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Making Offers They Can't Refuse: Consensus and Domination in the WTO

1. Introduction

The World Trade Organisation (WTO), and the international trade regime within which it operates, is regularly evaluated in terms of distributive outcomes or opportunities (e.g. Moellendorf 2005, Brock 2009, James 2012, Suttle 2017, Christensen 2018). A less-established concern is the extent to which the institutional structure of the trade regime enables agents to exert control over the economic forces to which they're subject.¹ This oversight is surprising, as trade negotiations amongst states have profound impacts upon what options remain open to those states and their citizens in regulating their economies. To the extent that this is true, we shouldn't think of the trade regime as being of merely instrumental concern, furthering or hindering particular distributive outcomes or opportunities. Insofar as the international order does not operate in some nebulous political space, unmoored from how citizens and states order their own polities, questions about power, influence, and control must form a key part of any comprehensive theory of trade justice.

This article contributes to filling this lacuna in the literature. Following on from recent neo-republican work on global and international justice (e.g. Bachvarova 2013, Laborde and Ronzoni 2016), it argues that a major problem with the trade regime's core institution, the WTO, is that it fails to effectively mitigate the domination of some states by others within its negotiations.² Neo-republicans (and others committed to the ideal of non-domination) ought to be deeply concerned with the design of institutions such as the WTO which regulate inter-state interactions. In a world characterised by both radical inequality between, and considerable interdependence among states, such institutions represent an overlooked potential bulwark against the domination of some states by others. Optimistically, they represent sites where members can work to constrain and regulate exercises of arbitrary power to which they may otherwise be vulnerable. However, when the design of these institutions doesn't frustrate, but rather facilitates the exercise of unequally-held power, this marginalises weak states and their citizens in the construction of a political and economic order by which they're nonetheless constrained. This leaves a good deal of weak states' fates subject to the whim of more powerful ones. Correspondingly, states' responsiveness to their own citizenry diminishes.

¹ Some exceptions include Julius (2014), Christiano (2015) and Brandi (2017).

² Vrousalis (2016b) briefly discusses the WTO from the vantage of domination as well, though his conception of domination is different to the one I utilise, and he places far less emphasis on control and political voice than I do here.

While republicans ought to be concerned with the non-dominating credentials of all international institutions, a comprehensive assessment of the WTO is perhaps particularly pressing. This is because, unlike much of our current international order, significant reform of the trade regime is eminently conceivable. In some ways, it's already happening. With the rapid proliferation of regional trade agreements,³ the elbow grease going into mega-regional agreements (e.g. CETA, TPP), and the prolonged stasis at the organisation itself, the WTO looks increasingly obsolescent as a negotiating forum. Yet as by far the largest, most institutionally-defined trade organisation, wherein rules are enforced by one of the most powerful international enforcement mechanisms (Hopewell 2016, p. 55), it may also represent the best chance of securing for weak states some control over the terms of their own participation in the international economic system. Global justice theorists who aspire to provide concrete guidance for reforming the international order would do worse than to spend their energies thinking about what shape a just trade regime would take. This article lays the groundwork for such future enquiry, by showing how WTO negotiations currently facilitate the domination of weaker states.

While the above points should be of interest to all those interested in trade justice, the analysis of the WTO allows us to develop two arguments of special interest to neo-republicans. The first is that, despite its superficially non-dominating character, consensus decision-making is inadequate as a means of making power non-arbitrary. The second is that offers, or rather the capacity to make and withhold offers, can generate domination in the right circumstances. This latter conclusion is of signal importance to the WTO case, but also has wide-ranging ramifications for how we understand non-domination more generally. Motivating these two positions, then, can be seen as a subsidiary aim of this article.

The argument will develop in four sections. Section two, drawing from the work of Pettit and Lovett, will put forward a republican conception of domination, before clarifying the significance that intergovernmental organisations such as the WTO have for the project of advancing non-domination. Section three will describe the WTO as a negotiating forum, paying particular attention to those features which may empower or enfeeble weak states. Section four will show that consensus decision-making fails to give such states effective control over negotiations, before discussing whether this lack of control is a systemic upshot of the international division of power, or can instead be credited to the design of the WTO. Section five will raise the issue of whether trade negotiations can be a distinct site of domination, insofar as participants are (for the most part) engaged in the giving and withholding of concessions (i.e. offers). I'll argue that, when weak agents are

³ As of 1st May 2018, there were 287 regional agreements in force (WTO 2018b).

dependent upon powerful agents who act as gatekeepers to urgently-needed resources, this can be enough to generate domination. The relation between rich and poor countries in trade is just such a case. The conclusion (section six) will restate key points.

2. Domination and the Role of Intergovernmental Organisations

Before starting in earnest, there is just a little conceptual housekeeping to get through. I'll be assuming some version of what I'll call the 'orthodox' republican conception of domination, where an agent is dominated when they are subjected to the arbitrary power of another agent.⁴ The two most prominent accounts in this vein are those of Philip Pettit (e.g. 1996, 1997, 2008, 2012, 2014) and Frank Lovett (e.g. 2010, 2012), both of whom I draw upon at various points throughout. Where I do so, I take this to be unproblematic given the affinity between their respective accounts.⁵ However, two important conceptual divergences will be discussed in what follows, and I'll end up endorsing something of a hybrid between the two accounts (siding with Lovett on the question of what sorts of powers can generate domination, and with Pettit on the question of what makes power non-arbitrary). Because there are also differences in the terminology they use to unpack domination, I should make explicit that I'll be adopting Lovett's framework⁶ throughout. In section five, I'll give a positive argument which entails that we should reject Pettit's framework, as it can't capture an important subset of domination-generating capacities. For now, though, it is enough to say that some features of Pettit's framework are quite firmly wedded to the contexts of domination with which he is largely preoccupied (i.e. domestic citizens within the state). This makes applying it to other cases somewhat messy.⁷ Lovett's conceptual building blocks are, as the title of his book (2010) suggests, more general.

As per Lovett's framework, then, domination is characterised by three core features; an imbalance of power, dependence, and arbitrariness (Lovett 2010). A

⁴ For a republican conception which finds a place for structural as well as agential domination, see (Gourevitch 2013). For a republican conception which differs sharply from the above-described account, see (Thompson 2013, 2018). For a range of non-republican treatments of domination, see (e.g. Gordon 2007a, Vrousalis 2013, 2016a, 2016b, Clark 2007, Filling 2017).

⁵ This affinity is something both authors acknowledge (Lovett 2010, ch. 4, Pettit 2012, p. 58). It is also evident in their belief that they are engaged in a joint research program (Lovett and Pettit 2009).

⁶ I make use here of a distinction between a theorists' *account* (their arguments, commitments, etc.) and their *framework* (the way concepts are assembled and deployed). Because it can incorporate the change I believe ought to be made to his *account*, I can adopt Lovett's *framework* throughout.

