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The Ethics of Economic Sanctions

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I declare that this thesis is all my own work except where I indicate otherwise by proper use of quotes and references. The work has not been submitted for any other degree or professional qualification.

Signed: _____ Date: _____

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Abstract

The ethics of economic sanctions is an issue that has been curiously neglected by philosophers and political theorists. Only a handful of philosophical journal articles and book chapters have ever been published on the subject; yet economic sanctions, as I will show, are significantly morally problematic and their use stands in need of moral justification. The aim of this thesis then is to consider how economic sanctions might be morally justified.

Of the few writers who have considered this issue, the majority point to the analogies between economic sanctions and war and use the just war principles (just cause, proportionality etc.) as a framework within which to assess their moral permissibility. I argue that this is a mistake. The just war principles are derived from a set of complex and detailed arguments all planted firmly within the context of war. These arguments contain premises that, whilst they may hold true in the case of war, do not always hold true in the case of economic sanctions.

Nevertheless, the rich just war tradition does offer a valuable starting point for theorising about economic sanctions and in the thesis I consider how the wider just war tradition might be brought to bear on the case of economic sanctions, beginning, not with the just war principles, but with the underlying arguments for those principles.

In particular, I consider whether economic sanctions can be justified on the grounds that they are a form of self- or other-defence, that they are the 'lesser evil' and that they are a form of punishment. I argue that certain types of economic sanctions can be justified on the grounds that they are a form of self- or other-defence and that, in extreme circumstances, certain types of economic sanctions can be justified as the 'lesser evil'. However, I argue that economic sanctions cannot be justified on the grounds of punishment.

I also develop a 'clean hands' argument for economic sanctions that is unavailable to the just war theorist; I argue that where the goods and services to be supplied would contribute to human rights violations or other wrongful acts, there is a duty to impose economic sanctions to avoid complicity in this wrongdoing.

Contents

| | |
|--|------------|
| Introduction | 6 |
| Chapter 1: What are Economic Sanctions? | 13 |
| Chapter 2: What's Wrong with Economic Sanctions? | 28 |
| Chapter 3: Clearing the Ground | 51 |
| Chapter 4: Economic Sanctions and the Just War Principles | 74 |
| Chapter 5: Economic Sanctions and Defensive Rights | 86 |
| Chapter 6: Economic Sanctions and Humanitarian Intervention | 130 |
| Chapter 7: Economic Sanctions and the Lesser Evil | 145 |
| Chapter 8: Economic Sanctions and Punishment | 163 |
| Chapter 9: Economic Sanctions and Clean Hands | 186 |
| Conclusion | 209 |
| Bibliography | 212 |

Introduction

Economic sanctions have long been a feature of international relations. One of the earliest recorded instances of economic sanctions dates back to 432BC; the 'Megarian Decree' limited the sale of Megarian products in Athenian markets in retaliation for Megara's failed attempt to seize Athenian territory and the kidnapping of three women.

However, these historic instances of sanctions often foreshadowed or accompanied war.¹ It was only after the First World War that economic sanctions began to be employed outside of a war situation. Speaking in 1919, Woodrow Wilson recommended that economic sanctions should be the primary strategy of the League of Nations and that they should be used as an alternative to war, asserting that:

A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside the nation boycotted, but it brings pressure upon the nation which, in my judgment, no modern nation could resist.²

Economic sanctions, however, never took off in the way Wilson envisaged. In fact, the League of Nations sanctions imposed on Italy following its invasion of Abyssinia (Ethiopia) in 1935 were widely perceived as a disastrous failure and, many argue, led to the disintegration of the League of Nations.³

After the Second World War, the United Nations used economic sanctions infrequently, the only notable instances being the sanctions imposed on Rhodesia and South Africa. However, the 1990s saw a proliferation of economic sanctions; most notably those imposed on Haiti, the former Yugoslav republics and, of course, Iraq. The end of the Cold War had had made concerted international action possible where previously any action by the West was countered by the U.S.S.R and vice-versa.⁴ This meant that for the first time the United Nations Security Council could impose

¹ Hufbauer et al., 39.

² Quoted in Winkler, 136.

³ Lang, 85.

⁴ Christiansen & Powers, viii.

economic sanctions that, in theory at least, all member states were required to take part in. With this came the possibility to inflict serious damage. The harms caused to Haiti and the former Yugoslav republics were severe but the harms suffered by Iraq were the worst ever caused by the use of economic sanctions outside of a war situation. UNICEF estimated that the economic sanctions imposed on Iraq from 1990 until the introduction of the Oil for Food Programme in 1996, led to the deaths of 500,000 children aged under five from malnutrition and disease.⁵ As Woodrow Wilson asserted, sanctions can indeed be both ‘peaceful’ and ‘deadly’: peaceful for the sanctioning state but possibly deadly for the target state.

Following the obvious devastation caused by economic sanctions in Iraq, a wide variety of governmental and non-governmental organisations - including the United Nations and economic sanctions theorists - began to seriously investigate the possibility of alternative forms of economic sanctions; sanctions not targeted against ‘ordinary people’ but rather targeted against those considered to be morally responsible for the objectionable policies of the state. The results – ‘targeted’ economic sanctions - became the UN’s economic sanctions tool of choice throughout the 2000s. Targeted economic sanctions include measures such as imposing financial sanctions on top government officials or those suspected of financing terrorism, arms embargoes, nuclear sanctions (which ban the export of materials necessary for the manufacture of nuclear weapons) and bans on ‘items intended for internal repression’ such as torture equipment. The harms inflicted by targeted sanctions are for the most part much less extensive than those inflicted by previous episodes of economic sanctions which targeted entire populations; nevertheless they are not harmless and may still be morally problematic. For example, the arms embargo imposed during the break up of the former Yugoslavia was widely criticised as it did not permit the Bosnian Muslims to acquire the weapons they needed to defend themselves from the genocidal attacks of the Serbian army.⁶ Further, many individuals have tried to appeal the decision to freeze their foreign held assets (on the grounds that they have been incorrectly designated terrorists) only to find there is no process to do so.⁷ Nevertheless, targeted economic sanctions seem on the whole to

⁵ As quoted in Winkler, 139.

⁶ Gordon, 2011, 315.

⁷ Tridimas and Gutierrez-Fons, 2008-2009.

be morally preferable to the type of sanctions imposed on Iraq, the former Yugoslavia and Haiti; sanctions not targeted at specific individuals but rather at the entire economy. (For the purposes of this thesis I refer to such sanctions as ‘collective’ sanctions) Morally speaking, the shift away from collective sanctions and towards targeted sanctions has been a great improvement.

However, in recent months, there is evidence that states are returning to a policy of collective sanctions. Specifically, the comprehensive financial sanctions imposed on Iran by the United States, European Union and others (though not the United Nations) as a consequence of Iran’s alleged pursuit of nuclear weapons, are targeted at damaging the entire economy of the country and appear to be harming the ordinary population. The value of the local currency, the rial, has fallen by 80% since the start of the year and inflation is running at an estimated 24%.⁸

The situation in Iran is nowhere close to the devastation that occurred in Iraq but, with the US and EU seemingly committed to tough sanctions, the future does not look good for the Iranian people. In the face of the pursuit of weapons of mass destruction, collective sanctions appear to be making a return.

Given this it would appear that the question of the ethics of economic sanctions is becoming increasingly urgent. However, with the notable exception of Joy Gordon (whose recent work has predominantly been empirical), it is not a question that philosophers are addressing. The economic sanctions imposed on Iraq, Haiti and Yugoslavia in the 1990s generated a small flurry of papers on the ethics of economic sanctions which remains, to date, pretty much the extent of the philosophical literature on the subject. There are certainly no book-length treatments on the ethics of economic sanctions. This thesis therefore is an attempt to address the question of the ethics of economic sanctions in a comprehensive manner. In it I ask the question, can the use of collective and targeted economic sanctions be morally justified and, if so, on what grounds?

I begin in chapter one by stipulating and defending a definition of economic sanctions for use in the thesis. Chapter one also further explores the nature of economic sanctions; in particular, the range of objectives they may aim at and their possible operational mechanisms. It is important to note that there is no consensus

⁸ BBC News, <http://bbc.co.uk/news/business-19786662>. Last accessed 30 October 2012.

among economic sanctions theorists about what the objectives and operational mechanisms of economic sanctions actually are and equally no consensus about what they should be. It is clear that those imposing economic sanctions often have a variety of objectives in mind and are sometimes unsure how (or if) the sanctions will work. They also have incentives to be vague or to lie about the nature of the economic sanctions they have imposed. Thus economic sanctions theorists examining the same episode of economic sanctions may draw very different conclusions as to what the objectives of the sanctions were, how they were supposed to work and, especially, whether they actually did work. I deal with this issue by assuming economic sanctions can have any kind of political objective at all and can operate with any of the mechanisms identified by economic sanctions theorists. Whether a particular economic sanctions episode is justified will of course depend on what objectives it seeks and how it expects to achieve them.

In chapter two I go on to consider the question: what's wrong with economic sanctions? What is it about economic sanctions that renders them in need of moral justification? This chapter is motivated by a concern that the lack of philosophical attention to the issue of the ethics of economic sanctions might be driven by an assumption that economic sanctions are morally unproblematic. I argue that economic sanctions have several morally problematic features. In particular, they inflict harm on individuals – many of whom one would consider to be morally innocent. Further, as a means of international coercion (or compulsion) they undermine the self-determination of target states.

Chapter three, as the title suggests, is a ground clearing effort. As I mentioned above there is little in the way of philosophical work on the ethics of economic sanctions and, further, what there is is overwhelmingly critical. There is, however, a public debate on the issue and several justifications for economic sanctions have been put forward in this debate. Furthermore, in working on this topic and presenting my work at philosophy conferences and work in progress seminars, I have been presented with several more philosophical justifications for economic sanctions. In this chapter my aim is to reconstruct these justifications into their strongest form and then assess their plausibility. Following this assessment, I conclude that none of the justifications offered are plausible.

Thus, in chapter four, I turn to consider the approaches taken by the existing philosophical literature on the subject. Of the few writers who have considered the ethics of economic sanctions, the majority point to the analogies between economic sanctions and war and use the just war principles (just cause, proportionality, non-combatant immunity etc.) as a framework within which to assess their moral permissibility. I argue that this is a mistake. The just war principles are derived from a set of complex and detailed arguments all planted firmly within the context of war. These arguments contain premises that, whilst they may hold true in the case of war, do not always hold true in the case of economic sanctions. Nevertheless, the rich just war tradition does offer a valuable starting point for theorising about economic sanctions and, in the four chapters that follow, I attempt to systematically consider how the wider just war tradition might be brought to bear on the case of economic sanctions, beginning, not with the just war principles, but with the underlying arguments for those principles.

Chapter five considers whether economic sanctions can be justified on the grounds of an individual right to self- or other-defence. Economic sanctions are often imposed for reasons that can broadly be construed as defensive. Some examples are the sanctions imposed on Iraq by the United Nations following its invasion of Kuwait and the sanctions imposed by the European Union on Argentina following its invasion of the Falkland Islands. Much of contemporary just war theory is concerned with justifying defensive war on the grounds of an individual right to self- or other-defence and my objective here is to investigate how far these arguments can be applied to the case of economic sanctions. I conclude that targeted economic sanctions can be justified on these grounds as long as certain conditions are met. However, collective economic sanctions are very unlikely to be justified.

Chapter six considers whether economic sanctions can be justified on the grounds of humanitarian intervention. There is considerable debate about the legitimacy of humanitarian intervention: when, if ever, is it morally permissible (or required) to intervene in another state to end human rights violations perpetrated by a government against its own citizens? To date the debate has focussed almost exclusively on *military* intervention and the use of other means of intervention – such as economic sanctions – has largely been neglected. This is despite the fact that

economic sanctions are actually used much more frequently than military force in cases of humanitarian intervention. After developing a positive argument for the use of economic sanctions as humanitarian intervention, I show that the arguments commonly employed against humanitarian intervention, which mostly assume a context of military intervention, either do not apply at all to the case of economic sanctions or apply with significantly less force and are thus more easily overcome.

Chapter seven considers whether economic sanctions could ever be justified as the 'lesser evil'. Inspiration for this chapter is taken from Michael Walzer's 'supreme emergency exception'. Walzer argues that in dire emergencies during war it is morally justified to intentionally target innocent civilians in order to further just war aims. In this chapter I argue that collective economic sanctions, which target innocent people, might be justified in rare and extreme circumstances as the lesser evil.

Chapter eight considers whether economic sanctions can be justified on the grounds that they are just punishment for violations of international law or international moral norms. I argue that for economic sanctions to be justified on the grounds of just punishment requires an executive authority that could judge and execute its judgments impartially. Currently, there is no such impartial executive authority. Hence, currently, a practice of international punishment by means of economic sanctions cannot be morally justified.

I conclude with chapter nine, which departs from the just war tradition, to develop an argument originally put forward by Noam Zohar. Zohar argues that we have a duty to sanction where sanctioning is necessary to avoid complicity in wrongdoing. For example, we have a duty to impose arms embargoes on states which would use those weapons to pursue aggressive war or attack their own citizens; we have a duty to 'keep clean hands'. Zohar's idea is interesting because to date the moral analysis of economic sanctions has almost exclusively assumed that economic sanctions are a *prima facie* wrong (for the reasons given in chapter two) and morally justified in any given case only if certain conditions are met. However, under a clean hands conception of economic sanctions the imposition of sanctions is, by contrast, a moral *duty* - a duty derived from the duty not to be complicit in human rights violations or other wrongdoing. Employing the clean hands conception of

economic sanctions thus shifts the burden of moral justification from those who would impose sanctions to those who would not. The clean hands conception therefore appears to be a valuable tool for those who would impose economic sanctions in response to international wrongdoing. I argue that the clean hands argument does successfully ground a duty to sanction in certain cases.

At this point it is worth clarifying my normative approach to the above issues. In order to draw reasonably determinate conclusions about the ethics of economic sanctions it is necessary to adopt a fairly substantive moral theory. For example, it is necessary to take a stand on questions such as whether consequences alone determine the rightness or wrongness of actions (as in consequentialism) or whether moral rights act as constraints on the pursuit of good consequences (as in deontology). In this thesis I adopt a general moral theory with the following features. My moral theory is fundamentally a deontological theory where moral rights act as side constraints on the pursuit of good consequences. However, it allows for moral rights to be overridden where it is necessary to avoid terrible consequences. I believe that a theory along these lines is the most plausible, but arguing for this view is beyond the scope of the thesis. It is an interesting question in itself, and one worth investigating, what a moral theory like this has to say about the ethics of economic sanctions.

Chapter 1: What are Economic Sanctions?

For the purposes of this thesis I stipulate the following definition of economic sanctions:

Economic sanctions are the deliberate withdrawal of customary trade or financial relations⁹ ordered by a state, supra-national or international organisation (the 'sender') from any state, sub-state group, organisation or individual (the 'target') in response to the political behaviour of that target.

The specific elements of this definition merit some discussion.

First, economic sanctions may comprise the withdrawal of customary trade and/or financial relations in whole or in part. *Trade* may be restricted by refusing all or only some imports and exports. If all imports and exports are refused then the sanctions are 'comprehensive'. (Though note that even in the case of comprehensive sanctions humanitarian exemptions are usually made, e.g. for food and medicine). In other cases only trade in certain goods is refused – usually commodities like oil or timber - such sanctions are 'partial'.¹⁰ *Financial sanctions* include measures such as asset freezes, the denial of credit, the denial of banking services, the withdrawal of aid and so on. Again, withdrawal of financial relations may be comprehensive or partial.

Second, economic sanctions may be ordered (or 'imposed') by a variety of actors. Sanctions can be 'multi-lateral', ordered by the United Nations or regional organisations such as the European Union or they can be 'unilateral', ordered by one state acting alone. The actor ordering economic sanctions is typically known as the 'sender' of the sanctions.

In practical terms, contemporary economic sanctions are imposed by following a legal process. Economic sanctions mandated by the United Nations Security Council are required to be adopted by all member states under chapter VII of the United Nations Charter. States then pass legislation prohibiting their citizens from entering into trading and/or financial relationships with the target and setting

⁹ This part of the definition is taken from Hufbauer et al., 3.

¹⁰ The term 'comprehensive' is widely used in the literature. The term 'partial' is my own. I'm not aware of any particular alternative widely used in the literature.

penalties for sanctions-breaking. European Union economic sanctions are brought into law slightly differently but the exact details are not important here. Suffice to say the conclusion is the same, the citizens of EU member states are prohibited by law from entering into trading and/or financial relationships with the target. Similarly, states imposing unilateral economic sanctions will follow their own legal processes. So although we often talk of sanctions being ‘imposed’ on the target, a usage I shall continue, it should be clear that economic sanctions are actually legal measures imposed by a sender *against its own members*. It is a sender’s own citizens who are prohibited from trading, the citizens of the target state face no such legal restriction.

Finally, note that I exclude from my definition of economic sanctions measures undertaken by non-state actors, e.g. consumer boycotts or boycotts undertaken by companies or religious organisations. Such measures are undeniably worthy of ethical enquiry; however, the ethical concerns they present are sufficiently distinctive to make it sensible to treat them as a separate issue.

Third, states are not the only targets of economic sanctions. Economic sanctions can be, and often are, imposed on sub-state groups. Well known examples from the recent past are the sanctions imposed on Serb-controlled areas of the former Yugoslavia in the 1990s or the ban on trade in conflict diamonds that targeted sub-state rebel groups in parts of Africa. Economic sanctions can also be imposed on companies, organisations and individuals. For example, the UK regularly freezes the UK-held assets of companies, charities or individuals suspected of funding terrorist activities. For this reason it is perfectly possible for a state to sanction its own citizens. Those on the receiving end of economic sanctions are typically known as the ‘target’. In this thesis I will refer to economic sanctions imposed on an entire state as ‘collective’ and economic sanctions that are imposed more narrowly as ‘targeted’.

Fourth, on my definition, economic sanctions are imposed in response to the *political* behaviour of the target - as distinguished from its *economic* behaviour. Such a stipulation is common in the economic sanctions literature. For example, Robert Pape distinguishes economic sanctions from what he calls ‘trade wars’:

When the United States threatens China with economic punishment if it does not respect human rights, that is an economic sanction; when punishment is threatened over copyright infringement, that is a trade war.¹¹

Not everyone accepts this distinction. David Baldwin, for instance, denies that economic sanctions must be a response to political behaviour. For Baldwin economic sanctions can be a response to any type of behaviour - there is no reason to restrict the definition of economic sanctions to those measures which aim to respond to *political* behaviour.¹² Thus, *contra* Pape, Baldwin argues that if the U.S imposes restrictions on trade with China over copyright issues then this *is* an economic sanction. However, it is important to note that Baldwin and I have different aims in writing about economic sanctions. Baldwin aims to instruct statesmen in their use of economic power to achieve foreign policy goals. For Baldwin then, the political/economic distinction is not particularly relevant to his project. I, on the other hand, am interested in the ethical uses of economic power. For my purposes the distinction *is* relevant because I suspect that the ethical issues surrounding measures responding to political issues are importantly different to those surrounding measures responding to economic issues. Thus it makes sense to consider the two separately. In any case, if the reader does not accept the basis for my distinction, I have no problem with her considering this to be a thesis addressing the ethics of a particular type of economic sanction: those responding to political behaviour.

A final objection to this approach – also made by David Baldwin – is that there is no clear-cut distinction between the ‘political’ and the ‘economic’ and so there is no clear-cut basis for making the distinction even if it is warranted.¹³ I concede that the distinction between the two might be a bit fuzzy at the edges but there are undeniably clear-cut cases such as Pape’s example of responding to human rights violations versus responding to copyright infringement. In this thesis all the cases of economic sanctions that I address are clear cut cases.

Finally, I should point out that my definition of economic sanction is broader than most found in the literature. This is because most theorists define economic

¹¹ Pape, 1997, 94.

¹² Baldwin, 1985, 32.

¹³ Baldwin and Pape, 191.

sanctions with reference to a specific objective and/or with reference to a specific mechanism by which they believe economic sanctions to work.¹⁴ However, there is considerable advantage in a broader definition that does not tie economic sanctions to any particular objective or operational mechanism. First, it allows us to address the question of which objectives it is morally permissible to pursue by means of economic sanctions. Second, it allows us to consider whether some operational mechanisms are more morally problematic than others. Consideration of such issues is surely essential to an ethical analysis of economic sanctions; it does not make sense to make such consideration impossible from the outset with a restrictive definition of economic sanctions.

Nevertheless, I do need to discuss the various possible objectives and operational mechanisms of economic sanctions and this is the matter I turn to address next.

The Objectives of Economic Sanctions

Economic sanctions theorists tend to conceptualise economic sanctions in one of two ways: as tools of foreign policy or as tools of international law enforcement. In what follows I discuss each in turn.

Foreign Policy Conception

Economic sanctions are most commonly conceptualised as being tools for achieving foreign policy objectives. They are part of the foreign policy ‘toolkit’: a range of measures that includes diplomacy, propaganda, covert action, the use of military force etc., which politicians have at their disposal when attempting to influence the behaviour of other states. The foreign policy conception comes in both simple and more sophisticated versions. On the simple version, the objective of economic sanctions is to change a target’s ‘objectionable’ policy or behaviour where a policy or behaviour is understood to be ‘objectionable’ if it conflicts with the

¹⁴ A good example of this tendency is Robert Pape’s definition of economic sanctions as measures which ‘seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change its political behaviour.’ See Pape, 1997, 94.

interests of the sender. Thus, where the sender is a state, a target's policy or behaviour is 'objectionable' if it conflicts with the sending state's national interest.¹⁵ That's the simple version.

Until fairly recently, a frequent criticism levelled at economic sanctions was that they never worked – that they most often failed to change a target's objectionable policy or behaviour. This concern led many to ask the question: if economic sanctions don't work, why do we keep using them?¹⁶ The attempt to answer this question has led some theorists to develop more sophisticated conceptions of economic sanctions.

David Baldwin, for instance, argues that although changing a target's 'objectionable' policy or behaviour is sometimes the objective of economic sanctions, politicians often employ economic sanctions in much more nuanced and subtle ways.¹⁷

First, Baldwin argues that economic sanctions are often employed with the more limited objective of influencing a target's 'beliefs, attitudes, opinions, expectations, emotions and/or propensities to act'.¹⁸ No *immediate* policy or behaviour change is expected - even if long-term some change is hoped for. In such cases Baldwin argues that economic sanctions are being used symbolically to 'send a message'. They can signal specific intentions or general foreign policy orientations or they can be used to show support or disapproval for the policies of other states. If the economic sanctions are imposed at some cost to the sending state then this demonstrates the sender's commitment to its position and strengthens the message being sent. Importantly, even if the objective of an episode of economic sanctions is to 'send a message', it is unlikely to feature as the officially stated objective. The message is stronger if the sanctions are framed as demanding a change in the target's objectionable policy or behaviour - even if it is clear that the economic sanctions alone cannot hope to change this behaviour.

¹⁵ Hufbauer et al., 2007; Galtung, 1967; Pape, 1997.

¹⁶ See Baldwin, 1999/2000, 80. Also Nossal, 302.

¹⁷ Strictly speaking Baldwin is analysing the concept of 'economic statecraft' not the concept of economic sanctions. However, he states that he will use the two terms interchangeably in his book. Baldwin, 1985, 36.

¹⁸ Baldwin, 1985, 20.

Second, Baldwin argues that economic sanctions may have multiple objectives of which some will be more important to the sender than others. Behaviour change might be a sender's secondary or even tertiary objective whilst 'sending a message' might be the primary objective. Even if the most important objective for the sender is to 'send a message' the economic sanctions must be framed as demanding behaviour change if this secondary or tertiary objective is to be met.¹⁹

Third, economic sanctions may have multiple targets. For example, if economic sanctions are employed as a general deterrent then there will be many targets of the influence attempt extending well beyond the original recipient of the economic sanctions.²⁰

David Cortright and George A. Lopez have also worked on developing more sophisticated understandings of economic sanctions. They agree with Baldwin that economic sanctions may have objectives other than that of changing a target state's behaviour and that they may, indeed, have multiple objectives. Economic sanctions, they argue, can be imposed for purposes that include deterrence, demonstrating resolve, upholding international norms and sending messages of disapproval as well as influencing behaviour change.²¹

Finally, Richard Nossal argues that senders might also have retributive punishment as their objective, i.e. they intend to inflict economic harm on a target they regard to have wronged them.²² For Nossal, to be clear, saying a sender has been 'wronged' is not to say it has been morally wronged, it is only to say that the target's actions have displeased the sender. Thus senders may 'punish' agents who – objectively – have done nothing morally wrong – just as a mafia boss might punish underlings who have been passing information to the police. Again, it is important to realise that even if the purpose of the economic sanctions is retributive punishment it is unlikely to be stated as such by the sender for fear of appearing irrational or vindictive.

¹⁹ Baldwin, 1985, 17-18.

²⁰ Baldwin, 1985, 17.

²¹ Cortright & Lopez, 2000, 16.

²² Nossal, 314.

For all these reasons it would be a mistake to assume from the fact that economic sanctions often fail to achieve their stated objectives that economic sanctions do not work; stated objectives are not always true objectives – the true objectives might be to punish or send a message. Even when the stated objectives are true objectives they may not be the primary objectives.

In spite of all this, however, it should be noted that later work on the effectiveness of economic sanctions has shown it to be false that economic sanctions never or rarely achieve their stated behaviour or policy change goals. The analysis produced by Hufbauer et al. - which is the most comprehensive statistical study of economic sanctions to date - concluded that economic sanctions worked (i.e. achieved their stated policy change objectives) in approximately one third of cases.²³

Given the above discussion, it seems to me that changing or preventing objectionable policies or behaviour, ‘sending a message’ and punishment are all possible objectives of economic sanctions.

I now turn to consider the law enforcement conception of economic sanctions.

Law Enforcement Conception

Economic sanctions are sometimes alternatively conceptualised as being a tool for enforcing international law or international norms of behaviour. On this conception, the ultimate objective of economic sanctions is thus understood to be international law enforcement.

For Margaret Doxey, enforcement of the law through the use of economic sanctions might take several forms.

First, enforcement might involve ending ongoing violations of international law/norms – the domestic analogy is that of stopping a crime in progress. Doxey’s own example is that of economic sanctions imposed to reverse the illegal invasion of the Falklands Islands by Argentina.

²³ Hufbauer et al., 159. Success rate calculated as 34%.

Second, enforcement might require *preventing* violations of international law from occurring in the first place. The domestic equivalent is that of preventing a known criminal conspiracy from being realised. As she notes, under chapter VII of the UN Charter, given adequate support from its members, the Security Council can designate any situation a threat to peace and then order preventive action to ensure the threat is not realised.

Third, enforcement might require that economic sanctions are imposed punitively subsequent to violations of international law to deter either the recipient state or others from repeating the violations. Here economic sanctions are ‘a kind of fine for international misbehaviour’.²⁴ She argues that such economic sanctions, especially if imposed at some cost to the sending state, demonstrate the sending state’s commitment to international law, its willingness to punish further breaches and, possibly, its willingness to take harsher measures in future.²⁵

The main difference between the law enforcement and the foreign policy conceptions of economic sanctions is that the former claims that the objectives of economic sanctions are purely to enforce international law/international norms of behaviour whereas the latter claims that the objectives of economic sanctions are determined by a sender’s foreign policy. (Of course the two conceptions are not mutually exclusive. A given sanctions episode may both be in a state’s national interest *and* work to enforce international law).

The difference between the two conceptions can partially be explained with reference to the focus of the respective theorists’ studies: those employing a foreign policy conception tend to focus on states as the senders of economic sanctions whereas those employing a law enforcement conception tend to focus on the UN as sender. Undoubtedly the foreign policy conception fits states better than the UN and the law enforcement conception fits the UN better than states. However, it would be wrong to say that the foreign policy conception applies to states and the law enforcement conception to the UN. States can also act to enforce international law. Likewise, the UN is not immune to the national interests of its more powerful member states. In a powerful critique of the UN’s sanctions on Iraq, Joy Gordon

²⁴ Doxey, 92.

²⁵ Doxey, 8-9, 90-97.

argues that the sanctions were hijacked by the US in order to pursue its own national interest.²⁶

Again, deciding by definitional fiat between the two conceptions of economic sanctions seems to close down interesting avenues of ethical enquiry. Therefore, in this thesis I will assume that the objectives of economic sanctions may include both international law enforcement and the pursuit of foreign policy objectives. In either case the intermediate objective might be to change or prevent an objectionable/unlawful policy, to send a message about an objectionable/unlawful policy or to punish it.

The Mechanisms of Economic Sanctions

Whatever the objectives of economic sanctions, we need to address the question of how economic sanctions work: what is their operational mechanism? I will start by considering sanctions aimed at changing or preventing the objectionable/unlawful policies or behaviour of targets before moving on to consider sanctions imposed with the objective of sending a message or with punitive objectives.

Changing or Preventing Objectionable/Unlawful Policies

Theorists of economic sanctions began addressing this question in the 1970s and 80s and took as their model collective sanctions imposed on states - which was the predominant type of sanctioning at the time. They theorised that economic sanctions worked via the imposition of economic pressure. Call this the 'economic pressure' mechanism. Robert Pape sums this view up well when he states that economic sanctions 'seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change its political behaviour.'²⁷ In elaborating on this mechanism Pape argues that:

²⁶ Gordon, 2010.

²⁷ Pape, 1997, 94.

Targets of economic sanctions understand they would be better off economically if they conceded to the coercer's demands, and make their decision based on whether they consider their political objectives to be worth the economic costs.²⁸

(Note that the term 'coercion' is used fairly loosely in the economic sanctions literature to mean roughly any kind of pressure aimed at forcing a target state's government or its citizens to do something against their will. In the next chapter I discuss whether economic sanctions really are coercive in a more restricted philosophical sense).

A similar view to Pape is shared by Hufbauer et al. They use the following framework to analyse the utility of economic sanctions:

Stripped to the bear bones, the formula for a successful sanctions effort is simple: The costs of defiance borne by the target must be greater than its perceived cost of compliance. That is, the political and economic costs to the target from sanctions must be greater than the political and security costs of complying with the sender's demands.²⁹

Indeed, the view that economic sanctions 'work' via the imposition of economic pressure is the most widely accepted in the literature. Johann Galtung even calls it 'the general theory of economic sanctions' and he elucidates as follows.³⁰ Focussing on collective economic sanctions, Galtung argues that the objective of economic sanctions is to cause an amount of economic harm sufficient to bring about the 'political disintegration' of the state which, in turn, will result in the state being forced to comply with the sender's demands. For Galtung 'political disintegration' is a split in the leadership of a state or a split between the leadership and the people that occurs as people within the state disagree about what to do with regards to the sanctions and the resulting economic crisis. Under what Galtung calls the 'naïve theory' of economic sanctions (which he rejects), the more severe the economic pressure, the faster and more significant the political disintegration and the sooner the state will comply. This theory is naïve, Galtung argues, because it does not take into account the fact that sanctions might - at least initially - result in

²⁸ Pape, 1997, 94.

²⁹ Hufbauer et al, 50.

³⁰ Galtung, 379.

political *integration*, as the people of the state pull together in the face of adversity. This is especially likely to occur if the target government can muster up the spirit of nationalism. Indeed ‘rally-round-the-flag’ effects are often cited as a reason for the failure of economic sanctions. Under Galtung’s ‘revised theory’ of economic sanctions, economic pressure results initially in political integration but will eventually lead to political disintegration as economic pressure increases but, he warns, the levels of economic harm required for this might in some cases be exceptionally severe.³¹

Baldwin, however, argues that although economic pressure is one possibility for how economic sanctions might ‘work’, it is not the only one. In particular he argues that economic sanctions do not have to cause economic harm to work. He argues that even if the economic sanctions make barely a dent in a target state’s economy, its government may be moved to act out of a concern to avoid international embarrassment or a reputation as a pariah state. This is particularly likely to occur when targets believe themselves to be members in good standing of international society. Suffering international condemnation might be unacceptable to them. In other cases Baldwin argues that targets might worry that the economic sanctions are a prelude to war. Since a just war must be a last resort, those about to resort to war often impose sanctions first - either in a genuine attempt to reach a non-military resolution or, more cynically, to demonstrate to domestic and international audiences that non-military methods have been attempted and failed – thus making war the last resort. A target might comply with the economic sanctions not because they damage the economy but out of concern to avoid war.³² I will call this second mechanism ‘non-economic pressure’ since its power does not derive from its economic effects.

Economic sanctions employing either the economic or non-economic pressure mechanisms work only indirectly: pressure is applied to targets to force them to change their objectionable/unlawful policies themselves. Thus such sanctions are sometimes referred to as ‘indirect’ sanctions and I will adopt this terminology.³³

³¹ Galtung, 388-9.

³² Baldwin, 24.

³³ I borrow the terminology of ‘direct’ and ‘indirect’ sanctions from Gordon, 1999, 123.

However, economic sanctions can operate directly by denying a target the resources necessary for pursuit of their objectionable/unlawful policy. For example, if a target state's militarization is the objectionable/unlawful policy then economic sanctions might be designed to so destroy a target state's economy that it does not have the resources available to build up or maintain its military capacity. Hufbauer et al. accept the possibility of this mechanism.³⁴ Joy Gordon claims this was originally the intended mechanism for the UN sanctions on Iraq.³⁵ Such 'direct sanctions' do not apply pressure to change a target's policy but rather work directly by denying a target the resources it needs to pursue the objectionable/unlawful policy. Call this the 'denial of resources' mechanism.

Pape argues that economic measures employing this direct mechanism are not economic sanctions but rather something called 'economic warfare'; for Pape only measures utilising indirect economic pressure are economic sanctions.³⁶ Again I do not want to rule out economic sanctions using the denial of resources mechanism by definitional fiat. Pape's major reason for excluding such sanctions is that the purpose of his study is to measure the effectiveness of economic sanctions and that is much easier to do if there is only one mechanism to consider (i.e. economic pressure) since it entails one is always comparing like with like. My thesis, however, does not address the problem of effectiveness but rather ethical concerns and hence this is no good reason to exclude direct sanctions from my thesis.

Having considered collective sanctions, I now turn to consider targeted sanctions. Targeted sanctions became popular after the devastation caused by the collective sanctions imposed on Iraq led many senders to rethink their sanctioning policies (I discuss this further in chapter two). Very little has been written so far on the mechanisms by which targeted sanctions might work. However, it is obvious that targeted sanctions too have direct and indirect variants. Direct targeted sanctions include, for example, arms embargoes which directly prevent states from pursuing aggressive military projects and nuclear sanctions which prevent target states from obtaining materials necessary to manufacture nuclear weapons, e.g.

³⁴ Hufbauer, 4.

³⁵ However, Gordon claims that as time went on the coercive mechanism took over.

³⁶ Pape, 1997, 94.

uranium. Additionally, asset freezes of either state funds or the funds of government officials may operate with a direct mechanism. Freezing Libya's state funds and the funds of Colonel Gaddafi was intended to make it impossible for him to pay mercenaries during the Arab Spring. Plus the freezing of assets suspected of belonging to terrorist groups is intended to make financing terrorist operations more difficult.³⁷

Of course targeted sanctions could also work with an indirect mechanism. Asset freezes on the foreign investments of top government officials might prompt them to encourage their leader to change policy or, if the assets frozen are the leader's, it might act as an incentive to her to change her policy. Depending on the amounts at stake, the pressure employed here could be either economic or non-economic. Even if the amounts involved are trivial, it is surely very embarrassing for a leader to have her bank accounts frozen by another state or an international organisation.

Of course not all economic sanctions aim to change or prevent an objectionable/unlawful policy. Some aim to send a message or to punish. These sanctions have different operational mechanisms as I go onto discuss.

Sending a Message

If the objective is simply to 'send a message' then the imposition of sanctions in itself should be sufficient to achieve this – causing economic harm should not be necessary. Having said this, there are undoubtedly ways of making the message stronger and causing some economic harm to the target might do this. Of course, as both Baldwin and Doxey note, this is not the only way to strengthen the message. If the sanctions are costly to the sender – because, for instance, they involve putting a stop to valuable exports, this willingness of the sender to bear costs shows how seriously it takes the situation.

³⁷ Targeted or 'smart' sanctions have been analysed in great detail by David Cortright and George Lopez. See for instance Cortright and Lopez, 2002.

Punitive Sanctions

Punishment necessarily involves the infliction of some harm, suffering or otherwise unpleasant consequences on the target, and this is the case whether the objective of the punishment is to deter or whether the punishment is purely retributive. Thus economic sanctions imposed as punishment must either inflict some economic harm or, if a target state (or organisation/individual) is sensitive about its/their standing in the international community, symbolic sanctions expressing international condemnation might suffice as punishment. I discuss the use of economic sanctions as punishment in more detail in chapter eight.

The following table summarises the objectives and related operational mechanisms of economic sanctions as I have defined them.

Summary of the Possible Objectives of Economic Sanctions and their Related Operational Mechanisms

| | Objectives | Operational Mechanisms |
|---|--|--|
| 1 | To <i>change or prevent</i> objectionable/unlawful policy/behaviour | <p><u>Indirect Sanctions:</u></p> <p>Economic Pressure; and/or</p> <p>Non-Economic Pressure (e.g. international embarrassment or fear of war); and/or</p> <p><u>Direct Sanctions:</u></p> <p>Denial of resources</p> |
| 2 | To <i>send a message</i> | Imposition alone should send message |
| 3 | To <i>punish</i> objectionable/unlawful behaviour | Infliction of economic harm as a penalty and/or sanctions express international condemnation |
| <p>For reasons set out in chapter two, this thesis focuses on economic sanctions imposed with the objectives and operational mechanisms highlighted above in bold.</p> | | |

Table 1.1 Summary of the Possible Objectives of Economic Sanctions and their Related Operational Mechanisms.

The above table summarises the three main objectives that economic sanctions might have: to change or prevent a target's objectionable/unlawful policy or behaviour, to 'send a message', or to punish, together with each objective's related operational mechanism(s).

Having established the nature of economic sanctions in this chapter, in the next chapter I ask the question: what is wrong with economic sanctions? What exactly is it about the nature of economic sanctions that renders their use in need of moral justification?

Chapter 2: What's Wrong with Economic Sanctions?

The ethics of economic sanctions is a topic that has been curiously neglected by philosophers. Only a handful of philosophical journal articles and book chapters have ever been published on the subject.³⁸ It is unclear exactly why this is the case but one possible explanation is that economic sanctions are viewed by many as morally unproblematic: as peaceful means for achieving morally valuable objectives such as ending human rights violations or reversing military invasions. The aim of this chapter is to show that this view is mistaken, and that the ethics of economic sanctions is a worthwhile topic of study.

In particular I argue that economic sanctions have two morally problematic features; first, in many cases they inflict harm on individuals – often individuals who bear no moral responsibility whatsoever for their government's objectionable/unlawful policy; second, as a means of international coercion (or compulsion) they undermine the self-determination of target states. To the extent that we think the ability of a state to be self-determining is morally valuable, economic sanctions will be morally problematic.

To be clear, I am not arguing that these two features make the use of economic sanctions morally wrong all things considered; rather, I am arguing that they are features of economic sanctions which make their use morally problematic, i.e. it is in virtue of these features that economic sanctions stand in need of moral justification.

In what follows I consider cases of economic sanctions by objective type (as outlined in the previous chapter).

³⁸ The majority of this philosophical work can be attributed to Joy Gordon. See Gordon 2011, 2010, 1999 (note that 2010 is predominantly an empirical study).

1. Objective to *change or prevent* a target's objectionable/unlawful policy or behaviour

Infliction of Harm

Collective economic sanctions - direct and indirect (economic pressure mechanism) - can wreak terrible harms. It is, for example, without dispute that the economic sanctions imposed on Iraq between 1990 and 2003 caused exceptionally severe harms; the worst harms, in fact, caused by any economic sanctions. Indeed, so terrible was the case of Iraq that it led the United Nations to rethink its entire sanctions policy. For that reason alone it is worth describing in some detail the effects of the economic sanctions imposed on Iraq between the two Gulf Wars.

Mandatory comprehensive economic sanctions were first imposed by the UN against Iraq in August 1990 following Iraq's invasion of Kuwait with the demand that Iraq withdraw from the territory. The economic sanctions banned *all* trade and financial transactions between UN member states and Iraq with the exception of 'supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs'.³⁹

Despite the economic sanctions Iraq refused to withdraw from Kuwait and so the United States led a coalition of states into the first Gulf War which began in January 1991. Once the war was over the economic sanctions remained in place with a fresh demand by the United Nations that Iraq comply with UN resolutions concerning weapons of mass destruction.

Iraq was particularly vulnerable to comprehensive sanctions because it relied on oil exports for the vast majority of its income and on imports for the majority of its food and other basic goods.⁴⁰ Thus the economic impact of the sanctions was severe. In 1989 Iraq's GDP had been \$66.2 billion; by 1996 (the year the oil-for-food programme began) it had fallen to \$10.8 billion.⁴¹ Similarly, per capita annual income was \$3,510 in 1989; \$450 by 1996.⁴²

³⁹ Gordon, 2010, 21.

⁴⁰ Gordon, 2010, 33.

⁴¹ In May 1996 the Oil for Food Programme began whereby Iraq was permitted to sell a restricted amount of oil and use the proceeds to purchase humanitarian goods – thus increasing GDP figures.

⁴² Gordon, 2010, 21.

The humanitarian cost was much worse. UNICEF estimated that the economic sanctions were directly responsible for the deaths of 500,000 children aged under five.⁴³ This figure is disputed but even the most modest estimates quote figures in the tens of thousands. Given that the sanctions allowed for the import of medicine and food how did this happen?

In ordinary circumstances the economic sanctions imposed on Iraq might not have resulted in the extreme suffering experienced by the population. However, the Gulf War had included a bombing campaign aimed not solely at military targets but also Iraq's infrastructure and industrial capacity resulting in 'widespread devastation of all service facilities such as electricity, water, sewerage, telecommunications, radio and television stations, some dams and some large productive enterprises'.⁴⁴ It was this damage *coupled with* the economic sanctions that caused the severe harms experienced by the Iraqi people. The problem was that Iraq was unable to import the equipment it needed to restore its damaged infrastructure. Therefore, although Iraq could import food and medicine, it was difficult to distribute it because Iraq could not import the equipment necessary to repair roads and bridges destroyed in the bombings or obtain spare parts for vehicles. Similarly, Iraq could not repair its power stations – the lack of a reliable power supply meant that essential medicines and food could not be properly stored. Further, the inability to repair the water treatment and sewerage systems meant the population had no clean water to drink and resulted in typhoid and cholera epidemics.

Admittedly, Iraq was an unusual case and the majority of sanctions regimes do not cause such severe harms. But even if they do not plunge a state into economic and humanitarian turmoil, the effects of economic sanctions may still be significant. They may prevent or reduce economic growth, keep unemployment and poverty rates high and push up prices. They also might make it difficult or impossible for citizens of the target state to access sanctioned goods or services that they may regard as highly desirable (if not actually essential).

Empirical studies of the effects of economic sanctions have also revealed the following problems.

⁴³ Gordon, 2010, 37.

⁴⁴ Gordon, 2010, 22.

A common unintended side-effect of economic sanctions is the criminalisation of a target state – a process which takes place during the period of sanctioning but whose effects persist well after the sanctions have been lifted. Peter Andreas argues that the criminalisation of a target state can be analysed on three dimensions: political, economic and societal.

