Theological Categories for Special and Differential Treatment*  

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“There are many congregations that spoil the rich; it is good to have one congregation in the name of the poor, to spoil the poor.”  

Mother Teresa,  
In the Heart of the World 58 (1997)  
(comments at a seminary in Bangalore)  

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* In December 2001, I spent a very happy time with some very poor people in a slum in Dhaka. They reminded me of the incessant need to link my everyday work with their realities. To them, whose faces I was fortunate to capture in photographs, I dedicate this article.  


This article is based in part on my forthcoming book, Trade, Growth, and Injustice (Foundation Press 2003). I am grateful to the Kansas Law Review for the chance to test and improve the article, and thereby the book, at the symposium on “Globalization and Sovereignty” on 28 February 2002 at the University of Kansas School of Law. I especially thank Mr. Mikas Kalinauskas, Symposium Editor, Rachel Emig, Articles Editor, and their colleagues on the Review for their help, and Professor John W. Head not only for his help on this project, but also for his long-standing support of my work.  

I also am grateful to many colleagues and friends in Bangladesh. At the University of Dhaka, Rajshahi University, and the Asian University, I presented an earlier draft during a lecture tour of Bangladesh in December 2001. There, and in Washington, D.C., I had the honor of meeting senior officials responsible for trade, notably the Minister of Commerce, H.E. Amir Khosru M. Chowdhury, and the Ambassador of Bangladesh to the United States, the Honorable A. Tarig Karim. In these venues, I received thoughtful comments to help me appreciate better trade law from the perspective of developing countries.  

Finally, my talented and cosmopolitan research assistants provided indispensable work on this article: Mr. Mohammed Zakirul Hafez (Bangladesh), Esq., LL.M., George Washington University, 2000, S.J.D. candidate, George Washington University, 2002; Mr. Probir Mehta (India), J.D. candidate, George Washington University, 2002; Ms. Tiloma Jayasinghe, J.D. candidate, George Washington University, 2002.  

Throughout the article, unless otherwise noted, I use the term “developing country” to encompass both “developing country” and “least developed country,” which is a distinction made in international trade law. Without intending any pejorative implication, or implying the correctness of any particular path of economic growth, I also use what are commonly understood as equivalent terms—“poor country,” “underdeveloped country,” and “Third World country.”

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I. SEEING THE BEGGARS IN DHAKA

A. The "Anti-Third World" Claim

We are told, often rather loudly, by anti-globalization protestors that international trade law spoils the minority congregation of rich country Members of the World Trade Organization (WTO). Yet, we are not instructed, at least not in any coherent organizational way or in much detail, what the particular allegedly offending laws rules are. Providing a framework for considering the claim that trade law does not spoil the majority congregation of poor country WTO Members—quite the contrary—is my purpose here. It is a framework built on Catholic theological concepts, each of which has an Islamic analog. I am all for trade rules in the name of the poor, but that congregation cannot be helped by unsystematic thought. From these concepts flows the analytical precision we need if we are to attend to that congregation.

At stake, then, is how to go about a normative analysis of the General Agreement on Tariffs and Trade (GATT) and WTO rules designed to help poor countries. If we are to be rigorous in our method, then it will not do to infer from a few stark statistics or painful anecdotes that the persistence of poverty in the Third World, and the dominance of a few hegemonic powers in the global trading system, mean these laws are unjust in their treatment of the Third World. Yet, I find precisely this sort of sloppy inferential reasoning underlies what I dub the "anti-Third World" claim. That claim, its rickety underpinnings, and how to deal with it, are what I want to address.

The specific charge is that GATT-WTO rules, including the rules that purport to benefit developing countries by offering them special and differential (S & D) treatment, actually are contrary to the interests of the Third World. The incongruity may be intentional, or simply result from the operation of the rules in practice, though the distinction is not always delineated by the claimants. In brief, this anti-Third World claim is that the S & D rules are not doing enough, not doing anything at all, or even hurting Third World countries that are WTO Members.

The implication is that participation in the GATT-WTO legal regime is not in the interests of those Members. Never mind the consid-

erable body of empirical evidence—most recently, the World Bank’s Policy Research Report, *Globalization, Growth, and Poverty*—that points to a strong association between trade liberalization, on the one hand, and economic growth and poverty reduction, on the other hand. The anti-Third World claim is, in one form or another, a mantra for believers, and an important flank in the broad attack on capitalism of the anti-globalization movement that finds published expression in, for example, David Ransom’s *The No-Nonsense Guide to Fair Trade*.

Who are these believers, i.e., who levels the accusation, and where do they level it? They are not all of one mind on all matters, which is not surprising given that they hold different positions of responsibility. One class is populated by a variety of trade officials and scholars in developing countries, in public pronouncements, and often in private conversations—such as the many I have had the honor of meeting in India, Pakistan, and Bangladesh in the last five years. A second group is made up of a variety of advocates for developing countries, often in public or semi-public forums—such as students from sub-Saharan African and Central American countries I have had the privilege of learning from in my International Trade Law and Advanced International Trade Law classes, and also teachers and writers from around the world. A third group from which the accusation comes consists of officials in nongovernmental organizations (NGOs)—such as one, Oxfam, for whose fieldwork I have enormous respect, in a recent Briefing Paper that characterizes the behavior of industrialized countries toward poor countries as hypocritical and duplicitous. Even within each of these groups there is some diversity of opinion. Yet, the basic suspicion of, or downright opposition to, the WTO and its rules is a common denominator.

B. Addressing the Claim

Addressing the anti-Third World claim—even in its narrow incarnation focused on the GATT-WTO legal regime, and especially S & D

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2. (2002).
3. (2001). There is no shortage of anti-globalization books, many of which are mentioned in BHALA, THEORY AND PRACTICE, supra note 1, at xliii.
treatment rules—can easily consume a book. That is my larger project. This article is part of a book, *Trade, Growth, and Injustice*, which I am currently finishing. In that sense, it is an opportunity to test and improve ideas that are maturing. In the book, I probe the intellectual origins of the anti-Third World claim, which I think are in Marxist-Leninist theory.\(^5\) I employ classic theories of development economics to show why the claim overstates the role of trade in Third World economic growth. And I offer a definition of “justice” by which the rules on S & D treatment can be evaluated. Using that definition indicates that the rules are not nearly so unjust as the anti-Third World claim makes out. But the application also indicates that greater charity in these rules, which can be supported on principles of self-interest or social justice, is called for. I shall say more about all of these points in my forthcoming book.

For now, there is a particular dimension of the claim on which I wish to concentrate: its dearth of coherence. The claim accuses S & D treatment in toto of not doing justice to the very WTO Members that are supposed to benefit from the treatment. But the accusation is hurled at the law without any sense of what the rules are and, in particular, without an organizational framework in which to think about the rules.

The fact is that the GATT-WTO system, by which I mean both the GATT\(^6\) itself and the Uruguay Round agreements,\(^7\) contains a large number of S & D treatment rules. Many of these rules are complicated—for example GATT Article XVIII, or the details of applying the transitional safeguard remedy in the Agreement on Textiles and Clothing.\(^8\) Moreover, stepping out of the thicket of legal reality and imagining what potential rules could be drawn up, it is apparent to all but the most uncreative international trade mind that a considerable diversity exists in theory. Sadly, the anti-Third World claim acknowledges neither the practical range of nor theoretical possibilities for S & D treatment. It simply lumps the rules together as a single regime, snidely comments that the regime was foisted upon the Third World by the United States,

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he European Union (EU), and their co-conspirators, and finds the whole matter rotten.

I find this way of thinking unscholarly and unfair. Recently at a lecture in Bangladesh I said that I did not care whether Kashmir stayed in India, went entirely to Pakistan, or became independent—I just did not want to see beggars on the streets of Dhaka left unaided. If there is a way to improve the design and implementation of international trade law so as to touch the lives of those poor people, then I am all for it. Never have nor shall their faces leave my everyday consciousness. But, I do not think hurling accusations in an unstructured and careless manner at the S & D treatment rules will lead to these improvements. Surely there is a conceptual framework that can help us understand exactly what it is that is so controversial? Surely that framework is needed before we pass final judgment on the law of S & D treatment? After all, if the rules are so rich in number and diversity that they cannot be lumped together, if there are important delineations and nuances to be understood in that body of law so that it is not really one single body, but several bodies under one moniker—“S & D treatment”—then how can it be right to point the finger?

Here, then, is my self-appointed task in this article: to build a conceptual edifice into which all of the possible or extant S & D treatment rules can be organized. My purpose in doing so is not to offer up an anti-anti-globalization framework. Rather, it is to improve the quality of the critique of that treatment by systematizing it. I am neither pro- nor anti-globalization. Globalization just plain is, and depending on our country, province, city, town, village, or farm, it “is” to greater or lesser degrees—but almost everywhere to increasing degrees. Like anything that is a fact of life staring us in the face, globalization has both positive and negative dimensions, opportunities and costs which are felt by each of us in different ways at different times in our lives. In brief, my entire approach to the fact of globalization is eclectic.

Thus, as I marked above for discussion in my forthcoming book, I think the S & D treatment rules are a work in progress, neither saintly nor satanic in nature. But for me to make that eclectic argument—that there is some, though not perfect, justice in the rules, and hence that there is room for focused improvement—I need to classify what the rules are in the first place.
C. The Reservoir of Faith and Reason

This self-appointed task requires strength. I intend to get it from a reservoir of faith and reason that has been replenished continuously for 2000 years: Catholic theology. There is nothing value-free or positivistic in the way I shall go about building the conceptual edifice—what I shall call the “Theological Framework.” The categories of this Framework are foundational concepts in my religion. But, as I shall point out at the end, they also are foundations in the religion of another great system of belief adhered to by so many of my colleagues and friends—Islam.

Without digressing into an essay on scholarship in the modern legal academy, let me say at least that I find the whole notion of value-neutral scholarship a deception, a veil behind which lies a truly value-laden agenda. If the reader would like to contest this point, let him rebut C.S. Lewis, who in The Abolition of Man explains that we have starved our students of sensibility, making them easier prey for the propagandist and ill-prepared to evaluate claims of injustice, by debunking traditional values in the interests of academic skepticism or, worse, in order to reject the concept of value entirely. As Lewis wrote: “It is no use trying to ‘see through’ first principles. If you see through everything, then everything is transparent. But, a wholly transparent world is an invisible world. To ‘see through’ all things is the same as not to see.” How correct Professor Lewis was, but if only he knew that this truth extends to international trade law!

A relentless rounding up and flushing out of normative principles in the interests of “seeing through” these principles to some underlying reality might be the politically correct way to go about building the edifice in which to slot S & D treatment rules. Were I to do so, I would be a hypocrite. With what intellectual scrub brush would those principles be expunged, and with what foundation would they be replaced? The specious answer is a more “objective” approach (perhaps de rigueur in some academic quarters) to international trade law, which may be from the right (such as law and economics) or on the left (such as critical legal studies). That these approaches offer useful analytical tools is not to be gainsaid. That they are any more objective than the methodological path I shall take is nonsense.

10. Id. at 458.
Furthermore, I do not want to be value-free. The anti-Third World claim is inherently value-laden, as all claims about “injustice” necessarily are. When international trade law ceases to be about values, it loses its grandeur and ceases to be interesting. Most dreadful of all, I find that when trade debates get infected with a politically correct drive to “see through things,” we stop seeing the beggars of Dhaka. Blinded so, we forget some of the people whom trade rules are designed to help by creating wealth-generating opportunities.

D. Eclecticism—And a Disclaimer

What I have just implied is that there is a second task I have set for this article. The first task is the organizational synthesis—the Theological Framework—that I want to construct. The second task is a methodological synthesis: I want to build something for trade law analysis using tools from theology that are equally familiar to Christians and Muslims. Thus, it is quite fair to characterize my substantive and methodological points as eclectic in nature. The reader looking for an all-or-nothing approach that does not look to a variety of sources for inspiration had better stop reading.


I do not expect every reader to agree with every substantive or methodological point I make. That would be an unrealistic expectation, given what I have just indicated, namely, that I make no pretense of using value-free ideas. But I do expect my points not to be read in terms of a personal spiritual odyssey—mine, or that of anyone else. This article is not about religious conversion. Besides, what reasonable person can disagree with Surah 2, verse 256 of the Holy Qur’an? It states: “Let there be no compulsion in religion . . . .”

Similarly, I do expect my points not to be read as an implicit self-appointment as a role model. Notwithstanding my efforts, by no means am I a perfect practitioner of the Catholic faith, and there is considerable room for growth in my understanding of Scripture, Sacred Tradi-

11. Qu’ran 2:256.
tion, and the Magisterium of the Church. And I am not an accomplished scholar of Islam, even though I teach the Shari'a as a major part of my course in Comparative Law.

In other words, from my professional standpoint, this piece is about intellectual evolution. The substantive and methodological points I set forth below are an effort at trying out new thinking—new, at least, in the American legal academy, as far as I can tell—on a topic troubling me since my first visit to the Indian Subcontinent in the summer of 1974 at age ten. That topic is the scourge of poverty in the Third World. I do hope what I say below is intriguing enough for the reader to justify examining the full response to the anti-Third World claim I offer in my forthcoming book, Trade, Growth, and Injustice. Most importantly, of course, I trust the present article will help all of us avoid seeing through all things, so that we do not fail to see the beggars in Dhaka.

II. BUILDING A THEOLOGICAL FRAMEWORK FOR S & D TREATMENT RULES

As I intimated at the outset, one strategy for the evaluation of S & D rules set forth in the GATT-WTO legal regime is to list the various preferences, describe them briefly, and more or less leave the law to speak for itself as to its range of rules and generosity of treatment. That strategy is uncreative, and also risky. Reasonable minds might draw different conclusions, particularly given the lack of an organizational framework in which to analyze the S & D treatment rules. Thus, I feel the need for a more innovative and rigorous strategy.

Let us imagine we were asked, on behalf of all WTO Members, to start from scratch and write S & D treatment rules for the benefit of the Third World. Only the technical zealot would begin drafting specific legal provisions. The wise attorney would ask about the range of possibilities: what are the various generic categories of S & D treatment that could be offered? For now, never mind the current S & D regime. Never mind for the moment whether the S & D treatment rules actually will be offered. Never mind the political realities.

Rather, let us first talk about the ideal world, the world of potentialities. Let us put down on paper a list of all the possible types of preferential treatment that the rich WTO Members, if inclined to do so, could

offer to the poor WTO Members. Our concern is to consider the range of possibilities as if starting with a tabula rasa.

In staring at this hypothetical "erased tablet," no doubt the wise attorney would keep in mind a fundamental insight from development economics—that trade can facilitate the transition from agriculture to industry. That is, we must not labor under the misconception that trade is a panacea for the problems of the Third World. Rather, the goal of the S & D treatment rules we are re-conceptualizing would be to ensure they are the allies of transition in poor Members.

