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978-0-521-87256-0 - Trade Imbalance: The Struggle to Weigh Human Rights Concerns
in Trade Policymaking

Susan Ariel Aaronson and Jamie M. Zimmerman

Excerpt

[More information](#)

1

Introduction

The Struggle to Weigh Human Rights in Trade Policymaking

Overview

If birth and geography are destiny, the citizens of Cochabamba, Bolivia, were determined to change their fate.¹ Although the city lies in a fertile valley near the Rocha River and the Alalay Lagoon, Cochabamba has long had a chronic water shortage.² For many years, the people of Cochabamba struggled to obtain enough water to meet their basic needs. The local water utility was poorly managed and barely provided adequate services for the city proper. Moreover, the city was ringed by slums where the government did not provide such basic services as electricity or water.

In 1994, citizens in some of the slums surrounding the city decided to solve their chronic water problem on their own. They dug a well and organized a cooperative that provided clean, plentiful water at a reasonable price to many of the citizens living outside the city proper. Soon, other groups inside and outside the city were emulating this approach.

But, in 1999, the Bolivian government auctioned off the city's water utility as part of a broad-based effort to privatize the state utilities and transportation infrastructure. The government opened up the bidding to all investors, foreign and domestic. A U.S./Italian consortium (controlled by the U.S. company Bechtel) acquired the utility. That utility was granted the rights to neighborhood wells and water cooperatives, even though the cooperatives were not part of the original utility's purview. Moreover, the new water services provider decided the company must invest in a more effective water infrastructure. To pay for these costs, the company raised prices some 35%. But many of Cochabamba's citizens could not afford these prices, including those citizens who had created the cooperatives. Thus, they organized to defend the cooperatives they had set up. In January 2000, they took to the streets in protest, claiming that water would become less affordable.³ Citizens

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Excerpt

[More information](#)

2 *Trade Imbalance: The Struggle to Weigh Human Rights Concerns*

battled police and soldiers in what journalists called “*la Guerra del Agua*” – the Water War.

The protests provided a preview of a problem surfacing around the world. Water is essential to survival, sanitation, public health, and numerous activities that sustain human life and ensure human dignity.⁴ Yet the global supply of water is declining at the same time that the demand for and competition for water are rising.⁵

Water became the “poster child” – an archetype for public concern that trade policies and trade in general could undermine access to resources and in so doing, human rights. Under the Universal Declaration of Human Rights (UDHR), the basic code of human rights outlined by the members of the United Nations, there is no “right to water.” However, as no one can survive without access to water, human rights bodies as well as the World Health Organization have delineated what governments should do to ensure that all of their people can enjoy sufficient, safe, acceptable, accessible, and affordable water without discrimination.⁶ Alas, in many countries, government officials do not have the skill, expertise, or funds to regulate the provision of water. In the belief that outside companies may more efficiently provide access to safe, affordable drinking water, some policymakers have privatized water services, often permitting foreign companies to operate and manage water delivery systems.⁷ In these instances, water services are traded.

Fairly or unfairly, many people perceived that trade in water services had undermined the right to water of the people of Cochabamba. Trade policies and trade agreements did not directly *cause* Cochabamba’s water problem. Nonetheless, trade in water services (opening up the water supplier to foreign investment) *contributed* to making water less accessible and affordable.

The Bolivian experience has convinced some officials in other governments that they should neither open their water services to trade nor treat water as a commodity for trade.⁸ For example, in May 2005, the Australian government made a public commitment to exclude water for human use from its World Trade Organization (WTO) trade negotiations agenda.⁹ The government of Canada has banned bulk exports of water.¹⁰ Members of the WTO have become so concerned about trade in water issues that they waded into the debate with a fact sheet – “The WTO is not after Your Water.”¹¹

But trade in water and water services can also *improve* peoples’ access to water. For example, foreign investment in water services may lead to a more efficient and cheaper supply of water. Thus, trade may indeed promote access to clean, affordable water.¹² Clearly, the effect of trade on the public’s right to water is not black-and-white.¹³

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Excerpt

[More information](#)*Introduction*

3

In many countries, citizens and policymakers have alleged that trade policies and agreements can undermine specific rights such as the right to food, labor rights, the right to education, or the right to health (through access to affordable medicines). To some degree, the perception that trade and human rights may conflict stems from an imbalance in the international rule-based system. The WTO stipulates a set of rules that limit how and when nations may apply protectionist tools. It is also a forum for negotiating trade and has an effective and enforceable dispute settlement body. If any of the WTO's 150 members believes that another member nation's trade policies impede trade in violation of WTO rules, that nation can challenge those policies under the WTO's binding system of dispute resolution.¹⁴