With respect to the political dimension, the rulers of targeted regimes may sponsor organised crime in order to raise revenues previously generated through legitimate means or in order to import restricted goods into the country. Consequently, smuggling and its associated activities become institutionalised at the level of the state – for example, the state’s customs and tax collecting policies and procedures may be adapted to facilitate smuggling and/or outright theft. Importantly, the links that the state forms with organised crime persist after the sanctions are lifted and criminal activities are likely to continue since, although regime officials no longer need to raise revenues in this way and no longer need to smuggle in restricted goods, there is still considerable profit to be made from a black market economy. Post sanctions, smugglers who had previously smuggled oil or other restricted items turn to alternatives such as drugs, weapons, cigarettes or people trafficking and bring them into the country through their well-established smuggling routes.

On the economic side, the black market economy thrives whilst, at the same time, the sanctions force the legitimate economy into recession. The black market throws up a new criminal elite: sanctions busting entrepreneurs. After the sanctions are over these criminal entrepreneurs often buy up legitimate businesses rendered almost worthless by the sanctions and run these businesses like they would their criminal enterprises. Thus even previously legitimate business becomes criminalised in the post sanctions period.

The sanctions also have the effect of criminalising society. Under a period of sanctions, smuggling becomes seen as a ‘normal’ activity; certainly not illegal or immoral. In some circumstances it can be seen even as patriotic and smugglers are upheld as role models. Attitudes towards smuggling, bribery and corruption formed during a period of sanctions are slow to change and a black market economy may be tolerated by society well after the sanctions have ended.⁴⁵

⁴⁵ Andreas, 2005.

Further, empirical studies have shown that economic sanctions can cause increased political repression and human rights violations within a target state.⁴⁶ This should not be altogether surprising since the target presumably knows that sanctions are intended to cause political protest and will act to disincentivise such protest.

Another problem with economic sanctions is that economies do not bounce back as soon as economic sanctions are lifted – targeted economies can struggle for years after sanctions are lifted to get back to where they were pre-sanctions. If a target state is a developing nation then economic sanctions can set back or stall its growth; this can mean thousands of people continuing to live in poverty who otherwise would not have been.

Post Iraq, a wide variety of governmental and non-governmental organisations - including the United Nations and economic sanctions theorists – began to seriously investigate the possibility of alternative forms of sanctions; sanctions not targeted against ‘ordinary people’ but rather targeted against those considered to be morally responsible for the objectionable policies of the state. The results - targeted economic sanctions - have now replaced collective sanctions as the UN’s economic sanctions tool of choice. Targeted sanctions, recall, include measures such as imposing financial sanctions on top government officials or those suspected of financing terrorism, arms embargoes, nuclear sanctions (which ban the export of materials necessary for the manufacture of nuclear weapons) and bans on ‘items intended for internal repression’ such as torture equipment.

The harms inflicted by targeted sanctions are for the most part much less extensive than those inflicted by collective sanctions; nevertheless they are not harmless. Those subject to financial sanctions lose access to their cash and investments and, further, are placed on the UN’s Consolidated List of sanctioned individuals which carries a huge social stigma that can be seriously damaging for those concerned – especially business people who rely on their reputation (and their cashflow) to do business.⁴⁷

On the other hand, some targeted sanctions may genuinely seem to be harmless. For example, a ban on items intended for internal repression or arms

⁴⁶ Wood, 2008; Peksen and Drury, 2009; Peksen and Drury, 2010.

⁴⁷ Lang, 100.

embargoes should ideally help to reduce harm. However, such measures can backfire. Arms embargoes, for example, can sometimes have the unfortunate effect of entrenching existing power differentials since the weaker side is unable to import weapons to strengthen itself. If the more powerful side is also the side guilty of wrongdoing then an arms embargo is not a neutral mechanism for helping reduce violence but actually weighs in on the side of the wrongdoer and so exacerbates the damage done. For example, the arms embargo imposed during the break up of the former Yugoslavia was widely criticised as it did not permit the Bosnian Muslims to defend themselves from the genocidal attacks of the Serbian army.⁴⁸

Further, as discussed above, targeted sanctions like arms embargoes can contribute to the criminalisation of the state as arms smuggling networks spring up to supply the required weapons.⁴⁹

The harms inflicted by economic sanctions obviously make them morally problematic but, equally, as I go onto discuss now, the way in which the harms are inflicted and the reasons for their infliction also render them morally problematic.

Indirect collective sanctions, recall, aim to pressure citizens of the target state into forcing their government to change the objectionable policy. Economic sanctions attach costs to any continued support of or acquiescence to the target government's objectionable policy. Thus every citizen affected by the sanctions is forced to reassess their position on the matter: on balance do the net benefits of continuing to support/acquiesce to the objectionable policy outweigh the net benefits of withdrawing their support or actively protesting against it? The sender of the sanctions hopes the answer to this question is 'no' and that so many people will protest that the government will be forced to change its policy to avoid the risk of losing power. Indirect collective economic sanctions are morally problematic then because they inflict economic harm in order to pressure citizens into demanding their government changes policy. The sanctions thus make target citizens agents of the sender – pressured into demanding their own government fulfil the sender's wishes rather than their own. They are effectively 'conscripted' to the sender's cause – a

⁴⁸ Gordon, 2011, 315.

⁴⁹ See Andreas 2005. Though, in the particular cases he analyses, he notes that the criminalisation resulting from arms embargoes is less than the criminalisation resulting from comprehensive sanctions.

cause they presumably do not share. Additionally, it is worth pointing out that in cases where governments are very repressive this is a very dangerous position to put citizens in as going up against the government can have serious repercussions. Thus not only are citizens used as a mere means to an end but in many cases they will be used in ways which expose them to great risks. Further, the logic of indirect sanctions is particularly unfortunate, as the more repressive and violent a government is to its own citizens, the harsher the sanctions must be to overcome citizens' resistance to protesting. Finally, a great number of the citizens used in this way will be people most would consider to be innocent: the 'ordinary people' who bear no responsibility for their state's objectionable policies.⁵⁰

As discussed in chapter one, *direct* collective sanctions do not operate via this mechanism. Rather, their aim is to achieve an ending of the objectionable policy directly. For example, the sender may desire that the target state ends a military build up or cease work on weapons of mass destruction. The collective economic sanctions work directly by 1) denying the target the resources it needs to meet its military objectives (e.g. denying imports of arms, dual use materials) and 2) denying the target the import/export of other goods, services and finance – the idea being that this will destroy the target economy to such an extent that the government will have no funds available to spend on militarization. Such sanctions aim to achieve their objectives without any action on the part of citizens.

Direct collective sanctions are also *prima facie* morally problematic. As Joy Gordon notes, such sanctions are like a siege writ large. The sanctions prevent the import of goods into a country just as a surrounding enemy army would a castle or city. Thus, sanctions are vulnerable to the same moral criticisms as siege – they attack the innocent and guilty indiscriminately. In fact the innocent usually suffer worse since increasingly scarce resources are usually allocated as a matter of priority to the army or leadership. As Gordon states 'the harm is done to those who are least able to defend themselves, who present the least military threat, who have the least input into policy or military decisions, and who are the most vulnerable'.⁵¹

To summarise then economic sanctions are morally problematic because they inflict harm. Furthermore, in the case of indirect sanctions, sanctions use people as a

⁵⁰ I discuss the question of moral responsibility for objectionable policies in detail in chapter five.

⁵¹ Gordon, 1999, 125.

mere means to an end - possibly in ways that expose them to great risks.

Additionally, in the case of both indirect and direct sanctions, many of the people thus affected will be people we would consider to be innocent – those who bear no responsibility for their government's objectionable/unlawful policy.

So far of course we have not considered collective economic sanctions operating with a non-economic pressure mechanism. Such economic sanctions do not inflict economic harms but rather operate by instilling embarrassment, shame or fear of war. Although it is true that individual citizens often identify with their state and feel the embarrassment and shame heaped upon it as their own, and although it is true that citizens will often fear war, the harms inflicted on individuals by these types of sanctions are minor in comparison to the more tangible economic harms brought about by direct economic sanctions or indirect economic sanctions operating with an economic pressure mechanism. Therefore, I have no more to say about them in this section.

A Means of International Coercion

Economic sanctions are widely regarded to be a means of international coercion. Many theorists even define economic sanctions as coercive. However, they rarely pause to explain exactly what they mean by 'coercion' and arguably – under many philosophical theories of coercion – economic sanctions are not actually coercive at all – at least not in any morally interesting way. In this section therefore I take a closer look at the issue of coercion. Drawing on the philosophical literature on domestic coercion, I start by arguing for a particular view of coercion. I then turn to consider the circumstances in which economic sanctions are coercive on this view. I conclude the section by explaining why the coerciveness of economic sanctions is morally problematic.

A View of Coercion

In ordinary language the term 'coercion' is applied rather loosely to a whole range of measures by which one party may force another to do something contrary to

their will. Virginia Held captures this intuition when she writes that ‘coercion is the activity of causing someone to do something against his will, or of bringing about his doing what he does against his will’.⁵² This, I believe, is the way the term ‘coercion’ is used in the economic sanctions literature. However, Robert Nozick’s influential definition of coercion however is much narrower. For Nozick:

Person P coerces person Q into not doing act A if and only if:

1. P threatens to bring about or have brought about some consequence if Q does A (and knows he’s threatening to do this).
2. A with this threatened consequence is rendered substantially less eligible as a course of conduct for Q than A was without this threatened consequence.
3. (Part of) P’s reason for deciding to bring about the consequence or have it brought about, if Q does A, is that P believes this consequence worsens Q’s alternative of doing A (i.e. that P believes that this consequence worsens Q’s alternative of doing A, or that Q would believe it does).
4. Q does not do A.
5. Part of Q’s reason for not doing A is to avoid (or lessen the likelihood of) the consequence which P has threatened to bring about or have brought about.
6. Q knows that P has threatened to do the something mentioned in (1), if he, Q, does A.
7. Q believes that, and P believes that Q believes that, P’s threatened consequence would leave Q worse off, having done A, than if Q didn’t do A and P didn’t bring about the consequence.⁵³

One obvious way in which Held’s definition is wider than Nozick’s is that she does not limit the instruments of coercion to threats. For instance, she quotes approvingly J.R Lucas’ assertion that ‘imprisonment is the paradigm form of coercion’.⁵⁴ According to Held’s definition, a person locked in a cell against their will is coerced to stay there though they are not under any threat. According to Nozick’s definition, a person locked in a cell against their will is not being coerced at all because coercion requires the use of threats. One might say that they are

⁵² Held, 51.

⁵³ Nozick, 440-462.

⁵⁴ J.R Lucas, *The Principles of Politics* (New York: Oxford University Press, 1966), 60 quoted in Held, 54.

compelled to stay in the cell, but not that they are coerced.⁵⁵ If a person were placed in an *unlocked* cell and threatened with death if he tried to leave, only then would he be coerced to stay there under Nozick's account.⁵⁶ There is clearly a distinct difference between the cases of the locked and unlocked cells: in the first case compliance is achieved by means of direct force – the door is locked, in the second case compliance is achieved by means of threats intended to constrain the will of the prisoner. In the first case the prisoner really cannot leave the cell because he is physically prevented from doing so. In the second case the prisoner could actually leave the cell though it would be very unwise. I will use the term 'compulsion' to refer to compliance achieved by direct force and 'coercion' to refer to compliance achieved by means of threats. The remainder of this discussion relates to coercion.

Since Nozick's 1969 paper a considerable philosophical literature has sprung up around the task of defining 'coercion'. This task is motivated by a variety of concerns: are individuals excused from morally wrong acts carried out under coercion? Are contracts made under coercion valid? Do coercers act wrongly and, if so, why? However, despite all the effort that has gone into this area, agreement on any definition remains elusive. This has led some to argue that there is no one unified and overarching definition of coercion to be found. Rather, the necessary and sufficient conditions for an instance of coercion will depend on the context in which the enquiry is taking place. For instance Mitchell Berman argues that the necessary and sufficient conditions for the kind of coercion that excuses one from moral responsibility (which he calls coercion_e) might differ from the necessary and sufficient conditions that determine the coercer has acted wrongly (which he calls coercion_w).⁵⁷

I think this is probably right and in what follows I consider coercion in the context of whether or not the coercer acts *prima facie* wrongly.⁵⁸ That is, after all, what I want to know with regards to economic sanctions: does the sender coerce the target state (or the citizens thereof) in a way that is morally interesting for my

⁵⁵ See for example Joel Feinberg's distinction between coercion and compulsion, Feinberg, 1989, 191. Nozick doesn't actually make any comment on cases of compulsion, seemingly taking for granted that there is no need to consider them.

⁵⁶ Held would also agree this was an instance of coercion.

⁵⁷ Berman, 45.

⁵⁸ Allowing for the possibility that the coercion might be justified means it can only be *prima facie* wrong.

purposes, i.e. in a way that means the sending state has acted *prima facie* wrongly. I am less interested in whether the target is morally responsible for any policy changes enacted due to the sanctions or whether the target is required to continue to respect agreements reached under threat of economic sanctions. Though these are admittedly important questions, the scope of my enquiry does not permit me to consider them here.

A useful place to start then is by considering what might be wrong with coercion. For most theorists coercion – whatever their particular definition – is morally problematic *at least in part* because it involves the subjugation (or the attempted subjugation) of one individual's will by another and so undermines their autonomy. As Gerald Dworkin puts it:

Whenever coercion takes place one will is subordinated to another. The coerced is no longer a completely independent agent. If my will is overborne by yours I serve your ends and not mine. I am motivated by your interests and not mine. I do what you want, not what I want.⁵⁹

We can see this clearly when we consider the case of the highwayman's proposal 'your money or your life!' which is often taken as a paradigm case of coercion. The victim does what the highwayman wants (hands over her money) not what she herself wants (to hold onto the money). The victim's choice to hand over the money is made involuntarily. It is a forced choice and it is wrong because it undermines the victim's autonomy. So in order to get necessary and sufficient conditions for coercion_w we need to determine under what circumstances X's proposal to Y renders Y's choice involuntary.

Serena Olsaretti argues that 'a choice is voluntary if and only if it is not made *because* there is no acceptable alternative to it'.⁶⁰ To be clear, a choice can be

⁵⁹ Dworkin, 1. Some people believe there is a paradox here. They argue that talk of 'choosing' against your will is a contradiction – if you *choose* to do X then you *will* to do X. The victim chooses to hand over her money to the highwayman and therefore it cannot be against her will to do so. Indeed there is a sense that things being as they are, the victim wants to live and therefore she does genuinely want to hand over the money. However, the phrase 'choosing to do X against your will' does not seem meaningless to most people. There is not space to consider this issue here in any depth but it has been considered by others. See, for example, the Dworkin paper referenced above.

⁶⁰ Olsaretti, 2004, 139. In later work she has altered this to read 'a choice is non-voluntary if and only if it is made because the alternatives which the chooser believes she faces are unacceptable'. See

voluntary even if there are no acceptable alternatives if it would have been chosen anyway, i.e. if it would be chosen even if there were acceptable alternatives. A person who is unable to leave a fortified city, but who does not desire to leave the city, remains there voluntarily.⁶¹ Thus we can say that A coerces_w B into doing X if and only if:

1. A threatens B with an unacceptable consequence if B does not do X.
2. B would not do X in the absence of A's threat.
3. B does X.

Before I go any further with this though it will be useful to flesh out further the notion of 'acceptable alternatives'.

i. Objectively or Subjectively Unacceptable?

On Olsaretti's account whether an alternative is acceptable or not should be assessed according to an objective standard such that 'an option is unacceptable if pursuing or choosing it threatens some basic need'.⁶² Olsaretti does not discuss this further but one assumes she thinks that all human beings have the same basic needs. This does not, of course, mean that all individuals will find the same alternatives acceptable or unacceptable. For instance, if one is blind then having one's guide dog taken away is unacceptable (assuming freedom of movement is a basic need) but if one is not blind then having one's guide dog taken away is not unacceptable.⁶³

In any case Olsaretti's main concern is that consequences should *not* be assessed according to an individual's subjective preferences. I think this is a mistake and that the acceptability of options ought to be subjectively rather than objectively determined.

Olsaretti, 2008, 3. This is to account for the ability of bluffs to coerce: the agent might believe there is no acceptable alternative but to do what the coercer wants but in the case of bluffs they are mistaken. For the sake of simplicity I set this complication aside.

⁶¹ Olsaretti, 2004, 138.

⁶² Olsaretti, 2004, 154.

⁶³ It is true that many people are very attached to their dogs but it does not seem that their dogs meet some basic need.

To see why this is so, consider that a good coercer will use her victim's preferences against her so that the victim does what she wants. If her victim has an (objectively) warped preference structure it makes no difference to the coercer. Say putative coercer, A, knows that X feels she can only drink champagne and that the idea of never being able to drink champagne again is literally unbearable for her. It seems that A commits the same *prima facie* wrong by threatening to prevent X from ever drinking champagne again as she does by threatening to beat up X. A knows both will have the same effect. I do not see why A does something *prima facie* wrong in the second case but not the first. So in the case of coercion_w, the alternatives should be *subjectively* unacceptable. A coerces_w X by threatening to prevent her from ever drinking champagne again.

ii. Absolutely or Relatively Unacceptable?

For the alternative to be unacceptable it is not sufficient that it be unacceptable relative to the other options – it must be unacceptable in its own terms. Here Olsaretti borrows from Gerald Cohen who argues that the unacceptable alternative has to be 'thoroughly bad... in some [absolute] sense'.⁶⁴ Cohen argues that the alternative must be absolutely unacceptable not merely relatively unacceptable. Otherwise, he argues, the upshot is that perfectly rational people make all their choices involuntarily since any less preferred option will be relatively 'unacceptable'.⁶⁵ For example if X is choosing between a good, well-paid job in New York and a good job in LA on twice as much money, the New York job is relatively unacceptable and so the job-seeker takes the LA job involuntarily. I think Cohen is right on this point.

But, one might ask, how can an alternative be both subjectively unacceptable and unacceptable in some absolute sense? Well, if one allows that individuals can rank their subjective preferences from most to least preferred then at some point in this ranking there will be a threshold and everything that falls below this threshold is absolutely unacceptable to that individual. In the example above, both the LA and

⁶⁴ Cohen, 282.

⁶⁵ Cohen, 283.

New York jobs are above the threshold whereas, one would assume, unemployment without benefits would definitely fall below the threshold.

An objective standard of acceptability sets an absolute limit in the exact same way – one can list all the needs human beings must have met to live flourishing lives from most to least necessary and draw a threshold line at some point – perhaps, as Olsaretti does, at the level of ‘basic needs’.

iii. Moralised and Non-moralised Theories of Coercion

So far I have presented a view of coercion that is non-moralised. That is, whether a proposal is coercive or not depends on whether or not an agent’s choice to act is voluntary and the necessary and sufficient conditions for this can all be explained without invoking moral values. Moralised theories of coercion on the other hand contend that coercion claims cannot be assessed without involving moral values. Proponents of moralised theories might argue either that:

1. A lack of any acceptable alternatives is not sufficient for involuntary choice; or
2. A choice made due to a lack of any acceptable alternatives *is* involuntary but involuntary choice is not sufficient for coercion in the morally significant sense that the coercer acts wrongly.

I will consider each in turn.

1. Lack of any acceptable alternatives insufficient for involuntary choice

The most fully worked out theory of moralised coercion is that of Alan Wertheimer. Wertheimer has what he calls a ‘two-pronged’ theory of coercion in which A coerces B into doing X if and only if:

1. A creates a choice situation for B such that B has no reasonable choice but to do X (choice prong), and
2. It is wrong for A to make such a proposal to B (proposal prong).

(Note that A's proposal is wrong for Wertheimer's purposes if the proposed consequences for non-compliance would violate B's moral rights.)⁶⁶ Thus a coercive proposal is a proposal to make someone worse off than they *ought* to be if they do not comply. A lack of any acceptable alternative (the choice prong – roughly speaking) is not sufficient for coercion. (Note that Wertheimer does not divide coercion into coercion_e, coercion_w etc., his concept of 'coercion' is intended to cover all contexts in which coercion claims are made).

Wertheimer illustrates his two-pronged theory with an example borrowed from Daniel Lyons. A rich benefactor of a private boys' school tells the headmaster he will give the school this year's annual donation only if they start admitting girls.⁶⁷ Assuming that the donation is necessary to keep the school open is the benefactor's proposal coercive? Well the benefactor has no duty to make his annual donation - he does not violate the moral rights of the headmaster or the pupils if he withholds it. He does not make them any worse off than they *ought* to be. Therefore the proposal is not coercive. On the other hand if the local government, which did have a duty to fund the school, made the same proposal, that proposal *would* be coercive. A further consequence of this moralised theory is that a choice is not deemed to have been made involuntarily if it is brought about by a moral threat even if it is true that the victim had no choice but to do X. Wertheimer states that 'one acts voluntarily when responding to moral threats' and so the headmaster chooses to admit girls voluntarily.⁶⁸

The problem with such an argument, as Olsaretti points out, is that it results in a moralised theory of voluntariness that seems completely counter-intuitive: one does not want to say of the headmaster that he chose to admit girls voluntarily. Given this, why does Wertheimer take this view? Well for Wertheimer the primary function of coercion claims is to bar ascription of responsibility or render contracts void. Wertheimer wants to be able to say that fair contracts entered into where one party 'has no choice' are still valid since we want people in desperate situations to be able to enter into contracts to better their situations. Wertheimer warns that a non-

⁶⁶ Wertheimer, 172.

⁶⁷ Wertheimer, 213.

⁶⁸ Wertheimer, 250.

moralised theory of coercion faces the problem of distinguishing between those involuntary agreements that it wishes to hold valid and those involuntary agreements that it wishes to hold void. He therefore considers a moralised theory to have significant advantages over a non-moralised theory. However, again, this issue is irrelevant to my argument. That the necessary and sufficient conditions for coercion_w are unhelpful if we take them to be necessary conditions for coercion_e or even coercion_i (contract invalidating) is irrelevant since I do not suggest doing such a thing. Therefore, Wertheimer's objections do not hold against a non-moralised account of coercion_w and the non-moralised account has the additional advantage of not being counter-intuitive.

To return to the benefactor, does he coerce_w the headmaster on my account of coercion_w? Recall that A coerces_w B into doing X if and only if:

1. A threatens B with an unacceptable consequence if B does not do X.
2. B would not do X in the absence of A's threat.
3. B does X.

Where the existence of an unacceptable alternative is judged according to the recipient's subjective preferences and where alternatives are unacceptable in some absolute sense.

Assuming that the closure of the school is an unacceptable consequence for this headmaster and he would not have chosen to admit girls in the absence of the benefactor's threat then, yes, the proposal is coercive_w and the benefactor *acts prima facie* wrongly. Of course this does not mean his actions cannot be justified. If one thinks that the school's accepting girls is a morally important objective then the use of coercion_w to achieve this objective could be morally justified.

2. *Involuntary choice not sufficient for coercion*

There are other types of moralised theories that do not involve a moralised concept of voluntariness. These theories concede that an agent's choice is involuntary in situations where there is no acceptable alternative (though they may

cash out this situation in slightly different terms) but deny this renders the proposal coercive in the sense that the coercer commits a wrongdoing. Vinit Haksar and Berman have accounts of this nature. For Haksar for a proposal to be coercive in the sense that the coercer acts wrongly it is not sufficient that it leaves one 'with no choice', it must threaten to violate the 'victim's' rights. A fair contract signed by an agent who 'had no choice' but to sign it is not coercive in the sense that the coercer acts wrongly. To use his example, the village doctor does no wrong in selling medicine to a rich man for \$1 even if the rich man has no choice but to pay for he will die otherwise. The rich man's choice to pay is involuntary but the doctor's proposal is not coercive in the sense that the doctor acts wrongly.⁶⁹ However, when Haksar discusses 'coercion' in the wrongdoing sense he means wrong in the all things considered sense. When I discuss 'coercion' in the wrongdoing sense (i.e. coercion_w) I mean *prima facie* wrong. So we are not talking about the same thing. On my account, the doctor's actions are not all things considered wrong – they are *prima facie* wrong. I would also claim that the doctor's proposal – although *prima facie* wrong – is morally justified. It is morally justifiable for him to threaten to refuse to give medicine to rich patients who can afford it. If he does not charge for medicine he will not be able to buy more for his other patients and so on. Further, it is a fair price that barely covers his costs and the rich man can afford it. He is only coercing_w him into doing the morally right thing. Therefore, in the end I do not think our positions are so different. Haksar concedes that 'having no choice' is an intrinsic evil and accepts that although the proposals which leave one with no choice are not coercive in the all things considered wrongful sense, they are coercive in a 'neutral sense' and require an 'ordinary justification' just as putting prices up in a shop requires an ordinary justification.⁷⁰

I now turn to consider the circumstances in which economic sanctions might be coercive_w.

⁶⁹ Haksar, 1976, 75.

⁷⁰ Haksar, 1976, 78.

In what Circumstances are Economic Sanctions Coercive?

The claim that economic sanctions are coercive is best understood as being made with respect to economic sanctions imposed with the objective of changing a target's objectionable/unlawful policy and which work via an indirect mechanism employing economic or non-economic pressure. In what follows I consider the collective version of such sanctions before turning to the targeted version.

Collective Economic Sanctions

Collective economic sanctions employing an indirect mechanism issue a threat to the target government. If the pressure applied is economic, the threat to the target government is something like this: if you do not change some policy X, we will impose (or continue to impose) economic sanctions, your economy will suffer and you run the risk of losing power. If the threat is non-economic then it might take various forms; one form it might take goes something like this: if you do not change some policy X, we will impose (or continue to impose) economic sanctions, this will be hugely embarrassing for you.⁷¹

The target government is thus faced with two alternatives to weigh up. In the case of economic pressure this is: abandon policy X or suffer economic sanctions and possibly lose power. In the case of non-economic pressure this is: abandon policy X or suffer huge embarrassment.

The threat to the target government will only be coercive_w if the economic sanctions are an unacceptable alternative to changing policy X. Whether this is so will depend on a number of factors. I consider economic pressure before turning to consider non-economic pressure. Some relevant factors for economic pressure are as follows.

⁷¹ In both cases the explicit threat is that sanctions will be imposed or continued. The threatening consequences of the sanctions (loss of power for the government, huge embarrassment) are not typically made explicit by the sender. However, it is reasonable to believe these consequences are understood by all parties as being the obvious outcome of economic sanctions. Indeed if sanctions did not have unpleasant consequences, the sender's declared plan to impose them would not be particularly threatening.

First, it matters whether the target government expects the economic sanctions to cause political protest. If the economic harms are expected to be minimal then significant protest is unlikely. Even if the harms are expected to be significant there might be steps the target government can take to avoid protest in response to the economic sanctions. First, they might be able to reduce the economic harms, e.g. by encouraging smuggling or by developing import substitutes. Second, they might be able to prevent the economic harm from generating political protest. One method would be to exploit nationalist sentiment to create a rally-round-the-flag effect. Alternatively the government could increase the level of repression and terrify the population into submission. If a government is confident that it can retain power in the face of economic sanctions, economic sanctions will not be an unacceptable alternative.

Second, it matters how committed the target government is to remaining in power. Governments that have terrorised their populations and carried out terrible crimes against them have significant incentives to remain in power as they may be subject to severe retribution once out of power. On the other hand, a government without such concerns might be less worried about losing power. Thus economic sanctions are more likely to be an unacceptable alternative – other things being equal - when imposed against a criminal government.

In summary then it appears that economic sanctions employing an economic pressure mechanism could be coercive in certain circumstances. What, though, is the situation with non-economic pressure? Can economic sanctions employing a non-economic pressure mechanism coerce a target?

The answer to that question will depend on the type of non-economic pressure employed. Let us take for examples economic sanctions as a threat of war and economic sanctions causing international embarrassment.

In the case where economic sanctions are thought to ‘work’ by being perceived by their target as a threat of war, it is war and the consequences of war that are the unacceptable alternatives to changing policy X rather than any harmful consequences that will be brought about by the economic sanctions themselves. Hence, such economic sanctions are not coercive; rather, it is the underlying threat of

war which coerces. It is fear of war and its consequences rather than fear of economic sanctions and their consequences which coerces targets into compliance.⁷²

Economic sanctions that ‘work’ through causing their targets (only) international embarrassment threaten nothing but the embarrassment itself. Can international embarrassment be an unacceptable alternative to policy change? One should not underestimate the psychological pressure such a mechanism could bring to bear on officials of targeted governments; particularly governments that consider themselves to be members in good standing of international society. In extreme cases one could imagine that continuing to suffer the embarrassment of economic sanctions was an unacceptable alternative to policy change. However, it is important to note that government officials are only likely to feel embarrassed if they believe that their policies are wrongful/unlawful. If they believe their policies are neither wrongful nor unlawful then the sanctions are likely to be met with anger and defiance rather than embarrassment. Thus, economic sanctions that operate through this ‘embarrassment mechanism’ will only coerce if the target itself considers its policies to be wrongful/unlawful. Without claiming that such a mechanism is entirely morally unproblematic it does seem fair to say that the fact it can only work if the target itself believes its policies to be wrongful/unlawful, renders it less problematic than other forms of economic sanctions.

To summarise then, economic sanctions employing a non-economic pressure mechanism are either not coercive in and of themselves or, where they are coercive, are significantly less problematic than coercive sanctions employing an economic pressure mechanism. Further, as we saw in the previous section, economic sanctions employing a non-economic pressure mechanism do not inflict any serious harms. For all these reasons, I set such economic sanctions aside for the purposes of this thesis.

⁷² Some might object that in the case of indirect economic sanctions employing an economic pressure mechanism, it is likewise the threat of losing power that coerces governments rather than the economic sanctions themselves. This objection is mistaken. A government’s losing power is a direct consequence of the imposition of economic sanctions. War, however, is not a direct consequence of the imposition of economic sanctions.

Targeted Economic Sanctions

Targeted sanctions may also be coercive_w. For example, a government official suffering financial sanctions will have to weigh up the two alternatives of never having her financial assets returned and changing policy X. If the loss of her financial assets is an unacceptable alternative to policy change then the targeted financial sanctions are coercive_w.

Why International Coercion is Morally Problematic

So some economic sanctions are coercive_w in a morally interesting sense: they coerce_w their targets. Earlier I argued that the wrongness of coercion_w is found in the way it involves the subjugation of the victim's will by the coercer and therefore undermines the victim's autonomy. This applies in the same way to the case of economic sanctions. Government officials of target states subjected to collective sanctions are forced to fulfil the sender's wishes rather than their own wishes and rather than the authentic (i.e. non-coerced) wishes of their citizens.⁷³ This is morally problematic because it undermines the self-determination of states. A state is self-determining if it is able to make decisions for itself on matters of policy. Self-determination is thought to be especially valuable when it comes to matters of domestic policy; the thought being that domestic policy ought to be determined by those who will be affected by it and not dictated by outsiders. One of the major objections to humanitarian intervention is that such interventions undermine the self-determination of the target state.

Likewise, targeted sanctions against government officials threaten the self-determination of states because government officials can be coerced into acting in the interests of the sender instead of in the interests of their own citizens. For instance, imagine the UK Prime Minister had a considerable sum of money sitting in an offshore bank account in state Y. If state Y imposed financial sanctions on the Prime Minister with the demand that he change some UK policy, the Prime Minister – depending on the sums involved – might be coerced into doing so.

⁷³ Citizens are also coerced by such sanctions. For citizens the threat is different: persuade your government to abandon policy X or suffer economic/non-economic harms.

Finally, a word on direct sanctions. Direct sanctions, recall, are those which aim to change a policy by denying a target state the resources necessary to pursue it. From the above discussion it should be obvious that direct sanctions are a case of compulsion rather than coercion. Direct sanctions attempt to achieve their ends without encountering the ‘will of the state’ at all. Nevertheless, compulsion undermines self-determination just as well as coercion. Thus direct sanctions also undermine self-determination. Unlike indirect sanctions which use threats to force a target state to abandon a policy, direct sanctions make that policy physically impossible. Thus direct sanctions are subject to the same criticism as indirect sanctions – they both undermine a state’s ability to be self-determining.

Prima facie the ability of a state to determine its own policies – self determination - is morally valuable and therefore undermining this ability requires justification. I consider this issue in chapter six.

2. Objective to Send a Message to the Target

Most economic sanctions that are designed to ‘send a message’ inflict little in the way of economic harm and, further, are not designed to pressure or coerce an immediate change in the target’s objectionable/unlawful policy or behaviour. Without claiming that they are entirely morally unproblematic, it is fair to say that they are significantly less morally problematic than economic sanctions that are designed to change a target’s objectionable/unlawful policy, considered above, or economic sanctions that are designed to punish, as considered below. Hence for the purposes of this thesis I set them aside.

3. Objective to Punish the Target

If collective economic sanctions are used as a kind of punishment then *prima facie* they are morally problematic because they are instances of collective punishment: every citizen within the target state is punished for the objectionable/unlawful policy irrespective of whether or not they bear any moral responsibility for it.

Targeted economic sanctions might be less problematic in this regard but, even if we assume that targeted economic sanctions are correctly targeted at those who are guilty (which, due to lack of proper due process procedures, we cannot), it is still a practice that requires justification – a claim I expect to be accepted by most philosophers given the huge amount philosophical literature devoted to the task of justifying the practice of punishment in the domestic case. I consider whether or not economic sanctions can be justified as a kind of punishment in chapter eight.

Conclusion

To conclude, economic sanctions are *prima facie* morally problematic because first, in many cases they inflict harm on individuals – often individuals who bear no moral responsibility whatsoever for their government’s objectionable/unlawful policies, and second, because as a means of international coercion (or compulsion), their imposition may undermine the self determination of target states. It is in virtue of these problematic features that economic sanctions stand in need of moral justification. The remainder of this thesis is an attempt to provide such a justification.

Chapter 3: Clearing the Ground

As I mentioned in the previous chapter, there is little in the way of philosophical work on the ethics of economic sanctions. There is, however, a public debate on the issue and several justifications for economic sanctions have been put forward in this debate. Furthermore, in working on this topic and presenting my work at philosophy conferences and work in progress seminars, I have been presented with several more philosophical justifications for economic sanctions. In this chapter my aim is to sympathetically reconstruct these justifications into their strongest form and then assess their plausibility. I end by concluding that none of the justifications offered are plausible, thus clearing the ground for the consideration of alternative justifications in later chapters.

In what follows the first three justifications primarily relate to collective economic sanctions, the final three justifications relate to any kind of economic sanctions.

1. The ‘Better than War, Better than Nothing’ Justification

One often hears the assertion that ‘economic sanctions are better than war, better than nothing’ as if that is all that can or should be said on the ethics of economic sanctions. But what exactly does that mean? How could we re-construct the argument that lies behind such a claim? Something like this first formulation seems reasonable.

P1. If a state is engaged in behaviour that is significantly threatening or harmful, then there are three courses of action which other states could take in response to it: war, economic sanctions or ‘doing nothing’.

P2. The morally required course of action is the one which has the best expected consequences.

P3. If a state is engaged in behaviour that is significantly threatening or harmful, then economic sanctions always have better expected consequences than either war or ‘doing nothing’.

C. If a state is engaged in behaviour that is significantly threatening or harmful, then other states are always morally required to impose economic sanctions against it.

The background assumption to premise one appears to be that economic sanctions are designed to change the political behaviour of the target. In particular, I think many people have the example of the Iraq sanctions in mind (i.e. collective, comprehensive sanctions) when they bring forward this justification. Therefore, for the sake of example, let us say that the significantly harmful or threatening behaviour with respect to which the action is being contemplated is that of a tyrannical leader developing weapons of mass destruction (WMD). The objective of the war or economic sanctions is to end this weapons programme. ‘Doing nothing’ with respect to this state of affairs is best understood as doing exactly what one would have done if the relevant state of affairs had never arisen. In this case of the WMD example, ‘doing nothing’ means acting as if there were no weapons programme at all and therefore means that no action of any kind is taken to end the weapons programme. Of course, premise one’s assumption that the economic sanctions are designed to change the political behaviour of the target means that, even if this justification holds, it can only justify economic sanctions that aim to change the political behaviour of the target. It cannot justify economic sanctions which aim to ‘send a message’ or punish targets. Nevertheless, it is worth considering as a justification to the former type of economic sanction.

Premise two is a standard consequentialist premise. I think it is quite clear that the better than war better than nothing (BWBN) argument is consequentialist in form. The general idea seems to be that ‘doing nothing’ would be disastrous and so *something* must be done. Further, of the two options – war and economic sanctions – economic sanctions are the less harmful. Hence economic sanctions are ‘better than war, better than nothing’.

Admittedly, it is not obvious *exactly* what people mean when they say that economic sanctions are ‘better than war, better than nothing’ for there are many ways of evaluating consequences. Here I am going to assume that the course of action which has the best expected consequences is the one which has the greatest expected balance of benefit over harm. However, there are (at least) two different ways of weighing the harms – either of which may be intended by the proponent of the BWBN argument. First, there is the pure consequentialist argument that economic sanctions are better than war because they cause less harm *overall*. Second, there is the quasi-consequentialist argument that economic sanctions are better than war because they cause less harm to *our own people* – that is, citizens of the sending state. The pure consequentialist argument weighs harms done to all individuals equally. The quasi-consequentialist argument builds in a view about the moral status of individuals based on their citizenship and assumes that harms done to non-citizens may either be completely disregarded or at least discounted versus harms to citizens. This quasi-consequentialist argument is not a plausible moral view. A person’s citizenship is, largely, not a matter of choice but of circumstance and as such is a morally arbitrary factor.⁷⁴ Their moral status should not be affected by it. (I am aware that this claim is controversial and I argue for it in chapter five). In what follows therefore I consider only the pure-consequentialist version of the BWBN argument.

Premise three – that if a state is engaging in behaviour that is significantly threatening or harmful, economic sanctions always have better consequences than war or ‘doing nothing’ - is fairly self-explanatory. The conclusion that follows is that in such cases economic sanctions are morally required.

There are a number of objections that can be made against the ‘better than war’ argument as it stands.

First, according to premise one there are only three possible courses of action to be factored into the consequentialist calculation: war, economic sanctions and doing nothing. However, it is not necessarily true that these are the only three possible courses of action. Depending on the case at hand there might be other

⁷⁴ Setting aside issues of voluntary immigration etc.

things one could try such as diplomatic sanctions or conditional aid. Premise one is thus false and should be restated as follows:

P1*. If a state is engaged in behaviour that is significantly threatening or harmful, then there are several alternative courses of action which other states could take in response to this including - amongst others - war, economic sanctions or 'doing nothing'.

I now turn to premise three. Recall that according to premise three 'if a state is engaged in behaviour that is significantly threatening or harmful, economic sanctions always have better consequences than war or doing nothing'. That is, economic sanctions always have the greatest expected balance of benefit over harm. Unfortunately, premise three is false. There are (at least) three reasons for this.

First, taking into account the expected consequences of both war and economic sanctions means taking account of the *probability* that the respective measures will succeed. The most comprehensive study of the effectiveness of economic sanctions to date concluded that economic sanctions succeeded in only one third of cases.⁷⁵ However, the more economically powerful states - which are usually the ones imposing economic sanctions - are often militarily superior as well and are likely to win a war. Thus, the probability of war achieving the objective might be considerably higher than the probability of economic sanctions achieving it. If we factor these probabilities into the consequentialist calculation the result might often be that economic sanctions have lower expected benefits than war and thus overall do not have better expected consequences than war.

Further, if economic sanctions in a particular case do not achieve their objective, or have a very low probability of achieving their objective, then they will not be better than 'doing nothing'. If economic sanctions do not work then all the harm that would have occurred if one did nothing still occurs plus there is the additional harm caused by the sanctions themselves.

⁷⁵ Hufbauer et al., 2007.

Proponents of the BWBN argument need to properly reflect the probability of success of the various measures in a consequentialist calculation if they want to select the course of action with the best consequences. The table below shows this calculation for the WMD example. The ‘expected benefits’ are the value of ending the weapons programme multiplied by the probability of this being achieved, the expected harms are the disvalue of failing to end the weapons programme multiplied by the probability this will be the case, and the known harms are the certain harms that arise from war (e.g. deaths and destruction), economic sanctions (primarily economic harms) and ‘doing nothing’.

| | Expected Benefits | | | Expected Harms | | | Known Harms | Net |
|----------------------|-------------------|-------|----------------|-----------------|-------|----------------|-------------|--------------|
| | Prob of Success | Value | Expected Value | Prob of Failure | Value | Expected Value | Value | |
| War | 50% | 100 | 50 | 50% | -100 | -50 | -60 | -60 |
| Economic Sanctions | 33.3% | 100 | 33.3 | 66.7% | -100 | -66.7 | -20 | -53.4 |
| Diplomatic Sanctions | 10% | 100 | 10 | 90% | -100 | -90 | 0 | -80 |
| Do Nothing | 0% | 100 | 0 | 0% | 0 | 0 | -100 | -100 |

In this example economic sanctions are the least harmful course of action but it is easy to see how this could change with changing probabilities of success.

| | Expected Benefits | | | Expected Harms | | | Known Harms | Net |
|----------------------|-------------------|-------|----------------|-----------------|-------|----------------|-------------|-----------|
| | Prob of Success | Value | Expected Value | Prob of Failure | Value | Expected Value | Value | |
| War | 90% | 100 | 90 | 10% | -100 | -10 | -60 | 20 |
| Economic Sanctions | 7.5% | 100 | 7.5 | 92.5% | -100 | -92.5 | -20 | -105 |
| Diplomatic Sanctions | 5% | 100 | 5 | 95% | -100 | -95 | 0 | -90 |
| Do Nothing | 0% | 100 | 0 | 0% | 0 | 0 | -100 | -100 |

In this example war is the least harmful course of action.

Basically, the upshot is that in a case where economic sanctions have a low probability of succeeding the better consequences could easily be those of war or ‘doing nothing’.

Second, it is not true that economic sanctions are always less harmful than war. There are many different types of economic sanctions and the assumption that they are less harmful than war is more plausible in relation to some than others. For instance, targeted sanctions such as asset-freezes on the investments of government

officials harm only those officials and their close relatives – and even then those harms are restricted to economic losses. Targeted sanctions like these are clearly less harmful than war. On the other hand, comprehensive trade sanctions may cause considerable damage to an economy and, in extreme cases, result in the deaths of people within the target state as happened in the case of Iraq. Where economic sanctions cause this level of harm it is possible that they are more harmful than war. The BWBN argument needs to take account of this possibility.

Third, it is worth pointing out that economic sanctions can sometimes unintentionally *trigger* a war, e.g. some argue that the US oil boycott on Japan triggered the attack on Pearl Harbor. The risk of this occurring should also be included in the consequentialist calculation.

Taking into account the above points, the BWBN argument should be restated to read as follows:

P1*. If a state is engaged in behaviour that is significantly threatening or harmful, then there are several alternative courses of action which other states could take in response to this including - amongst others - war, economic sanctions or 'doing nothing'.

P2. The morally required course of action is the one which has the best expected consequences.

C. If a state is engaged in behaviour that is significantly threatening or harmful, then other states are morally required to impose economic sanctions *if* they have the best expected consequences.

The third version of the argument is obviously very different to the second. Most significantly, on this version economic sanctions are not always morally required but rather may or may not be morally required depending on the case at hand.

However, even in this, its most defensible form, there is an objection that can be made against the BWBN argument. As a fundamentally consequentialist

argument, it does not acknowledge deontological constraints on action. The BWBN argument weighs up only the aggregate harm inflicted; it does not give any consideration to the question of *who* the harm is imposed upon or *why*. This is a particular problem when it comes to *collective, comprehensive* sanctions such as those imposed on Iraq. As we have seen, indirect collective sanctions violate two important deontological constraints - they *intentionally* inflict harm on innocent people and further use innocent people as a means to an end; possibly, in some cases, even forcing them to risk their lives. War, on the other hand, at least when fought according to international law, does not deliberately target innocent people. So even if comprehensive collective economic sanctions might cause less harm than war overall, that harm is deliberately targeted at innocent people. This counts against the moral permissibility of economic sanctions but is not taken into account by the BWBN argument.⁷⁶

In conclusion then the argument fails as a justification – economic sanctions require more justification than simply being ‘better than war, better than nothing’.