I submit that the sort of brainstorming—in effect, the thought experiment—of which I speak could result in the theologically-inspired groupings of prospective S & D treatment rules set forth below. It might not do so immediately. It would not do so at all if our minds were closed to fresh inter-disciplinary influences and new conceptual syntheses. But, with time and openness, the brainstorming could yield the following four categories: (1) Homily; (2) Mortification; (3) Mercy; and (4) Almsgiving. These categories and their definitions are summarized in Chart 1.

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## Chart 1
The Theological Framework for S & D Treatment Rules—Categories and Definitions

<table>
<thead>
<tr>
<th>Theological Category in which S &amp; D Treatment Rules Can Be Placed</th>
<th>Definition of the Theological Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homily</td>
<td>An exhortation to developed countries to help developing countries, and to developing countries to press ahead with trade-liberalizing reforms so that they may grow economically. The rule contains didactic and advisory elements, but no legal rights are attached, nor are any legal duties imposed.</td>
</tr>
<tr>
<td>Mortification</td>
<td>A legal obligation of, or a suggestion for, developed countries to refrain from asserting a right under international trade law.</td>
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<tr>
<td>Mercy</td>
<td>A rule that empowers, indeed requires, a developed country to forgive unilaterally a past or expected future violation by a developing country of an international trade law obligation otherwise owed by the developing to the developed country.</td>
</tr>
<tr>
<td>Almsgiving</td>
<td>A rule that calls for an unconditional transfer (direct or indirect) of financial capital, human capital, or technology from a developed country to a developing country, (1) where the developing country has no ownership or possessory claim to the thing transferred, other than pursuant to the rule itself, and (2) which yields a tangible economic gain to the developing country.</td>
</tr>
</tbody>
</table>

I must emphasize that the categories in the Theological Framework are not created on the basis of extant S & D treatment rules. In my forthcoming book, I shall classify and analyze the rules that exist in the GATT-WTO regime—"on the books law," as it were—for developing countries within the Theological Framework I am now constructing. But that exercise will be inherently less meaningful if I have constructed a paradigm that does little more than re-organize reality. Put differently, I suspect that on this subject, the classification and analysis of reality will be more interesting, and potentially more insightful, if the paradigm for understanding reality proceeds initially from theory, from grander elements than the data of everyday life. Those elements are the four conceptual categories of the Theological Framework.
My argument about this Theological Framework is that all of the possible types of S & D treatment that could, in an ideal world, possibly be offered to underprivileged WTO Members can be captured in one of these four categories. But, let me not proceed to the top of the Theological Framework before it is even built. I also want to remind the reader that I am not yet applying the Framework to actual S & D treatment rules, nor assessing whether those rules are unjust. Thus, the Framework does not contain a category like “remedy,” in the sense of rules designed to remedy past wrongs. Questions of rectifying past harms, paying reparations, and so forth are (to my mind) largely about the just-ness of S & D treatment, which I shall deal with in the latter portion of my forthcoming book. For now, I want to focus on classification and try, so far as it is possible, to defer that issue.

One need not go to church every Sunday or mosque every Friday to see that these categories are theological in inspiration. The origin of the appellations is neither the theory nor the practice of international trade law. The casebooks, treatises, and articles in this discipline are devoid of concepts (even if offered as metaphors) like “homily,” “mortification,” “mercy,” and “almsgiving.” These concepts derive from the Bible and Qur’an,\(^\text{14}\) and from the tradition of sacred and scholarly literature that has developed since the days of Jesus and the Prophet Muhammad (PBUH).\(^\text{15}\) They are concepts absent from the environment of the law professor, but common to the setting of the priest and imam.\(^\text{16}\)

Thus, at first glance, transplanting these four concepts into the present context may seem odd. “An exercise in syncretism?” no doubt would be the skeptical academic reaction. But, upon more careful reflection, I find it amazing (or yet another testament to the grip political correctness exerts on the legal academy) that we have not tried to learn from theology and apply it to trade problems.

After all, many of us are quite comfortable with occasional talk of GATT and its related multilateral agreements as a “constitution” for

\(^{14}\) For the convenience of the reader, I am italicizing most Arabic words throughout and explaining them as needed.

\(^{15}\) “PBUH” is an Islamic term of respect typically following a reference to the name of the Prophet Muhammad. It stands for “Peace Be Unto Him.” To my mind, it is unfortunate when this acronym is ignored by western writers. Having stated it initially, for reasons of economy, hereinafter I shall assume it implicitly. No disrespect is intended by this economy.

\(^{16}\) See infra notes 94–95 and accompanying text (defining “Imam”).
cross-border trade\textsuperscript{17} (or, somewhat distinctly, with discussions of the relationship between domestic constitutions and the GATT-WTO system),\textsuperscript{18} with the application of international relations theory to trade relations,\textsuperscript{19} and with examinations of Kant's *Perpetual Peace* at the intersection of trade and human rights.\textsuperscript{20} Theology and trade are hardly strange bedfellows.

Quite the contrary. If S & D treatment is supposed to be about helping the poor, then what possibly could be more relevant than theological concepts relating to helping the needy? When we think of the ideal ways to help the poor, do we think first of constitutional law, international relations theory, and Kant, or do we think first of Mother Teresa? In other words, is it not odd that we borrow from constitutional law or international relations theory, but when it comes to the

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most pressing problem the global trading system faces—the giant and growing gap between the rich and the poor, both among and within countries—we do not draw upon 2000 years of Christian thought or 1500 years of Islamic thought?

In putting the question that way, I must take care not to set myself up for a professional theological failure. Quite obviously, as an amateur theologian (at best) in a land of giants, I lack the expertise to offer a systematic appraisal of the centuries of this thought, or a perfect distillation of that thought. But such appraisal is not called for here.

I am not trying to consider the whole history of Christian and Islamic thought, nor do I wish to engage in guerrilla raids into these great achievements and extract from them a few ideas based on intellectual expediency. To do so would be to write a theology article, and probably a bad one. My project is the converse: a provocative article about a pressing trade issue that looks for clues to resolving the problem in the fundamental insights of other disciplines. As I said, despite its neglect by trade scholars, theology is a uniquely fertile field, because its soil is rich in basic nutrients that feed the hungry.

So, I am offering up four categories that a professional theologian would agree are foundations of religious belief and practice, and that even an infrequent church- or mosque-going trade lawyer could see as exhaustive of the potential types of S & D treatment. I do not expect that the theologian or lawyer will agree that the Theological Framework I propose is “the best,” only that it has some merit when thinking about mapping out a strategy for S & D treatment.

My task is dialectic, not eristic. That is, my purpose in creating and, later, applying the Theological Framework is to argue in order to nudge a bit closer to truth, not to assert at the expense of truth. If, one day, this Framework is found wanting, but its very defects are the catalyst for building a better intellectual construct, then my purpose shall have been achieved—every bit as much as if the Framework proves enduring.

I must hasten to add two points about the potential virtues I believe flow from S & D treatment rules in each of the four categories of the Theological Framework.21 The first point is that the benefits are not mutually exclusive, in the sense of being linked to only one type of S & D treatment rule. For instance, concentration of the attention of

21. These virtues are highlighted in the latter portion of Trade, Growth, and Injustice (forthcoming 2003).
the developed world on the plight of the developing world is a potential benefit that follows from Homiletic and Mortification Rules.

"Potential" is a significant adjective here, which leads to my second point about the effects of the rules. In the context of preferential trade treatment for developing countries, I do not wish to suggest that Homiletic, Mortification, Merciful, or Almsgiving S & D treatment rules will lead ineluctably to all of the virtues. Put bluntly, their assent to such rules will not turn developed country governments into the nation-state equivalent of Mother Teresa.

Even in the everyday practice of religion, the benefits of mortification do not manifest themselves in every disciple, nor among all disciples to the same degree. I do not claim more for the secular world than is realized through the practice of sacred rules, lest the benefits of S & D treatment appear to be oversold. But, in both contexts, effort—trying to improve through adherence to certain rules, even if the addressee of the rules falls short—can matter. At the risk of sounding Pollyannish, I would like to be open to the possibility that, through the design and implementation of S & D treatment rules, some First World governments might experience—if only just a bit—a true change of perspective and policy on trade problems confronting developing countries.

A. The First Category: Homiletic Rules

The first category of theoretically possible preferential treatment that could be offered to underdeveloped WTO Members is encouragement. Developed Members, individually and acting in concert through the WTO Secretariat, could offer support, manifest in language alone. The words of support could be written into WTO legal texts, making it plain that the major trading powers look sympathetically on the plight of poor countries, and that the poor countries ought never to give up their quest to industrialize. In effect, these textual provisions could be addressed to rich and poor countries alike.

To be sure, the textual provisions would be precatory. They would express an aspiration, but contain neither legal rights nor obligations. The words in the texts would be exhortations to rich Members to behave a bit less selfishly than before in formulating and applying their trade policies toward the Third World. But they would impose no duty on rich Members to be selfless, or to assume a greater burden of the adjustment costs associated with trade liberalization than they do now in comparison with such costs borne by poor Members. Likewise, the ex-
hortations in the WTO texts would be exhortations to Third World Members to keep up their efforts to reach, and pass, the transition point from an agrarian to an industrial economy. The encouragement would be toward greater reliance on market forces and a calculated retreat of the government from intervening in import markets on behalf of domestic industries, and toward increased transparency in the creation and execution of trade law. However, as exhortations, no new rights would accrue to these Members once they had industrialized. In brief, the S & D treatment of this type would be written inspiration.

Exhortation is precisely what a homily is all about. The *Catechism of the Catholic Church* defines “homily” as “preaching by an ordained minister to explain the Scriptures proclaimed in the liturgy and to exhort the people to accept them as the Word of God.”22 It is no accident that the *Oxford Dictionary* defines the term as “a formal or liturgical address,” nor that it suggests “sermon” as a synonym.23 Conversely, what is a “homily” from a theological perspective, but none other than an attempt to teach in order to affect behavior? As The Essential Catholic Handbook puts it, a homily—a key part of the liturgy of the word24—is: “... an instruction or sermon preached after the readings from Scripture; its purpose is to explain the Word of God and also to make application of that Word to the lives of people today.”25 However, the instructive element does not mean a Homiletic rule is characterized merely as a statement of moral doctrine, or a statement of what possibly could be achieved.

Typically, the essence of the exhortation is a prescriptive element—an exhortation, after all, to do something. In *The Catholic Catechism*, Father John Hardon explains this point through his analysis of the Sermon on the Mount, the eight Beatitudes, and the Lord’s Prayer:

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Taken together, these norms of conduct introduced a new dimension into human culture and, quite alone, warrant the conclusion that Jesus of Nazareth professed to be more than a human legislator.

... Christ made his moral doctrine not only possible [by offering Himself as the source of grace] but, in many ways, prescriptive. He therefore not only described what his followers might aspire to, but, also legislated what they were obliged to do. His parting words to the disciples were that they might teach all “that I have commanded you,” and his sanction was that those who would believe and act accordingly would be saved ... 26

In brief, a homily has both an instructive and prescriptive element. The latter element may be sufficiently forceful to be an obligation, albeit not in a legal sense.

In turn, “Homily” as a category for potential S & D treatment refers to an exhortation to developed countries to help developing countries, and to developing countries to press ahead with trade-liberalizing reforms so that they may grow economically. S & D treatment rules in this category neither offer legal rights nor impose any legal duties. But, as exhortations, they are didactic and advisory rules about how best to trade with poor countries.

B. The Second Category: Mortification Rules

In the Theological Framework, the second category in which I propose to classify S & D treatment rules is called “Mortification.” Perhaps mortification is the initial reaction to this term—in the sense of being “mortified,” i.e., horrified or appalled. But that reaction is based on the narrow use to which the word “mortify” is put in everyday parlance. Typically, only the first meanings listed in the Oxford Dictionary are intended: causing shame or humiliation, or wounding. 27

The second lexicographic meaning is overlooked: to “bring (the body, the flesh, the passions, etc.) into subjection by self-denial or discipline.” 28 This second meaning is near to the theological understanding. In a theological context, “mortification” is all about renunciation, about turning away from a right or privilege that, if exercised, would bring personal satisfaction. This context is far more common than we sometimes

27. OXFORD DICTIONARY, supra note 13, at 972.
28. Id.
realize. As Father Hardon puts it, "[e]xperience tells us that there are few things in life that do not call for some self-surrender."\(^{29}\)

Mortification is closely related to—indeed, it demands—two cardinal virtues:\(^{30}\) temperance toward that which is pleasant, coupled with courage (or fortitude) to manage the instinctual aversion from difficulties or pain.\(^{31}\) An act of forbearance amounts to self-sacrifice for a larger, more worthy purpose than enjoyment of the benefits that would flow from experiencing the pleasure.

As *The Essential Catholic Handbook* explains, "mortification" comes from "the Latin word which means 'death'; the Christian ideal [see Luke 9:23–24 and Galatians 5:24] of 'dying to self' through the *deliberate restraint* of unruly passions and appetites; the *struggle against one's evil inclinations* so as to bring them in conformity with the will of God."\(^{32}\) Plainly, what matters is restraint, which may be called for with regard to many impulses.\(^{33}\) Ultimately, the source of this restraint is the actor, the addressee of the rule. But, the rule is not written by its addressees. An external authority designs the rule, and the rule—as a Mortification Rule—counsels self-denial. If the authority were to force compliance with the rule, then we still might call the event "mortification," but only in a loose sense. What would be missing would be the volition of the actor—the deliberateness and struggle of which the above-quoted passage speaks.

Now, the parallel between the theological concept of mortification and its legal version is evident. In international trade law, "mortification" means the giving up of a legal right. In particular, it is an act of self-denial by developed WTO Members. They do not press a legal claim, which they are otherwise entitled to do, against an underdeveloped WTO Member. This rule says "abandon your right" or "do not press your claim," and is agreed upon by all WTO Members, during episodic events like the Uruguay Round. Following the rule is a volitional act on the part of each developed country Member. To be sure, there is

\(^{29}\) HARDON, *supra* note 26, at 570.

\(^{30}\) In the last part of my forthcoming book, *Trade, Growth, and Injustice*, I shall discuss virtues, and the distinction between the "cardinal" virtues (prudence, justice, temperance, and courage) and the "theological" virtues (faith, hope, and charity).

\(^{31}\) See HARDON, *supra* note 26, at 198 (discussing the cardinal virtues).

\(^{32}\) *Essential Catholic Handbook*, *supra* note 25, at 214 (emphasis added).

\(^{33}\) Most obviously, self-control is called for with respect to sinful inclinations such as pride, lust, anger, covetousness, envy (jealousy), sloth, and greed. See HARDON, *supra* note 26, at 118, 428–30 (discussing mortification of these tendencies and detachment from their objects).
more than exhortation at play here. A developing country may be able to compel compliance using the WTO’s dispute settlement mechanism. But, as with all rules, in the first instance the choice of compliance is up to the addressee.

C. The Third Category: Merciful Rules

In the experiment I posited at the outset—drafting S & D treatment rules de novo, and thinking first in terms of generic types of treatment—I suspect any lawyer involved who was even remotely familiar with international debt restructuring (particularly sovereign loans) would think of forgiveness as a possibility. In the global debate on how to manage the monstrous debt burden borne by many Third World countries, forgiveness of all or part of the indebtedness is often mentioned as a strategy to end the cycle of lending new money to pay back old money, and of earning export revenues only to repay creditor banks in developed countries.