⁷ Pettit's more recent writings (e.g. 2010, 2015, 2016) on international domination might suggest that this concern is misplaced. Nevertheless, I remain unconvinced of his account's generalisability. For example, far greater argument is needed to show that thinking about domination in terms of interferences in an agent's 'basic liberties' is not uniquely suited to the case of individual citizens within the domestic state.

has power over B where A has the ability to reliably change B's preferences or actions. There can be many different sources of such power; A may be capable of deceiving, coercing, or enticing B in ways which are decisive in changing what B wants to do, making some options more attractive, and others less so. When B doesn't have a reciprocal power of this kind over A, A holds an imbalance of power over B. Next, B is dependent upon A when B faces prohibitive exit costs from the relationship, or when exit is inaccessible. Exit costs may be high for several reasons; costs may be attached to leaving, or the attempt to leave, and this cost-attaching may be exercised by the dominator themselves, or by other agents outside the relationship (e.g. B may face ostracisation from their community if B exits a marriage with A). Equally, even when there is no attempt to attach costs to B's exit, the decline in quality of life outside the relationship compared to life within it may simply be prohibitively steep. In terms of the degree of dependence present within a relationship, it doesn't matter which of these factors creates the high exit costs (even if this matters greatly in our overall evaluation of the relationship). Unlike in the case of power, there is nothing contradictory about saying a relationship is dominating when A and B are equal in their degree of dependence; A being dependent upon B does not preclude A's domination of B. Finally, the third constitutive feature of domination is that the power A holds over B is arbitrary. When power is arbitrary, it is unconstrained; where A can determine when and how to interfere with B at their own discretion, A holds arbitrary power. Arbitrariness is a matter of degree; how arbitrary A's power is will vary according to the reliability, effectiveness, and accessibility of resources and safeguards which protect B from unwelcome exercises of A's power. We can call the institutional and material resources which B can effectively utilise in order to secure themselves from domination *countervailing powers*.

Which sorts of countervailing powers secure non-arbitrariness is a matter of debate, and hinges upon whether we ought to consider arbitrariness in substantive (e.g. Pettit 1997, 2012) or procedural (e.g. Lovett 2010, 2012) terms.⁸ Lovett adopts a procedural conception where, for power to be non-arbitrary, it is enough that its usage is bound by effective constraints, which are reliably enforced by something external to the source of power itself. Ensuring that power is procedurally non-arbitrary is a valuable ideal because 'regardless of a person's conception of the good, she can appreciate the value of knowing where she stands, and being able to plan out a life on that basis' (2012, p. 149). The obvious example of such a procedural constraint is the reliable application of a publicly-known law. Certainly, such constraints secure stability, but it appears Lovett is wrong to think that increasing the stability of power's exercise will always promote (an attractive

⁸ The distinction between procedural and substantive versions of arbitrariness is Lovett's own (2010).

conception of) non-domination.⁹ While significantly reducing the degree of unequal power or dependence in a relationship plainly reduces the degree of domination present, stabilising power need not. Indeed, the process of codification and enforcement of a constraint (both of which are necessary for reliable implementation) may actually serve to entrench unequal power relations. Greater codification, enforcement, and specification of the rights of masters relative to their slaves, for example, hardly seems like a path to non-domination. Yet on Lovett's account, significant levels of non-arbitrariness are wholly consistent with highly-regulated forms of slavery (Ahlstrom-Vij 2012). This, I take it, is a *reductio ad absurdum* of the procedural position.¹⁰

Non-domination appears to require, then, a substantive conception of non-arbitrariness, i.e. one which demands that constraints on power meet some further condition regarding either the content or the creation of such constraints. On Pettit's account¹¹, we should consider power to be non-arbitrary when those subject to it have control over its exercise. The power that doctors hold over ill patients, for example, is made non-arbitrary through doctors' requirement to obtain informed consent before performing certain medical procedures. This ensures that patients have a degree of control over the interventions to which their poor health makes them subject. Again, this will come in degrees; requirements of informed consent means that control over such medical interventions is fairly robust, whereas the control a citizen has over their government's exercises of power is significantly weaker. The degree of substantive non-arbitrariness realised will depend upon how successfully B can wield their material and institutional resources in order to shape those relationships upon which they're dependent. Increasing non-arbitrariness understood in this way does appear to bring us further towards an attractive ideal of non-domination. Greater control makes B more capable of directing A's power towards aims that B can share, or else blocking it in areas where B would rather pursue their plans unimpeded. Where A and B are part of a relationship which establishes and enforces obligations, control ensures that B's obligations are the product of mutual deliberation, rather than one-sided

⁹ Lovett's discussion of the (relatively) non-dominating US state, compared to the more dominating Romanian state during Ceausescu's era (Lovett 2010, pp. 94f.), makes it clear that he does think sufficiently reducing arbitrariness can go a long way towards reducing non-domination, even without concomitant reductions in dependence or inequality.

¹⁰ See also Arnold and Harris (2017).

¹¹ Arnold and Harris (2017) argue that Pettit's earlier work contained a different conception of non-arbitrariness, which required power to be forced to track B's interests, and that this earlier variant is in fact the more attractive vision. On the exegetical point, Arnold and Harris fail to explain how an interest-based account fits better with Pettit's categorical aim of advancing non-domination as an attractive theory of *freedom*. In terms of their critique of control-based substantivism, their arguments are better understood as showing that democratic procedures may well be insufficient to ensure citizens' control of the state, rather than as refutations of the control-based account itself.

imposition.¹² This latter sort of power is vital in contexts where interdependence is either unavoidable or produces sizeable benefits (or both) for parties involved.¹³

Plugging this substantive conception of arbitrariness into Lovett's framework then, we can say that B is dominated when they are dependent upon a relationship within which they have little-to-no control over how a more powerful agent, A, exercises power over them. On this account, domination refers to something about the structure of unequal relationships. It is not an outcome-based concept; A can dominate B even if A doesn't exercise their power to worsen B's condition. Of course, A having control over B makes committing certain further wrongs easier, such as the exploitation, coercion, or deprivation of B. Even in cases where A has every intention of treating B benignly, B may have good reason to feel insecure about how reliable A's continued good favour is. Such insecurity may lead to what Lovett calls 'strategic anticipation' (Lovett, 2010, p. 77); B may pre-emptively act in ways that they believe A wants them to behave. Because penalties or censure might be attached to delayed- or non-compliance with A's wishes, such behaviour may be rational for B, minimising risk of injury. Absent the ability to control how A exercises power, this may be B's optimum strategy.

However, it is equally true that, because it refers to the structure of the relationship and not its outcomes, domination need not entail that the powerful agent gets everything their own way. When B is obstinate, i.e. when they defy A's preference for how B should act, A may nonetheless find it easier or desirable in the long-run to let B have their way in a given instance. A slave may well win a day's rest against the direct interests of the master. A colony may well resist the metropolis' dictates in a certain matter. When the more powerful agent has some interest in continued association, they may well find that 'losing' a particular battle is an acceptable cost. It is enough that, were A to consider making their full weight felt on the issue, B would not have the resources to successfully resist.

According to republican political theory, justice requires that public institutions ought to be designed so as to promote the non-domination of morally significant agents. Though discussion of what this requires initially concentrated on the shape

¹² For an account of domination which shares this focus on control over the creation of common obligations, see Bohman (2015).

