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Grades and Standards in the Context of International Trade: Some Ethical Considerations

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Une approche éthique des normes dans le commerce international

Mots-clés:

éthique, théorie néo-libérale, échanges internationaux, normes, sécurité alimentaire, qualité des produits alimentaires, libéralisme, utilitarisme

Résumé – La théorie néo-libérale de l'éthique économique milite en faveur de la libéralisation des échanges. Dans ce cadre, elle avance des arguments pour l'établissement de normes allant dans le sens d'une promotion de cette libéralisation. L'harmonisation des normes doit toutefois, d'un point de vue néo-libéral, préserver le droit du consommateur de choisir de s'exposer, ou non, aux risques associés à ses achats alimentaires. En conséquence, les normes établies ne doivent pas priver le consommateur de cette possibilité de choix alternatif qui reflèterait mieux ses préférences, en matière alimentaire.

Dans cet article, nous présentons et discutons les concepts de base de la théorie de l'éthique économique, en illustrant notre propos à l'aide de l'exemple des normes relatives à la sécurité des aliments.

Grades and standards in the context of international trade : Some ethical considerations

Summary – *Grades and standards for both domestic and international trade are based in part on beliefs about the purpose of commerce, its contribution to the public good, and general principles on which specific exchanges should be either permitted or restricted. These beliefs form the basis for ethical arguments about grades and standards. Two general types of argument have formed a dual ethical rationale for liberalization of trade restrictions and expansion of global trade. On the one hand, libertarian arguments stress the freedom or right of individuals to dispose of legally acquired property however they see fit. Libertarian arguments rule out restrictions on personal freedom except under conditions of exit and consent. On the other hand, utilitarian arguments stress the social benefit of free trade and utilize economic analysis to demonstrate that relatively open trading systems lead toward efficient use of society's total resources. These two rationales can come into conflict over grades and standards, however. The utilitarian rationale provides a basis for standards aimed at insuring health and safety that can conflict with libertarian belief that individuals should be at liberty to choose which risks to run, and which to avoid. Standards intended to support culturally based food practices become especially controversial, especially when they are negotiated at an international level. While utilitarians may be willing to use scientific risk assessment to predict actual benefits and risks of a given standard, libertarians may regard nationally based cultural food standards as intricate systems of exit and consent. If so they will object to international standard setting based on benefit-risk calculation, and will insist on procedures that leave opportunities for exit and that involve citizens in the active procurement of consent.*

Key-words:

ethics, neo-liberal theory, international trade, standards, food safety, food quality, libertarianism, utilitarianism

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MORAL philosophy (or ethics) plays an important role in establishing, justifying and criticizing standards for international trade, but this role is often implicit. Indeed, the role of ethics is seldom acknowledged even when advocates of one view or another wear their values on their sleeve. This is partially a problem with terminology: the word 'ethics' is associated with cultural mores, religion and even irrationality in some quarters. As such, it is necessary to begin by reviewing some basic terminology to philosophical ethics as a scholarly discipline. After some preliminary comments on ethics, two neo-liberal ethical theories that have had a substantial influence on the development of theory in the area of international trade are discussed. *Utilitarianism* is the philosophy holding that public policies (including trade standards and other agreements) are ethically justified by the consequences they have for each individual in every affected country. Specifically, policy should aim for an optimal ratio of benefit and cost, where benefit and cost are interpreted in terms of impact on net social welfare. *Libertarianism* is the view that policies are justified only to the extent that they are consistent with the protection of individual liberties. Policies that sacrifice individual liberties in pursuit of social goals are specifically prohibited.

This paper will review neo-liberal assumptions that are often implicit in standard setting both for health and safety, and for quality. Clearly there are alternatives to utilitarianism and libertarianism. Indeed, some of the most familiar criticisms of global trade attack the neo-liberal foundations of current trade policy. While I do not wish to imply that these criticisms lack merit, this paper is confined to neo-liberal moral and political philosophy for three reasons. First, as already noted, neo-liberal theory lies at the heart of trade theory and examining the ethical orientation of the dominant theories is the first order of business in any philosophical discussion of trade. Second, I will argue that emerging approaches to setting standards are creating a rift between the utilitarian and libertarian strands of neo-liberal theory. Thus even if one refuses to except radical critique of trade theory, there are enough problems that can be raised within the neo-liberal tradition. Third, though I do not want to rule out radical critique altogether, I do believe that neo-liberal theory provides a persuasive argument for a broad commitment to the opening of markets and the elimination of barriers to trade. My view is that the primary work lies in refining and specifying that commitment, not in scrapping it altogether.