The idea, in terms of S & D treatment, would be to forgive developing countries for their transgressions of international trade laws. A body of such laws exists in the GATT and the WTO agreements reached during the Uruguay Round. Why not say “never mind, do not worry about it” to developing countries—so long as the “it” is neither the entire body of trade law, nor so small a group of rules so as to render the forgiveness a nullity?

Here, then, is a third category of potential S & D treatment: Mercy, i.e., Merciful Rules. Why the change from the word “forgiveness” to the word “mercy”? The truth is, the two are synonyms.34 “Mercy” is “compassion or forbearance shown to enemies or offenders in one’s power.”35 Nearly equivalently, to “forgive” is to “cease to feel angry or resentful toward; pardon (an offender or offense) . . . remit or let off (a debt or debtor).”36 In stressing the need for mercy when imparting advice, Father Hardon quotes from the Decree on Justification issued in 1525 by the Council of Trent: “The only remedy for great evils, the only way of plucking them out is to forgive and to give.”37 He adds: “When

34. See Oxford Dictionary, supra note 13, at 574 (defining “forgiveness”), 937 (defining “mercy”).
35. Id. at 937 (emphasis added).
36. Id. at 574 (emphasis added).
37. Hardon, supra note 26, at 203.
persons come for help, no matter what their problems may be, two things they always need and that the counselor should offer by word and example are forgiveness of injuries (real or imagined) and great generosity, both covered by the concept of mercy.” In brief, assigning the rubric “Mercy” to the third category of the Theological Framework is a matter of preference with no substantive distinction intended from the term “forgiveness.”

The words I have highlighted in the definitions of the two terms suggest five irreducible elements that a rule must contain to be put in the third category. Let me first, however, set forth the definition of a Merciful S & D treatment rule and then consider its constituents. It is a rule that empowers, indeed requires, a developed country to forgive unilaterally a past or expected future violation by a developing country of an international trade law obligation otherwise owed by the developing to the developed country.

What are the basic elements of rules in this category? The first two elements are obvious enough. First, there exists some underlying rule of international trade law applicable to all trading nations (or, at least, to the WTO Members). Second, there must be a transgression of a legal obligation—either committed already or impending. One country must have run afoul of the underlying rule or be contemplating a violation.

As for the third element in the Merciful Rules category, the victim of the past transgression, or the potential victim of the anticipated transgression, must have the power to pardon the transgressor. That power may be derived by common agreement of the trading nations, which is the case in the member-driven GATT-WTO system. Or, such power could be granted from some higher authority to which all the nations have agreed to submit.

Fourth, and most obviously, the victim (or potential victim) must proclaim unilaterally a pardon of the past (or anticipated future) transgression. Perhaps this is the most obvious of the elements. Indeed, “divine mercy” (i.e., the mercy of God) is defined principally in terms of this element: “An attitude of God toward his creatures which causes him to forgive out of his love and goodness.” Nonetheless, it is worth highlighting that the forgiveness is a unilateral act by the victim (or potential victim). Is forgiveness a discretionary act? An affirmative answer

38. Id. (emphasis added).
would be problematic, I think, because it would blur the distinction between homily and mercy. A rule saying “you can forgive a developing country for violating such and such multilateral trade rule” amounts to exhortation. Accordingly, I think the better course in conducting a Theological Framework with sharper distinctions among the categories is to insist that forgiveness be mandated by the rule.

I realize that this mandate might sit uneasily with the overall theological inspiration behind the Framework. We do not think of the Holy Father being compelled to forgive his would-be assassin for attempting to kill him. We do not think of Mother Teresa being ordered by her Bishop to forgive an unwed pregnant mother for her state. To the contrary, mercy is beautiful in part because—at the level of the human actor—it is discretionary.

To this concern I might offer two replies. First, in the deepest sense, I read Catholic theology to teach that mercy is not an option. It is demanded of us by God, if we reasonably expect it from God.

Second, in the practical world of multilateral trade obligations, all S & D treatment rules (mercies and others) are mandatory in that the WTO Members have made them such. To be sure, an individual Member might opt not to be forgiving of a developing country. But, the price may be an action by the latter against the former under the WTO’s dispute settlement mechanism. Thus, in the normal course, the developed country will invoke its authority to be merciful toward legal failures of a developing country, just as in the ideal course, a disciple will be forgiving with respect to the transgressions of another.

A final element of S & D treatment that I would consider part of a Merciful Rule is that it be a unilateral act. It is not a group decision taken after a vote. To be sure, that is how the rule may have come about. But, the exercise of that rule is entirely a matter for one person, in the theological context, or one WTO Member, in the international trade law context.

D. The Fourth Category: Almsgiving Rules

I call the final category in the Theological Framework for S & D treatment rules “Almsgiving” (or “Alms” for short). Ostensibly, this category is easy to define—is it not made up of any international trade law that calls for giving money to Third World countries? I think that such an approach would be too simplistic. It would not account for the
different forms of almsgiving, nor would it acknowledge the importance of the motivation for almsgiving.

Accordingly, I propose to define this category as consisting of S & D treatment rules that require assistance by developed countries to developing countries, where such assistance reflects a charitable intent on the part of the donor developed countries. That is, an S & D treatment rule falls within the Almsgiving category if it calls for an unconditional, or gratis, transfer of financial capital, human capital, or technology from a developed country to a developing country, where the developing country has no ownership or possessory claim to the thing transferred, other than pursuant to the rule itself.

At first glance, there is a certain "catch-all" nature to Almsgiving Rules. If a Homiletic Rule is an exhortation, a Mortification Rule is self-denial of a legal right, and a Merciful Rule is forgiveness of a transgression, then an Almsgiving Rule seems to be any other type of S & D treatment. I do not entirely reject that characterization. But I do think it would be too casual on my part to leave the it at that. I think more focus can be given to the category.

Specifically, I think it is evident that there are three potential kinds of alms a developed country Member of the WTO can give a developing country Member: money, brains, and know-how. At bottom, they all entail a financial benefit, or one that can be measured in terms of a tangible economic gain. That common denominator suggests that alms can be given in a direct or indirect way—and, indeed, they can. I shall discuss the three forms of alms later on, and the possibility of direct and indirect transfers, when I treat hypothetical examples of almsgiving rules. For now, let me point out that from my proposal it should be apparent that the motivation for giving matters. I have referred to charity, and spoken of the lack of a claim to the item of value transferred. Thus, the category is defined by three elements: the fact of the gift, what is given, and why it is given.

The third element raises a potential inconsistency in the delineations among the categories of the Theological Framework. Arguably, I addressed the matter of intent to a certain degree when I spoke of forgiveness in the context of the Mercy category. I did not focus on intent with respect to the definition of the Homiletic or Mortification categories. Why highlight the unconditional, good-hearted—in a word, the charitable—intent behind an Almsgiving Rule, but not behind a Homiletic or Mortification Rule?
The first answer is that charity is the virtue associated with Almsgiving Rules. In my view, it is precisely this virtue that makes these rules just. My point now in identifying charity as the motivation for almsgiving is to link this virtue more clearly with the inherently just nature of an Almsgiving Rule.

The second answer is that the inconsistency is not as great as it might seem. In fact, I have hinted at motivation all along. Why an S & D rule exhorts, or why it calls for self-denial, seems implicit: to help stimulate Third World growth by allowing trade to facilitate industrialization in the Third World. The same implicit motivation also exists with respect to the Mercy and Almsgiving categories. In other words, this noble motivation is always lurking in the background of any S & D treatment rule.

This commonality leads me to a brief digression. I should take care to spotlight a part of the boundary between the Mercy and Almsgiving categories that cannot be demarcated with perfect clarity. Some of the works of mercy I mention later—giving food, drink, clothing and shelter to the needy, visiting the imprisoned and sick, and burying the dead—are corporal works of mercy. They are also examples of giving alms. Fortunately, I do not see any need to try to mark out this part of the boundary more clearly. To the contrary, it seems quite logical that mercy might lead to, or in effect become, almsgiving. Indeed, in the S & D treatment context, to see the drafting and implementation of Merciful Rules catalyze the drafting and implementation of Almsgiving Rules would be a happy chain of events.

I do think there is a more serious difficulty than the semblance between corporal works of mercy and almsgiving. Simply put, the sometimes veiled noble motivation behind almsgiving (or, for that matter, mercy) becomes adulterated with conditions. That difficulty leads to my third reason for explicitly discussing motivation with respect to the Almsgiving category. The propensity to adulterate increases with the value of the transfer. The more the First World perceives itself to be “donating” to the Third World, the greater the likelihood it will want to

41. See ESSENTIAL CATHOLIC HANDBOOK, supra note 25, at 125–26 (defining “almsgiving” and “alms”), 209–10 (defining “mercy”); infra note 50 and accompanying text.
42. In Catholic theology, a related, but reverse, chain is articulated: one of the fruits of charity (along with joy and peace) is mercy. See CATECHISM, supra note 22, ¶ 1829, at 450 (enumerating the fruits of charity).
impose conditions on the donations, or want some sort of reciprocal privilege. Among the four categories in the Theological Framework, quite obviously the most valuable rules—in hard dollar terms—are those that call for a transfer of capital or technology. That is, alms have a dollar value that homilies do not, and that in many instances may exceed the dollar values of mortifications or mercies. In this material sense, an Almsgiving Rule is the greatest of all S & D treatment (or at least is likely to be so).

But, are Almsgiving Rules the greatest of all types of S & D treatment in a theological sense? I submit that this question depends on the motivation underlying the rules. Where assistance to help developing countries boost exports is linked to economic and political conditions imposed by developed countries, I do not think they are great in this sense. Indeed, I would not even call them “almsgiving.” Tied aid is an expression of enlightened self-interest. As such, it is an easy target for critics who claim that international trade law is “anti-Third World.” The critics—again, with Marxist-inspired ideas—can assail conditional gifts as neo-colonialist tools to benefit the First World and as schemes to increase the dependence of the Third World on the benefactors. In sum, the fourth reason for highlighting the motivation of rules in the Almsgiving category is that so much is potentially at stake with these rules—their greatness in a theological sense, and their susceptibility to the claims of the critics.

Another issue raised by the definition of the Almsgiving category that I propose is its consistency with extant definitions. How does it square with lexicographic and theological sources? The short answer is that my definition is quite consistent with what we expect from the dictionary. But neither is as complete on the point of motivation as the theological definition. Therefore, the fullness of the theological definition needs to be kept in mind when considering S & D treatment rules as candidates for the Almsgiving category.

There is not a great deal of difference between the secular connotation of “almsgiving” and its theological definition. In normal parlance, the term “alms” (or “almsgiving”) refers to “the charitable donation of money or food to the poor.” Similarly, The Essential Catholic Handbook defines the term as an “act of freely giving material or financial as-

43. The United States Generalized System of Preferences (GSP) program is a notorious example. See BHALA, THEORY AND PRACTICE, supra note 1, at 1431–518 (describing the GSP).
44. OXFORD DICTIONARY, supra note 13, at 40.
sistance to a needy person [that] must be motivated by Christian char-
ity."45

However, the religious definition is more full than is the secular one, in that it contains a profound basis for almsgiving in the religious sense. Both Sacred Scripture and the Fathers of the Christian Church recognize almsgiving, along with prayer and fasting, as a form of interior pen-
ance.46 In turn, "interior penance" refers to a conversion of one's heart toward God and away from sin, and thus an intention to change one's life because of hope in God's mercy and trust in His grace.47 Indeed, interior penance is nothing less than a "radical reorientation of our whole life, a return, a conversion to God with all our heart, an end of sin, a turning away from evil, with repugnance toward the evil actions we have committed."48 Almsgiving, then, is an external manifestation of an interior conversion.49 This expression involves giving to another. Necess-
arily, what is given is valuable, particularly to the donee, and it is a thing to which the donee has no legal claim (e.g., a claim of ownership or possession).

At first glance, the interior conversion—this deep-seated basis for giving alms—would have nothing to do with international trade law. Surely giving assistance to the Third World need not be motivated by religious impulses. In fact, I think an interior conversion could, and probably ought to, have everything to do with almsgiving to the Third World. Indeed, in the definition of Almsgiving Rules, the express men-
tion of a charitable intent bespeaks the relevance of an interior conver-
sion.

To be sure, in the context of international trade law, I do not mean "conversion" in the religious sense. I mean it in the sense of law and legal policy. And, the consequence of conversion—almsgiving—is an economic one. In other words, the conversion is one of countries, those of the First World. Their conversion is one in favor of helping to resolve the economic problems of developing countries. They agree to rules that obligate them to help—to give out of a spirit of charity.

45. ESSENTIAL CATHOLIC HANDBOOK, supra note 25, at 125.
46. CATECHISM, supra note 22, ¶ 1434, at 360.
47. The conversion, or repentance, of the heart is known by Church Fathers in Latin as "com-
punctio cordis," and is accompanied by a salutary pain and sadness called "animi cruciatum," which refers to an affliction of spirit. CATECHISM, supra note 22, ¶ 1431, at 360.
48. Id. (emphasis added).
49. Id.
The conversion is an "interior penance," because the First World changes its orientation—radically so—toward the Third World. It no longer regards the Third World simply as a market for its businesses to access, or as countries with hundreds of millions of rising middle-class persons to which its businesses can sell their wares and garner profits. The First World sees the Third World in a different light. But with the interior penance comes a realization of the importance of Third World growth—importance to the very people who live in the Third World. Growth—and, even more generally, development—in the Third World becomes a goal for the First World as well. Perhaps the self-interested business aims are never lost, and I am not even sure they need to be. After all, the context is a capitalistic one. But what is radical about the reorientation is that the First World acknowledges the need for large, sustained gains in per capita gross national product (GNP) in developing countries.

I realize that there is an underlying assumption here—that to some degree it is reasonable to see countries as human beings writ large. To be sure, a country does not have a single brain. But, it can—on some issues for some periods of time—have a singleness of purpose. Illustrations include sympathy following a tragedy, elation following a victory, and acceptance of organizing principles like democracy. Whether the same kind of commonality can exist as to Almsgiving Rules may be an open question.

As I intimated, this acknowledgement of the need for growth in developing countries is manifest in a tangible way—almsgiving. This manifestation is called for by S & D treatment rules. After all, interior penance must be accompanied by an expression of the desire to turn away from the past. Thus, if penance occurs, then trade relations between the First and the Third World must be put on a different footing from the past. Negotiations and agreements must be about more than lowering tariff and non-tariff barriers in developing countries for the benefit of First World-based multinational corporations. They must also have to them a large component dealing with First World assistance to the developing countries.