2. The ‘Blame-Shifting’ Justification

Other arguments that aim to justify economic sanctions – and particularly the suffering of innocents caused by collective economic sanctions - include what I will call ‘blame-shifting’ arguments. The general argument goes that it is not the sender who is to blame for the suffering of innocents living within the target state; it is their own government. There are two main variations of the blame-shifting argument.

The first variation of the blame-shifting argument claims that the target government is entirely morally responsible (in the blameworthy sense) for all the

⁷⁶ One way in which this problem could be alleviated would be by building these deontological constraints into the consequentialist value theory, i.e. by weighing the harms inflicted on innocent people more heavily than those inflicted on the guilty. For an example of how concerns of justice can be incorporated into a consequentialist framework see Feldman, 1999. However, although such theories will often rule out the intentional infliction of harm on innocents (since such harms are weighted so heavily) these harms ultimately remain permissible if the benefits at stake are very significant. Hence although a theory like this could take some account of these deontological constraints, it would not recognise them as absolute. Hence the objection stands.

suffering caused by the sanctions since it could comply with the sender's demands but does not.⁷⁷

The second variation does not deny that the sender is morally responsible (in the blameworthy sense) for *some* suffering, what is denied is moral responsibility for *excess* suffering, i.e. suffering in excess of that intended by the sender. Senders almost always allow humanitarian exemptions (e.g. for food and medicine) in order to avoid humanitarian catastrophe. If humanitarian catastrophe nevertheless occurs then this excess suffering, it is claimed, is the moral responsibility of the target government because it is redistributing scarce resources or humanitarian aid in a way that makes the impact of sanctions worse than they would otherwise be. For example, the target government might redistribute scarce resources towards its supporters and away from its opposition in an attempt to hang on to power. Alternatively, the target government may forbid the distribution of humanitarian aid because it wants to show pictures of extreme deprivation for propaganda purposes or may direct humanitarian aid towards the military. In what follows I take each variation of the blame-shifting argument in turn.

The 'Refusal to Comply' Variation

The first variation of the blame-shifting argument claims that the target government is entirely morally responsible for all the suffering caused by the sanctions since it could comply with the sender's demands but does not. A very old example of this kind of blame-shifting argument is given by Michael Walzer who quotes Josephus' account of the 72AD siege of Jerusalem: 'Titus, [the Roman commander besieging Jerusalem] ...lamented the deaths of so many Jerusalemites, 'and lifting up his hands to heaven...called God to witness, that it was not his doing'.⁷⁸ Josephus goes on to argue that it was the political and military leadership of Jerusalem that was to blame for the all the deaths because they refused to surrender. Walzer is not particularly impressed by this argument. The argument, he says, 'makes Titus himself an impersonal agent of destruction, set off by the

⁷⁷ In what follows 'moral responsibility' refers to moral responsibility in the blameworthiness sense.

⁷⁸ Walzer, 2006, 162.

obstinacy of others, without plans and purposes of his own'.⁷⁹ It is wrong to see Titus this way, of course, since Titus is a moral agent and is free to choose his response to the refusal of surrender. Hence he is morally responsible for the choice that he does make.

Along similar lines it seems quite clear to me that the sender also bears moral responsibility for the harms of the economic sanctions; the sender, after all, is free to impose sanctions or not to impose sanctions in response to a refusal to comply. The sender has a choice and should be held morally responsible for the choice made.

None of this of course entails that the target government is blameless for the ensuing economic sanctions. It might be quite wrong for the target government to refuse to comply with the demands of the economic sanctions; for example because the demands are perfectly reasonable or because the suffering that will be inflicted as a consequence is vastly disproportionate to any good that can be achieved by refusing to comply.⁸⁰ In this case both the sender and the target government will share moral responsibility for the harms of sanctioning.

Excess Suffering Variation

The first thing to note about this second variation is that – even if it is plausible – it is only a partial justification – it only justifies the suffering that is in excess of that intended by the sender. It cannot justify any suffering that is intended by the sender.

The second thing to note is that it only applies if the circumstances it assumes hold do actually hold, i.e. it only applies in circumstances where there actually *is* excess suffering and, further, where the target government's redistribution policies are a cause of this. These circumstances might well not hold. After all, extreme suffering is not necessarily unintended, i.e. is not necessarily 'excess'. Even where it is, it is not necessarily caused by the target's redistribution policies. Admittedly, it is very plausible that in some cases of sanctions, target governments make the economic harms worse than the sending governments intend them to be. With respect to indirect collective sanctions, target governments know that the intention

⁷⁹ Walzer, 2006, 162.

⁸⁰ For this view (though not applied to economic sanctions) see Zimmerman, 1985b.

behind the sanctions is to pressure those who support the target government and those who are disinterested or apathetic towards it to pressure the government into changing the objectionable policy. Thus the target will do its utmost to ensure that these groups suffer least from the sanctions. They will be much less concerned about the impact of the sanctions on the groups who have traditionally opposed the government. Since such groups already oppose the policy it does no harm to the target to let economic harms fall on them. In fact, if it weakens their ability to protest or otherwise attempt to subvert the target government then so much the better. That the government may then also use the suffering of opposition groups for propaganda purposes to attempt to persuade the international community to help get the sanctions lifted is not entirely unlikely either. These courses of action are perfectly rational for a target government that does not want to change its policy – they are obvious defensive moves against economic sanctions – and their possibility is entirely foreseeable.

Similarly, in the case of direct sanctions it is a foreseeable possibility that the target government will direct scarce resources and even humanitarian aid to the military and leadership as a matter of priority rather than sharing them in an equitable manner. This is likely to result in suffering for other groups in excess of that intended by the sender.

Having said all that, suffering in excess of that intended by the sender may be caused by factors other than the target's redistribution policies. For instance, it could be due to negligence on the part of the sender, e.g. if humanitarian exemptions were insufficient or not processed efficiently. In such cases the 'blame shifting' argument could not even get off the ground.

For the sake of argument though let us assume that there is suffering in excess of that intended by the sender and this is due to the target governments' redistributive policies. Is it right to think that the sender is not to blame for this excess suffering?

I suspect that arguments to the effect that the sender is not to blame for the excess suffering in this case are motivated by the 'doctrine of intervening agency' or

something similar.⁸¹ According to the doctrine of intervening agency, blame for harms cannot be traced through the intervening agency of another agent where that agent's intervention is free, voluntary and informed. Thus if I beat you up and leave you lying defenceless on the ground and after I am gone your neighbour, who (unknown to me) hates you, takes this opportunity to stab you death, I am not to blame for your death; your neighbour is to blame. Here your neighbour is the 'intervening agent' and blame for your death cannot be traced through your neighbour back to me; to put it colloquially, the buck stops with your neighbour. The logic behind this idea is that agents are entirely morally responsible for their free, voluntary and informed choices even if those choices are only available because of the prior actions of others. Further, agents should not be held morally responsible – even in part – for harms that arise from the free, voluntary and informed actions of others – for that is to make agents responsible for the actions of others and that is unfair.

However, even if the doctrine of intervening agency is plausible in a case like the one sketched above (and I take no stand on that), it is not plausible in cases where the harm that the intervening agent will inflict as a result of your actions is *foreseeable*.

To show this let's consider another example. Imagine a police officer who locks up the town drunk for the night in a cell with a notorious serial killer who has just been captured. She hopes that being locked up with a serial killer will scare him into being less trouble in the future. She foresees there is a high probability the serial killer will kill him but goes ahead anyway. Unfortunately the serial killer does kill him. Obviously, the serial killer is to blame for the drunk's death. However, surely it is intuitively obvious that the police officer is partly to blame for the drunk's death as well? Of course the police officer's moral responsibility for the death is less than that of the serial killer, we would not call her a murderer but we might, I submit, think her guilty of some lesser crime.

In a similar manner, I contend that where the excess suffering from economic sanctions is foreseeable, both the sender and target are morally responsible for the excess suffering though the sender bears a lower level of moral responsibility.

⁸¹ On the 'Doctrine of Intervening Agency'. See Hart & Honoré, 1985 esp. chapters 12 and 13; Kadish, 1985.

Proponents of the doctrine of intervening agency are likely to object to this conclusion by arguing that in effect it makes one agent morally responsible for the actions of another. One should, one would think, only be held morally responsible for one's own actions. However, I would respond that we are not holding agents morally responsible for the actions of others at all; rather we are holding agents responsible for the *contribution they make* to the actions of others and, by extension, the contribution they make to their harms.⁸² Thus we are holding agents responsible only for their own actions. The police officer did not kill the drunk but she created a situation where it was foreseeable that he would likely be killed. It is the latter action for which we hold her responsible. That is why in the case of the police officer we do not consider her guilty of murder but of some lesser crime. Therefore this objection does not hold.

To conclude, then, blame-shifting arguments fail to justify the harms senders inflict on innocent people. The most blame-shifting arguments can do for us is point us in the direction of partners in crime.

3. Consent

Another possible justification is that those innocents who are harmed by collective economic sanctions might consent to suffer such harms.⁸³ It is widely argued, for instance, that the Black population of South Africa consented to the anti-Apartheid sanctions and that this justified the harms they suffered. Indeed, if an agent genuinely consents to suffer harm then her rights are not violated since she has waived her right to not be harmed in this way. Therefore, I agree that, in principle, if those innocents who would suffer the harm of economic sanctions consented to this then the harms inflicted would be justified. However, there are some problems with a consent justification for economic sanctions.

First, the consent justification cannot justify harms that are intentionally inflicted on innocent people in order to coerce them into protesting against an objectionable policy. Conceptually it makes no sense to think of them as consenting

⁸² See Gardner, 2007a, 132.

⁸³ This justification has been suggested by several writers. See for example Christiansen and Powers, 1995 and Damrosch, 1994.

to be coerced into protesting - as if they just wanted some extra motivation to give up supporting the objectionable policy.⁸⁴ The consent justification can only justify harming innocents as a side-effect. In the case of South Africa, which was a case of indirect economic sanctions, the harms falling on the innocent Black population were side-effects and therefore can be justified by consent, but those falling on innocent members of the White population - which were intended - cannot. Hence indirect sanctions – at least those that involve the intentional infliction of harm on innocent people – cannot be justified by appeal to consent.

The consent justification might, however, be able to provide a justification for *direct* collective sanctions. At least, there is no conceptual problem with the idea. There are, unfortunately though, some non-conceptual problems which I will go through now.

First, most obviously, the innocent victims of the direct sanctions might not consent to suffer the harms of sanctions.

Second, the majority of the innocent victims of direct sanctions might consent but a minority might not. If a minority refuse to consent then it remains wrong to impose collective sanctions which will inevitably harm the minority in question.

Third, even if it is thought that everyone has actually consented, there remains the epistemic problem of verifying this. How does one know that everyone has consented to the sanctions? It is impossible to get the explicit consent of everyone. Lori Damrosch suggests that we rely on the statements of ‘authentic civilian leaders’ stating that ‘the international community should defer to those leaders’ judgements concerning what degree of hardships the civilian population is willing to endure’.⁸⁵ However, we need to be aware that the interests and motivations of ‘authentic civilian leaders’ might not always perfectly align with those of the ordinary population. Leaders tend to suffer less from sanctions – especially if they are in exile – and also have the most to gain – perhaps even political control of a state.⁸⁶ Although it is impossible to get the explicit consent to

⁸⁴ That is not to say that it is conceptually impossible to consent to be coerced. A drug addict might consent to be locked up in order to be forced into withdrawing from drugs, for example. However, to draw such an analogy with supporters of the objectionable policy consenting to be forced to protest is absurd.

⁸⁵ Damrosch, 1994, 73.

⁸⁶ Gordon, 1999, 130.

sanctions from everyone, one can surely do better than merely consult ‘authentic civilian leaders’. One could do some work on the ground – interviewing a cross-section of people for example. One will never be able to get the explicit consent of everyone but should still be able to judge general feelings on the matter.

One final remark – even if the existence of consent is often unclear, the absence of consent is often very clear. The widespread absence of consent among a population ought to be a deciding factor against economic sanctions in all cases where the objective of the sanctions intended to ‘help’ that very population. If the people the sanctions are intended to help do not want them then they should not be imposed. If the Black population of South Africa had vociferously argued against the imposition of economic sanctions then their wishes ought to have been respected. The suffering population is best placed to judge whether the harms that they will have to endure are worth the potential benefits.

Having set these justifications aside I now want to consider some more hopeful justifications.

4. The ‘Libertarian’ Justification

One could claim that economic sanctions do not inflict harm on target citizens, they merely allow harm to occur to target citizens (i.e. invoke the doing/allowing distinction). After all, economic sanctions are constituted by ‘not trading’ and it is this ‘not trading’ that causes the harm. The fact that the sender is refraining from doing something that would prevent the harm makes it appear *prima facie* that the sender is merely allowing the harm to occur rather than inflicting harm.

If this were so then it would be relevant to any justification of economic sanctions. Other things being equal, many people would consider the infliction of harm harder to justify than the allowing of harm. The infliction of harm is considered to be a violation of negative rights against harmful interventions such as killing, assault or theft; the allowing of harm, by contrast, is considered to be a violation of positive rights to aid or support which many would argue are much less weighty.⁸⁷ A libertarian might even go as far as to argue that there are no such things

⁸⁷ For the view that the doing/allowing distinction maps on to the positive/negative rights distinction see Philippa Foot, 2002b, 84. Not everyone agrees with this view but it is widely accepted.

as positive rights and that there are no duties to avoid allowing harm at all. If this were the case then, on a libertarian view, economic sanctions would not even stand in need of justification.⁸⁸ That, of course, would make my project redundant. Fortunately, the libertarian justification does not hold. As I will show, economic sanctions stand in need of justification irrespective of the status of positive rights because they are cases of inflicting harm rather than allowing harm.⁸⁹

First and foremost, the domestic analogy where sender X voluntarily decides to stop trading with target Y is very misleading. As discussed in chapter one, the sender of the economic sanctions passes legislation that prevents its citizens from trading with citizens of the target state; it will force them to renege on existing contracts and prevent them contracting any future trade by threat of legal penalties. Thus the sender intervenes to prevent the trade that would otherwise occur between citizens of state X and citizens of state Y. Given this correct picture of economic sanctions then it seems obvious that the sender's actions in intervening to prevent the trade that would otherwise have occurred *inflicts* harm on Y – the sender does not passively allow it to happen.

However, some might object – rightly - that this argument only applies to states with private enterprise; for example, if state X's oil companies are all nationalised it could be argued that if state X imposes an oil embargo on target state Y this does not constitute third party intervention into the affairs of others; rather, the domestic analogy holds – state X is refusing to trade with state Y. Is this still a case of X inflicting rather than allowing harm to state Y? I think that it is.

I want to start with a simple hypothetical example. Imagine that state X stops selling food to state Y in order to cause a famine. Y imports almost all its food from X and does not grow nearly enough of its own food to supply the population; Y's sudden decision leaves it in crisis. The only alternative supplier who has enough surplus food to supply Y in time to avoid many deaths from starvation is state Z. However, state Z refuses to do so because it will mean cancelling contracts with

⁸⁸ Libertarians deny the existence of positive rights because they deny the existence of enforceable duties to prevent harm befalling others. (With the exception of special positive rights/duties created by voluntary contract).

⁸⁹ Of course a consequentialist is likely to think it irrelevant whether economic sanctions violate negative or positive rights or whether they are instances of imposing or allowing harm; for the consequentialist, it is the fact that economic sanctions have harmful consequences (however brought about) that renders them in need of moral justification.

existing purchasers and losing their goodwill (even though its existing purchasers would not starve). As a result a famine develops in state Y and many people die. When state X and state Z are criticised for killing the citizens of state Y they state that they are not killing the people of state Y, they are merely letting them die.⁹⁰ Is this plausible? In assessing this I want to start by using Philippa Foot's distinction between doing and allowing.

Foot argues that an agent who inflicts harm is one who *initiates* a sequence of events that results in harm; an agent who allows harm, by contrast, is one who could stop a sequence of events that has already been set in motion from resulting in harm but does not.⁹¹ According to Foot there are two ways an agent can allow a pre-existing sequence of events to continue, i.e. two ways of allowing harm. First, one could 'forbear to prevent' the sequence from continuing; that is, completely stand aside and, as it were, just watch it happen. Second, one could 'remove an obstacle which is...holding back the train of events'.⁹² In Foot's example of the second possibility, the agent, let's call him 'A', finds himself involuntarily attached to a patient with organ failure and is providing the patient's life support via his own organs. Foot argues that if A removes the connecting tubes then he is allowing the patient to die because he is removing an obstacle (i.e. his life support) which is holding back the pre-existing train of events (i.e. the train of events which would usually follow organ failure).⁹³ What does Foot's analysis of the doing/allowing distinction imply for our example?

In the case of state Z it really does appear that Z is allowing the harm. State Z is allowing X's economic sanctions to develop into food shortages and then into a famine by refusing to sell Y the food that would prevent this. Z is allowing a pre-existing sequence of events (sanctions leading to food shortages leading to famine) to continue to their harmful conclusion of starvation. In Foot's terminology Z is 'forbearing to prevent' the sequence from continuing, Z is, as it were, just sitting back and watching the famine happen. Z is allowing the Y-citizens to die.

⁹⁰ I assume that the killing/letting die distinction is a species of the wider harming/allowing harm distinction.

⁹¹ Foot, 2002a, 89-90. Note that on my understanding of causation, both the agent who initiates a sequence of events and the agent who allows them to reach their harmful conclusion make a causal contribution to the resulting harm and thus can be said to be a 'cause' of the harm.

⁹² Foot, 1978, 26.

⁹³ Foot, 2002b, 88.

However, the case of state X is very different. It does appear that state X is the *initiator* of the sequence of events that conclude with starvation. It is X's economic sanctions – X's not selling of food to Y – which initiates a sequence of events that end with starvation in state Y. X *creates* the famine. On Foot's analysis this would entail that state X kills the citizens of state Y by not selling them food; it does not merely let them die.

One might perhaps resist this conclusion by claiming that X does not initiate the sequence of events; rather, the sequence of events was initiated by the fact that state Y had an unfortunate reliance on imports from X to provide its population with sufficient food. State X had been preventing any harm arising from this reliance by trading with Y in the past but, once it removes its trade, the harm that results is due to this pre-existing reliance. In other words, X allows the famine to occur in Foot's second possible way – X removes an obstacle to the famine's instantiation (where the obstacle is understood as selling food). Understood this way, X is like A who detaches himself from the patient with organ failure – by his connection he had been preventing the man's death from his pre-existing medical condition from occurring but has now decided to stop preventing that harm from occurring by detaching himself and allowing the pre-existing threat to materialise.

I do not think we should be persuaded by this argument. It is not the case that there was a pre-existing risk of famine that X was preventing by selling food in the same way that there was a pre-existing risk of death for the patient that A was preventing. Prior to developing trading relations with X, Y would have bought its food from other suppliers or grown enough of its own to feed the population. If there is a pre-existing risk of famine due to its reliance on state X then this risk is not independent of state X but entirely depends for its existence on the attitude of state X. Y's reliance on X is only a risk if state X makes it so. The patient's medical condition, by contrast, is a risk to the patient independent of anyone's attitudes. Presumably he developed a medical condition independent of anything A did. Once the medical condition became severe, A was hooked up to the patient to prevent him from dying. A really did become an obstacle to a sequence of events set in motion by the patient's medical condition – a condition which existed entirely independently of anything A did.

Therefore, economic sanctions are instances of inflicting harm, not merely allowing it. Thus even if one held that positive rights did not exist, economic sanctions would still stand in need of moral justification.

I believe this is the best way to understand economic sanctions – as the infliction of harm rather than as the passive allowing of harm. In addition to the arguments supplied above, this understanding has the advantage that it accords with most people’s intuitions and it also matches the views of senders of economic sanctions – senders certainly discuss the imposition of sanctions as though they believe themselves to be inflicting economic harms on targets. In this I believe they are right.

However, before I move onto the next justification, I have one final comment to make. It is worth pointing out that even if one remains convinced that economic sanctions are cases of allowing rather than inflicting harm, one would also have to be committed to the highly controversial view that positive rights did not exist in order to hold that my project was redundant.

5. The ‘Free Trade’ Justification

One might concede that economic sanctions inflict harm (as opposed to merely allowing it) yet nevertheless argue that there is no right to be protected from the harms inflicted by the refusal to trade because there is no such thing as a duty to trade – even in cases where harm will result. I will argue that this view is mistaken; there is a duty to trade in certain circumstances.

I will, however, start by conceding that there can be no comprehensive duty to trade - in the sense that everyone has a duty to trade with everyone else. This is for the simple reason that ‘ought’ implies ‘can’ – we cannot possibly trade with everyone so we cannot have a duty to do so. Further, there cannot be a duty to trade with even a smaller set of individuals, say, everyone who wants to trade with us. Such requirements would undermine important liberties. However, I think there are special circumstances where there is a duty to trade with a particular individual.

One very obvious example of this runs as follows. Imagine the case of a person dying of thirst who staggers into a shop asking for a bottle of water. She has

the money but, for whatever reason, the shopkeeper refuses to sell her the water and she dies. Intuitively, in such a situation the shopkeeper has the duty to trade with the person dying of thirst and the shopkeeper wrongs her by her refusal.⁹⁴ It cannot be said in this situation that there is no duty to trade.

A second example are cases in which two parties have built up a regular pattern of trade over the years and this has created a reasonable expectation in the minds of one or both parties that the trade will continue indefinitely. If, further, one party has come to rely upon the trade such that its sudden removal would cause that party severe harms, then intuitively there is a moral duty to continue to trade – at least for a reasonable period of time during which the reliant party can make adjustments. For example, imagine X is Y's major supplier, selling Y 75% of the raw materials Y needs for her manufacturing business and their trading relationship has been established for several years. Y could find alternative suppliers but it would take time. If X stops supplying Y overnight then Y will not be able to fulfil orders, her company's reputation will suffer and her business may never recover. If, for whatever reason, X decides to stop supplying Y then intuitively X has a duty to give Y reasonable notice and continue to trade with Y for a reasonable period of time – during which Y could find alternative suppliers. In this case, again, there is a duty to trade – at least for a reasonable period of time.

A third example are cases where there is only one supplier, i.e. where the supplier has a monopoly. If the goods supplied are essential, e.g. water or electricity then intuitively there is again a duty on the part of the monopolist to trade. If the goods supplied are non-essential it is less obvious that there is a duty on the part of the monopolist to trade but I think a case can still be made for it. Some non-essential items: books, expensive clothes, TVs, ipads etc. make important contributions to people's lives and for the monopolist to arbitrarily deny them to some individuals is wrong. Again there is a duty to trade.

The second and third cases are analogous to many cases of harmful economic sanctions. Economic sanctions cause harm because either a) the target has become reliant on a pattern of regular trading that cannot quickly be substituted or b) the

⁹⁴ Intuitively, the shopkeeper has the duty to give the water to the person dying of thirst whether she has the money to pay for it or not. However, I set this issue aside since I am only considering the duty to trade here.

sanctions are being imposed by the UN or a large multi-lateral group such that the target cannot obtain alternative supplies. In this second case the UN is like the monopolist. In both cases I would argue that there is a *prima facie* duty to trade that is being violated by the economic sanctions. This is not to say that the refusal to trade cannot be justified, it is only to say that it does require justification.

6. The ‘Trading with the Enemy’ Justification

It is sometimes argued that economic sanctions could never be prohibited by international law because such a prohibition would make continuing to trade with the enemy a legal duty and this is absurd. Likewise, one could argue that economic sanctions must be morally permissible because if economic sanctions were not morally permissible this would entail the absurd conclusion that there is a moral duty on the part of states to continue to trade with the enemy and/or a duty to allow their citizens to continue to trade with the enemy.

In what follows I take a closer look at the moral version of this argument. It can be set out as follows:

- P1. If economic sanctions are not morally permissible then this entails a duty on the part of states to continue to trade with the enemy and/or to allow their citizens to continue to trade with the enemy.
- P2. There is no duty on the part of states to continue to trade with their enemies and/or to allow their citizens to continue to trade with the enemy.
- C. Economic sanctions are morally permissible.

This argument is flawed. Even if both premises are true all one is entitled to conclude from them is that economic sanctions are morally permissible *where the sender would otherwise be trading with its enemies*. If we assume by ‘enemies’ it is meant an entity (state, terrorist organisation etc.) or an individual that poses a current or future threat to the sender then economic sanctions are frequently imposed on

targets that are *not* enemies.⁹⁵ Therefore the argument cannot show that economic sanctions *in general* are morally permissible.⁹⁶

Nevertheless, this argument *could* potentially justify the permissibility of economic sanctions in the more narrow range of cases where they are imposed on the sender's enemies. In other words the conclusion could be restated thus:

C*. Economic sanctions against a sender's enemies are morally permissible.

Where a sender's 'enemies' are understood to be those entities and individuals who pose a current or future threat to the sender.

Of course this conclusion will only be true if both premises are also true. I have no issue with premise one. However, I question premise two. Why is there no duty to continue to trade with the enemy?

Well one could argue that there is no duty to trade with the enemy simply because there is no duty to trade with anyone. However, as I argued earlier, there are duties to continue to trade with those who have developed reasonable expectations that you do so. Hence the argument that there is no duty to trade with the enemy cannot simply be derived from there being no duty to trade with anyone. In any case, proponents of the 'trading with the enemy' argument emphasise the fact that one would be forced to trade with one's enemies – not the fact that one would be forced to trade in general – hence it is unlikely that they consider themselves to be deriving their argument from an argument that one should not be forced to trade in general. Setting this issue aside then why is there no duty to continue trade with the enemy? I assume the thought behind this idea is first, that there is no duty to

⁹⁵ Economic sanctions can be imposed on friends as well as enemies. As a matter of practice it is not uncommon for more or less friendly states – or at least states that no-one would consider to be enemies – to sanction one another on very specific policy matters. As a matter of theory it might even be desirable for friendly states to sanction one another. In an interesting paper Avia Pasternak has advocated a mechanism whereby liberal democratic states – most of whom are not 'enemies' - sanction each other for violations of their liberal democratic principles in a communal effort to uphold such principles. See Pasternak, 2009.

⁹⁶ Likewise the legalised variation of the argument does not show that sanctions cannot be prohibited under international law. The law could quite easily make sanctions illegal with exceptions for specified circumstances (such as when the target to be sanctioned is a threat to the sender). This would be consistent to the way war is treated in international law, i.e. illegal except in cases of self- or other-defence against aggression.

contribute to threats against oneself and second, that trading with the enemy contributes to threats against oneself. I will accept that trading with the enemy can contribute to threats against oneself. In some cases this will be obvious, e.g. selling guns to a state one is at war with will contribute to the threat posed by the enemy state. In other cases this will be less obvious: trade in mundane everyday items keeps an economy strong and ensures the enemy state has plenty of cash to purchase weapons etc. However, I question the first assumption that there is no duty to contribute to threats against oneself. I concede that contributing to threats against oneself is imprudent (to say the least) but it is not obvious to me that there is *never* a duty to do so. Hence in what follows I consider whether it is true that there is *never* a duty to contribute to threats against oneself. I take this question in two parts: first I consider cases where the threat to oneself is unjust then I consider cases where the threat to oneself is just.

Why is there no duty to contribute to unjust threats towards oneself? If the threat to oneself is *unjust* then one plausible argument for there being no duty to contribute to the threat against oneself is because there is no duty to contribute to the wrongdoing of others – this is true whether the threat is directed towards oneself or a third party. In fact in chapter eight I make the stronger argument that there is a duty to avoid contributing to the wrongdoing of others, i.e. a duty to sanction. However, this duty can be overridden. For example, say state A is at war against state B after being unjustly attacked by state B. State A citizens are currently engaged in selling food to state B citizens as they always have been. The food contributes to the threat against state A as it ensures the army and its supporting workers are well-fed and strong. *Prima facie* state A has no duty to assist state B in its wrongdoing and thus may permissibly stop selling food to state B. However, in cases where the citizens of state B have no other sources of food this will lead to mass starvation in B. Those who will die in the famine will not be the soldiers who pose the threat – soldiers, the leadership and the rich will always be fed first. The ones who suffer will be the poorest civilians who, for most part, will be innocent people. Thus the sanctions will kill innocent people. Although there is a duty not to contribute to the wrongdoing there is also a duty to not kill innocent people. It is likely that in some cases the duty to not kill innocent people trumps the duty to not contribute to wrongdoing even

when that wrongdoing is directed against oneself. In this case then there would be a duty to trade food with state B. If that is so then it is not true that there is never a duty to trade with the enemy. Such cases will, of course, be rare since most enemy states would be able to import their food from elsewhere. Nevertheless, my point stands - even where trade does contribute to threats against oneself - one might have overriding moral reasons to continue to trade with the enemy.

Second, I consider the case where the threat towards oneself is *just*. Perhaps one has initiated an aggressive war and the enemy state is fighting back in self-defence. What are we to make of the claim that there is no duty to contribute to threats towards oneself in such a case? It obviously cannot mean that there is no duty to contribute to wrongdoing for there is no wrongdoing on the part of the enemy state. What are we to make of the claim? It simply seems to be odd to make this claim in the context of a just threat. Imagine a bank robber is fleeing the scene of a crime pursued by an unarmed police officer. The bank robber could throw a spare gun at the police officer so that the police officer has more of a chance of catching her. The question of whether or not she has a duty to do so just seems a bit odd. Surely it's obvious what the bank robber's duty is? Her duty is to surrender to the police officer. In the same way, the duty of the aggressive state is to surrender. The question of whether the aggressing state does or does not have a duty to assist the innocent state in its own defeat is odd.

Conclusion

None of the six arguments given above supplies a plausible justification for economic sanctions. If none of these arguments can ground a justification for economic sanctions, where else can we look? In the next chapter I turn to consider the approach taken by the existing philosophical literature: that of using the just war principles as a framework for the moral assessment of economic sanctions.

Chapter 4: Economic Sanctions and the Just War Principles

Of the few writers who have considered the ethics of economic sanctions, the majority point to the analogies between economic sanctions and war and use the just war principles as a framework within which to assess their moral permissibility. In this chapter I survey and critique these attempts to use the just war principles as a framework.

I start in section one by offering a very brief description of the just war principles. All the theorists considered in this chapter are employing a contemporary mainstream view of just war theory and cite Michael Walzer in this regard and so it is primarily Walzer's interpretation of the just war principles that I describe here.

In section two I consider and critique the arguments for using the just war principles as a framework for the moral assessment of economic sanctions. I conclude that, although there are indeed many analogies between the cases of war and economic sanctions, there are many disanalogies. This means that the just war principles cannot be straightforwardly transplanted from the case of war to the case of economic sanctions.

The Just War Principles

The contemporary mainstream interpretation of just war theory has shaped, and has been shaped by, international law and therefore shares significant features with it as will become apparent.⁹⁷ Arguably, it finds its best articulation in Michael Walzer's *Just and Unjust Wars*, and I will refer to this often in what follows.⁹⁸

Just war theory is split into three parts: *jus ad bellum*, which sets out the principles that must be followed for the resort to war to be just, *jus in bello*, which sets out the principles that must be followed during war and, a more recent addition, *jus post bellum* which sets out principles to be followed post war. In mainstream just war theory the three parts are logically independent. Thus it is possible to start a just war and fight it unjustly and vice versa. In this section I will focus on *jus ad bellum*

⁹⁷ Coates, 1997.

⁹⁸ Walzer, 2006.

and *jus in bello* since none of the theorists I consider address the issue of *just post bellum*.

Jus ad bellum

There are six principles of *jus ad bellum* as set out below. For the resort to war to be just, all six conditions must be met.

Just Cause: There must be a just cause for war. In mainstream just war theory, just cause is limited to defence against aggression. There are no other just causes. Wars for the sake of colonial expansion or economic gain or punishment, for example, are all ruled out.

But what counts as ‘aggression’? Mainstream just war theory and international law is ‘statist’, that is it takes states to be the main actors in international society and therefore takes war to be a relation between states, not individuals. Indeed, Michael Walzer defines the paradigm case of aggression as ‘any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another’.⁹⁹ According to mainstream just war theory, states have a moral right to political sovereignty and territorial integrity which they are entitled to defend. This is supported by international law which recognises states as being separate legal entities and accords them these same rights by law. Walzer argues that a state’s right to defend itself from aggression derives from the rights of its citizens to life, to liberty and to the common way of life those citizens share. The right of a state to go to war to defend its rights can then be justified using what Walzer calls the ‘domestic analogy’ with self-defence. Just as an individual may use proportionate force when necessary to defend himself from an unjustified attack, so may a state. Similarly, just as a third party may assist an individual suffering an unjustified attack, so states may come to the assistance of other states that are under attack.¹⁰⁰

That settled there are still some problematic issues - in particular there is the issue of humanitarian intervention to consider. In cases of humanitarian intervention, the state turns its aggression on its own people. May another state intervene to

⁹⁹ Walzer, 2006, 62.

¹⁰⁰ Walzer, 2006, 59.

protect these people? Under the mainstream view of just war theory sketched above, military intervention would violate a state's right to political sovereignty and territorial integrity and would be an act of aggression itself. In addition, Walzer argues that political communities have a right to 'self-determination', that is, the right to develop their own social and political structures themselves over time without external interference. Walzer argues that such a right rules out the possibility of humanitarian intervention. As he states:

The recognition of sovereignty is the only way we have of establishing an arena within which freedom can be fought for and (sometimes) won. It is this arena and the activities that go on within it that we want to protect, and we protect them, much as we protect individual integrity, by marking out boundaries that cannot be crossed, rights that cannot be violated. As with individuals, so with sovereign states: there are things that we cannot do to them, even for their own ostensible good.¹⁰¹

However, Walzer allows for an exception 'when the violation of human rights within a set of boundaries is so terrible that it makes talk of a community or self-determination...seem cynical and irrelevant, that is, in case of enslavement or massacre [or which otherwise] shock the conscience of mankind'.¹⁰² Once again Walzer's views mirror international law. A norm of non-intervention is recognised in international law – it is generally not permissible to intervene in the domestic affairs of foreign states – however, the UN's 2006 'responsibility to protect' resolution allows for military intervention in situations of 'genocide, war crimes, ethnic cleansing or crimes against humanity.'¹⁰³

Proportionality: The harm that will foreseeably be caused by the war must not be disproportionate to the good that it is hoped will be achieved. The good consequences to be counted are limited to those specified in the just cause, i.e. the ending of aggression. Any incidental good consequences, such as the kick-starting of an economy, should not be included in the proportionality calculation. However, the harmful consequences of war are not limited to certain types and should all be

¹⁰¹ Walzer, 89.

¹⁰² Walzer, 90.

¹⁰³ UN Security Council Resolution 1674.

counted. Further, the calculation must include the harms suffered by all parties to the war and those suffered by neutral states.

As Thomas Hurka stresses, the proportionality principle does not necessarily require that the good consequences must outweigh the bad; the requirement is only that the harm is *not disproportionate* to the good, the harm may therefore exceed the good as long as it does not exceed it by a disproportionate amount.¹⁰⁴ Hurka argues that given the unpredictable nature of war and the subjectivity inherent in determining what harms might be 'disproportionate', fine grained assessments of proportionality will be impossible. However, more coarse-grained assessments are perfectly plausible and should always be made.¹⁰⁵

Right Intention: The decision to go to war must be made with the right intention - the intention to achieve the just cause. The just cause must not be a pretext for some unjust end that is secretly intended.

Legitimate Authority: The decision to go to war must be made by a legitimate authority. That is, one which has the moral right to act on behalf of its people and take them into a war. In international law there is a presumption that the governments of all states are legitimate authorities. However, mainstream just war theory imposes additional requirements for legitimacy; for instance, Walzer argues that a legitimate government must have the support of its people, otherwise it has no right to act on their behalf.¹⁰⁶

According to mainstream just war theory, private individuals may not wage war. According to A. J Coates, war is a legal instrument and the power to enforce the law is vested in the government on behalf the political community. Thus, private war is an instance of taking the law into your own hands and is a kind of vigilante justice.¹⁰⁷

Last Resort: War must be the last resort. Given the horrendous harms it creates, war must be necessary in order to be just. If other, less harmful, alternatives are available such as some kind of economic sanctions or diplomatic measures, then war is not necessary and therefore not just. This does not mean that all the

¹⁰⁴ Hurka, 6.

¹⁰⁵ Hurka, 33.

¹⁰⁶ Walzer, 99.

¹⁰⁷ Coates, 127.

alternative measures must actually be attempted first, if it is obvious they would not work then there is no requirement to make such attempts.

Reasonable Chance of Success: There must be a reasonable chance of success. This is to prevent hopeless wars where people die pointlessly. The difficulty in interpreting this principle concerns what constitutes a 'reasonable' chance of success. Where a state is the actual or potential victim of aggression from a much stronger opponent, as is often the case, it is likely that its chance of success in resisting the aggression is small. Yet, as Walzer puts it, the failure to resist in such cases 'concedes the loss...of independence for the sake of the survival of individual men and women. It points toward a certain sort of international society, founded not on the defence of rights but on the adjustment to power'.¹⁰⁸ Indeed, Brian Orend notes that this principle is not part of international law as it is considered biased against small or weak states.¹⁰⁹ So, given the great importance of the rights a defensive war aims to protect, it seems a 'reasonable' chance of success might be a very small one. Nevertheless, if there is a negligible or no chance of success at all, it could be that appeasement or surrender is the more moral option.

Jus in bello

Below are stated some of the more significant rules of *jus in bello*. All the requirements of *jus in bello* must be met for an individual military action to be morally permissible.

Discrimination: The principle of discrimination requires attackers to distinguish between two classes of people in war: combatants and non-combatants, and stipulates their different treatment. According to this principle, combatants are morally liable to attack at any time and, correspondingly, it is always morally permissible to attack them. This holds whether the combatants fight for a just cause or an unjust cause and reflects what Walzer calls the 'moral equality of soldiers'.¹¹⁰ Non-combatants, on the other hand, have immunity from attack and it is never morally permissible to attack them directly; however, if non-combatants are killed

¹⁰⁸ Walzer, 2006, 72.

¹⁰⁹ Orend, 2008.

¹¹⁰ Walzer, 2006, 127.

not as the result of a direct attack, but rather as an unintentional *side effect* of an attack against combatants or military property, then the unintentional killing of those non-combatants may be morally permissible under the doctrine of double effect.

Necessity: This is the requirement that any harm done during the war must be militarily necessary. That is, any individual military action must make a contribution to the winning of the war if it is to be morally permissible. Thus, the principle rules out pointless violence.

Proportionality: Like the *jus ad bellum* principle, which requires that the total expected harm caused by the war should not be disproportionate to the good to be achieved, the *jus in bello* principle of proportionality requires that each individual military action is proportionate.

Having very briefly characterised the contemporary mainstream interpretation of the just war principles I will now show how writers have used these principles as a framework to assess the moral permissibility of economic sanctions.

Applying Just War Principles to Economic Sanctions

The best known accounts applying the just war principles to cases of economic sanctions are those of Joy Gordon, Albert C. Pierce and Adam Winkler.¹¹¹ In what follows I discuss each in turn.

Gordon applies the just war principles only to the case of collective comprehensive economic sanctions. Although she does not explicitly justify her decision to use just war principles for this purpose, some justifications can be drawn from her paper. For example, she states:

If sanctions were ... peaceful there would be no ethical dilemma. If, on the other hand, they were flatly understood as an act of aggression, the framework of the rules of war would offer guidance for their use. It is precisely because they do so much human damage in the name of achieving peace that it is so difficult to untangle their ethical ramifications.¹¹²

¹¹¹ See Gordon 1999a, Pierce 1996 and Winkler 1999. Note that in her paper Gordon also assesses the moral permissibility of economic sanctions using the frameworks of deontology and utilitarianism.

¹¹² Gordon, 1999a, 124.

Elsewhere she further argues that ‘sanctions may continue to be invoked as a tool of international governance. But it is a tool that is indeed a form of violence – no less than guns or bombs – and it is ethically imperative that we see it as precisely that’.¹¹³

Her idea seems to be that collective comprehensive sanctions are acts of aggression that cause significant human damage in the name of achieving peace or international governance and therefore that they are sufficiently ‘war-like’ for the rules of war to apply.

Gordon then goes on to apply the just war principles to comprehensive collective sanctions. Such sanctions, she argues, are like a siege writ large. The blockade of ports prevents the import of goods into a country just as a surrounding enemy army would a castle or city. Thus sanctions are vulnerable to the same moral criticisms as a siege. Sieges do not discriminate between combatants and non-combatants. In fact in a siege it is usually the non-combatants who suffer the most since increasingly scarce resources will be allocated as a matter of priority to the army or leadership. As Gordon states in both sieges and in the case of comprehensive collective sanctions ‘the harm is done to those who are least able to defend themselves, who present the least military threat, who have the least input into policy or military decisions, and who are the most vulnerable’.¹¹⁴ Gordon thus concludes that comprehensive collective sanctions are morally impermissible because they violate the just war principle of discrimination. Having considered Gordon’s arguments, I now turn to the views of Albert C. Pierce.

Like Gordon, Pierce thinks that the just war principles can provide a framework for assessing the moral permissibility of economic sanctions. He argues that:

If those principles [of just war theory] are an established and accepted means of evaluating the use of one instrument of statecraft that can cause great pain, suffering, and physical harm, then they might well be appropriate in evaluating another instrument that can produce similar effects.¹¹⁵

¹¹³ Gordon, 1999b, 150.

¹¹⁴ Gordon, 125.

¹¹⁵ Pierce, 100.

So Pierce draws an explicit analogy between war and economic sanctions in that they both involve great pain, suffering, and physical harm. He then suggests that, for that reason, moral principles for evaluating the one might well be appropriate for evaluating the other.

Again, like Gordon, Pierce then goes on to argue that comprehensive collective sanctions violate the just war principle of discrimination. However, he also considers in more detail how the principle of discrimination might apply differently to the case of economic sanctions. Pierce starts by taking Walzer's definition of non-combatants and seeks to apply it to cases of sanctions. He states:

If we move from the war case to the economic sanctions case...who are [non-combatants in Walzer's sense] and who are not? A starting point is to argue that here the functional equivalent of 'aggressive war' is the policy the imposer of sanctions objects to and is trying to persuade the target nation's leadership to change...Logically, then, the moral equivalent of the 'combatants' would be those who have ordered and are implementing that [policy] – that is, the political leadership and the organs of state control. Those not in the chain of agency – that is, those not ordering or implementing [that policy] – are 'non-combatants' and are innocent.¹¹⁶

Indeed, this does seem a reasonable approach to take if we are applying Walzer's just war principles to the case of economic sanctions.

Pierce then goes on to briefly consider the *jus ad bellum* principles. Although he believes all the *ad bellum* principles are 'relevant and useful [for] moral analysis of economic sanctions', he focuses on the principles of 'proportionality' and 'probability of success' and concludes these could both potentially be met in sanctions cases. At least, there is nothing essential to the nature of sanctions that would rule them out.

