

Twenty-Fifth Anniversary Symposium

25 Years, Where Are We Now? Global Trade & Sovereign Debt

A Conversation Between Walter Mondale and Oren Gross

The Honorable Walter Mondale*

Oren Gross**

OREN GROSS

Good afternoon, I think we are ready to start. We have had a phenomenal conference and this is truly the highlight of the day. My name is Oren Gross. I am the Irving Younger Professor of Law here at the Law School. However, I have a feeling that you are not here to listen to me. It is usual in events like this that you hear statements such as ‘the next speaker’ or ‘the next person’ needs no introduction. These are normally followed by a very lengthy introduction in an inverse proportion to the no-introduction element. Well, there *is* no need for an introduction of Walter Mondale in Minnesota and certainly not in this Law School—you have all passed through the lobby many times and have heard the Dean reference the picture that you see there as

* Forty-Second Vice President of the United States (1977–81). United States Ambassador to Japan (1993–96); United States Senator, Minnesota (1964–76); Attorney General of Minnesota (1960–64). Walter Mondale is a 1956 graduate of the University of Minnesota Law School, which now bears his name. Vice President Mondale has served as an advisor to the *Minnesota Journal of International Law* since its founding in 1991, and authored the very first article that the *Journal* published, entitled “Meeting the Challenges of the New World Order.” Mondale served as President Jimmy Carter’s primary advocate for foreign policy issues, focusing on the humanitarian crisis caused by refugees fleeing Vietnam, brokering peace between Egypt and Israel, and traveling to China to further economic and trade relations. Ambassador Mondale later strengthened the U.S.-Japanese relationship in the 1990s and led efforts to open Japanese markets to American goods and services.

** Irving Younger Professor of Law, University of Minnesota Law School. Director, Institute for International Legal & Security Studies.

the Mondale-Lisa, with the eyes following you wherever you go. Still, I will make a brief introduction just to follow tradition.

Walter Mondale has had a long and extremely distinguished career of extraordinary public service: as Minnesota's youngest Attorney General, and if my research is correct, you became the Attorney General four years after graduating from law school? (*Mondale nods*) So students—four years after graduating from law school—this is the power of education here at the University of Minnesota! He also served as a U.S. Senator, as Vice President of the United States, and as Ambassador to Japan. There are many more distinguished career milestones, and we can spend forty-five minutes just talking about them. I think these will suffice for now.

Mr. Mondale, it is always a pleasure to host you here in Mondale Hall and I wish to thank you for everything you have done and continue to do for this Law School. What I think we will do in the time that we have is split our time: partially talking about issues that we talked about in this conference, international trade, and partially, because this is hosted by the *Minnesota Journal of International Law*, talk about some more general issues of law and global affairs as we see them now.

International trade policy has become, almost overnight, a major issue in the current presidential campaign. You have been involved in trade policy for many years, as a Senator, as Vice President, and as an Ambassador to Japan. Just to give a quick example: in your years as Ambassador to Japan, we saw the conclusion of the Uruguay Round, the establishment of the World Trade Organization (WTO), the entry into force of the North American Free Trade Agreement (NAFTA), and prolonged, somewhat successful negotiations with the Japanese on opening the market to telecommunications, insurance, and medical equipment. If you can share with us a bit your experience and your thoughts on what you saw then and what you see now.

WALTER MONDALE

Well, thank you very much, Professor Gross. I am very glad to be here, and I thank you for coming and I want to especially thank the students at our Law School for arranging today's conference—I think it has been an excellent conference—and for being the spirit that has driven this successful set of discussions, as well as so many other things here at the Law School. I love this Law School, it is a great Law School. I am always glad to be

here and I am glad to be a part of this discussion today.

For some reason, in my years in public life, one way or another, I was engaged, it seemed to me, in trade disputes and issues. First, in the United States Senate, where we were often acting on trade questions—I would say I was probably considered a free-trader—and when Ted Kennedy and the rest of us tried to, for example, open up trade contacts and other opportunities for normalization with China, which at that time was a kind of an isolated, suspicious, remote nation. I am glad that that has changed. Then, when I ran for, and was, Vice President, we had several trade issues that would come before us during that time. When I went to Japan, as you mentioned, we had one difficult challenge after another.

I asked Jim Southwick to show up today. Jim Southwick was the head of the Japan Desk at the Office of the U.S. Trade Representative, and he handled medical technology and insurance. Were you involved in autos? (*Southwick: "No, I wasn't."*) I asked him to come along so we can loop him in the discussion because he is a University of Minnesota Law School graduate and he was involved in all these things, and there is some important history there that we should know about.