All that I have said above implies that almsgiving is the consequence of interior penance. But, it also can be a means to foster that penance.50

50. See id. (defining "almsgiving," and stating that along with prayer and fasting, almsgiving is "traditionally recommended to foster the state of interior penance").
By giving, one's heart may be re-oriented toward the donee. This may be no less true in the S & D treatment context. The very act of negotiating and drafting rules on developing country preferences, and implementing the assistance they call for, may prove to be an educational process for some developed countries. They may learn a good deal more about the challenges to growth facing developing countries. In turn, they may re-orient their trade laws and policies toward those countries—for example, by lowering their own barriers to developing country exports, and by offering more generous assistance than in the past.

Thus, in sum, I am defining the category of "Almsgiving" in the Theological Framework very strictly. (I shall say more about the reason for this exacting definition in a moment.) An S & D treatment rule does not fall within this category unless it calls for an unconditional transfer of a thing of value by a developed country WTO Member to a developing country Member, where the developing country has no ownership or possessory claim to that thing other than by virtue of the rule itself.

Why such rigidity in defining a concept that is at bottom a matter of the heart? In brief, I want to treat the critics of the international trade law regime with respect, and even give them the benefit of the doubt at the outset. A careless definition of "Almsgiving" in the S & D context would obfuscate the categories in the Theological Framework. Virtually any nicety extended by the First World to the Third World under the auspices of the GATT-WTO regime could qualify as "alms." Were that the case, then my judgment of the S & D treatment regime would be a foregone conclusion. Having defined the "Almsgiving" category so broadly, I would be compelled to say S & D treatment is very generous.

In turn, adherents to the anti-Third World claim would be right to say that my analysis was rigged against them. They would say I constructed a category into which could be placed any potential or extant GATT-WTO preference for developing countries. My proposed universe of S & D treatment rules, they would rightly counter, is skewed towards "Almsgiving," simply because of my excessively charitable definition of the category. The end result would have to be a rosy view of the treatment of developing countries, when in fact the reality is quite different.

To be sure, this sort of counter-attack might overlook the potential virtues of the relatively few rules I had put in the Homily, Mortification, and Mercy categories. Still, it would be on target. To phrase my rationale differently, if—given this tight definition of the Almsgiving category—there prove to be a fair number of reasonably generous S & D
treatment rules in practice, then perhaps the Marxist-inspired claim is overblown. Thus, I have insisted on a rigorous definition of an "Almsgiving" Rule.

III. ILLUSTRATING THE CATEGORIES OF THE THEOLOGICAL FRAMEWORK

Part of any construction project is (or ought to be) testing the new building before occupancy. Accordingly, it is time to test the Theological Framework, but not by rushing headlong to fill its categories with actual S & D rules. That is a large moving task, better for my forthcoming book than for the present article-length publication. Rather, let me test the new edifice with some hypothetical rules. In other words, what I shall do now is illustrate its categories, and thereby probe them, with some S & D preferences for poor countries, where such preferences are illustrative of the kinds of real laws that eventually will move into the Framework. The results of the test are summarized in Chart 2, which provides a categorization of hypothetical S & D treatment rules.

**Chart 2**

THE THEOLOGICAL FRAMEWORK—ILLUSTRATIVE S & D TREATMENT RULES

<table>
<thead>
<tr>
<th>Theological Category in which S &amp; D Treatment Rule Can Be Placed</th>
<th>Hypothetical Examples of Preferential Trade Rules in the Theological Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homiletic Rules</td>
<td>Exhortation to Developed WTO Members to:</td>
</tr>
<tr>
<td></td>
<td>(1) Reduce or eliminate tariff or non-tariff barriers;</td>
</tr>
<tr>
<td></td>
<td>(2) Eschew trade remedy actions against developing country products, or alter</td>
</tr>
<tr>
<td></td>
<td>the procedural rules for such actions in favor of developing country</td>
</tr>
<tr>
<td></td>
<td>respondents; and</td>
</tr>
<tr>
<td></td>
<td>(3) Provide assistance to developing countries so they can be more</td>
</tr>
<tr>
<td></td>
<td>competitive in global trade.</td>
</tr>
<tr>
<td></td>
<td>Exhortation to Developing WTO Members to:</td>
</tr>
<tr>
<td></td>
<td>(1) Continue trade liberalization reforms; and</td>
</tr>
<tr>
<td></td>
<td>(2) Implement fully the Uruguay Round agreements.</td>
</tr>
<tr>
<td>Mortification Rules</td>
<td>(1) External mortification, i.e., surrender of a right to impose a tariff or</td>
</tr>
<tr>
<td></td>
<td>non-tariff barrier on imports from developing countries.</td>
</tr>
<tr>
<td></td>
<td>(2) Internal mortification, i.e., forbearance from initiating a trade remedy</td>
</tr>
<tr>
<td></td>
<td>action (antidumping, countervailing</td>
</tr>
</tbody>
</table>
duty, or safeguard case\textsuperscript{31}) against imports from developing countries.

Mortification may be substantive or procedural in nature.

**Merciful Rules**

There are two types of boundaries that can be placed on the extent of forgiveness from a legal obligation:

1. limitations on time; and
2. limitations on the scope of merchandise covered.

Therefore, there are four possible types of S & D treatment mercies:

1. Most generous—no temporal or subject matter limitations on forgiveness;
2. Least generous—strict temporal and subject matter limitations on forgiveness.
3. Intermediate level of generosity—no temporal limit, but a limit on merchandise covered.
4. Intermediate level of generosity—no subject matter limit, but a temporal limit.

**Almsgiving Rules**

Any gratis transfer from a developed country to a developing country (either directly or through a third-party institution like the WTO) that provides the developing country with finance, human capital, or technology needed to help that country more effectively implement international trade law and compete more successfully in world markets. The transfer must yield a tangible economic gain to the developing country. The transfer may be direct, such as an outright grant of funds, technical assistance or know-how, or the guarantee of access to developed country markets for exports from a developing country. Or the transfer may be less direct, such as permission for (or acquiescence to) protection for producers and exporters in a developing country.

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**A. Hypothetical Homiletic Rules**

What might a Homiletic S & D Treatment Rule look like? As I suggested when building the category, the key qualities of such a rule would be its exhortative nature (with both didactic and advisory dimensions), and its lack of compulsion. The examples depend on the addressee. Let us consider rules directed at developed countries.

First, developed countries could be encouraged to reduce dramatically, or to drop entirely, their tariff and non-tariff barriers to exports.

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\textsuperscript{31} See BHALA, THEORY AND PRACTICE, supra note 1, at 819–1174 (explaining antidumping, countervailing duty and safeguard cases).
from developing countries. Second, they could be encouraged to eschew trade remedy action against developing countries, or at least to take such action on the basis of a set of legal thresholds and presumptions that favor developing countries. Third, developed countries could be encouraged to assist developing countries in building the institutions and human capital necessary to participate more competitively in the global trading system.

As to the first set of examples, there is more at stake than just slashing tariffs and quotas. Of critical importance is the extent of product coverage. A strong Homiletic Rule would call for—but, again, not mandate—protection on all exports to be reduced or eliminated. There would be no exceptions for so-called “sensitive” products, as that very term is a euphemism for domestic industries that are well-connected politically and able to secure an exemption from any cut in tariffs or quotas.

A Homiletic S & D Treatment Rule concerning trade remedies might take the form of urging developed countries to adopt a moratorium on antidumping (AD), countervailing duty (CVD), and/or safeguard actions against products from developing countries. A weaker version of that rule might encourage wealthy WTO Members to construct a different set of procedures for such actions when the subject merchandise comes from a developing country. For instance, the rule might urge that a higher de minimis threshold apply, so that no AD, CVD, or safeguard action is taken unless the imports from a developing country amount to a very significant volume in a relatively short period. Likewise, higher thresholds could be urged for dumping margins and subsidization rates. Obviously, higher thresholds would cut down on the number of remedial actions against developing country respondents.

Another example is a rule urging adoption of a rebuttable presumption favoring developing country respondents. The presumption could be against the use of information available as supplied by a petitioner, in lieu of data supplied by the respondent, and in lieu of data that the respondent cannot offer. The presumption could be that the petitioner’s information is not to be used unless the petitioner proves that the data offered by the respondent is false or misleading, or that the respondent is deliberately withholding data. In other words, the inability of a respondent to supply information would not be a strong enough reason to rely on the information available to the petitioner and to use it against the respondent. The Homiletic Rule would remind developed countries that many exporters in developing countries—by virtue of their small
size and insecure finances—have yet to obtain accurate and thorough record-keeping systems.

As regards the third type of S & D treatment qualifying for the Homiletic Rule category, I have in mind any strong advice to help developing countries in such a material way. Such advice could focus on implementation of the Uruguay Round agreements and capacity building, such as training local attorneys and judges in international trade law. It could focus on developing the infrastructure necessary to engage in world trade—for example, record-keeping systems for small businesses, automated customs clearance systems, and air and sea port facilities capable of handling large container volumes quickly. To fit within the category of “Homily,” the precise focus of the advice does not matter. What counts is a call to assist.

What about Homiletic S & D Treatment Rules addressed to developing countries? Earlier, I hinted at some examples. Any exhortation to continue on the path of trade liberalization, or to put into full practice the rights and obligations set forth in the GATT-WTO regime, would qualify, as long as the rule does not also contain a condition about winning a legal right or suffering a legal obligation. A Homiletic Rule is an exhortation, full stop, without the compulsion created by legal incentives and disincentives.

Thus, the exhortation of a Homiletic Rule can be to eliminate import and export licensing, to reduce export subsidies, to weed out corruption among customs officers, and, of course, to reduce tariff and non-tariff barriers. As with Homiletic S & D Treatment Rules addressed to developed countries, depth as well as breadth matters. Strong advice to cut barriers on a narrow range of products is a weak homily (unless those products are disproportionately important in the economy of the developed country). Likewise, timing matters. Sooner rather than later evinces a strong homily.

B. Hypothetical Mortification Rules

In a theological sense, mortification may be “external” or “internal.” External mortification refers to the denial of sensory pleasure (e.g., fasting or abstinence). Internal mortification concerns discipline over emotions (i.e., control of a passion).

Likewise, there is an analogy between “external” and “internal” mortification in the theological context and in the international trade law regime. I consider external mortification in the trade law context to be
the surrender of a right to impose a tariff or non-tariff barrier in the normal course of trade relations. For example, granting duty-free treatment to a developing country product, or eliminating a quota on that product, is an external mortification. The developed country is giving up a “pleasure” it otherwise would experience—tariff revenue for its government, or quota rents for producers of the like domestic product.

In contrast, an internal mortification involves a restraint of anger, and thus—I think—seems best suited to trade remedy cases that are not initiated. In other words, internal mortification is unilateral forbearance by a developed country. It is a self-imposed constraint on hostile action against a perceived harm inflicted by exports from developing countries.

I should note that this way of distinguishing external and internal mortifications in S & D treatment is not the only possibility. I could have proposed that external S & D mortifications are those that are mandatory, i.e., set forth in a WTO text, and that internal S & D mortifications are voluntary acts by developed countries. The problem with this distinction, however, is two-fold.

First, such differentiation is a bit further from the theological distinction, summarized above, between external and internal mortifications. Second, there is a risk of blurring the line between “homily” and “mortification.” If an internal S & D mortification is self-imposed without legal compulsion, then are we not talking about a Homiletic Rule? After all, as defined above, such a rule is an exhortation; and self-denial with no attendant legal duty could well be a reaction to an exhortation.

It is also worth appreciating that Mortification Rules can be substantive or procedural in nature. It is perhaps more obvious to think of a Mortification Rule as S & D treatment that amounts to self-restraint by a developed country with regard to the assertion of a legal right that the country otherwise might claim to concern the substantive merits of a potential case. But such a rule could instead concern the adjudicatory procedures that would apply in a case. Declining to assert a claim because that claim is not available against developing countries sounds like a substantive matter. In contrast, declining to impose a procedural hurdle on a developing country, such as the normal burden of proof or standard of evidence, or the normal presumptions (whether rebuttable or irrebuttable) against respondents, would be procedural Mortifications. In other words, reducing the burden of proof or standard of evidence that a developing country must meet, allowing a presumption to apply in favor of the developing country, or disallowing a presumption from ap-
plying against the developing country, are all examples of Mortification Rules in the procedural context.

C. Hypothetical Merciful Rules

There lies in theology a distinction between the seven "corporal" and the seven "spiritual" works of mercy.\textsuperscript{52} This distinction is about manifestations of mercy, not about the definition of the concept. Thus, it is an appropriate starting point for my effort to provide some illustrations of what S & D treatment rules would need to say if they are to fit comfortably in the category of "Mercy" in the Theological Framework.

The corporal works of mercy (flowing from the Gospel, especially Matthew 25:31–46) are to feed the hungry, give drink to the thirsty, cloth [sic] the naked, visit the imprisoned, shelter the homeless, visit the sick, and bury the dead. The spiritual works of mercy, also rooted in the Scriptures, are to counsel the doubtful, instruct the ignorant, admonish sinners, comfort the afflicted, forgive offenses, bear wrongs patiently, [and] pray for the living and the dead.\textsuperscript{53}

The distinction highlights corporal acts, which focus on the body,\textsuperscript{54} or on material needs, and contrasts them with spiritual acts, which operate on the soul and (ultimately) the after-life.\textsuperscript{55} But, just how transferable is this theological distinction to the field of S & D treatment?

I am sure an analogy can be made between Merciful S & D treatment that addresses: (1) material wants of developing countries, and (2) the long-run disposition of developed to developing countries. However, I think that sort of distinction by analogy runs throughout the Theological Framework I am constructing. In terms of the potential virtues of the various categories of the rules, material and dispositional gains may be had from several rules, when they are put into practice.

What worries me more than artificially confining the distinction to just one category of the Framework is unnecessarily blurring the catego-

\textsuperscript{52} See CATHECHISM, supra note 22, ¶ 2447, at 588 (listing the spiritual and corporal works of mercy); RICHARD P. MCBRIEN, CATHOLICISM 942 (Harper Collins, new ed. 1994) (same).


\textsuperscript{54} The seven "corporal" works of mercy are dubbed such because they pertain to the body, or in Latin, \textit{corpus}. TERESE, supra note 53, at 164.

\textsuperscript{55} See CATHECHISM, supra note 22, ¶ 2447, at 588 (stating that "[t]he works of mercy are charitable actions by which we come to the aid of our neighbor in his spiritual and bodily necessities").
ries. I suspect that the distinction is difficult enough to maintain, because the material manifestations of mercy look very much like almsgiving. Indeed, three of the corporal works of mercy are just that—feeding the hungry, giving drink to the thirsty, and clothing the naked. These works have clear parallels in charitable rules designed to help developing countries adjust and perform in the global trading system. Still, I want to be scrupulous in maintaining a distinction between mercy and charity, between forgiveness and almsgiving, and to thereby lay a foundation for viewing rules I classify as “charity” as the highest and noblest type of S & D treatment.

Another way to state this point is that I am using the concept of “mercy” rather narrowly. As I suggested, theologians identify seven corporal and seven spiritual manifestations of the concept. The act of “mercy” on which I focus, and which I apply in the trade law context, is the sixth spiritual work of mercy—to bear wrongs patiently, i.e., to forgive injuries. This narrow use of the concept calls for a different way of thinking about international trade rules that bespeak mercy toward developing countries. Specifically, I would like to consider limitations on mercy.

