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Master Thesis

Charting a new course or running aground?

A systematic evaluation of Aaron James' theory of fairness in trade

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Foreword

From my 9th level apartment in Antwerp, I am reminded every day of the ubiquity of commerce in our world. Beyond the rooftops of this former Hanseatic *Kontor*, I can see the cranes, wind turbines and smoke stacks of Europe's second-largest commercial port. Whenever I zoom out from my home address in Google Maps, I see the huge grey expanse of the Port of Antwerp stretching northwards from the city, claiming more space on the map than the city proper. And, as my apartment sits by the Scheldt river, I can often glimpse barges carrying materials and goods inlands, far into the hinterlands of our continent.

Trade is undoubtedly a key driver of human history and contemporary geopolitics. Had it not been for trade, the Americas may not have been discovered and colonised, gunpowder may have been confined to China, slavery may never have occurred. And, in the present day, who can think of geopolitics without mentioning the European Union – the living embodiment of multilateralism and free trade – or without mentioning ex-president Trump's trade wars against China, or China's own Belt and Road initiative? Trade is everywhere, it affects our past, present and future. How can one leave such a huge topic untouched?

I began writing this dissertation in the waning days of the Trump presidency, in the middle of the Covid-19 pandemic. The multilateral trading order that could be taken for granted a few years ago looked quite fragile indeed. Following the spirit of the times, I decided trade had to feature somehow in my final academic work. The rest is now history, at least for me. For the reader, it is the chunk of 16.404 words waiting to be read below.

Enjoy!

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1 – Introduction

Within distributive justice theory, the idea of trade justice is a controversial one. Ask one scholar, and you might be told there is no such thing as trade justice. Ask another, and you might hear that global justice *requires* justice in trade. As the listener, you may end up rather confused. After all, the two positions appear irreconcilable. What should be made of distributive justice in the world, when it is in fact unclear what issues matter to it? For example, should the plight of blue-collar workers, who have lost their jobs to trade liberalisation, be considered an issue of justice? Have they been harmed unfairly and must they be compensated directly for the effect liberalisation has had on their livelihoods? Or is their plight outside the purview of justice, implying they have no reason to complain or lay claim to compensation? Without a resolution, distributive justice theory will struggle to provide observers with insight. Can such a resolution be found?

The two traditions in this debate have at times been labelled 'parochialist egalitarianism' and 'cosmopolitanism'.[1] Parochialists are the ones that claim there is no trade justice. They think that issues of justice only arise from within nation states, therefore trade has nothing to do with the achievement of justice.[2] Cosmopolitans deny this, arguing that globalisation and its institutions – including the international trade regime – have made justice a global issue. Consequently, the achievement of justice includes domestic justice as well as justice in trade.[3]

The two traditions are seemingly locked in disagreement over the relevance of trade. Resolution thus seems a way off. With that said, a recent contribution to the literature claims to chart a distinct course between cosmopolitanism and parochialism. Aaron James' *Fairness in Practice: A Social Contract for a Global Economy* was published in 2012 with the promise of offering this 'third way' that is not only distinct from, but also more desirable than the other two options.[4]

In his book, James complains that parochialism and cosmopolitanism offer an unappealing choice between a feasible but underwhelming benchmark for justice – or fairness as he calls it – or an ambitious but unattainable one, respectively.[5] Thus, he develops a theory that provides an ambitious and feasible benchmark for global justice, revolving around fairness in trade. He retains ambition by advocating for equal distribution like cosmopolitans. However, he limits this call to the gains of trade, while cosmopolitans operate no such limitation.[6] James thinks this makes his theory more feasible than

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[1] James 2012, p. 6.
[2] For examples of parochialist positions, see: Blake 2001; Nagel 2005; and Miller 2007.
[3] For examples of cosmopolitan positions, see: Pogge 2002; Caney 2006; Brock 2009.
[4] James 2012.
[5] Ibid., p. 6.
[6] Ibid., p. 17.

cosmopolitanism, as it will guide agents more effectively towards a fair outcome.[7] The result is a set of principles for trade reform that can feasibly guide societies towards greater fairness overall.[8]

Upon publication, James' book was recognised as the most ambitious effort to date towards developing a theory of trade justice.[9] However, this recognition did not come without controversy. *Fairness in Practice* initiated a debate where positions ranged from supportive commentary on one side to accusations of disguised cosmopolitanism or parochialism on the other.[10] This mixed reception presents students of distributive justice with a problem: how should James' contribution be valued? Usually, helpful contributions are kept as vehicles for furthering an academic debate; dead ends of inquiry are discarded. Which is James'?

To find out, I conduct a systematic evaluation of James' third way, guided by the following research question: *Does Aaron James provide a plausible alternative to parochialism and cosmopolitanism within distributive justice theory?* In this dissertation, I will argue that he does not.

My inquiry proceeds as follows. In Chapter 2, I provide a comprehensive account of James' theory. For present purposes, its only relevant detail is that James relies on practice-dependence methodology to ensure action-guidance. The chapter finishes with an illustration of James' three principles of fairness, namely, Collective Due Care, International Relative Gains and Domestic Relative Gains. In Chapter 3, I test James' theory for internal coherence. Unfortunately, James' principles are not as fair and feasible as he claims. James must accommodate several objections to retain the claim that his theory is ambitious as well as feasible. However, the updated theory strongly resembles cosmopolitanism and renders practice-dependence redundant, thereby calling the plausibility of James' third way into question. Finally, in Chapter 4 I investigate whether the loss of practice-dependence constitutes an obstacle to James' objective of guiding action. It does not. On the contrary, practice-dependence emerges as a misguided solution to a false dilemma between action-guidance and cosmopolitanism. James' third way was a misled enterprise to begin with, because he could have motivated action via cosmopolitanism all along. This leads me to conclude that James has offered no plausible alternative to distributive justice literature after all.

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[7] James 2012, p. 30.
[8] Ibid., pp. 17-18.
[9] Risse & Wollner 2013; Barry 2014; Olson 2014.
[10] Beitz 2014; Axelsen 2018.

2 – Aaron James' theory of fairness in trade

The first step towards an appraisal of theory is to ground one's understanding of it. In this chapter, I conduct a comprehensive exploration of James' theory of fairness in trade. Starting from his motivation for developing the third way, I discuss the methodological and theoretical foundations of his theory, including: practice-dependence theory; the conceptualisation of trade as a social practice; and trade as a ground for fairness demands. In the latter part of the chapter, I introduce the three principles of fairness emerging from these foundations: Collective Due Care, International Relative Gains and Domestic Relative Gains.

2.1 – <u>The third way</u>

The theory that James develops can best be understood starting from his guiding ambition: to formulate a 'third way' in the philosophical debate surrounding global economic justice. That begs the question: a third way between what? In the introduction to his book, James writes: "If we look to the philosophical literature on global justice for guidance, we are offered an unattractive choice between nationalistic or parochial egalitarian views and fully 'cosmopolitan' viewpoints".[11] Parochialism posits that questions of distributive justice pertain to the domestic domain only. Consequently, it recognises no legitimate grounds for global distributive justice concerns.[12] James dislikes this approach because it "arguably makes too much of borders".[13] In his view, the global economy is characterised by systemic interdependence between countries, meaning they barely have a choice in their participation to it.[14] As countries are unwillingly entangled in the grip of global trade, their citizens are too. Their (mis)fortunes are determined by global dynamics, hence James thinks that compensation should work across borders to be sufficiently fair.[15]

In contrast to parochial egalitarianism, cosmopolitanism recognises the global economy as a unified system, pointing to its historic and contemporary impact on individuals scattered across countries.[16] Accordingly, cosmopolitans want parochialists' domestic redistribution schemes to be elevated to the global level, featuring transfers between persons and institutions worldwide.[17] This, however, is a step too far for James: cosmopolitanism "arguably overstates or at least oversimplifies the global economy's real importance".[18] This is because, as James asserts, national institutions shape global and domestic

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[11] James 2012, p. 6.
[12] Ibid., p. 9.
[13] Ibid., p. 10.
[14] Ibid., p. 11.
[15] Ibid., p. 10.
[16] Ibid., p. 12.
[17] Ibid. p. 11.
[18] Ibid, p. 12.

economic outcomes to such an extent that they cannot be ignored when conceptualising a theory of fair trade.[19] Clearly, one must not disregard borders either: an effective conception of fairness recognises the markedly inter-*national* character of global governance.[20] Dissatisfied as he is with the dichotomy on offer, James expresses the key to his project: "[My novel] conception of fairness in international political morality presents a distinctive '*third way*.'"[21]

2.1.1 – <u>Prescriptive philosophy</u>

There is a silver lining running through James' rejection of the two traditions: a principled concern with the global economy *as it is.* Parochialism ignores real-world economic interdependence, which leads it to endorse underwhelming fairness demands. Cosmopolitanism ignores the markedly international character of global politics, which leads to demands that are too ambitious ("asking for the moon", in James' vocabulary).[22] If these are grounds for rejection, James' opinion must be that the state of the world should inform a theory of fairness. Indeed, his reasoning against cosmopolitanism illustrates this aptly: "We cannot abstract away from our basically international system of global cooperation even as a matter of 'ideal theory'" – because while ideal theory might ask for the moon, the request falls on deaf ears if lunar landers are nowhere to be found.[23]

That James holds 'the world as it is' – namely, economically interconnected yet ruled by nation states – in such high regard underscores the mission he reserves for moral philosophy: motivating *real* change in the world. He writes: "Normative political philosophy seeks to address actual world agents with normally conclusive demands for action," and "for that, principles must be credibly addressed to going practice".[24] Ideal-theoretic principles may be more equitable or perfect in some other sense, but due to their removal from agents' real circumstances they will fail to motivate real change. A related but more profound reason for James' practice-dependent position is his wariness of 'epistemic uncertainty'. That wariness can be summarised as follows: Although ideal theory can formulate superior principles in abstract terms – for example, cosmopolitanism imagining a global redistribution scheme for a truly equitable world – the *real* stability, efficacy and therefore desirability of the resulting world order is entirely unknown.[25] This 'epistemic limitation' motivates James to focus on the world as-it-is, because today's international order is the only known viable and hence realistic foundation for normative principles of fairness.[26] For lack of reasonable proof on the alternatives, political philosophy is obliged to consider the current international order as *the* reality to theorise on.[27] This is not to say that ideal

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[19] James 2012, p. 12.
[20] Ibid., p. 13.
[21] Ibid., p. 14.
[22] Ibid., p. 13.
[23] Ibid.
[24] Ibid., p. 126; James 2014, p. 289.
[25] James 2012, p. 118.
[26] Ibid., p. 119.
[27] Ibid., p. 114.

theory has no experimental or speculative value. But to theorise on what is required for more fairness in the world of *today*, philosophers need a non-ideal theory that recognises the international character of the world system. In summary, James' core concern here is that normative principles must speak to the (agents within the) practice they make prescriptions for.