Basic Terminology: Ethics

As noted, there are opportunities for terminological confusion with respect to the word "ethics". Some people use the word "ethics" for issues involving conflict of interest or sexual misadventure. While these topics are not unrelated to international trade, this paper will discuss

the way that beliefs about good and bad (or right and wrong) underlie our understanding of when it is appropriate that people should be allowed to trade, as well as when they should not. As philosophers interpret the term, an *ethical argument* is a set of claims intended to establish a prescriptive conclusion, that is, a statement to the effect that a particular policy should be adopted, or a particular course of action ought to be followed. An ethical argument generally bases important claims on an appeal to normative concepts such as justice, duty, fairness, virtue or the public good. Ethical arguments stand in contrast to special pleading where service to private interests is not even alleged to have any connection to norms like justice and the public good.

Statements expressing norms will be called "moral beliefs" irrespective of whether they refer to social, religious or highly personal values, and with no implied view of the social psychology of belief, preferences or culture. The norms to which such statements refer will be called "moral norms" irrespective of the basis on which they would be thought to have normative (or action-guiding) force. The claim that policy should promote efficient use of resources is, thus, a moral belief because it advocates the norm of efficiency as a criterion for the formation and justification of policy. Philosophical ethics (or moral theory) is the study of how moral norms (and the beliefs that support them) cohere into a system of thought that may be used to develop logically consistent and conceptually coherent ethical arguments. In certain contexts, it is important to distinguish moral norms (including norms of religious duty) from norms that can be classified as "political" or "prudential". With respect to trade, the distinctions might be used to recognize that beliefs held for religious, aesthetic or moral reasons (such as views about the purity of foods) might be binding on a particular individual's conduct, but not on society as a whole. However, a systematic approach to ethical, political, or prudential norms requires theoretical complexity that is not central to the topic of this paper. As such, I will not introduce a systematic approach for distinguishing ethical, political and prudential norms. Instead, I will offer clarification within the particular discussions where the terminology is most likely to cause confusion.

As noted above, two theories in philosophical ethics are especially evident in arguments that prescribe policies or general approaches to trade: utilitarianism and libertarianism ⁽¹⁾. Utilitarians derive prescriptions from their analysis of social utility. Libertarians derive prescriptions from principles of personal liberty. Both must conjoin normative premises with factual claims in order to produce ethical arguments, and these factual claims may be more hotly contested than ethical beliefs. For convenience, I will call people who offer libertarian arguments "libertarians" and

⁽¹⁾ This section summarizes material that would be found in any textbook treatment of ethical theory. See Harris (1996) for a particularly concise and lucid overview. See also Elliot (2000) for a discussion especially pertinent to readers of this journal.

people who offer utilitarian arguments “utilitarians”. In my usage, the terms refer to a general strategy for making ethical arguments, and not to the overall belief system of people who, on one occasion or another, make use of these strategies. My terminology should not be understood to impute some sort of quasi-religious belief system or ideology, though there are some people who really do seem to be utilitarians or libertarians in an ideological sense. Most of us, however, tend to find each of these strategies somewhat persuasive, and we tend to make both utilitarian and libertarian arguments, depending on the circumstances.

Basic Terminology : Libertarianism

Libertarianism is a moral and political philosophy committed to protecting individuals against interference in their voluntary actions. Libertarians believe in protecting individuals against interference in their voluntary actions whenever possible (See Hospers, 1971 ; Nozick, 1974 ; Narveson, 1988). With respect to trade, libertarians regard any attempt to prevent two or more people from exchanging goods or services as interference in voluntary action, that is, as a violation of liberty. Government has a responsibility to protect citizens from others who would restrict liberty, including the freedom to make voluntary trades. For libertarians, this responsibility is the prime justification for any sort of government action. Government should protect what is morally important about citizens, that is, their personal freedom. This is done when government is restricted to the protection of citizens' rights against interference from others, or, for short, protection of *non-interference rights*.