The very thought causes dissonance, because normally we like to think of mercy as limitless. Yet, as we all know from harsh experience, rarely are its manifestations without bounds. From a theological perspective, but probably even more so from a legal perspective, mercy can be bounded—or not—by time. We may forgive another for all transgressions committed in the past, present, and future. Or we may forgive another for all transgressions, again regardless of their nature, but only for those committed during a specific period. The most common time limit placed on mercy is the past—only past transgressions are forgiven, but no blanket amnesty, as it were, is offered.

Temporal boundaries are not the only limitations that can be placed on mercy. Subject matter is another boundary. We may limit our forgiveness according to the type of transgressions covered. Catholic theology teaches that no sin is unforgivable. Yet, in our everyday lives, we sometimes find it hard to forgive certain trespasses committed against us

57. When we do so, we are thinking (consciously or not) of God’s mercy: “And God is allmerciful. As often as we repent, so often will God forgive. There is a limit to your patience and mine, but no limit to the infinite mercy of God.” TRENSE, supra note 53, at 21 (emphasis added).
(hence the "Our Father" prayer as a supplication for Grace to give us greater strength to be bountiful in our forgiveness). In brief, mercy can be distinguished according to its generosity—it's subject coverage—with greater scope reflecting greater mercy.

In the legal arena, I think there are similar clear delineations that can be made as to S & D treatment rules that are merciful in character. First, Merciful Rules can take the form of either permanent or temporary forgiveness. A developing country can be permanently forgiven through an exemption from adhering to a legal obligation, with the exemption lasting for as long as the country remains a developing one. Alternatively, it can be forgiven temporarily in the sense of being exempt from the obligation for only a prescribed time period. In common trade law parlance, the latter kind of forgiveness means delayed implementation of an obligation, such as an extended period for phasing-in or phasing-out a trade measure.

Any of what I have dubbed the "pillars of GATT" furnish examples.58 Mercy in S & D treatment could take the form of an exemption for a developing WTO Member country from the most-favored nation (MFN) or national treatment obligations of GATT Articles I:159 and III:1–2 and 4,60 respectively. It also could take the form of an exemption from the tariff binding commitments made by that developing country under GATT Article II:1,61 or from the general prohibition concerning quantitative restrictions articulated in GATT Article XI:1.62 In all these instances, the merciful treatment may be "forever," in the sense of lasting for as long as the developing country Member remains in the Third World. Or, the treatment can last for a period of a few years, even a decade, regardless of whether that Member journeys from the Third to the First World.

Second, these examples can also be delineated by generosity of coverage. Perhaps they may cover all imported products. Or perhaps they may encompass only one product line of the several thousand in the Harmonized System (HS) for tariff classifications.63 At an intermediate level, the merciful treatment may cover a particular industry or group of

58. See BHALA, THEORY AND PRACTICE, supra note 1, at 127–818 (discussing the pillars of GATT and exceptions thereto).
59. See generally id. at 249–85 (discussing "MFN treatment" in the context of GATT Article I).
60. Id. at 423–98 (discussing "national treatment" in the context of GATT Article III).
61. Id. at 287–330 (discussing tariff bindings in the context of GATT Article II).
62. Id. at 528–48 (discussing GATT Article XI).
63. See BHALA HANDBOOK, supra note 6, at 56 (explaining the Harmonized System).
related industries. A likely candidate for coverage would be an infant industry in which the developing country Member seeks to gain a comparative advantage—such as autos, steel, or textiles.

I should point out a third possible delineation, which I also drew in the category of Mortification Rules—that between procedure and substance. A Merciful S & D Treatment Rule may be either procedural or substantive in nature. Or, as the line is not always clear, it may have features of both procedure and substance. A higher de minimis threshold for developing than for developed countries, above which conduct is considered illegal, is a possible example of a rule with both procedural and substantive components. As a result of the higher threshold, there is forgiveness for a greater extent of illegal conduct than otherwise would be offered—a substantive dimension to the rule. At the same time, the threshold itself is the procedural regulator between cases that are and are not brought.

In contrast, it ought to be evident that the first and second types of delineations—by time and by merchandise coverage—are not mutually exclusive. The same Merciful Rule can either make use of, or ignore, both boundaries. Indeed, there are four possibilities.

First, the rule can be bounded in both dimensions. This would be the least generous possibility. Second, the rule can be unbounded in both dimensions. This formulation would manifest the most generous possibility. The third and fourth possibilities are on the continuum between “least” and “most” generous. An S & D Mercy can be unbounded in time, but bounded in the scope of imports it covers. Conversely, it can be bounded in time, but unbounded in product coverage. It cannot be said a priori which of these two intermediate positions is more generous. Such determination requires an examination of the nature of the two rules in question, and a comparison of their likely effects.

D. Hypothetical Almsgiving Rules

Illustrating Almsgiving Rules by hypothetical example is an excellent opportunity to explore the distinctions among the categories of the Theological Framework. Defined broadly enough, or as I intimated earlier, lacking any definition at all, Almsgiving could be nothing more than a catch-all category encompassing all direct and indirect forms of giving. I have said that three types of alms are evident: financial capital, human capital, and technology. At the same time, forms such as abstinence from enforcement of a legal right or provision of sympathetic treatment
in the form of a grace period, need to be excluded—these fall more appropriately in the Mortification and Mercy categories, respectively. Yes, either of these two forms could entail a transfer directly from a developed to a developing country, or a transfer through a third party, like the WTO. But, it is a question of trying to be as precise as possible in category design.

I would like to include both direct and indirect transfers of value (be they direct or through a third party) as Almsgiving Rules, but to do so in as cautious a manner as possible so as to avoid creating a category of S & D treatment into which virtually any preference can be slotted. I am therefore focusing on rules that call for transfers of financial and human capital, and of technology, which yield a tangible, quantifiable economic gain to the recipient. Candidly, though, even with this focus I must admit that a bright line among categories in the Theological Framework is not always possible.

For example, certain types of abstinence can be on or near the boundary between Mortification and Almsgiving. Consider an instance in which a developed country drops a tariff or non-tariff barrier when it need not. Such action is self-denial of tariff revenues, but can also lead to expanded export opportunities for developing countries, which (if realized) would mean larger export earnings for companies from those countries. Could, then, the barrier removal also be seen as giving alms? Or, consider a grace period for implementation of a GATT-WTO obligation. To excuse a GATT or WTO violation by a developing country is to show mercy. But suppose that a particular violation allows the developing country to continue to earn profits—for instance, by violating intellectual property rights. Could, then, this forgiveness also be characterized as giving alms?

My point, therefore, is two-fold. First, to fit in the “Almsgiving” category of the Theological Framework, an S & D treatment rule would have to involve a direct or indirect transfer of a thing of value. Second, this focus helps distinguish the categories of the Theological Framework from one another, and makes them more exclusive of one another with respect to the classification of most S & D treatment rules. But it does not make the categories hermetically sealed from one another. There exists the possibility that some S & D treatment rules that are, on balance, most appropriately seen as Mortifications or Mercies, also entail an economic gain to the developing country. After all, the Framework exists for complex, real-world laws, not antiseptic laboratories.
With these points in mind, let me take up examples of "direct" transfers that qualify as Almsgiving. Again, the transfers would take the form of financial capital, human capital, or technology. There is no accident in picking these three forms; they are factors of production. To be sure, the latter two are conventionally recognized as such by development economists (as any text in the field suggests). But investment (be it in physical capital, land, labor, human capital, or any other source of growth) requires money.

So, for example, a developed country could provide an outright grant of funds to a foreign government for training judges in international trade law, or to a foreign industry to help it compete on world markets. In effect, a developed country could subsidize these activities. It could send to the developing country a cadre of technical advisors to help government lawyers learn how to prepare trade litigation cases. Similarly, the developed country could support technology transfer to a developing country, perhaps to a private pharmaceutical company to help it develop a new generation of discount medicines, or to the customs service to help it monitor more quickly and accurately the flow of imports. In all these cases, I would consider the transfer direct, whether or not it passes through a third party like the WTO.64

In addition, an S & D treatment rule would be Almsgiving only if it called for a transfer of something of value with no expectation in return. If a developed country expects anything—market access for exporters, enforcement of patents, trademarks, and copyrights held by certain individuals and companies, enforcement of international arbitration awards in favor of its citizens, or assistance in combating international crime or terrorism—then the transfer is not "alms." The transfer may be called "assistance," and it may even be generous assistance in its actual value. But it is encumbered by the expectation of a thing of value in return. No matter how disproportionate the values, there is consideration involved.

In being so strict, I have just ruled out America's Generalized System of Preferences (GSP),65 and other similar schemes like that sponsored by the EU, from the category of "Almsgiving." These schemes

64. That third party would be merely a pass-through vehicle, but would not materially alter the financial capital, human capital, or technology destined for the developed country. Of course, the third party would likely require support for its administrative expenses, and these overhead costs might come out of the value transferred.

65. See supra note 43.
are examples of Mortification Rules, specifically external Mortifications, because they require the United States (or EU) to deny itself the right to impose a barrier on developing country products. Interestingly, the GSP Mortifications share one characteristic of some S & D Mercies, namely, boundaries on the duration and scope of the surrender of the right to apply a tariff or non-tariff barrier. In fact, the boundaries I used are all real expectations laid out in the United States' GSP statute.66 In contrast, giving alms is the ultimate act of self-giving. Think no further than Calcutta and Mother Teresa's life work there, and the selfless nature of her gifts will surely be evident.

As I outlined earlier when discussing the Almsgiving category, the transfer from developed to developing countries via an S & D treatment rule in the Almsgiving category may be direct or indirect. What about examples of Almsgiving Rules that are less direct than the illustrations above in terms of the transfer of something of value to a developing country? Let me offer an example by building on an obvious direct transfer: an outright grant of technical assistance to help a developing country diversify its economy in order to withstand trade liberalization in a sector on which it has been excessively dependent for export earnings. The same goal—helping the country diversify its export base—could be achieved by an indirect transfer, such as guaranteeing access to developed country markets for developing country goods, which would thereby provide some assurance of export earnings for developing country exporters. The case of Bangladesh illustrates my point.

Bangladesh has sought expanded quota thresholds for its ready-made garment (RMG) exports to the United States, as well as duty-free access for these exports.67 Roughly seventy-five percent of Bangladesh's exports are RMGs (though RMGs account for about twenty-five per-

66. See Raj BHALA & KEVIN KENNEDY, WORLD TRADE LAW 454–66 (1998) (discussing the conditions in the GSP program on qualifying for status as a beneficiary developing country and for gaining product eligibility, and also discussing the thirty-five percent value added and substantial transformation rules of origin, graduation from the program, and competitive need limits); see also BHALA, THEORY AND PRACTICE, supra note 1, at 1447–53 (discussing GSP conditionality, including the enforcement of internationally recognized worker rights).

67. This illustration is based on my visit to two RMG factories in Dhaka on December 8, 2001, and two meetings, in Washington, D.C. on November 14, 2001 and in Dhaka on December 2, 2001, with Mr. Kutubuddin Ahmed, President, Bangladesh Garment Manufacturers and Exporters Association (BGMEA). I am grateful to Mr. Ahmed and the BGMEA for the excellent cooperation and instruction they provided to me. Some of the information in my illustration is drawn from discussions with present and former U.S. government officials familiar with the Bangladesh economy, to whom I am also grateful. The data set forth above are as of year-end 2001, and any statistical or interpretative errors are mine.
cent of Bangladesh’s export earnings, as RMGs are not a high value-added product. Bangladesh notes that it is the only least-developed country member of the WTO not to receive such treatment from the United States for its textile and apparel exports (as textile and apparel products from Sub-Saharan African and Caribbean countries get duty-free treatment under the African Growth and Opportunity Act of 2000 and similar special legislation for Caribbean countries, respectively). Thus, Bangladesh has called for parity for as long as the worldwide quota system for textile and apparel products remains in place under the Multi-Fibre Agreement (MFA). Under the Uruguay Round Agreement on Textiles and Clothing (ATC), the MFA expires on December 31, 2004. So, what Bangladesh requested was alms that would be of value until the expiration of the MFA. The desired alms took not only the form of guaranteed market access in the United States for its RMG exports, but, more to the point, an expansion in the size of that access and a reduction in its cost to zero.

This form of alms would mean a financial gain to Bangladesh’s RMG exporters, for which they would have to give nothing in return. Hence, the unconditional nature of the transfer from the United States to Bangladesh is apparent: more American consumer dollars flowing to Bangladesh’s RMG exporters as a result of increased assured access to the American market on duty-free terms. Embedded in this unconditional transfer is yet another, though less direct, form of alms which Bangladesh sought from the United States. Bangladesh did not want to lower its tariff and non-tariff barriers to RMG imports (e.g., from the United States, but, more ominously, from China and India). That is, Bangladesh wanted to preserve its network of protection from foreign competition for its domestic RMG industry. If it could do so, then the result would be that tariff revenue and quota rents would continue to accrue to Bangladesh’s government and domestic RMG producers. An Almsgiving Rule, therefore, can take the indirect form of permission, or acquiescence, by developed country WTO Members to the collection of tariffs by developing country governments, and of quota rents by devel-

68. BHALA & KENNEDY, supra note 66, at 1217–19.
69. See ATC Agreement, art. 9, reprinted in BHALA HANDBOOK, supra note 6, at 348, 362. Article 9 indicates that “the textiles and clothing sector shall be fully integrated into the GATT 1994” on the “first day of the 121st month that the WTO Agreement is in effect.” Full integration refers to the ending of MFA-based quotas. The WTO Agreement took effect on January 1, 1995, and the first day of 121 months thereafter is January 1, 2005.
opposing country producers and exporters. Such collection is a tangible economic benefit to the recipient, and if properly used, could support efforts at export diversification.

IV. ISLAMIC ANALOGS

A. Why Bother?

What I have constructed, while not value-free, is a tolerant edifice. Because the Theological Framework can be put in Islamic terms, I think it safe to say that it is not uniquely Roman Catholic. Rather, it is catholic, in the sense of "of interest or use to all" or "universal." Every category in the Framework—or, to be more precise, the Catholic concept underlying each category—has an analog in Islam (and I should take care at the outset to specify that I am speaking of the precepts adhered to by Sunni Muslims, the vast majority of all Muslims). The result is (I trust) a Framework built from conceptual elements identifiable by believers in Islam. The analogs are summarized below in Chart 3.

I shall now proceed to draw the parallels between the Theological Framework and Islam, though by no means do I claim to offer a thorough analysis of the relevant concepts from the Muslim faith, much less the grand history of that faith. My point is simply that the categories of the Framework, which ought to be known to the approximately one billion Catholics, plus the roughly one billion Protestants, in the world, would also be familiar to the nearly 1.2 billion Muslims in the world.