2.1.2 – <u>Practice-dependence</u>

James' concern with 'going practice' is methodologically embedded in an approach to ethical reasoning that he calls 'constructivist'. He writes: "We move from this […] understanding of the global economy to the more substantial conception of fairness expressed," wherein "the bridge is our constructivist methodology".[28] James constructs his conception of fairness on the foundations offered by an understanding of trade-as-it-is, which is the 'going practice'. In doing so, his approach draws from the work of John Rawls, that "takes independently identified social structure as a point of departure" in conceptualising principles of justice.[29] James has nurtured this interpretation of Rawls ever since an earlier 2005 article, wherein he writes that, contrary to other opinions in the literature, "Rawls has all along been following a single, abstract 'constructive' method, which begins from existing social practices".[30] In this Rawlsian method, then, Rawls' 'independent identification' of going practice is James' 'bridge' towards constructing principles of fairness.[31]

James' effort to create an independent characterisation of trade borrows from Ronald Dworkin's legal interpretivism. Charles Beitz defines Dworkin's method as: "a method of 'constructive interpretation' for such practices [like law] modelled on the creative interpretation of works of art and literature".[32] On this account, the interpretive method progresses in three stages: the pre-interpretive stage, wherein identification of the practice occurs in a value-free way; the interpretive stage, wherein the practice's purpose is drawn from its factually identified character; and a post-interpretive stage, wherein the practice is evaluated and possible reforms are suggested.[33] In its traditional format, the method requires for its first stage "a significant degree of agreement about the object of interpretation" among observers.[34] Problematically for James, there is little agreement regarding the precise boundaries and thus 'identity' of international trade.[35] To meet this challenge, James diverges from Dworkin by interconnecting the stages in a process akin to reflective equilibrium. Reflective equilibrium requires its user "to measure the results of bottom-up investigations of relevant practices against critical standards of independent moral principles", creating a feedback loop between interpretation and moral standards.[36]

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[28] James 2012, p. 25.
[29] Ibid.
[30] James 2005, p. 282.
[31] Ibid.
[32] Beitz 2014, p. 226.
[33] Ibid.
[34] James 2014, p. 288.
[35] Ibid.
[36] Brandstedt & Brännmark 2020, p. 356.

Applied to Dworkin's legal interpretivism, this entails the constant re-evaluation of the identity of international trade – by going back and forth between divergent interpretations of its boundaries and purpose – to produce a conceptualisation of the practice more or less identical to the reality on the ground.[37]

To summarise the discussion thus far, James' pursuit of fairness in trade is guided by the characteristics of the trade practice *as it is*. This places him in the camp of practice-dependence theorists who, to paraphrase camp member Andrea Sangiovanni, posit that practices and their institutions should play a role in justifying, formulating and grounding the principles in question.[38] Only this adherence to practices can ensure that principles are strongly normative – in other words, that they sufficiently motivate agents to act on James' prescription.

2.2 – Trade as social practice

The next question now is: what, according to James, *is* the trade practice actually? The answer lies in James' three-chapter discussion of the social foundations underpinning his theory. Before treating the specifics of that discussion, however, it may be helpful to define the concept of 'practice' further. The most important step in doing so is to emphasise that practices are social: they involve a collection of agents. For this reason, James actually refers to *social practices* throughout his book.[39] Furthermore, James identifies the following criteria to determine the existence of a social practice in a given context. Firstly, there is agent interaction over time. Secondly, coordination between agents is governed by shared expectations. Thirdly, the expectations are determined by the agents in unison. Lastly, the expectations are based on a shared purpose.[40] In light of this, James believes that trade constitutes a social practice. After all, trade is characterised by interaction between countries, that is coordinated via multilateral institutions set up by the countries themselves – such as the WTO or the European Union – in pursuit of mutual income gains.[41] A crucial step in the creation of this social practice is the wilful transition towards 'mutual market reliance', i.e. the decision by several countries to economically integrate and come to rely upon one another, for the shared purpose of raising national incomes.[42] In light of this, James calls trade practice the 'international market reliance practice'.

2.2.1 – Mere pattern or social practice?

It should be noted that James' conceptualisation of trade differs markedly from what one would tendentially derive from classical economics. An economist will conceptualise trade more as a pattern

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[37] James 2014, p. 289.
[38] Sangiovanni 2016, p. 3.
[39] James 2012.
[40] Ibid., pp. 37-38.
[41] Ibid., p. 40.
[42] James 2012, pp. 39-40.

of unconstrained transacting between self-interested agents, only satisfying the first criterium for social practice. The inescapable Adam Smith wrote in *Wealth of Nations* that trade liberalisation serves any participant unilaterally: regardless of what others do, individually initiating free trade allows oneself to specialise and reap greater personal rewards.[43] When several countries liberalise, the motivating principle remains self-enrichment. Countries specialise in the activity each has a comparative advantage in (wherein each loses the least hypothetical income from alternative use of its endowments), generating larger income gains for all in the transactions that follow.[44] In sum, each country is free to choose to participate in international trade, its actions solely determined by its own motivation to increase gains and the comparative economic decisions of others.[45] Far from a practice, trade is a mere pattern of international market activity.

James' interpretation accommodates much of the basic economic rationale for trade. Countries indeed trade to increase their own gains, and they do so by nursing their comparative advantage. But it cannot accommodate for the supposition that trade is a mere regularity of behaviour. Where economists assume a pattern of free individual decisions converging toward an equilibrium of greater gains – perhaps guided by an Invisible Hand? – James sees a governance vacuum that inhibits trade if it is not addressed. He writes: "Economic [trade] reality cannot approximate neo-classical models in the absence of a constitutively embedding market reliance practice".[46] The practice matters because it addresses a crucial problem neoclassical models do not account for: "The practice is essential […] because of problems of uncertainty and risk that arise among distinct agents in virtue of the human condition".[47] The problem is that risk and uncertainty discourage trade liberalisation, as individual countries are wary of exposing their economies to possible threats posed by the unknown strategies and motivations of their peers.[48] The *solution* provided by social practice is to regulate risk and uncertainty through adequate governance arrangements. Inclusion of such institutions enables trade to occur on the shared expectation that current and future cooperation will be reciprocated – returned, rather than betrayed – by all participants.[49] As such, the governance of shared expectations satisfies the second criterion for social practice.

2.2.2 – <u>The international regime</u>

International trade is therefore nothing like a realm of unconstrained transactions: James believes the international system is orderly. He rejects the Hobbesian position that the international system is an anarchic hunting ground, where the right of the strongest prevails and the weak cower behind their borders.[50] While Hobbes was and still is correct in characterising international politics as devoid of

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[43] Smith 2007 [1776], pp. 473-476.
[44] Mankiw 2018, p. 53.
[45] James 2012, p. 36.
[46] Ibid., p. 44.
[47] Ibid.
[48] Ibid., p. 56.
[49] Ibid., p. 52.
[50] Ibid., p. 80.

central authority, James sustains that a decentralised regime has come to fill the void in recent decades: "Whatever was true in Hobbes' day […] the basic assurance problem in trade has long been overcome, despite the absence of a global sovereign ruler".[51] Countries have learned that by negotiating the terms of trade peacefully, they can resolve the problems of uncertainty and risk successfully. In doing so, participant countries are essentially 'co-legislators' of the decentralised regime that regulates international trade.[52] This corresponds to the third criterion for social practice: that expectations are determined by participants *in unison*. Bound together by the shared purpose of raising incomes through decentralised governance, countries are indeed participant to the international market reliance practice for all intents and purposes.[53] In sum, James has no doubt that trade can accurately be characterised as a social practice.

2.3 - Trade as a ground of fairness

So far, I have discussed that James' position rests on an understanding of trade as a social practice. What remains to be discussed is why and how fairness demands arise from trade in the first place, which James can subsequently address with his principles of fairness.

2.3.1 – Why do fairness demands arise from trade?

Why fairness demands arise from trade can be explained via three arguments within James' work. The first argument arises from his interpretation of efficiency in neoclassical economics. Neoclassical theory is generally assumed to endorse liberalisation for reasons of mere instrumental efficiency – that is, that it leads to a more efficient allocation of resources – but there are several more definitions of efficiency within the discipline.[54] Most of these conceptions do not give rise to substantive demands for fair trade, however James notes that among these conceptions there is the particular idea of *Pareto efficiency*. This idea posits that a policy change leading to overall greater gains – such as trade liberalisation – is only acceptable when it leaves nobody worse off.[55] Exploiting the multifaceted conceptualisation of efficiency in neoclassical theory, James argues that a Pareto efficient fairness demand arises from trade economics. To paraphrase his argument: Since many economists endorse Pareto efficiency – which requires that losers from trade be compensated – neoclassical economic theory accepts that free trade must come in a "specifically distribution-sensitive form" to be efficient.[56] This raises a fairness demand in trade, in the sense that no one should be left worse off by liberalisation.

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[51] James 2012, p. 81.
[52] Ibid., p. 91.
[53] Ibid., p. 41.
[54] James 2012, pp. 61-67.
[55] Ibid., p. 51.
[56] Ibid., p. 67.

The second argument is modelled on coercion theory, a branch of distributive justice theory. According to coercion theory, the case for *domestic* justice arises from the oppressive effect of national institutions on the citizens they govern. "Domestic law is a directive system that tells individuals what to do by orders backed by force", and that "creates the special presumption against arbitrary inequalities in our treatment by the system".[57] Because citizens do not choose to be subjected to these institutions – which include the criminal justice system, tax authorities and the forceful hand of police – domestic conditions give rise to substantive fairness demands. James argues that similar fairness demands arise from international trade because countries have no choice but to partake in it: "Nowadays no country can afford not to participate".[58] This view contrasts with the image tabled by classical economics, wherein trade is an activity anyone can freely opt in to and opt out of.[59] An image that, it may be noted, is upheld by coercion theorists to argue against coercion-based grounds for fairness in trade.[60] In contrast, James sustains that countries have no choice but to subject themselves to the forces of free trade for their economic survival. In doing so, he compares their non-decision to citizens' non-decision to be subject to domestic coercion.[61] Consequently, countries too have a special presumption against arbitrary inequalities.

The third and final argument depends on an application of T.M. Scanlon's contractualist theory to the international system. James' interpretation of Scanlon centres on the latter's emphasis on "what we owe to each other", wherein "What ultimately matters are relations of 'recognition' between people, as realised in the ways individual or collective agents conduct themselves".[62] Applied to the international system the agents are countries and mutual recognition revolves around the idea of status equality, as formally demanded by international law (to paraphrase James, the idea that countries are "moral equals is firmly rooted in the state system").[63] True recognition of equal moral status depends on agents' conduct, though. Therefore, the idea of 'what we owe to each other' raises substantial fairness demands for participants to international trade.

2.3.2 – How do fairness demands arise from trade?