I listened to today's discussion and I agreed with almost everything I heard. I would say my experience in those later years made me more skeptical about trade agreements, about how trade agreements were drafted, and about how they were enforced or whether they were enforceable. We had an agreement with Japan on practically all of these issues that had to be negotiated, but the idea was that we were going to end up with a more open automobile trade environment. We were going to make real progress on these other areas I mentioned. I think we did make some progress, but it was slow and frustrating, and sometimes you just want to scream at them, but of course you could not do that. Jim Southwick went through all of these things, and he was on the direct negotiating team.

Having said that, I think the process was important. I believe it was valuable. I think it strengthened U.S.-Japan relationships. I think our relationship with Japan is pretty good right now, contrary to what one candidate for President said the other night. That was the most wacko one-second of his campaign. He wanted to give them nuclear weapons. He wanted to get rid of our alliance. For anybody who knows what is going on over there and what we are trying to do—that was a miserable twenty seconds in our national political history. But

other than that, the relationship is okay.

Now we have the Trans-Pacific Partnership (TPP) and I do not know if it is going to be adopted. We have an absolute deadlock and paralysis in Congress. Whether they will lighten up and allow TPP to pass, I do not know. There are some things about the TPP that bother me. I do not understand why there is this strategy that allows so much of what is going on to be conducted in secret, or essentially in secret. You can debate about whether or not it is really secret, but what they do in these deals is they allow a Senator to go by himself, without his lawyer, to a private room to read parts of the agreement. In the real world of public life, that is a secret. Because people are not going to go do that, it is hard to do, and it is difficult to fully understand these issues.

We have this provision in the TPP for, I do not know if I have got the exact words here, but it is "Investor-State Dispute Settlements." Do you all know what that is? Shameful. It has been in a lot of other trade agreements. It allows nation-states to take their disputes, or I think actual private companies, to a U.N. court, or a special court set up by this institution that can govern over the rulings of your own national court system. You could take a big dispute out of the United States, try it before a court of uncertain integrity and independence, and then that would govern the law of the United States on that matter. I certainly find that a highly doubtful innovation. I think if it passes that way, we are going to regret having it there. Let me stop there.

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You said "if it passes that way," but I want to push you on this and see what, in your opinion, can be done at this point. We have an agreement that was signed in February of this year—the United States and eleven other countries—some of which have already started processes of ratification. The United States will go to an up-down vote in Congress. Several of those countries already said that if there are any amendments attempted by the United States, they will not be acceptable to them. Do you see any way forward on amending those concerns that you expressed?

WALTER MONDALE

As you know, in the history of trade agreements, there has always been the possibility of reservations, or special

understandings, in which a nation-state could try to amend an agreement after the main agreement had been reached. If that is what you are talking about, I would say that is a real possibility here; whether the other country would accept that, I do not know. I would entertain that as preliminary rhetoric—wait to see what happens.

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Let us talk a bit about the politics of all of this. We currently have five candidates in the presidential campaign still standing, four of whom, at least at the moment, express their antipathy to the TPP.

Just to give quick quotes, Bernie Sanders calls the TPP “part of a global race to the bottom to boost the profits of large corporations and Wall Street by outsourcing jobs and undercutting worker rights.” Ted Cruz announced that, “enough [is] enough” and that the TPP was a catalyst for “sweeping changes in our laws that trade agreements typically do not include” and he specifically referenced immigration reform. Donald Trump, in his usual understated manner, says the TPP is the “biggest betrayal” of the American people, and denounces it as a “terrible deal” and “an insanity that should not be allowed to happen.”

Hillary Clinton supported the agreement as Secretary of State, but now says the agreement does not meet her “high bar” and she is “not in favor” of the TPP “as of today,” so that may still change. Currently, John Kasich seems to be the only one who actually supports the TPP. In addition, Speaker Paul Ryan declared last month that currently there were not enough votes to pass the agreement because, as he put it, there were still “legitimate concerns” about the agreement. How do you see this going forward? Is this something that will be voted on in the lame-duck session after the 2016 elections? Where is this going in terms of domestic politics?

WALTER MONDALE

One thing I think you have to read into is that I have never seen a national political campaign where trade, trade agreements, and the rest, were trashed in the way they have been in this campaign, and where the body of politics seems to have moved sympathetically with that criticism. Some of these early elections, in the so-called “Rust Belt” states, not all of them, have demonstrated that the public seems to be buying some of this severe criticism. I have expressed a few of my

concerns. Usually, these things are worked out in the end. Maybe there are some amendments cranked into the agreements, other ways of assuaging differences, side agreements, and the rest, and the measures pass and the President signs it into law.