70. OXFORD DICTIONARY, supra note 13, at 220. I hasten to add, as a personal note, that by pointing out analogs I do not mean to imply that the religions are the same. I do not believe that, as there are profound differences as well as wonderful similarities between Catholicism and Islam.

71. I should also take care to mention that I am a poor student, hardly proficient, in the Arabic language. Thus, I make frequent requests of Arabic-speaking friends, and draw on any sources they suggest. For the discussion that follows, I have relied on my friends, a glossary of Islamic terms provided by the International Islamic University in Kuala Lumpur, Malaysia, available at http://www.iiu.edu.my, and glossaries contained in various scholarly works cited below.

72. Happily, the reader has at his disposal a rich and accessible literature on Islam that has blossomed in recent years. For discussions of Islamic history, see KAREN ARMSTRONG, ISLAM (2000); JOHN L. ESPOSITO, THE OXFORD HISTORY OF ISLAM (1999); ROBERT PAYNE, THE HISTORY OF ISLAM (1959). For treatments of Islamic precepts, see H.A.R. GIBB, MOHAMMEDANISM (2d ed. 1953); SUZANNE HANEFF, WHAT EVERYONE SHOULD KNOW ABOUT ISLAM AND MUSLIMS (14th ed. 1996); YOUSUF N. LALJEE, KNOW YOUR ISLAM (5th ed. 1999); THOMAS W. LIPPMAN, UNDERSTANDING ISLAM: AN INTRODUCTION TO THE MUSLIM WORLD (rev. ed. 1990); SACHIKO MURATA & WILLIAM C. CHITTICK, THE VISION OF ISLAM (1994); FAZLUR RAHMAN, ISLAM (2d ed. 1979).

73. See infra note 74.
Indeed, I suspect that the concepts underlying the categories are common to all of the children of Abraham—the two billion Christians, one billion Muslims, and fifteen million Jews.74

**Chart 3**

**The Theological Framework—Analogous Islamic Concepts**

<table>
<thead>
<tr>
<th>Theological Framework Category For Classifying S &amp; D Treatment Rules</th>
<th>Catholic Concept on Which the Framework Category is Built</th>
<th>Analogous Concept in Islamic Theory or Practice</th>
<th>Brief Explanation of Islamic Concept</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homiletic Rules</td>
<td>Homily (Instruction and exhortation).</td>
<td><strong>Khuṭba</strong> (Specifically, <em>Khuṭbatul Jum’a</em>).</td>
<td>At <em>Jum’a</em> prayers, an <em>Imam</em> delivers a sermon.</td>
</tr>
<tr>
<td>Mortification Rules</td>
<td>Mortification (Self-denial).</td>
<td><strong>Ramadan fast</strong> (Fourth of the Five Pillars of Islam).</td>
<td>Denial of food and beverages from sunrise to sunset.</td>
</tr>
<tr>
<td>Merciful Rules</td>
<td>Mercy (Forgiveness).</td>
<td><strong>Rahmah</strong> (Mercy, Forgiveness).</td>
<td>Mercy at two levels: (1) Mercy of Allah during Final Judgment; and (2) Mercy during one’s lifetime—merciful treatment of one’s fellow human beings.</td>
</tr>
</tbody>
</table>

Showing the catholic nature of the Catholic concepts does not answer the question, “Yes, but why focus on Islamic parallels?” The most obvious answer would be, “September 11.” After that Dreadful Day, surely all non-Muslims need to understand Islam better—and the converse is also true. The problem with this answer is that long before the

74. See generally Tad Szule, Abraham—Father of Three Faiths, NAT’L GEOGRAPHIC, Dec. 2001, at 90-129 (retracing the trek of Abraham, the patriarch of three major religions, through the Middle East). This article also contains demographic statistics on the three religions. Id. at 96.
11th of September, I thought that was true. To put it negatively, I found a high degree of ignorance of elementary Islamic precepts before the Dreadful Day, and still do. Hence, September 11 is not my motive for drawing analogies to Islam. Of course, I should be ever so happy if in some small way the parallels might increase understanding of, and tolerance for, that great religion.

A second answer to “Why Islam?” is that it would be a long endeavor indeed to draw parallels to every religion, and it would occupy more pages than I have the luxury of consuming. A choice must be made, and one that draws an analogy so as to ensure coverage of about half the world’s population (3.2 billion Christians and Muslims) ought to be good enough to make the point that the categories in the Theological Framework are not just for Catholics. In making the choice, I admit that part of the reason is my long-standing interest in Islam and the Shari’a (which I have the pleasure of teaching in Comparative Law, though I remain very much a student of that discipline).

But, I think the best answer to the question “Why Islamic analogs?” is explained by the great scholar of comparative religions, Huston Smith:

Of all the non-Western religions, Islam stands closest to the West—closest geographically, and also closest ideologically; for religiously it stands in the Abrahamic family of religions, while philosophically it builds on the Greeks. Yet despite this mental and spatial proximity, Islam is the most difficult religion for the West to understand. “No part of the world,” an American columnist has written, “is more hopelessly and systematically and stubbornly misunderstood by us than that complex of religion, culture and geography known as Islam.”

This is ironic, but the irony is easily explained. Proximity is no guarantee of concord—tragically, more homicides occur within families than anywhere else.75

It is a testament to Professor Smith’s foresight that he wrote the above passage in 1958, nearly half a century before September 11, 2001. As I indicated at the outset, in the wake of September 11, if by drawing parallels between the Theological Framework and Islam I can contribute a tad to ecumenical understanding, then I should be happy indeed.

There is one final point I should make before offering analogies between the elements from which the categories of the Theological Framework are constructed, on the one hand, and Islamic doctrine and

practice, on the other hand. Some of the Islamic concepts that are analogous to the categories in the Theological Framework are drawn from (or, indeed, are themselves) one of the Five Pillars of Islam. This rubric needs to be put in the context of God's revelation through the millennia as Muslims see it.

The Five Pillars are the essential obligations—the "dos" and "don'ts"—that regulate the daily, private life of all Muslims. Any traveler to the Islamic world ought to have witnessed its heterogeneity. The Five Pillars are, however, a unity in that rich diversity. The Five Pillars are:

1. The profession of faith (the Shahada, which affirms monotheism in its first part, and the authenticity of Muhammad in its second part, as it states that "[t]here is no god but God. Muhammad is the Messenger of God." 89)
2. Regular prayer (called "salat," 81 which as noted below, is to be undertaken five times a day);
3. Almsgiving, or charity (called "zakat" 82);
4. Fasting during the month of Ramadan (called "sawm" 83); and
5. Pilgrimage (the Hajj to the Holiest sites of Islam in Mecca and Medina).

The very listing of the Pillars—especially the third and fourth—suggests parallels to the Catholic concepts on which I have grounded the Theological Framework.

The Islamic Pillars manifest general principles of right conduct found in the Qur'an. From the Islamic perspective, these principles are the fourth and final stage of God's revelation to humankind, and Islam itself is not a new system but rather a reformation of pious beliefs and practices as they existed at the time of the Prophet Muhammad. 84 The

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76. See id. at 243 (stating that the Five Pillars govern the private lives of Muslims).
79. See Esposito, supra note 77, at 89 (discussing the profession of faith and its substance).
80. Quoted in Ruthven, supra note 78, at 147; see also Smith, supra note 75, at 244 (explaining the first of the Five Pillars).
81. See Ruthven, supra note 78, at 147 (defining "salat").
82. See infra note 144 (discussing the meaning of "zakat").
83. See Ruthven, supra note 78, at 149–50 (describing "sawm").
84. See Esposito, supra note 77, at 14, 19–22 (discussing Muhammad as a reformer and the Qur'an); Smith, supra note 75, at 243 (discussing the Qur'an).
first stage was God's revelation of the oneness of God (monotheism) through Abraham. The second stage was God's revelation of the Ten Commandments through Moses. The third stage was God's revelation of the Golden Rule (to do unto others as we would have others do unto us) through Jesus Christ. 

Accordingly, Muslims accept Abraham, Moses, and Jesus as pre-Islamic prophets (yet reject the divine nature of Christ). But, in Islamic thinking, a final stage of revelation was needed, one in which the question of how we should implement the Golden Rule—how we should love our neighbor—would be explained. (Additionally, this final stage was needed because, in the Islamic view, the earlier prophetic messages became corrupted in practice over time). That stage was the revelation of the Qur'an to the last—or “seal”—of the Prophets, Muhammad. The result was a straight path laid out for Muslims to follow consisting of clear duties, which are succinctly set forth in terms of Five Pillars.

B. The Homily, Homiletic Rules, and the Khutba at Jum'a Prayers

The Catholic homily has a direct analog in Islamic practice, hence the category of Homiletic Rules ought to be comprehensible in either paradigm of faith. Somewhat akin to Sundays in the Catholic liturgical week, Fridays are a special day in the weekly Islamic calendar. Friday services at mosques around the world are called “Jum'a prayers,” as “Jum’a” is the Arabic word for “Friday.” At these services, not only is there a religious official to lead the congregation in prayers, with all the devout facing Mecca, but there is also an official who offers a lecture

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85. SMITH, supra note 75, at 243.
86. See ESPOSITO, supra note 77, at 14 (explaining that “[f]or Muhammad, the majority of Arabs lived in ignorance (jahiliyya) of Allah and His will as revealed to the prophets Adam, Abraham, Moses, and Jesus” and that “he believed that both the Jewish and the Christian communities had distorted God's original revelation to Moses and later to Jesus”).
87. Id.
88. For short biographies in English of the Prophet Muhammad, see MICHAEL COOK, MUHAMMAD (1983); W. MONTGOMERY WATT, MUHAMMAD: PROPHET AND STATESMAN (1961).
89. See SMITH, supra note 75, at 245 (explaining that “[w]hile in Islam no day of the week is as sharply set apart from the others as is the Sabbath for the Jews or Sunday for the Christians [because of the obligation, discussed later, incumbent upon Muslims to pray five times every day], Friday most nearly approximates a weekly holy day”).
91. The direction of Mecca, specifically of the Kaba in the Grand Mosque in Mecca, is called the “qibla.” In every mosque in the world, the qibla is indicated by a niche (often a semi-circular
on a topic concerning the principles and practice of Islam. Thus, every Friday, a lecture on religious matters can be heard at any mosque. That “lecture,” often referred to as a “sermon” in English-language conversation or books, is the Islamic analog of a homily. The Arabic term for “sermon” is “khutba,” and the full term for “the Friday sermon” is “Khutbatul Jum’a.” Just as a non-Catholic is welcome to come to church and listen to a homily, a non-Muslim is welcome to go to a mosque and listen to the lecture.

The lecturer in the mosque is a member of what in Arabic is called the “Imam,” which means “leader,” but specifically “a person who leads prayers.” The Imam both leads prayers and delivers the khutba from a raised pulpit, called a “minbar.” The Imam may well be a member of the ulama, that is, of the body of Islamic religious scholars. In that case, he also is an “alam” (or “alim,” the singular of “ulama”), though his title would still include “Imam.” The Imam is qualified to deliver the “homily” because he is schooled in the Muslim Holy book, the Qur’an.

Quite possibly, the Imam would have received his training at a madrasa—an Islamic religious school—including, possibly, advanced education at a seminary.

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92. See, e.g., HUSSAIN, supra note 78, at 13 (discussing the location in a mosque from which a “sermon” is given).
93. See ESPOSITO, supra note 77, at 220 (defining “khutba” as the “sermon delivered in a mosque at the Friday congregational prayer”); HUSSAIN, supra note 78, at 213 (mentioning “khutba” in the definition of “minbar,” which is discussed below); Glossary, at http://www.iiu.edu.my/deed/glossary/k.html (last visited Jan. 2, 2002) (defining “Khutba” and identifying “Khutbatul Jum’a”).
94. JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 299 (2d impression, re-issued, 1982).
95. HUSSAIN, supra note 78, at 212.
96. Id. at 13.
97. ESPOSITO, supra note 77, at 221.
98. HUSSAIN, supra note 78, at 214. For a discussion of the ulama, see RUTHVEN, supra note 78, at 9–11.
99. I am eschewing the more politically-charged term “mullah,” which actually refers to a local religious leader. ESPOSITO, supra note 77, at 221.
100. The term “madrasa” (or “madrasah”) is sometimes used narrowly to include only Islamic seminaries. Or, it is sometimes used broadly to include those religious colleges plus primary and secondary schools with an Islamic curriculum. Id. at 220. Based on my experience in Pakistan in the spring 2001, I am using it in the latter sense.
The Imam is the person, invariably male, who leads the congregational prayer. An Imam is not a priest, since there are no intermediaries between God and man in Islam. There is no ordination and no sacraments or rites which only a religiously sanctified person can perform. In theory, any respectable man with sufficient religious knowledge can act as Imam, and in cases where for some reason, a particular mosque is left without a formally appointed Imam, a member of the congregation will fulfill the function as and when necessary. However, full-time Imams are usually people who have undertaken religious studies, often at Al-Azhar University in Egypt, or in Saudi Arabia.

In some Muslim countries Imams and other mosque officials are appointed, paid and supervised by the government and may be expected to support the government in its policies. In other countries they are appointed by the local mosque committee which also pays their salary. Imams are normally married and have families the same as any other Muslim.101

Not surprisingly, an Imam may well be capable of reciting in Arabic from memory all or most of the Qur’an.102 (If the Imam had only memorized the Qur’an, then he would be a “hafez.”) That is no small feat. The Qur’an is four-fifths of the length of the New Testament, and divided into 114 chapters, known as surahs.103 Each surah is divided into verses, called “ayas,” which mean “signs,” referring to signs from and of God.104 There are roughly 6000 verses.105 Typically, and certainly in small mosques or mosques in a rural area, the same Imam performs both tasks, leading Jum’a prayers and delivering the “homily.”106

The analogy between the Friday khutba delivered by the Imam and a Sunday homily is quite appropriate when the basic two-part structure of the khutba is considered. Through the presentation, the Muslim faithful are exhorted to learn the will of Allah, and to submit to it.107 The khutba follows a general formulaic pattern whereby, following recitation or reading of a verse from the Qur’an,108 the first part covers a topic of contemporary international, national, local, or individual importance.

101. HUSSAIN, supra note 78, at 14.
102. Professor Smith describes the Qur’an as “perhaps the most recited (as well as read) book in the world,” and “[c]ertainly . . . the world’s most memorized book, and possibly the one that exerts the most influence on those who read it.” SMITH, supra note 75, at 231.
103. Id. at 232. The word is sometimes translated as “suras,” and literally means “rows.” Except for the first surah, the surahs are arranged roughly in order of length, starting with the longest. RUTHVEN, supra note 78, at 24.
104. RUTHVEN, supra note 78, at 28.
105. ESPOSITO, supra note 77, at 19.
106. HUSSAIN, supra note 78, at 14.
107. See ESPOSITO, supra note 77, at 90 (characterizing the khutba as an “exhortation”).
108. See id. (noting that an imam will begin service with the reading of a verse from the Qur’an).
For instance, the topic might be why acts of violence are un-Islamic. This part is delivered in the local language (e.g., Bengali in Bangladesh, Malay in Malaysia, or English in the United States).