With regards to *how* fairness demands arise from trade, James offers a perspective that builds on his constructivist concern for practice-dependence. He begins with a basic point: that specific fairness demands can and do arise solely from *within* trade as a social practice.[64] Generally speaking there is many a moral demand placed on agents, such as the provision of humanitarian aid regardless of person

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[57] James 2012, p. 95; Nagel 2005, pp. 128-129.
[58] James 2012, p. 100.
[59] I refer the reader back to section 2.1.5 for an illustration of this perspective.
[60] James 2012, p. 94.
[61] Ibid., p. 100.
[62] Ibid., p. 101.
[63] Ibid., pp. 188-189.
[64] Ibid., p. 144.

or circumstance.[65] However, when one seeks to conceptualise fairness in a specific social practice, only *internal* issues count in the calculation.[66] These are fairness demands that would not have existed in the absence of the practice in question.[67] There cannot be a duty to compensate the losers of free trade when all countries are closed societies, after all. Or even more concretely, there cannot be unfair WTO rulings by WTO panels on given trade practices, *when trade does not exist.[68]* In this sense, fairness demands arise from trade because trade itself creates situations that must be evaluated as fair or unfair.

On a related note, the question of internality also clarifies what the gains are that should be distributed fairly: those created by the practice itself. There is more wealth in the world than that created by trade, but James believes that principles of fairness internal to trade only dictate the fair distribution of the gains *of trade*.[69] Whatever a country produces autarkically, it will be entitled to keep.[70]

James' concern with internality points to the next component of his perspective: that when evaluating the degree of fairness within a social practice, "We reason on the merits of the case from the standpoints of different parties" involved.[71] Taking into account participants' differing interests in and objections to the practice as it is, we can determine whether some objections are so serious as to demand a reform to the practice in name of fairness.[72] This builds on the notion that each participant (this can refer to countries as well as individuals) has equal moral status, and thus deserves equal consideration of objections. Internal fairness demands therefore arise when any one participant has reasonable complaints against the practice's current constitution. In which case James would call the practice 'structurally inequitable'. On the flipside, a practice satisfies the demands of *structural equity* when "no country or class is in a position to reasonably complain of the way it is treated under the practice".[73]

The notion of equal moral status sustains one last point on how trade gives rise to fairness demands. As discussed, James believes that agents have equal moral status among their peers: countries are equal to one another, individuals are equal to one another.[74] As James tries to determine what fairness demands arise from trade, he augments his conception of agents' equality in three ways. Firstly, he assumes participants are equal contributors to the gains accrued by trade: only through collective effort do the gains materialise in the first place.[75] Secondly, he includes the assumption that participants have a 'symmetry of interest': each is assumed to be interested in greater rather than lesser shares of the gains. The plausibility of this position rests on the basic economic assumption that agents self-interestedly

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[65] Ibid., p. 145.
[66] James 2012, p. 145.
[67] Ibid., p. 144.
[68] Ibid., p. 146.
[69] Ibid., pp. 19-20.
[70] Ibid., p. 180.
[71] Ibid., p. 134.
[72] Ibid., p. 135.
[73] Ibid., p. 131.
[74] Ibid., p. 189.
[75] Ibid., p. 168.

pursue maximum gains, *ceteris paribus*.[76] Lastly, he adds that participants lack 'special entitlements', that is, no participant has arbitrary claims to greater gains than others.[77] This includes a rejection of libertarian views on merit-based special entitlements.[78] The resulting conception of fairness is that participants, whether they are countries or individuals, have a claim to equal shares of the gains of trade. James calls this the 'equal gains benchmark' which, in its essence, stipulates that fairness demands arise from trade in a *substantively egalitarian* way.[79]

To summarise, trade practice raises fairness demands *because* trade is concerned with Pareto efficiency; trade constitutes a coercive regime; and participants to trade are obliged to consider what they owe one another. The way in which these demands arise is internal; taking into account participants' complaints; and in a substantively egalitarian fashion. Knowing this, all the necessary building blocks are in place to turn the attention to James' specific prescriptions for the global economy.

2.4 - Principles of fairness

Having understood why and how trade raises fairness demands, the remaining question is what fairness specifically requires. James develops three principles of fairness in reply. To cite James directly, they are as follows:

> *Collective Due Care*: trading nations are to protect people against the harms of trade (either by temporary trade barriers or "safeguards," etc., or, under free trade, by direct compensation or social insurance schemes). Specifically, no person's life prospects are to be worse than they would have been had his or her society been a closed society.

> *International Relative Gains*: gains to each trading society, adjusted according to their respective national endowments (e.g., population size, resource base, level of development), are to be distributed equally, unless unequal gains flow (e.g., via special trade privileges) to poor countries.

> *Domestic Relative Gains*: gains to a given trading society are to be distributed equally among its affected members, unless special reasons justify inequality of gain as acceptable to each (as, e.g., when inequality in rewards incentivizes productive activity in a way that maximizes prospects for the worst off over time).[80]

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[76] James 2012, pp. 185-188.
[77] Ibid., p. 170.
[78] Ibid., pp. 174-179.
[79] Ibid., p. 168.
[80] Ibid., pp. 203-204.

The next paragraphs discuss the theoretical foundations of each principle and illustrate the intended prescriptions in a stylised example.

2.4.1 – Collective Due Care

The first principle, Collective Due Care (CDC), builds on the previously discussed notions of Pareto efficiency, structural equity and coercion. As a reminder, Pareto efficiency dictates that liberalisation is only acceptable when it leaves nobody worse off.[81] This is directly reflected in the second sentence of CDC, where James clarifies that nobody's life prospects should worsen as a consequence of liberalisation. Meanwhile, structural equity requires that participants' objections against free trade are addressed. This is indirectly reflected in CDC: since open trade can cause significant harm to individual livelihoods, their complaints against harm weigh heavily in favour of considering protectionist or compensatory measures.[82] Lastly, these objections against arbitrary inequalities make considerable sense from a coercion theory perspective: *because* individuals are inescapably affected by their country's decision to liberalise, they are entitled to compensation. Note that coercion features here more in the original sense (domestic justice for individuals) rather than James' globalised sense (international justice for trading countries).

In formulating CDC, James is deeply concerned with economic outcomes for the poor. He emphasises that, in calling for no person's life prospects to be diminished, he does *not* concern himself with the life prospects of those that are wealthy enough to sustain a negligible setback from liberalisation. He writes: "The privileged will in any case lack a reasonable objection to being disadvantaged if this provides significant benefits to people who are less well-off, especially given the substantial opportunities for adaptation afforded by their greater wealth".[83] Separately, James opposes utilitarian reasoning based on the same concern with the poor. Applied to trade, the implication of utilitarianism would be that the maximisation of national income (welfare) overrides domestic individual objections.[84] Minute welfare improvements for all consumers or gargantuan welfare improvements for 'oligarchs' *at the irreparable expense of others* would be wholly fair, provided overall welfare is maximised in the process.[85] In opposition, James sustains that individual well-being weighs more heavily in matters of fairness: "The objection 'I am made worse off' is more powerful than 'I could have been better off', in which case either market protection or compensation of the loser carries the day".[86] Convinced that individuals are substantively equal – equal in moral status and entitlement to welfare – James places individual well-being above utilitarian welfare maximisation.

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[81] James 2012, p. 51.
[82] Ibid., p. 207.
[83] Ibid., p. 209.
[84] Ibid., p. 215.
[85] Ibid., p. 216.
[86] Ibid., p. 207.

To give the implications of CDC a degree of substance, consider the recently struck Regional Comprehensive Economic Partnership (RCEP) in the Asia-Pacific region.[87] It is one of few noteworthy multilateral trade agreements reached in recent years, comprising roughly a third of the world's GDP and population.[88] The RCEP makes for a good case study because the participating countries are diverse in terms of size, development and wealth. As it stands, the deal is an economic boon for China, Japan and South Korea in particular, and it is expected to add 500 billion US$ to the world economy on a yearly basis. However, it has been criticised for the absence of labour standards. Assuming RCEP moves forward, CDC would criticise it for coming short on that ground. In contrast to what a utilitarian principle would sustain, national income gains alone would not be sufficient to make the agreement fair. Lack of labour protections presumably exposes workers to the effects of liberalisation, implying harm to their livelihoods. If Toyota were to offshore some of its manufacturing facilities to Vietnam, the workers in Japan losing their jobs would be unfairly harmed. To make RCEP fair, CDC would require either the reinstation of protectionist measures, or the expansion of social insurance schemes domestically.[89] In the Toyota example, that would imply appropriate social security or retraining schemes for the Japanese workers provided by the government in Tokyo. Meanwhile, ensuring nobody is worse off than they would have been under autarky is problematic. That would require determining the alternative course of an RCEP economy since a person's birth and comparing that with its actual course, present and future, for every citizen under RCEP being disadvantaged. Whether such determination is possible is disputed; I return to this in the next chapter.

2.4.2 – <u>International Relative Gains</u>

The second principle, International Relative Gains (IRG), follows directly from the equal gains benchmark. As discussed, the equal gains benchmark dictates that countries are entitled to equal gains from trade vis-à-vis their peers. However, it is apparent in the principle that there are some qualifications as to what equal gains means in application. James allows for two 'fair inequalities'. The first one is based on endowments, i.e. countries' characteristics associated with their 'productive capacity', such as population.[90] James argues that these endowments reflect a country's real economic 'weight', so to speak, and the gains granted to each country should correspond to this weight.[91] Succinctly, it only seems fair that a country with double the population receives a double share in the gains of trade, *ceteris paribus*.[92]

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[87] Kurlantzick 2020; Petri & Plummer 2020a; Ibid., 2020b.
[88] Participants are: the ten members of ASEAN, China, Japan, South Korea, Australia and New Zealand.
[89] Supposedly in the spirit of CDC, India and the United States withdrew from negotiations precisely to extend protection for their workers.
[90] James 2012, p. 180.
[91] Ibid., p. 182.
[92] Ibid., p. 181.

The second 'fair inequality' is based on countries' vastly diverse levels of wealth. James believes that all countries are entitled to the same level of development, and that no individual should live in abject poverty.[93] Thus, to address inequality of wealth among both individuals and countries, James allows greater gains to flow to the poorest countries. This may seem like a violation of the 'absence of special entitlements' assumption that supports the equal gains benchmark: why should poor countries be permanently entitled to greater gains than rich countries? James resolves this as follows. Firstly, he grants that advanced countries must continue receiving worthwhile gains, otherwise they will abandon the IMRP.[94] Secondly, he clarifies that poor countries' entitlements to greater gains only last as long as they are truly disadvantaged: once any poor country has reached a certain threshold of development, its special entitlement will terminate.[95]

After his initial promotion of IRG, James addresses and rejects a vast array of alternative principles for fair international distribution of gains. The details of that extensive treatise are not relevant for present purposes. However, James' general position in that discussion is that the alternative principles demand insufficient levels of distribution for developing countries.[96] In short, IRG underlines James' concern with the welfare of the disadvantaged, in this case at the level of countries.