¹³ It should be noted that non-domination is often (though not always) advanced by republicans insofar as it is an attractive vision of *freedom*. In contrast to freedom as non-interference, where B is unfree just if A frustrates B in a given choice, freedom as non-domination requires that A *can't* frustrate B in that choice. The second important difference between the two theories is that, whereas all interferences render B unfree on the non-interference picture, on the non-domination picture B is only made unfree by interferences when they are *uncontrolled*, i.e. arbitrary. None of what I say here contradicts this vision. Nevertheless, I've refrained from talking explicitly in such terms because, insofar as what it means to be free in the context of collective decision-making is not an immediately intelligible idea, introducing the heavy-duty concept of freedom into the discussion would risk complicating rather than clarifying things.

of institutions at the domestic level, more recent theorists have begun thinking about what a non-dominating international or global order might look like (e.g. Pettit 2010, Martí 2010, Bachvarova 2013, Maynor 2015, Macdonald 2015, Laborde and Ronzoni 2016, Lovett 2016). Such work is welcome, as the failure of institutional safeguards to keep pace with the changing world wrought by globalisation undoubtedly creates openings for arbitrary power to prosper. This work has had a tendency towards big-picture matters concerning, for example, whether republicanism commits us to cosmopolitanism or statism. Though such work is essential, I believe we shouldn't neglect careful study of the specifics of our current international order, in particular if we want our work to be action-guiding. One area worthy of such investigation is the role of international organisations. In a world characterised by vast asymmetries of power between states, as well as profound interdependence, it appears the only feasible way of ensuring that states are not dominated in the present world is to ensure that more powerful states exercise their powers in a non-arbitrary fashion.¹⁴ Insofar as self-constraint does nothing to eradicate the discretionary nature of dominating power, this requires powerful states to subject some of their powers to international discipline, in forums where dependent states are capable of enacting control. We might see the aspirational function of at least some intergovernmental organisations in this light, i.e. as providing sites wherein states' interactions can be regulated, so as to minimize powerful states' ability to dictate the terms of cooperation.

Of these organisations, the WTO is undoubtedly amongst the most significant in terms of the depth and extent to which it shapes governance across the globe (Shaffer 2015). It is 'a rules-making and rules-enforcing organization' (Krueger 1998, p. 15), which disciplines state policy in areas as diffuse as tariffs, subsidies, sanitary and phytosanitary standards, government procurement, the creation and protection of intellectual property rights, and investment. If states have inadequate control over the negotiations which create such disciplines, this entails that large swathes of how the state goes about ordering its economy is not responsive to its citizens, but instead to the preferences of other states. Of course, the WTO can do little in terms of the existence of an imbalance of powers between states in general. Unlike the state, where the legal architecture is largely constitutive of the powers that citizens hold, states enter the WTO bringing with them heterogeneous bundles of resources, expertise, diplomatic experience, military strength, and allies,

¹⁴ There is some debate over whether all states have a valid claim against international domination, or whether such a claim is held only by those states which are broadly representative of their citizenry. For the latter position, see Pettit (2010, 2015). For an argument that we should equally seek the non-domination of non-representative states, see Gaedeker (2016).

all of which are largely independent of the workings of the WTO.¹⁵ This means that our evaluation of the WTO in terms of domination will focus on how and whether the WTO *constrains* the power of its more powerful members, and whether its design gives weaker states control over proceedings.¹⁶ In the next section, I'll describe the process of WTO negotiations, paying particular attention to those institutional features which may contribute to the degree of control differently-situated states can enact.

3. (How) Does the WTO Ensure Members' Control?

The WTO is an organisation that creates binding international trade law through negotiations amongst its 164 members.¹⁷ These negotiations take place in rounds, with a clear beginning and end. Before a negotiation is launched, members of the WTO must agree upon which issues are to be covered. Once this has been agreed, members are bound by few guidelines or criteria through which they can seek to bargain with fellow members in order to secure their desired outcomes (Wilkinson 2000, ch. 5, Steinberg 2002). There are two key WTO principles which constrain the sorts of outcomes which the process can produce; non-discrimination, and reciprocity. Non-discrimination involves two components, one being that any concessions given by one member of the WTO to another must be stretched out to all other members¹⁸ (this is somewhat misleadingly known as the Most Favoured Nation (MFN) principle), and, that once inside a state, imported goods must be treated the same as domestic ones (the National Treatment principle). The other general principle is that there ought to be reciprocity between the members of an agreement,¹⁹ where this has typically been interpreted as a demand for roughly equivalent benefits or costs accruing to parties of a trade agreement (Brown and Stern 2012, pp. 686ff., but see Finger, et al. 1999).

¹⁵ States also interact in non-trade forums, and there is little the WTO can do to prevent states linking their interests and activities in one domain with trade-related activities. Here again there are limits to what institutional reconfiguration can achieve.

¹⁶ The WTO is differentiated from the rest of the trade regime, not only in terms of its significance and the breadth of its membership, but because of the density of its institutional architecture. This latter feature makes it capable of furnishing agents with countervailing power which plausibly makes it the most promising trade forum to evaluate from the perspective of non-domination. Thus, I'll only discuss other trade forums insofar as they affect the dynamics of the WTO itself. See Brandt (2017) for a related discussion of mega-regional trade agreements.

¹⁷ The vast majority of members are states, though there are a small handful of exceptions (e.g. the EU, Hong Kong).

¹⁸ One important exception to this is that MFN need not be stretched out to other WTO members when favourable terms are given to another state as part of a free-trade agreement outside the auspices of the WTO. Such agreements are WTO-compliant so long as trade restrictions are lifted on 'substantially all the trade' amongst participants (see WTO 1994b, Article XXIV).

¹⁹ This has been significantly relaxed in the case of developing and Least Developed Countries (LDCs); see Hoekman and Mavroidis (2015, ch. 6).

While the aforementioned principles of reciprocity and non-discrimination somewhat constrain and shape the substantive outcomes of negotiations, there are few procedural constraints; different strategies and approaches may be followed depending on the interests and circumstances of the members. Often, pivotal discussions on sticking points within negotiation will take place among small groups of states invited by the Director-General, in what are called Green Room meetings. Because deals stand little chance of progressing without their support, these meetings typically involve the largest and wealthiest members²⁰. This is often justified as a necessity when trying to achieve consensus amongst a membership as large as the WTO (Jones 2009). Drafts or bargains are subsequently tabled at more inclusive meetings, or at plenaries, where they can be challenged by any member. Drafts go through repeated iterations of this process as disagreements are ironed out and a consensus is formed. This gives flexibility to negotiators, which may be vital to securing complex agreements which cover many policy-areas. Decisions are taken through negative consensus, i.e. a proposal is accepted 'if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision' (WTO 1994a, fn.1).

In terms of domination within the WTO, it may be worth highlighting the extent to which both imbalances of power and dependence exist amongst members. Regarding the imbalance of power, suffice it to say that any organisation which includes say, the US (~323 million people, GDP per capita ~\$57,000) and Malawi (~18 million people, GDP per capita ~\$300) has a pretty serious power imbalance when so much hinges upon states' respective market size.²¹ Dependence is arguably even more fundamental to the workings of the WTO, and to the trade regime more generally. Insofar as the gains from trade derive from specialising in the production of certain goods in which the state has comparative advantage, and importing those goods no longer produced (in enough quantity) domestically, dependence is an essential feature of trade.²² The greater the integration of international markets, the greater the dependence created, i.e. the greater cost of exit. While figuring out states' WTO exit-costs has too many variables to ascertain, such as how successfully they would be able to negotiate other bi- and pluri-lateral trade deals, not many countries have the wealth or market-size to negotiate such agreements in secure knowledge that they would get favourable terms. In the WTO, each member is entitled, through the non-discrimination principles, to favourable market access in each of the other members' jurisdictions. Leaving

²⁰ Referring to the agents within the WTO, I will usually call them 'members', as it is more accurate (not all WTO members are states). However, I will also use 'states' or 'countries' where it seems fitting or less awkward to do so.