The second part of the khatuba, delivered in Arabic, focuses on one or a few verses from the Qur'an. The Imam reads and interprets these verses, and explains how they can be applied to everyday life, much as a Catholic priest would interpret the readings from the Old and New Testaments that precede his homily. Therein lies a resemblance in the formulaic patterns: a reading from the sacred text, and then an exposition thereof tending towards its practical significance. The second portion of the khatuba was set by Abu Bakr, the first Caliph of Mecca, reigning from 632–634 A.D., following the death of the Prophet in 632 A.D.

This part is particularly important, given the reverence Muslims have for the Qur'an, and given that it is “directly doctrinal and indirectly historical” (whereas the Old and New Testaments are the converse); hence the Qur'an is not easy reading. The Qur'an is “the eternal, uncreated, literal word of God sent down from heaven, revealed one final time to the Prophet Muhammad as a guide for humankind.”

There is an “inflexible but not inaccurate” comparison made between Jesus as God incarnate, and the Qur'an as God inlibriate (where liber is the Latin word for “book”), i.e., between Christ as God in human form, and between the Qur'an as God in book form.

The second part of the khatuba, therefore, can deal with grand theological concepts embodied in a particular verse. Or, as I observed in the

109. RUTHERFORD, supra note 78, at 15.
110. Supra note 13.
111. SMITH, supra note 35, at 234.
112. See id. at 233 (quoting Thomas Carlyle's view that for him the Qur'ān was "as toilsome reading as I ever undertook; a wearisome, confused jumble, crude, incondite. Nothing but a sense of duty could carry any European through the Koran," and Edward Gibbon's observation that "[the European will peruse with impatience its endless incoherent rhapsody of fable and precept, and declamation, which seldom excites a sentiment or an idea, which sometimes crawls in the dust, and is sometimes lost in the clouds"). The statements of Carlyle and Gibbon are examples of the negative reporting on the Qur'ān, and for that matter on the Prophet Muhammad and Islam, which have plagued Western scholarship for centuries. These statements neglect the often-observed emotional response to the beautiful verses, rendered in Arabic, which is the language in which Muslims "believe God spoke finally with incomparable force and directness." Id. at 234. Still, it is fair to say that picking up the Qur'ān and reading it for the first time in English requires significant concentration and effort, and thus the second part of the lecture at Jum'a prayers in which verses from the Qur'ān are explained and applied can be of great assistance. For a brief introduction to the principal teachings of the Qur'ān, see ESPOSITO, supra note 77, at 23–32. For a lengthier guide, see FAZLUR RAHMAN, MAJOR THEMES OF THE QUR'AN (1989).

113. ESPOSITO, supra note 77, at 19.
114. SMITH, supra note 35, at 232.
Badshahi Mosque in Lahore, Pakistan in 2001, it can cover what may seem to some non-Muslims a rather narrow and technical topic, like how women ought to pray during their menstrual cycle. Either way, my point is that the analogy between *khutba* and homily, and the extension to the category of Homiletic Rules, is hardly foreign to a Muslim worshipper. Put succinctly, the Islamic “homily” is a key aspect of devout practice, something to which listeners would pay careful attention.

C. Mortification, Mortification Rules, and the Ramadan Fast

The Catholic concept of mortification has a direct analog in Islam, hence the category of Mortification Rules ought to be comprehensible in either paradigm of faith. Indeed, regarding mortification, there can be no doubt about its importance in Islamic practice. Every year, an entire month—the ninth month of the Muslim lunar calendar—\(^{115}\) is dedicated to fasting from the rise to the setting of the sun. That month is *Ramadan*, which is highly significant in Islamic history.

Muslims believe that *Ramadan* is the month in which God, through the Archangel Gabriel, began reciting verses of the *Qur'an* to the Prophet Muhammad (PBUH)—an event that took place in the desert mountains of the Hejaz, in western Saudi Arabia along the Red Sea, in the year 610 A.D.\(^ {116}\) They also believe that it was during *Ramadan* that the Prophet took a “Night Journey to Heaven,” and from God received the instruction that Muslims should pray five times a day.\(^ {117}\) The obligation to pray (1) upon arising, (2) when the sun reaches its zenith (i.e., mid-day), (3) when the sun is in the middle of its decline (i.e., the middle of the afternoon), (4) at sunset, and (5) before going to bed, is the Second of the Five Pillars of Islam.\(^ {118}\)

Prescribed by the *Qur'an*, the *Ramadan* fast is the Fourth Pillar of Islam.\(^ {119}\) During the days of *Ramadan*—which can be very long during summer—nothing is to be ingested. “From the first moment of dawn

\(^{115}\) Hussain, supra note 78, at 12.

\(^{116}\) Smith, supra note 75, at 224–25, 247. Muslims date their calendar from 622 A.D., the year of the *Hijra* in which the Prophet Muhammad and his followers migrated from Mecca to Yathrib (Medina). Thus, for example, 632 A.D. (the year the Prophet died) in the Islamic calendar is 10 A.H. (where “A.H.” stands for “After the *Hijra*”). Id. at 229–30.

\(^{117}\) Id. at 245.

\(^{118}\) Hussain, supra note 78, at 12; Ruthven, supra note 78, at 147; Smith, supra note 75, at 245.

\(^{119}\) Smith, supra note 75, at 247.
to the setting of the sun, neither food nor drink nor smoke passes their lips; after sundown they may partake in moderation."[120] (Even where an exception is made, say for the sick, for travelers on a long journey, or for crises like war,[121] a day that the fast is broken is a day that must be made up for later.) The analogy between mortification and its corresponding category in the Theological Framework, on the one hand, and the Ramadan fast, on the other hand, is all the stronger when the purposes of the fast are understood.

[F]asting makes one think, as every Jew who has observed the fast of Yom Kippur will attest . . . [F]asting teaches self-discipline; one who can endure its demands will have less difficulty controlling the demands of appetites at other times. Fasting underscores the creature's dependence on God. Human beings, it is said, are as frail as rose petals; nevertheless, they assume airs and pretensions. Fasting calls one back to one's frailty and dependence. Finally, fasting sensitizes compassion. Only those who have been hungry can know what hunger means. People who have fasted for twenty-nine days within the year will be apt to listen more carefully when next approached by someone who is hungry.[122]

I hasten to recall a point from The Revival of the Religious Sciences (Ihya ulum al-din), the famous spiritual manual and synthesis of law, theology, and mysticism written by the Sufi scholar known as the "Renewer of Islam," Abu Hamid al-Ghazali (1058–1111):[123] there are multiple benefits that flow from the fast.[124] Imam Al-Ghazali lists five advantages to fasting: (1) the purification of heart and the sharpening of mind; (2) softness of the heart so as to be ready for the delight of an intimate discourse with God; (3) mortification and abasement, and the removal of passions that catalyze rebellion against God; (4) remembrance of God's

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120. Id. at 247. There are detailed rules about the fast, which also covers sexual activity, addressing issues like whether saliva may be swallowed. For an illustration of some of these rules, see the extract from Muhyi al-Din al-Nawawi, a 13th century legal scholar (faqih) of the Shafi’ite School of the Shari’a, excerpted in RUTHVEN, supra note 78, at 148.

121. SMITH, supra note 75, at 247.

122. Id. at 247.

123. RUTHVEN, supra note 78, at 149; see also ESPOSITO, supra note 77, at 103–04 (summarizing the life of Abu Hamid al-Ghazali).

124. See RUTHVEN, supra note 78, at 149 (excerpting from Al-Ghazali’s work); see also ESPOSITO, supra note 77, at 91 ("Ramadan is a time for reflection and spiritual discipline, for expressing gratitude for God’s guidance and atoning for past sins, for awareness of human frailty and dependence on God, as well as for remembering and responding to the needs of the poor and hungry.")
tribulations and those afflicted by them; and (5) the breaking of desire for sin.125

It is empathy with those in need that is particularly relevant in the analogy. The Ramadan fast, like the Islamic emphasis on God's mercy and obligation to give alms, both discussed below, are directed at helping poor people. As Al-Ghazali wrote, the benefit is that one comes never to forget God's trials and torments, or those who are afflicted by them, for the man sated is liable to forget those people who are hungry and to forget hunger itself.126 That aim is another bridge between, on one side, the Islamic concepts and, on the other side, the Catholic concepts from which the categories of the Theological Framework are derived. Helping poor countries is the purported aim of S & D treatment rules in international trade law, and the Framework is a system for organizing and understanding those rules.

D. Mercy, Merciful Rules, and Rahmah

The Catholic concept of mercy has a direct analog in Islamic thought, hence the category of Merciful Rules ought to be comprehensible in either paradigm of faith. To be sure, neither appreciation for God's mercy, nor showing mercy to others, is a Pillar per se of the Islamic faith. Nonetheless, mercy animates palpably throughout that faith. The Arabic term for "mercy" is "rahmah."127

Consider the very name for the faith. The word "Islam" means "surrender," or submission, and in particular, it refers to surrender to the will of God.128 In light of that meaning, it would be an overstate-

125. IMAM AL-GHAZALI, THE REVIVAL OF THE RELIGIOUS SCIENCES (IHYA 'ULUM AL-DIN), bk. 23, excerpted in RUTHVEN, supra note 78, at 149.
126. Id.
127. See Glossary, available at http://www.iu.edu/my/deed/glossary/r1.html (last visited Jan. 2, 2001) (defining "Rahem (Ar)," meaning most merciful, which is one of the ninety-nine attributes of Allah; defining "Rahmat Allah," meaning the mercy of Allah; and defining "Rahaman (Ar)," meaning most gracious and merciful, again one of the ninety-nine attributes of Allah). "Rahmah" is the Arabic root word for the three aforementioned terms. Certainly, "mercy" and "merciful" may be used with respect to an individual (but the Arabic word "Ar" is dropped in those cases).
128. See ESPOSITO, supra note 77, at 220 (defining "Islam"); SMITH, supra note 75, at 222 (describing the meaning of the word "Islam"); 239-40 (observing that "surrender" is interchangeable with "commitment," in the sense of withholding nothing from the Divine, and "that to be a slave of Allah is to be freed from other forms of slavery—ones that are degrading, such as slavery to greed, or to anxiety, or to the desire for personal status... This explains why Abraham is by far the most important figure in the Koran, for he passed the ultimate test of willingness to sacrifice his own son if that was required."); see also RUTHVEN, supra note 78, at 3 (stating that "Islam" in Arabic is a
ment to say that Islam is all about, or about nothing more than, mercy. However, identifying and proclaiming the mercy that God shows to each individual, and showing mercy to one another, is most certainly a central aspect of Muslim practice. In other words, the analogy between the Catholic concept of mercy that underlies the corresponding category in the Theological Framework and the Islamic concept of rahmah is an analogy on two levels: the mercy of God (Allah) toward individuals; and the mercy each individual is called upon to show his fellow human being.

The emphasis on tempering justice with mercy is a tradition beginning with the Prophet Muhammad himself. His administration in Medina of the first Islamic community, following the Hijra of 622 A.D.,\textsuperscript{129} was an ideal blend of justice and mercy. As chief of state and trustee of the life and liberty of his people [and, in particular, in his role as hakam, or arbitrator], he exercised the justice necessary for order, meting out punishment to those who were guilty. When the injury was toward himself, on the other hand, he was gentle and merciful even to his enemies.\textsuperscript{130}

The merciful treatment shown by the Prophet Muhammad reflects the merciful treatment that each individual shall (or ought to) hope to receive on the Day of Final Judgment.\textsuperscript{131}

Indeed, mercy and compassion are the first adjectives modifying God's Arabic name, and are repeated shortly thereafter in the first seven verses of the first Surah\textsuperscript{132} of the Qur'an:

\begin{quote}
In the Name of Allah the Merciful, the Compassionate:
Praise be to Allah, Creator of the worlds,
The Merciful, the Compassionate,
Ruler of the day of Judgment.
Thee do we worship, and Thee do we ask for aid.
Guide us in the straight path,
The path of those on whom Thou hast poured forth Thy grace.
\end{quote}

\textsuperscript{129} See Esposito, supra note 77, at 220 (defining hijra).
\textsuperscript{130} Smith, supra note 75, at 229.
\textsuperscript{131} See id. at 240–41 (discussing the Day of Judgment in comparison with the individuality and freedom of the soul).
\textsuperscript{132} See supra note 103 (defining "surah").
Not the path of those who have incurred Thy wrath and
gone astray.\textsuperscript{133}

The passage is called the "\textit{Fatiha}," which means "Opening," and is recited five times daily during prayer.\textsuperscript{134} This repetition is quite logical given the need for God's mercy at the end of each person's life. "Allah, who is a merciful but all-powerful judge, consigns all either to heaven or to hell as He wills..."\textsuperscript{135}

In quoting the \textit{Fatiha}, I do not mean to tread down the path of discussing the attributes of God, an exercise which in any event most Sunni theologians find a fruitless path (and one for which I am unprepared).\textsuperscript{136} To these theologians, God is so far beyond the comprehension of the human mind that it is both ludicrous and highly disrespectful to try and pin Him down with our imperfect words.\textsuperscript{137} Rather, my point is simply to highlight the concept of mercy in this famous passage.

The above-quoted passage also indicates that central to Islam is the Day of Final Judgment. On that Day, each individual will stand alone before God and be judged according to his actions, and the extent to which he made an effort to submit to God's will.

Muslims consider it to be one of the illusions of modernity that we can, as it were, slip quietly away and not be noticed so long as we live (according to our own opinion) decent and harmless lives and do not draw attention to ourselves. It is the tearing away of all such illusions of security that characterizes the doctrine of the Last Judgment and its anticipation in the Koran. When the sun shall be folded up, and the stars shall fall, and when the mountains shall be set in motion... and the seas shall boil... Then shall every soul know what it has done (81, passim [i.e., \textit{Surah} 81 of the \textit{Qur'an}, as well as other places in the text]). It is against this background that the Koran presents life as a brief but immensely precious opportunity, offering a once-and-for-all choice. Herein lies the urgency that informs the entire book. The chance to return to life for even a single day to make good use of their opportunities is something the losers, facing their Reckoning, would treasure be-

\textsuperscript{133} \textit{Smith, supra} note 75, at 242–43 (originally quoted entirely in emphasis). For a slightly different rendition in English (though still employing mercy and compassion in adjective form), see \textit{Ruthven, supra} note 78, at 25. \textit{See also supra} note 127 (on the definitions of "rahmah" and references to Allah).

\textsuperscript{134} \textit{Ruthven, supra} note 78, at 24.

\textsuperscript{135} \textit{Esposito, supra} note 77, at 32 (referring to \textit{Surah} 5, verse 43 of the \textit{Qur'an}).

\textsuperscript{136} \textit{See Ruthven, supra} note 78, at 62–64 (explaining that the consensus of Sunni scholars opted to focus on the commands of Allah, rather than to speculate about his nature, though theological speculation flourished under \textit{Isma'ili Imams}). For a historical account of Islamic philosophical and theological debate about the nature of God, see \textit{Esposito, supra} note 77, at 70–75.