Returning to the RCEP example, IRG would make the following prescriptions. On the one hand, it would require the gains to be divided equally among participants. Assuming the 500 billion US$ created by the RCEP stay in participants' national economies, the endowments-free equal distribution would require each country to receive approximately 33 billion US$ on a yearly basis. However, including the population endowment creates a markedly different distribution, with for example China (population 1.4 billion) receiving 304 billion US$ and neighbouring Japan (population 126 million) receiving 27 billion US$. Brunei, the smallest country by population (440 thousand), would receive a mere 10 million US$.[97] Accounting for more endowments would refine James' fair distribution further: a resource base *and* population-sensitive distribution could give resource-rich China 270 billion US$ and resource-poor Japan 50 billion US$, since greater resource endowment implies greater domestic wealth for James.[98] On the other hand, IRG would allow greater gains to flow to countries below a certain development threshold. This could raise gains for the likes of Myanmar, while further diminishing the gains for an advanced economy like Japan. Assuming Japan's gains would ultimately halve, the question is whether yearly gains of 13.5 billion US$ would make RCEP membership worthwhile for the 5 trillion US$ Japanese economy. Since James believes trade should be worthwhile for the rich countries too, this may be a problematic outcome of IRG. I return to other possible problems with IRG later.

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[93] James 2012, p. 223.
[94] Ibid., pp. 224-225.
[95] Ibid., p. 226.
[96] See James' treatment of these alternative principles on pages 226 to 245 (2012).
[97] Population statistics are drawn from the Trading Economics Database (2020).
[98] James 2012, p. 222.

2.4.3 – <u>Domestic Relative Gains</u>

Domestic Relative Gains (DRG) emulates IRG on the domestic level. Since *individuals* are equal in the sense expressed by the equal gains benchmark, each has a right to an equal share of the gains of trade. This equal distribution is only concerned with equality of gains between individuals of the same society, since IRG determines how much of the total gains of trade each country receives in the first place.[99] Just as with IRG, greater gains may flow to the poor.[100] However, greater gains may *also* flow to some individuals if they specifically create greater gains for everyone, for example with risk-taking leaders of tech start-ups.[101] Despite this 'difference principle', James believes DRG also ensures that rich countries do not subsidise rich individuals in poor countries. By ensuring that in each country the gains of trade are divided equally, transfers from rich country to poor country will actually benefit those *individuals* in need.[102]

The RCEP example of a double endowment-sensitive distribution would, as mentioned, see China receive 270 billion US$ and Japan 50 billion US$ respectively. According to DRG, fairness would then require each Chinese citizen to receive 178 dollars (total gains divided by population) while each Japanese citizen would receive 396 dollars, more than double the sum. Poor citizens may receive more at the cost of their more affluent countrymen. In this way, wealthy Singaporeans giving up part of their wealth to the Chinese would not see it disappear in the pockets of China's super-rich (but maybe they would disappear in the pockets of China's risk-taking tech entrepreneurs).

2.5 – <u>In summary</u>

Thus far, I have comprehensively laid out James' theory of fairness in trade. In doing so, I have clarified that he pursues an internationalist 'third way' based on a practice-dependent approach to moral philosophy. The third way conceptualises trade as a social practice which for several reasons and in several ways gives rise to fairness demands. These are addressed in the principles of Collective Due Care, International Relative Gains, and Domestic Relative Gains. In the next chapter, I start my inquiry into the plausibility of James' account.

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[99] James 2012, p. 168.
[100] Ibid., p. 219.
[101] Ibid., p. 220. This is similar to Rawls' difference principle.
[102] Ibid., p. 221.

3 – James and the spectre of autarky

James claims that his principles of fairness are both fair and feasible. If this is indeed the case, James deserves serious praise for his contribution to distributive justice scholarship. His theory would trump the underwhelming parochialist and unrealistic cosmopolitan positions, offering a third way to the sweet spot of feasible utopia. To know if he succeeds, I will test whether James' claim is sufficiently supported by his prescriptions (i.e. his principles). I will be aided by several authors who have reason to be doubtful.

The greatest hiccup in James' plan is the role of autarky in his theory. This means the following in each principle. With regards to CDC, it is necessary to determine the state of the domestic economy *had it been closed since a person's birth* to conclude whether that person has been substantially harmed by liberalisation (and is therefore entitled to compensation). With regards to IRG, one needs to determine autarkic gains within the total sum of gains to determine the gains of trade (which must be distributed fairly). Additionally, in accordance with the first 'fair inequality' discussed in 2.4.2, autarkic 'background' endowments shape the fair distribution of trading gains under IRG. Finally, DRG indirectly depends on the two roles that autarky plays in IRG, since the gains subjected to domestic distribution depend on what gains of trade are received via IRG.

Autarky therefore plays three distinct roles in James' theory. Firstly, it serves as a counterfactual for comparison in CDC. Secondly, it acts as a means for isolating the gains of trade in IRG. Lastly, it acts as a regulator of the ultimate distribution of trading gains among participants in IRG, thereby affecting DRG as well. In the next three sections, each autarky-based mechanism is appraised on account of its feasibility and fairness outcomes. In the fourth and fifth sections of this chapter, I explore the possibility of reconciliation between James' position and that of his critics.

3.1 – Autarky as a counterfactual for comparison

The foremost critic of James' use of autarky as a counterfactual for comparison is Christian Barry. He devotes an article to critically examining CDC and the autarky-based mechanism it relies on, the main question being: Does CDC live up to James' own standards of feasibility and fairness?[103] Barry argues the answer is no. He starts by repeating a fact well understood by now: that CDC requires nobody is made worse off by free trade in comparison to a state of autarky initiated at a person's birth.[104] To make CDC work, then, determining that state is necessary. James thinks this can be done. Notwithstanding that there are "enormous epistemological difficulties" in determining how a counterfactual autarkic

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[103] Barry 2014.
[104] Ibid., p. 256.

economy would look, he sustains modern econometrics makes determination possible.[105] Barry, meanwhile, believes it is impossible to accurately determine how an economy – and any individual's life course – would have fared under autarky.[106] How can one pinpoint the counterfactual course of the economy when it is in fact unknown how autarky affects national institutions, diplomatic relations and economic policymaking? And, consequently, how it affects the circumstances of the person selected for the comparison?[107] The possible outcomes of a move towards autarky are many; how does one confidently select any outcome as the correct counterfactual for comparison? Barry sees no feasible path towards such selection, and is therefore compelled to reject James' optimism.

To be clear, Barry does believe it is possible in philosophy to engage in *speculation* regarding counterfactuals. That is precisely what cosmopolitans do when they compare reality to their proposed – but entirely hypothetical – world order of redistribution.[108] However, speculation is a different beast than determination. Whereas speculation entails the envisaging of possible situations with no regard for likelihood, determination requires finding something out at a substantial level of certainty. The first problem facing James, then, is that the autarky-based mechanism supporting CDC contradicts his own standards of feasibility. On the one hand, James urgently needs determination to steer clear of the ideal-theoretic speculation à-la-cosmopolitanism that he wishes to avoid. On the other hand, the only way for him to conceptualise counterfactual autarkic economies and livelihoods is precisely by speculating. CDC can only function if it disregards the wariness of epistemic uncertainty central to James' thesis, but in doing so it fails to be sufficiently action-guiding according to James' own standards. Therefore, CDC fails to make the practical recommendations required for James' third way.

Beside seeing a problem of feasibility, Barry disputes the fairness credentials of CDC and its autarky-based mechanism. Firstly, he thinks the counterfactual comparison with autarky is too weak to compensate losers sufficiently. To understand why, consider the following line of reasoning. During his critique of James' strategy of counterfactual comparison, Barry initially grants James the observation that mainstream economists use counterfactual speculation in *their* theories. If that is so, James could argue, why should *he* not be allowed to do the same? Barry replies that the problem with subscribing to an economist's rationale for CDC is that the economist would almost certainly conclude a closed economy to be disastrously poorer than an open one. Crucially, that would mean that CDC is satisfied *too easily* compared to James' demand for substantive fairness.[109] The following example may help to illustrate this. Suppose a Vietnamese farmer gets by in the partially open Vietnamese economy preceding RCEP. Following liberalisation, her economic condition is markedly worsened. According to CDC, the farmer would be entitled to compensation if her condition is worse than the counterfactual

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[105] James 2012, p. 213; Barry 2014, p. 257.
[106] Ibid.
[107] Ibid., p. 258.
[108] Ibid.
[109] Ibid., p. 257.

wherein the economy closed when she was born. But what if the closed economy would be disastrously poorer than even the post-RCEP Vietnamese economy, as most economists would expect? In that case the farmer would receive nothing, even though a new trade deal worsened her *real* livelihood. This does not seem fair, given that the *real* harms of RCEP liberalisation are not compensated.[110]

In addition to this problem of insufficient compensation, Barry thinks the mechanism leads to *over*compensation of others. Suppose now that a Vietnamese small business owner under RCEP loses 1000 dollars a year compared to pre-RCEP, but 5000 dollars compared to a counterfactual autarkic situation. Following CDC's comparative autarky baseline leads one to conclude that the small-town businessman is due 5000 dollars in compensation, even though in real life he only loses 1000 dollars. How is this fair, especially when the farmer is compensated *too little* under the same baseline? Barry notes that James tries to make CDC fairer by accounting for under-compensation and overcompensation respectively. He accounts for underwhelming compensation via appeal to uncertainty: when in doubt, compensate more.[111] Possibly. But this appeal cannot work for possible overcompensation, because greater pay-outs will only exacerbate the problem.[112] Barry considers whether James may try to escape the overcompensation problem by privileging the poor over the rich, akin to the discussion in Section 2.4.1.[113] However, this does not resolve the problem, given that the issue is the comparison with autarky itself. The Vietnamese small business owner is not a rich person who should be denied remuneration; he should just receive 1000 dollars instead of 5000!

According to Barry, then, James' overarching mistake is to rely on comparison with a counterfactual of autarky in the first place. Indeed, following his critique the question that looms largest is why James does not simply take pre-liberalisation as the relevant baseline. In light of this, Barry argues that to avoid unjust harms, any instance of (proposed) liberalisation should be approved or rejected in light of how much it (would) erode livelihoods upon implementation. Barry believes the evaluation should not be focused exclusively on trade – after all, the aggregate of redistributive institutions in a country determine whether livelihoods are ultimately preserved, worsened or improved. For this reason, Barry proposes a holistic principle of 'justice preservation' to identify unfair harms. As opposed to James' comparative-counterfactual approach, the justice preservation approach would "examine [liberalisation's] effects on the distribution of benefits and burdens within the society, relative to all feasible alternatives", bearing in mind the interplay with trade-independent redistributive institutions in that society.[114] Whether this approach can be reconciled with James' theory will be discussed later in the chapter.

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[110] Barry 2014, p. 259.
[111] "When we are uncertain whether or not a person (or representative individual) is better off relative to autarky, we should not presume that they are indeed better off, but rather err in the direction of assuming that they are not better off, and that they are thus due compensation." (Barry 2014, p. 259)
[112] Barry 2014, p. 260.
[113] James 2012, p. 209.
[114] Barry 2014, p. 262.