In addition, libertarians *do not* readily acknowledge rights that take the form of entitlements, such as a right to education, a right to health care, or even a right to food. Such entitlements might be called *opportunity rights*. Unlike non-interference rights, opportunity rights require others to act on behalf of the rightsholder, in addition to *not acting* in ways that interfere in the rightsholder's liberty. While libertarians recognize a right to life, it is understood as a right that forbids others from interfering in a person's liberty by causing or risking their death. The libertarian right to life does not require anyone, let alone government, to bring aid to someone who is at risk or on the brink of death. Indeed, if government must interfere in others' rights (by confiscating their property through taxes) in order to supply such aid, it would be *prohibited* from doing this. These dimensions of libertarianism are controversial, and do not play a large role in the analysis that follows. They are worth noting simply to exemplify the basic pattern of argument characteristic of libertarian thought.

It is fairly easy to see how libertarian philosophy moves directly to an argument for relatively open, unregulated markets and free trade. As long as all parties have legitimate title to the goods they are trading,

and as long as the exchange is clearly voluntary, there is every reason to think that limiting the exchange constitutes an unwarranted interference on the traders' rights. Libertarians do recognize a role for government in securing the conditions for free trade, however. One legitimate function of government is to adjudicate disputes over property rights. Establishing and enforcing sanctions against coercion is another. Libertarians differ among themselves about how these disputes should be adjudicated, and when coercion has occurred. Thus, it is possible for two libertarians to take opposite sides on the debate over patenting of genetic resources. One might argue that seed companies have a legitimate title to patented items, and that failure to protect it constitutes a "taking" — coercive interference in the company's property rights. Others might question the legitimacy of the right claimed by a seed company, and argue that patents interfere in the liberty of indigenous farmers. What is crucial to see, in this context, is that the most obvious interpretation of either claim is grounded in libertarian philosophy.

Basic Terminology : Utilitarianism

The preceding point becomes easier to recognize when we consider the alternative philosophy of trade, utilitarianism. Utilitarians are sometimes said to evaluate an act or policy in light of whether it tends to result in "the greatest good for the greatest number of people," — the *utilitarian maxim*. This phrasing of the utilitarian maxim derives from the philosophy of Jeremy Bentham (1988). Defining and measuring "the good" introduces enormous complexity into utilitarian thought, but almost all utilitarians understand it in terms of improvement or detriment in the welfare or well-being of sentient individuals. Most contemporary theorists of utilitarianism would substitute a more sophisticated analysis of optimization for Bentham's version of the utilitarian maxim. They interpret utility as a function of individual preference satisfaction, and that takes cognizance of the logical difficulties one encounters in attempting to aggregate individual preferences into a measure of social utility⁽²⁾.

What is relevant in the present context is simply the way that utilitarians develop a principle of ethical justification that turns upon the way actions and policies affect the welfare of individuals. There is something

⁽²⁾ I use the term "sentient individuals" rather than "people" because the question of whether effects on non-human animals should be included in a utilitarian argument has been hotly debated for the last thirty years. Animal welfare will not be a topic for the analysis developed in this paper. What is important here is that for utilitarians it is individuals, rather than nations, groups or cultures, that experience harm or enjoy benefits. Social benefit and cost must be derived by "adding up" the value of impacts on individuals. In addition to Bentham (1988), classical sources on utilitarianism include Mill (1979). For a recent development of the theory, see Singer (1993). For its relation to economics, see Sen (1987).

eminently common-sensical about the utilitarian belief that we should attend to the consequences of our actions when undertaking moral deliberations. A utilitarian analysis compares the costs, risks and benefits of each option available to a person or to an organization, and then stipulates that the option having the most attractive ratio of good or beneficial impact to bad or harmful impact is the one that is morally justified. A complete utilitarian analysis of trade would conjoin straightforward normative principles of optimizing cost-benefit trade-offs with complex empirical analysis of those costs and benefits. In the interests of avoiding unnecessary complexity, the exegesis in this paper will be confined to an argument sketch that omits most of the empirical details.

Utilitarians like free trade because it seems unlikely that two or more people would make voluntary trades unless both thought they would be better off after the trade than before it. Voluntary exchange thus appears justifiable from an utilitarian perspective irrespective of how one resolves difficult and contentious problems in measuring, aggregating and comparing impacts on the welfare of individuals. As such, utilitarianism moves almost as quickly to an endorsement for free trade as libertarianism, but a very different form of argument is being used. This becomes clear when we consider the utilitarian view of government and regulation.