Finally, he claims that just war principles can be applied to all types of economic sanctions. As he states:

The theoretical propositions in this paper can be applied to any type of economic sanctions, and ...the moral conclusions one might draw will depend to a great extent on how discriminate the

¹¹⁶ Pierce, 102.

sanctions imposed are. That is to say, sanctions narrowly targeted to affect exclusively or even primarily the parties responsible for the policies outsiders are trying to change should more easily pass the discrimination test...This calls for further work, but as a theoretical proposition, targeted sanctions appear to be morally superior to their indiscriminate cousins.¹¹⁷

It is worth noting here that Pierce's claim that the just war principles can be applied even to targeted economic sanctions doesn't actually follow from his previous argument. Targeted economic sanctions often do not cause 'great pain, suffering and physical harm' and yet, according to Pierce's previous argument, it is because economic sanctions cause 'great pain, suffering and physical harm', that it might well be appropriate to apply just war principles to them. Thus Pierce has in fact given us no reason to think that it might be appropriate to apply just war principles to the case of targeted economic sanctions.

The final account is that of Adam Winkler who argues that:

The just war tradition is a longstanding moral framework for analysing the intentional infliction of harm by one state upon the citizens of another. In light of its broad acceptance and long history, this body of laws, codified in international treaties and established by the practice of states, offers...fertile soil for international agreement.¹¹⁸

So again Winkler draws an analogy between wars and economic sanctions in that both involve 'the intentional infliction of harm by one state upon the citizens of another'. His second point - that the just war principles have broad acceptance and stand the best chance of reaching consensus on the moral permissibility of economic sanctions - may well be true. However, it is a prudential and not a moral argument and does not serve to establish that just war principles provide the right moral framework for assessing sanctions. Hence I set it aside.

As with Gordon and Pierce, Winkler considers the principle of discrimination to be the most significant stumbling block for economic sanctions' moral permissibility and argues that it rules out the use of comprehensive collective

¹¹⁷ Pierce, 110.

¹¹⁸ Winkler, 135.

economic sanctions. For Winkler, the non-combatants in a case of sanctions are ‘ordinary civilians’, that is:

People who have done little more than inhabit a state with disfavoured policies... These people pose no threat to other states, but merely go about their usual routine of trying to survive or prosper by way of participation in the economy.¹¹⁹

But who for Winkler are combatants? One possibility he notes is that the combatants are the same people as in war, i.e. soldiers. For example when sanctions were imposed on Iraq after the invasion of Kuwait, the combatants were Iraqi soldiers. Otherwise, he argues, political officials who bear responsibility for the planning and carrying out of the aggression or disfavoured policies can be thought of as combatants. In this then Winkler is broadly in line with Pierce.

Winkler also considers the principles of *jus ad bellum*. Although he thinks all the principles may be applied to sanctions he focuses on ‘just cause’ and ‘right intention’ believing the others to ‘translate to sanctions...in obvious ways’.¹²⁰ Winkler notes that, as we have seen, just cause allows for self and other-defence against aggression and also humanitarian intervention (in grave cases) and therefore sanctions would be morally permissible if used for these purposes: ‘where just war would declare the use of armed force to be legitimate, economic sanctions of some sort are justifiable’.¹²¹ Similarly, he argues that the principles of ‘right intention’ can theoretically be met in cases of economic sanctions though he warns that the propensity for economic sanctions to be imposed without clear purpose (as discussed in chapter one) means that the requirement of right intention might not be met in many actual cases.¹²²

Finally, Winkler, like Pierce, believes just war theory can be applied to all types of sanctions – both economic and diplomatic. He states:

¹¹⁹ Winkler, 147.

¹²⁰ Winkler, 155 n. 48.

¹²¹ Winkler, 142.

¹²² Winkler, 144-145.

Total embargoes, even with humanitarian exemptions should not be used, but arms embargoes, diplomatic sanctions, and the freezing of foreign assets fit comfortably within just war principles.¹²³

Does Winkler's claim that the just war principles can be applied to all types of economic and diplomatic sanctions follow from his previous argument? If we interpret Winkler – as I think we should - as arguing previously that the just war principles should be applied to economic sanctions because, like war, they involve the 'intentional infliction of harm' then certainly the claim does not follow. This is because it is clear that many targeted economic sanctions do not involve the intentional infliction of harm, e.g. arms embargoes.

In summary, all three writers justify the use of just war principles as a moral framework for assessing comprehensive collective sanctions by drawing an analogy between economic sanctions and war. This leads them all to conclude that comprehensive collective sanctions are always impermissible because they violate the just war principle of discrimination. Pierce and Winkler further extend the use of just war principles to targeted economic sanctions and conclude that targeted economic sanctions that do not harm non-combatants may be morally permissible because it is at least theoretically possible that they can meet the just war principles.

This would appear to be a neat solution to the issue of the ethics of economic sanctions. However, I believe there are problems with their approach.

First, why should we assume that the contemporary mainstream just war principles as articulated by Michael Walzer are the right ones? Perhaps there are better understandings of what the just war principles entail.

Second, although it is true that there are many analogies between the cases of war and economic sanctions there are many disanalogies. This is most obvious when we consider targeted economic sanctions like asset freezes and arms embargoes. This problem, as I indicate above, appears to have been overlooked by Pierce and Winkler. Further, although it is less obvious, it will become clear in later chapters that there are also important disanalogies between the cases of war and comprehensive collective sanctions. The existence of disanalogies between cases of war and economic sanctions is problematic because the contemporary mainstream

¹²³ Winkler, 154.

just war principles – including Walzer’s - are derived from a set of complex and detailed arguments all planted firmly within the context of war. These arguments contain premises that, whilst they may hold true in the case of war, do not always hold true in the case of economic sanctions. To the extent that economic sanctions are disanalogous to war, the more problematic this issue will be.

Nevertheless, I believe that the rich just war tradition does offer a valuable starting point for theorising about economic sanctions. Therefore, in the four chapters that follow I attempt to systematically consider how the wider just war tradition might be brought to bear on the case of economic sanctions, beginning not with the just war principles but with the underlying arguments for those principles. In particular I consider whether (all types of) economic sanctions might be justified on the grounds of defensive rights (including the right to defend citizens of other states as in the case of humanitarian intervention), on the grounds that they are the lesser evil and on the grounds that they are a form of punishment.

In the final chapter of the thesis I step away from the just war tradition to consider whether there is a duty to refuse to supply goods and services to those states which would use them for wrongful purposes such as committing human rights violations. This is an important moral consideration for the case of economic sanctions and, further, not a consideration that typically arises in the context of war. This shows the limitations that would arise if we relied purely on the just war tradition to develop an account of the ethics of economic sanctions.

Chapter 5: Economic Sanctions and Defensive Rights

Economic sanctions are often imposed for reasons that can broadly be construed as defensive. Some examples are the sanctions imposed on Iraq by the UN following its invasion of Kuwait, the sanctions imposed on Cuba by the US following its expropriation of US owned assets, the sanctions imposed by the European Union on Argentina following its invasion of the Falkland Islands, the sanctions imposed the US on Iran after Iran had taken US hostages. This fact about economic sanctions raises the question of whether the use of economic sanctions could, like war, be justified on the grounds of self-defence or the defence of others. Certainly most of the people who have written on the ethics of economic sanctions have implicitly assumed that self- or other-defence provides a justification for their imposition - after all, as we saw in the previous chapter, most of these writers have employed just war theory as a framework for their moral analysis and modern just war theory holds that war is morally justified only on the grounds of self-defence or the defence of others.¹²⁴

In this chapter I test this implicit assumption by explicitly examining whether economic sanctions can be justified on the grounds of self-defence or the defence of others.

I begin in section one by setting out in some detail what an individual right to self- and other-defence entails. Note that in so doing I take the existence of *some* individual right to self and other-defence as a given - I do not argue for the existence of such a right against views that would deny it, e.g. pacifist views. My objective is rather to set out a view of the right to self- and other-defence that will be acceptable to most who believe such rights exist, taking a stand on controversial components of the right only where it is relevant to the case of economic sanctions.

In section two I argue that the concepts of individual self- and other-defence need to be extended along three dimensions if they are to be applied to the case of economic sanctions. First, they must be extended from paradigmatic cases which involve the infliction of physical harm to the infliction of economic harm. It is true enough that economic harms can result in physical harms – a devastated economy

¹²⁴ For writers employing just war theory to the case of economic sanctions see Gordon, 1999; Pierce, 1996; Winkler, 1999.

might result in starvation, for example. However, in many cases of economic sanctions the damage will not extend to the physical harm of individuals. Second, they must be extended from paradigmatic cases involving the defence of life or very basic rights to the defence of a greater range of rights. Although economic sanctions are used to defend rights to life and other fundamental rights such as bodily integrity, they are also used to defend less fundamental rights such as the right to property, religious freedom or democracy. Third, they must be extended from the individual case to the international case. This is the most difficult element and will take up most of section two.

Having developed extended concepts of self- and other-defence suitable for the case of economic sanctions I turn to apply them in section three. I conclude that indirect collective sanctions, by virtue of their very nature, can never be justified on the grounds of self- or other-defence; direct collective sanctions will rarely be so justified, but targeted sanctions have a reasonable chance of being justified.

1. The Individual Right to Self- and Other-Defence

The right to self-defence is paradigmatically the right of an individual to defend her life or some other fundamental interest of hers from an unjust attack using a level of force which would not ordinarily be morally permissible. For instance suppose X is being stalked by known serial killer Y and one night comes home to find Y in her kitchen with a gun. As Y raises his arm to point his gun at X, X stabs Y with a kitchen knife and kills him before he has a chance to shoot. This is a clear cut case of self-defence. *Other*-defence is the right of a third party to intervene in such cases and defend the innocent person from their attacker – again, using lethal force if necessary.

In this section I aim to set out a fairly uncontroversial view of the individual right to self-defence though I am forced to take a position on four controversial points which are relevant to the later discussion on economic sanctions. I start by setting out the basic view of self-defence before I move onto the more controversial points. Note that since the justification of other-defence is so similar to that of self-defence I will only discuss self-defence here.

According to most views your defensive attack can be justified on the grounds of self defence only if the following necessary conditions are met:

The Unjust Attack Condition: The initial attack on you is unjust. This is crucial. If the initial attack on you is *just* then you have no right to defend yourself. For example the serial killer cannot claim he permissibly killed the victims who resisted him on the grounds of self-defence.

The Necessity Condition: Your defensive response is necessary. There is no other, less harmful way of defending yourself.

The Proportionality Condition: Your response is proportionate. The harm caused by your defensive action must be weighed up against the benefits achieved by it. This means that generally you may use more force to save your life than to prevent someone punching you. The proportionality requirement does not, however, demand perfect equivalence. Most would accept that you may use lethal force to defend yourself from very serious harms such as being raped, blinded, maimed or kidnapped and so on and not only to save your life.

Having established the basics I now need to argue for a particular view on four controversial points: first, who is liable to suffer defensive harms and why; second, whether the necessity condition is objective or subjective; third, whether ‘imminence’ is a necessary condition; fourth, whether the necessity condition entails a duty to retreat. Note that in this section my aim is merely to argue for particular views on the individual right to self defence – it is in section two that I show how these views are relevant to the case of economic sanctions.

Who is Liable to Suffer Defensive Harms? Why?

The right to self-defence can be explained in different ways but most common is some form of the rights forfeiture view.¹²⁵ The rights forfeiture view that I find most plausible is that of David Rodin. Rodin argues thus:

I have the right to life. Therefore, if an aggressor makes an attack upon my life, in the absence of any special justifying circumstances, he wrongs me. Because I am innocent and he is at fault for the aggression, his claim against me that I not use necessary and proportionate lethal force against him becomes forfeited (or fails to be entailed by his right to life). Therefore I have a right (liberty) to kill him.¹²⁶

It is consistent with Rodin's account to say that the aggressor forfeits his right to life (when the attack on his life would be necessary and proportionate) because he is morally responsible in the blameworthy sense for the attack. But what does it take to be morally responsible in the blameworthy sense for an attack? Joel Feinberg argues that one is morally responsible for a harm or threat of harm in the blameworthy sense if and only if:

- 1) he was at fault in acting or omitting to act and the faultiness of his act or omission consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm (*fault condition*);
- 2) his faulty act (or omission) caused the harm (*causal condition*); and
- 3) the resultant harm was within the scope of the risk (or certainty) in virtue of which the act is properly characterised as faulty. (That is the harm risked in (1) must be the same sort of harm as actually caused in (2)) (*causal relevance condition*).¹²⁷

¹²⁵ See Thomson, 1991; Rodin, 2002.

¹²⁶ Rodin, 80.

¹²⁷ Feinberg, 1970, 195-199. Note that though Feinberg states that one is morally responsible for a harm 'if and only if' his tri-conditional analysis is met, he later states that his tri-conditional analysis could be refined to make it more accurate and so the tri-conditional analysis as it stands must not represent a set of necessary and sufficient conditions. In particular, Feinberg suggests that more conditions could be added and existing ones refined to deal with bizarre counterexamples. Nevertheless, he hopes the tri-conditional analysis captures most cases. For my purposes Feinberg's tri-conditional analysis will be sufficient.

In what follows I will assume that Feinberg's tri-conditional model of moral responsibility is correct. It is outside the scope of my thesis to develop an account of moral responsibility and, although Feinberg's is surely open to criticism, it is widely accepted and cited in the literature.

If an aggressor meets these conditions for moral responsibility then the aggressor has wronged his victim (violated her rights) and, so long as the use of defensive force against him is necessary and not disproportionate, then the aggressor forfeits his right to life/right not to be attacked in the circumstances.¹²⁸ It is clear, for example, that serial killer Y meets these conditions and thus forfeits his right to life with respect to X in the circumstances outlined above. In the terminology of this chapter Y is 'liable' to suffer defensive harms.¹²⁹

A major objection to views like Rodin's is that attackers who are not morally responsible for their attack (i.e. attackers who are morally innocent) are not liable to suffer defensive harm. Thus, for example, if you are attacked by an individual who has been hypnotised to kill you, that individual is not liable to be killed by you in self-defence even if such defence would be both necessary and proportionate. Similarly, imagine a man pushed off the top of the building and headed straight for you; if he lands on you he will be saved but you will be crushed to death. Fortunately (for you), there is an awning above you and it is possible for you to alter its angle so as to deflect him away from yourself: he will die but you will be saved.¹³⁰ The falling man is, like the hypnotised man, morally innocent and thus not liable to suffer defensive harms. Thus, in both cases, killing your attackers cannot be justified on the grounds of self-defence.

This, many have argued, is a counter-intuitive conclusion and thus moral responsibility on the part of the aggressor cannot be necessary for a defensive act to be justified on the grounds of self-defence. The debate concerning innocent attackers and their liability or otherwise to be killed in self-defence is well-known and I have

¹²⁸ The fact that one is morally responsible (in the blameworthy sense) for a harm does not entail that one has violated the rights of the person harmed. It is outside the scope of my thesis to explain this fully but the basic point is that only fundamental interests are protected by rights and thus only harms to fundamental interests are rights violations. Not all harms are also wrongs.

¹²⁹ See also McMahan, 2009, 8-9.

¹³⁰ The cases – slightly adapted – are taken from Thomson, 1991.

nothing to add to it here.¹³¹ Instead, I want to point out that in fact Rodin's argument does not actually show that it is wrong to kill innocent aggressors; only that if you kill them you cannot justify your actions on the grounds of self-defence. You might, however, be able to justify your actions on some other grounds. For example, Cécile Fabre argues that in situations where two agents are morally on a par, i.e. where they are both morally innocent, each agent is permitted to give greater weight to her own life on the grounds that:

- a) there are limits to the sacrifices which one can reasonably expect agents to make for the sake of others and
- b) expecting them to sacrifice their life for the sake of the agent who is posing the lethal threat to which they are not liable lies beyond the bounds of reasonableness.¹³²

Thus, the apparent counter-intuitive conclusions of Rodin's theory can easily be avoided. We can therefore add a fourth necessary condition as follows:

The Liability Condition: The defensive harm is targeted only at those liable to suffer the defensive harm.

The liability condition is important because, as I show in section two, the liability condition rules out the use of collective economic sanctions in most circumstances.

Objective and Subjective Views of Necessity

On an objective view of necessity, your defensive act is morally justified only if it is necessary. On a subjective view of necessity, your defensive action is morally justified only if you *reasonably believe* it to be necessary. The difference is important. Consider the following case.

In *Gunman*, a police officer is investigating an abandoned house. When she enters the house she is immediately confronted by a man waving a gun at her and

¹³¹ See for example Thomson, 1991; Zohar, 1993; Otsuka, 2003.

¹³² Fabre, 62.

shouting that he will kill her. As he raises the gun to point at her head, she fires first and kills him with the reasonable belief that this action is necessary to save her life. However, after she kills him she finds out that the gun was a replica and her life was never in any danger. On a subjective view of self-defence her actions are justified since it was reasonable for her to believe that the gunman would kill her. On an objective view of self defence her actions are not justified since it was not in fact necessary for her to kill the gunman.

The problem with the objective view is that it cannot guide action. The objective view tells us that our defensive acts are justified on the grounds of self-defence only if they are necessary from a 'God's eye' point of view where all the relevant facts are known. However, human beings do not and cannot occupy a God's eye point of view and so the objective view offers human beings no guidance about when they may justifiably engage in self-defence.

Even after the fact human beings cannot say with certainty that any particular defensive act was objectively necessary. To be sure, it is possible to sometimes determine that the act was objectively *unnecessary*, e.g. in the case where the gunman had a replica gun. However, proving that a defensive act was necessary (as opposed to unnecessary) requires possession of all the relevant facts, i.e. a God's eye point of view. For example, for a gunman with a real gun we would need to know that he would not have changed his mind in the split second before pulling the trigger, that the gun would not have jammed and so on if we were to prove that the defensive act was objectively necessary. Thus in addition to being unable to guide action, the objective view makes it impossible for us to determine after the fact whether a particular instance of self-defence was justified or not.

The subjective view on the other hand takes into account the fact that we are human beings capable of doing no more than forming reasonable beliefs about the necessity of our defence. Therefore, I accept the subjective view.

The Imminence Condition

On some views of self-defence, the initial attack must be already underway or *imminent* (as in the serial killer example) for your defence to be morally permissible.

If this were so it would prove seriously problematic for my project because in many cases economic sanctions are imposed *preventively* to head off threats expected to materialise in the (possibly quite distant) future and that are in no way imminent. Fortunately, as I will argue, the view that imminence is a necessary condition for morally justified self-defence is mistaken. To argue this I take as my starting point a thought experiment from Allen Buchanan. In *Paralysis*, you have conclusive evidence that a villain has a plan to kill you for no justifiable reason. He plans to carry out his attack in a few weeks when, due to some disease, you will be completely paralysed and unable to defend yourself. For some reason you are unable to rely on the police or anyone else to help you. There is no way of stopping the villain short of killing him. Is it morally permissible to kill the villain in self-defence now while you still can even though the villain's attack is not imminent?¹³³ Well in this case the attack on you is unjust so the unjust attack condition is met. The proportionality condition is met: a life for a life. The necessity condition is also met: *ex-hypothesi* the only way to prevent the villain from killing you is by killing him and there is no less harmful alternative. In particular, the only way to prevent the villain from killing you is by killing him *now* – if you wait until his attack is imminent it will be too late. However, it is obvious that the imminence condition is not met. Nonetheless Buchanan argues that intuitively one is permitted to kill the villain in this case and therefore imminence cannot be a necessary condition. I agree with his view and in what follows I will consider and reject two arguments in favour of retaining the imminence condition: what I call the 'epistemic argument' and what Buchanan calls the 'simple rights based argument',¹³⁴.

Here I use the term 'epistemic argument' to refer to a group of arguments which share the highly intuitive view that it is only in circumstances of imminent attack that we can come to form a reasonable belief that defensive force is necessary. Hence it is only in circumstances of imminent attack that self-defence can be justified.

¹³³ Buchanan's version of *Paralysis* is set out in Buchanan, 2007, 127. Buchanan borrows this case from Jeff McMahan, 'Preventive War and the Killing of the Innocent', in (eds.) Sorabji, Richard and Rodin, David, *The Ethics of War: Shared Problems in Different Traditions* (Ashgate Publishing, 2006).

¹³⁴ Buchanan, 2007, 135.

One version of the epistemic argument claims that the sort of high quality evidence needed for a belief to be reasonable can only be obtained when an attack is imminent. I would argue that although this is often the case in practice, it is not necessarily so. Consider the *Gunman* case above. The evidence in this case of imminent ‘attack’ was completely misleading. Compare this to the case of *Paralysis* where there has been time to gather and assess evidence, possibly from several independent sources. Imminence is no guarantee of high quality evidence. Hence there is no categorical difference in the epistemic conditions surrounding imminent and non-imminent attacks – at least where it concerns reliability or extent of evidence.

Another version of the epistemic argument is that where the attack is temporally distant there is time for circumstances to change so as to render defensive action unnecessary: the attacker has time to change her mind or, alternatively, circumstances could change such that options other than lethal force open up to us. Therefore, when faced with distant threats, it is never reasonable for us to believe that defensive force is necessary. Although I concede it is often the case that with distant threats that circumstances could change to render defensive action unnecessary; this is not necessarily so. We can imagine cases – like *Paralysis* – where circumstances will not change to render our defensive action unnecessary. Moreover, even in cases of imminent attack there is likewise time for circumstances to change and render defensive action unnecessary. Imagine a case like *Gunman* but slightly different – where the gun is not a replica and the *Gunman* really is intending to kill the police officer at the time he makes his threat. Even in this case of imminent attack, the gun might jam or the *Gunman* might have a sudden change of heart. So, again, there is no categorical difference in the epistemic conditions surrounding imminent and non-imminent attacks.

Having rejected the epistemic argument I now want to examine the simple rights based argument; in particular, David Rodin’s version of the simple rights based argument (which is the argument Buchanan addresses).

Rodin argues that imminence is a necessary condition for justified self-defence and that it would be wrong to harm someone to prevent a non-imminent attack *even if that harm were necessary to prevent it*. This is because, Rodin argues,

individuals posing a non-imminent threat haven't done anything wrong yet and thus are not yet liable to suffer defensive harms.¹³⁵ To support this assertion he presents his version of the simple rights based argument:

If one accepts that the permission to kill in self-defence is tied to some wrongdoing on the part of the aggressor, then it is easy to see why there is a problem with preventive acts of self-defence... Without the presence of active aggression it is difficult to see how there can exist the liability to harm which seems to be such a crucial part of the classic model of self-defence.¹³⁶

Here it is important to note that Rodin intends 'the presence of active aggression' to cover imminent threats as well as actual aggression – otherwise his argument would also rule out self-defence against imminent attack and this is not a position that he holds. Rodin uses a case to illustrate his views. In *Jealous Husband*, X has been sleeping with Y's wife. X knows Y is violently jealous and comes home one day to find Y going through his private letters. In the letters is one from Y's wife proving X has been sleeping with her and as soon as Y sees it, X knows Y will almost certainly try and take his revenge by killing him. In this situation Rodin notes it does not seem it would be permissible for X to kill Y before he reads the letter, only afterwards (presuming it does in fact lead to an immediate murderous rage).¹³⁷

Let us assume for the sake of argument that in this case X's killing Y is necessary if X is to save his own life – X cannot snatch the letter out of Y's hand before he reads it etc. I agree with Rodin that in this case it would be wrong for X to kill Y. However, I will argue that it is not wrong *because* Y's attack is non-imminent. Therefore, Rodin's case does not show that imminence is a necessary condition for justified self defence. Before I do this, however, I first want to consider and reject Buchanan's own response to the simple rights based argument.

To defend his view from the simple rights based argument Buchanan makes an analogy with the law of conspiracy. He argues:

¹³⁵ Rodin, 2007, 161. In our terms we can understand Rodin's claim to be that the liability condition is not met in the case of non-imminent attackers.

¹³⁶ Rodin, 165.

¹³⁷ Rodin, 165.

The law of conspiracy explains how someone can have done something wrong, namely, imposed an unjust risk on others, without actually harming or being about to harm. And to the extent that we believe that enforcement of the law of conspiracy, including the use of deadly force when necessary, is justified, it seems that the moral plausibility of the law of conspiracy refutes the simple rights based argument...If something like the elements of the crime of conspiracy were present in the case of a state or a terrorist group conspiring to commit a massive unjust harm, it would be justifiable to use force to arrest and punish them, and to use lethal force against them if they resisted arrest, if this were necessary to stop them.¹³⁸

However, this passage is a bit ambiguous. What does he mean when he says it would be permissible to use lethal force 'if this were necessary to stop them'? It most naturally reads as a permission to use lethal force if it were necessary to stop them resisting arrest. If Buchanan envisages the conspirators resisting arrest violently such that it puts the lives of arresting officers in danger then that seems right. However, this would then be a straightforward case of self-defence against imminent attack and therefore this does not refute the simple rights based argument. The alternative interpretation of this passage is that it is justifiable to kill the conspirators even if they are running away if it is the only way to prevent their conspiracy being realised. Perhaps the police know it's their only chance to arrest the conspirators and so prevent their attack. This would be consistent with Buchanan's overall view as it suggests that in conditions of necessity it is permissible to use lethal force in self-defence even if the attack is not imminent.¹³⁹ However, this interpretation begs the question. If you accept the premise that a morally plausible version of conspiracy law would allow you to kill conspirators involved in a non-imminent attack when the conditions of necessity were met, then you must already accept Buchanan's conclusion that imminence is not a necessary condition for an act of killing to be one of justified self-defence. Therefore, Buchanan's conspiracy law analogy does not refute the simple rights based argument.

I now want to suggest an alternative strategy for overcoming the simple rights based argument. The question we should be asking here is not whether the non-

¹³⁸ Buchanan, 2007, 135.

¹³⁹ Obviously in this case it is the defence of others rather than self defence but I assume it makes no significant difference.

imminent attacker has done anything wrong, nor what exactly she has done wrong but whether she has done something wrong that renders her liable to suffer defensive harms. I think that she has – at least in cases that meet the other conditions for justifiable self-defence (necessity, proportionality, unjust attack). In such cases the non-imminent attacker has culpably put her victims in a position where it is necessary to kill their attacker.¹⁴⁰ Her victims have no other choice if they are to save their own lives. The victim in *Paralysis* has been placed in a kill-or-be-killed situation, and to put someone in such a situation is definitely to commit a serious wrong, one for which you surely forfeit your own right to life and render yourself liable to suffer defensive harms. Therefore, when one kills the attacker in this situation it is a permissible act of self-defence. I think this explanation overcomes the simple rights based argument whilst remaining consistent with Buchanan's overall account.

Now let's go back to Rodin's *Jealous Husband* case. I agree with Rodin that it would be wrong of X to kill the jealous husband in this case even if it were necessary to save X's life. However, the jealous husband is very different to the villain in *Paralysis*. In particular, the jealous husband has not put X in a kill-or-be-killed situation. X may indeed be in a kill-or-be-killed situation but jealous husband has not put him there. It is true that jealous husband poses a threat to X but posing a threat is distinctively different from culpably issuing a threat. We can pose threats in all kinds of innocent ways which do not render us liable to suffer defensive harms. For example, I may pose a threat to you if I park my car in a narrow alley down which you are fleeing from a murderous attacker but this does not render me liable to suffer your defensive harms. In the case of *Jealous Husband* it is only after he flies into a murderous rage that he culpably issues the threat that renders him liable to suffer defensive harms. Rodin is thus right to think that we may not kill the jealous husband until he flies into a murderous rage but he is wrong to conclude from this that imminence is a necessary condition for justified self-defence.

Therefore, neither the epistemic argument nor the simple rights based argument succeed in showing that imminence is a necessary condition for an act of killing to qualify as morally justified self-defence. It therefore appears that self-

¹⁴⁰ By 'culpable' I mean with full moral responsibility.

defence is morally permissible even when the attack is not imminent. I now turn to consider the duty to retreat.

Necessity and the Duty to Retreat

Recall that for an act of self-defence to be morally justified it must be (reasonably believed to be) necessary. For some this necessity condition entails the 'duty to retreat' in confrontations where it is possible to escape being killed or injured by running away. If it is possible to run away and thus avoid being killed it cannot be necessary to kill your attacker in self-defence since there is a less harmful way of saving your life: running away. However, the idea that the necessity condition always requires a duty to retreat is controversial.

In particular, many argue that if you are confronted in your own home by a burglar there is no requirement to flee from your home while she ransacks it if you are able to use force to stop her. The idea is that a duty to retreat can sometimes require an innocent person to give up too much. 'A man's home is his castle' they say and he should not be required to abandon its defence.

Similarly, in his discussion on the self-defence of battered women, Richard A. Rosen writes that in some cases battered women have to go to extreme lengths to avoid their abusive partners who will often threaten to kill them if they leave and attempt to track them down if they do. Rosen argues that in such cases if a battered woman has to leave her children, change her name and hide away for the rest of her life in Alaska just to get away from her partner then this is asking too much of her – she cannot have a duty to do this.¹⁴¹

I think this is right. We usually think it costs nothing to retreat but this is not always so and while it is one thing to run away from a stranger who has attempted to rob you, it is quite another to be expected to leave everything you've ever known behind because someone is threatening to kill you and the police cannot or will not help. I will return to this issue in the second section.

¹⁴¹ Rosen, 1992-3.

2. Economic Sanctions and the Concepts of Self- and Other-Defence

In this section I consider whether the self-defence justification – as outlined in the previous section – can provide a framework for a moral analysis of economic sanctions. The task at hand then is to extend the concept of individual self-defence along three dimensions: from the infliction of violence to the infliction of economic harms, from cases involving the defence of very basic rights to cases involving the defence of less basic rights and from the individual case to the international case. In what follows I draw heavily on the work of David Rodin, adapting his position where necessary.

Extending from Physical Harms to Economic Harms and from Defence of Basic Rights to Less Basic Rights

Although economic sanctions are used to defend rights to life and other fundamental rights such as bodily integrity, they are also used to defend less fundamental rights such as the right to property, religious freedom or democracy. Further, economic sanctions are often not lethal and do not in any case involve the direct infliction of physical violence. Thus it might seem a bit of a stretch to attempt to justify economic sanctions as a type of self- or other-defence.

However, we can understand the rights to self- and other-defence as being a sub-set of a wider class of defensive rights. As David Rodin puts it:

The right to commit homicide in self-defense is not *sui generis*, a case alone unto itself. It is rather one case within a range of morally and legally justified defensive actions. It is a range which might properly include defending one's position in a queue by delivering some sharp words to an interloper, defending a valuable art work by striking a thief who is about to steal it, through to defending one's life by shooting and killing an assailant who is about to kill you.¹⁴²

For Rodin, all justified defensive acts have the same underlying moral structure. Thus the necessary conditions for morally permissible defensive acts

¹⁴² Rodin, 2002, 36.

are the same: unjust attack, proportionality, necessity and liability, whether they involve killing to defend one's life or delivering sharp words to a queue jumper.¹⁴³ For Rodin, defensive rights derive from the fact that one has a right to a certain object that is being threatened and, if that object is being threatened by an aggressor who is at fault, then one has the derived right to defend the object using necessary and proportionate force – where the force need not be physical violence.¹⁴⁴ If we accept this, and I see no reason not to, it does make sense to consider economic sanctions as the exercise of defensive rights. Note, however, that in what follows I continue to use the terms 'self-defence' and 'other-defence' for the sake of familiarity and simplicity.

Extension to the International Case

The problem of extending the concept of individual self-defence to the international case is not unique to the question of economic sanctions; it is also a problem for just war theorists attempting to justify war on the grounds of self-defence. In what follows therefore I draw on the work of just war theorists, particularly David Rodin, to develop an account of how the concept of individual self-defence could be extended to the international case – the case of 'national-defence'.

Rodin argues that there are two broad strategies that can be taken when extending the concept of individual self-defence to the international case: the analogical strategy and the reductive strategy. The analogical strategy takes the domestic analogy at face value: states are like people – if state A attacks state B then state B has the right to defend itself against state A (which has forfeited its right not to be attacked) in order to defend its 'common life'. Here Rodin takes the common life of a state to 'consist in the set of interconnected social structures which emerge when people live together in a community...the common life has a character and identity over time, it grows and develops, and it is shaped...by those who live within it'.¹⁴⁵ The reductive strategy, by contrast, paints 'a moral picture of war as a

¹⁴³ This is Rodin's view. See Rodin, 2002, 36.

¹⁴⁴ Rodin, 2002, 37.

¹⁴⁵ Rodin, 2002, 142.

composite of individual acts of [self- and other-] defence'.¹⁴⁶ Every individual's life is threatened by the soldiers on the opposing side and they have the right to defend themselves and their fellow citizens against their attacks – a defensive war is simply a group of people exercising their individual rights to self- and other-defence in a co-ordinated manner. Saying that state B has the 'right to war' is simply a short-hand way of referring to this.

There are also, Rodin argues, mixed analogical/reductive positions; for example, one could argue states hold the right to national-defence because states have the right to defend the rights of their citizens to life, bodily integrity and so on – rights which will be violated by an armed attack.¹⁴⁷

Rodin in fact argues that neither the analogical strategy nor the reductive strategy nor any mixed strategy can ground the right to national-defence and hence thinks that the project should be abandoned.¹⁴⁸ I agree with Rodin that neither the pure reductive nor analogical strategies can ground the right to national defence though, as my focus is on economic sanctions and not war, for different reasons. On the other hand, I believe that the mixed strategy considered above *can* ground the right to impose economic sanctions in national-defence. I take these points in turn.

The analogical strategy fails for economic sanctions because it is clear that economic sanctions are imposed as defensive measures in situations where the common life of the state is not threatened. For example, economic sanctions might be imposed on a state which has taken hostages, on a state which refuses to extradite suspected terrorists or on a state which has expropriated property contrary to international law. None of these actions – the hostage taking, the refusal to extradite terrorist suspects or the expropriation of property, typically threatens the common life of a state. Thus it would be nonsense to attempt to justify these economic sanctions on the grounds that they are a means of defending the common life of a state.

The reductive strategy also fails. It is *prima facie* a plausible way of understanding war where soldiers on both sides are attempting to kill each other. However, economic sanctions are by their very nature a *collective* weapon. One

¹⁴⁶ Rodin, 2002, 131.

¹⁴⁷ Rodin, 2002, 126.

¹⁴⁸ Rodin, 2002, 163.

soldier may kill another but if one individual refuses to trade with another that person will just buy what she needs from someone else. Economic sanctions must be imposed by a *collective* agent to have any impact at all. Further, economic sanctions are sometimes one-sided, i.e. endured by their targets without any retaliatory economic sanctions. Therefore, modelling cases of economic sanctions on the actions of individuals engaged in a fight would be a strain.

A more natural way of modelling economic sanctions is using one of the mixed analogical/reductive strategies that Rodin also rejects. Recall that one mixed position runs that states hold the right to national-defence because they have the right to defend the rights of their citizens to life, bodily integrity and so on. This position is better for modelling economic sanctions as it satisfactorily accounts for those sanctions which are imposed in situations where the common life is not threatened. In cases of hostage taking the lives of the hostages are under threat. In the expropriation case it is property rights. In the extradition case it is the right of the victims of terrorism to see receive justice. The state has the right and the duty to defend its citizens' rights in these cases. The mixed model also better accounts for the collective nature of sanctioning and its often one-sided nature. Of course, on this account, the right to national defence is best viewed as 'other defence' rather than 'self defence', the state as a collective agent is defending the rights of its citizens, but nothing particularly hangs on this distinction.

However, Rodin argues against using this mixed model to ground the right to national-defence. He uses two arguments: 'the argument from humanitarian intervention' and 'the argument from bloodless invasion'. I consider each in turn.

Rodin's argument from humanitarian intervention is in two parts as follows:

1. If state A has a right to defend the rights of A-citizens from state B's unjust attack then state C also has a right to defend the rights of A-citizens from state B's unjust attack.
2. If state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state B, state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state A itself. In other words state C has a right to humanitarian intervention in state A.¹⁴⁹

¹⁴⁹ Rodin, 2002, 131.

That the right to humanitarian intervention (which is basically a right to invade for humanitarian purposes) can thus be derived from the right to national-defence on this mixed model is a big problem in Rodin's eyes because, as he puts it:

If there is a right to humanitarian intervention then it is because the moral basis of the right of national defence can in certain circumstances be justly overridden, not because the right of humanitarian intervention is, in some sense, an application of those moral considerations.¹⁵⁰

For Rodin the right to humanitarian intervention is in 'deep tension' with the right to national-defence since the right to national-defence is normally thought to entail the right to resist interventions – humanitarian or otherwise.¹⁵¹ However, according to Rodin, the mixed model recognises no such tension.

Let's consider Rodin's argument in more detail. Part one of the argument is really just the claim that wherever a state has the right of self-defence, a third party state has the right of other-defence. This is a plausible assumption and I will not challenge it here. Part two of the argument is the claim that if a third party state has the right of other-defence in situation X then the same third party state also has the right of other-defence in situation Y where situation Y is identical in every respect to situation X except for the identity of the attacker. This claim is more debatable and I will consider it in more detail. If the claim is that purely changing the *identity* of the attacker whilst everything else about the attacker remains the same then the claim is plausible. For instance say serial killer X is about to kill her victim in circumstances where a third party has the right to other-defence. If copycat serial killer Y is about to kill her victim in identical circumstances and Y is identical to X in relevant ways (i.e. same physical strength, same propensity to kill) I agree the third party would also have the right to other-defence. However, in most cases changing the identity of the attacker cannot help but change the circumstances in ways which may be relevant to there being a justified case for other-defence. For example, one attacker may be much more powerful than another meaning that much greater force must be used against her. It is possible that this greater force would be disproportionate whereas

¹⁵⁰ Rodin, 2002, 131.

¹⁵¹ Rodin, 2002, 132.

the smaller amount of force needed to defend oneself from the less powerful attacker would not be.

There are likely to be *relevant* differences between state A and state C. Hence the claim that if state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state B, state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state A itself is only contingently true – it is only true if there are no *relevant* differences between the two states.

However, in cases where there are no relevant differences then Rodin is right that one can derive a right to humanitarian intervention from the right to national-defence (and vice-versa). Is this as problematic as Rodin thinks it is? I do not think it is because I think the mixed model is still capable of generating the ‘deep tension’ Rodin wants to see. Where state A is attacking its own citizens the mixed model implies that state C has the right of humanitarian intervention because state C has the right to protect the rights of A-citizens. The mixed model also implies that state A has the right to national-defence because it has the right to protect the rights of A-citizens – and the rights of A-citizens would certainly be threatened by a military invasion – even one carried out for humanitarian purposes. However, this results in a contradiction: If A has the right to national-defence it would entail that C had a duty not to invade – even for humanitarian purposes. Nevertheless on the mixed model C does have the right to invade for humanitarian purposes. Therefore the tension Rodin wants to see definitely remains. However, although I have shown that there is a *prima facie* contradiction flowing from the mixed model and thus appeased Rodin’s objection, the mixed model now faces the different objection that it generates contradictory conclusions. One way of dissolving the *prima facie* contradiction is to appeal to circumstances where the right to national-defence can be justly overridden which is – as we have already seen – exactly what Rodin thinks we should do. Since, on the mixed model, the end of both the right to national-defence and the right to humanitarian intervention is protection of rights, it is considerations of which action best protects rights that will point us to the circumstances under which the right to national-defence may justly be overridden. In this case I would argue that state A’s right to national-defence is over-ruled by the need to protect the

basic rights of citizens – on the assumption that invasion will lead to less rights-violations overall than not invading.

Rodin's second argument against the mixed model is the 'argument from bloodless invasion'. In this hypothetical case, state B invades state A but promises not to kill any A-citizens if they do not put up any resistance. If the lives of A-citizens are safe then it seems state A has no right to defend itself from invasion since it cannot justify its response on the grounds that it is defending the lives of its citizens. Thus we cannot ground the right to national-defence in the right to defend the rights of citizens.¹⁵² I have two objections to make to this argument.

First, it may be true that the state B soldiers will not kill any A-citizens but what else might they do? Might they suspend their democratically elected government? Might they set up a police state? Might they start torturing people? Might they requisition their property? It's likely that they will do some of these things; after all, unless the invasion is part of a humanitarian intervention surely the point of it is to secure some economic and/or political gain and that would generally require them to take over the running of the state in the face of serious opposition. So even if they do not kill the A-citizens they will certainly violate their human rights. Further, states have the right to national-defence because they have the right to defend the rights of their citizens – and not just their rights to life but *all* their rights. To stop A-citizens' human rights being violated it would reasonably be considered necessary to fight them and stop them invading. Therefore, state A would still possess a right to national-defence even if they were promised a bloodless invasion.

Second, one could argue that there is still a *conditional threat* to kill A-citizens even if the aggressing state is not currently killing them and will not do so as long as they do not meet any resistance. Hence state A has the right to defend its citizens from this conditional threat. Rodin counters this objection by arguing that one cannot permissibly kill in response to a conditional threat of death because the necessity condition is not met – one can avoid being killed simply by doing with the threat-issuer wants. To use Rodin's example, if someone makes the conditional threat 'give me a dollar or I'll kill you', you have to give her a dollar- it is not

¹⁵² Rodin, 2002, 132.

morally permissible to kill her. This is an instantiation of the ‘duty to retreat’, if the least harmful way of defending yourself is to run away or hand over a dollar then that is what you have a duty to do – using force instead would be unnecessary.¹⁵³

However, as I argued in section one, there is no duty of retreat where innocent people would be forced to give up something very valuable to them. In the case of bloodless invasion the A-citizens are not being asked to give up a dollar *but their country*.

Surely this is asking them to give up too much. If so then the necessity condition *is* met and A *does* have the right to national-defence in the case of bloodless invasion.

Hence, the mixed model stands: states have a right to national defence because states have the right to defend the rights of their citizens.

There is a final issue to consider though, against whom is the right to self- or other-defence to be exercised? As argued above, the right to self- or other-defence is only justified if the defensive harms are targeted at those who are liable to suffer them, i.e. at those who are morally responsible for the objectionable policy in virtue of which defensive action must be taken. Therefore in this section I consider the issue of who is morally responsible for a target state’s objectionable policy.¹⁵⁴

In what follows it will be useful to have an example in mind. Say state A invades a small island territory of state B. The island, although very small, is of strategic importance and is inhabited by citizens of state B. The invasion poses no imminent danger to the mainland of state B and it is the plausible intention of state A to be satisfied with the occupation of the island alone. State B decides that a war would be difficult and possibly disproportionate and that instead it will use economic sanctions to coerce the citizens of state A into persuading their government to order troops be withdrawn from the island. The question I want to consider is who can be held responsible for the ongoing occupation of state B’s island.

One possibility is that *all* the citizens of state A share moral responsibility for the occupation.¹⁵⁵ I believe this notion of shared responsibility is fairly common

¹⁵³ Rodin, 2002, 133.

¹⁵⁴ Note that in what follows I am assuming that the objectionable policy which the sender wishes to change is morally wrong. If it were not then it would not make sense to hold anyone morally responsible for the policy in the blameworthy sense. It might even make sense to hold someone morally responsible for it in the praiseworthy sense.

¹⁵⁵ Note that the fact responsibility is ‘shared’ does not entail any one individual’s responsibility is less than it would have been had she been the only responsible agent. Responsibility is not ‘zero-

even if it is not explicitly endorsed by many. For instance, if in war one counts enemy civilian casualties as less morally troubling than one's own civilian casualties – as many people seem to - then something like this notion of responsibility might be working in the background.¹⁵⁶ Can such a notion of responsibility be justified?

I will start by rejecting any view that claims individuals bear moral responsibility for the harms perpetrated by their state solely by virtue of their citizenship. Such views are wildly implausible because, since citizenship is rarely freely chosen, such views attribute moral responsibility to individuals irrespective of their actions and irrespective of their characters. On any plausible view linking citizenship to responsibility there must be some feature shared by all citizens of that state that renders them morally responsible for their state's wrongdoing. Thus those who wish to maintain the position that all citizens are responsible for their state's wrongdoing must argue that there is some such feature shared by all citizens of the state by virtue of which they are all morally responsible.