3.2 – <u>Autarky as a means of separating gains</u>

As previously mentioned, James utilises autarky in IRG not as a counterfactual of comparison, but as a mechanism for singling out the gains of trade within the total gains of an economy. This act of separation works as follows. Assuming that total welfare is constituted by the sum of autarkic gains and gains of trade, determining the size of the former enables one to do the same for the latter. James confirms as much: "Once we factor out the gains countries would have reaped under autarky, given their background endowments (land, labour, capital, technology, etc.), national income gains can only be understood as the fruit of international social cooperation".[115] This 'factoring out' can supposedly be done by relying on economic methodology: "economic science already offers methods of approximating how much a given country gains from a trade relationship" over and above its autarkic productive capabilities.[116] Isolating the gains of trade in this way is crucial to make IRG work, since it mandates the fair distribution of the aggregated gains of *trade* only.[117]

In this way, James relies on economics for the act of isolating trading gains in a way that echoes his reliance on econometrics for the act of counterfactual comparison. Recalling Barry's critique, the question is whether James' reliance on economic science is convincing this time. Mathias Risse and Gabriel Wollner, as well as Kristi Olson separately, believe it is not. For one, determining 'the gains countries would have reaped under autarky' runs into the same insurmountable problem of feasibility that was discussed in the previous section for CDC: a counterfactual cannot be known.[118] Olson hypothesises that to avoid this problem, James could argue that by autarkic gains he intended "how much [the country] could produce autarkically this year *if it were to become autarkic starting today*".[119] In other words, perhaps James intends to separate the gains that arise from background endowments *today* from those that arise from trade-related endowments *today*. In this case, however, the problem remains that drawing the line between autarkic endowments and trade-related endowments is messier than James suggests.

Risse and Wollner bring forth a historical argument to sustain this point. Their position can be summarised as follows: bearing in mind that societies have been trading uninterruptedly for millennia, the decision on which endowments (and consequently which gains) count as autarkic and which do not is arbitrary.[120] To illustrate, suppose Australia has a valuable mining industry that relies on explosives for extraction purposes. Assuming the black powder required for these explosives can be produced from

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[115] James 2012, p. 168.
[116] Ibid., p. 169.
[117] Ibid., p. 203.
[118] Olson 2014, p. 274.
[119] Ibid., p. 273.
[120] Risse & Wollner 2013, pp. 398-400.

Australia's own natural resources, one could argue that the Australian mining sector creates autarkic gains out of autarkic endowments.[121] However, black powder was invented in China: only through the trade detour that spans the Silk Road and British sea lanes did this technological endowment arrive in Australia. As a courtesy of black powder being a trade-related endowment *historically,* one could argue that the gains of Australian mining are gains of trade. Without having to grant this specific argument, one should accept that there is a problem of demarcation. Suppose the line between background endowments and trade-related endowments is drawn in such a way that only trade after 1945 counts as relevant international social cooperation (for example, because only then did the multilateral trade regime emerge).[122] In that case, Australia keeps the gains of its mining industry.[123] However, suppose now that Chinese manufacturing relies on Australian raw materials exports, i.e. its manufacturing relies on post-1945 trade-related endowments. Under the selected baseline the Chinese would have to share their gains, while the Australians would not. In light of the dependence of Australian mining on the Chinese invention of black powder, this seems odd.

According to Olson, such an outcome would be more than odd: it would be unfair. She believes that the demarcating method proposed by James runs into problems of moral arbitrariness. Far from it being a value-free economic method, it arbitrarily judges what countries are entitled to.[124] Olson argues the method has two morally relevant effects, wherever on the historical axis one draws the line. The first effect features in the previous paragraph: the method rewards or punishes countries' past trading behaviour purely based on timing. To understand how, recall that background endowments are considered off-limits in IRG. Then, consider that these same endowments can move across borders: raw materials can be sold from Australia to China, an invention can move from China to Australia. Indeed, this is precisely what makes trade worthwhile: that autarkically valuable background endowments can *also* be traded to mutually increase national incomes (and thereby become trade-related endowments).[125] If this is the case, though, a country that heavily traded before the demarcation moment stands to lose. As Olson writes: "Suppose that, just two days ago, Singapore made a trade deal that gave away some of its autarkically valuable resources. Surely Singapore could reasonably complain that it is arbitrary whether we use today or a week ago [as the baseline] to measure autarkic capacity".[126] By using the two-days-ago baseline, Singapore will be entitled to fewer gains than had the baseline been placed a week earlier. This appears especially unfair when considering that Singapore's trade deal presumably raised its partners' national incomes, following James' assumption of mutual income gains via trade.

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[121] Technically speaking, the explosives routinely used in mining do not require black powder but nitro-glycerine. I hope the reader grants this historical and chemical inaccuracy for illustrative purposes.
[122] For a position proposing this baseline, see Brandi 2014, pp. 230-232.
[123] This is because black powder arrived in Australia before 1945, starting from the establishment of the first British penal colony in 1788.
[124] Olson 2014, p. 275.
[125] Ibid.
[126] Ibid., p. 276.

Why, then, should Singapore be punished for trading? The opposite appears just as unfair: why should a country that refrained from trading in the past receive more gains in the present? The result would be a morally contorted trade practice, wherein each country refrains from trading to gain as much as possible from trade.[127] As Olson writes: "No one is going to be willing to sell autarkically valuable resources [anymore] if it knows that the mere possession of these resources will allow them a larger share of total gains".[128] Alarmingly, James' proposed method could unintentionally see trade grind to a halt altogether!

The method's second effect is that it can implicitly validate injustices that happened before the selected moment. As Olson writes, "autarkically valuable endowments also cross borders in significantly less savoury ways, including theft, enslavement […] and wars of acquisition".[129] As long as this occurs before the selected moment, the resulting distribution of background endowments is apparently acceptable to James. Returning to the example where the line is drawn at 1945, consider the transfer of endowments that occurred between 1905 and 1945 from the Korean peninsula to Japan. Since this transfer occurred before the baseline separating background from trade-related endowments, upon implementation of IRG Japan's misappropriated endowments would count as autarkic, while South Korea would have fewer background endowments to keep for itself. Since these transfers occurred via means that appear morally reprehensible, James' reliance on the demarcating method for IRG does not appear fair.

In response to the perceived unfairness in James' method of demarcation, the critics propose to resolve it in two different ways. Risse and Wollner argue that countries are not entitled to the background endowments they happen to have, and that therefore *total* gains should be distributed fairly among countries based on their respective needs.[130] This method avoids the demarcation problem altogether by not requiring the separation of trading gains from autarkic gains. Olson, meanwhile, proposes to distribute *total* gains via a principle of 'mediated cosmopolitanism with a Paretian twist'. What this entails is that countries receive equal shares of the world's total gains (adjusted for population) whereby no country is made worse off than it would have been in the absence of trade.[131] Here, too, the issue of demarcation is avoided entirely. How these proposals can function in James' theory will be discussed later in the chapter. The present point is that the demarcation problem can be avoided by changing the criteria for redistribution.

To conclude, James' proposal for separating the gains of trade from autarkic gains cannot escape the problem of arbitrary demarcation. For one, it cannot rely on economic science alone, making his

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[127] Olson 2014, p. 277.
[128] Ibid.
[129] Ibid., p. 276.
[130] Risse & Wollner 2013, p. 391.
[131] Olson 2014, p. 279.

proposed value-free economic method unfeasible. The admission of morally arbitrary judgment makes demarcation possible, but this in turn creates apparently unfair and contorted outcomes. Although his critics offer alternatives, it appears *James'* use of autarky as a means of separation fails to be either feasible or fair.

3.3 – Background endowments as regulators of distribution

Beside requiring the separation of trading gains from autarkic gains, IRG requires a sensitivity to background endowments to distribute the gains of trade fairly: "Gains to each trading society, *adjusted according to their respective national endowments* […], are to be distributed equally".[132] In Section 2.4.2 I briefly touched upon this adjustment – the third autarky-based mechanism – already. This is how China could receive 304 billion US\$ from the RCEP while Japan received 27 billion US\$: by adjusting the equal gains benchmark for population. The 'fair inequality' based on background endowments is at the core of how IRG is supposed to work in practice. Indirectly, background endowments also affect DRG by determining the gains each country receives.

To make the endowment adjustment feasible, a deeper understanding of the endowments themselves is essential. This is not meant in the demarcating sense discussed in the previous section. Rather, it is meant in a definitional sense. Firstly, what are all the possible background endowments? Beside population, James designates natural resources (including climate, geography and land quality), technological development (including infrastructure), capital, and culture as relevant background endowments.[133] Additionally, he leaves the door open for including "any other factor not created by the trade relationship that predictably changes how much a country gains from global market integration".[134] Put together, these background endowments determine a country's real economic 'weight' and, consequently, its entitlement to the gains of trade.[135]

Secondly, what *is* each endowment precisely? For example, does James understand 'population' as the whole resident population or as solely the working population?[136] The first interpretation could be reconstructed as follows: Since every member of the trading society has an equal interest in a share of the gains (the aforementioned 'symmetry of interest'), total population counts as background endowment. However, the second interpretation can also be reconstructed: Since workers create a country's output, the working population counts as background endowment.[137] Choosing one

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[132] James 2012, p. 203.
[133] Ibid., p. 18; p. 168; pp. 180-181; p. 222.
[134] Ibid., p. 222.
[135] Ibid., p. 182.
[136] Olson 2014, p. 267.
[137] James suggests as much on page 181: "We double expectations of gain for a country whose *working* population is twice as large." [emphasis added]

interpretation over the other may affect the final distribution.[138] Without siding with any one interpretation here, the general point is this: Before background endowments can shape a country's entitlement to gains, each must be defined with precision.

The definitional exercise hints at a second requirement for feasibility: settling how exactly the background endowments shape countries' entitlement to gains. The deeper question here is, what is the *motivation* for the endowment adjustment? Revisiting the two interpretations of population is helpful for seeing the ambiguity. The first interpretation suggests that the *needs* of every citizen motivate the adjustment. However, the second interpretation suggests that *contributions* are the prime motivator. James himself defines background endowments as 'productive capacities', but this could imply needs as well as contributions.[139] After all, low productive capacity implies greater need to provide fairly for disadvantaged populations; but workers' high productive capacity implies greater contributions that ought to be rewarded. Reading James, it appears he intended the adjustment to account for special needs ignored by the equal gains benchmark. For example, with regards to population he writes: "Surely size matters; populous countries should reap larger gains than small countries. By virtue of greater numbers, they have a greater interest in greater rather than lesser shares".[140] Greater interest, it is assumed, implies greater need by virtue of greater numbers. Further on, he suggests that underdevelopment (i.e. lack of technology and capital background endowments) too counts as a basis for special needs.[141] Indeed, the last passage of IRG confirms as much.[142] It therefore appears that although the benchmark recommends equal distribution, James recognises special needs based on background endowments (or lack thereof). Crucially, these are different than the 'special entitlements' that he rejects elsewhere, which revolve on property rights as well as contributions – hereby confirming his rejection of the second interpretation.[143]

In sum, there appears no reason to doubt the feasibility of the endowment adjustment, the demarcation problem notwithstanding. Formulating correct definitions appears possible upon reflection, while the method for settling entitlements should be a straightforward comparative exercise (whereby claims are weighed against one another to settle on a fair distribution). The remaining question for this section, then, is whether James' third autarky-based mechanism runs into problems of fairness. Olson, as well

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[138] The difference can be illustrated as follows. Suppose that the RCEP shrinks to include only Japan and China, for a total population of 1.526 billion people and total gains of 331 billion US$. In accordance with the first interpretation, Japan receives 27 billion US$ while China receives 304 billion US$. In accordance with the second interpretation, however, Japan (working population 67 million) would receive 26 billion US$ while China (working population 774 million) would receive 305 billion US$.[138] While this change may seem modest, each additional endowment that is defined one way or the other can presumably lead to substantially different distributions *cumulatively*.