For an utilitarian, government action must be justified by the utilitarian maxim. Governments should adjudicate disputes over property rights because individuals are better off than they would be in situations where they rely on personal persuasion or physical coercion. No basic "right" to property is presumed in this argument, nor does it stipulate any right to trade property free from interference by others. However, without government regulation, individuals who wanted to improve one another's well-being through a trade would be forced to bear risks and shoulder the costs of discovering whether a potential trading partner actually owns the goods in question. Sometimes the risk and cost of trading would outweigh the benefit a person expects from making the trade. Government regulation and protection of property rights can reduce the risks and costs for each party, enabling more mutually beneficial trades to be made. Reducing transaction costs thus allows more voluntary trades, creating more circumstances in which all parties benefit. Reducing transaction costs thus benefits everyone who trades (which is to say, everyone), and that is just what the utilitarian maxim recommends.

Basic Terminology : Neo-Liberalism

For simplicity, neo-liberalism can be understood as a political philosophy that supports social organization with maximal private exchange on either libertarian or utilitarian grounds. For libertarians, this philosophy is justified because interference in private exchange violates per-

sonal liberty. For utilitarians, the philosophy is justified because private exchanges are believed to promote the most valued use of society's resources. Though the two approaches to ethical argument differ in important ways, they have been thought to support roughly the same set of government policies with respect to privatization, expansion of markets and liberalization of trade. On a deeper level, both libertarianism and utilitarianism are committed to individualistic and subjectivist beliefs about value. On either view, the exchange value of goods is a function of the subjective beliefs and preferences of the trading parties. Neo-liberal theory does not need an objective basis for characterizing one subjective preference as better than any other in order to operationalize its norms of maximizing personal freedom (libertarianism) or social welfare (utilitarianism).

The individualist and subjectivist foundations of neo-liberal thought provide the entrée for critique of the neo-liberal philosophy. Two important lines of critique can be noted briefly. First, many have noted that in approaching the justification of law and policy from the standpoint of individual choice, the neo-liberal approach may be somewhat insensitive to the way one person's choice (or the aggregate effect of many individuals' choices) affects third parties. On this ground, it becomes possible to raise questions about the effect of a trading system on the global distribution of resources, or on who wins and who loses when a change in trading rules takes place (Chen, 2000). Second, some have argued that neo-liberal philosophy promotes a conception of individual choice and autonomy that is characteristic of property owners, but not of humanity in general (Macpherson, 1962). Trading rules that might be favored by those who see themselves as having something to trade would not necessarily be favored by those who have little or nothing. The primacy of voluntary choice is, thus, thrown into question, or at least radically reformulated. Any complete philosophical analysis of ethical implications associated with grades and standards would include criticisms of the neo-liberal view, but such criticism also introduces philosophical and theoretical complexities that are both beyond the scope of this paper (and already relatively well represented in the political and sociological literature on globalization). As such, alternatives to neo-liberal thought will be omitted in the ensuing discussion. This should be interpreted as an exploration of the implications of neo-liberal theory, rather than as a deep philosophical commitment to it.

The subjective foundations of the argument for trade become important for any evaluation of grades and standards, especially in a cross-cultural or international context. For example, disallowing a given trade (or insisting that a trade be made subject to a government regulation) is often justified on grounds of health and safety. The most obvious way of understanding such justifications is to presume that everyone has the same understanding of health and safety as the experts who make these determinations, and that everyone places roughly the same relative value

on health and safety in comparison to other life goals. Neither libertarians nor utilitarians make this assumption, and there is ample empirical evidence to suggest that the assumption is false. There is thus a gap between the most obvious way of justifying a grade or standard and the most persuasive ethical arguments for free trade.

As noted, neo-liberal ethical theory makes individuals the sovereign judges of value. A person who places little value on personal health may quite plausibly make trades to engage in practices that are objectively unhealthy. A libertarian would say that it is his right, while an utilitarian would say that his trading behavior reflects his preferences, and given those preferences, utility is increased even in the objectively unhealthy choice. For both libertarians and utilitarians, any allowable trade rules must reflect and protect the choices that individuals would make voluntarily, irrespective of the truth, falsity or imprudence of what they happen to believe. But this is a tricky business, because one trader may exploit the false beliefs of another to induce a trade that would not have been made had both parties access to the same information. In some circumstances, this is ethically problematic, while in others it is not. If, for example, one trader has privileged access to information about an upcoming merger or product announcement, trades with people lacking that information would be considered unfair. However, if one person believes that ginseng promotes longevity and is, hence, very valuable, while the other is quite confident that it does not, this is not considered to be a disparity in information. Why is the first case unfair, when the second is not?