²¹ Both sets of figures are from the World Bank (2016).

²² See James' (2012) path-breaking work on trade justice, where he grounds fairness claims upon the international practice of mutual reliance on common markets.

severely jeopardises the competitiveness of a country's exports, and adds significantly to administrative costs (increasing the number of countries with whom states would have to negotiate separately).

Given the degree of asymmetrical power and dependence, then, there ought to be significant constraints on power, in order to minimize its arbitrary exercise. It should be clear from the above discussion that, were we to interpret arbitrariness procedurally, our evaluation of the WTO would fail badly. As mentioned, there are few rules, formulae, or restrictions on how powerful states engage with weaker ones. Despite this bare-bones approach to procedural rules, though, there are reasons to be more optimistic in terms of substantive non-arbitrariness. Some of this is down to the multi-lateral nature of the organisation itself; the fact that so many states negotiate within the same forum allows the weaker states to use their agency in coordination, which may greatly enhance their ability to ensure that their voices make a decisive difference on proceedings. Tellingly, Pettit identifies coalition-formation, of the sort the WTO's flexibility allows for, as one of the most promising ways that weaker states can ensure their non-dominated status (2015, pp. 61f.). On this score, it is promising that WTO coalitions have been at least somewhat successful both in their ability to adopt cogent, detailed positions, and at maintaining unity in the face of external pressures (Narlikar 2005, 2012).²³ In the absence of a multi-lateral negotiation forum, smaller members would be liable to being marginalised by the lack of interest from larger states, or alternatively exposed to deeply one-sided bargains in any market access that they had to offer.²⁴

Furthermore, and in contrast to other international economic organisations such as the IMF or the World Bank, the WTO works on the basis of sovereign equality. Every member is entitled to one vote each,²⁵ and they all have the same rights to table motions, to oppose agreements, or partake in meetings. While there are huge asymmetries between the size and wealth of members, this does not translate into greater formal status within the organisation. Finally, as mentioned previously, all agreements and decisions taken in the WTO are settled by negative consensus. This means that decisions only pass when no party expresses formal opposition, so that any member can ultimately hold up negotiations if they are unsatisfied with the terms. This, it would seem, is as strong a lever a state could have in the formation of an agreement. If you can unilaterally block any proposal which doesn't satisfy you, then your preferences must be interpreted and accommodated.

²³ See Eagleton-Pierce (2013, ch. 4 & 5) for two detailed, contrasting case studies of how coalitions fared in the face of pressure from more powerful members. See Hopewell (2016, ch. 4) for discussion of how India and Brazil boosted their power within the WTO through strategic coalition-formation.

²⁴ See Guzman (1998) for a similar point regarding investment treaties.

²⁵ While there is provision for majority-voting in the absence of any forthcoming consensus, in practice this has never been used.

Because marginalising members or their concerns increases their likelihood of obstructing agreement, this greatly incentivises inclusive, co-operational approaches to negotiation.

The history of the GATT/WTO,²⁶ however, seems to belie this optimistic picture. While passing such judgement is hardly straightforward, there's a good case to be made that, as a pattern, trade regulation has persistently favoured developed countries' interests, with the needs of many developing²⁷ countries having been systematically neglected. Average tariffs faced by developing states in developed ones are significantly higher than they are for their developed counterparts. Markets and products most central to developed countries' interests have been liberalised much quicker (and at a far greater depth) than those products central to many developing states' economies (Khor 2000, Wilkinson 2014). This is most obvious when comparing the liberalisation trajectories of industrial goods and agriculture respectively. Developed countries have historically held comparative advantage in manufactured goods, and trade in this area has seen the deepest liberalisation; average tariffs have fallen from 40-50% to around 4% today (Baldwin 2012, p. 29). In contrast, agriculture, which is an area of significant comparative advantage for many developing states, is still subject to often prohibitively high tariffs, and the liberal use of subsidies often further protects developed world farmers from foreign competition.²⁸ While developed countries' comparative advantage initially lay in industrial goods, when it shifted to services, the idea of sectoral regulation through international agreement gained support within, and was pushed by, the US and OECD states, gradually culminating in its inclusion as part of the Uruguay Round (Drake and Nicolaidis 1992).²⁹ A similar trajectory occurred in relation to intellectual property, the regulation of which represents perhaps the clearest departure from what we'd expect of a system properly responsive to all WTO members. The *Trade-Related Intellectual Property Agreement* (TRIPS) ensured that many WTO members had to meet far higher levels of protection of intellectual property (IP) than they previously applied, in a market dominated by a small handful of developed states. TRIPS essentially shelters developed states' IP producers from market competition for several years, significantly slowing the diffusion of knowledge and the benefits which would

²⁶ *General Agreement on Tariffs and Trade*, the predecessor to the WTO. Seeing as consensus decision-making was also characteristic of the GATT, I'll treat the two together in relation to this particular shared feature.

²⁷ A note on word-choice; I sometimes refer to 'developed' and 'developing' members, as well as 'weaker' and 'powerful' ones. These categorisations are crude, but I believe they latch onto useful cleavages. Given that I will discuss countries which are both 'developing' and 'weak', it should be clarified that not all developing countries are weak, and that there may be some developed countries whom we ought to consider weak (though this is far less clear).

²⁸ To give an idea of the significance of these, according to Wolf (2004, p. 215), in 2001 farm subsidies going to farmers in rich OECD countries exceeded the entire GDP of Sub-Saharan Africa.

²⁹ For an extended critique of the trade in services regime, see Kelsey (2008).

otherwise accrue to developing states were they capable of cheaply accessing the relevant IP products. In many ways, this is typical of a pattern where developing states are prohibited (or at least, notably restricted) in their use of policy tools which were central to many of the most historically successful development stories (Chang 2002, Wade 2003). However, the huge increases in prices for IP-protected goods, such as essential pharmaceuticals caused especially grievous hardship in developing states, and even though some of its most worrying elements have been attenuated through a formal amendment agreed in 2005, the TRIPS agreement appears to set back significantly the interests of the global poor.³⁰

As already discussed, domination is not an outcome-based concept. If weak states had, and have, sufficient control over the process of negotiation, we must chalk these outcomes down to bad luck, coincidence, or unconventional priorities, as opposed to domination. Outcomes cannot establish domination, even if they form the basis of reasonably sound inferences (seeing as agents will typically use whatever control they have to further their interests). Thus, to make a judgement on the WTO in terms of its arbitrariness or otherwise, we need to look in more detail at how differential levels of power affect the process of decision-making. For this, I'll simply assume that the existence of some kind of multilateral trade forum for trade negotiations does potentially increase the control weak states have over the international trade regime. This is a plausible assumption, based on the role that coalition-formation amongst weak states can play as an effective countervailing power. The question, then, is what shape such a multilateral institution would have to take in order to empower rather than enfeeble their voices. On this front, it seems our evaluation of the WTO hinges almost entirely on how effectively consensus process ensures substantive non-arbitrariness. It's to this, then, that we now turn.