[139] James 2012, p. 180.

[140] Ibid., p . 188.

[141] Ibid.

[142] "Gains to each trading society, adjusted according to their respective national endowments (e.g., population size, resource base, level of development), are to be distributed equally, *unless unequal gains flow (e.g., via special trade privileges) to poor countries.*" (p. 222) [italics added]

[143] James 2012, pp. 171-179.

as Risse and Wollner, believe that it does. Their critique targets James' identification of background endowments as well as his motivation for the adjustment, arguing that he unfairly disadvantages trade-enabling countries.[144]

Starting with identification, Olson argues that James erroneously assumes background endowments are productive in autarky. That James believes so is apparent from the discussion in the previous section: background endowments can be used to separate autarkic gains from trading gains because they create *purely* autarkic gains. This implies that the gains of trade are mere enhancements of the autarkic gains that already existed prior to the productivity-enhancing effects of trade, much along the lines of comparative advantage theory. What makes the assumption erroneous in Olson's view is that background endowments, as defined by James himself, can very well be autarkically *un*productive.[145] Recall that James views as a background endowment "any […] factor not created by the trade relationship that predictably changes how much a country gains from global market integration".[146] Now, consider a country with a natural deep water harbour, for example Australia with Sydney Harbour. Assuming Australia does not use the harbour in autarky (conducting internal commerce only by land), Sydney Harbour would be a geographic background endowment not created by the trade relationship, that predictably changes Australia's trading gains (in reality Sydney is a major international port), that is nonetheless worthless in autarky.

The unfairness comes to the surface when James' characterisation of background endowments is coupled to his needs-based motivation for the endowment adjustment. This can be illustrated with yet another Asia-Pacific example. As discussed, James thinks background endowments entitle countries to special claims based on need. In a situation wherein Australia, China and New Zealand share a downsized RCEP trade practice, that would entitle China to the lion's share by adjusting for population (working or otherwise). This adjustment is acceptable to James for two reasons. Firstly, because population is a valid background endowment to adjust for, by virtue of its autarkic value (even if left in autarky, China's population will presumably create domestic economic activity). Secondly, because China's population size justifies greater claims based on need. However, suppose now that all the gains of trade depend on Australia's Sydney Harbour, possibly because all fleets must dock there to refuel or seek refuge from violent open seas. In James' eyes, Australia's fundamental contribution does not entitle it to greater gains because the harbour is not a valid background endowment to adjust for (since it is autarkically worthless) *and* Australia has no special needs based on population size or underdevelopment. This seems unfair, especially when considering that Australia is entitled to nothing more than New Zealand despite the latter contributing no trade-enabling endowment to the practice.[147]

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[144] Olson 2014, p. 266; Risse & Wollner 2013, p. 395.
[145] Olson 2014, pp. 269-270.
[146] James 2012, p. 222.
[147] Risse & Wollner 2013, p. 395.

Yet, James would recognise no unfairness in this instance. Olson explains this blind spot can be retraced to James' needs-based interpretation of the endowment adjustment. After all, if only needs entitle a country to greater gains, why should contributions be rewarded for a trade practice to be fair?[148] Still, Australia's predicament should not leave James cold. Did he not write that background endowments are productive capacities that enhance the gains of trade?[149] And did he not write that countries are entitled to a fair share because every country contributes to the creation of the trade practice?[150] In that case, write Risse and Wollner, Australia's *essential* contribution via Sydney Harbour should be accounted for in the final distribution.[151] This could be done by having the endowment adjustment serve two purposes: on the one hand adjusting for legitimate greater needs, on the other hand adjusting for contributions.[152] Without this, though, James' endowment adjustment disadvantages precisely those countries that enable the trade practice to arise.

In summary, James' endowment adjustment creates unfair outcomes if it only adjusts for special needs. Therefore, it must be concluded here that James' third use of autarky is not as fair as promised. However, there is space within James' own work to have the adjustment account for contributions as well. When that is done, the endowment adjustment may become fair as well as feasible.

3.4 – Replies to his critics

Thus far in the chapter, I have discussed how James' three autarky-based mechanisms give rise to feasibility and fairness problems. In doing so, several alternatives proposed by James' critics have been mentioned that try to avoid using autarky-based mechanisms altogether. The question of interest here is what James would make of the criticisms and the counterproposals. As we shall see, the key priority for James is to preserve the internal character of his principles, and in doing so he is compelled to resist criticisms of the autarky-based mechanisms.

In order to initiate the discussion, it is useful to revisit James' practice-dependence approach to distributive justice. Recall that in pursuit of a third way that is fair and feasible, James decides that his theory of fairness ought to be constructed from within 'going practice'.[153] He does so in the belief that his principles will only be sufficiently action-guiding for the trade practice when they arise from within the practice as it is known to its participants.[154] Consequently, he limits himself to matters 'internal' to the trade practice as the foundation for his principles of fair trade.[155] It is this concern with internal

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[148] Olson 2014, pp. 268-270.
[149] James 2012, p. 180.
[150] Ibid., p. 168.
[151] Risse & Wollner 2013, p. 396.
[152] For theoretical clarity, the adjustments could conceptually be separated from one another in the final result.
[153] James 2014, p. 289.
[154] James 2012, p. 126
[155] James 2012, p. 145.

fairness issues that explains why James relies so heavily on autarky. By definition, autarky is the *absence* of a trade practice. As such, it can be used as a conceptual tool – i.e. a mechanism – for identifying the issues that arise specifically within the trade practice when trade *is* present. With CDC this entails taking counterfactual autarkic livelihoods as a comparative benchmark for judging the fairness of a (emergent) trade practice and *its* harmful effects on livelihoods. With IRG it entails the determination of background endowments to, firstly, isolate the gains internal to the trade practice (which, being internal, are the only gains eligible for distribution), and secondly, for arriving at a final endowment-adjusted distribution of trading gains to all countries (thereby distributing the gains subject to DRG).

In essence, the three autarky-based mechanisms are so important to James because they set the boundary between external fairness issues and internal ones. Based on this, James could grant some criticism as long as the purpose of the mechanisms remains unchanged. However the objections by Risse and Wollner, Barry and Olson focus almost exclusively on problems that relate to the mechanisms, leaving little scope for reconciliation on James' terms.

With regards to the mechanism underpinning CDC, for instance, Barry argued that harms cannot be determined by comparing a reality *with* trade to a counterfactual situation free from trade. In a direct reply, James brushes Barry's objection aside: "To be sure, I would not say that the autarky condition can be applied in any very precise way", but this does not matter because "what is needed is only sufficient credibility to provide a general fairness rationale for the establishment of social insurance".[156] In doing so, he ignores Barry's argument that the relevant counterfactuals cannot be known *at all* – let alone imprecisely – and that therefore sufficient credibility cannot be provided via this method.[157] Presumably, James resists Barry's critique because it attacks the practice-dependent method that underpins his work. Since he believes that his principles should arise from within trade, James would be contradicting himself if he were to replace his practice-dependent principles with Barry's practice-*independent* 'justice preserving' approach.[158] However, by doing so he leaves Barry's valid criticism unanswered.

Meanwhile, Risse, Wollner and Olson rejected the first of two mechanisms underpinning IRG. In light of humanity's longstanding practice of trade, they deemed the demarcation between background and trading endowments arbitrary regardless of placement on the historical axis. As a consequence, they argued for distributive schemes that avoided James' distinction between endowments altogether. James' likely reply would be that 1945 is not an arbitrary demarcation moment. Pointing to shared governance of expectations as a key criterium for social practices, James would argue that the trade practice arose

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[156] James 2014, p. 297.
[157] Barry 2014, p. 257.
[158] In this approach, Barry includes grounds of justice outside of the trade practice such as universal justice and domestic justice. In doing so, his justice preserving approach is practice-independent.

only in the post-war era of the GATT and WTO.[159] In this reading, anything that happened before 1945 simply would not count as internal to the trade practice and would therefore fall outside the purview of his theory of fairness. The arbitrariness of countries' autarkic profile would thereby be admitted as a natural consequence of the chosen practice-dependence method: "[Trading countries] have no duty to part with greater benefits *under the proposed principles*".[160] And, as a consequence of his adherence to distinguishing between background (pre-1945) and trading (post-1945) endowments, James would almost certainly reject the critics' recommendations for fairer distribution.

Only with regards to the criticism directed at his last mechanism could James concede. This mechanism, which is the second one that underpins IRG, was criticised by Olson for unfairly adjusting country gains to (only) needs instead of needs *and* contributions. Supposing that Olson concedes the identification of background endowments (she rejects this notion for the previous mechanism, but seems to accept it for this one), then these can be used to adjust countries' gains as envisaged by James.[161] Having granted James this requirement, he could presumably accept that the endowment adjustment serves a needs-based as well as a contributions-based role. After all, this fairer approach would not infringe upon the conceptual distinction between the external (i.e. background endowments existent outside of the trade practice) and the internal (i.e. trade-related endowments) that underpins his work.

To conclude, James' commitment to internality makes him inflexible when faced with the discussed criticisms. As a consequence, James generally fails to respond to valid critique on plausible grounds. However, it may be possible to find a synthesis between his position and that of his critics. This possibility rests on a reconceptualisation of internality itself, which I will discuss in the next section.

3.5 – <u>Broadening the boundaries of trade</u>

I begin by reiterating the positions in the debate. On one side there is James, who uses several autarky-based mechanisms to ensure his principles are 'internal' to the trade practice. On the other side there are his critics, who reject James' mechanisms on the grounds that they are unfeasible and their outcomes unfair. James subsequently fails to address most of their criticisms and counterproposals, making the debate appear at an impasse. However, these positions can be reconciled by adapting the concept of internality.

To see how this is possible, a deeper understanding of internality is needed first. When James says his principles are 'internal' to trade, he means they arise exclusively from fairness issues within the trade practice.[162] A good example is how CDC arises from the unfair treatment of the losers of trade, which

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[159] James 2012, p. 40; Ibid., p. 81.
[160] James 2014, p. 301.
[161] Olson 2014, p. 275 ; Ibid., pp. 269-270.
[162] James 2012, p. 144.

as a fairness issue only exists *in the occurrence of* trade. James therefore conceptualises trade as an independent ground of justice that single-handedly gives rise to his principles. This in turn implies that trade should be analysed in isolation from other grounds of justice (e.g. universal human rights, or domestic justice) to reach adequate conclusions on fairness *in trade*.