However, there is no equally influential and binding international system to promote human rights globally. The United Nation's International Bill of Human Rights, (which includes the UDHR and its subsequent covenants), global public support, and governmental and civil society activism demonstrate an international commitment to fulfilling human rights obligations. Yet nations have not agreed on an effective universal mechanism to ensure the implementation of human rights norms and principles, to assess violations, or to punish violators. Moreover, because countries act differently at the intersection of trade and human rights, there is also an imbalance in behavior among countries. When confronted with a potential conflict between their human rights and trade objectives, some countries develop long-term strategies and mechanisms, other countries respond in an ad hoc manner, and still other countries do nothing.

Although scholars, policymakers, and activists have long debated the relationship between trade and human rights, in fact we still know very little about that relationship. Scholars are only beginning to study empirically the effects of trade or particular trade agreements on individual rights, and they have just started to examine which rights (such as property rights or the right to equality before the law) must be protected by governments for trade to flourish. Nonetheless, current studies seem to indicate that, over time, trade policies and agreements – and the trade they stimulate – could (even simultaneously) undermine some rights and enhance others.

Policymakers may find it difficult to evaluate the impact of a particular trade agreement or policy on each one of thirty-some rights delineated in the UDHR. Moreover, the effect of trade policies upon a particular human right may change over time. There is no one set way that trade affects a basket of rights or a particular human right.¹⁵

Despite this lack of insight into the relationship between trade and human rights, policymakers around the world frequently use their trade policies to achieve human rights objectives. Sometimes they use incentives, such as

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Excerpt

[More information](#)4 *Trade Imbalance: The Struggle to Weigh Human Rights Concerns*

increasing market access for countries that improve human rights. But government officials must be careful that when they use such incentives they do not violate international trade rules. At other times, government officials use disincentives, such as trade sanctions, to get other states to change their human rights behavior.¹⁶ But a sanctions-based approach cannot build the capacity of state actors to protect internationally accepted human rights standards, such as those delineated by the International Labor Organization (ILO) or the UDHR. Some governments have tried to link trade and human rights by obtaining a waiver from their trade obligations. And, finally, some governments have tried to address specific areas where trade and human rights may conflict outside of the WTO system. For example, under the aegis of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris, a wide range of nations agreed to a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expression. France and Canada led a bloc of countries that argued that cultural rights (and industries) should be shielded from international trade rules under the WTO.¹⁷

The WTO, the international system of rules governing trade, provides very little guidance to its member governments on what they should do if a fellow member undermines particular human rights. Nor does it provide guidance as to how WTO members can promote human rights without distorting trade. The WTO system stipulates what governments *cannot* do, not what they can do. Yet, when policymakers fail to coordinate trade and human rights objectives, they risk perpetuating human rights problems both at home and abroad.

This book enters this murky territory with three goals. First, we aim to provide readers with greater insights into the relationship between human rights and trade. We will present readers with an overview of the international systems governing trade and human rights and background on some of the research on the relationship among trade, trade policies and agreements, and human rights. We believe that, with such background, policymakers will have additional tools and insights to help them develop more effective approaches to achieving expanded trade as well as to progressively realize human rights over time.

Second, we have prepared the first in-depth comparative analysis of how four case studies (South Africa, Brazil, the European Union [EU], and the United States) try to coordinate trade and human rights objectives and resolve conflicts at both the domestic and international levels. In an additional chapter, we also discuss how governments have introduced and discussed human rights concerns at the WTO. We hope these chapters will give our readers a better understanding of how these very different nations and the EU juggle the important goals of advancing human rights and expanding trade. We will show that none of our case studies have found a direct path or “right way” to protect and advance human rights as they seek to expand trade. We believe that greater

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Excerpt

[More information](#)

knowledge of what other countries are doing may help policymakers achieve a more coordinated approach to these important objectives.