It is also true that very rarely when the President commits the nation's prestige, as he has for TPP—he says our country is going to do this—and we tell nations around the world, “therefore, together we should negotiate this,” many Senators and Congressmen consider it very dangerous to undo the whole deal, because it undermines American respect and stature. This could be the year. It takes my breath away because I have never seen a time like this, when the public seems to be buying this kind of talk, and as a nation we seem to be paralyzed in our ability to reach agreements on tough matters like this.

If I had to bet, I would bet maybe not. It looks like the odds are piling up against this agreement, but I notice Ryan did not say he was against it—he said he did not think it would pass. Well, you might get him to help out. The President could also become much more involved in this effort, as could Biden. Maybe there are other ways: if Kasich were nominated, or if it looked like he was on a roll, maybe politicians would look at it differently. I do not know, but right now, I would not put a lot of money on it.

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I want to shift from trade to some general international law and global affairs issues. We thought it might be interesting to talk about some of those other issues that are very much currently in the news. One such issue is Cuba. The President has been calling on Congress to lift the U.S. trade embargo on Cuba. On the other hand, we have congressional opponents who say it is too early, that restoring ties and lifting the embargo unduly rewards the Castro regime without requiring the Cuban government tangibly improve the human rights situation on the island. How do you see this?

WALTER MONDALE

Unlike the earlier discussion, I am kind of optimistic about the trend in U.S.-Cuban relations. I thought the President's visit down there was spectacular. I think the Minnesota Senator [Klobuchar] and Congressman [Emmer] who went down there added a special Minnesota dimension to our commitment to

more openness there. I thought in a strange way, “ol’ Fidel Castro. Mean old soul. He tries to knock everything down” His brother has not done that.

I believe there is movement here. I think it may be hard to get Congress to lift that ban right now, but even in Florida, I am told young Cubans are starting to say, “well, this is a good thing.” There is no question in my mind that as we open up, as their young people and our people get together, as we limber up a little bit, that we are going to have normal relations with Cuba. That never did make any sense. We were never a threat to them and they were never a threat to us. We got into old Cold War disputes, and there is some baggage left over from that, but America has moved on. I think most people say that was stupid and we should drop it. While Cuba will probably not be perfect from our Western standards, the more we open up, the quicker they will find that things are just taken away from them—the hardliners. I am very optimistic about that.

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So, from optimism maybe to pessimism, and the \$64,000 question—Syria. We see now the balance tipping back in favor of the forces of Bashar al-Assad, as they have retaken the city of Palmyra. For many years, the thought was maybe there is the possibility of an agreement without Bashar al-Assad. How do you see the road forward with respect to Syria? And what role should the United States play?

WALTER MONDALE

Kerry has tried to get some negotiations going, some resolution of the dispute, or some way of trying to diminish, in a respectful way, the pressure of refugees that are flowing out of Syria and into Europe. This is a tragedy for the world. Maybe a little progress has been made. I personally think Assad has to go. I do not see how he can put this together. But I just do not know. I am glad we are trying.

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You mentioned refugees. I want to quote a speech on the problem of refugees: “Let us honor the moral principles we inherit. Let us do something meaningful, something profound, to stem this misery. We face a world problem. Let us fashion a world solution. History will not forgive us if we fail. History will not forget us if we succeed.”

I think you probably remember those words. (*Mondale: "That was a great speaker."*) Great speaker. That was a July 1979 speech you gave to the United Nations Conference on Indo-Chinese Refugees in Geneva, Switzerland. Here we are so many years later, and we see basically a re-emergence of this problem.

WALTER MONDALE

Thank you for bringing that up because I think that is an example of how, if we handle this well, we all benefit. You are talking about the boat people. We are talking about the crisis at that time, where there were hundreds of thousands of refugees pushed out to sea, in unsafe boats, and in camps where hardly a human could live. The United States, instead of just sitting back and watching the problem, led the fight to create an international agreement on finding a place for these fellow human beings to live and be citizens. The United States stood up. We offered to take, I may be off on the numbers though, something like 250,000 refugees. Minnesota was at the center of this, and those individuals have been very successful, and their communities are strong. I would guess about 30% of students in the public school system in St. Paul are Hmong. This has worked and we should feel good about it. Lot of work yet to do, but now we have come up against this next enormous refugee problem and we should do everything we can to be helpful.