4. Negative Consensus as a Countervailing Power in the WTO

The first thing to note regarding the use of consensus is that while every rule or binding decision requires consensus amongst all members, not every consequential decision in the WTO is of this kind. As was already alluded to, the key decisions regarding the construction of WTO draft texts typically take place in Green Room meetings, involving the largest and most powerful countries. Even if this is not just, there is a good organisational rationale to this; if the aim of the organisation is to facilitate reciprocal trade liberalisation, the concessions of larger members are far more likely to bring others to the table than those of their smaller counterparts,

³⁰ See Pogge (2008) for a scathing critique. James (2012, ch. 9) contains a convincing take-down of arguments in favour of requiring IP protection from developing countries.

and are therefore more likely to get the ball rolling in this direction. This gives such states significant discretionary control over the early stages of negotiations.

Immediately, we encounter a serious obstacle to the control that weaker states may enact, seeing as proposals developed at this stage have a tendency towards being sticky and difficult to substantially revise at later stages (Steinberg 2002). But while this appears to give weaker members little power over the 'supply' side of negotiations, if they have enough power on the 'demand' side (i.e. if their acceptance or rejection carries enough weight), they may be able to compensate for their disadvantaged position in the initial stages of negotiation.³¹

Optimistically, we might think the requirement for consensus on all decisions gives weaker states precisely this sort of countervailing power. We might think this for two reasons. First, in contrast to other forms of decision-making where proposal-makers need only convince 'enough' members of a motion's attractiveness, negative consensus demands that agreements be considered satisfactory by all. Thus, it may be the case that weak states' views are sought out and incorporated during the process of drafting texts, so as to maximise the chances of an initial draft being supported. Second, consensus ensures that each member can make themselves heard when an agreement is unacceptable to them. At any given time, where a state feels like the proposed draft neglects their concerns, or unjustly disadvantages them, or simply desires that more thought goes into a particular formulation in the text, they can block consensus, regardless of whether or not any other states finds this congenial. The fact that negative consensus process is prevalent amongst many groups within the global justice and anarchist movements, who are so consciously committed to a praxis of non-domination (see Gordon 2007b, Nail 2013)³², may lend further credence to this favourable perspective. Given that there is no withering away of their ability to dissent, and given that powerful members cannot force through any change to the status quo without their acquiescence, weaker members of the WTO seem to have sufficient institutional clout to ensure that they have robust control over proceedings.

Unfortunately, this final claim is off the mark. Negative consensus, when paired with neither supply-side control nor complimentary countervailing powers, is an insufficient guarantor of weaker agents' control over decision-making. The position of weaker states in the WTO shows us two class of reasons why this is so. The first class concern the hidden social and reputational costs attached to the (repeated) use of consensus blocking, given the juncture at which weaker agents

³¹ Pettit makes use of a similar distinction, between 'authorial' and 'editorial' control over decisions (2012, p. 218).

³² Most anarchists would have a different conception of domination from the republican one. Still, given their rejection of all social hierarchies, their requirements for realising non-domination would be even more demanding, further boosting the non-domination credentials of consensus.

can actually exercise this power. While there is no formal withering away of the ability to block consensus, for various reasons this can fail to translate into effective power of the sort required to enact control over decision-making. One aspect of this is that being given the ability to block consensus is importantly different from being given a veto (or at least some forms of veto). Unlike a veto, blocking consensus on a particular measure does not actually take the proposal off the table, nor does it guarantee that one won't have to block a similar, or even identical proposal sometime in the (near) future. Indeed, insofar as only some small number of agents block consensus, the proposal which they block will almost certainly still form the basis of future discussions, because it has achieved something close to consensus. Thus, attempting to alter the substance of a proposal which has the support of more powerful members³³ would require a great deal of obstinacy. This is made even more acute by the nature of actually using one's block. Unlike a vote, for example, where 'for' and 'against' a motion is explicitly canvassed, to block consensus is to take an active step and put one's head above the parapet. Such open obstinacy carries with it significant costs. If a member is seen to be openly blocking a proposal which other members appear at least tacitly satisfied with, this calls into question their reliability as a cooperative partner. In an interdependent world, where a great deal of states' ability to effectively discharge its duties depends upon maintaining its good standing amongst the international community (Chayes and Chayes 1995, pp. 26ff.), the burden this places upon dissenting states should not be discounted. Thus, in the WTO, the contrasting positions that weak and powerful states hold in the negotiating process (where the powerful play the role of drafters, the weaker of blockers), makes it prohibitively difficult for weaker agents to use their powers to efficaciously direct the negotiating process. Equally, for the powerful it makes wearing down the resistance of obstinate states a viable strategy.

The second class of reasons why consensus-blocking fails to translate into effective control has to do with the relative needs of participants, where the deprivation of some contributes greatly to the dynamics highlighted in the previous point. To illustrate the effects this has, I'll describe the dynamic that exists between powerful members of the WTO and those weak members who lack (by any standards) a minimally-acceptable level of welfare. Though this somewhat limits the scope of the ensuing argument, it does not, I take it, limit its normative significance, given that it is precisely these countries who have the greatest interest in having control over the international trade regime.³⁴ Indeed, given the level of material deprivation

³³ This would typically be the case once a draft is opened out to the membership at large following Green Room bargains.

³⁴ Note that I'm not necessarily committed to the claim that only those members are dominated within the WTO.

which persists in many countries, the limitation suggested here should not be exaggerated.³⁵

Put somewhat crudely, the fact that many countries fall so short of acceptable levels of welfare allows more powerful states to negotiate from a position of want, against those in a position of need.³⁶ This can lead to a number of deleterious states of affairs, three of which I'll identify. First, weaker states may accept bargains which are deeply unsatisfactory from the perspective of both fairness and justice. This could be because they may have an urgent need to improve their current circumstances, which overrides any concerns about relative shares. Thus, instead of holding out for what they take to be a just agreement, weaker states may accept deeply asymmetrical deals, if only to bring negotiations to a quick close in the hope of securing urgently-needed gains.

Second, wealthy states' economic position allows them to treat the WTO with relative neglect, an option that weaker countries typically do not possess. Whether this stems from an intentional attempt to strengthen their bargaining position within the WTO, or simply involves a reorientation of focus, wealthy members' potential withholding of further participation could hurt the relative position of weaker members. If wealthy members choose to pursue further trade regulation through bi- and pluri-lateral agreements outside the auspices of the WTO, this may weaken the position of those not party to the relevant agreements. This is because, in trade, relative position is crucial. B's goods will only be competitive in country A relative to C's goods if they are allowed enter A on relatively favourable terms. If, for example, A's tariffs are prohibitively high, it doesn't really matter how cheaply B can produce its goods. B's staying competitive depends not only on having favourable terms of entry, but also on the comparative tariffs-levels that others face.³⁷ Even if A doesn't raise tariffs against B, maintaining a 10% tariff against B whilst removing the barriers faced by C will harm B's competitiveness. So, while the absolute level of B's market access remains, the relative position worsens, leaving B worse off. Aware of powerful states' ability to attract trade partners outside the multilateral context, and the precariousness of their own international competitiveness, many weaker states may have good reason to refrain from

³⁵ Collier (2008) suggests that the bottom billion individuals globally live in about 58 countries. Collier does not name all 58 countries. It is highly probable, however, that there is substantial overlap with the category of LDCs. Given that there are 36 LDCs (out of a total of 47 listed by the UN) within the WTO, it is reasonable to assume that many, if not most of the 58 countries are WTO members. Another 8 LDCs are in the process of WTO accession (WTO 2018a).