However, James uses the word 'internal' in a second sense too. This sense is not concerned with the principles that arise from within the trade practice, but with the activities that 'make up' the trade practice. In other words, this sense of internality is concerned with where the line is drawn between what is 'in' the trade practice and whatever else is external to it.[163] In line with his conviction that social practices require the stable co-governance of shared expectations, James argues that only the regulated trade that occurred after 1945 should be considered internal to the trade practice.[164] In addition to this temporal boundary, he sets a substantive boundary between activities that count towards trade and those that do not (e.g. global capital markets are 'in', security arrangements are 'out').[165] The resulting conceptualisation of trade – a regulated post-1945 regime containing a specific array of activities – summarises what James thinks is internal to today's trade practice in the second sense.

The reason for James' flirtation with autarky becomes clearer now. When James uses the autarkic mechanisms, his aim is to isolate the trade practice as an independent ground of justice. This is to ensure his principles arise from that ground *only,* thereby safeguarding internality in the first sense. For this to succeed, however, he needs to determine what is internal to trade in the second – substantive and temporal – sense. Thus, James works via the autarkic mechanisms to determine background endowments, the gains of trade and the demarcating line between trade that satisfies the criteria for social practice and trade that came before that date. Only having determined these boundaries can James single out the practice-specific fairness issues that give rise to his internal (in the first sense) principles of fairness.

As discussed, however, James' autarky-based mechanisms are rejected by Barry, Risse and Wollner, and Olson. Their recommendations for improvement are in turn rejected by James for violating the requirement of internality in both senses. Barry's justice preserving method violates the requirement for internality in the first sense by allowing principles to arise from grounds of justice outside of trade (e.g. domestic justice). Meanwhile, Risse, Wollner and Olson's proposals violate the requirement for internality in the second sense by ignoring that only post-1945 trade is considered part of the social practice.

But why should James' boundaries be the only plausible ones for determining internality? There is nothing that forbids shifting the boundaries to change the substance of the trade practice and, as a

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[163] Beitz 2014, p. 228.
[164] James 2012, p. 40; Ibid., p. 81.
[165] Ibid., pp.150-152.

consequence, the fairness issues that give rise to internal principles of fairness.[166] For example, one could easily argue that security arrangements are part of the trade practice because these can be granted in exchange for preferential market access (for example, war-torn European countries opening their markets to the US in exchange for the Marshall Plan and protection via NATO). Yet James excludes these from the trade practice. This suggests that James' characterisation of internality is flexible enough to allow adjustments.

One way to attempt synthesis, then, is to expand the substance included in the trade practice by shifting the boundaries that determine what is internal to it (in the second sense). For example, by including historical trade flows and other grounds of justice within the practice. It may become too broad a social practice to maintain the name 'trade' in the traditional sense of the word. But even if the name is changed to the 'historical global economic system' practice, it remains possible to speak of a full-fledged social practice that gives rise to internal fairness demands (in the first sense). This substance could still meet the four criteria of a social practice, namely, repeated interaction (several hundreds of years of interstate and intrastate interaction), shared expectations (respect for sovereignty, trade for economic gain, domestic 'rules of the game'), co-governance of expectations (Peace of Westphalia, Concert of Europe, the League of Nations) and a shared purpose (possibly, maintaining stability in a multipolar world).

In this newly defined practice, the proposals for fairness tabled by James' critics could be seen as arising from within the social practice. For illustrative purposes, assume that the expanded social practice is now broadened to include pre-1945 trade and domestic fairness issues. In this case, the principle of Collective Due Care could address international trade *and* domestic fairness issues under the idea that domestic as well as international economic policymaking *together* make up the global economic system of the practice. The principle could then be reformulated in a way that incorporates Barry's proposal for the justice preserving approach:[167]

> *Collective Due Care*: nation-states are to protect people against harms induced by policy decisions
> (for example by temporary trade barriers or "safeguards" in case of international trade, or, in case
> of domestic harms, by social insurance schemes). Specifically, no person's life prospects are to be
> worse than they would have been prior to a policy change.

The other two principles could go in at least two ways. If domestic and international economic matters together make up the practice, one could plausibly adopt the cosmopolitan idea that total gains be distributed equally to all individuals with no regard for borders (thereby making Domestic Relative

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[166] Beitz 2014, p. 228.
[167] "What individuals (and social classes) can demand of forms of economic integration is just what they can demand of other institutional arrangements that might be implemented in their society. That is, they can demand that it be *justice preserving*. The envisioned reform should not lead to outcomes that undermine the achievement of distributive justice domestically." See: Barry 2014, p. 262.

Gains redundant).[168] Alternatively, one could maintain the mediating influence of the state while allocating total historical gains. In this case, each country would receive a needs or contributions-adjusted share of the world's total wealth, after which that share is distributed according to citizens' needs and contributions domestically. The reformulated principles would then generally correspond to Risse, Wollner and Olson's proposals for "mediated cosmopolitanism" as discussed in Section 3.2:[169]

International Relative Gains: each society is to gain equally from total historical gains, adjusted according to their respective needs and/or contributions (e.g., population size, resource base, technological contributions to the world), unless unequal gains flow (e.g., via special trade privileges) to poor countries.

Domestic Relative Gains: gains to a given society are to be distributed equally among its members, unless special reasons justify inequality of gain as acceptable to each (as, e.g., when inequality in rewards incentivizes productive activity in a way that maximizes prospects for the worst off over time).

This is one way in which James' principles could accommodate the proposals made by his critics, while honouring James' demand for internality in the first sense. However, it should be noted that this was only an illustration and that the resulting theory may fail for hitherto unidentified reasons. My objective here was not to exhaustively defend any one demarcation of the social practice.[170] Rather, I aimed to illustrate that shifting the boundaries of trade is possible and that this can facilitate a reconciliation between James and his critics.

I expect James would argue against this exercise for excessively bloating the trade practice, thereby making us lose the valuable distinction between the internal and the external. But expanding the boundaries of trade appears the most plausible way to incorporate valid criticism in his theory of fairness, *without violating the internality demanded by practice-dependence theory*. If James wants to ensure his principles motivate real change in the world, while also accepting valid criticism, then this is the best way to move forward.

Yet, I would go further and ask what the broader implication is of this synthesis. As previously mentioned, the inclusion of greater parts of global society within the practice could lead one to propose cosmopolitan distribution while technically still adhering to practice-dependence methodology. Considering that practice-dependence was introduced to James' theory to avoid pie-in-the-sky cosmopolitanism, this suggests that a broadened social practice reduces practice-dependence to

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[168] James 2012, p. 11.
[169] Risse & Wollner 2013, p. 391; Olson 2014, p. 279.
[170] Although Risse and Wollner make a strong argument for broadening the scope of James' 'trade' practice both temporally *and* substantively speaking. See: Risse & Wollner 2013, pp. 390-391; Ibid., pp. 399-400.

insignificance. After all, if cosmopolitanism and a practice-dependent theory of fairness can become the same thing under a certain demarcation, what is the theoretical value of including practice-dependence considerations? James may lament that an expanded practice cannot be used to distinguish between the internal and the external, but I would argue that the distinction between internal and external is rendered *redundant* by the synthesis. After broadening the boundaries of trade, practice-dependence simply no longer matters.

In light of this, however, another more pressing question emerges: What remains of James' objective of motivating real change in the world? By synthesising valid objections into James' theory, the practice-dependence that underpins his action-guiding yet morally ambitious 'third way' fades away. Does this mean that James has to give up on his objective? I turn to this question in the next and final chapter.

3.6 – <u>In summary</u>

In this chapter, I have tested the feasibility and fairness of James' principles and the autarky-based mechanisms that enable them. With the help of critiques by Olson, Barry, Risse and Wollner, I found that James' account falls short without substantial improvement. After considering possible replies by James, I updated his theory to accommodate the critics' objections. In doing so, I encountered two new issues. Firstly, whether James' theory is still distinguishable from cosmopolitanism. Secondly, whether James' objective of motivating action is doomed without practice-dependence. Both will feature in the final discussion below.

4 – Against practice-dependence

So far, James' endorsement of practice-dependence has been assumed plausible and thus left untouched. In this chapter, however, I ask whether practice-dependence is indeed necessary to ensure that principles are action-guiding. I am supported in this process by two authors that believe the answer is 'no'. If they are correct, the main implication would be that James' objective would *not* be lost to a broadening of his practice. In that case the objections discussed in Chapter 3 could be accepted by James without the loss of his objective. However, this would also imply that James' practice-dependence methodology was irrelevant for achieving action-guidance to begin with, putting into doubt the value of James' third way in general.

As a reminder, James' take on normative theory was quoted in Chapter 2 to entail the following: "Normative political philosophy seeks to address actual world agents with normally conclusive demands for action," and "for that, principles must be credibly addressed to going practice".[171] The objective of moral theory is thus to motivate real change in agents on the ground. That objective is achieved by "taking independently identified social structure as a point of departure" in the formulation of fairness principles, "where the bridge [between practice and principles] is our constructivist methodology".[172] James is positive that this practice-dependent approach guarantees action to a greater extent than universalist and practice-independent approaches like cosmopolitanism: "By abstracting away from the embedding international form of the global economy, cosmopolitan approaches obscure the question of how a distinctive class of fairness responsibilities [i.e. reasons to act] could emerge"; while his approach "brings principles to bear on major issues in practical life [that can be acted upon], without compromising either the key realities of practice or the highest intellectual standards for moral thought."[173] As a result, he proposes his approach as the winning formula for achieving feasible (contra cosmopolitanism) yet ambitious (contra parochialism) improvements in trade fairness.

In short, James' objective with practice-dependence is motivating action. Does practice-dependence really facilitate this objective, though? There are two authors who argue that James' method does not do what he says it does. David Axelsen claims that James' 'institutional conservatism' bars his principles from even *initiating* the actions and meaningful change he seeks. Saladin Meckled-Garcia, meanwhile, argues that James' reasoning to adopt practice-dependence is misguided and, hence, unnecessary for formulating action-motivating principles. In the following paragraphs, their views will be evaluated further.

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[171] James 2012, p. 126; James 2014, p. 289.
[172] James 2012, p. 25.
[173] Ibid., p. 13; Ibid., p. 31.

4.1 – The dilemma of institutional conservatism

To begin, Axelsen addresses James and several other practice-dependence theorists in an article titled "Against institutional conservatism".[174] In his opening remarks he summarises their view as follows: "Institutionally conservative political theorists hold that normative principles should be *action-guiding*", and this involves "reluctance to include radical changes to important institutions within normative principles for fear of losing practical significance".[175] This reflects our understanding of James and practice-dependence, and again highlights that he rejects cosmopolitanism for proposing overly idealistic principles.[176]

Axelsen's central claim is that practice-dependence theorists fail to make their principles action-guiding, "when measured by their own standards".[177] The standard in question is the achievement of principles that are *more likely* to motivate action than ambitious cosmopolitan principles.[178] And, in James' case, that action is intended to guide the international order to meet the needs and claims of all societies and individuals (which it is not doing now).[179] However, as Axelsen writes: "Institutionally conservative theorists propose principles that are infeasible in exactly the sense that their achievement is unlikely in any immediate future […] due to the static role they ascribe to soft facts in their action-guidance".[180] In other words, he argues that their strict adherence to social practices as unchangeable facts of human life – the mentioned 'static role' ascribed to 'soft facts' – brings theorists like James no closer to action-guidance than cosmopolitanism.