We might say that everyone has the same information in the second case, but background assumptions about how the world works lead people to evaluate that information differently. Since everyone *could* make use of the same information, there is no coercion, deception or unfair practice. However, this response ignores the way that different background assumptions may themselves constitute forms of ignorance. Opinions on ginseng will be formed on the basis of very broad cultural and religious views, but also on a person's familiarity with science and its methods. Do people who believe in the efficacy of ginseng on the basis of religious mysticism or traditional knowledge lack full information? Would it be unethical for someone else who does not believe in this religious view to sell them ginseng? Or, to put the second question differently, would government regulators be justified in preventing the sale of ginseng because they believe that these unscientifically based ideas are false? I think that the answer to the first question is, "Probably," while the answer to the second question (in both formulations) is "Almost certainly not".

I would prefer to state the point in a way that does not hinge so decisively on the requirement of full information, nor on the interpretation of the safety regulations that are at issue in the example described above.

Preventing someone from acting on their fundamental beliefs about how the world works, including their views about the meaning, reliability or significance of science, is an interference in that person's basic liberty of conscience. Freedom of religion, to use the common terminology, protects freedom of thought. People have every right to maintain and act upon beliefs that contradict the findings of modern science, and that are, in all probability, false. The corollary of this principle is that far from harming religious believers when we allow them to make trades on the basis of faulty information, we are in fact showing our deep respect for their most fundamentally held views. Now, when two or more people share the same basic assumptions about how the world works (at least as far as they relate to a particular transaction), it would indeed be unethical to withhold information that would affect their willingness to trade. So trade rules must respect differences in belief systems or worldviews, but must also promote informed decision making when framing beliefs are shared. This is an imperative that applies equally to quality or equivalency standards and to health and safety regulations.

Grades and Standards ⁽³⁾

It is fairly easy to see why utilitarians would support grades and standards. Like secure property rights and police protection, grades and standards reduce the risk, uncertainty and discovery cost of making a transaction. For libertarians, the reasoning is more difficult. There are, of course, some standards intended to protect people from harm, and so long as liberty of conscience is not involved, libertarians will have no trouble here. But on the face of it, most grades and standards preclude some of the trades that individuals would make voluntarily. Other things equal, this interference in individual liberty would be unacceptable to libertarians. However, two or more individuals who are potential trading partners might welcome grades and standards for exactly the reasons noted by utilitarians. If so, then they might voluntarily consent to a system of grades and standards, even if they know that the system will rule out trades that they might have made in a particular case. To sum up, the utilitarian wants free trade to be regulated whenever doing so increases public welfare. The libertarian wants it regulated only under a strict requirement of prior consent.

But how strict does the consent requirement have to be? It is evident that governments and others interfere in citizen action all the time and without consent. There are many philosophical replies that might be made to this observation, but for brevity's sake I will consider only the

⁽³⁾ This section presupposes the analysis of grades and standards offered by Sylvander (this volume).

one that is most likely to result in the judgment that particular grades and standards are compatible with consent. On this view, consent is implicit in any economic and political system that provides an opportunity for exit. By exit, I mean that people can "opt out" of the system, either completely or with respect to a particular subset of system rules. There are difficult questions about who bears the costs when someone chooses to exit. But for the purposes of argument let us stipulate that opportunity for exit has been fulfilled so long as someone who wants to quit the system does not endanger life and limb, or risk reprisals that would violate his or her civil rights⁽⁴⁾. We can illustrate this principle with respect to the food system. For example, it may be that no butcher shop in town stocks meat slaughtered according to Kosher requirements. While this would certainly be inconvenient for those who wish to eat Kosher meats, it would not constitute a violation of their rights as long as they can continue to practice their religion by eating something else. Similarly, some consumers may have values that lead them to abhor chemical additives. As long as they can find *something* to eat without chemical additives, the food system does not violate their rights, even if it means cooking everything up from relatively unprocessed whole food ingredients (e.g. fresh fruits and vegetables, flour, shortening, milk, eggs, etc.). If they choose *not* to exercise their opportunity for exit, they have consented to be bound by grades and standards that frame the market for food.