Our third goal is to help policymakers do a better job of governing globalization. As noted previously, because trade and human rights exist in separate governance spheres, scholars, advocates, and officials working in these areas often rely on bureaucratic jargon, use different policy tools, and do not often work collaboratively. Thus, in each of our country chapters, we examine how policymakers make trade policy and discuss how and when human rights concerns can enter the discussion about trade. We will make suggestions to foster greater dialogue and coordination *within* governments, because we believe a more coordinated approach will help make policy more coherent and more effective. In addition, we will also make some suggestions on how to foster a dialogue *between* countries that seek to promote human rights abroad with trade policies.¹⁸

What Do We Know about the Relationships among Human Rights, Trade, and Development?

As long as men and women have traded, they have wrestled with questions of human rights. Archaeological evidence shows that ancient civilizations traded at great risk to their freedoms. According to economist Peter Temin, the ancients shipped a wide range of goods from wheat to wine.¹⁹ But these traders often lived in fear; when they engaged in trade they risked being captured, sold as slaves, or enslaved by pirates.²⁰ Not surprisingly, the ancients had a bifurcated view of trade. The sea could bring contact with strangers who could enhance national prosperity, but these same strangers might threaten the security of the nation and its people.²¹ The first trade sanction, the Pericles Megarian decree, was developed in 432 B.C. in response to the kidnapping of three Aspasian women.²²

Many years later, during the Age of Exploration, theologians, scholars, and royal advisors debated whether they had the right to exploit the land and wealth of indigenous populations. The economic historian Douglas Irwin notes that Vitoria, one of the “founders of international law,” contended that the right to trade is “derived from the law of nations. . . . Foreigners may carry on trade, provided they do no hurt to citizens.”²³

In the centuries that followed, policymakers around the globe developed a wide range of approaches to govern the behavior of states and citizens at the intersection of trade and human rights. Often one state would act and challenge (or inspire) others to follow. For example, after England banned the slave trade in 1807, it signed treaties with Portugal, Denmark, and Sweden to supplement its own ban. After the United States banned goods manufactured by

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Susan Ariel Aaronson and Jamie M. Zimmerman

Excerpt

[More information](#)6 *Trade Imbalance: The Struggle to Weigh Human Rights Concerns*

convict labor in the Tariff Act of 1890 (section 51), Great Britain, Australia, and Canada adopted similar bans. Ever so gradually, these national laws inspired international cooperation.²⁴

Recent Scholarship on Trade and Human Rights

Today, citizens and policymakers increasingly debate the relationship between trade and human rights. Many policymakers and scholars of trade argue that trade per se (and the agreements governing trade) inherently enhances human rights. They claim that trade stimulates an export-oriented middle class, which will use its increasing economic clout to demand political freedoms and to press for openness and good governance.²⁵ Thus, they are asserting that trade, in effect, may help to encourage guarantees of civil and political liberties. In this regard, law professor Joel Paul cites the example of Mexico, where greater trade with Canada and the United States helped Mexico mature into a “multi-party democracy.”²⁶ Policymakers and scholars also argue that trade improves human welfare. They note that, over time, the General Agreement on Tariffs and Trade (GATT) and the WTO (as well as bilateral trade agreements) have effectively stimulated and regulated trade. These agreements have thus contributed to economic activity, which, in turn, has helped more people improve their quality of life.²⁷

Other analysts acknowledge the benefits of trade to economic growth and political liberalization, but they have a more nuanced view of how trade affects particular human rights. For example, according to economists Kimberley Ann Elliott and Richard B. Freeman, trade does not necessarily improve labor rights. They concluded that the impact of trade on labor standards depends on the quality of country-specific institutions and conditions.²⁸

Although people have been debating the relationship between human rights and trade for centuries, the truth is that we know very little about how the two interact. Some scholars are testing how trade and foreign investment affect human rights.²⁹ The more rigorous studies are finding a complex relationship. For example, some studies have found that some types of foreign economic penetration (investment, trade, and aid) are reliably associated with increased levels of government respect for some – but not all – human rights. Several studies indicate that as citizens engage in trade, some rights seem to advance, whereas others seem to decline.³⁰

Some scholars have begun to rely on a comprehensive data set, the Cingranelli and Richards (CIRI) Human Rights Data Set, that provides a country-by-country summary of each nation’s human rights behavior (see <http://ciri.binghamton.edu/>.) Working with this data set, scholars have found

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Excerpt

[More information](#)

that higher levels of foreign investment and trade increase governmental respect for personal integrity rights (such as freedom from torture or arbitrary imprisonment). Thus far, studies reveal that states with better human rights records receive more investment.³¹ But none of these studies examine how trade flows per se affect particular human rights or how membership in the GATT/WTO over time affects particular human rights.