Wy is this so? Because today's international order is dominated by nation states that have no incentive to create a fairer global redistribution at their own expense.[181] Precisely by having their principles depend on this supposedly static social practice, the theorists cannot coherently claim that their prescriptions will motivate real change: they are actually *perpetuating* injustice rather than resolving it. As Axelsen writes: "Institutional conservatism, thus, conflicts with non-cosmopolitan obligations to fulfil basic needs in exactly this way; the continued existence of strong nation states and the absence of strong, international institutions constitute weighty obstacles" to the resolution of global injustice.[182]

The practice-dependence theorists are therefore stuck in a dilemma that they can only escape in one of two ways: either they weaken their claim to be action-guiding while retaining their institutional conservatism, or they weaken their conservatism so as to retain their claim to be motivators of change.[183]

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[174] Axelsen 2019.
[175] Ibid., p. 638.
[176] James 2012, pp. 13-14.
[177] Axelsen 2019, p. 638.
[178] Ibid., p. 640.
[179] James 2012, pp. 165-170.
[180] Ibid.
[181] Ibid, p. 653.
[182] Ibid., p. 642.
[183] Ibid.

In Axelsen's view, the choice is clear: institutional conservatism certainly cannot motivate change while ambitious principles may at least stimulate agents to change what they can under constraint of the social practice.[184] After all, social practices are not fully static and they can be changed under the right circumstances and with a degree of fortune.[185] Thus, seen as James and his colleagues want to stimulate action above all else, they should follow in the footsteps of the cosmopolitans and thereby drop their commitment to practice-dependence.[186]

In summary, Axelsen argues that James is better off without his practice-dependence if he wants to motivate change. It is no use creating less demanding principles for the sake of action-guidance if the practice-dependence that this requires is precisely what erases the possibility for change. If so, the loss of any distinguishable practice-dependence in James' theory – as suggested with the synthesis in the previous chapter – does not imply the loss of James' objective.

4.2 – <u>Practice-sensitivity</u>

With that said, James intuitively still has reason to doubt that overly idealistic principles can motivate actors on the ground. As I wrote in Chapter 2, a theory asking for the moon *will* fall on deaf ears if the listeners have no lunar landers to try and reach it with. They may listen and they may even conceive what 'having the moon' could entail, but their cause is hopeless if there is no bridge (perhaps a manual to construct landers?) to connect the principle with reality. If this is the case, is Axelsen proposing a dead end when he urges James to take the second route out of the institutional conservatism dilemma?

Meckled-Garcia would have us believe otherwise. In his article directed at James and other practice-dependence theorists, he lends support to the Axelsen's position that action-guidance can be reached via application of universal moral principles.[187] Via the bridge of practice-*sensitivity,* universal values can be made intelligible and thus motivational to agents in specific practices.

Meckled-Garcia starts from an understanding of James' practice-dependence as a method that reserves a special place for the aim of a practice, or its 'functional role'. Practice-dependence entails that, "For at least some practices the formulation and justification of moral principles for their regulation *depends on the functional role* of the practice in the *shared understandings* of its participants", whereby "this functional role […] will constrain the kind of moral principle that can be appropriately formulated for a

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[184] Axelsen 2019, p. 654.
[185] Ibid., p. 640.
[186] In advocating for this option, Axelsen identifies and recognises James' concern for epistemic uncertainty – namely, that steering the world with ambitious principles may lead to unknowable and undesirable consequences (mentioned in Section 2.1.1). However, he holds firm in saying that possible improvement is more desirable than certain paralysis: "We should balance this against the epistemic *certainty* of the obstacles inherent in a world *with* strong nation states". See: Ibid., pp. 653-654.
[187] Meckled-Garcia 2013.

practice".[188] In case of James' theory, the functional role of the trade practice is mutual income gains for participating countries.[189] This aim constrains James' principles in that they may only arise from fairness issues that materialise from countries' pursuit of mutual income gains (internality in the first sense).[190] For example, losses for domestic actors that are addressed by CDC, or the question of how to distribute the gains of trade that is addressed by IRG and DRG.[191]

As we have learned, the reason for James to constrain principles in this way is to ensure they directly speak to the participants in a practice. Given that national income gains are mutually understood by participants as the aim of trade, having principles be directed to that aim purportedly helps the cause of action-guidance.[192] On this matter Axelsen retorted that constraining principles to going practice actually guarantees the opposite, which is why he advocated for principles to be practice-independent – possibly universal – instead.

From here, Meckled-Garcia builds on Axelsen's argument by explaining how these universal principles can motivate action. He writes: "If a moral principle, say, a principle of equal concern or equal respect, however abstract, genuinely applies to relations in a particular context, it is because some feature of those relations triggers the conditions for applying the principle".[193] Meckled-Garcia does not believe a principle applies because it arises from within the practice; rather, it applies because there is a match between the "detail, colour [and] specifics" of the practice and the "moral rationale of the principle".[194] For example, the universal principle that "one should do what one formally undertakes to do" – otherwise known as 'keeping a promise' – will apply in practices where "contracts, international treaties, and promises to meet at the cinema" are part of the detail, colour and specifics of that practice.[195] Instead of practice-dependence, we could speak of *practice-sensitivity* in the application of a principle to a social practice.

Following this line of reasoning it becomes clear how universal principles may motivate action. Principles are matched to the specifics of a practice; subsequently, since agents are familiar with the specifics, they are capable to act in accordance with the principle. Consider the following to understand how this is distinct from James' practice-dependence approach. Whereas James would argue that the duty to compensate the losers of trade arises from the occurrence of harms *within* the trade practice, Meckled-Garcia says that the occurrence of harms within the trade practice is a 'detail' that triggers the application of the universal principle of "doing no harm" – or perhaps, in the words of Barry, "preserving justice". The principle itself can feature in many a social practice – a game of football, the criminal

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[188] Ibid., pp. 100-101.
[189] James 2012, p. 40.
[190] Ibid., p. 144.
[191] Ibid., pp. 203-204.
[192] Ibid., p. 126.
[193] Meckled-Garcia 2013, p. 109.
[194] Ibid.
[195] Ibid., p. 110.

justice system or international trade – and in our case it is simply *applied* to the trade practice.[196] In short, practice-dependence is not necessary to motivate action – and, if we are to believe Axelsen, practice-dependence is actually counterproductive for that objective. Instead, the adoption of universal principles applied with practice-sensitivity is the right approach.

This finding hints at a mixed fate for James' project. In light of the status of redundancy bestowed upon practice-dependence at the end of Chapter 3 – caused by the 'bloating' of the trade practice – the finding may appear as a good thing for James. After all, in the expanded 'historical global economic system' practice, action could still be guided as intended by James, with the sole modification that this is achieved by applying universal principles in a practice-sensitive way. However, by this point there is little left in James' theory that makes it distinct from cosmopolitanism: practice-dependence is replaced by practice-sensitivity, which applies universal principles á-la-cosmopolitanism to a practice in pursuit of action-guidance. Since James' motivating mission was to create a third way distinct from cosmopolitanism, this finding ultimately encapsulates a great disappointment for James.

More consequentially, the finding highlights a far-reaching misconception on the part of James. As James set out to create a third way that is ambitious as well as action-guiding, he incorrectly assumed that cosmopolitanism could not provide what he sought. Working under that conviction, James has been trying to resolve a problem that never existed, namely, the false dilemma between action-guidance and ambitious fairness demands. James correctly understood parochialism as institutionally conservative and therefore undesirable, but he failed to see the solution simply lay in the 'second way' of cosmopolitanism. And, failing to do so, he entangled himself in a theory of fairness that has been shown to be as institutionally conservative – and thereby unfair and action-constraining – as parochialism.

4.3 – <u>In summary</u>

In this chapter, I have shown that practice-dependence is unnecessary and even counterproductive for James' objective of motivating action. The practice-sensitive application of universal (cosmopolitan) principles is sufficient to make a theory of fairness action-guiding. This finding negates much of James' initial motive for creating the third way, thereby putting his entire project in serious trouble.

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[196] Meckled-Garcia partly explains James' misstep by showing that he erroneously enlisted Rawls and Dworkin in his methodology. As discussed in Section 2.1.2, James uses Rawls and Dworkin to justify the construction of his principles from within the trade practice. However, according to Meckled-Garcia, Rawls only ever really engaged in the creation of a coherent general theory of justice. Dworkin, meanwhile, used his interpretive method *not* to identify the practices that would give rise to principles, but rather to identify and further develop *universal* principles. In other words, it seems that James used the two authors as a methodological foundation that they have nothing to do with. See: Meckled-Garcia 2013, pp. 114-116.

5 – Conclusion

In this dissertation, I conducted a philosophical evaluation of Aaron James' theory of fairness in trade. My motive was to further the debate within distributive justice literature, seen as the value of James' contribution remained unsettled prior to this inquiry. I was guided by the research question, *Does Aaron James provide a plausible alternative to parochialism and cosmopolitanism within distributive justice theory?* Building on an in-depth discussion of James' theory, I first tested the feasibility and fairness of his prescriptions. After that, I examined James' method and motive to fundamentally determine the value of his contribution to the literature.

Having completed the evaluation, my answer to the research question is as follows: James has not provided a plausible alternative to parochialism, and in particular to cosmopolitanism. The discussion in Chapter 3 illustrated that James' principles fail to be feasible or fair. Considering James' claim that his third way is feasible *and* fair, this failure harmed the plausibility of his account. Then, upon adapting James' theory to objections discussed in the chapter, James' distinctive practice-dependent approach lost its theoretical relevance. Since James had conceptualised this approach as his most significant departure from cosmopolitanism, its loss implied that James was offering no real alternative to cosmopolitanism. My assessment in Chapter 4 confirmed as much, when it turned out that practice-dependence is not required to motivate action at all (James' ultimate objective). On the contrary, it *complicates* action-guidance. James had thus embarked om a misguided mission to resolve a false dilemma between cosmopolitanism and action-guidance, seen as *practice-sensitive* cosmopolitanism – an already existing tradition within distributive justice theory – could have served action-guidance all along.

It seems, then, that fairness in trade is most plausibly achieved via cosmopolitanism. This may be true for justice beyond trade as well, but I cannot exclude here that practice-dependence has not shown its full potential in this discussion. Further inquiry into practice-dependence vis-à-vis practice-sensitivity may thus be a worthy challenge for future students and scholars. However, that will be for another time.

6 - Bibliography and References

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