Writing in the aftermath of the Second World War, Karl Jaspers argued that, to some extent, all citizens of a state could be held responsible for that state's wrongdoing including those who were not directly involved in the harms themselves. For Jaspers all Germans were 'politically responsible' for Hitler's regime and thus its consequences. The German state was their state and they were responsible for who they allowed to run it and the consequences thereof. As he puts it: 'ever since European nations have tried and beheaded their monarchs, the task of the people has been to keep their leaders in check'.¹⁵⁷ Further, no citizen escapes political responsibility as 'politically everyone acts in the modern state, at least by voting, or failing to vote, in elections. The sense of political liability lets no man dodge'.¹⁵⁸ However, Jaspers takes care to distinguish this notion of political responsibility from criminal and moral responsibility. Only political responsibility can be attributed to every citizen - criminal and moral responsibility cannot. The political liability that Jaspers refers to (which derives from political responsibility) is the liability of all

sum'; the extent of an individual's responsibility for her group's wrongdoing does not depend on the size of her group. See Zimmerman, 1985a.

¹⁵⁶ To be clear I am not saying that this view of responsibility is the *only* reason one might find enemy civilian casualties morally less troubling than one's own civilian casualties. Obviously it is not.

¹⁵⁷ Jaspers, 55.

¹⁵⁸ Jaspers, 62.

German citizens for the actions of their state. For Jaspers this entails that German citizens were liable to pay reparations and to suffer living under the military rule imposed by the victors. He is very clear, however, that political responsibility does not entail a liability to suffer criminal punishment. His view on whether German citizens would have been liable to suffer defensive harms is unclear.

Nevertheless, others do make the strong claim that citizens are morally responsible for the actions of their state by virtue of their political ties - in ways which do ground liability to suffer defensive harm. For example, in their discussion of the ethics of economic sanctions, Drew Christiansen and Gerald Powers argue that civilian populations of target states are not always morally innocent. They might, for example, have given their full support to an unjust regime which has aggressed against its neighbour. They state:

In these cases, the civilian population becomes a legitimate target of sanctions because it shares responsibility for the actions of its government and thus may be pressured to remove that government from power or, at least, to force it to change its policies'.¹⁵⁹

Christiansen and Powers use the example of Israel. Sanctions on Israel would be permissible, they argue, because it is a democracy and thus the population must be supporting its government's policies.

What should we make of this? The argument is most plausible where the state in question is a democracy since it is in democracies that citizens have the most control over their government and their government's policies. However, as I will show, this argument does not hold even for democracies. Therefore, *a fortiori* it does not hold for non-democratic states.

Individual citizens in a democracy have a limited amount of political power; they can influence their government's policies by campaigning for or against those policies or, occasionally, by voting in referendums held on particular issues. Over the long term individuals can vote for political parties known to support or oppose certain policies or even stand for office themselves and attempt to direct government

¹⁵⁹ Christiansen & Powers, 106.

policy more directly. Does that entail that everyone in a democracy shares responsibility for the actions taken by their government?

To go back to the Island Occupation case, what should we say about those who use their political power to campaign *against* the occupation? Those who, for example, demonstrate outside the parliament, who publicly declare that they will not vote for any party that supports the occupation, who write to their MP's and newspapers, who start anti-occupation protest groups. Such citizens are using the political power they have in order to end the occupation. The occupation continues despite their efforts not because of them. Such citizens do not share moral responsibility for the occupation.¹⁶⁰

Further, what about those citizens who either do not have any political power or who cannot exercise it. These include children, those too ill to exercise political power and, at least in the UK, some prisoners. These citizens either do not have any political power or cannot exercise it. Thus they cannot be held morally responsible for their state's objectionable policies on the grounds that they exercised – or failed to exercise – their political power in a way which allowed the state to pursue its wrongful policy.

Further, in what I have said so far I have assumed throughout that individuals either know or should know that the occupation is unjust. This is important because if individuals hold the reasonable belief that the occupation is just then they cannot be held morally responsible for it in the blameworthy sense – they have an excuse. It is possible that some – or even most – citizens in a democracy could have this excuse, since even democratic governments lie to their people about threats posed by other states. Of course, whether or not citizens do in fact have this excuse will depend on the case at hand.

So, to conclude this section, even in a democracy there will be large numbers of people who cannot be held morally responsible for their government's actions. Hence it cannot be shown that in a democracy all bear moral responsibility for a government's objectionable policies. *A fortiori* it is not the case that all individuals living within non-democratic states share moral responsibility for their government's

¹⁶⁰ At least, they do not share moral responsibility by virtue of their citizenship. They might share moral responsibility for other reasons e.g. making tax payments that contribute to funding the occupation.

objectionable policy. This particular shared feature view fails. However, there are other shared feature views worth considering.

Joel Feinberg very briefly argues that individual members of a group which shares racist attitudes are morally responsible for racist violence perpetrated by their group even if they do not participate in the violence themselves. In his example all the members of the White population of the postbellum American South are morally responsible for the lynching of Black people that occurred there. It follows from Feinberg's argument that they are thus liable to suffer defensive harms.¹⁶¹

Feinberg's argument is interesting but problematic.

The first problem with this view is that even if racist attitudes are widespread within a community there is no reason to think they are shared by every single White person in that community. Feinberg anticipates this objection and states that he assumes 99% of the White population of the American South share racist attitudes on account of their beliefs having been shaped by their upbringing within that society. Further, those who did not share such racist attitudes would be outcasts of White society - such being the nature of that society. Hence responsibility 'might be ascribed to all those whites who were not outcasts, taking respectability and material comfort as evidence that a given person did not qualify for an exemption'.¹⁶² However, even if Feinberg is right in the case of the American South – and I take no stand on that – one cannot extrapolate this case to other groups - let alone *states* which rarely exhibit the kind of solidarity Feinberg attributes to the White American South. States often comprise a mix of nationalities, ethnicities and races and are unlikely to *all* share any particular attitudes – racist or otherwise.¹⁶³

¹⁶¹ Feinberg, 1970, 247-248. More recently, Larry May argues along very similar lines that individual members of a community share moral responsibility for harms they do not directly participate in if they share the attitudes of those who do participate. Using the example of racist attitudes, May argues that individuals who hold racist attitudes help to create a climate in which racist violence is more likely to take place. Thus, even if those individuals do not take part in the racist violence themselves, they bear some moral responsibility for it when it happens. However, May reaches a weaker conclusion than Feinberg. May argues it is not appropriate to blame or punish individuals who hold such attitudes – the appropriate response to their faulty attitudes is self-imposed shame, remorse, regret or moral taint. I do not discuss May's views here because May's weaker conclusion cannot justify the imposition of economic sanctions on the grounds of self-defence or just punishment. May, 16.

¹⁶² Feinberg, 1970, 248.

¹⁶³ Note that Feinberg does not suggest extending his view to states.

The second problem is that some citizens might have an excuse for their racist attitudes. Children, especially, do not yet have the capacity to independently reflect on the attitudes that they hold. Thus they must be excused moral responsibility for the attitudes they hold and the harms that flow from them.¹⁶⁴

To summarise, then, neither Jasper's 'political responsibility' nor Feinberg's 'shared attitudes' views of shared responsibility succeed in grounding a liability of each individual member of the group to defensive harm. Attempts to assign moral responsibility to individuals based on their citizenship fail. That leaves the possibility of attributing moral responsibility to individuals based on their own actions. This is the issue I consider next.

Individual Contribution

What is required to attribute moral responsibility to an individual for a harm? Recall that Feinberg argues that an agent is morally responsible for a harm in the blameworthy sense if and only if:

1. he was at fault in acting or omitting to act and the faultiness of his act or omission consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm (*fault condition*);
2. his faulty act (or omission) caused the harm (*causal condition*); and
3. the resultant harm was within the scope of the risk (or certainty) in virtue of which the act is properly characterised as faulty. (That is the harm risked in (1) must be the same sort of harm as actually caused in (2)) (*causal relevance condition*).¹⁶⁵

For example, a drunk driver who obviously drives through a red light and kills a pedestrian crossing the road is morally responsible for that death; while driving drunk she created an unreasonable risk of harm to pedestrians (*fault condition*), her driving drunk actually caused harm to a pedestrian (*causal condition*) and finally the harm she caused – hitting the pedestrian – is one of the harms she

¹⁶⁴ Note that Feinberg does not claim that children are morally responsible for their racist attitudes. It does not seem to be a view he is likely to hold. However, by stating that all members of a community share moral responsibility for racist attacks because they hold racist attitudes, this view is implied.

¹⁶⁵ Feinberg, 1970, 195-199.

risked by driving drunk (causal relevance condition). Note that the causal relevance condition is necessary to rule out counterintuitive results. For instance suppose the pedestrian is suicidal and runs out into the road intending to be hit by the driver and the driver could not have stopped even if she had been sober. The driver was at fault in driving drunk (fault condition) and caused the pedestrian's death (causal condition) but it was not *because* of her drunkenness that the pedestrian was killed and therefore the causal relevance condition is not met. Hence she is not morally responsible for the pedestrian's death.

As discussed above, I assume that moral responsibility for a harm in Feinberg's sense renders one liable to suffer defensive harm. I now turn to consider Feinberg's conditions in some more detail before applying them to the *Island Occupation* case.

Causal Contribution

Many argue that an action is causal if, in the circumstances, it was necessary to the outcome. In other words, but for this particular action the particular outcome would not have arisen. In law this counterfactual condition is known as the 'but-for' condition and is the standard test of causality. In philosophy the counterfactual theory of causation owes most to David Lewis.¹⁶⁶ On Lewis' original theory one event causes another if they are linked through a chain of events where each link in the chain is causally dependent on the one before. The causal chain from the previous example looks something like this:

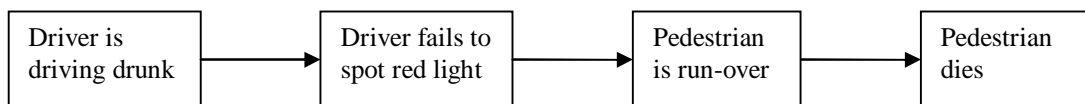


Figure 1. Causal chain of events for drink driving example.

¹⁶⁶ Lewis, 1973.

The driver's drinking is a cause of the pedestrian's death: but for the driver's drinking she wouldn't have missed the red light; but for her missing the red light she wouldn't have run over the pedestrian; but for her running over the pedestrian he wouldn't have died.¹⁶⁷

Of course the counterfactual test is not the only test of causation available. Another well-known test of causation is the 'NESS' test – which is in fact the test used by Feinberg.¹⁶⁸ According to the NESS test an action is a cause of an outcome if, in the circumstances, it is a **n**ecessary **e**lement of a **s**et of antecedent actual conditions **s**ufficient for the outcome (NESS). The NESS test is also sometimes used in the law – especially where the counterfactual test gives counterintuitive results.

It is far beyond the scope of this thesis to attempt to adjudicate between these two tests of causation. Therefore in what follows I will make reference to both. Before I go on however it will be useful to make one clarification. Feinberg makes a distinction between something's being *a* cause (which we might also understand as something's making a causal contribution) and something's being *the* cause. Whether something is *a* cause is (more or less) a matter of fact and can be determined under the but-for or NESS tests.¹⁶⁹ In legal terminology *a* cause in this sense is known as a cause-in-fact. In the earlier example of the drunk driver the driver's drinking was *a* cause of the pedestrian's death. Likewise the pedestrian's crossing of the road at that particular point in time was *a* cause of the pedestrian's death. Both the driver and the pedestrian made causal contributions to the pedestrian's death.

However, if we are looking for *the* cause of the pedestrian's death we would not single out the pedestrian's crossing of the road, we would pick out the driver's drunk driving. The action typically designated as *the* cause is one that is 'especially interesting to us, given our various practical purposes and cognitive concerns'.¹⁷⁰

¹⁶⁷ The law uses a simpler counterfactual test - it does not apply the counterfactual test of necessity to every link in the causal chain – it merely asks the question: but for the driver driving drunk would the pedestrian have died?

¹⁶⁸ Feinberg, 1970, 202.

¹⁶⁹ It is not entirely a matter of fact since the decision to use either the but-for or NESS test is a matter of judgment. Furthermore, others have argued that both tests build in normative criteria. See Malone, 1956-7.

¹⁷⁰ Feinberg, 1970, 202.

Feinberg is explicit that on his tri-conditional analysis the causal condition refers to a cause-in-fact. In what follows therefore when I discuss an individual's actions being a cause of the harm or, equivalently, making a causal contribution to that harm, I mean that the individual's actions are a cause-in-fact and meet the causal condition on Feinberg's tri-conditional analysis.

Having now determined how we should identify causal contributions I now turn to consider the *Island Occupation* case.

There are many different ways in which a citizen might causally contribute to the objectionable policies of their state. Take the *Island Occupation* case, citizens who contribute causally to the occupation include the political and military leadership of the state, the individual soldiers who are part of the occupying force, the civilians who provide what the occupying forces need to sustain the occupation, e.g. weapons, ammunition, uniforms, food etc., journalists and 'opinion makers' who write in favour of the occupation, everyone who pays tax (since, let's say, the occupation is funded through tax revenues), everyone who expresses xenophobic attitudes towards state A and who thus contributes to a climate where opposition to the occupation will be slim and, additionally, everyone who exercises their political power in favour of the occupation or who fails to exercise it in opposition. This is not meant to be an exhaustive list of the ways in which citizens might causally contribute to an objectionable policy; nevertheless it is sufficient to illustrate the extent of the average citizen's potential involvement. In the *Island Occupation* case it is reasonable to believe that the vast majority of adult citizens will causally contribute something to the occupation – through the payment of tax if nothing else. However, one might reject the view that the vast majority of adult citizens causally contribute to the occupation by invoking the problem of overdetermination.

On the counterfactual test of causation it is not true to say of any one individual citizen that but for their contribution there would be no occupation. If one citizen refused to contribute, e.g. by refusing to serve on the occupation force or by refusing to pay tax, the occupation would not come to an end. Thus, on a counterfactual theory of causation, no individuals make necessary contributions to

the occupation and hence no individuals are causally responsible for it.¹⁷¹ The NESS test faces the same problem in this kind of situation. This is the problem of overdetermination.

It is easy to see that if we take the problem of overdetermination seriously, we end up with absurd conclusions. For example, say soldier X is one of a hundred soldiers involved in a massacre that kills the entire population of a village. For his part soldier X kills ten people. If he hadn't killed the ten people, one of the other ninety nine soldiers would have killed the same ten people since the aim of the soldiers was to kill everyone in the village. It is not true to say of soldier X that but-for his contribution those ten people would not have died. Therefore, on the counterfactual theory of causation we have been employing, he is neither causally nor morally responsible for their deaths. This is clearly absurd. Moreover, it is not only soldier X that can make this claim for it seems that *each one* of the one hundred soldiers could justifiably have said that they made no causal contribution on the same grounds. In which case *none* of the soldiers are causally or morally responsible for any deaths even though an entire village has been massacred.¹⁷² Again this conclusion is clearly absurd. I would suggest that these completely counter-intuitive conclusions indicate a flaw in the counterfactual theory of causation rather than anything more and the problem of overdetermination should not be invoked to deny the causal or moral responsibility of those who make causal contributions to an overdetermined effect.

One way around the overdetermination problem would be to employ David Lewis' revised account of causation. It is far too much to go into all the details here but, very roughly, the idea behind Lewis' revised view is to take into account not just *whether* an event occurs but *whether, when and how* an event occurs.¹⁷³ On this revised theory any given soldier's participation is necessary to the occupation

¹⁷¹ There may be rare individuals for whom this is not true. For instance, a dictator may occupy state B's island out of some private grudge such that if that dictator had not ordered the invasion of the island the occupation would not have occurred (an alternative government would have no reason to invade). However, in this case the contribution made by everyone else is counterfactually not necessary to the outcome and hence – if we take the problem of overdetermination seriously – no-one but the dictator causally contributes to the occupation. This likewise seems absurd.

¹⁷² See also Thompson, 49.

¹⁷³ Lewis, 2000.

because if that soldier had not participated, the occupation would not have occurred (or be occurring) exactly as it was (is).¹⁷⁴

Of course even if making a causal contribution is a necessary condition for moral responsibility it is obviously not sufficient. To go back to the example of the pedestrian – her crossing of the road at a particular time made a causal contribution to her death but she is in no way morally responsible for it. A further necessary condition is that the agent responsible must be *at fault* and it is this condition I consider next.

Fault

Recall that for Feinberg the other two necessary conditions for moral responsibility are that the agent:

was at fault in acting or omitting to act and the faultiness of his act or omission consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm (*fault condition*);

and;

the resultant harm was within the scope of the risk (or certainty) in virtue of which the act is properly characterised as faulty. (That is the harm risked in (1) must be the same sort of harm as actually caused in (2)) (*causal relevance condition*).¹⁷⁵

Therefore for an agent to be morally responsible for a harm the agent must have acted/omitted to act in a way that created a certainty or an unreasonable risk of that particular type of harm occurring. Feinberg argues that there are different levels of culpability for agents judged to be ‘at fault’ for a harm. Drawing on the legal distinctions made for *mens rea* he distinguishes between i) *intentional wrongdoing* –

¹⁷⁴ Note that Lewis does not suggest using his revised theory to overcome the problem of overdetermination. Lewis argues that our intuitions in overdetermination cases are not reliable and so intuitions about such cases should not be used to test theories of causation. Hence, he never applies his revised account to overdetermination cases. Lewis, 2000, 182. Note that the problem of overdetermination in such cases has led other theorists to argue that making an individual causal difference is not necessary for the attribution of moral responsibility for collective wrongdoing to an individual. See especially Kutz, 2000, chp. 4.

¹⁷⁵ Feinberg, 1970, 195-199.

which exists ‘if either one acts with a wrongful conscious objective or one knowingly produces a forbidden result even incidentally as a kind of side-effect of his effort to achieve his objective’; ii) *recklessness* – which exists where an actor knowingly runs an unreasonable risk of producing a forbidden result; and iii) *negligence* – which is the unintentional creation of an unreasonable risk – often by failing to pay sufficient attention to what one is doing.¹⁷⁶ The extent to which an agent is at fault (their degree of culpability) corresponds to whether or not their harm has come about through intentional wrongdoing, recklessness or negligence.¹⁷⁷ An agent who brings about harm intentionally is more at fault than an agent who brings about the same harm recklessly who is, in turn, more at fault than an agent who brings about this harm negligently. In the individual case determining whether an agent is at fault is relatively straightforward. In the earlier example the drunk driver was at fault because by driving drunk she knowingly created an unreasonable risk of harm. Her action was reckless.

In the *Island Occupation* case one is at fault if one intentionally contributes to the unjust occupation or is reckless or negligent with respect to the risk one might thus contribute. Here intentionally contributing to the occupation can be understood widely as contributing either with the intent to contribute to the unjust occupation or contributing simply with the knowledge that one is making a contribution to the unjust occupation.

Further, one can be reckless or negligent if, for example, one does not take the trouble to find out where the weapons one is manufacturing are being sent or if one does not realise one’s taxes are going towards the occupation.

In all such cases one will be at fault for one’s actions unless one is excused for some reason. One may be excused on any of the following grounds:

Mistake: Individuals who contribute to the occupation might genuinely believe that the occupation is just. Exposure to propaganda or outright lies from the government might make this likely. Of course, individuals have a duty to do what they can to find out the truth but this is often harder than it seems especially if their

¹⁷⁶ Feinberg, 1970, 193-4.

¹⁷⁷ It is worth mentioning that agents may act intentionally, recklessly or negligently but still be excused moral responsibility on the grounds that they were coerced, deceived or suffering some kind of mental impairment such that their action was not free, voluntary or informed.

state controls communications. Lack of education may also prevent people from working out what's really going on. If an individual has made a decent effort to establish the facts of the matter and nevertheless truly believes that the occupation is just then they have the excuse of mistake.

Duress: Another excuse is that of coercion or duress. Soldiers and civilians alike might be conscripted to take part in the occupation and imprisoned or even executed if they refuse. Similarly, tax payments are usually coerced under threat of legal penalty. The excuse of duress is usually only granted if the threat is more than a reasonable person would be expected to withstand in the circumstances. If one considers the threat of imprisonment for non-payment of tax more than a reasonable person could expect to withstand then no individual can be morally responsible for contributing to the occupation solely on the grounds that she is a taxpayer.

Lack of capacity: Young children, for example, are not full moral agents and, even if they do play a small part in assisting the occupation they are not morally responsible for it.

Whether these excusing conditions actually apply will vary from case to case and will obviously depend on the type of state being targeted. An authoritarian state or a state with high levels of poverty and illiteracy is more likely to be willing and able to deceive and coerce its citizens than a rich, highly educated, democratic state. Thus we can expect more citizens to be excused in the former case than the latter.

Finally, there is the possibility that one might offer a lesser evil justification (rather than an excuse) for one's conduct. I discuss the lesser evil justification in chapter seven but this justification for contributing to the occupation basically takes the form that the contribution was necessary to avert some greater evil. For example, one might admit that one took overall responsibility for co-ordinating procurement for the occupation forces but claim that one did this job deliberately badly in order to undermine the occupation (though not badly enough to be replaced).¹⁷⁸ Thus, although one contributed to the occupation one also acted to undermine it at the same time. Similarly, one could admit that one paid taxes one knew supported the occupation but claim this was necessary to allow one to remain free and carry out

¹⁷⁸ For this suggestion see Raikka, 1997.

political protest. In some instances it is possible that the lesser evil justification will hold.

So, to conclude, the vast majority of adult citizens will causally contribute to the occupation; however, the above analysis shows that many will not be at fault – they will have an excuse or, in rare circumstances, a lesser evil justification. Thus there will be many citizens in a target state who are innocent. On the other hand there will of course be many individuals who both make a causal contribution and are at fault for their contribution. Thus they are morally responsible for contributing to the harm of the occupation. This will include every individual who is capable of moral agency and who causally contributes to the unjust occupation without an excuse or lesser evil justification – even if their causal contributions are very small (e.g. they contribute by voting/paying tax).

Before I finish, however, there is one more point to consider. Some might concede that these individuals are morally responsible for contributing to the occupation but object that the causal contributions they make are too small to render them liable to suffer serious defensive harms. Proponents of this view argue that liability to defensive harm requires not just any causal contribution but a causal contribution that passes some threshold of significance.

As Cécile Fabre argues:

To the extent that the collective venture in which they are direct participants is wrongful..., their own individual contribution to it is wrongful....However, it does not follow that they are liable to being killed. To claim otherwise implies that the costs which people are liable to suffering for their actions are determined solely by the significance of their individual contributions when considered collectively...[but] liability derives from what they do as individuals and not from their membership in a group engaged in war...[one] cannot regard mere wrongful participation in a wrongful venture as a sufficient condition for liability to direct attack. Rather, a contribution must, on its own individual terms, meet a threshold of causal significance in order for its author to be liable. Tightening screws on tank engines, testing the sweat-absorbing capacities of the clothes which soldiers will wear in the desert...do not...pass the threshold. Nor, for that matter, does designing a tiny piece of equipment which goes into a gun...By contrast, taking overall responsibility for negotiating and drafting sales contracts between one's factory and the army might; so might driving a truckload of munitions or protective

clothing to an armoury division, and so on...[Individuals] who make very small, marginal contributions are not liable to being killed, although they might be liable to incurring lesser harms.¹⁷⁹

Here Fabre is making her point in the context of war rather than economic sanctions. Nevertheless, the point translates to the context of economic sanctions: perhaps individuals who make causal contributions that fall below some threshold are not liable to suffer the severe harms inflicted by comprehensive sanctions but are liable to suffer the less severe harms inflicted by partial sanctions (e.g. sanctions that target particular commodities rather than all trade) or perhaps, if those individuals are to be subject to targeted sanctions, those targeted sanctions should be of a milder variety. In what follows I consider Fabre's argument and how it might apply to the case of economic sanctions.

First, it is worth pointing out that as a matter of fact, we do often talk of one individual making a greater contribution to something than another – even where both contributions were necessary to the end effect. This way of understanding causation is highly intuitive. Let us accept for the sake of argument that it makes sense to talk of there being degrees of causation in this way.¹⁸⁰ Given that, is Fabre right to claim that those who make causal contributions which fall below some threshold are not liable to suffer lethal defensive harms but only, perhaps, lesser defensive harms?

One way of understanding Fabre's claim is to understand it a manifestation of the proportionality condition for self-defence. The proportionality condition requires that the harm caused by your defensive action must be proportionate to the benefits achieved by it. In the case of a soldier in a war the proportionality condition is easy to meet: one soldier kills another to save his own life. In the case of a civilian whose goal is to assist soldiers in their killing - but who does not take part in any killing themselves – things are more tricky.

Let us take Fabre's case of the sweat testers, what is the amount of harm to be averted in the case of the sweat-testers? One might think that the harm to be averted is the harm of an unjust war and all the death and destruction that necessarily entails.

¹⁷⁹ Fabre, 61.

¹⁸⁰ For arguments that it makes sense to talk of degrees of causation in this way see Braham and van Hees, 71 and Lewis, 2000, 97. For an alternative view see Zimmerman, 1985a.

Or that the harm to be averted is all the additional killing that the soldier wearing the sweat-tested uniform does that he would not do if he had a less effective uniform. If so then killing the sweat-tester would be proportionate. However, the sweat-tester considered as an individual doesn't threaten these additional deaths – it is the collective of which she is part that threatens this harm. Thus Fabre makes the point that thinking the killing of the sweat-tester is morally permissible 'implies that the costs which people are liable to suffering for their actions are determined solely by the significance of their individual contributions when considered collectively...[but] liability derives from what they do as individuals and not from their membership in a group engaged in war.'¹⁸¹ Is she right to think this though? I am not sure that she is.

Let us borrow an example from Derek Parfit.¹⁸² Imagine a thousand torturers have a thousand victims. Each of the thousand torturers presses a button which turns a switch one thousandth of a degree which inflicts an imperceptible amount of pain on each victim. Then each torturer move onto the next victim. Each torturer presses a thousand different buttons such that by the time the torturers have finished their work every victim is in agony since every victim's switch has, by that time, been turned up to its maximum. It is true to say that every single torturer inflicts only an imperceptible amount of pain on each victim; yet a thousand victims are horribly tortured because of the way the torturers act collectively. Assume that all the torturers are well aware of how each other acts, all take part voluntarily with the intent to cause terrible suffering and so on.

Now imagine one victim has the chance to escape but in order for her to do so it is necessary to kill one of the torturers; may she do so? Intuitively, it seems certain that she may. If this is so then this must be because the liability of the torturer to defensive harms derives from the harm that the torturer's group inflicts as a collective. Fabre, however, denies that the liability to suffer defensive harms can derive from the harms that one's group inflicts as a collective and therefore must deny that the victim may kill the torturer. However, this claim is wildly counter-intuitive and give us reason to reject Fabre's argument.

Of course it could be objected that my argument has equally counter-intuitive implications. It would seem to suggest that the tax-payers, for example, are liable to

¹⁸¹ Fabre, 25.

¹⁸² Parfit, 80.

suffer lethal defensive harms if they contribute to the collective unjust occupation. However, this conclusion does not necessarily follow. First, tax payers would only be morally responsible (as opposed to merely causally responsible) if they were also at fault in their payment of tax. They must pay their tax voluntarily and in the full knowledge that it is contributing to the unjust occupation which they must also know is unjust and, further, they must have no lesser evil justification for doing so. If those conditions are met then, yes, tax payers are liable to suffer lethal defensive harms if and when it is necessary to kill them.

Having said all of that; although there will be many guilty individuals in any target state, there will be many innocent individuals too. Children, those individuals who do not contribute in any way to the unjust occupation, those individuals who contribute but are excused on the grounds of duress, mistake or impaired capacity and finally, those individuals with a lesser evil justification.

3. Justifying Economic Sanctions on the Grounds of Self- or Other-Defence

From the above discussion we can conclude that economic sanctions are justified on the grounds of other defence if the following necessary conditions are met:

The Unjust Attack Condition: The initial attack on the rights of individuals by the target is unjust.

The Necessity Condition: The economic sanctions are reasonably believed to be necessary. In other words it is reasonable to believe that there is no other, less harmful, way for the sender to defend the rights of the attacked individuals.

The Proportionality Condition: The harm caused by the economic sanctions is proportionate to the good to be achieved, i.e. is proportionate to the good of restoring the threatened rights. As discussed earlier, the moral asymmetry between aggressor and victim

means that the proportionality requirement does not demand perfect equivalence. The harms inflicted by the sender may slightly exceed the value of the rights being defended.

The Liability Condition: The defensive harm must be targeted only at those liable to suffer the defensive harm. In other words, the harms inflicted in cases of self-defence are only permissible if they are targeted at those who bear some moral responsibility for the unjust attack on the rights of individuals.

Given this, what type of economic sanctions might it be morally permissible to use in other-defence and in what circumstances? Let us first consider collective economic sanctions before moving onto targeted economic sanctions.

As discussed in chapter one, collective sanctions can operate via an indirect or direct mechanism. *Indirect* collective sanctions, recall, aim to pressure citizens of the target state into forcing their government to change the objectionable policy. Such sanctions attach costs to any continued support of or acquiescence to the target government's objectionable policy. Thus every citizen affected by the sanctions is forced to reassess their position on the matter: on balance do the net benefits of continuing to support/acquiesce to the objectionable policy outweigh the net benefits of withdrawing their support or actively protesting against it? The sender of the sanctions hopes the answer to this question is 'no' and that so many people will protest that the government will be forced to change its policy to avoid the risk of losing power. In the case of *direct* collective sanctions the aim of the sanctions is to inflict harms on the military and/or leadership by destroying the economy to such an extent that military projects become unfeasible. Unfortunately for citizens of the target state – some of whom will be innocent – the target government will tend to allocate dwindling resources as a matter of priority towards itself and its military projects. Therefore innocent people will suffer the (possibly severe) effects of shortages long before the target government does.

In the case of both direct and indirect collective sanctions the defensive harms fall on all citizens and, as I argued above, some of these citizens will be

morally innocent, i.e. not liable to suffer these defensive harms. Therefore, *prima facie*, it would appear that the liability condition is not met for these types of sanctions.

However, that conclusion would be too quick. It is true that in cases of collective sanctions innocent people are harmed, just as innocent people are harmed in war. However, there is an important distinction to be drawn between intentionally harming innocent people as a means of changing objectionable policies and harming innocent people as an unintended but foreseeable side-effect of changing objectionable policies. It is only in the former case that the liability condition is not met. This distinction can be drawn, as it is for the case of war, by invoking the doctrine of double effect.

The doctrine of double effect acknowledges that one action (e.g. collective sanctioning) can have two effects – the intended effect (in our case this is changing the objectionable policy) and a foreseen but unintended side effect (in our case this is harming innocent people). According to the doctrine of double effect it is morally permissible to bring about a harmful side effect as a foreseen but unintended consequence of intentionally pursuing some good end so long as the harm of the side effect is not disproportionate to the intended good end. Hence harming innocent individuals might be permissible if it is a foreseen but unintended consequence of pursuing the good end of changing the objectionable policy (which is presumably a wrongful policy) – so long as the harms inflicted are proportionate to the goods to be achieved from ending the objectionable policy.

In order to ascertain whether the doctrine of double effect can justify collective economic sanctions, we first need to ascertain whether the harms falling on innocent people is *intended* by the senders or whether it is merely a foreseen but unintended side-effect.

Following Warren Quinn I will say that intended harms are harms which ‘come to the victims, at least in part, from the agent’s deliberately involving them in something in order to further his purpose precisely by way of their being so involved.’¹⁸³ Thus, in order to work out who the harms of sanctions are intended for, we need to consider the mechanism by which sanctions work.

¹⁸³ Quinn, 343.

Indirect collective economic sanctions work by coercing those individuals who support or at least acquiesce to the objectionable policy into withdrawing their support for the policy or actively protesting against it. Since this is how sanctions are expected to ‘further the purposes’ of the sender we should say that the intended targets of the sanctions are those individuals who support or at least acquiesce to the objectionable policy and who have the capacity to change their views on this and act accordingly, i.e. withdraw their support/protest. Certainly, applying the counterfactual test of intention, if the sanctions did not harm any of these individuals there would be no point in imposing them.¹⁸⁴ Since, as I argued earlier, some of these people will be innocent, indirect sanctions are intended to harm innocent people.

What about individuals within the target state who oppose the objectionable policy? Are they intended targets too? Undeniably, opposition groups often suffer during a period of collective sanctioning; in fact, it is a frequent criticism of collective sanctions that they can backfire by depriving opposition groups of the resources they need for effective campaigning. However, sanctions are not intended to harm opposition groups – harming opposition groups does not further the purposes of the sender. The harms falling on opposition groups are foreseeable side-effects.

What about individuals who are not in a position to influence the target government at all: young children and the very ill? Are collective sanctions intended to harm them? There is no doubt that harming young children and the very ill will further the purposes of the sender. Although young children and the very ill are unable to exercise political power, harming the children and sick relatives of those who support/acquiesce to government policy and who *are* capable of exerting political influence would put significant pressure on them. Worries about whether you can continue to afford your child’s education or your sick relative’s medical treatment might consume you much more than concerns about your own economic well-being. Applying the counterfactual test again, if the sender would not impose sanctions but for the fact that the children and very ill people would be harmed by them, then the harm in such a case is inflicted intentionally and cannot be justified by the doctrine of double effect.

¹⁸⁴ The counterfactual test of intent has its detractors but I think it does well enough in the context of economic sanctions.

To summarise so far, the intended targets of indirect collective economic sanctions are those who support or at least acquiesce to the objectionable policy and, in some cases, their children and sick relatives. Thus the doctrine of double effect cannot justify the harms which indirect collective sanctions inflict on innocent people. To be sure, some innocents are harmed as a foreseeable side-effect but others are clearly intended targets. Thus, indirect collective sanctions, by their very nature, can never be justified on the grounds of self-defence or the defence of others – in any circumstances. The liability condition is not met. What of direct collective sanctions?

The objective of direct collective sanctions, recall, is to inflict harms on the military and/or leadership by destroying the economy to such an extent that military projects become unfeasible. Unfortunately for citizens of the target state – some of whom will be innocent – the target government will tend to allocate dwindling resources as a matter of priority towards itself and its military projects.

However, none of this entails that the innocent people living within the target state are the intended targets of direct collective sanctions. Rather, it is the leadership and military who are the intended targets. If for some reason the innocent citizens of the target state were unharmed by the sanctions – perhaps, say, the target government recognised a duty of care towards its citizens and did not actually redistribute resources away from them – the sender would still impose the sanctions. Indeed it would be *better* for the sender if the target did not redistribute resources away from innocent citizens as the sanctions would reduce the target's military capacity at a faster rate. Hence the harms falling on innocent citizens from direct collective sanctions are a foreseeable but unintended side effect. Of course this does not mean that the harms are permissible under the doctrine of double effect since the doctrine of double effect further requires that the harms of direct sanctions are not disproportionate to the goods we expect to achieve. Direct collective sanctions, in the memorable words of Joy Gordon, are like a 'siege write large'; they have to work their way through the general population before they can harm their targets: the military and/or leadership.¹⁸⁵ Given this, direct collective sanctions are likely to be disproportionate. However, there may be rare instances in which the harms are not

¹⁸⁵ Gordon, 1999, 125.

disproportionate and in these rare instances it would appear that the doctrine of double effect is satisfied.

Understandably, just war theorists such as Michael Walzer are uneasy about such a conclusion. Writing in the context of war, Walzer argues that it cannot be sufficient for moral permissibility that civilians are not the intended targets of attack – even with a proportionality constraint. In war soldiers rarely intend to harm civilians since there is rarely anything to gain by it – civilians are no threat to them. The risk in war is that soldiers aim at enemy soldiers with no consideration of how many nearby civilians are thereby harmed. Thus Walzer argues that the doctrine of double effect needs to be corrected for the context of war. Walzer notes that the standard doctrine of double effects assumes that the good and evil effects flow from the same intention – the intention to harm the enemy. He argues the doctrine of double effect needs to be revised to take into account a double intention – the intention to harm the enemy soldiers and the intention to reduce foreseeable civilian casualties as much as possible. For Walzer if harm to civilians is to be permissible under the doctrine of double effect then those inflicting the harm must act with this double intention: the intention to inflict harm on the enemy and the intention to reduce foreseeable civilian casualties as much as possible.¹⁸⁶

Walzer then goes on to discuss the status of blockades during war. Since the case of blockades is so similar to the case of direct collective sanctions it is worth considering what he has to say in some detail. Here Walzer is referring to the British blockade of Germany during the First World War which, it is claimed by the British, was aimed at reducing Germany's military capacity by destroying its economy and denying it crucial resources. Historians estimate that the blockade cost the lives of half a million German civilians; though none died of starvation, mass malnutrition reduced their ability to fight diseases such as typhus and influenza.¹⁸⁷ Walzer argues:

When the British took aim at the enemy army...they were aiming through the civilian population...It may be that the British did not intend to kill them; killing them wasn't...a means to the end set by the Cabinet. But if the success of the British strategy did not depend upon

¹⁸⁶ Walzer, 2006, 153-156.

¹⁸⁷ Walzer, 2006, 173.

civilian deaths, it nevertheless required that nothing at all be done to avoid those deaths. Civilians had to be hit before soldiers could be hit, and this kind of attack is morally unacceptable. A soldier must take careful aim at his military target and away from non-military targets... He can risk incidental deaths, but he cannot kill civilians simply because he finds them between himself and his enemies.¹⁸⁸

Here Walzer clearly lays out the mechanism by which direct economic sanctions work: ‘civilians had to be hit before soldiers could be hit’. This is unacceptable on his corrected doctrine of double effect since, although there is the intention to inflict harm on the enemy army, there is no intention to reduce civilian suffering as much as possible.

Interestingly, Walzer does allow one exception where blockades might be permissible. This is where the blockading state ensures that the civilians are well provisioned for so that they do not suffer. Such a blockade would be consistent with the intention to reduce civilian suffering as much as possible. This entails that direct economic sanctions might be permissible if something were done to ease civilian suffering such as a genuine attempt to provide humanitarian aid. Of course if it was clear in a particular case that the humanitarian aid was failing to provide adequately for the civilians then the corrected doctrine would no longer permit the sanctions and they would have to be withdrawn. This would be the case even if the humanitarian aid were diverted by the target government by its own purposes. As argued in chapter three, target measures like these are not sufficient to shift the blame for civilian suffering from the sender to the target.

To summarise then, collective sanctions cannot meet the liability condition except in rare instances of direct sanctions where humanitarian aid is supplied and is effective in reducing the suffering of innocent people.

Targeted sanctions – at least when they are aimed correctly, i.e. when they correctly identify those who are morally responsible for the objectionable policy – will meet the liability condition. They are also much less harmful and affect many fewer individuals and thus are much more likely than collective sanctions to satisfy the proportionality condition. Whether they meet the necessity condition will obviously depend on the circumstances. Again, less harmful means must either have

¹⁸⁸ Walzer, 2006, 175.

been attempted and failed or be expected to fail if attempted for the necessity condition to be met. In any case targeted economic sanctions are far more likely to be justified on the grounds of other-defence than are collective economic sanctions.

Finally, it should be noted that economic sanctions designed to prevent a future but non-imminent threat from being realised may (so long as the four conditions are met) be justified on the grounds of other-defence. As I argued in section one, imminence is not a necessary condition of morally justified other-defence.

Conclusion

Economic sanctions can be justified on the grounds of other-defence when the following necessary conditions are met: the unjust attack condition, the necessity condition, the proportionality condition and the liability condition.

Indirect collective sanctions, by their very nature, cannot ever be morally justified on the grounds of other-defence as they cannot ever satisfy the liability condition. Direct collective sanctions will satisfy the liability condition in those (probably rare) cases where the innocent members of the population are successfully provided for. In such instances direct collective sanctions will be justified on the grounds of other-defence if the other necessary conditions are met.

Targeted sanctions, by contrast, will more easily be able to meet the necessary conditions for justified other-defence. Whether they in fact do in particular circumstances would require an analysis of those particular circumstances. I now turn to consider another context in which the right to other-defence is relevant; that of humanitarian intervention.

Chapter 6: Economic Sanctions and Humanitarian Intervention

There is considerable debate about the legitimacy of humanitarian intervention: when, if ever, is it morally permissible (or required) to intervene in another state to end human rights violations perpetrated by a government against its own citizens? To date the debate has focussed almost exclusively on *military* intervention and the use of other means of intervention – such as economic sanctions – has largely been neglected. This is despite the fact that economic sanctions are actually used much more frequently than military force in cases of humanitarian intervention. In this chapter, then, I consider the legitimacy of using economic sanctions in cases of humanitarian intervention.

I should start by explaining exactly what I mean by ‘humanitarian intervention’ since a sizeable minority of theorists would not accept that economic sanctions are a form of intervention at all. Some theorists, for example, define ‘intervention’ as necessarily involving the use or threat of force. One widely cited definition is that of Percy H. Winfield who stipulates that intervention ‘occurs where one state interferes by force or threat of force in the affairs of another state’.¹⁸⁹ Obviously, under this definition, economic sanctions cannot be a means of intervention – humanitarian or otherwise. More commonly, ‘intervention’ is defined more broadly as some type of ‘coercive interference’. For example, Simon Caney, drawing on Hedley Bull, defines intervention as ‘coercive action by an outside party or parties in the sphere of jurisdiction of a sovereign state, or more broadly of an independent community’.¹⁹⁰ Now it seems that definitions like Caney’s can encompass at least some types of economic sanctions: basically, the coercive ones. Caney himself explicitly allows that coercive economic sanctions are a type of intervention.¹⁹¹ However, this definition would exclude economic sanctions applying pressure falling short of coercion.

I will adopt a wider definition of intervention. For my purposes intervention is:

¹⁸⁹ Winfield, Percy H., “Intervention”, *Encyclopedia of the Social Sciences*, Vol 8. (New York: Macmillan, 1932), p236.

¹⁹⁰ Caney, 229.

¹⁹¹ Caney, 230.

Any action undertaken by an external party or parties to influence the internal affairs of another state.

Humanitarian intervention is:

Any action undertaken by an external party or parties to influence the internal affairs of another state in order to reduce or end human rights violations occurring in that state.

Obviously, coercive economic sanctions are interventionary on this definition. Additionally, however, economic sanctions which aim to improve the human rights situation in a state by applying pressure falling short of coercion are a means of humanitarian intervention. Further, direct sanctions such as arms embargoes or bans on ‘items intended for internal repression’ aimed at improving the human rights situation would qualify as a means of humanitarian intervention. One clear example of what I would consider to be economic sanctions as humanitarian intervention would be the sanctions imposed on Apartheid-era South Africa which are widely considered to have played a major role in bringing down that system.¹⁹²

Again, my definition of humanitarian intervention is wider than most offered in the literature, but it has the considerable advantage of allowing us to consider which means of attempting to influence a state’s internal policies are morally permissible and which are not. A narrow definition does not allow this so easily. Indeed, Charles Beitz views attempts to formulate narrow definitions of intervention with suspicion, arguing that theorists adopting narrow definitions tend to start with the assumption that intervention is always wrong and then work backwards to define intervention in a way that supports this assumption. As he puts it ‘the controversy about the definition of intervention masks a question of substantive political ethics – what forms of influence in a state’s internal affairs are impermissible, and why?’¹⁹³ Clearly, since my focus is on a particular form of influence – economic sanctions (in all their variety) – this is the question I need to address and therefore I need a

¹⁹² See Rodman, 1998 and Davis, 1995.