This is, I admit, a fairly minimal account of what would be required for exit⁽⁵⁾, but I use it because even on these minimal grounds we can see why grades and standards might create an ethical problem. The recent conflict over standards for genetically modified plants and animals (GMO's) is a case in point. In the United States, GM crops were "mainstreamed"; they were not labeled. Considerable legal and economic barriers made voluntary labels that distinguish GMO's from traditional (non-GMO) foods difficult to implement. There is ample evidence that a significant minority of people object to GMO's on the basis of their worldview and current knowledge⁽⁶⁾. Can people who object to eating GMO foods "opt out" of the food system? Not easily. Even if they revert to preparing their own foods from whole grains and oils, they might be inadvertently and unwillingly eating GMO food. At this writing, a number of strategies for resolving this problem are being discussed, in-

⁽⁴⁾ For a sophisticated discussion of exit in the area of economic behavior, see Hirschman, 1970.

⁽⁵⁾ See Faden and Beauchamp (1986) for a more complete discussion of the issues that might arise in attempting to stipulate and enforce a consent standard. Clearly, some approaches to consent imply that exit is a necessary but not sufficient condition, and that risk bearers cannot be said to have given consent until much more stringent criteria of information and choice have been satisfied.

⁽⁶⁾ Virtually every survey on genetic engineering and its applications in agriculture indicates some portion of the population resisting the technology on religious grounds. See Hoban and Kendall, 1993.

cluding labeling of GMO's and organic certification as form of non-GMO label. The crucial ethical imperative for any such policy is to restore the consumer's right to withhold consent by exit.

This is a point on which utilitarians and libertarians might diverge. For one thing, an utilitarian is more likely to be satisfied if "most people" are able to satisfy their preferences. Benefits to the majority might outweigh harm to a few. An utilitarian might also be much more impressed by the costs of segregating GMO and non-GMO commodities, and by the potential for perfectly good GMO foods to be stigmatized by labeling. People who would be willing to eat GMO foods but avoid them on the basis of unfounded fear may be paying an unnecessary premium⁽⁷⁾. However, libertarians have a strong commitment to the inviolability of an individual's non-interference rights, even (and especially) if the affected individuals are in the minority. A libertarian will be singularly unmoved by cost considerations, given that a fundamental liberty is at stake. So even before we get to *international* trade, we find that there are ethically troubling dimensions to US standards for the food system.

International Grades and Standards

When we move to trades across international borders, the considerations that are of interest to utilitarians move even farther away from those of libertarians. The utilitarian analysis of international trade is a highpoint of classical economic theory as formulated by Smith and Ricardo. Famously, they showed that international trade between nations would complement the way that climate, culture and natural endowments make the cost of producing certain goods lower in some countries than others. Furthermore, they proved that under certain very plausible conditions people would be better off to trade across borders to acquire a good even when the cost of producing the imported good at home is lower than the price paid to foreign suppliers. When compared to rules that restrict international exchange in pursuit of a foolish conception of national wealth, trading systems that encourage trading across borders yield "the greatest good for the greatest number". The potential for gains from trade is so dramatic that anyone who is both inclined toward a utilitarian view and capable of following the mathematics in an economic analysis must certainly conclude that relatively unregulated trade is better.

If there is any qualification to an utilitarian's enthusiasm for international trade it arises in the recognition that successful trading presupposes a reliable, authoritative and economical means of dispute resolu-

⁽⁷⁾ Many people offering utilitarian-type arguments would add that since GMO's meet food safety tests, no one is actually harmed by eating them. But this is a problematic claim for anyone who believes that preferences are subjective, and that it is satisfaction of preferences that are being optimized in an utilitarian analysis.

tion. Within national boundaries, sovereign governments perform this function, but how can it be done across boundaries? At an earlier point in world history, this would have been a more than rhetorical question. Of course, some forms of exchange between human societies have occurred since prehistory, but a unique set of barriers to international trade arose along with the formation of the European system of nation states in the sixteenth century. Some of those barriers consisted in the way that sovereigns mandated terms of trade by fiat, but the risk and uncertainty of conducting business across national boundaries also made international trade costly. The utilitarian assessment of international trade has involved a trade-off between the gains from trade and the costs of attempting to do business in an uncertain and unfamiliar environment, ever since. As international agreements have lowered barriers and reduced uncertainty, the utilitarian assessment of trade liberalization has become more and more positive.

The libertarian view of international trade is at once simpler and vastly more complex. On the one hand, a libertarian is likely to think that two people who want to trade with one another should be allowed to do so, without regard to whether they happen to be citizens of the same country or not. This predisposition points immediately toward a strong inclination to minimal regulation of exchange across borders. The complex economic analysis supporting gains from trade is only icing on the cake. On the other hand, a libertarian may have qualms about an agreement between governments that overturns national trade rules. To the extent that a *national* trading system represents an elaborate arrangement of exit and consent, one cannot abrogate that system without possibly invalidating the consent criteria that serve as its ethical foundation.