³⁶ For an interesting discussion in the WTO context of how control over negotiations, when engaged in by self-interested agents, directly conflicts with what levels of control would be normatively endorseable, see Christiano (2015).

³⁷ There are numerous non-tariff barriers which could have similar effect. I restrict myself to the tariff case here for illustrative purposes.

blocking consensus when doing so risks reducing powerful states' commitment to multilateralism.

Finally, and a close cousin of the previous scenario, if weaker countries continually frustrate the interests of the stronger countries, then some of the wealthiest or most self-sufficient states may be capable of exiting the multilateral relationship entirely. If the reason B faces prohibitive exit costs from a relationship is because co-operation with A provides comparatively good opportunities to improve their lot, then A's withdrawal may significantly worsen B's condition.³⁸ While this is somewhat of a nuclear option, given the costs which would accrue to those states withdrawing, it only has to be a sufficiently credible threat to make dissenting members accede to the would-be absconder's demands. Like the previous scenario, if weak members fear that the multilateral order will be abandoned, to ensure its preservation they may acquiesce to unjust proposals within it.

Insofar as it is the presence of domination which undermines states' levels of control, we should be concerned with these dynamics, regardless of whether powerful states actually threaten neglect or exit of the WTO.³⁹ Still, their presence and efficaciousness in actual trade negotiations lends support to the analysis here. In terms of neglect, it is a mainstay of developed countries' negotiating arsenal to threaten a move to either more pliant negotiation forums or to work only with co-operative 'can-do' countries when multilateral negotiations stall (Wilkinson 2006, Miller 2010, ch. 3). The most dramatic recent iteration of this long-standing trend is the proliferation of work going into mega-regional trade agreements. The fact that powerful states have, and exercise the option to let multi-lateral negotiating tables gather dust while they push on with amenable countries in other settings may well be seen as a credible threat to weaker countries interests.⁴⁰ Suggestive of such threat is the US Trade Representative's speech shortly before the Bali Ministerial, which saw a relative breakthrough in multi-lateral negotiations (the adoption of the *Trade Facilitation Agreement*). Just two months prior to the conclusion of the Bali Ministerial, the US Trade Representative Michael Froman gave a speech where he claimed that:

³⁸ In cases where B faces prohibitive exit costs only because A would punish attempted exit, this may not hold true. It would be speculative to suggest that weaker members face exit costs from the WTO of this sort. However, see Cavallero (2010) for an argument that the international property regime is in fact coercively enforced in the relevant way.

³⁹ One of the weaknesses of Brandi's (2017) account of domination stemming from the potential proliferation of mega-regional trade agreements is that she occasionally mistakes exertions of dominating power with domination itself. While she usefully identifies how mega-regionals worsen the position and influence of weaker states, such worsening does not actually represent an exacerbation of domination, relative to domination within the WTO; rather, it is more correctly understood as the manifestation of the latent dominating power which has long permeated the trade-regime complex.

⁴⁰ Risse (2017) and Brandi (2017) separately express concern at this possible neglect of the WTO.

If Bali shows that the WTO is not a viable forum for negotiations, bilaterals and plurilaterals will likely be the only avenue for trade negotiations. And this speaks, again, to the development goals. The loss of the WTO as a negotiating forum of course, would have the greatest impact on the smallest countries and the poorest economies. Big countries will always have options. Fair or unfair, that's a reality. We all want the WTO to be a vibrant negotiating forum — but small countries and poor countries would feel the loss the most.

(WTO 2013)

Given that trade representatives hardly make such public statements carelessly, it's not unreasonable to assume that at least part of the motivation for making such statements is to give weaker members reason to consider revising their negotiating positions. Indeed, if such statements are made in public-facing speeches, one can only imagine what is said around the negotiating table.

The threat of actual exit is far more drastic, more costly, and thus only credibly wielded by a few members (and even then, it would be strongly against their interests). While the Trump administration (given both its rhetoric on trade, and its withdrawal from international agreements such as the Paris climate accord) plausibly raises just such a prospect,⁴¹ the most consequential exit-threat of recent times was the closing stages of the Uruguay Round. Facing resistance to the expansion of WTO disciplines in areas such as intellectual property and investment, the EU and the US proposed the 'Single Undertaking'. This required states to sign up to the full set of proposed agreements, on an all-or-nothing basis. As part of the Single Undertaking, the EU and US would formally rescind all previous GATT commitments; the same commitments would be assumed under the new WTO, but they were legally distinct (Steinberg 2002). This meant that to merely preserve the market access they had already been granted into the world's largest economies, GATT members would have to join the WTO. This incident is perhaps the most conspicuous exercise of dominating power during the recent history of the trade regime, but the dominating power itself has hardly evaporated.

Bearing in mind the broader international context, where states' capacities are institutionally pre-determined, we might agree with all the above, but deny that any potential features of the WTO could prevent any of this. To the extent that powerful states have realistic exit-threat, the domination of weaker states within the international order is systemic, regardless of what institutional features we might erect. If the trade regime doesn't conform to their interests, they can just

⁴¹ Currently the Trump administration seem more inclined to neglect the WTO rather than to exit. However, given the personalities involved, it's probably fair to say that their current conduct is not a particularly reliable indicator of future action.

leave, and use their market size to entice weak states into cooperating in more pliant forums.

While there's some truth to this thought, it greatly overstates matters. For one thing, the drastic nature of exit-threat limits the frequency with which it could be used. Moreover, given the significant costs for any exiting party, countries are to a certain extent locked in to the WTO, meaning that continued membership of most countries is a fairly durable expectation. Insofar as this is true, well-targeted institutional changes stand reasonable chance of reducing domination without at the same time depleting the membership. Many of the dynamics which I've discussed in this section are deeply intertwined with features of the WTO which are both contingent, and (due to this 'lock in' of members) eminently changeable. We've already discussed the *ad hoc* use of Green Room meetings, which grants the larger states a privileged role in controlling outcomes. Another regrettable feature is the disproportionate significance that short, intense bi-annual ministerials play in the formation of global trade rules.⁴² While this makes cool-headed and far-sighted decision-making difficult for everybody, the strain is less on those who drive negotiations (as they can plan for starting positions, red lines etc. more effectively than those forced to play a reactive role) and those with abundant and skilled personnel to pour over the minutiae and ramifications of any proposal. Absent the bodies and the knowledge to process what's put before them, weaker members have little chance of effectively steering trade law.⁴³

There are two further, big-picture features of the WTO which I believe contribute towards WTO-based domination. Perhaps most significant of all is the role that competition plays as an organising principle (Wilkinson 2014, ch. 2). While trade rules have historically been formulated largely through competitive interstate bargains, where each state attempts to extract as many concessions as possible from others while giving away comparatively few,⁴⁴ there is nothing immutable about this. Nor is it how most intergovernmental organisations operate and produce outcomes; in this, the WTO is fairly unique. By failing to subject the institutional features of trade to proper scrutiny, we've taken as a *fait accompli* the centrality of a system which maximises powerful members' discretionary ability to marginalise, pressurise, or incentivise weaker members as they see fit (which, in turn, further aggravates the disadvantages faced by states with limited staff and

⁴² Bluestein (2009), a chronicle of the main actors and actions of the first handful of WTO ministerials, constantly returns to the theme of all-night sessions, last-minute bargains, off-the-cuff draft proposals and so on.