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I want to finish by looking inward again. We have heard quite a lot recently about President Obama's use, some called it abuse, of unilateral executive authority. Some of the examples we have heard are executive changes to the Affordable Care Act, seemingly broad use of the war powers, executive orders on immigration and the environment, and even talks about the possibility of an executive order closing the Guantanamo facility in the final months of President Obama's term.

In fact, the President himself pledged to pursue "audacious" executive action during his final year in office, even in the face of, particularly in the face of, congressional obstructionism. There are those who now grow nervous about the possibility of a President Trump using the same type of powers to conduct business, maybe I should say negotiations, from the Oval Office. How do you view this use of executive power?

WALTER MONDALE

I think what we are seeing is a paralyzed Congress with a President trying to make progress on key issues to the extent that his powers allow. The President has not, in my opinion, taken the position of asserting powers he does not possess. These will all be worked out in the courts, where others feel he has exceeded his authority. But I consider he has done a pretty good job. For example, on the environment and global warming issues, where a few years ago, laws were passed that granted the President wide powers, to help bring that awful issue under control. He has used those powers, but I think that is not an abuse of powers.

If, in these regulating and rulemaking powers, the Congress has given him that right, then he is perfectly fine in doing so. I do believe the paralysis has probably pressed the President a little bit further than he would like to go, and if there were a Congress that would act on these things, clearly it would be better to move with the help of Congress. I am hoping the public in this next election will vote to unfreeze this situation so the Congress can go back to work and get its job done. Whether it will or not, I do not know. I do not think that Obama is the culprit here.

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Thank you. Mr. Mondale very graciously agreed to take some questions and if it is okay with you, I would like to give priority to our students, so if there are questions

WALTER MONDALE

While we are waiting, let me ask Jim Southwick to talk briefly about the issues in Japan and what he went through on those negotiations.

JIM SOUTHWICK*

Well, thank you. I had the opportunity of working in the U.S. Trade Representative's Office while Mr. Mondale was the Ambassador to Japan. The first time I went as the head of the Japan Office and walked into the Embassy, I saw a copy of the *Star Tribune* on his coffee table and said I was from Minnesota. He called all of his staff back in and put his arm around me. He

* Deputy General Counsel & Vice President of Government Affairs, Medtronic, Inc.; Former Deputy Assistant United States Trade Representative for Japan, Executive Office of the President.

said, "I want everybody to know this guy is from Minnesota and you have to treat him right." It has been a pleasure to work with him ever since.

I agree completely with your characterization of the trade negotiations we have had with Japan. This was the 1990s and 'Japan, Inc.' was seen as the same kind of threat, maybe, that a decade later people saw China representing—i.e., taking over the lead position in a lot of industries and a concern about us losing competitiveness. There was a sense, at least from our perspective, that it was unbalanced, and that there were a lot of restrictions, collusions, and things in the market that were difficult to go after.

We were fighting really hard to try to open those sector-by-sector kind of negotiations. Your comment is right, that we managed tension in the relationships. We made some progress, but the Japanese were very good at what we called the Russian strategy, of falling back and waiting for winter. They were not of a mind that they wanted to open their market; instead, they were of a mind that they were managing us and giving just enough so we would keep the situation calm, but not enough for fundamental change. Sometimes we were able to corner them before they fell back into the woods and waited for winter. Sometimes they wore us down. That said, I agree with your characterization.

QUESTION 1

Vice President Mondale, I was wondering what your thoughts are on the threat of a break-up of the European Union with the "Brexit" and other pressures? What, if anything, should the United States do to help?

WALTER MONDALE

Good question. I am very worried about it. I think the pressure of refugees is swamping Europe. Several issues come to mind: the weakness of the EU in trying to deal in any decisive way with this problem; the Schengen Agreement, where the whole idea of the EU is to try to encourage free passage, and to get rid of all those national restrictions; and the horrible extremes of terrorists in Europe and the way their national law enforcement and intelligence agencies seem to be unable to proactively deal with it.

In Brussels, you see real anger and desperation about what they are going to do. The feeling that maybe Putin is encouraging

the flow of refugees in order to put strains on the European Union. The strong person in Europe has been Angela Merkel, but she seems to be losing altitude under the pressure of the refugees. So real problems.

The United States, I believe should be more engaged than it is, to help provide European leaders with a friend that they need now. Just what we should do, I do not know. If the European Common Market or if Europe would be destroyed, that would be a terrible blow to the civilized world. We should try to avoid that.