Let me illustrate the point with a hypothetical example. Suppose that most of the individuals resident in a country (let us call it "America") believe that dog and cat meat is unwholesome and unhealthy. Suppose also that those in the minority who do not share this belief have little interest in purchasing dog or cat meat. Under such conditions, grades or standards that exclude over the counter sale of dog and cat meat (or the use of this meat in processed foods) would be acceptable on libertarian grounds. We may presume that exceptions to this standard must meet fairly exacting standards of informed consent (Thompson, 2001). So, for example, someone whose religion required its use in ceremonial practice, or a scientist doing research on dog and cat meat would both be able to procure it, but not through normal market channels, and not without stringent assurances that each knew what they were buying.

What happens when meatpacking firms from another country where people do not share this attitude toward dog and cat meat propose to export processed meats that may contain dog? Even those Americans who don't care much about the wholesomeness of dog meat may well protest that the proposal violates a nationally established consent agreement.

They may object “on principle”, fearing that abrogation of *any* national standard weakens the force of those standards that are of most importance to them personally. There is an important sense in which the libertarian’s concern with protecting non-interference rights and in securing conditions of exit and consent leads the libertarian to feel a sense of investment in any system of trading or regulatory standards. Any modification of those standards must be endorsed by the national political process of one’s home country, on the libertarian view. This is not an unmeetable standard, and rules for entering treaties sketch one process that can be used to meet it⁽⁸⁾. However, there must be some way for individuals to have a voice in this process, or else it becomes coercive and unacceptable on libertarian grounds.

Libertarians will certainly regard an entirely open international trading system as the ideal case, subject to the condition that consumers have adequate information and opportunity to exit. Nevertheless, there are questions about market structure and about “normal” expectations for exchange that simply cannot be avoided in many particular cases. A market in which special information is provided only when food items *do not* conform to general cultural expectations may be deemed adequate (and even preferable to a stringent “full-information” requirement) by those taking a libertarian approach. Because “general cultural expectations” can vary from place to place, a certain amount of tension and adjustment is an inevitable side effect of harmonizing grades and standards to promote individual trade. This tension can grow into genuine distrust if international standards are used to overturn cultural expectations, placing people in a position of uncertainty about whether they are eating cat and dog (not to mention clones or GMO’s).

Separating scientific and cultural considerations will not resolve this problem. For one thing, quality standards (such as provenance) are simply not amenable to scientific verification. But the problem is deeper and it infects even those environmental and food safety standards where science has been put forward as the arbitrator for national differences. Put succinctly, one person’s science is another person’s culture. This is not to imply cultural relativism about scientific truth. There are right and wrong answers to questions about the probable health and environmental effects of importing and consuming any agricultural product.

⁽⁸⁾ My claim is that a procedure allowing for administrative negotiation of treaties, legislative approval and judicial review meets at least minimal requirements for libertarian consent. But the issue is complicated by the fact that many, perhaps most treaties are focused on national defense, and preserving the national defense is considered to be an objective that can override many concerns about individual liberty. As such, there may be a pattern of neglecting individual consent in the process of negotiating, approving and implementing treaties. While this can (arguably) be justified when treaties truly involve a nation’s survival, it cannot be justified when treaties deal with less serious matters such as communication, cooperation, immigration, or international trade.

But if we are all inclined toward a libertarian view, individuals must be free to choose based on their own worldview, true or false, scientific or not. We face many global problems — pollution, deforestation, climate change — where consent and exit are a practical responsibility, and where it may be necessary to reformulate our conception of non-interference rights (McGinn, 1994). We should decide *these* issues on the basis of the best science available, recognizing that science alone is never sufficient. We should never use science to undercut exit and consent when it is possible to secure them. We should not weaken the credibility of scientific knowledge by using it as a bulldozer to knock down relatively trivial individual and cultural beliefs, beliefs such as the view that dogmeat is unhealthy, that ginseng promotes longevity, or that genetically modified food is unwholesome.

Conclusion : Should Health and Environmental Standards be “Based on Science” ?