⁴³ Wilkinson (2014, pp. 56-60) is particularly eye-opening regarding the chasm in representation amongst WTO members; in contrast to members such as China and Japan who have over 20 individuals working on WTO issues, the majority of countries have less than five, with some (Armenia, Guinea-Bissau, and Namibia) having only one. See also Narlikar (2005).

⁴⁴ See Krugman (1997).

expertise). Whether feasible alternative procedures can be developed is a subject worth giving serious thought.

Finally, the WTO's own stated *raison d'être* may, in fact, contribute to the dynamics highlighted earlier. It is often discussed in terms of, and indeed portrays itself as, a forum for the liberalisation of trade (e.g. WTO 2018c, Bagwell and Staiger 2004). While this doesn't seem to play a major role in determining the outcomes the WTO produces (which bear only a passing resemblance to what countries committed to free trade would pursue), framing the organisation's role in such light reduces the political and reputational costs of institutional neglect. If the WTO's role is framed in terms of facilitating ever-greater liberalisation, this gives states grounds for pursuing their trade objectives in alternative forums when WTO negotiations stall. Moreover, it obscures the role that the WTO could potentially play in furthering the non-domination of weak states. Justifying the WTO in such terms would significantly raise the reputational costs that states would face (from other states, as well as from their own citizens) upon exit or neglect.⁴⁵

5. Which Capacities Can Generate Domination?

We cannot conclude our argument without confronting the question of whether A must be capable of actually worsening B's options in order for A to hold dominating power over B. Insofar as trade negotiations consist in the making and withholding of concessions (i.e. offers), if these behaviours cannot be categorised as exercises of dominating power, then much of what has been said above is misguided. At the heart of this worry is another difference between the accounts of domination that Pettit and Lovett advance, one we have thus far elided. By adopting Lovett's framework, up to this point we've been able to assume that any sort of power that allows A to shape the preferences of B can generate domination. This position entails that 'being dependent on a person or group with the power to arbitrarily withhold the goods or services needed to meet basic needs...amounts to suffering domination' (Lovett 2009, p. 824).⁴⁶ In contrast,

⁴⁵ This raises the issue of disciplining of bi- and pluri-lateral agreements outside the WTO. Currently, such agreements are allowed so long as they substantially liberalise trade amongst participants, i.e. on the basis of how effectively they further free trade. Re-orienting the understood purpose of the WTO would plausibly also call for greater oversight and discrimination regarding which bi- and pluri-laterals are consistent with states' WTO membership.

⁴⁶ It should be noted that on this point, Lovett's discussions frame the relationship between deprivation, domination, and improvement-capacity as one where deprived agents will likely 'trade away' (Lovett 2009, *passim*) their non-domination in order to secure greater welfare from another agent. This way of putting things suggests that B is not actually dominated *until* they give A the power to interfere with B. On this picture, improvement-capacity leads to, but doesn't itself generate domination, unless it can create an interference-capacity. In contrast, I argue that B may be dominated even if A never has the power to

Pettit claims that for A to dominate B, it must be the case that A has a more specific type of power, namely the capacity to interfere in B's option-set. A interferes with B when A 'removes, replaces or misrepresents an option' (Pettit 2012, p. 295); in short, interference worsens B's option-set. The addition of an option to B's option-set does not count as an interference (at least not when the added option is rejectable).⁴⁷ Thus, for Pettit, without an attendant interference-capacity, the sort of power we might call *improvement-capacity* is insufficient for generating domination (2012, ch. 1). On this account, how, whether, and in which forum powerful countries table negotiating positions is an issue which simply doesn't fit the lens of domination. So long as states can't negatively alter or worsen the options of states through their activity within the WTO, there is no domination therein.

Certainly, the interference-based account of domination has intuitive pull when we think about domination in terms of the isolated actions of individual agents, and what might constrain such agents in a given choice. If A can't possibly remove or worsen any options that B faces, it may seem implausible to suggest that B's control over their decision is jeopardised by A's ability to add more options; no option that B had before A's intervention is any less open than it was before. Yet once we start thinking about cases where A and B are participants in a collective decision-making body, where control over proceedings is (broadly) zero-sum, it becomes less plausible to dismiss the importance of improvement-capacity. Every power that A has to change other agents' preferences within this decision-making context increases A's control over decisions, and proportionately reduces B's. Because B needs to have some effective control over outcomes in order to ensure that the power they're subject to is non-arbitrary, A's far superior ability to provide attractive offers or incentives to other participants represents a grave threat to B's non-dominated status. To consider only A's interference-capacity is to turn a blind eye to a significant determinant of who gets to dictate the terms and outcomes of interdependent cooperation. Thus, if we must discard either the notion that the powers which states wield in trade are capable of generating domination, or else the notion that domination must involve a capacity to interfere in Pettit's terms, it should be the latter.

Yet in order to complete our argument, we need to identify exactly when improvement-capacity generates domination. It surely can't be the case, for example, that all failures of generosity amongst agents come out as exercises of dominating power. On the account I develop here, there are two important conditions which separate out dominating from non-dominating improvement-

interfere with B. Thus, although quotes like the one above show that the ensuing argument is entirely consistent with his framework, it is unclear whether or not Lovett would reject some of what follows.
⁴⁷ Rejectable is used here in a thin sense, i.e. the agent has the option of rejecting it.

capacities.⁴⁸ In discussing these, we can start with an instructive exception which Pettit makes to his own claim that making and withholding offers doesn't constitute interference-capacity. When B's receiving a benefit becomes part of the ordinary course of events, A may dominate B if they can subsequently withhold this benefit (Pettit 2012, p. 73).⁴⁹ In such a case, withholding the expected benefit represents, on Pettit's view, an interference. This seems plausible; to the extent that B expects A's provision to continue, and begins to develop plans upon this expectation, the potential withdrawal of such benefit may well give A sufficient leverage over B to dominate them. But it should be clear that what's doing the heavy philosophical lifting in this case is not that A's provision of a benefit has become part of B's ordinary course of events. On its own, a benefit being part of the ordinary course of events is clearly insufficient for generating domination. A's recurrent provisions will only convert into dominating power when the loss of such provision is particularly injurious, i.e. when B is dependent upon them. However, as was made clear in section two, where the prohibitiveness of exit stems from doesn't matter for the degree of dependence felt. Hence, once we recognise that it's not *recurrence*, but rather *dependence* that matters, it seems only a short step towards recognizing that the ability to give and withhold benefits can also generate domination even when such benefits are infrequently given, or even once-offs. This is because, even when A has not provided B with recurrent benefits in the past, it may be prohibitive for B to exit a relationship with A when A is B's best or only hope of securing a minimally-adequate condition. For example, we might think that a lecherous millionaire dominates the mother of a sick, dying child when he makes an indecent proposal to her. While exploitation may be the most striking wrong committed here, we can imagine a nearby case, where a millionaire promises to provide for the child's medical bills, no strings attached...but can only provide the money in two months' time. Further, let's say such a promise is not legally binding, and that no similar offers are forthcoming. For two months, the mother has urgent reasons to stay on the millionaire's good side. At any given moment, he might change his mind, and thus act in such a way that the mother's (and her child's) most basic interests remain unmet. Her position is deeply insecure, and beholden to his whim. Even if the mother is fully protected in her rights by an