\textsuperscript{137} \textit{See Smith, supra} note 75, at 236–37 (discussing the Islamic conception of God).
yond anything they desired while they were still alive (14:14 [i.e., Surah 14, verse 14 of the Qur’an]).

Depending on how it fares in its Reckoning, the soul will repair to either the heavens or the hells, which in the Koran are described in vivid, concrete, and sensual imagery.

Underlying the differences of interpretation [of the imagery in the Qur’an describing Heaven and Hell], the belief that unites all Muslims concerning the afterlife is that each soul will be held accountable for its actions on earth with its future thereafter dependent upon how well it has observed God’s commands. We have hung every man’s actions around his neck, and on the last day a wide-open book will be laid before him. (17:13 [i.e., Surah 17, verse 13 of the Qur’an]).

Having those actions hung around our neck is a scary prospect, because at least some of those actions cannot be characterized—even by the best of lawyers—as submission to God’s will.

Facing this Final Judgment, a soul has little choice but to rely on the forgiveness of Allah. Every individual, during his lifetime, is bound to have fallen short in some way. For all but the most saintly of humans, there is bound to be a disconnect between what God expected and what one’s actions were. Consequently, access for the “average” soul to Heaven is hardly certain unless God tempers justice with mercy. God’s forgiveness of not quite submitting in all respects to His will amounts to forgiveness for transgressions committed during one’s lifetime.

Therein lies the link between the Catholic concept of mercy underlying the Merciful Rules category of the Theological Framework, and the Islamic concept of rahmah. Merciful S & D Treatment Rules call for forgiveness for past, as well as potential future, transgressions. Forgiveness for the disconnect between expected and actual behavior is part of the Final Judgment (or, one hopes so). I agree, the analogy may not be thorough in one sense. In Islamic theology, at the Day of Final Judgment, God may forgive past transgressions, whereas Merciful Rules in the Theological Framework concern both past and potential future transgressions. At the risk of commencing a deep discussion on the nature of God (for which I am ill-prepared), there is a rebuttal to this argument. As God is omniscient, He knows in advance of an individual committing a transgression that He may forgive that transgression. (For myself, I would accept this rebuttal and leave matters at that, for to ven-

138. Id. at 241–42.
ture any further would be to wander quite afar from my project of analogical reasoning.)

In linking the category of Merciful Rules in the Theological Framework with the Islamic concept of rahmah, there is another rebuttal worth considering, albeit to a different charge. Perceptions fueled by coverage in some western media of some events in the Muslim world suggest that capitalism and Islam are fundamentally incongruous with one another. Were those perceptions accurate, then an analogy between a category of S & D treatment rules and Islam would be inapposite, because those rules are part of a GATT-WTO regime designed to support global trade.

In truth, there is no incongruity, especially if the energies of capitalists do not overrun their spirit of compassion for the less fortunate participants, or the down-and-out, in a market economy.

The model that animates Muslim economics is the body's circulatory system. Health requires that blood flow freely and vigorously; sluggishness can bring on illness, blood clots occasion death. It is not different with the body politic, in which wealth takes the place of blood as the life-giving substance. As long as this analogy is honored and laws are in place to insure that wealth is in vigorous circulation, Islam does not object to the profit motive, economic competition, or entrepreneurial ventures—the more imaginative the latter, the better. So freely are these allowed that some have gone so far as to characterize the Koran as "a businessman's book." It does not discourage people from working harder than their neighbors, nor object to such people being rewarded with larger returns. It simply insists that acquisitiveness and competition be balanced by the fair play that "keeps arteries open," [i.e., that maintains the salubrious circulation of wealth], and by compassion that is strong enough to pump life-giving blood—material resource—into the circulatory system's smallest capillaries. These "capillaries" are fed by the Poor Due, which . . . stipulates that annually a portion of one's holdings be distributed to the poor.139

Plainly, compassion, hard work, and entrepreneurship are seen in Islamic social teaching as complimentary means of ensuring an acceptable flow of wealth throughout an economy. That teaching, in turn, underscores the propriety of the analogy I have urged.140

139. SMITH, supra note 75, at 250 (emphasis added).

140. Lest there be any objection raised on the basis of the proscription in the Shari‘a against riba (excess, usually translated in terms of interest), i.e., that capitalism is un-Islamic because of the important role of interest in a market economy, it must be remembered that the Shari‘a contains a number of legal devices, some of which are legal fictions, known as "hiyal." Hiyal are used to get around the proscription, and thereby achieve a desired aim in a legal way. See N.J. COULSON, A HISTORY OF ISLAMIC LAW 11–12, 38, 138–41, 239 (1964) (describing and defining "riba" and dis-
E. Almsgiving, Almsgiving Rules, and Zakat

The Catholic concept of almsgiving has a direct analog in Islamic belief and life, hence the category of Almsgiving Rules ought to be comprehensible in either paradigm of faith. Indeed, when we come to this final category of the Theological Framework, we come also to the Third of the Five Pillars of Islam. Almsgiving, in the sense of donating money or property to charitable causes, specifically to those in need, is an obligation set forth in the Qur'an. "The alms are only for the poor and needy, and those who are employed to administer the funds, for those whose hearts have (recently) been reconciled (to Islam), for those in bondage and in debt, for the cause of Allah, and the wayfarers." 141 In Arabic, alms are referred to as "zakat" (which is also sometimes transliterated as "zakah," and understood as a "religious tax"). 142

Yet, does the obligatory nature of zakat pose a problem in drawing an analogy between zakat and Almsgiving Rules in the Theological Framework? That is, might it be said that Almsgiving Rules call for giving assistance, whereas zakat is a form of taxation—hence, any analogy is inapposite? Might the better analogy be with sadaqa, which is a voluntary act of giving alms for the cause of Allah on the part of Muslims who would like to contribute more than their obligatory zakat payment? 143

Quite the contrary, I should think. Insofar as both Almsgiving Rules and zakat have a compulsory dimension to them, the underlying theological concepts concerning the giving of alms in Catholicism and Islam would seem to be all the closer. Rules in the Almsgiving category do not leave contributions to developing country WTO Members to the discretion of the developed country Members. If a rule does so, then its proper place is the Homiletic category. Instead, the "call" of a true Almsgiving Rule is a mandate to help out, and it is the help that has a

141. Qur'an 9:60, quoted in Hussain, supra note 78, at 169.
142. Hussain, supra note 78, at 215.
143. The term is sometimes transliterated as "sadaqah." See Glossary, available at http://www.iu.edu/m/deed/glossary/s.html (defining "sadaqa" as any item given for free for the pleasure of Allah). The item given may be as simple as a smile to a fellow human being.
charitable benefit. Similarly, for zakat, religious obligation and charity—
in a compulsory sense—are intertwined. 144

Those who have much should help lift the burden of those who are less for-
tunate... The Koran introduced... [this] basic principle in the seventh cen-
tury by prescribing a graduated tax on the haves to relieve the circumstances
of the have-nots.

Details aside, the figure the Koran set for this tax was 2 ½ percent.
Alongside the title of Judaism and Christianity (which, being directed more to
the maintenance of religious institutions than to the direct relief of human
need, is not strictly comparable), this looks modest until we discover that it re-
fers not just to income but to holdings. Poorer people owe nothing, but
those in the middle and upper income brackets should annually distribute
among the poor one-fortieth of the value of all they possess. 145

In contrast, sadaqa can be made at any time as a sign of gratitude to Al-
lah. Typical instances of the optional payment include weddings, anni-
versaries, and personal milestones (be they happy or sad)—contexts not
mandating righteous behavior toward the needy.

In sum, my point is that there is hardly anything unfamiliar about an
Almsgiving Rule, in an obligatory sense, to a Muslim practitioner.
Almsgiving is at least an annual reality. The 2.5 percent zakat assess-
ment is made on individuals and business associations, specifically, on
net worth (total assets held for the preceding year less liabilities), and
paid annually (typically before the end of Ramadan) to the public treas-
ury (the Bait ul-Mal), from whence it is distributed to the needy. 146

144. See ESPOSITO, supra note 77, at 91 (stating that zakat “is not regarded as charity since it is
not really voluntary but instead is owed, by those who have received their wealth as a trust from
God’s bounty, to the poor”); HUSSAIN, supra note 78, at 169 (discussing both dimensions of zakat);
RUTHERFORD, supra note 78, at 147 (equating “zakat” with “alms-giving” and “compulsory charity”).
I am leaving aside the question of whether local law, as well as religious obligation, compels payment
of zakat. The brief answer is that it depends on the country, namely, whether it is a Muslim country
or not, and if so, the role of the Shari’a in the country’s legal system. Thus, for example, the Malay-
sian government compels zakat (but grants Muslim taxpayers an offset against income tax liabilities),
and the governments of Pakistan, Libya, and Sudan assert the right to collect a zakat tax,
whereas the Australian government obviously stays out of the matter. ESPOSITO, supra note 77, at
91; HUSSAIN, supra note 78, at 170.
145. SMITH, supra note 75, at 246. The “details” to which Professor Smith appears to refer
concern issues like whether proportional taxation and indexing are permitted in calculating zakat.
These issues are actively debated among Islamic legal scholars. HUSSAIN, supra note 78, at 170.
146. HUSSAIN, supra note 78, at 169–70. To be more precise, the assets included in the zakat
calculation are items like bank deposits, precious metals, merchandise used in commerce, crops, and
livestock, but not personal possessions like houses, cars, clothes, and jewelry. RUTHERFORD, supra note
78, at 147–48. The fact that the percentage is taken from net worth, not income, is noteworthy.
ESPOSITO, supra note 77, at 91.
assessment, as indicated, is for the benefit of the needy. Hence, there is a threshold for capital assets—called the *nisab*—below which no almsgiving contribution assessment is imposed.147

Indeed, one of the manifestations of giving alms in the Islamic world is through a “*waqf*” (sometimes written in English as “*wakf*” or “*wakaf*,” and loosely translated as a “trust,”148 though “pious foundation” might be a more accurate rendition).149 A *waqf* is “[a] settlement of property under which ownership of the property is ‘immobilised’ and the usufruct thereof is devoted to a purpose which is deemed charitable by the law.”150 As this definition suggests, the *Shari’a* encourages the creation of a *waqf* for charitable purposes, and money and property may be placed in a *waqf* to benefit the poor.151 There exists a large body of rules concerning their establishment and maintenance, and operation.152

V. ECLECTICISM RESTATE, AND THE POOR IN DHAKA REMEMBERED

I believe the claim that the GATT-WTO laws on underdeveloped countries like Bangladesh are “unjust” reflects sloppy thinking about those laws. I do not find the claim to be premised on any systematic understanding of the S & D treatment rules that exist in the GATT-WTO legal regime. I seek to provide coherence on the issue—whether the S & D treatment rules are just—by constructing a Theological Framework for use in appraising preferences for Third World country Members of the WTO. The Framework is designed to categorize all

147. RUTHVEN, supra note 78, at 147–48. There is a threshold for major asset categories. For livestock, the *nisab* is five camels, thirty cows (both oxen and buffaloes), or forty sheep or goats. Id. at 148.

148. HUSSAIN, supra note 78, at 215.

149. SCHACHT, supra note 94, at 303.

150. COULSON, supra note 140, at 241.

151. I do not mean to suggest that the origins of *waqf* lie entirely in a charitable impulse. It has been suggested that “the contributions to the holy war which Muhammad had incessantly demanded from his followers in Medina,” the example of “the pious foundations . . . of the Eastern Churches,” and “the need of the new Islamic society to counteract some of the effects of its law of inheritance” are possible origins. SCHACHT, supra note 94, at 19. See also COULSON, supra note 140, at 28, 33, 87, 132, 142 (discussing the origin of, and rules applicable to, *waqf*).

152. Professor Schacht observes that *waqf* (along with other areas of the *Shari’a* like marriage, divorce, family relationships, and inheritance) “have always been, in the conscience of the Muslims, more closely connected with religion than other legal matters, and therefore generally ruled by Islamic law,” as distinct from, for example, a civil code or modernist legislation, and that it has “always formed part of the central domain of the *shar ‘a*.” SCHACHT, supra note 94, at 76, 101. For a full discussion of the rules concerning *waqf*, see ASAF A.A. FYZEE, OUTLINES OF MUHAMMEDAN LAW ch. IX (4th ed. 1974); HUSSAIN, supra note 78, at 103–17.
S & D treatment rules, both potential (i.e., theoretical) and actual (i.e., those found in the GATT, Uruguay Round agreements, and post-Uruguay Round agreements), with a view to assessing them for their "just-ness."

I build this Framework in the spirit of eclecticism as regards globalization. The ineluctable fact is that the likes of Bangladesh and other Third World WTO Member countries face its benefits and challenges. I see little point in a construction project that polarizes the debate about globalization any further than it already is. Rather, I see value in a project that helps slot S & D laws by type. That project just might bring about a better appreciation of precisely what kinds of rules are in controversy—perhaps most especially among those who make the "anti-Third World" claim. Only with that project complete—a Framework for analysis—does it seem logical to proceed to the next task, namely, assessing the strengths and deficiencies of the laws.

My eclecticism has been methodological as well as substantive. The elements of the Theological Framework are concepts from Catholic theology. The result is a four-category system for any kind of preference for a developing or least-developed country: Homiletic Rules; Mortification Rules; Merciful Rules; and Almsgiving Rules. The Catholic elements have clear analogs in Islamic teaching and practice, hence the rule categories would be familiar to Muslims. If one were devising a system of S & D trade treatment de novo, and were asked to map out what the potential generic types of preferences could be, then perhaps one might arrive at the types suggested by these Theological categories.

Of course, one might not arrive at these types, or one might not do so using these rubrics. No matter, for I am at least as interested in rooting out muddle-headedness in claims about the GATT-WTO system as I am in the precise terms used to organize rules in that system. The poor of Dhaka need help from trade law, not poor analyses of trade law. I suggest the Theological Framework as a—a, not the only—remedy for sloppy condemnation of developing country preferences contained in GATT-WTO law. Its elements of Homily, Mortification, Mercy, and Almsgiving are designed to capture the range and depth of S & D treatment in a manner that is not only accurate and thorough, but also suggests normative insights about that treatment. I shall say a good deal more about those insights in my forthcoming book, Trade, Growth, and Injustice.

For now, let me conclude with a personal insight from overseas journeys. I have found that homily (khutba), mortification (Ramadan
fasting), mercy (rahmah), and almsgiving (zakat) are ideas that help over three billion people around the globe organize their world. Overtly, resonating just beneath the surface, or animating deep inside, these ideas help to order thinking about behavioral rules—law, in a loose sense—in many areas of life other than trade law. Rules on personal growth, child development, inter-personal relationships, spiritual belief and practice, and even international relations are sometimes conceived of systematically by reference to these religious concepts.

Why consider trade rules for the Third World through these categories? Why not, if the consequence is a coherent way to understand what those rules are, and how they ought to be improved for the benefit of the poor of Dhaka?