This general review of ethical norms implicit in the setting of grades and standards for international trade can be brought to a close by noting its relevance to some issues that arise in the special case of health, environmental or food safety regulations. While it would clearly be most useful to offer a detailed example of ongoing negotiations on some specific issue, the empirical analysis that would be requisite for such a case study is beyond my disciplinary training and professional experience. As such, I will close with a somewhat general discussion of issues associated with the proposal to use scientific risk assessment as the gatekeeper for issuing a standard on health, environmental or food safety grounds. This proposal is central to debates of implementation of sanitary and phytosanitary restrictions on the importation of products under the current framework of the World Trade Organization (WTO). However, the view that regulations should be based on science lends itself to three pointed ethical objections that follow from the discussion above. The “based on science” approach to standard-setting is a particularly poignant example of the way that some have tried to dodge the ethical questions associated with regulatory grades and standards.

First, individual liberty of conscience is one of our most fundamental freedoms. If someone sincerely believes that a given plant is poisonous because it is “taboo”, they have both a right to reject the plant as a food-stuff *and* to maintain the belief system according to which it has been judged taboo. People who believe the plant taboo will say that it is unsafe or unfit to eat. It is a profound insult to that person’s belief system to deny it any bearing on whether something is safe to eat or not. We cannot, in short, have a hierarchy that adjudicates health and safety concerns on the basis of a Western scientific worldview, and that denies

exponents of religious or other worldviews the opportunity to speak on health and safety by demoting their concerns to the category of "perception" (Thompson, 1997).

Second, there is a profound sense in which science has an utilitarian bias. Applied to questions as diverse as food safety and economic benefit, science is able to predict that certain outcomes will ensue on the adoption of a policy proposal. This is crucial information for utilitarian decision making, but it may be of minor importance (even irrelevant) to the libertarian who wants to know whether the proposal maintains the right to exit, irrespective of whether he or she intends to exercise exit. Like all of us, scientists tend to regard their special knowledge as important, and they want to be helpful. They wind up siding with utilitarians without even knowing it. To say that a decision should be "based on science" is generally to claim that it must be based on an utilitarian-style prediction and comparison of consequences. This dismisses one of the most influential moral and political philosophies of the democratic era without opportunity for argument (Thompson, 1995).

Third, science does not speak unequivocally on risk issues, and even when it does there are many different ways to incorporate science into regulatory decision making (Rothstein *et al.*, 1999). Does social science count? There is generally an implicit suggestion that financial risks should not be included in the "scientific risk assessment", but the science available for measuring those risks may be much more advanced than biological or ecological modeling. Can we stipulate norms of health or environmental quality without making value judgments? The burgeoning literature in medical and environmental ethics suggests that a normative conception of adequate functioning is implicit in each. What burden of proof is being established for the priority of science? In claiming that a regulatory standard should be based on science, one person might mean, "as opposed to pecuniary private interests", while another might mean, "as opposed to socio-cultural, moral and religious concerns". One person might take the standard to reflect the mainstream consensus of natural scientists working in a given area; another might insist that claims be demonstrated with a high degree of statistical certainty; and a third might require only that *someone* with scientific credentials has raised an issue about it.

To note these objections is not to call for the abandonment of science or for the neglect of what science teaches with respect to health, environment or food safety risk. It is simply to say that standards — even regulatory standards in the health and safety arena — have normative dimensions that cannot be decided on scientific grounds. Nor am I suggesting that anyone and everyone should have equal say in the standard setting process. There must be a fair procedure for integrating science with cultural and moral norms, but any attempt to articulate that procedure is far beyond the scope of this analysis. The claim is that scien-

tists and trade negotiators have hitherto demonstrated insensitivity to the problematic nature of regulatory decision making in each of the three dimensions noted above. These neglected issues should somehow be taken into account.

Others will expand the list of neglected considerations by noting how a margin of isolation from international markets may be necessary to preserve the cultural integrity of social groups. They will find fault with me for failing to question the neo-liberal framing assumptions of my analysis. These left leaning criticisms notwithstanding, we should not abandon the moral underpinnings of the "free trade" view. We should, instead, live up to them. Harmonizing international standards is, in fact, the negotiation of culture and worldview in the most fundamental sense. Progress should probably be measured in decades or generations, not year by year. For every two steps forward there will be a step back. This may disappoint the greedy and the impatient, but the philosophies analyzed in this paper *are* committed to an eventual opening up of trading opportunities and an ideal of globally unrestricted trade. Democratic procedures and personal liberty must prevail over expediency if we are to have a stable trading system in the long run.

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