¹⁹³ Beitz, 1999, 74.

definition of 'intervention' that allows me to do this. Having established a definition of humanitarian intervention, I now turn to consider its moral permissibility.

The argument of this chapter proceeds as follows. In the first section I set out a positive argument for the moral permissibility of humanitarian intervention using economic sanctions. In the second section I consider the most prominent argument against humanitarian intervention: Walzer's argument for a state's right to self-determination. Walzer makes his argument in the context of military intervention so I endeavour to show how it may be transferred to the case of economic sanctions. I then argue first, that Walzer's argument – even if it were sound - only rules out coercive economic sanctions; and second, that Walzer's argument is not sound. Thus, it fails to rule out the use of economic sanctions as a means of humanitarian intervention. In the third section I consider the prominent rule-consequentialist arguments against humanitarian intervention. First the argument that a rule permitting humanitarian intervention would be abused and so a rule prohibiting intervention would have the best consequences. Second the argument that humanitarian interventions often fail to achieve their goals. Thus, again, a rule prohibiting intervention would have the best consequences. I show that even if these arguments are sound in the context of military intervention they apply quite differently to the context of economic sanctions. Thus, they fail to rule out the use of economic sanctions as humanitarian intervention.

It is true that there are more arguments against humanitarian intervention than the three that appear in this chapter. However, I cannot hope to cover them all here. I believe the three arguments I have presented to be the most prominent arguments against humanitarian intervention in the literature and in public discourse and I hope that by showing they do not hold for the case of economic sanctions, my positive case of the moral permissibility of humanitarian intervention by means of economic sanctions is thereby strengthened.

The Case for Humanitarian Intervention

Those who favour humanitarian intervention argue either for the strong claim that there is a *duty* to intervene or for the weaker claim that there is a *right* to

intervene. In this chapter I argue for the weaker claim (though without denying the stronger claim).

As David Rodin correctly points out, the right to humanitarian intervention can be derived quite simply from the right to national defence that I set out in chapter five. For Rodin, of course, this is a reason to reject this particular understanding of the right to national defence but, as I argued in chapter five, this is a mistake. So to recap, I argued in chapter five that states hold the right to national-defence because they have the right to defend the rights of their citizens to life, bodily integrity and so on. Rodin argued that if this is true we can easily derive a right to humanitarian intervention as follows:

1. If state A has a right to defend the rights of A-citizens from state B's unjust attack then state C also has a right to defend the rights of A-citizens from state B's unjust attack.
2. If state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state B, state C has a right to defend the rights of A-citizens when they are being unjustly attacked by state A itself. In other words state C has a right to humanitarian intervention in state A.

In other words states – or more broadly any senders – have a right to humanitarian intervention because any sender has the right to protect the rights of any citizen.¹⁹⁴

I now turn to consider some objections. Although there are many well-known objections to humanitarian intervention they are almost exclusively aimed at *military* intervention. In what follows therefore I examine how, if at all, these objections might apply to humanitarian intervention using economic sanctions. The first objection that I consider is Walzer's objection from the right to self-determination. A political community's right to self-determination, according to Walzer, entails that states have a right to non-intervention that rules out humanitarian intervention in all but the most egregious cases of human rights violations. I then turn to consider rule-consequentialist arguments against humanitarian intervention that appeal to the negative consequences of institutionalising a practice of humanitarian intervention.

¹⁹⁴ Rodin, 132.

Walzer's Objection from the Right to Self-Determination

Michael Walzer argues that states have a right to non-intervention even when they commit human rights violations because the political community underlying the state has the right to self-determination.

The right to self-determination in Walzer's sense is best understood as the right of a political community to work out by themselves under which political institutions they will live without the help or hindrance of outsiders. It is a right to a *process* whereby political institutions are created, maintained or destroyed under the influence of only internal social, political or military forces.

Walzer offers two main supporting arguments for the right to self-determination. The first draws heavily on J.S Mill's argument that intervention aimed at creating free institutions simply does not work. As Mill puts it 'if [the people] have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by hands other than their own, will have nothing real, nothing permanent'.¹⁹⁵ Further Mill argues that the 'love of liberty' that would be needed to sustain popular institutions has the best chance of developing 'during an arduous struggle to become free by their own efforts'.¹⁹⁶ Therefore, if we value the freedom of political communities we should not intervene; rather the best thing to do is to allow political communities to fight for their own freedom. The right to self-determination follows.¹⁹⁷

Walzer's second argument has become known as his 'communal integrity thesis'. According to this thesis the political community's right to self-determination derives from the rights of individuals to 'live as members of a historic community and express their inherited culture through political forms worked out amongst themselves'.¹⁹⁸ The right to self-determination protects this *process* of working out culturally-relevant political forms though it has no implications for its end result.

¹⁹⁵ Mill, 1984, 122.

¹⁹⁶ Mill, 123.

¹⁹⁷ Mill made an exception for 'barbarous' nations: 'nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners'. Mill, 118.

¹⁹⁸ Walzer, 1980, 211.

Even an authoritarian regime, Walzer argues, might ‘come, as it were, naturally, reflecting a widely shared world view or way of life’ and the political community living under this authoritarian regime would be self-determining on Walzer’s account.¹⁹⁹

Of course Walzer realises that it is not the case that all presently existing political communities have political institutions which allow them to ‘express their inherited culture’. Not all authoritarian regimes, to say the least, reflect the widely shared world-view of their citizens. As Walzer puts it, not all governments ‘fit’ their political communities. In such cases one would expect that the communal integrity thesis would not support a state’s right to non-intervention. Nevertheless Walzer argues there is always a ‘morally necessary presumption’ that there is a ‘fit’ between government and political community and therefore that all states have the right to non-intervention. The presumption is morally necessary, Walzer argues, because foreigners lack the detailed understanding of the inner workings of other political communities and are not in a position to accurately judge the ‘fit’ between government and political community. Thus far Walzer’s argument allows a right of non-intervention for every state. However, he does allow for three exceptions where the right to non-intervention does not hold.

First, where there is more than one political community within a state and one political community is involved in a struggle for secession. Second, where a foreign power has already intervened in a state’s civil war, counter-intervention to aid the other side is permissible – so long as it only balances out the initial foreign intervention. Walzer, again following Mill, argues that in both cases the intervention does not undermine the self-determination of the relevant political communities but rather supports it. In the first case the seceding political community is not self-determining but under the rule of a ‘foreign power’ and the intervention seeks to remove that foreign power. In the second case counter-intervention which only balances out the original intervention allows the fate of the civil war to turn on the internal balance of forces and so the war’s outcome will be the result of a process of self-determination.²⁰⁰

¹⁹⁹ Walzer, 225.

²⁰⁰ Walzer, 2006, 91-100.

Walzer's third exception permits humanitarian intervention carried out in response to human rights violations so severe they 'shock the conscience of mankind: massacre, enslavement and the mass expulsion of people from a territory'.²⁰¹ Walzer offers two explanations for this. First, the lack of 'fit' between the government and people in such circumstances is so 'radically apparent' that even foreigners can see it; the 'presumption of fit' can be rebutted and the state no longer has a right of non-intervention. Second, it is likely that where such human rights violations occur the political community has been destroyed. Therefore, there is no political community with respect to which the right of self-determination can be said to apply.²⁰²

Walzer of course worked out his argument in the context of military intervention so before I can consider it further it is necessary to first work out how, if at all, his argument would apply to the case of economic sanctions. Walzer does not address this issue directly except for in one short footnote where he writes:

I was concerned in *Just and Unjust Wars* only with military intervention, but the arguments I constructed do rule out any external determination of domestic constitutional arrangements...I don't, however, mean to rule out every effort by one state to influence another or every use of diplomatic and economic pressure. Drawing a line is sure to be difficult, but the precise location of the line is not at issue here, for all my critics...are ready for 'the actual use of violence' in other people's countries.²⁰³

Since Walzer sets aside any 'line-drawing', it will be necessary to make my own attempt. The line to be drawn here, as far as I understand it from Walzer's footnote, is between economic sanctions which exert sufficient pressure to count as effectively 'determining' domestic constitutional arrangements and those which do not; between economic sanctions that effectively make a people's decisions for them and those which leave them the space to make their own decisions. One way to draw the line would be to consider the domestic analogy. Individuals come under all sorts of pressures to make certain choices in their daily lives but we still recognise the difference between autonomous and forced choices. It is when pressure becomes

²⁰¹ Walzer, 107.

²⁰² Walzer, 101.

²⁰³ Walzer, 1980, 223 n. 26.

coercive that an individual's autonomy is undermined and their choices are forced. Similarly one could argue that it is when economic sanctions are coercive that they violate Walzer's right to self-determination. Drawing the line on the basis of coercion seems to fit Walzer's theory.

However, it does not settle the matter to say that Walzer's self-determination objection applies to economic sanctions that are coercive since we need to know *when* economic sanctions are coercive. I argued for a theory of coercion in chapter two but it will be useful to recap it very briefly here.

The paradigm case of coercion is the highwayman's threat 'your money or your life!' Threats like this are instances of coercion because they leave their victim with no acceptable alternative but to do what the coercer wants them to do. On my understanding of 'no acceptable alternative' this is a subjective consideration – it is whether or not the *victim* considers the alternative of non-compliance acceptable that is important. When applying this theory of coercion to economic sanctions it is important to realise that the various types of economic sanctions cannot simply be categorised as 'coercive' or 'non-coercive' in isolation. Rather they will be 'coercive' or not only relative to a given context. The two important features in any context will be: first, what the alternative to compliance is and second, whether the target perceives that alternative as unacceptable or not. Consequently therefore, it is not possible to state that some types of economic sanction are always coercive and others never are. It will always depend on the context in which they are applied.

Of course, direct economic sanctions that straightforwardly compel a target government to cease violating human rights, (e.g. an arms embargo) would also fall on the 'determining' side of the line. Such measures would also be ruled out by Walzer's argument.

So to summarise, Walzer's argument for the right to self-determination *does* rule out the use of economic sanctions in instances where they would coerce or compel – at least where the human rights violations fall short of 'shocking the conscience of mankind'. But is Walzer's argument sound?

Walzer's argument has encountered a battery of criticism since it was first published and continues to be seriously debated.²⁰⁴ In what follows I consider his two arguments in turn: first the Millian argument and then the communal integrity thesis.

First, the crucial premise in the Millian argument – that free institutions will only last if the political culture *already exists* to support them – is purely an empirical conjecture and one for which neither Mill nor Walzer offers any evidence. Though it seems fairly plausible, it is likewise fairly plausible that the establishment of free institutions might *create* a political culture that could support them over the long term.²⁰⁵ If the latter were true then Mill's argument would in fact support intervention rather than non-intervention. In the absence of empirical evidence Mill's non-interventionist conclusion is not well supported.

Second, one must consider the scope of a Millian right to self-determination. Walzer intends his argument for the right to self-determination to rule out all intervention with only his three exceptions noted above. Mill's argument however only rules out intervention aimed at creating free institutions, it does not rule out intervention with any other objective. It does not rule out, for example, intervention to ensure people's basic material needs are met. It thus fails to support a generalised non-intervention principle.²⁰⁶ As Charles Beitz points out however, the scope of the Millian argument could be widened, and thus saved as an account of a generalised non-intervention principle, by recasting the Millian argument in terms of social justice rather than free institutions. On this version of the argument, the crucial Millian premise would be restated to say that institutions *for the promotion of social justice* will only persist if the political culture already exists to support them. Beitz's point here though is that the restated premise also relies on an empirical conjecture, one for which even more evidence would be required.²⁰⁷ I would add that the problem here is even more serious than Beitz realises. Mill's argument, even if it is recast in Beitz's terms, addresses intervention aimed at establishing or significantly altering political institutions as a whole. It does not rule out intervention aimed at

²⁰⁴ See for example Beitz, 1999; Beitz, 1980; Doppelt, 1978; Wasserstrom, 1978; McMahan, 1996; Luban, 1980; Caney, 2005; Buchanan, 2004.

²⁰⁵ For this criticism see also Beitz, 1999, 84.

²⁰⁶ Beitz, 86.

²⁰⁷ Beitz, 86

changing one policy, law or decision. Thus, even if all the empirical evidence could be supplied for the premise, Mill's argument would still fail to support the generalised principle of non-intervention for which Walzer is aiming.

Walzer's second argument, the communal integrity thesis, might offer better support for a generalised non-intervention principle and it is this I consider next. Interestingly, the right to self-determination supported by the communal integrity argument seems to be a very different right to self-determination than that supported by the earlier Millian argument. In the Millian argument the right to self-determination is the right to succeed or fail in establishing free institutions whereas in the communal integrity argument it is the right to 'express inherited culture' in ways that might, for example, lead to authoritarian political institutions. Even if we re-state the Millian argument such that the right to self-determination is the right to succeed or fail in establishing institutions that express inherited culture, the two rights are still at odds with each other since the Millian argument recognises the right to self-determination as entailing the right to *fail* in establishing institutions which express inherited culture and the communal integrity argument does not. In what follows therefore I treat the communal integrity argument as a standalone argument for the right of non-intervention.

The first point worth making about the communal integrity argument is that many writers have objected to Walzer's 'presumption of fit'. Why is this a morally necessary presumption to make in all cases bar the worst violations of human rights? First, it seems that evidence of 'fit' *is* available to foreigners. Foreigners can travel to the country and see it for themselves, they can discuss the situation with academic experts and expatriates, and they can read its newspapers, study its culture and so on. Second, why is lack of fit only radically apparent in the case of gross violations of human rights like massacre and enslavement? Surely evidence of widespread 'ordinary oppression' such as the torture and imprisonment of political opposition is enough to make a lack of fit radically apparent?²⁰⁸ In attempting to further explain his position on this Walzer explains the presumption of fit as entailing a respect for pluralism in political values.²⁰⁹ But a respect for pluralism in political values surely would require foreigners to take steps to seriously assess the level of 'fit' within a

²⁰⁸ Luban, 394-5; Beitz, 1980, 386.

²⁰⁹ Walzer, 1980, 216.

society. Walzer clearly believes this to be an impossible task but, as we have seen, this just seems to be an implausible assumption.

Perhaps one reason Walzer takes this direction is that he is writing in the context of military intervention and his caution is an understandable reluctance to authorise military force where there is a risk that the situation has been misunderstood. In that case there is a kind of tacit rule-consequentialist argument for a generalised principle of non-intervention operating here: generally the best consequences are achieved by following a principle of refraining from military intervention except in the very worst cases of human rights violations. However, even if this were true, it would not hold for economic sanctions. The harms caused by economic sanctions may be, depending on the type of sanction, much less weighty than the harms caused by military intervention. Therefore, a rule consequentialist argument might reverse the presumption of fit in the case of economic sanctions.

The second point to make is that the communal integrity argument, like the Millian argument, restricts the scope of the right to self determination because it only rules out intervention that would interfere with a community's ability to create and sustain culturally relevant political institutions. Intervention which did not seek to alter political institutions but perhaps was aimed more narrowly at just one policy would not violate the right to self-determination in Walzer's sense. Walzer's argument then does not support a generalised principle of non-intervention.

Finally, the most obvious difficulty in applying Walzer's view of self-determination to this problem of a state's right of non-intervention is that his theory supports a right of self-determination for *political communities* yet states are almost always comprised of multiple political communities. Indeed, Walzer himself concedes this possibility when he makes his exception for secession. Even if his argument shows there is no right to intervene in the political processes of *political communities*, it does not show that there is no right to intervene in the political processes of *states*. For if states contain more than one political community then they cannot be the place within which political communities work out their political form, the political form will be worked out at best as a compromise between the various political communities and at worst simply by the dominating political community.

Rule-Consequentialist Arguments against Humanitarian Intervention

Proponents of the various rule-consequentialist objections to humanitarian intervention argue that in the long run the best consequences will be achieved if there is general acceptance and observance of the non-intervention principle even if, in rare instances, a particular act of intervention would in fact have the best consequences. They concede that the non-intervention principle results in the significant negative consequence that human rights abuses will often occur unchecked. However, they argue that the negative consequences of a rule permitting intervention would be even worse.²¹⁰ The two most significant rule-consequentialist arguments are as follows.

First, any rule permitting humanitarian intervention would be abused. States would pursue their national interest by intervening whenever it suited them, cloaking their actions in the respectability of 'humanitarian intervention'. Thus a rule permitting humanitarian intervention would pose a threat to the global order by making it easier for states to go to war.

Second, humanitarian intervention often fails to achieve its goals. Restoring human rights often requires more than simply defeating an oppressor. It might, for example, be necessary to assist in building up new political and economic institutions or to establish the rule of law. This is a difficult task for anyone but it is particularly difficult for outsiders working in a culture and region that they do not necessarily understand very well.²¹¹ Thus a rule permitting intervention would result in more military interventions – which are inevitably destructive – without achieving any comparable benefits in terms of reducing human rights violations.

These arguments are made in the context of military intervention so before I can consider them further it will be necessary to work out how, if at all, they apply to the case of economic sanctions. Is it right to say that in the long run the best consequences will be achieved if there is general acceptance and observance of a

²¹⁰ For good overviews of the rule-consequentialist arguments against a rule permitting humanitarian intervention see Mason and Wheeler, 1996 and Welsh, 2003.

²¹¹ Mason and Wheeler, 103.

non-intervention principle that prohibits economic sanctions?²¹² Or might a rule that permits intervention using economic sanctions - if not military intervention - have better long run consequences? Let us consider the arguments in order.

First, would a rule permitting intervention using economic sanctions be abused by states pursuing their national interest? It is difficult to see what the point of abusing such a rule would be. If state A wants to harm state B's economy or improve its own by banning all trade between itself and state B it can simply do so – perfectly legally – and without even being expected to give an explanation. As long as it does not violate World Trade Organisation (WTO) rules there is no problem. Even if a state did violate WTO trade rules it is unlikely any threat of punishment from the WTO would deter an economically powerful actor (and most of those imposing economic sanctions are economically powerful actors). In any case an open admission from state A that it is imposing economic sanctions on state B for self-interested economic reasons is far less controversial than claiming it is imposing the sanctions for humanitarian reasons. Therefore, there is no motivation to abuse this rule.

Second, the objection that intervention often fails to achieve its goals is, at first sight, actually more powerful when applied to the case of economic sanctions. This is for two reasons. First, any necessary 'institution building' for the long-term protection of human rights cannot really be done from the outside using economic sanctions. It needs to be done from inside the country. Of course the protection of human rights in a given case does not always require 'institution building' so this point will not always hold, yet it often will. Second, according to conventional wisdom 'sanctions never work'. Is the conventional wisdom right? The most comprehensive study of economic sanctions conducted to date concluded that economic sanctions achieved their goal in one third of cases.²¹³ This conclusion however has been the subject of dispute by those who claim that sanctions are much less effective (though not that they never work).²¹⁴ It appears then that the conventional wisdom – that sanctions never work – is mistaken; sanctions do

²¹² Although the status of economic sanctions in international law is generally ambiguous, the non-intervention principle is thought to apply to economic sanctions as well as military intervention (though this is quite obviously widely ignored in practice).

²¹³ Hufbauer et al., 159.

²¹⁴ See Pape, 1997; Elliot, 1998; Pape, 1998.

sometimes work though to date they have, at most, only been effective in one third of cases. Unfortunately, the data relating to economic sanctions as humanitarian intervention has not been separately analysed so it is not possible to tell whether the success rate is higher or lower for economic sanctions with humanitarian intervention as a goal. Therefore, I will assume that the success rate for these sanctions is also one third. Neither of these two points bode well for the effectiveness of economic sanctions as humanitarian intervention. They suggest that at least two thirds of attempts will fail and probably a lot more. However, we should not forget that economic sanctions are most often much less harmful than military interventions. The negative consequences of the non-intervention principle are that human rights violations occur unchecked, the negative consequences of a rule permitting intervention using economic sanctions are that at least two thirds of the human rights violations will still occur (since the sanctions will be ineffective in preventing them) plus harm will be caused by the economic sanctions themselves. This harm might be very small, e.g. where the economic sanctions take the form of asset freezes for top government officials or it might be more significant, e.g. in the case of a comprehensive embargo. It is therefore quite difficult to say which rule will have the best consequences. Therefore we need to either a) distinguish between the different sanction types based on their level of expected harm and come up with different rules on intervention for each or b) institutionalise a rule permitting economic sanctions as humanitarian intervention which includes safeguards such that sanctions are not imposed in situations where all the warning signs are that they will be ineffective. A blanket non-intervention principle, however, seems unjustified.

So, in summary it is still possible to construct rule-consequentialist arguments against humanitarian intervention with economic sanctions though such arguments are much less powerful and, if rules are institutionalised carefully, the arguments lose even what little force they have.

Conclusion

Humanitarian intervention by means of economic sanctions is morally permissible because senders have the right to defend the human rights of any citizen.

The most prominent arguments against humanitarian intervention using military means apply either not at all or with significantly less force to the case of economic sanctions and are easily overcome. Before I turn to the next chapter, however, I have a few final words on the subject of humanitarian intervention.

First there is the matter of moral constraints on humanitarian intervention. Of course, the use of economic sanctions as a means of humanitarian intervention is subject to the same constraints discussed in the previous chapter; namely, the economic sanctions must be a response to human rights violations, necessary, proportionate and aimed at those morally responsible for the human rights violations. I have discussed these constraints in some detail in the previous chapter so I will not repeat myself here. Suffice it to say that targeted economic sanctions are much more likely to meet these conditions than collective economic sanctions (and indirect collective sanctions will never meet them).

Second, it is worth remembering that humanitarian intervention, although it may be justified as a type of other-defence, has some distinguishing features. Most importantly, humanitarian intervention is intended to assist those individuals suffering human rights violations. However the economic sanctions, even if they are targeted at those morally responsible, may have side effects that harm the very people they are trying to help – as occurred in the case of South Africa. The South African sanctions were intended to harm the White population but nevertheless harmed the Black population. Arguably, the Black population – or at least a large proportion of them – consented to suffer such harms. However, if they had not so consented then it would have been wrong to impose the economic sanctions. Those who will suffer are best placed to determine whether the objective of the economic sanctions is worth their suffering.

So far in this thesis we have established that targeted economic sanctions and (at least where the needs of the innocent population are met) direct collective economic sanctions can be justified on the grounds of other-defence. As yet we have no justification for the use of indirect collective sanctions or direct collective sanctions in instances where the innocent population's needs cannot or will not be met. In the next chapter I turn to consider the question of whether or not collective economic sanctions can be justified on the grounds that they are the lesser evil.

Chapter 7: Economic Sanctions and the Lesser Evil Justification

In the preceding two chapters I showed that it is possible to justify targeted economic sanctions on the grounds of other-defence (being the defence of a sender's own citizens or, as in the case of humanitarian intervention, of other citizens) – at least where certain conditions are met. However, I also showed that it was not possible to justify indirect collective economic sanctions on these grounds and, further, that direct collective economic sanctions could only rarely be justified on these grounds. Naturally, that leads us to ask the question: are there any other grounds that might justify collective economic sanctions? One possibility we have not yet considered is that collective economic sanctions could be justified as a 'lesser evil'. Lesser evil arguments claim that it may be justifiable to harm innocents – even to intentionally kill innocents – if it is necessary to prevent some much greater evil. In such cases it is said that the individual's rights have been permissibly 'infringed' rather than violated and that although the individual has been wronged, all things considered, the act is not wrongful; it is morally justified.²¹⁵

Walzer gives a very well known example of what is, arguably, a lesser evil justification. Walzer argues that in cases of 'supreme emergency' during war it may be permissible to intentionally kill innocent civilians if that is a necessary means of preventing some great evil. Thus, for Walzer, the terror-bombing of German cities during the Second World War, which resulted in an estimated 300,000 civilian deaths and 780,000 civilians injured, was justified because it was necessary to avoid the triumph of Nazism.²¹⁶

Another very well known - if not notorious - example of a lesser evil argument is that of the ticking time bomb terrorist. In this case we are to imagine we are counter-terrorist agents who have captured a terrorist who has planted a bomb somewhere in a major city. The bomb is on a timer and will explode in the next few hours unless we can get there first and defuse it. The terrorist is refusing to reveal

²¹⁵ Thomson, 1977, 47. For this use of the lesser evil justification in just war theory see McMahan, 2009; Rodin, 2011.

²¹⁶ Walzer, 2006, 255-263. Walzer's argument is a little ambiguous and so, arguably, he may not be putting forward a lesser evil justification for the terror bombing of Nazi Germany or, at least, his lesser evil justification may be of a different kind to the one I outline above. For useful discussions of Walzer's supreme emergency exception and its relation to the lesser evil justification see Primoratz, 2011 and Kaufman, 2007.

the location of the bomb. However, it is stipulated that if we torture the terrorist he will reveal its location, we can defuse the bomb and thousands of lives will be saved. Many have argued that in circumstance like this the torture of the terrorist would be justified as the lesser evil.²¹⁷

In this chapter I want to assess the plausibility of justifying collective economic sanctions on the grounds that they may sometimes be the lesser evil.

I start in section one by fleshing out a particular understanding of the lesser evil justification. In section two I then apply this understanding to the case of collective economic sanctions and argue that they can be justified as the lesser evil in certain circumstances. I conclude by offering some 'rules of thumb' to help guide decisions about whether collective economic sanctions will be the lesser evil in particular situations.

The Lesser Evil Justification

For whatever reason, the lesser evil justification has not been subject to a great deal of scrutiny by philosophers; certainly, the self-defence justification has attracted much more attention. Therefore in this section I attempt to formulate a plausible version of the lesser evil justification which I can then apply to the case of economic sanctions.

Many formulations of the lesser evil justification run along the following lines:

²¹⁷ For versions of this argument see, e.g. Shue, 1978; Dershowitz, 2002. Note that Shue thinks that the circumstances outlined in the ticking time bomb case will never actually present themselves in the real world. The ticking time bomb argument, with slightly different presentation, can also be traced to Walzer. See Walzer, 1973, 167. However, Walzer does not apply the 'lesser evil argument' in this case but instead advances his 'dirty hands' argument. The dirty hands argument, though superficially similar to the lesser evil argument, differs from the lesser evil argument in several ways. The most important difference is that, in the case of the lesser evil argument, the lesser evil act of torture is morally justified and not morally wrong. By contrast, the dirty hands argument is dilemmatic in form, and the lesser evil act of torture is both right and wrong at the same time. Walzer comments that the politician who gets his hands dirty and tortures should be praised for the good he has done and punished for the evil. Walzer, 1973, 179.

An act which overrides a moral right is morally justified if the act is necessary to avert a greater evil.²¹⁸

There are some important features of this formulation that it is worth discussing in more detail.

Evil

The terminology ‘lesser evil’ might suggest to some that the justification applies to particularly horrific acts of wrongdoing. However, the term ‘evil’, as it is used in the lesser evil justification, simply means ‘wrong’. The lesser evil justification may easily be turned to fairly trivial moral issues, e.g. one might have a lesser evil justification for lying to a friend if it is to spare her feelings.

Overriding Rights

Note that I intend the term ‘overriding rights’ to be neutral between infringing and violating rights. If it is morally justified to override a right then that right is infringed. If it is not morally justified to override a right then that right is violated. Of course the idea that rights can be infringed without being violated commits us to the view that *at least some* rights are not absolute; that at least some rights may be permissibly overridden. In fact in this chapter I will assume that there are no absolute rights at all. This assumption is highly controversial; however, I do not defend my view here as it takes me far beyond the scope of my thesis.

²¹⁸ This formulation is often implied rather than explicitly stated. For such formulations see Rodin, 2011; McMahan, 2009; Alexander, 2005. The requirement that the act be necessary to avert a greater evil is sufficient for justifying the overriding of rights. It is not necessary for justifying the overriding of rights however because there may be other types of circumstances that justify the overriding of rights. For example, in chapter five I argued that when faced with an innocent attacker who had not forfeited her right to life, you would be justified in killing her if it were necessary to save your life on the grounds that it would be unreasonable to expect you to sacrifice your life for hers.

Necessity

Crucial to the justification is that the act is a *necessary* means of averting the greater evil. This means that there must be no other, less evil, means of averting the greater evil. To put it another way, the ‘lesser evil’ act must actually be the *least* evil act of all possible alternative acts (including the ‘act’ of doing nothing and allowing the greater evil to materialise).²¹⁹ For example, in the case of the ticking time bomb, the torture of the terrorist would not be justified if it were possible to use some tracking device to locate the bomb. Similarly, Walzer claims that although the terror bombing of German cities was justified when it first began, after the United States and Russia joined the war against Germany, it was no longer necessary and hence was no longer justified.²²⁰ To make this clearer it will be useful to re-state the justification as follows:

An act which overrides a moral right is morally justified if the act is a lesser evil than any other alternative act available to the agent.

The question which then arises is how do we determine the lesser evil? How do we weigh up such things? To go back to our example, how do we determine that torture is a lesser evil than allowing thousands of people to die? This is the question of proportionality.

Proportionality

To be clear from the outset, the proportionality requirement is not a requirement for a simple utilitarian weighting; we are not required to simply weigh up the harms and benefits of the various alternative acts available to the agent. If this was all that was required then torture would likely be justified to save just one life.²²¹ This is clearly not a position that proponents of the lesser evil justification for torture

²¹⁹ Alexander, 618.

²²⁰ Walzer, 261.

²²¹ On the assumption that torture is less harmful than killing.

hold; in the ticking time bomb scenarios it is usually hundreds or thousands of lives at stake.

When it comes to determining the lesser evil, what we are actually weighing up is the *wrong* of committing an act which overrides moral rights against the *wrong* of allowing harmful consequences to materialise when it is in our power to prevent them (and against the wrong of any other acts available to the agent). Of course the next question is: how do we do this?

It is widely accepted that some rights are more stringent than others (e.g. it is widely accepted that the right to not be tortured is more stringent than the right to property), and thus it is also widely accepted that it is more wrong to override some rights than others. David Rodin argues that the more stringent rights are the rights that protect us from non-compensable harms such as being killed, raped or physically harmed in some way that we cannot recover from.²²² Rights that protect us from compensable harms are less stringent. The overriding of property rights, for example, can be compensated for: property can be returned or replaced. Other things being equal, the more stringent the overridden right, the greater the harm that must be averted if the overriding of the right is to be morally justified.

It is also widely accepted that some ways of overriding rights are more wrong than others. For instance, it is widely accepted that, other things being equal, intentionally overriding rights for some good end is more wrong than unintentionally but foreseeably overriding rights for the same end. Hence, other things being equal, if intentionally overriding rights is to be justified, it requires that a greater harm be averted than would be required if one was unintentionally but foreseeably overriding rights.

To give another example, many would consider that, other things being equal, killing someone to use her as a means to the end of averting the greater evil is more wrong than killing someone whose death is not such a means.

Further, many would consider that, other things being equal, killing or actively harming someone to avert a greater evil is more wrong than allowing someone to die or be harmed for the same end.

²²² Rodin, 2011, 76-77. Victims of such crimes could be financially compensated of course but I take Rodin's point to be that the harm inflicted cannot be reversed.

To give a final example; other things being equal, many would consider harming an innocent person to be more wrong than harming a guilty person for some good end. Thus in the notorious ticking time bomb case, many people think it would be justified to torture the terrorist if the only alternative is allowing the deaths of hundreds of people. However, many people would outright reject the view that it would be justified to torture the terrorist's five year old child in this case in order to make the terrorist reveal the information. Some would say it could never be justified. Others would say it could be justified but demand the stakes be higher: millions of lives must be at risk.²²³

At this point it is worth going back to Walzer's case of terror bombing. Terror bombing involves intentionally killing hundreds of thousands of innocent people and also uses them as a means to an end (of demoralising the enemy). Deontologically speaking, it is one of the worst things you could do. It is so wrong that it is almost unthinkable that anything could justify it. The greater evil in Walzer's case was, of course, the risk that Nazism would triumph which, as he puts it, was:

[the] ultimate threat to everything decent in our lives, an ideology and a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful. We see it – and I don't use the phrase lightly – as evil objectified in the world, and in a form so potent and apparent that there could never have been anything to do but fight against it.²²⁴

Indeed, the harms otherwise allowed would have to be something of this magnitude in order to justify the grave wrong of terror bombing.

²²³ For a detailed and thorough discussion of the role of proportionality in the lesser evil justification see Rodin, 2011.

²²⁴ Walzer, 2006, 251-263.

Imminence

A few writers, such as Walzer, claim that the imminence of the greater evil which is to be averted is a necessary condition for the lesser evil justification.²²⁵ However, as I argued in chapter five with respect to self-defence, imminence is relevant only to the extent that it is a fairly reliable indicator that self-defence is necessary. There will be cases where self-defence is necessary in the absence of imminent attack. I believe the same holds true for the lesser evil justification: there will be cases where the lesser evil act is necessary to avert a non-imminent greater evil. Since I have already discussed this point at some length in chapter five, I will not repeat myself here. Suffice it to say imminence is not a necessary condition for justified self-defence or a justified act of lesser evil.

Uncertainty

Unfortunately, we will often be forced to make lesser evil decisions under conditions of uncertainty. How should we factor uncertainty into our lesser evil reasoning? In what follows I use the ticking time bomb case as an example.

In the kind of cases I am considering there are two major areas of uncertainty. First is the issue of probability of success. How probable is it that the means we select (e.g. torture) will actually succeed in averting the greater evil? The torture might not work if the terrorist is very committed to his cause. Or it might work but we might get to the bomb too late or cut the wrong wire when we attempt to defuse it.

Second is the issue of necessity. How sure are we that the means we select are necessary? How sure are we, for example, that torture is necessary? The bomb might be faulty and not explode or the terrorist might have a sudden change of heart. Or there could be other means we could use that are less evil.

How do we deal with uncertainty in the lesser evil calculation? I take each issue in turn.

²²⁵ Walzer, 252.

1. Probability of Success

If the torture is 100% certain to work then we are weighing up the wrong of torture, let's say 'X', against the wrong of allowing thousands of deaths to occur when it is in our power to prevent them, let's say 'Y'.

If the torture is less than 100% certain to work then the calculation is different. The wrongness of torture is the same but the consequences of torturing are now uncertain. Let us say that the probability of the torture approach working is only 80%. In this case we must weigh up the wrongness of torture, X, against the 80% probability that if we do not torture we commit the wrong of allowing thousands of people to die. How can we do this? A straightforward weighting by probability would give us the result that we must weigh up X against 0.8Y. On this approach, other things equal, the lower the probability of our evil means working, the greater the number of lives to be saved must be if our evil means are to be justified. Additionally, other things equal, the lower the probability of our evil means working, the less evil the means must be if they are to be justified. This sounds roughly right. Of course there is no requirement to use this straightforward weighting of probabilities when calculating the lesser evil under conditions of uncertainty. We could stipulate a different way of including probabilities. For instance we could insist that for evil means to be justified they must cross some threshold probability of success. However, I think it would be a mistake to take this approach. We have to allow for the possibility that when the rights we are overriding are not that stringent (e.g. property rights), and the great evil that we are averting is extremely serious, that it might be justified to use means that have only a low probability of success. It should further be noted that a threshold approach would probably rule out all use of collective economic sanctions as the lesser evil. As discussed in chapter two, best estimates of the success rate of economic sanctions is only 34%. Any threshold probability is likely to be set much higher. I now turn to consider the uncertainty surrounding the necessity of our evil means.

2. Necessity

The other uncertainty surrounds the question of whether or not our evil means are actually necessary. If there is a 30% chance that the bomb is faulty and will never explode, how do we factor this into our lesser evil calculation? Again, I think the answer is a straightforward weighting by probability. In this case we are weighing up the wrongness of torture, X , against the 70% probability that if we do not torture we commit the wrong of allowing the deaths of hundreds of people. That is, we weigh up X against $0.7Y$. On this approach, other things equal, the greater the probability that the evil means are not necessary, the less likely it is that the evil means will be justified as the lesser evil. Again, this sounds right.

So far, however, we have only considered cases where the evil means are unnecessary because doing nothing might also avert the greater evil. In addition to this there will be cases where the evil means in question are unnecessary because it is possible lesser evil means or even good means might also avert the greater evil. We can, for example, imagine a case where torture has a 100% probability of success but some kind of tracking device also has a 10% probability of success. Which is the lesser evil in this case? Presumably using the bomb-tracking device is not intrinsically wrongful – it overrides no rights. However, with an estimated 10% probability of success, it is almost the same as doing nothing. If we use the bomb-tracking device there is a 90% probability that we commit the wrong of allowing hundreds of people to die. Thus, in such a case we must weigh up the wrongness of torture, X , against the wrong we commit by doing nothing and allowing hundreds of people to die, Y and also against the 90% probability that if we use the bomb-tracking device we commit the wrong of allowing hundreds of people to die, $0.9Y$. (Of course this assumes there is not time to try the tracking device first). Although use of the tracking device overrides no rights, it is not the least evil alternative, since its use is likely to allow the deaths of hundreds of people.

Before I go onto the next section there is one final complication that I want to consider. As we have seen, in the real world, lesser evils reasoning takes place under conditions of uncertainty. Further, the lesser evil justification is concerned with justifying often very serious wrongs such as torture. In order for such acts to be

justified, the epistemic basis for them must be secure. Our estimated probabilities for each possible outcome must be carefully calculated and based on the best available evidence. It is very rare that we would know for certain, e.g. that the probability of a bomb's being faulty was x% but we can make more or less reasonable estimates of this being the case.²²⁶ Therefore, we should re-formulate the lesser evil justification as follows:

An act which overrides a moral right is morally justified if it is *reasonably believed* that the act is a lesser evil than any other alternative act available to the agent.

I now turn to consider whether collective economic sanctions can be justified on the grounds that they are the lesser evil.

Collective Economic Sanctions and the Lesser Evil Justification

Indirect collective economic sanctions involve the intentional infliction of harm on innocent people as a mere means to the end of changing the target's objectionable policy. As I put it in chapter two, the aim of the sanctions is to force such people to become unwilling agents of the sender; to effectively conscript them to the sender's cause. Such sanctions violate stringent deontological constraints because they involve intentionally inflicting harm on innocent people and, further, using those people as a means to an end. Innocent individuals have rights against suffering such harms and against being used as a means to an end. If these rights are to be overridden, that requires justification.

Direct collective economic sanctions do not use innocent people as a mere means to an end; the harm that falls on innocent people is a foreseen but unintended side-effect. It is unfortunate (to say the least) that the only way of denying resources to the military and/or leadership of the target state has the side-effect of denying resources to the entire population and, further, that the ordinary population will

²²⁶ There could be cases where it was known with certainty that the probability of the bomb being faulty was 30%. Imagine a case where you know ten bombs have been smuggled into the country by boat but one of your undercover counter-terrorist agents managed to sabotage three of them en-route.

suffer shortages long before the military or leadership. However, innocent people have a right not to be harmed in such a way – even as a side-effect.²²⁷ Therefore direct collective sanctions also override moral rights, and require justification.

So both types of collective economic sanctions override moral rights and hence stand in need of moral justification. Might they be justified as the lesser evil?

In order to help us answer this question, let us consider a hypothetical case of collective economic sanctions. Imagine that a target state with a recent history of initiating aggressive war is undertaking a rapid process of militarization in violation of peace treaties it has signed; there is a concern that the target intends to attack a neighbouring state at some point in the near future. If this happens, hundreds of thousands of people are likely to die; many more will be injured or be made homeless. The target state is a dictatorship which ruthlessly crushes all opposition. The UN Security Council is considering whether or not to impose collective economic sanctions. Indirect collective sanctions could be imposed to inflict suffering on the entire population in the hopes that the population would demand its government ends this programme of militarization. Likewise, direct collective sanctions could be imposed that prevent the import of various military and non-military goods into the target state with the intention of destroying the economic and military capacity of the target state so that it does not have the resources to continue its militarization. Would the UN be justified in using collective economic sanctions (indirect or direct) to force the state to abandon its programme of militarization?

Following the formulation of the lesser evil justification given above, collective economic sanctions will be justified in this case if it is reasonably believed that the collective sanctions are a lesser evil than any other alternative act available to the agent. Might this be the case?

For the sake of argument, let us start by making three highly unlikely and generous assumptions: (1) that the collective economic sanctions are 100% certain to

²²⁷ In chapter five, following Walzer, I argued that direct economic sanctions could not be justified under the doctrine of double effect because no effort was taken to discriminate between those who were liable to suffer economic sanctions and those who were not. However, even if the doctrine of double effect was applicable to the case of direct economic sanctions, it remains true that innocent individuals have a right not to be harmed as a side-effect. I see the doctrine of double effect as a type of lesser evil argument. If harmful side-effects are justified under the doctrine of double effect then the rights of the innocent people harmed are justifiably infringed. McMahan (2009) and Rodin (2011) also view the doctrine of double effect in this way.

end the militarization and hence stop the planned attack, (2) that our only available alternatives are to impose collective economic sanctions or to do nothing, and (3) that if we do nothing the militarization will continue and the attack will take place. These assumptions are generous in the sense that they are the assumptions under which collective sanctions are most likely to be the lesser evil. Let us consider indirect collective sanctions before moving onto direct collective sanctions.

Indirect Collective Sanctions

In the case of indirect collective sanctions we need to weigh up:

- a. the wrong of intentionally inflicting harm on millions of innocent people (the vast majority of the target state population being innocent) and the wrong of using those people as means to an end; against
- b. the wrong of allowing hundreds of thousands of innocent people to be killed and many more to be injured or made homeless when it is in our power to prevent it.

I don't think it is that obvious which is the lesser evil. It is obviously a terrible thing to allow the deaths of hundreds of thousands of innocent people when it is in our power to prevent it but, equally, it is a terrible thing to intentionally inflict harm on millions of people and use those people as a means to an end.

However, we should remember that indirect collective sanctions can be more or less severe, can inflict greater or lesser harms, and can threaten different types of rights.

Bearing this in mind; I think that whether the indirect sanctions are the lesser evil will depend on how stringent the rights that they threaten are. As discussed above, other things equal, the more stringent the overridden right, the greater the harm that must be averted if the overriding of the right is to be morally justified.

Indirect sanctions that are designed to kill innocent people (i.e. which threaten the right to life) would not be justified as the lesser evil in this case. The

wrong of lethal collective indirect sanctions is comparable to the wrong of terror bombing and that, as we saw, required the threat of Nazi victory to be justified. However, at the other end of the scale are indirect collective sanctions that inflict only minor economic harms, e.g. a recession where life becomes a bit tougher for the general population but no-one starves or suffers severely. Such sanctions do not threaten the right to life or the right to subsistence, but lesser rights. It seems like in such a case, indirect collective economic sanctions might be justified as the lesser evil.²²⁸

Direct Collective Sanctions

Other things equal, we might expect to find it slightly easier to justify direct sanctions than indirect sanctions. This is because, as discussed above, other things being equal, intentionally overriding rights for some good end (as in indirect sanctions) is more wrong than unintentionally but foreseeably overriding rights for the same end (as in direct sanctions).

However, other things are rarely equal. By their very nature, direct collective sanctions must inflict a great deal of harm on innocent people if they are to be effective. In the case of *direct* collective sanctions the aim of the sanctions is to inflict harms on the military and/or leadership by destroying the economy to such an extent that military projects become unfeasible. As discussed in chapter two, as the economy grinds to a halt, the target government will tend to allocate dwindling resources as a matter of priority towards itself and its military projects. Therefore innocent people will suffer the (possibly severe) effects of shortages and economic turmoil long before the target government does. Innocent people have to be hit by the sanctions, and hit hard, before the target government/military can be hit.

Indirect collective sanctions might sometimes work by causing only small economic harms but it is not possible for direct collective sanctions – which, recall, are aimed at destroying an entire economy – to work by causing only small economic harms.