QUESTION 2

Mr. Mondale, it is my great honor to be here, and I thank you so much for coming. I am from Iran, and I am very pleased to be here. I want to know your ideas about President Obama's statement that Saudi Arabia should understand the new situation in the Middle East and learn to cooperate with Iran and share interests in the Middle East. It seems to me that we have not seen any signs of real cooperation. The situation is going to get worse, and there are no signs of improvement. I am curious as to your thoughts about the new government in the United States, the next president, and the situation in the Middle East. You are optimistic, as you said, about the cooperation between Saudi Arabia and Iran in the Middle East—what do you think?

WALTER MONDALE

I am basically supporting the Iran initiative. I think it is a very bold and creative way of trying to get some downward pressure against nuclear proliferation and, ladies and gentleman, the most dangerous thing in the world are that those god-awful weapons will ever be used. Millions of peoples' lives would be lost. This is a big problem.

The fact that, for the moment, we have Iran cooperating in a useful way to diminish the risk of developing more of those weapons, and that that could slowly trigger other positive developments in Iran and in the region that could diminish these risks, is the most challenging, but also one of the most hopeful trends in the world. Lots of problems with it, but at least we are working on it and getting efforts under way that suggest we are making progress. I would say, pretty good, and let us keep at it.

QUESTION 3

Vice President Mondale, would you speak to the civility of our public discourse, particularly in this election. I know this is

an issue you think about, and speak to the quality of public life, and the responsibility of public politicians to be civil in public discourse. I wonder if you have anything to say.

WALTER MONDALE

Thank you. I am really worried about this. There seems to be a cultural change that it is deep and profound. When I was in public life, we had people like Al Quie and others around. We had our big debates, but we respected each other and tried to get something good from those disputes and challenges. We accomplished a lot because of the discourse, and I bet the public appreciated it.

I do not think people really like all this harshness. For some reason, we slipped into this train-wreck school of politics, where no matter what comes up, you should be angry about it. Take no prisoners. Just paralyze the system. For example, all these strategies for designing congressional districts so that, unlike the public picking the politicians, the politicians started picking the public. That allowed them to rig, I do not know, say fifty congressional districts, where no compromise is allowed at all.

You see an interesting dynamic here in the Republican race where all of this fever seems to be running without limit. Kasich is trying to be reasonable, I think. I am sure I disagree with him on a lot of things, but when I listen to him it sounds like that spirit that was around when we got things done. I do not know what to do about it. The other thing is of course this awful money problem, where billions of dollars are flowing from corporate treasuries in secret, and that paralyzes the system because when someone gives you a couple million dollars, they do not want a commitment just to good government, they want you in the line, on the tail. I think that has plugged up the system.

The Supreme Court has been a problem here as well. The Supreme Court has, and I do not want to get into this, but they have really gone along on a lot of hard-nose stuff. The *Citizens United* case is, I think egregious. Where did that come from? Why was that sort of thing necessary? The dismantling of the civil rights laws in the South, voting rights laws? Where did that come from? The Congress reauthorized the Voting Rights Act unanimously. Two years later, the Court said well, that is illegal. I do not know where that came from. The Court is, of course, now in a peculiar position, but I am hoping somehow this can be sorted out so people are reasonable again. How? I do not know. But it is bad for us, I would bet everything on that.

QUESTION 4

Mr. Vice President, thank you for coming. I have a question related to both domestic and international politics. Either with your experience or what you see forthcoming, can you just comment on the relative difficulty of maintaining relationships when there is a change in government; either when you served as Vice President or in the Senate, or maybe comments on either the Republicans or Democrats in the upcoming election. Specifically you touched on Cuba's relations and other trade agreements, and challenges that those might bring?

WALTER MONDALE

I think when Congress does not function, and when debate, advice, and consent, and those expected functions of the Congress do not work, there is a problem. Where did they ever get this idea that when a President nominates a Supreme Court Justice, the Senate will not even greet the guy? Where did that come from?

All these things divide and embitter our country because it paralyzes the public process. This sort of came up in the earlier questions, but this is something you young leaders ought to work on, because from what I hear, you do not agree with this stuff at all. It does not fit. None of these social issues ring with you. You need to help us get off the dime here, and we need the energy, goodwill, and strength of young leaders to make a difference, because the old guys are failing you.

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This is a really good point of optimism at which to stop because we are out of time. I want to thank you for taking the time to sit with us, for imparting your experience and knowledge. We are truly blessed to have you not only as an alumnus, but as a friend of the Law School. Thank you very much.

WALTER MONDALE

Thank you.