Scholars also don't know if promoting *certain* human rights could be trade enhancing or if increased trade inspires policymakers to do more to protect *specific* human rights. Moreover, researchers know little about the lines of causality. Do enhanced human rights protections lead to increased trade? Or does increased trade lead to improved human rights? Finally, we have little insight as to how trade policies and agreements will influence the realization of human rights *over time*.

To some extent, this knowledge gap is part of a larger hole in knowledge: scholars know very little about the relationship between economic development and human rights. Economists find it difficult to tease out the many variables that can stimulate or undermine economic or social development. In recent years, one scholar has stimulated a forceful rethinking about the relationship between human rights and development: the Nobel Prize winner Amartya Sen. Sen's insights have greatly influenced practitioners as well as scholars, including the authors of this book (Figure 1.1).

Sen's Insights

In the post–World War II period, development officials and scholars generally thought that public policies could facilitate economic growth and development if these policies could simply raise the income of the poor. They thought the problems of poverty could be solved by increasing the supply of money available for development. With foreign aid, they hoped, the poor and middle classes in the developing world would get jobs and use their earnings to save, consume, or invest. The economy could then “take off.” But Sen believed countries and individuals are poor because, in many countries, citizens (a nation's most valuable resource) lack access to other productive resources such as education, land, health, justice, and credit. He argued that governments must actively provide these public goods to ensure that all citizens can obtain the services and resources they need to achieve sustainable development.

Sen also provided a normative framework for how human rights could guide the development process and, in turn, the international institutions designed to foster development. In *Development as Freedom* (1999), he explores the ways in which freedom is both a constituent of and a means to foster development. The

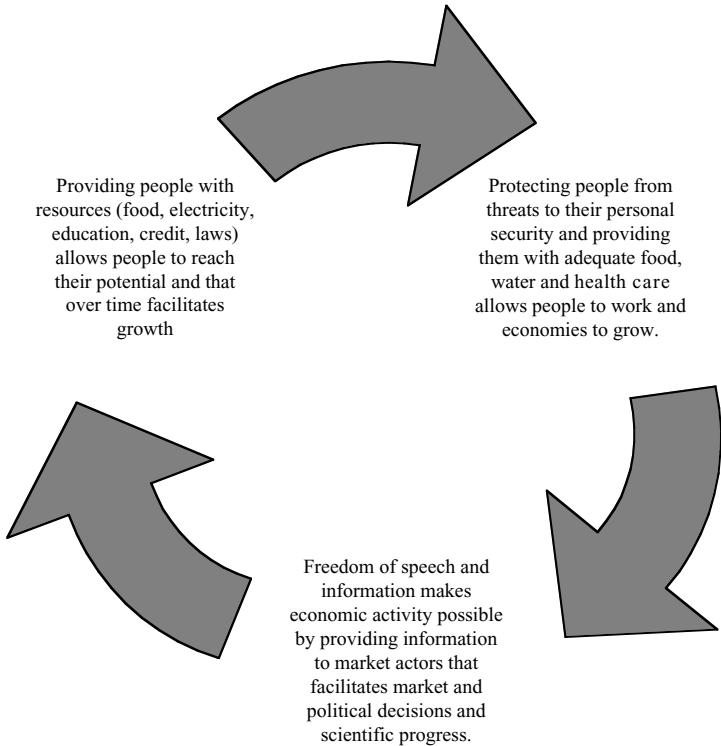


FIGURE 1.1. Sen's ideas on human rights and development.

book focuses on political freedoms and democracy, in particular, as democracy gives people a voice and a constructive role in shaping values, norms, and, ultimately, policy responses.³²

Sen is not the only modern economist to present ideas about the relationship between human rights and development. Nobel Prize-winning economist Robert Barro has shown that per capita gross domestic product (GDP), education level, and life expectancy are highly significant predictors of democracy and civil liberties, “firmly establishing the general link between democracy and the standard of living.”³³

Sen's insights have greatly influenced how economists think about development. For example, in 2000, the United Nations Development Programme (UNDP) declared, “rights make human beings better economic actors.”³⁴ In 2004, the WTO's Consultative Board noted, “the case for trade is made very definitely in terms of enhancing human welfare. Trade is a means to an end, not an end in itself.”³⁵ In its 2005 report, the UNDP noted, “eradicating poverty is more than a major development challenge; it is a human rights challenge.”³⁶