²²⁸ Even if the economic sanctions are justified as the lesser evil, I think there would remain a duty on the part of the sender to compensate the innocent people who have suffered their effects afterwards.

Could direct collective sanctions nevertheless be justified as the lesser evil? I think this is will be very rare because direct collective sanctions necessarily target stringent rights, i.e. rights to subsistence and possibly even the right to life. I cannot rule it out altogether; perhaps we can imagine an extreme case where direct economic sanctions are required to prevent a nuclear war. However, in the vast majority of circumstances we could not justify direct economic sanctions as the lesser evil. Of course if we cannot justify direct collective sanctions on the generous assumptions I made at the outset, we will not be able to justify them on the basis of less generous assumptions. Hence in what follows I consider only indirect collective sanctions.

Less Generous Assumptions

In the discussion above I made three very generous assumptions; namely, (1) that the collective economic sanctions were 100% certain to end the militarization and hence stop the planned attack, (2) that our only available alternatives were to impose collective economic sanctions or to do nothing, and (3) that if we did nothing the militarization would continue and the attack would take place. I concluded that even with these generous assumptions, direct collective sanctions were extremely unlikely to ever be justified as the lesser evil; hence I set them aside. However, I now want to consider whether *indirect* collective sanctions could be justified as the lesser evil once we make more realistic assumptions.

I want to start by considering the success rates of economic sanctions. Above, I assumed that the economic sanctions were 100% certain to succeed. However, it is very important to note here that economic sanctions fail more often than they succeed. The most reliable estimate states their average probability of success at only 34%.²²⁹ Of course, 34% is an average success rate for all economic sanctions imposed in the recent past. It could be that in a particular instance the probability of success is rated much more highly. Each situation would need to be assessed on its own merits. In what follows though, I will use the figure of 34%. A success rate of 34% means that we should weigh the wrong of imposing the

²²⁹ Hufbauer et al., 154.

sanctions, let's say 'X', against the 34% probability that if we do not sanction we commit the wrong of allowing hundreds of thousands of people to die when it was in our power to prevent it, let's say, 0.34Y. It is quite possible that economic sanctions that would be justified as the lesser evil if they had a 100% estimated probability of success, would not be justified as the lesser evil with a 34% estimated probability of success; other things equal, the lower the probability of success, the less likely it is the economic sanctions will be justified as the lesser evil. However, I do not think we can rule out the possibility that economic sanctions with an estimated success rate as low as 34% could be justified as the lesser evil. In particular, collective sanctions that cause fairly minor economic harms might be justified as the lesser evil even with fairly low probabilities of success. It is for this reason that I argued earlier against the use of threshold probabilities of success in the lesser evil justification.

Above, I also made the generous assumption that collective economic sanctions and doing nothing were the only alternatives available to us. I now want to consider the existence of other alternatives. Aside from collective economic sanctions, our alternatives might include targeted economic sanctions (e.g. a ban on the import of military goods), diplomatic sanctions, negotiations, military action such as bombing the military installations, and, of course, doing nothing and allowing the attack to take place.

I should start by pointing out that if negotiation, diplomatic sanctions or a ban on the import of military goods stand a reasonable chance of ending the militarization programme then collective economic sanctions will not be the lesser evil. Negotiation is not wrongful at all and, if diplomatic or targeted sanctions are wrongful, they are significantly less wrongful than collective economic sanctions.

However, if their probability of success is small then using them is not much better than doing nothing and hence collective economic sanctions could possibly be the lesser evil. In what follows, then, I will assume that negotiation, diplomatic and targeted economic sanctions have at best only a small probability of success.

That leaves us with the military alternative: would collective economic sanctions be a lesser evil than bombing the military installations?

In order to ascertain whether indirect collective economic sanctions are a lesser evil than limited military action of this type, we need to weigh up the wrongness of collective economic sanctions, X, against the wrongness of bombing the military installations, let's say, Z. Indirect collective sanctions are wrong because they involve the intentional infliction of harm on innocent people and, moreover, they treat them as a mere means to an end. The bombing campaign will be aimed at military installations, not at innocent people. However, innocent people living or working near the military installations may be killed as a foreseeable but unintentional side-effect of the bombing.²³⁰ Other things equal, it is much worse to kill people intentionally as a means to an end than to kill them as an unintended but foreseeable side-effect. Hence, if the economic sanctions were so severe that they threatened the lives of innocent people then, in all likelihood, it will be the bombing campaign that is the lesser evil. However, things may not be equal. In particular, the collective sanctions may not be so severe that they kill. If the economic sanctions threaten only less stringent rights then it may well be the case that collective sanctions are the lesser evil. Further this may be the case even though it is likely that millions of innocent people will suffer economic sanctions while a much smaller number will be killed in the bombing campaign. This is because killing violates much more stringent rights than inflicting lesser economic harms does.

One final complication remains though. The bombing campaign is far more likely to succeed in ending the militarization than the economic sanctions are. Let us say there is a 99% probability that the bombing campaign will end the militarization, compared to a 34% probability that the economic sanctions will end the militarization. If this is so then it may be that economic sanctions are not the lesser evil, for in using the economic sanctions there is a 66% probability that we are allowing hundreds of thousands of people to die when it is in our power to prevent it.

Finally, I made the generous assumption above that if we did nothing, the militarization would continue and the attack would take place. Of course we cannot know this for sure. The target state might change their mind about the militarization or, having militarized; change their mind about the attack. If we cannot be certain

²³⁰ Obviously, the bombing campaign is an act of war. For the sake of simplicity I set aside considerations of whether or not such a campaign would be just under just war theory.

that the attack will take place, this affects the lesser evil status of the collective economic sanctions.

For example, if the probability of the attack taking place is 50%, we must weigh up the wrong of the collective economic sanctions, X, against the 50% probability that by not imposing the economic sanctions we commit the wrong of allowing hundreds of thousands of people to die, 0.5Y.

The lower the probability that the attack will actually take place, the less likely it is that the economic sanctions will be justified as the lesser evil. Nevertheless, even if an attack is quite unlikely to take place, we cannot rule out absolutely the possibility that collective economic sanctions might still be justified as the lesser evil. If the consequences of the attack are sufficiently terrible and/or the collective economic sanctions threaten less stringent rights, the collective economic sanctions might yet be the lesser evil.

Conclusion

Direct collective sanctions, as we have seen, will only be justified as the lesser evil in the most extreme circumstances (e.g. to prevent a nuclear war). Hence, in the discussion above, I set these aside and concentrated on the issue of indirect collective sanctions. Taking into account the above discussion, it is clear to see that working out whether indirect collective economic sanctions are the 'lesser evil' in any given case will be a very difficult undertaking. With that in mind I suggest some 'rules of thumb' that might guide any decision to impose indirect collective economic sanctions.

Indirect collective economic sanctions are likely to be justified on the grounds that they are the lesser evil if it is reasonable to believe that:

- There is a significant probability that the target's objectionable policy, if allowed to continue, would have truly terrible consequences.
- The economic sanctions have a reasonable probability of succeeding.

- Other non-violent means (e.g. diplomatic sanctions, targeted economic sanctions and so on) have either been tried and have failed or it is reasonably believed that they will have a negligible chance of succeeding if imposed.
- The economic sanctions are not so severe that they will kill people, e.g. through starvation. (Generally, the less harm done by the sanctions the more likely they are to be justified on the grounds that they are the lesser evil).
- Military action either does not have a significantly higher probability of success or would kill a large number of innocent people.

At this point we might recall the ‘better than war better than nothing’ argument discussed in chapter three. In chapter three I assessed that argument assuming it had a consequentialist basis and found it wanting. We could, however, understand the ‘better than war better than nothing’ argument as a lesser evil argument. As a lesser evil argument it would have much greater plausibility although it would, of course, need to be altered to take into account more considerations than simply the relative harms of the three options.

I now turn to consider another ground for justifying economic sanctions: as a kind of punishment.

Chapter 8: Economic Sanctions and International Punishment

In the preceding three chapters I showed that it is possible to justify (some types of) economic sanctions on the grounds of other defence (being the defence of a sender's own citizens or, in the case of humanitarian intervention, of other citizens) and on the grounds of lesser evil. However, these may not be the only grounds for justifying economic sanctions. As we saw in chapter one, Margaret Doxey argues that economic sanctions can be used to punish targets retrospectively for behaviour which has violated international laws or international moral norms. As she puts it, economic sanctions used in this way are 'a kind of fine for international misbehaviour'.²³¹ Historically, punishment of wrongdoing was thought to be a justification for war. In this chapter I ask whether it might also provide a justification for economic sanctions.

I start in section one by considering the question of whether economic sanctions can be a kind of international punishment. Having answered this question in the affirmative I move on to consider in section two whether economic sanctions can be justified on the grounds that they are just punishment.

1. Economic Sanctions as International Punishment

Can economic sanctions be a kind of punishment? If so, what kind of punishment are they? Doxey stated that economic sanctions can be used as a 'kind of fine' - and we do indeed perceive fines to be paradigmatic examples of punishment (alongside imprisonment or community service). However, in actuality, there are many important and obvious disanalogies between the case of economic sanctions and the case of fines. Given this I think it is worth addressing directly the question of whether economic sanctions can be a kind of punishment.

²³¹ Doxey, 92. Note that some theorists have a wider understanding of punitive sanctions. For example, Anthony Lang defines punitive economic sanctions as 'the halting of normal economic activity with agents in response to a violation of a generally accepted rule or norm of international society'. Lang, 81. Lang's understanding of punitive economic sanctions is wider than mine because it is not limited to retrospective punishment but includes other law-enforcement activities e.g. economic sanctions intended to bring an end to ongoing violations of international norms.

One of the most well-known and influential definitions of punishment is that given by H.L.A Hart who defines the 'standard or central case' of punishment as follows:

- i. It must involve pain or other consequences normally considered unpleasant.
- ii. It must be for an offence against legal rules.
- iii. It must be of an actual or supposed offender for his offence.
- iv. It must be intentionally administered by human beings other than the offender.
- v. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.²³²

However, Hart cautions that there are many 'sub-standard or secondary' cases of punishment which, while they definitely merit the term 'punishment', will not meet the above definition. Hart gives the following examples of secondary cases (while conceding there could be many more):

- a. Punishments for breaches of legal rules imposed or administered otherwise than by officials (decentralized sanctions).
- b. Punishments for breaches of non-legal rules or orders (punishments in a family or school).
- c. Vicarious or collective punishment of some member of a social group for actions done by others without the former's authorization, encouragement, control, or permission.
- d. Punishment of persons (otherwise than under (c)) who neither are in fact nor supposed to be offenders.²³³

My purpose in this section is not to 'prove' that economic sanctions are a kind of punishment by showing that they can meet Hart's five conditions for central cases of punishment. This would be pointless since it is quite obvious (as I will show) that if economic sanctions are a kind of punishment then they are a secondary or sub-standard case. Instead I want to use Hart's five conditions and his examples of secondary or sub-standard cases as a kind of framework for explicating the punitive aspects of economic sanctions. To this end I will take as my starting point Hart's five conditions for central cases of punishment.

²³² Hart, 2008, 5-6.

²³³ Hart, 2008, 5-6.

First, do economic sanctions involve pain or other consequences normally considered unpleasant? It seems obvious that they can do but it is worth setting out here briefly what form those consequences might take. The most obvious unpleasantness caused by economic sanctions is economic harm.

Collective economic sanctions (those that aim at the entire state) target harm at an entire economy. Their effects can vary from devastating to negligible depending on the make up of the sanctions regime and the nature of the economy on which they are imposed. As discussed in chapter two, the sanctions imposed on Iraq between 1990 and 2003 are an example of the former. However, Iraq was an unusual case; the majority of sanctions regimes do not cause such severe harms. But even if they do not plunge a state into economic and humanitarian turmoil, the effects of economic sanctions may still be significant. They may prevent or reduce economic growth, keep unemployment and poverty rates high and push up prices. They also might make it difficult or impossible for citizens of the target state to access sanctioned goods or services that they may regard as highly desirable (if not actually essential).

Still more collective sanctions regimes have only a very small impact. If the sanctions are imposed by a state which is only a minor trading partner of the target for example then the target state might fairly easily obtain alternative trading partners. The target state might incur some costs in doing this but these are not likely to be that significant in the context of an entire economy. Still, I think it would be fair to say even in this case that the sanctions have had unpleasant consequences.

A final possibility is that the economic sanctions do not result in any economic harm. For example, a state might sanction a target with which it has virtually no trade. In most cases this will be in order to express its disapproval and condemnation of the target's actions. Could such sanctions be punishments? I think this depends on whether or not we accept that international expressions of disapproval and condemnation are sufficiently unpleasant to be considered a punishment. I believe that they could be. Many state leaders and officials would find it excruciatingly embarrassing to be sanctioned in such a way. On the other hand, some would not. For example, the Finnish government is more likely to be embarrassed by sanctions imposed as a consequence of alleged human rights

violations than is North Korea. However, the fact that some targets would not be embarrassed does not mean that symbolic sanctions like these are not punishments – the most hardened criminals are, one would expect, the least embarrassed by symbolic punishments - and just because they do not feel their condemnatory force does not mean that others do not.

Targeted economic sanctions target their harm more selectively; for example, it is possible to freeze the financial assets of individuals suspected of involvement in terrorism. This is obviously an unpleasant consequence for those involved. In the first instance they lose access to their cash and investments but in addition to this being placed on the UN's 'Consolidated List' of sanctioned individuals carries a huge social stigma that can be seriously damaging for those concerned – especially business people who rely on their reputation (and their cashflow) to do business.²³⁴

A more interesting question arises with respect to targeted sanctions like arms embargoes, nuclear sanctions or bans on 'items intended for internal repression'. Can such economic sanctions be a kind of punishment? The key thing to remember here is that it is those against whom the sanctions are targeted that we should expect to experience unpleasant consequences – after all, it is *they* who are being punished. Thus an arms embargo might offer some improvement to the general population but it will definitely be experienced by the army or security services as unpleasant. The same goes for 'items intended for internal repression'. Similarly, those working on the production of a nuclear bomb will find nuclear sanctions to be unpleasant.

This is by no means an exhaustive list of the unpleasant consequences economic sanctions can have but it is at least illustrative of the most obvious ways economic sanctions can inflict such consequences. I now turn to consider Hart's second condition.

Hart's second condition is that the penalty must be imposed for the violation of some legal rule. Economic sanctions imposed due to violations of international law would meet this condition. However, we might want to impose economic sanctions for violations of international moral norms that nevertheless are not violations of international law. (It is true the most of the worst violations of international moral norms are also violations of international law but there is not a

²³⁴ Lang, 2008,100.

perfect equivalence). For Hart, punishments imposed for the violation of a non-legal rule are secondary or sub-standard cases but, nevertheless, still merit the title of ‘punishment’.

Of course it is a matter of debate what international law there is and what international moral norms there are. This might make it difficult to determine whether or not there has been a violation and, hence, whether or not there is a case of punishment. However, this is no so different from the domestic case. Even in the domestic case there is dispute over interpretation of the law and even more dispute about the nature of morality and its requirements. It is probably best to interpret this condition as entailing that the authority imposing the penalty imposes it because they *reasonably believe* that there has been a violation of a rule.

Hart’s third condition is that the economic sanctions are imposed only on those who have actually or supposedly offended and only for their offence. Targeted economic sanctions can be designed so that harm is inflicted only on those who are morally responsible for the behaviour which is being punished. Hence targeted economic sanctions could meet this condition. However, collective economic sanctions, which target harm at innocent people, would not meet it.

However, Hart allows for two secondary or sub-standard cases of punishment where this condition does not hold.

- c) Vicarious or collective punishment of some member of a social group for actions done by others without the former’s authorization, encouragement, control, or permission.
- d) Punishment of persons (otherwise than under (c)) who neither are in fact nor supposed to be offenders.²³⁵

Collective economic sanctions could fall into either one of these categories. Hence collective economic sanctions will be a secondary or a sub-standard case of punishment.

Hart’s fourth condition is that the penalty must be intentionally administered by human beings other than the offender. Punishment cannot be self-imposed. Economic sanctions easily meet this fourth condition.

²³⁵ Hart, 2008, 5-6.

The fifth condition is quite interesting. Hart's fifth condition is that punishment 'must be imposed and administered by an authority constituted by a legal system against which the offence is committed'. Indeed the requirement that punishment must necessarily be inflicted by some kind of authority is central to many definitions of punishment. The authority in question need not be legitimate; an illegitimate state that incarcerated convicted murderers would still be said to be punishing them.²³⁶ What is required is not legitimate authority but merely *de facto* authority (i.e. the power to compel obedience whether that power is legitimate or not). In the absence of at least some kind of authority many would argue that we do not have a case of punishment but rather some kind of revenge or vigilantism. Thus if you steal from me and are convicted in a court of law and sentenced to time in prison you are punished. If you steal from me and I beat you up then you are not punished; you merely suffer my revenge. Is the authority condition met in the case of economic sanctions?

In the case of economic sanctions imposed by the United Nations it seems like it is. The United Nations Security Council certainly does claim the authority to interpret international law and to enforce it – at least where it judges there is a threat to peace and security. The United Nations Security Council has the *de facto* authority to require that all UN member states impose sanctions on those states or individuals it deems a threat to peace and security. Therefore UN sanctions could qualify as 'punishment' assuming the other conditions are met. But what of sanctions imposed by states?

A fundamental principle of international law is that all sovereign states are equal in the international system; none has any kind of authority over any other. It follows that when states impose sanctions the authority condition is not met. However, before we give up on the idea that state-sponsored sanctions do not merit the term 'punishment', we should recall one of Hart's secondary or sub-standard cases:

- a. Punishments for breaches of legal rules imposed or administered otherwise than by officials (decentralized sanctions).

²³⁶ See Flew, 294 and Benn, 326: authority may be 'real or supposed'.

Thus decentralised economic sanctions (i.e. economic sanctions imposed by states) still merit the title of ‘punishment’ according to Hart.

Having set out the punitive potential of economic sanctions, I now turn to address the question of whether economic sanctions can be morally justified on the grounds that they are just punishment.

Before I do this, however, for the sake of clarity it is worth pointing out some of the ways in which economic sanctions might be *indirectly* involved in punishment. For example, economic sanctions might be designed as a way of receiving war reparations. The only case I am aware of – and it may well be the only one – is the way the economic sanctions imposed on Iraq were designed in order to receive reparations for the Kuwaiti people and others harmed by the illegal invasion of Kuwait. As part of the Oil for Food Programme in the late 1990s, Iraq was permitted to sell a fixed quantity of oil and payments from the oil sales were controlled by the UN which allocated a certain amount to go towards reparations for the damage sustained by Kuwait and others during the invasion and the remainder to an approved list of humanitarian items required by the Iraqi people. This is not the use of economic sanctions as punishment; rather it is the use of economic sanctions to secure some other punishment – in this case, war reparations. Similarly, economic sanctions have been imposed in order to coerce states into giving up those suspected of terrorism or war crimes for trial in either foreign or international courts, e.g. Libya was sanctioned in order to force it to give up the Lockerbie bombers for trial. Again, the punishment here is not the economic sanctions themselves but the incarceration of those convicted. The economic sanctions are merely the means used to secure that punishment. To be clear then, in this chapter when I talk of economic sanctions being a kind of punishment it is not this indirect use of economic sanctions that I have in mind. Rather I am referring to the direct use of economic sanctions as punishment discussed above.

2. Can Economic Sanctions be Morally Justified on the Grounds of Just Punishment?

As discussed in the last section, economic sanctions can have very unpleasant consequences; when targeted at entire states they can – to greater and lesser extents - cause economic turmoil, restrict economic growth, increase unemployment and the number of people living in poverty as well as denying people access to essential (or at least desirable) goods and services; when directed at individuals their effects are much more limited although still not insignificant – individuals may lose access to their cash and investments and may have to deal with serious cashflow and reputational issues. A practice of inflicting harms like this obviously requires moral justification and that is what I turn to consider now.

Unfortunately, it is far beyond the scope of this chapter to develop a full theory of international punishment - or even a theory of economic sanctions as international punishment - but within the scope restrictions of this thesis I believe there are still some useful points which can be made.

Hart argued that any theory of just punishment had to provide the following:

- i. The ‘General Justifying Aim’ of punishment: the grounds on which a practice of punishment can be justified.
- ii. An account of who is liable to be punished.
- iii. An account of what the appropriate amount of punishment is.²³⁷

I would also add:

- iv. An account of who has the legitimate authority to punish.

(Hart is writing in the context of domestic punishment and seems to take it for granted that a state has the legitimate authority to punish its own citizens. However, even if Hart is correct about the domestic case, the situation with respect to authority to punish is far from clear in the international case. Thus I explicitly want

²³⁷ Hart, 2008, 1-26.

to consider the question of who has the legitimate authority to punish in the international case).

In what follows I consider each of the criteria in relation to the practice of using economic sanctions as international punishment.

i. General Justifying Aim of a System of Punishment

The two most common justifications for a practice of punishment are deterrence and retribution.

Proponents of the deterrent justification hold the empirical proposition that if penalties are attached to crimes then the ever-present threat of suffering those penalties will deter would-be criminals from breaking the law. Many (but by no means all) proponents of deterrence theories then draw on some version of consequentialism to argue that punishment to deter crime is justified. The argument goes that the consequences of a practice of punishment (the benefits gained from low crime offset by the harms of punishment) are better than the consequences of not punishing (the harms of high crime offset only by the fact that the harms of punishment are not inflicted).

Proponents of retributive justifications on the other hand hold that there is some moral value in making criminals ‘pay’ for their crimes independent of any consequences this might have. There are many different retributive theories but probably the most well-known are ‘desert theories’ according to which it is morally justified (perhaps even morally required) that a criminal receives the punishment she has come to deserve simply by virtue of her wrongdoing.²³⁸

There is plenty of literature debating the merits of both bases of justification and plenty of writers who take intermediate positions between the two. I take no position on which is right and in what follows I consider both: can either a deterrent or a retributive theory of punishment justify a practice of using economic sanctions as punishment? I take each theory in turn.

²³⁸ For varieties of retributive theories see Cottingham, 1979.

Deterrence Theory

The use of economic sanctions as a deterrent is justified if; first, the threat of economic sanctions being imposed in response to wrongdoing actually deters potential wrongdoers from committing crimes; and second, the consequences of a practice of sanctioning for deterrent purposes are better than the consequences of having no such practice. I take each in turn.

1. Success as a Deterrent?

Whether the threat of economic sanctions being imposed for wrongdoing would actually deter potential wrongdoers is difficult to say. The three most important factors affecting the ability of sanctions to deter are: a) the value the putative wrongdoer places on the wrongdoing, b) the amount of harm the sanctions will impose on the putative wrongdoer for the wrongdoing and, in turn, the disvalue the putative wrongdoer places on that harm; and c) the likelihood that the economic sanctions will actually be imposed. Other things equal, the higher the value the putative wrongdoer places on the wrongdoing, the more severe and more likely the sanctions will need to be if they are to deter.

In designing sanctions with a deterrent purpose then we need to make sure the economic sanctions that are threatened are sufficiently severe and, further, that their harms will actually fall on the putative wrongdoer. Collective economic sanctions – those targeted at an entire state – often fail to harm those who are actually responsible for the crime. As discussed in chapter two, as resources become increasingly scarce as a result of the collective sanctions they will likely be allocated as a matter of priority to the army or leadership with the remainder going to everyone else. The army and leadership are, of course, most likely to be the ones responsible for violating international law. Since they are able to control the distribution of scarce goods and are likely to help themselves first they will not actually suffer the harm of the sanctions. The problem for the deterrence theory here of course is that if wrongdoers can simply push the costs of the sanctions onto others then the costs of economic sanctions are unlikely to deter them. For this reason, the threat of targeted

sanctions might well be a more effective deterrent than the threat of collective sanctions.

Another factor we must take into account is how likely the target perceives the imposition of the sanctions to be. If the putative wrongdoer believes it to be very unlikely that sanctions will be imposed in response to her wrongdoing then she is unlikely to be deterred, particularly if she values the wrongful course of action very highly. Therefore, senders who wish to use economic sanctions to deter must develop a reputation for responding to all – or at least most - instances of wrongdoing with economic sanctions. Their threats to sanction in response to wrongdoing must be credible. In the case of the UN this need for credibility will require punishing all – or at least most – instances of wrongdoing. In the case of an individual state which only wishes to deter threats against itself, this will require punishing all – or at least most – instances of wrongdoing committed against that state.

2. Best Consequences?

The second point we must consider is whether the consequences of a practice of sanctioning for deterrent purposes (the benefits gained from low crime offset by the harms of punishment) are better than the consequences of having no such practice (the harms of high crime offset only by the fact that the harms of economic sanctions are not inflicted). It is always difficult to predict consequences but we can make some general observations.

The first thing to note is that a practice of sanctioning for deterrent purposes will only have the best consequences if it actually deters. If economic sanctions have no deterrent effect then the consequences of imposing economic sanctions as punishment are not better than the consequences of having no system of punishment at all since, by punishing, we inflict harms for no benefit. As discussed above, sanctions have to be carefully designed and regularly and reliably imposed if they are to be a successful deterrent.

Second, economic sanctions targeted narrowly at responsible individuals should be preferred over collective sanctions. This is because they cause less harm overall and yet, as argued above, are likely to have the most deterrent effect.

I now want to consider the retributive theory.

Retributive Theory

The practice of using economic sanctions as punishment is justified on retributive grounds if the economic sanctions are designed to inflict harm on those agents who deserve to suffer it on account of their past wrongdoing.

Further, if they are to be justified, the economic sanctions must be targeted only at those agents who are to blame for the wrongdoing and, in addition, the severity of the economic sanctions should be proportionate to the extent of the wrongdoing, i.e. the agent should suffer no more or less than they deserve. This requirement rules out the use of collective sanctions absolutely since they are a type of collective punishment which cannot help but punish innocent people. Targeted sanctions, however, if they inflict an amount of harm proportionate to the scale of the wrongdoing, can be justified by the retributive theory.

Having established the kind of economic sanctions that can be justified by the deterrent and retributive theories I now turn to give an account of who may be punished.

ii. Who May be Punished?

Who or what should be punished for violations of international law? The retributive theory demands that only the guilty be punished. The deterrent theory makes no such demand. If the best consequences can be obtained by punishing the innocent – as might happen if everyone believed the innocent to be guilty – then we should punish the innocent. However, here I would have to follow Hart in allowing that there are principles of natural justice that must override the deterrence theory's consequentialism in such cases. It goes against a fundamental principle of natural justice to punish the innocent.

Having established that only the guilty may be punished, that leaves us with three questions to address in this section. First, what kind of agents can we hold morally responsible for violations of international law? Second, in practical terms, how can we determine the guilt or innocence of the agents we propose to sanction? Third, what do our answers to these two questions imply for economic sanctions? I consider each question in turn.

What kind of Agents can bear Moral Responsibility for Violations of International Law?

First, then, what kind of agents can be held responsible for violations of international law? It seems obvious that individuals can be held responsible for violations of international law. Their moral responsibility for violations can be ascertained by applying Feinberg's tri-conditional analysis to their actions as outlined in chapter five.

However, Toni Erskine makes the controversial argument that states themselves – considered as connected sets of political institutions – can be moral agents and thus are suitable objects of punishment. I want to consider Erskine's fairly radical argument in more detail.

Erskine argues that a state – considered as an institution or a set of connected institutions – can be a moral agent suitable for blame and punishment.²³⁹ Erskine argues that, in very general terms 'moral agency requires a capacity for both moral deliberation and moral action'. In other words moral agency requires that 'one must be able to understand and reflect upon moral requirements...[and] act in such a way as to conform to these requirements'.²⁴⁰ Most individuals possess these capacities but so, Erskine argues, do some institutions. In particular, she argues that institutions are moral agents if they possess five characteristics:

First, a group must have an identity that is more than the sum of identities of its constitutive parts; it must have what might be called a "corporate" identity. Second, to be a moral agent a group requires a

²³⁹ See Erskine, 2003 and Erskine, 2010. Erskine draws on the work of Peter French. See French, 1979. For more recent work on collective moral agency see Pettit & List, 2011.

²⁴⁰ Erskine, 21.

decision-making structure. This not only enables the group to deliberate but also provides a means of arriving at a goal or policy that is more than simply the aggregate of individual aims and intentions. A third requisite feature is an executive function linked to this decision-making structure, which allows it to translate decisions into actions and ensures that policies can be implemented. Decision-making procedures and structures for carrying out the resulting resolutions come together to ensure that a group has a capacity for purposive action. Fourth, the group must have an identity over time. Finally, to be a moral agent a group must have a conception of itself as a unit—that is, it cannot be merely externally defined.²⁴¹

Such groups, for Erskine, have a capacity for both moral deliberation and moral action. Erskine argues that many states and international organisations such as the United Nations would meet these requirements and therefore would be moral agents suitable for blame and punishment.²⁴²

Erskine is at pains to point out that attributing moral responsibility to the state does not diminish or absolve individual citizens of their own moral responsibility; rather in most cases there will be an overlapping of state and individual responsibilities where individuals are fully morally responsible for the contribution they have made to the wrongdoing committed by the state while at the same time the state is also fully morally responsible for its wrongdoing.

One upshot of this view is that if the state is a moral agent and fully responsible for wrongdoing then the state (as distinct from its individual citizens) is liable to suffer punishment. Indeed Erskine does think it is theoretically possible to punish states without simultaneously punishing citizens. (Punishing a state without also punishing its citizens is meant to be analogous to fining a company for wrongdoing without also fining its employees). However, Erskine argues that there are two practical problems with punishing states; the first she calls the problem of ‘misdirected harm’, the second the problem of ‘overspill’. ‘Misdirected harm’ is harm that is targeted at individual citizens of the state rather than at the state itself. Since the state itself – considered as an institution – is the object of punishment, harm is misdirected if it is targeted at *any* individuals. ‘Overspill’ is harm that is

²⁴¹ Erskine, 2010, 265.

²⁴² Some weak states or collapsed states would fail to meet the conditions for moral agency. Other states might meet the conditions for moral agency but be unable to exercise their agency due to interventions from more powerful states restricting both internal and external sovereignty. See Erskine, 2003, 29-34.

correctly targeted at the state but, since many citizens rely on the state's effective functioning for everyday life, the harm imposed on the state 'overflows' onto individuals. If misdirected harm is equivalent to the harm suffered by a child locked up alongside her criminal mother; overflow is equivalent to the harm suffered by a child denied the care of her mother while her mother is locked up. Misdirected harm is always problematic because it involves punishing the innocent. However, Erskine argues that overflow is morally permitted in cases where the harms are proportionate to the aims to be achieved. She does not specifically invoke the doctrine of double effect in this regard but it seems to be the kind of thing she has in mind.

Erskine's view is very interesting though I doubt that it is correct.²⁴³

Nevertheless I will not argue for that conclusion here. What I will argue instead is that even if Erskine is correct and states are moral agents suitable for blame and punishment, their punishment by means of economic sanctions would not be morally justified.

Erskine is not primarily concerned with economic sanctions as a means of punishment; however, she does briefly consider the possibility. In a footnote she writes:

The case of economic sanctions is a challenging one. Do they represent an acceptable means of punishing the state? Much would depend on whether, in a detailed analysis of such a case, the frequently criticized suffering of ordinary citizens caused by sanctions were shown to constitute misdirected harm or an instance of overflow. My guess is that conventional [i.e. collective] sanctions would constitute the former, and that so-called smart [i.e. targeted] sanctions are more acceptable to the extent that they avoid this problem and might only result in overflow.²⁴⁴

I concur that collective sanctions would be a case of misdirected harm; they are, quite clearly, a means of collective punishment. However, I am less sure that targeted sanctions result only in overflow.

First of all we should consider exactly what we mean by targeted sanctions in the context of state punishment. Quite frequently we have discussed targeted sanctions in the context of sanctions imposed on top government officials for

²⁴³ For criticism of the view that groups can be independent moral agents see e.g. May, 1987.

²⁴⁴ Erskine, 2010, 285 n.46.

instance. However, these are not the targeted sanctions Erskine has in mind since such sanctions are not targeted at the state as an institution but at individuals. Recall that for Erskine all harm targeted at individuals is misdirected harm. The question then is whether there are any economic sanctions that can be said to intentionally target the state without at the same time intentionally targeting any individuals.

What kind of sanctions would do this?

We could, I suppose, freeze a state's financial assets. States do invest funds in foreign markets. These assets belong to the state as opposed to any one individual. Erskine also suggests that we might target a state's infrastructure.²⁴⁵ We could place restrictions on materials intended for state road-building or bridge-building projects for instance. Such sanctions are not so far-fetched; in the 1980s the U.S. imposed economic sanctions designed to prevent the building of an oil pipeline between Western Europe and the U.S.S.R.²⁴⁶ We could also refuse to grant a state the loans that it needs to finance state projects. We could also prevent the state from importing goods and services necessary for it to perform its various functions. For example, if we were to sanction the UK then we could refuse to allow the NHS (which is a state organisation) to import vital medicines and equipment.

The problem with these sanctions is that they are either targeted at state assets or they are targeted at state projects that are intended to benefit citizens. Targeting a state's assets is problematic because, arguably, state assets are not owned by the state at all but ultimately by all the state's citizens. Thus, in attacking state assets you attack all of a state's citizens.

Similarly, attacking state infrastructure projects or state functions simply *is* attacking citizens. Citizens are not related to their state in the way that employees are related to their company. Citizens set up and maintain state institutions in order to manage their interactions with each other and to ensure (at least some of their) needs are met. The 'state' is just a name given to the way a group of citizens have decided to organise themselves and the policies and procedures they have put in place to do this. Thus an attack on the state as an institution is an attack on a state's citizens in the way that an attack on a company (through fines etc.) would not be an attack on employees. Thus targeted economic sanctions on a state will result in

²⁴⁵ Erskine, 2010, 279.

²⁴⁶ Nossal, 1989.

misdirected harm; not merely overspill. Hence, even if it is true that the state is a moral agent suitable for blame and punishment, the imposition of either collective or targeted economic sanctions is morally unjustified.

Having thus determined that there is no morally justified way of punishing a state with economic sanctions, I now turn to consider the punishment of individuals.

How do we determine guilt?

Although it is often blatantly obvious that international crimes are being committed (the crime of aggression, crimes against humanity, war crimes and widespread violations of human rights are often quite obvious) it is often less obvious who exactly is morally responsible for them. The problem is that in the absence of set procedures for ascertaining guilt or innocence there is no reason to think we can be confident in the decisions to punish made by senders.

Where economic sanctions are imposed, the accused entity or individual is either another state or is located in another state. There is some literal distance between the sanctioning entity and their targets and consequently evidence of guilt might be hard to come by. Even if evidence is plentiful and easily accessible it should be open for challenge. During the Nuremberg trials at the end of the Second World War the Allies were physically occupying Germany and had access to all kinds of records that helped prove the complicity of individuals in Nazi crimes and even then some individuals who were accused and put on trial were acquitted.

Thus a practice of using economic sanctions as international punishment requires a set of procedures to ensure that those sanctioned are actually guilty. There needs to be some kind of due process that requires evidence of guilt and gives the accused some chance to defend themselves.

What are the Implications for Economic Sanctions?

Only guilty individuals may be punished. Therefore, if economic sanctions are to be morally justified, they must target the guilty and not the innocent. Targeted sanctions are capable of targeting only guilty individuals. Collective sanctions on the

other hand raise the spectre of collective punishment. In imposing collective sanctions, the innocent are punished alongside the guilty, with no effort taken to discriminate between them. Further, as discussed above, it is likely that the those most responsible for the wrongdoing will have the power to shift the costs of such collective sanctions onto others. So in addition to punishing the innocent, collective sanctions may well have the effect of allowing the guilty to escape punishment altogether. Only punishment by means of targeted economic sanctions has the potential to be justified on the grounds of just punishment.

iii. Extent of Punishment

Even if it is established that it is just to punish an offender, the question remains as to what amount of punishment is just. In the first instance the 'general justifying aim' of punishment suggests what amount of punishment might be appropriate.

For a deterrence theorist the purpose of punishment is to deter and so the amount of punishment that is appropriate will vary from crime to crime depending on the proclivities of those in society to engage in that kind of crime and how easily they may be dissuaded from doing so. For a retributivist, on the other hand, the appropriate amount of punishment depends on what is deserved – it is therefore proportionate to the seriousness of the crime. The two theories might coincide in some cases on the amount of punishment – for example where a strong deterrent is necessary for a serious crime – but may also come apart, e.g. where only a weak deterrent is necessary for a serious crime.

Hart argues that although the general justifying aim of punishment suggests an appropriate amount of punishment it is not sufficient to determine it. This is because there are limits to what we may do to individuals in order to pursue justice and these limits must also be taken into account when determining the appropriate punishment. Hart holds, for example, that the principle of proportionality in punishment is one such limit. Similarly the requirement to treat like cases alike is another: it is not fair to punish A more harshly than B for the same crime, other things being equal. These requirements do not naturally fall out of the general

justifying aim of punishment (at least not out of the deterrent justification) but, Hart argues, are rather independent requirements of natural justice.²⁴⁷ I now want to consider what this means for economic sanctions.

If we want to treat like cases alike and/or inflict punishment that is proportionate to the seriousness of the crime then economic sanctions as a means of punishment face some difficulties. Economic sanctions are not a standardised punishment. The consequences of economic sanctions are difficult to predict and difficult to control. They might cause a lot more harm or a lot less harm than anticipated. It will be very difficult to set in advance how long sanctions should be applied to cause the right amount of harm. Further, if the harm is too great it might not be very easy or quick to reverse it. This then makes it difficult to treat like cases alike or to achieve proportionality in punishment.

Of course the same can be said for more familiar modes of punishment such as incarceration. Two individuals may be handed the same prison sentence at the same prison but one may suffer much more during her imprisonment than another. This could be due to various factors such as how the other prisoners and staff treat her, whether the prison is near her home and can be easily visited by friends and relatives and so on. Likewise a £1,000 fine is almost nothing to a very rich person but might be devastating to a poor one.

It is probably impossible to devise punishments tailored to the individual to cause exactly the 'right amount' of suffering since there will be too many factors outside the control of the one handing down the punishment. Unless we are prepared to abandon punishment altogether we must accept this limitation. Nevertheless, in the case of economic sanctions there are surely some types of sanctions that are easier to control, monitor and, if necessary, reverse than others. For example, asset freezes can be imposed for a set period of time but some funds released quickly if the restricted cashflow is causing too much harm. If economic sanctions were to be used as a kind of international punishment it would undoubtedly be necessary to conduct a great deal of research into the types of economic sanctions best suited to this task but there is no reason to think *a priori* that suitable types of economic sanctions could not be found.

²⁴⁷ Hart, 2008, 1-26.

iv. Authority to Punish

Earlier I discussed whether economic sanctions could count as a type of international punishment since they were not imposed by an authority. Now the question of whether or not economic sanctions *are* punishment (on the grounds that they are not penalties imposed by an authority) is different to the question of whether or not economic sanctions as international punishment *are just* (on the grounds that they are not penalties imposed by an authority). It is quite obvious that even if we allow that penalties imposed by agents other than an authority are punishments, the fact that such punishments are not imposed by an authority might speak against the justice of using such punishments. It is this issue that I now address.

Actually, many argue that punishment is just only if it is imposed by a *legitimate* authority where an individual or entity has legitimate authority if she or it is morally justified in exercising that authority.

There are many different accounts of what is required for an authority to be legitimate but common to all is the requirement that a legitimate authority must be *impartial* between those it has authority over, i.e. it must have no reason to favour the interests of one party over the interests of any other. There are many other conditions that must be met for an authority to be considered legitimate but it is this condition – that the authority be impartial – that is most conspicuously absent in the international case. States are generally not impartial in this way when it comes to international punishment. There is clearly a risk that states will act out of self-interest - perhaps claiming that violations of international law have occurred when they have not in order to justify inflicting harms on other states or, alternatively, ignoring the fact that violations of international law have occurred when it suits them. The United Nations, dominated as it is by the interests of the five permanent members of the Security Council, faces the same problem – albeit to a lesser extent.

Thus, if it is correct that the impartiality of the punishing agent is a necessary condition for just punishment, neither individual states nor the United Nations punish justly. But is it correct? I want to start by considering why we think punishment is unjust when it is imposed by an agent who is partial.

If punishment is imposed by a partial agent then there is a risk that the agent will judge in her own favour or the favour of her friends – perhaps concluding that the law has been broken when it has not, finding an innocent person guilty or punishing in excess of what is deserved. I agree that these are very real risks but they are risks and not certainties. It is contingent whether a partial agent will judge incorrectly or punish excessively. It is *possible* for a partial agent, acting in good faith, to judge correctly and punish proportionately – even if this conflicts with her own interests or that of her friends. Further, even if the partial agent fails entirely in this respect, if we ask what is unjust about the punishment imposed we would reply that it was a case of punishing an innocent person or punishing excessively and it is *those* two factors which make the punishment unjust, not the fact that it was imposed by a partial agent. Again, this is due to the fact that it is contingent whether a partial agent will judge incorrectly or punish excessively. However, I think it is fair to assume that instances of partial agents punishing fairly will be rare. Thus, a *general practice* of international punishment by partial agents could not be morally justified (even if one-off acts could) because it would likely result in significant numbers of innocents being punished and excessive punishment. What are the implications of this?

In his discussion on punitive war, David Rodin argues that if punitive war (and, by extension, international punishment more generally) is to be morally justified then a universal state with executive authority is required, as only such a universal state would be impartial between disputing states.²⁴⁸ With a universal state able and willing to enforce the law impartially, punishment of the innocent or excessive punishment should generally be avoided.

Anthony Lang disagrees with Rodin's conclusions and instead argues that a universal state is not required to make international punishment just. Lang agrees with Rodin that impartiality is a key condition of just punishment but denies that impartiality requires a universal state. Lang argues that we need to distinguish between three types of authority: legislative, judicial and executive. It is sufficient for just punishment, he argues, that there is an impartial *judicial* authority; in which case we do not need a universal state in the full sense, i.e. with executive authority,

²⁴⁸ Rodin, 2002, chp. 8.

rather we need a body that is capable of adjudicating disputes and determining punishments impartially; something Lang suggests that a reformed UN could be capable of. Once the reformed UN had made its impartial judgement on punishment, individual states would be authorised by the UN to execute it. For Lang, if judgments are reached impartially then it does not matter if those enforcing them are impartial or not. Thus we only need an impartial judiciary, not an impartial executive authority and hence a universal state is not required.²⁴⁹

The problem with Lang's idea is that even if a more robust UN with an impartial judiciary was reliably and routinely making decisions about who should and should not be punished and how much, what reason is there to think that states, in their executive capacity, would carry these punishments out? States are not impartial and may well find excuses or simply refuse to punish where it was not in their best interests to do so. Further, if the UN had no executive authority, what would stop states punishing in the absence of UN authorisation? Thus, even if sentencing was impartial, actual punishment would not be imposed impartially. Punishment of the innocent and excessive punishment would still occur as would a failure to punish the guilty.

Conclusion

To conclude then, a practice of punishment requires an impartial executive authority to be morally justified. Currently there is no such impartial executive authority and so, at this point in time, a practice of using economic sanctions as punishment could not be morally justified. In order to justify a practice of international punishment using economic sanctions there would need to be some kind of universal state with executive authority that could judge and execute its judgments impartially. Such an authority would also be able to ensure punishments were imposed reliably and routinely and so would also be able to create an effective deterrent and allow punishment to be imposed where it is deserved. There may be good moral reasons not to create a universal state with executive authority of course – I take no stand on that – my conclusion is only that without one, a practice of

²⁴⁹ Lang, 134-140.

international punishment cannot be morally justified. I now turn to consider a final argument for economic sanctions: the clean hands argument.