⁴⁸ Though he eschews the 'arbitrariness' condition, and thus the republican conception more generally, Vrousalis (2013, 2016a, 2016b) also argues that offers, or improvement-capacity, can be dominating.

⁴⁹ Pettit mentions a second exception, namely 'mesmerizing offers', i.e. offers that impede B's ability to think straight (e.g. 2010, p. 75, 2012, pp. 53ff.). This concession is difficult to square with the rest of his account. Unlike other interference-capacities, it's unlikely that we could adequately identify when some agents hold this capacity over others independent of them actually exercising it, not least because which offers 'mesmerise' an agent will differ from agent to agent, even moment to moment. Moreover, unlike other interference-capacities (e.g. coercion, misrepresentation, deception), when B holds 'mesmerising-offer-capacity' against A, it's implausible to suggest that this represents a countervailing power; B's exercise of this capacity would be closer to a rent paid to A rather than any sort of impediment to A's domination.

effective state, the millionaire's ability to walk away makes it reasonable for her to regulate her behaviour according to what she perceives to be the millionaire's interests. In short, the mother is dominated. This is so even if the millionaire neither waives in his commitment to provide, nor intends for the mother to fret or worry.⁵⁰

The second condition which causes improvement-capacity to generate dominating power concerns how A stands in relationship to B. For domination to arise from A's improvement-capacity, A must occupy the role of a *gatekeeper*. Dominating relationships, just like all social relationships, have a context which structures the agents' interpretation of the other's actions and their role. Accordingly, the expectations that each agent has of the other will differ depending on whether their relationship is one of employer/worker, king/subject, husband/wife etc. Thus, in their interactions with A, B will look at A as a source of a particular sort of power, which in turn shapes their perception of what precisely makes exiting the relationship prohibitive. When A is B's boss, it is the loss of employment which looms large, whereas in a marriage within a patriarchal society, it could be the threat of physical violence or social ostracism. A will hold the role of gatekeeper when the weaker agent identifies the prohibitive nature of exit as being based not on facing any sort of penalisation, but rather on the prolonged deprivation of urgently-needed goods. Often, A need not do anything to be perceived as a gatekeeper by B, when this is inscribed in the nature of their respective social positions.⁵¹ This may be the case where someone has significant discretion in giving out raises within a business where most workers are paid well below what would be considered a minimally-acceptable wage. It is also more or less true of the trading system, where states rely upon international markets but where most of the world's wealth, and thus most of the potentiality for alleviating severe poverty, is enclosed within a small handful of members' economies. Moreover, in these two cases, the degree of domination felt is exacerbated by the presence of many dependent agents competing for the goods which A has control over. The presence of other deprived agents gives B greater reason and urgency to engage in strategic anticipation, for fear of falling out of favour or being neglected relative to any competing agents.⁵² Less frequently, A can use their easy access to urgently-needed goods in order to actively create a relationship with B where A stands as

⁵⁰ While Pettit does allow that cases similar to this can indeed be dominating (at least in his earlier work e.g. 1997, pp. 159f.), this is only so when the ability to make offers subsequently gives the powerful agent licence to interfere, i.e. when it creates an interference-capacity. See fn.45 on the potential proximity between Pettit and Lovett on this issue.

⁵¹ They also need not have acted in a blameworthy manner in order to occupy this role, even if their position relative to B nevertheless represents an injustice.

⁵² Though equally, when there are more B's competing for the favour of fewer A's, their ability to collectively organise and attempt to bring A's power under control may increase; see section three.

gatekeeper (whether or not this was their intention), acting so that deprivation-stricken B identifies A as their best (or only) hope of acquiring urgently-needed resources. This may occur where wealthy benefactors direct their attention and resources towards specific agents, as in our example of the generous millionaire.

Before concluding, it might be worth giving some idea of what all this entails for reducing domination. With improvement-capacity, like interference-capacity, it should be fairly clear what kinds of strategies might mitigate A's power over B, or reduce B's dependence; increase B's own resources, reduce A's, provide B with alternatives to the relationship with A, etc. It might be less obvious what it might mean to make an improvement-capacity non-arbitrary. Doesn't giving B control over A's improvement-capacity actually entail giving B control over A, thus leading to A's domination? No, for two reasons. First, making A's power non-arbitrary does not mean allowing B to dispose of or take control of A's bundle of material and institutional resources; instead, it only entails that B can enact control on how A uses them within the social relationship with B. In other words, arbitrariness refers not to the existence of power, but rather to its exercise within a particular relationship. Second, arbitrariness is a matter of degree; B can have more or less control over how A exercises their power. We can tackle arbitrariness by restricting, without utterly extinguishing A's control over their own actions in relation to B. To give illustrative examples in the case of trade, jettisoning Green Room draft formation, or increasing the conditions which bilateral agreements have to meet in order to be recognised as WTO-compliant, would allow weak states to exercise greater control of how powerful states exercise the power their market size gives them in trade negotiations. Such changes would make powerful states' exercise of power in the trading system less arbitrary, thus reducing weaker states' domination.⁵³

6. Conclusion

As I've argued here, the current process of trade negotiation within the WTO facilitates the domination of weaker states. Despite the vast asymmetry of power present, and the significance of the outcomes produced, there are few substantial or procedural rules constraining how proposals and drafts are formed. The formal ability to block proposals produced by such unconstrained bargaining is insufficient to provide weaker members with effective control over outcomes, insofar as they may often have good reason, whether reputational or material, to refrain from using this option. Blocking may be undesirable when a sub-optimal

⁵³ For an account of how to reduce domination at the hands of philanthropic gatekeepers, see Taylor (forthcoming).

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deal is urgently needed or unlikely to be improved upon. Blocking may be counter-productive when it discourages further participation within the trade regime. Through these cracks in institutional protections, weaker members are deprived of any substantial control over the terms of their own economic interdependence. I've further argued that the ability to give and withhold offers, i.e. the existence of improvement-capacity, is capable of generating domination. When a powerful agent occupies the role of a gatekeeper to urgently-needed resources, minimising domination may require reducing their power, reducing other agents' dependence upon them, or finding ways of giving the deprived some control over how the gatekeeper exercises power within their role. The above findings give all those concerned with trade justice, and republicans in particular, reason to explore means of reforming the WTO with an eye to giving weaker states greater control over proceedings, thereby reducing their domination.

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