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Excerpt

[More information](#)

Sen's ideas have also inspired scholars to test the relationship between human rights and development. In a wide range of studies, for example, World Bank scholars have found that governance matters for growth. Scholars have found an important link between the quality of institutions (such as courts, government agencies, and schools) and economic growth.³⁷ They have also discovered that protecting certain human rights is important for growth. Dani Kaufman of the World Bank Institute found that nations with greater civil liberties tend to have greater economic growth.³⁸ In another study, Kaufman and his team compared Bolivia's development and business environment with that of some eighty other countries. This study found that the lack of political freedoms as well as governance factors, such as corruption, limited Bolivia's economic performance.³⁹

Although these studies on human rights and development are thought-provoking, additional research is necessary to fully understand the relationship between human rights and development. We hope that in the future scholars will examine questions such as: What rights are the building blocks for growth to occur? Are there certain human rights that are a precondition for the protection of other types of rights? For example, are political rights a precursor to economic rights or are they mutually exclusive?⁴⁰

In sum, policymakers need more information to develop appropriate and effective policies at the intersection of trade and human rights. But that is not the only hurdle for scholars and policymakers seeking to examine this relationship. Human rights may be universal, but human rights are not universally accepted by all the world's peoples.

What Do We Mean by "Human Rights"?

Although policymakers have established internationally accepted human rights standards, the words *human rights* have different meanings to different people around the world. Every country has its own particular human rights objectives, priorities, policies, and experience. Thus, we believe we need to delineate what human rights we are talking about, so that we could have a consistent definition to use throughout the book. However, to understand what definition we adopted, we first discuss why human rights are important.

Human rights protection may be a precondition for capitalism as well as democracy. Without rights, people could not articulate or defend their freedom, ideas, or property. Technological and scientific progress could not occur without the protection of some human rights. Almost every culture and government recognizes the existence of certain rights or claims to specific freedoms

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Excerpt

[More information](#)10 *Trade Imbalance: The Struggle to Weigh Human Rights Concerns*

and goods. For citizens to realize these rights, governments have a responsibility to put such rights into law as well as into effect.⁴¹

Today's notion of human rights is derived from the notion of "natural" rights articulated by John Locke and other philosophers from the European Enlightenment. An ideology of rights was maintained in England by the common law and in the United States by the Constitution and the Bill of Rights. In revolutionary France, human rights were embodied in the Declaration of the Rights of Man and of the Citizen. But writing these rights into law did not guarantee their realization. For example, the United States allowed slavery and denied minorities and women the right to vote. The French government abandoned the Declaration during the Reign of Terror. Nor did these governments seek to disperse their vision of rights. The ideology of rights did not spread to the colonies of the British and French empires.⁴²

In the 20th century, policymakers began to recognize the need to root protection for human rights in international law. For example, the signatories of the Versailles Treaty tried to engineer a peace that would both stabilize Europe and protect various minority groups. They created an international organization to cooperate on the peace – the League of Nations. They also pledged to "endeavor to secure and maintain fair and humane conditions of labour . . . in all countries in which their commercial and industrial relations extend." To meet that goal, they created an ILO. Although the ILO has endured, the League of Nations was unable to prevent aggression by Germany, Italy, Japan, and Russia in the 1930s. By 1939, the League of Nations had collapsed.⁴³ Some policymakers were determined to learn from this failure and they planned a more comprehensive approach to global governance.

During the dark days of World War II, U.S. President Franklin D. Roosevelt outlined a vision of how human rights might be protected in international law. On January 6, 1941, he addressed the U.S. Congress about his hopes for a future world. Roosevelt said, "In the future . . . we look forward to a world founded upon four essential human freedoms: freedom of speech, freedom of religion, freedom from want, and freedom from fear."⁴⁴ Roosevelt and British Prime Minister Winston Churchill worked to ensure that advancing these four freedoms would become a central tenet of the planned United Nations.⁴⁵ After Roosevelt's death, his wife, Eleanor, became the driving force behind the adoption of the UDHR.⁴⁶

The architects of the United Nations were the first to apply the term *human rights*, in Articles 55 and 45 of the UN Charter. All members of the United Nations pledged to take action for the achievement of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." But human rights were not clearly defined in the UN Charter. Thus, when the UN General Assembly met