Chapter 9: Economic Sanctions and ‘Clean Hands’

Conventionally, as we have seen, economic sanctions are conceptualised as being measures designed to change the objectionable/unlawful behaviour of targets (or perhaps to punish it). However, Noam Zohar, drawing on Jewish theological tradition, argues in favour of an alternative way of thinking about economic sanctions - that of economic sanctions as a method of ‘preserving clean hands’.

Under a ‘clean hands’ sanctioning policy the objective of the economic sanctions is not to change a target’s behaviour or to punish it but rather to *avoid complicity* in that behaviour. Zohar argues, for example, that if one state sells weapons – or allows weapons to be sold by its citizens – to a second state where it knows or suspects those weapons will be used to commit human rights violations then it facilitates those violations and is thus morally responsible for them as an accomplice.²⁵⁰ Hence states have a duty to impose arms embargoes (a type of economic sanction) on targets that they suspect would use those arms to commit human rights violations.²⁵¹ Furthermore, clean hands sanctions are not restricted to arms embargoes; Zohar argues that embargoes would be required on *all* goods which would facilitate wrongdoing (his own example is the requirement to prevent oil exports to a state pursuing an aggressive war).²⁵²

To be clear, Zohar is not claiming (or, for that matter, denying) that there are real world cases of economic sanctions imposed out of a desire to avoid complicity in wrongdoing; rather he is claiming that there *could be* – and that there *should be*. Whether in fact any real world cases of economic sanctions are ‘clean hands’

²⁵⁰ Note that there are other ways of understanding ‘complicity’. For example some would consider using items produced through slave labour a kind of complicity in slavery – even if the slavery had long since ended. They might refuse to use such items in order to ‘keep their hands clean’. This is not the sense in which ‘complicity’ is being used here. Here we are concerned with supplying goods and services which facilitate the wrongdoing.

²⁵¹ Zohar, 1993, 8. For a similar view advocating ‘clean hands’ sanctions see Nili, 2011. Zohar’s (and Nili’s) views are similar to well-known views expressed by Thomas Pogge and Leif Wenar; the main difference being that the clean hands sanctions advocated by Zohar and Nili focus on avoiding complicity irrespective of outcomes, whereas both Pogge and Wenar make their suggestions with the intention of reducing human rights violations in the developing world. See Pogge, 2005 and Wenar, 2008.

²⁵² Zohar, 1993, 8.

sanctions in Zohar's sense is a separate question and one which falls outside the scope of this thesis.²⁵³

Zohar's idea is interesting because to date the moral analysis of economic sanctions has almost exclusively assumed the conventional conception of economic sanctions. On the conventional conception, as we have seen, economic sanctions are assumed to be a *prima facie* wrong (for the reasons given in chapter two) and morally justified in any given case only if certain conditions are met. However, under a clean hands conception of economic sanctions the imposition of sanctions is, by contrast, a moral *duty* - a duty derived from the duty not to be complicit in human rights violations or other wrongdoing. Employing the clean hands conception of economic sanctions thus shifts the burden of moral justification from those who would impose sanctions to those who would not. The clean hands conception therefore appears to be a valuable tool for those who would impose economic sanctions in response to international wrongdoing; but how plausible is it?

In this paper I consider the plausibility of Zohar's view on arms embargoes by locating it within the secular literature on complicity and moral responsibility and defending it from objections. I further consider in more detail exactly how Zohar's view might be extended to include not just arms embargoes but other types of economic sanctions. I start in section one by setting out and defending a model of complicity and moral responsibility that is sympathetic to Zohar's before turning in section two to consider how such a model would apply to the case of arms embargoes and then, in section three, to other types of economic sanctions. I conclude that in circumstances where ongoing trade would render a state complicit in international wrongdoing the 'clean hands' conception of economic sanctions supplies plausible grounds for a moral duty on the part of those states to impose economic sanctions.

²⁵³ The most obvious candidates for clean hands sanctions are unilateral arms embargoes and unilateral embargoes on 'items to be intended for internal repression' e.g. water cannons, riot shields, tear gas etc. Since such embargoes are unilateral they cannot plausibly be intended to force an end to violence/internal repression since the target would simply acquire the requisite goods elsewhere. It is therefore at least possible the such sanctions are imposed out of clean hands motivations.

Complicity and Moral Responsibility

Recall that Feinberg argues that an agent is morally responsible for a harm if and only if:

1. he was at fault in acting or omitting to act and the faultiness of his act or omission consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm (*fault condition*);
2. his faulty act (or omission) caused the harm (*causal condition*); and
3. the resultant harm was within the scope of the risk (or certainty) in virtue of which the act is properly characterised as faulty. (That is the harm risked in (1) must be the same sort of harm as actually caused in (2)) (*causal relevance condition*).²⁵⁴

Feinberg's tri-conditional analysis applies fairly straightforwardly to the case of individual responsibility. It is, however, much less straightforward to apply it to cases of *shared* responsibility where more than one agent is (at least partially) morally responsible for a harm. There are many different ways in which we can come to share moral responsibility for a harm – one of which is through complicity. Following John Gardner we can understand complicity, roughly, as being participation in the wrongs of another.²⁵⁵ In legal terms one is guilty as an accomplice to a crime if one aids or abets another (the principal) to commit a crime. To aid a crime is to provide practical help, e.g. providing the gun for a murder, acting as a lookout for a burglary or driving the getaway car for a bank robbery. To abet a crime is to encourage or procure it. For example, inciting someone to violence or hiring a hit man to murder someone is abetting a crime. In what follows I focus on what it is to aid a principal since it is Zohar's contention that the supply of goods actually facilitates wrongdoing (as opposed to merely encouraging it). In terms of moral responsibility the accomplice and principal are understood to share moral responsibility (not necessarily equally) for the resulting crime.

The difficulties in applying Feinberg's tri-conditional analysis to cases of complicity are fairly obvious. For instance, suppose that A sells a gun to B who uses

²⁵⁴ Feinberg, 1970, 195-199.

²⁵⁵ Gardner, 2007a, 127.

the gun to murder C. Is it A or B or both who cause C's death? Further, although B is clearly at fault in killing C, is A also at fault? Does an assessment of A's fault depend on whether A knew or suspected of B's motives? In what follows I explore possible answers to these questions.

Complicity and Causality

We could use the 'but-for' test to determine whether or not an accomplice is morally responsible for contributing to the harms of the principal. The but-for test, however, is well-known to give counterintuitive results in pre-emption cases (this is problematic for the clean hands approach as will become evident in section two). For example, say Suzy and Billy each have a stone and decide to throw their stones at a glass bottle in order to break it. Suzy throws her stone first and breaks the bottle, thus pre-empting Billy who now does not throw his stone. According to the counterfactual test it is not true that Suzy caused the bottle to break since it is not true that but for Suzy's throwing of the stone the bottle would not have broken. If Suzy had not thrown her stone Billy would have thrown his stone and the bottle would still have been broken. This is clearly an unacceptable result since it is intuitively obvious that Suzy's throwing of the stone caused the bottle to break.²⁵⁶

David Lewis has offered a refinement of this counterfactual theory that is intended to overcome the problem of pre-emption. It is far too much to go into all the details here but, very roughly, the idea is to take into account not just *whether* an event occurs but *whether, when and how* an event occurs.²⁵⁷ On this revised theory Suzy's throwing of the stone is a cause of the bottle breaking because it is true that but for Suzy throwing the stone at speed, *s* and at a time, *t*, the bottle would not have broken in the way that it did and at time *t*₁.

Of course the counterfactual test is not the only test of causation available – there is also the NESS test. The NESS test has the advantage of avoiding the

²⁵⁶ Example taken from Hall, N, 'Two Concepts of Causation' in Eds. Collins, Hall & Pond, *Causation and Counterfactuals*, (Cambridge, Mass: MIT Press, 2004) quoted in Menzies, Peter, 'Counterfactual Theories of Causation', *The Stanford Encyclopaedia of Philosophy* (Fall 2009 Edition), Ed. Zalta, Edward N., <http://plato.stanford.edu/archives/fall2009/entries/causation-counterfactual/> last accessed 4 December 2011.

²⁵⁷ Lewis, 2000.

problem of pre-emption. For example, one set of antecedent actual conditions sufficient for breaking the bottle includes Suzy's throwing of the stone plus various background conditions (e.g. laws of gravity, fragility of the bottle and so on). Suzy's throwing of the stone is a necessary element of this sufficient set. Therefore we can say that Suzy's throwing of the stone is a cause of the bottle's breaking. On the other hand there is no set of actual conditions that includes Billy's throw – since Billy never threw his stone – therefore Billy cannot be a cause of the bottle breaking. It is beyond the scope of this thesis to adjudicate between different theories of causation and therefore in what follows I make reference to both. I now turn to consider the fault condition and the causal relevance condition.

Complicity and Fault

Recall that for Feinberg the other two necessary conditions for moral responsibility are that the agent:

was at fault in acting or omitting to act and the faultiness of his act or omission consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm (*fault condition*);

and;

the resultant harm was within the scope of the risk (or certainty) in virtue of which the act is properly characterised as faulty. (That is the harm risked in (1) must be the same sort of harm as actually caused in (2)) (*causal relevance condition*).²⁵⁸

In what follows I consider only the fault condition as I think the causal relevance condition is quite straightforward to apply to the case of complicity – as I show at the end of the section.

In the individual case determining whether an agent is at fault is relatively straightforward. How should we extend Feinberg's analysis to the case of

²⁵⁸ Feinberg, 1970, 195-199.

complicity? What would it take for an agent to be at fault when aiding or encouraging another to bring about harm?

The answer to this question is important because it often turns what would be otherwise perfectly legitimate activities into wrongful action.²⁵⁹ Take the selling of a ladder. Ordinarily there is no wrong involved in selling ladders. It is only if one sells a ladder intending or perhaps knowing or suspecting that it is to be used in a burglary that we consider the vendor acts wrongly. In fact all kinds of activities performed by accomplices (though by no means all) are morally untroubling in and of themselves. The sale of ladders is only one example. The sale of kitchen knives, baseball bats and computers can also be perfectly legitimate and harmless activities in and of themselves though they are all items that can aid in crime. The sale of guns might also be perfectly legitimate, e.g. where a gun is intended for self-defence or hunting.²⁶⁰

In law complicity usually requires that accessories *intend* to bring about the harms in which they are complicit. For example if A gives a gun to B intending B to use it to kill C then A is at fault for C's death. In some jurisdictions the requirement that the accessory intend the principal's crime is interpreted widely such that it is sufficient that the accessory has knowledge that her assistance will help the principal commit a crime. On the knowledge standard if A gives a gun to B knowing B will use it to kill C then A is at fault and morally responsible for contributing to C's death – even if A does not desire C's death. On the wide interpretation the fact that A knew C would be killed if she gave the gun to B is sufficient to show that A intended C's death. Whether knowledge like this is sufficient for intention is an interesting philosophical question but not one I address here. Here I will assume that knowledge itself, irrespective of whether it indicates intention, is sufficient for an agent to be at fault and thus morally responsible as an accomplice. Such a position is consistent with most law and, I think, with common sense.

The question I want to ask here is why draw the line at intent/knowledge? It is sometimes suggested for instance that recklessness is sufficient for complicity – that a knife seller who by making a sale knowingly runs an unreasonable risk of

²⁵⁹ See Simester, 591.

²⁶⁰ Though guns are slightly different as their primary function is to cause harm: they are designed to kill people.

causing someone's death – as might occur if the seller strongly suspected the purchaser's motives but lacked knowledge – is at fault and shares moral responsibility for the resulting death. And what of negligence? If a gun seller failed to realise that her customer did not have a firearms license and that customer murdered someone is the gun seller at fault? Does she share moral responsibility for the death?

Arguments made against holding people responsible for reckless or negligent complicity are made in a legal context and primarily relate to legal liability as opposed to moral responsibility but may be relevant to the moral situation and I turn to them now.

First, Sanford Kadish argues there is an 'ethic of individualism and self-determination' underlying the restriction to intent/knowledge in the law. Morally we wish to hold people responsible for their own actions; there is something wrong with the idea of holding people morally responsible for the actions of others.²⁶¹ As Simester sums it up:

If my action is lawful and not [morally] wrong, someone else's crime does not become my lookout – and should not be my moral or legal responsibility – simply because I foresee its possibility. Something more is required.²⁶²

Kadish argues we should not be responsible for another's wrongs unless we 'make them our own'.²⁶³ By *intending* to participate or by participating with full knowledge the resulting crimes are an expression of our will and thus we make them our own. But where our actions are merely reckless or negligent this is not the case. Note that this could be viewed as a further instance of invoking the doctrine of intervening agency discussed in chapter three.

Again, I would object that we are not holding agents morally responsible for the actions of others at all, rather we are holding agents responsible for the *contribution they make* to the actions of others and, by extension, the contribution they make to their harms.²⁶⁴ Therefore this objection does not hold.

²⁶¹ Kadish, 1997, 390.

²⁶² Simester, 590.

²⁶³ Kadish, 1997, 390.

²⁶⁴ See Gardner, 2007a.

A second argument against holding people legally liable for reckless or negligent complicity is that the threat of criminal punishment would greatly restrict people's freedom to engage in what would otherwise be perfectly legitimate activities, e.g. selling knives, computers, ladders and so on. Many business people might stop selling such items out of fear of what their customers would do with them. Thus, as Simester puts it, setting the *mens rea* standard for complicity at intent/knowledge is a 'trade-off' between protecting potential victims and preserving the liberties of everyone else.²⁶⁵

This is a pragmatic rather than principled reason to restrict *mens rea* to intent/knowledge. That this is so is obvious in the way that – for particularly dangerous goods – the law has no problem explicitly criminalising certain types of reckless or negligent sale. For example it is illegal to sell guns to those without a firearms license, to sell knives to children or alcohol to already intoxicated persons. This reflects the law making a different 'trade-off' where goods involved are particularly dangerous.

But how does all this apply to moral responsibility? After all, if one is deemed *morally* responsible for recklessly or negligently aiding a principal to bring about some harm would that restrict one's freedom? Is the threat of being blamed by society sufficient to restrict one's freedom? Perhaps. Mill certainly thought so. But society's moral blame is less of a threat to most than the threat of criminal punishment and therefore less likely to restrict freedom – or at least to restrict it so much. But equally perhaps the pragmatic concern about restricting freedom does not translate very well from the legal to moral context. I believe we already have moral intuitions in our society that lead us to blame people for their reckless or negligent complicity. If those intuitions reflect society's existing moral beliefs then articulating them in a philosophy thesis is not going to further restrict anyone's freedom.

Some might say that the corresponding objection is not that freedom is restricted by making recklessness or negligence sufficient for moral responsibility but that it makes morality overdemanding. Morality would require us to investigate every purchaser to ensure that they would not use the goods to bring about

²⁶⁵ Simester, 582-3.

unjustified harms or otherwise face the charge of negligence.²⁶⁶ However, I do not think that avoiding negligence would require such extensive investigations. To be negligent is to fail to take the care that a *reasonably prudent* person would take; a reasonably prudent person faced with some suspicions might ask a few questions about what the customer wanted the goods for but they wouldn't follow him home and spy on him or engage a private detective. Obviously, it is a matter of judgment what a reasonably prudent person would do in the circumstances. However, what is required of a reasonably prudent person is unlikely to be overdemanding since what it is reasonable to demand of people will be factored into the judgment of what a reasonably prudent person would do.

A third objection against holding people legally liable for reckless or negligent complicity is that a *mens rea* of intent is required to ensure that the accomplice always has sufficient *mens rea* for the principal's crime. To use an example from Kadish, say X gives the code to his boss' safe to a known burglar, Y so that Y can get some papers for him.²⁶⁷ A week later Y returns to the safe and takes X boss' cash. Y is guilty of burglary. To be guilty of burglary requires that one acts with the intention of permanently depriving another of their property. X is not guilty of burglary because X did not give the code to Y with the intention that Y take the cash. X was merely reckless with respect to the risk that Y might take the cash. Therefore X cannot be found guilty of burglary. However, a reckless complicity standard *would* find him guilty of burglary and that does not make sense given the definition of burglary.

This is a technical legal reason for requiring a *mens rea* of intent which does not, I believe, translate to the case of moral responsibility for harms. After all it seems obvious that X does bear some moral responsibility for the loss of his boss' cash even if we would not want to find him legally liable for the crime of burglary.

²⁶⁶ One would be morally justified in assisting an agent to bring about morally justified harm e.g. one would be morally justified in selling an agent a gun which they use in self-defence – assuming one intended/had knowledge that the gun was purchased for defensive reasons. However, one would not be morally justified in selling a gun to someone whose crime would be excused. One would still be morally blameworthy for selling a gun to someone who had been coerced/deceived into committing a murder – presuming that one intended/knew about the murder and had not similarly been coerced/deceived. Thus one can be morally responsible as an accomplice while the principal is excused moral responsibility.

²⁶⁷ For Kadish's example see Kadish, 346.

In conclusion there does not appear to be any good reason to restrict attribution of moral responsibility to agents with a *mens rea* of intent or knowledge. Therefore, I will assume that any level of culpability is sufficient for an agent to be morally responsible as an accomplice: intent, knowledge, recklessness or negligence.

Given the preceding discussion we are now in a position to re-state Feinberg's tri-conditional analysis for the case of complicity as follows:

An agent who aids or abets a principal shares moral responsibility for the harms inflicted by the principal if and only if:

1. he was at fault in aiding or abetting and the faultiness of his aiding and abetting consisted, at least in part, in the creation of either a certainty or an unreasonable risk of harm. (In other words he aided or abetted with the intention to bring about the harm or in the knowledge that he would bring about harm or he recklessly or negligently created an unreasonable risk of that harm occurring).
2. his act of aiding or abetting made a causal contribution to the harm inflicted by the principal (where an act makes a causal contribution if it is a cause-in-fact of the harm as determined under the revised counterfactual or NESS tests).
3. The harm inflicted by the principal was within the scope of the risk (or certainty) in virtue of which the act of aiding and abetting is properly characterised as faulty (the harm the accomplice intended or risked the principal bringing about is in fact the harm that the principal brought about).

In the next section I consider whether, according to this analysis, states that permit (or encourage) arms exports are complicit in any human rights violations that result from the use of these arms and, further, whether there is a duty to impose arms embargoes.

2. Arms Embargoes

Before I begin a discussion on the duty to impose arms embargoes I should say that there are perfectly legitimate reasons to export arms to foreign states. Weapons have morally permissible uses such as national defence and policing and not all states can manufacture the weapons that they need for these purposes themselves. Therefore a total ban on arms exports would not be reasonable.

However, many states use weapons for illegitimate purposes such as pursuing aggressive war or committing human rights violations. When such human rights violations occur Zohar claims that the states which permitted (or encouraged) the export of these weapons share moral responsibility for these violations. Is that claim plausible?

Here I use the analysis developed in the previous section to argue that in certain circumstances it *is* appropriate to hold states which permit (or encourage) arms exports morally responsible as accomplices for the human rights violations that result. Further, given that states have a duty to avoid complicity in human rights violations I go on to argue that in the circumstances where exports would render them complicit, states have a derivative duty to impose arms embargoes. Finally, I set out what such a duty would entail. In what follows I take the UK's arms export policies as my example.

Causality

When can it be said that the UK makes a causal contribution to human rights violations committed with arms exported from the UK? The following is a highly simplified causal chain of events with respects to arms exports from the UK which I explain below.

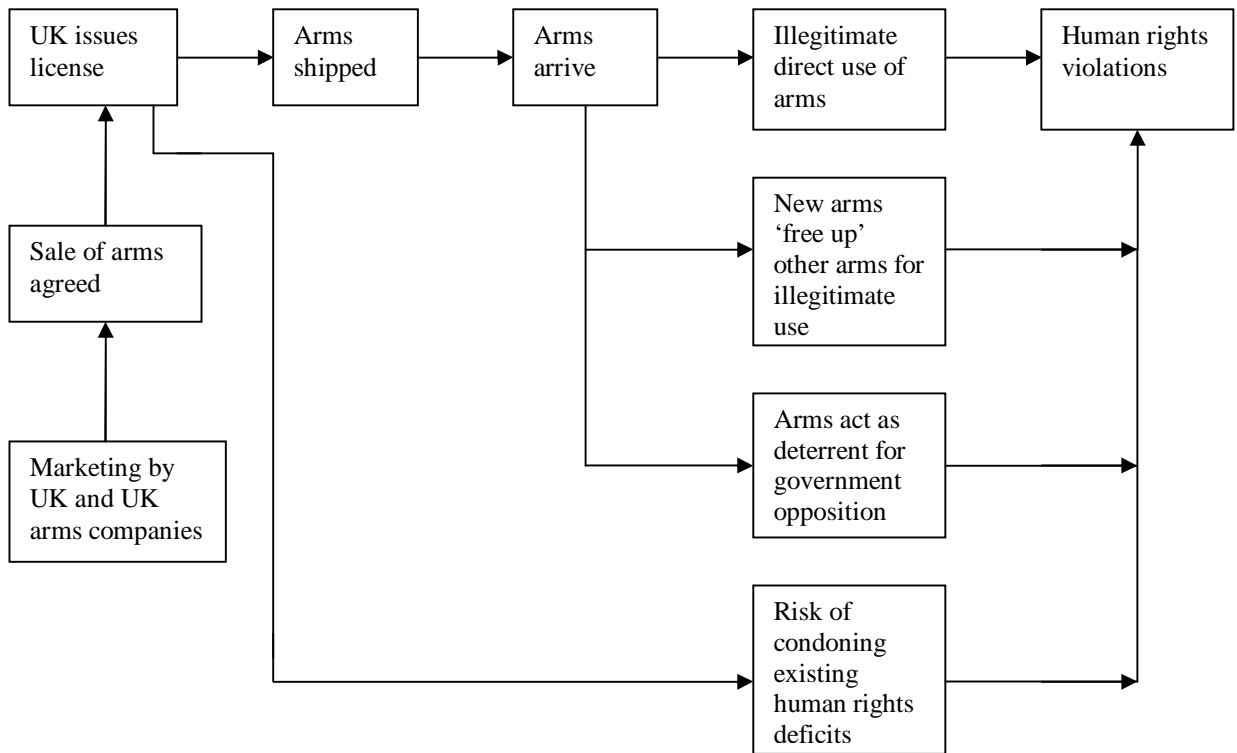


Figure 2. Causal chain of events for arms exported from the UK contributing to human rights violations

The British government does not sell weapons. In the UK, as in many other countries around the world, weapons are developed, manufactured and sold by private companies. The British Ministry of Defence is a significant customer of these companies but they also sell a substantial amount to third party states. Nevertheless, the British government has full control over where these weapons are sold. Every shipment of weapons out of the UK requires a license without which the arms will not be shipped. No weapons may be exported from the UK without official permission.

But this is not the only role the UK plays in arms transfers. Additionally, government ministers actively market British weapons abroad. Recently, for example, David Cameron attracted criticism for taking a delegation from British Aerospace to meet the rulers of the United Arab Emirates.

Once the arms have been shipped to their destination there are (at least) four different ways in which the arms may be thought to causally contribute to human rights violations.

First, obviously, the weapons can be used directly – for example in pursuit of an unjust war, to carry out a campaign of ethnic cleansing or to put down peaceful demonstrations.

Second, the UK sometimes permits exports only upon receiving guarantees from the recipient state that the arms will not be used in particular ways. For example during the Indonesian state's violent repression in Aceh province, the UK permitted a significant amount of arms sales to Indonesia on receipt of a guarantee they would not be used in Aceh. However, even if these weapons are not used directly to commit human rights violations there is a risk that the arrival of the new weapons 'frees up' older weapons to be used for this purpose.

Third, it is possible that the *threat alone* posed by these weapons might allow their possessors to commit human rights violations. Repressive, authoritarian governments usually have a well-armed military and internal security force which act as a deterrent to political opposition and allow human rights violations such as torture, illegal detention and denial of free speech to go on unchecked.

Fourth, there is the possibility that by permitting (or encouraging) arms exports to states with poor human rights records, the UK risks being seen as offering tacit approval of their actions. After all, one does not sell weapons to one's enemies. Diplomatically, weapons sales usually indicate friendly relations. Consequently, the state purchasing these arms might not take seriously any international pressure to improve its human rights record.

However, since causation is much more difficult to show in respect of the latter two possibilities I will not consider them in what follows.

In order to show that the UK makes a causal contribution to human rights violations it is necessary to show causal dependence between the UK's actions and each step in the chain. I start with the UK's licensing of arms exports before moving on to the UK's marketing of arms.

i. Licensing

Is the government's granting of a license a necessary link in the causal chain of events? For this to be the case on the *basic* counterfactual test it would have to be true that but for the license there would be no arms shipment; but for the arms shipment the perpetrators would not have weapons and but for the perpetrators having weapons there would be no human rights violations.

One objection to this analysis might take the form of the 'arms dealers defence': 'if we didn't do it, someone else would'. In other words if the UK did not license its companies to export arms, some other state would. Assuming this is true – which it almost certainly is – then according to the *basic* counterfactual test the UK does not causally contribute to human rights violations since it is not true that but for the UK's licensing of these exports there would not be an arms shipment – there would still be an arms shipment – it's just that it would be coming from another country. Thus the human rights violations would still occur – using weapons imported from other states.

Structurally, the 'arms dealer's defence' raises the same problem as the case of Suzy, Billy and the glass bottle – on the basic counterfactual test Suzy didn't cause the glass bottle to break because Billy would have broken it if she hadn't. Therefore, anyone who argues that the British government makes no causal contribution (on the grounds of the arm's dealer's defence) must, to be consistent, also argue that Suzy makes no causal contribution to the breaking of the glass bottle. This seems absurd and therefore we must reject the arms dealers defence and conclude that the UK in this case does make a causal contribution.²⁶⁸ Note that this is also the result that would obtain under David Lewis' *revised* counterfactual theory. On Lewis' revised theory the British government's granting of the license causally contributes to the human rights violations because but for the license being granted by the British government there would be no shipment of UK weapons; but for the shipment of UK weapons the perpetrators would not have this shipment of UK weapons; but for the perpetrators having the UK weapons they would not have

²⁶⁸ The 'arms dealer's defence' can also be applied to other links in the chain e.g. one could argue that if the perpetrators did not receive the weapons they could have found other weapons to commit the human rights violations. The objection can be countered in the exact same way.

committed the human rights violations in the way that they did, i.e. with the UK weapons. It is also worth pointing out that the UK government would make a causal contribution under the NESS test.²⁶⁹

Earlier I mentioned that it is possible that arms can be exported with the guarantee that they are not used in particular ways, e.g. the guarantee that the UK received that its arms exports to Indonesia would not be used in Aceh. However, even if such guarantees are given, and even if such guarantees are honoured, the risk exists that the delivery of new weapons ‘frees up’ other weapons that otherwise would not have been available and *these* are used to commit human rights violations. If this is the case then on the basic and revised counterfactual tests it is true to say that but for the delivery of the new weapons the older weapons could not have been used to commit human rights violations. Therefore, even if such guarantees are honoured, the UK makes a causal contribution to those violations. (Not that this will always be the case. For example, a state may have additional suppliers who do not seek such guarantees - in which case they will not be reliant on the UK’s new weapons ‘freeing up’ the older ones. Alternatively, the state may already have all the weapons they need for their repression). Again, the NESS test gives the same result.

ii. Marketing

Whether the marketing is a necessary link in the causal chain of events is more debatable - perhaps the targeted states would have purchased the weapons without them being actively marketed - perhaps not. Even those responsible for making the purchase might not be sure what the answer is to this question. Therefore, I set the issue of marketing aside.

To conclude then, the UK, through its licensing of arms exports, makes a causal contribution to human rights violations committed using those arms.

²⁶⁹ The ‘arms dealer’s defence’ can be understood in a different way - as the consequentialist claim that whether one deals arms or not is a matter of moral indifference since, either way, the consequences – in terms of human suffering – will be the same. For an interesting discussion of this version of the arms dealers defence see Glover, 1986.

Of course, showing that the UK makes a causal contribution to human rights violations is not sufficient to show that the UK is morally responsible for them. To show that we also need to determine whether the UK is at fault in its actions.

Fault

There are different ways in which the UK could be at fault in permitting arms exports that causally contribute to human rights violations. Earlier I discussed the four different levels of culpability: intent, knowledge, recklessness and negligence and I argued that even if the law rightly required specific levels of culpability for certain crimes, there was no reason to restrict moral responsibility to specific levels. Therefore it follows that the UK is morally responsible as an accomplice for the human rights violations if it licenses the exports with *any* level of culpability. But what would it entail for the UK to meet these varying levels of culpability? To meet the ‘intent’ condition, the UK must license the exports with the intention that the weapons sold will be used in human rights violations; this must be the purpose for which the license is granted. It would involve, for example, licensing arms sales to a state pursuing an aggressive war in an attempt to aid them in that war or licensing arms sales to a state pursuing a campaign of ethnic cleansing with the intention of aiding them in that endeavour. This is a high level of culpability. To meet the ‘knowledge’ condition is much easier, the British government must license the sales with the knowledge that they will be used to commit human rights violations; under the ‘knowledge’ standard it does not have to be the purpose for which the license is granted – it is perfectly sufficient for the ‘knowledge’ standard to be met that all the UK wanted was that UK arms companies profit from the deal. To meet the ‘recklessness’ condition it is sufficient that by licensing arms exports the UK creates an unreasonable risk that human rights violations will occur. Finally, to meet the ‘negligence’ condition the UK must *unintentionally* license arms exports that create an unreasonable risk of human rights violations occurring. That might occur if the British government did not properly consider the use to which the purchasing state might put the weapons. Obviously, the British government is more at fault for intentionally aiding a state to commit human rights violations than for

unintentionally creating a risk of human rights violations by failing to do proper research. However, whether the aiding is intentional or negligent, the UK is morally responsible for the results as an accomplice.

The Duty to Impose Arms Embargoes

If all people have human rights and if all states have a duty to avoid complicity in violating those rights then it follows from the above discussion that there is a derivative duty to impose arms embargoes wherever exports would create a certainty or an unreasonable risk of human rights violations occurring. What exactly would such a duty entail?

Obviously a state could not export arms with the intention or the knowledge that the arms would certainly be used to violate human rights. That much is straightforward. However, in many cases it will be unclear whether arms exports to a given state will causally contribute to human rights violations. In this case there is a duty to impose an embargo on that state if exports would create an ‘unreasonable risk’ of human rights violations occurring. But what constitutes an ‘unreasonable risk’?

The *risk* of a harm is the product of the *probability* it will occur and the *magnitude* of that harm. Thus, the risk of a very serious harm that has a low probability of occurring might be equivalent to the risk of a minor harm which has a very high probability of occurring. Whether a given risk is reasonable depends on the benefits that are to be gained by risking the harm. For example, a small but not insignificant risk of death is reasonable in the context of an operation to free someone from a miserable medical condition but is unreasonable in the context of a walk in the park.²⁷⁰

The possible benefits to be gained from exporting arms to a state are the capacity of that state to use the arms for legitimate purposes (e.g. national defence or policing), the profits to be gained by private companies and more intangible diplomatic gains. Any risk of harm must be weighed up in the context of these

²⁷⁰ Feinberg, 1984, 187-193.

benefits. Clearly, human rights violations are extremely serious harms and the probability of their occurrence is rarely insignificant.

It is clearly a difficult judgment therefore whether in any given case there is an unreasonable risk of human rights violations occurring. The exporting state will need to take into consideration various factors such as the political climate in the recipient state, its human rights record, any intelligence they have about why the weapons are desired and so on. Additionally, there are some specific issues to consider.

One is the issue of re-selling; the state the weapons are sold to might not be a high risk for committing human rights violations itself but might sell them on to a state that is. States are expected to commit to not selling the weapons on but in practical terms cannot be held to account if they do.

A further issue is that some weapons have a very long shelf-life. Indeed, some weapons are still in wide circulation that were manufactured in the 1960s or even earlier. At the time these were sold their sale might not have created an unreasonable risk of human rights violations occurring though they pose such a risk now. One could argue that given the nature of weapons one can never be sure that they do not pose an unreasonable risk of human rights violations and therefore that a state can never export them. I think a requirement for epistemic certainty takes things too far. Given that there are legitimate uses for weapons we need to make the best assessment possible of conditions existing at the time.

Finally, in order to avoid negligence, a state must ensure risk assessments are carried out for every arms export.

Therefore, to summarise, there is a duty to impose arms embargoes wherever exports would create a certainty or unreasonable risk of human rights violations occurring. Such a duty entails that exporting states conduct thorough risk assessments before any arms are exported and impose embargoes where there is a certainty or unreasonable risk of human rights violations occurring.

3. Other Cases of Economic Sanctions

As I argued above, Zohar's conception of 'clean hands' sanctions plausibly grounds a duty to impose arms embargoes; but can his account stretch to include embargoes of other goods or services? In this section I consider whether the duty to avoid complicity in human rights violations could require embargoes on the supply of goods and services other than arms. First, I consider which goods and services other than arms have the potential to causally contribute to human rights violations. Second, where human rights violations have taken place I consider what is required to hold the exporting state morally responsible for them as an accomplice. Third, I consider what a duty to sanction would entail if extended to goods and services other than arms. Finally, I consider the problems associated with extending a duty to sanction over a greater range of goods and services.

What Kind of Trade has the Potential to Causally Contribute to Human Rights Violations?

Some trade is more obviously problematic in this regard than others. To use Zohar's example, to sell oil to a state pursuing an aggressive war is obviously a problem. Oil is necessary to provide the fuel for tanks, planes and ships without which there wouldn't be a war. Similarly, selling uranium to a state attempting to build a nuclear bomb or selling certain chemicals to a state known to have carried out poison gas attacks is problematic. Both the uranium and the chemicals are necessary for the human rights violations. If a state wishes to explode a nuclear bomb or carry out poison gas attacks then the uranium and the chemicals are necessary to carry out those respective plans.

However, some goods are problematic in less obvious ways. Consider the computer equipment necessary to maintain databases to spy on the population or the construction equipment necessary to build a prison for political opponents. Even food is necessary for some wrongdoing; supplies of food would be essential for an army engaged in an aggressive war. Services too could be a necessary component of

some human rights violations. Consider, for example, contracts to provide specialist military or technical training.

Basically, any type of good or service at all has the potential to causally contribute to human rights violations. Therefore the clean hands conception of economic sanctions can in principal encompass all types of goods and services.

i. Causality

When does the UK causally contribute to human rights violations that have been brought about using goods and services exported from the UK? Since I have discussed the detail of this issue already for the case of arms exports I will only be brief here. Suffice it to say that by analogy with the case of arms exports there are (at least) two possible ways in which goods and services exported from the UK might causally contribute to human rights violations.

The first is through direct use: if it is the oil which UK companies exported that is being used to fuel the tanks in the aggressive war or the food which UK companies exported that is being used to feed the soldiers in this war then the UK has causally contributed to this aggressive war by permitting the exports. It is true that, unlike the case of arms, the UK government does not license every export. Nevertheless, it is within the UK's power to embargo any export and if it omits to do so then it causally contributes to the wrongdoing.²⁷¹

The second way the exports might causally contribute is indirectly by 'freeing up' other goods and services to be used in human rights violations that would otherwise not have been available. For example, the oil the UK supplies to the state might be delivered on the condition that it only be used for civilian purposes but this might 'free up' other oil supplies for use in the war effort that would not have been available otherwise. If the UK permits such exports then it causally contributes to the wrongdoing. However, in many situations it will not be the case

²⁷¹ Some might argue that an omission cannot be a cause. I believe that is wrong though I do not have the space to argue for my position here. However, even if it were conceded that omissions were not causes it would have little impact on the final conclusion. The fact remains that the UK companies (and hence UK citizens) are providing the goods and services that are causally contributing to human rights violations. Hence it can be argued that the UK has a duty to prevent its citizens violating human rights and hence a duty to impose an embargo on the goods.

that the supply of some goods for legitimate purposes 'frees up' more of those goods for illegitimate uses - in which case the UK will not make a causal contribution. For example, it is not always the case that the supply of oil to civilians frees up oil supplies for the war effort *that would not have been available otherwise*. There are (at least) two reasons for this.

First, the state might have the policy of directing its oil supplies to the war effort as a matter of priority. Thus it is never the case that oil being supplied to civilians 'frees up' oil supplies to be used in the war because the oil would never have been earmarked for civilian use in the first place.

Second, if the UK is the only oil supplier or all oil suppliers are making their oil deliveries conditional on civilian use then, assuming the state has no oil reserves and the civilian usage can be monitored, there is no oil to 'free up'. These issues would need to be taken into consideration if a state were considering making supply conditional on it being used for legitimate purposes.

Of course establishing that the UK makes a causal contribution in these cases is not sufficient to show that the UK is morally responsible. In order to show this we need to show that the UK was at fault in permitting the exports.

ii. Fault

The UK is obviously at fault if it allows these exports with the intention or knowledge that they will be used to commit human rights violations. When, though, can we say that the UK is reckless or negligent with respect to permitting such exports? As discussed above it will be necessary to conduct some kind of risk assessment to ensure that the exports do not create an unreasonable risk of human rights violations occurring. This will be considerably more difficult for some goods than others - just from an information collection point of view. Although there are organisations monitoring globally the use to which arms, uranium and certain chemicals are put there is nothing similar for construction equipment, computer equipment or food. In general, given the lack of available information, it will often be the case that a state genuinely does not know how the goods and services it exports are being used and, furthermore, has no realistic way of obtaining that

information. Thus for many goods and services it is unlikely that a state could be charged with being reckless or negligent in their export since in the absence of information it could not be said that they *knowingly* created an unreasonable risk and neither could it be said that a reasonably prudent person would not have exported the goods (at least in the case of goods that are ordinarily harmless, e.g. construction equipment, food etc.).

What are The Problems of Extending the Duty to Sanction to Other Goods?

Zohar himself points out the problem that might arise from preventing exports of oil: oil has both military and civilian uses. Terminating the supply of oil would avoid complicity in an aggressive war and save the lives of many innocent people in the aggressed-upon state. However, what if the oil was necessary to heat homes during the winter and the civilian population would freeze to death without it?

The duty to impose the oil embargo is derivative on the duty to not violate human rights. If the oil embargo itself would lead to human rights violations by causing people to freeze to death then it seems that instead of there being a duty to embargo there is rather a duty to continue trading. However, continuing to trade would render us complicit in the aggressive war and the deaths of many innocent people. Hence, we are pulled in two directions: on the one hand we should avoid supplying the oil so as to avoid complicity in aggressive war and on the other hand we should continue supplying the oil so as to avoid directly harming (as principal) the civilians who cannot heat their homes in the winter. It seems that one is forced to choose to either harm as principal or harm as accomplice. Perhaps one could argue that it is worse to harm as a principal than as an accomplice and therefore one should continue to supply the oil. However, I doubt that this would be a fruitful line of argument. Perhaps the only reasonable thing to do would be to undertake whichever course of action – embargoing or continuing to supply – that was expected to cause the least harm, i.e. follow the course of action which harms the least number of people.

Such dilemmas will occur frequently when the goods or services supplied are capable of causally contributing to human rights violations but nonetheless have essential and legitimate uses. Arms embargoes rarely face this dilemma since the refusal to deliver arms rarely causes human rights violations.²⁷²

Conclusion

In circumstances where ongoing trade would render a state complicit in international wrongdoing the ‘clean hands’ conception of economic sanctions supplies plausible grounds for a moral duty on the part of states to impose economic sanctions. However, this duty is not absolute and may be over-ridden in the face of competing moral considerations.

²⁷² However, this is not always the case. One could imagine a police force that cannot properly defend the civilian population because they are not armed. Or a repressive state which is attacked in an unjust war and is unable to defend itself.

Conclusion

In this thesis I considered whether economic sanctions could be justified on four different grounds: other-defence (of a sender's own citizens and, in the case of humanitarian intervention, of other citizens), on the grounds of lesser evil, just punishment and clean hands. Each justification provides its own framework for the ethical assessment of economic sanctions – its own set of necessary and sufficient conditions or 'rules of thumb' for justified cases of economic sanctions. Hence this thesis does not conclude with one set of overarching principles for the ethical use of economic sanctions comparable to the just war principles.

How, then, do the five frameworks presented here fit together? I consider them to be mutually complementary. Whether the framework is 'right' or not for a particular case of economic sanctions will depend on the context in which the economic sanction is being imposed. Is the economic sanction to be used to defend the rights of a sender's citizens or others (humanitarian intervention)? If so, then the grounds for justification will be other defence or, if collective sanctions are to be used, the grounds of lesser evil. If the economic sanctions are intended as punishment then the grounds of justification will be just punishment. If the economic sanctions are intended to avoid complicity in evil then their 'justification' is to keep clean hands.

Of course in actual cases of economic sanctions it will often be unclear what their objectives are or how exactly they are intended to work. For example, are they intended to change an objectionable policy or are they really intended as retributive punishment? Further, are the economic sanctions intended to work by coercing the ordinary population or are they intended to end the objectionable policy directly by damaging the economy to such an extent that a state does not have the funds to pursue ambitious military endeavours? This issue obviously causes problems but it is, in the end, no different to the situation of war where the intentions of political leaders are also often opaque. In such circumstances we can only assess the evidence available to us and draw the best conclusion we can about these matters.

To recap, then, I argued the following. Economic sanctions can be justified on the grounds of other-defence when the following necessary and sufficient

conditions are met: the unjust attack condition, the necessity condition, the proportionality condition and the liability condition. Indirect collective sanctions, by their very nature, cannot ever be morally justified on the grounds of other-defence as they cannot ever satisfy the liability condition. Direct collective sanctions satisfy the liability condition if the innocent population is properly provided for and thus can meet the necessary conditions for morally justified self-defence. Targeted sanctions, by contrast, (both direct and indirect) will more easily be able to meet the necessary conditions for justified self-defence. Whether they in fact do in particular circumstances would require an analysis of those particular circumstances.

Humanitarian intervention by means of economic sanctions is morally permissible because senders have the right to defend the human rights of any citizen so long as, as in the case of other-defence, the unjust attack condition, the necessity condition, the proportionality condition and the liability condition are all met. Again then, the use of indirect collective sanctions are ruled out as a means of humanitarian intervention. Further, I argued that the most prominent arguments against humanitarian intervention apply either not at all or with significantly less force to the case of economic sanctions and are easily overcome.

For economic sanctions to be justified on the grounds of just punishment requires an executive authority that could judge and execute its judgments impartially. Currently, there is no such impartial executive authority. Hence, currently, a practice of international punishment by means of economic sanctions cannot be morally justified.

Direct collective sanctions are extremely unlikely to be justified as the lesser evil. However, indirect collective economic sanctions are likely to be justified on the grounds that they are the lesser evil if it is reasonable to believe that:

- There is a significant probability that the target's objectionable policy, if allowed to continue, would have truly terrible consequences.
- The economic sanctions have a reasonable probability of succeeding.
- Other non-violent means (e.g. diplomatic sanctions, targeted economic sanctions and so on) have either been tried and have failed or it is reasonably believed that they will have a negligible chance of succeeding if imposed.

- The economic sanctions are not so severe that they will kill people, e.g. through starvation. (Generally, the less harm done by the sanctions the more likely they are to be justified on the grounds that they are the lesser evil).
- Military action does not have a significantly higher probability of success or would kill a large number of innocent people.

In circumstances where ongoing trade would render a state complicit in international wrongdoing the 'clean hands' conception of economic sanctions supplies plausible grounds for a moral duty on the part of states to impose economic sanctions. However, this duty is not absolute and may be over-ridden in the face of competing moral considerations.

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