The Ethics of Economic Sanctions: Why Just War Theory is Not the Answer

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Abstract

On 24 December 2017, the UN Security Council imposed its toughest sanctions yet on North Korea. The measures, intended to thwart nuclear ambitions, are some of the most extensive sanctions imposed in recent times. They place severe restrictions on the export of crude oil and refined petroleum to that state, ban the export of arms, dual use equipment, rocket fuel, natural gas, luxury goods and financial services, ban the import of coal, iron, gold, seafood and textiles from North Korea, and include asset freezes and travel bans for targeted individuals. Economic sanctions raise serious moral issues, not least because if properly enforced they can cause significant harm to their targets. How should we assess their moral permissibility? Several authors have pointed out analogies between economic sanctions and war and then applied the just war principles (just cause, proportionality, etc.) to the problem. This approach has faced little critical scrutiny. I argue that the straightforward application of just war principles to sanctions is misguided. There is a significant difference between war and economic sanctions: war is constituted by bombing, shooting or stabbing but economic sanctions are constituted by refusing to trade. While there is a strong pro tanto duty to not bomb, shoot or stab individuals, there is no comparable pro tanto duty to trade. That does not mean sanctions are always morally permissible, only that the moral issues involved are very different. We have no reason to believe that moral principles developed to govern war are also appropriate for governing sanctions. This approach to the ethics of economic sanctions ought to be abandoned.

Keywords Ethics of economic sanctions · Economic sanctions · Just war theory · Duty to trade

On 24 December 2017, the United Nations Security Council imposed its toughest sanctions yet on North Korea. The measures, intended to thwart that state's nuclear

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ambitions, include drastic restrictions on the amount of crude oil and refined petroleum that may be sold to North Korea and a requirement that North Korean nationals working abroad be repatriated. This comes on top of existing measures which banned sales of arms, dual use equipment, rocket fuel, natural gas, luxury goods and financial services to North Korea, and banned the import of coal, iron, gold, seafood and textiles from North Korea. In addition, some North Korean individuals have been specifically targeted by asset freezes and travel bans.¹ Several states, including the United States, Japan and South Korea, have gone further and unilaterally imposed sanctions which go above and beyond the UN measures. These are some of the most extensive economic sanctions imposed in recent times.

Economic sanctions raise serious moral questions. If properly enforced, they have the potential to cause significant harm to the people of the target state. As an indication, it has been estimated that the economic sanctions imposed on Iraq in the 1990s—also intended to thwart nuclear ambitions—led to the deaths of 500,000 children aged under five.² When it comes to the moral assessment of sanctions, several authors have pointed out analogies between economic sanctions and war and applied the just war principles (just cause, proportionality, discrimination etc.) to the problem.³ To date, this approach to the ethics of economic sanctions has faced little critical scrutiny. In this paper I argue that the straightforward application of just war principles to economic sanctions is misguided. There is a significant difference between war and economic sanctions: war is constituted by bombing, shooting or stabbing but economic sanctions are constituted by refusing to trade. While there is a strong pro tanto duty to not bomb, shoot or stab individuals, there is no comparable pro tanto duty to trade. That does not mean sanctions are always morally permissible, only that the moral issues involved are very different. Hence we have no reason to believe that moral principles developed to govern war are also appropriate for

¹ See <https://www.un.org/sc/suborg/en/sanctions/1718>. Last accessed 13 September 2018.

² Gordon, Joy, *Invisible War*, (Harvard University Press, 2010), p37. This figure is disputed but even the most modest estimates are in the tens of thousands.

³ Early, Bryan R. & Schulzke, Marcus. 2019. "Still Unjust, Just in Different Ways: How Targeted Sanctions Fall Short of Just War Theory's Principles". *International Studies Review*. 21: 57–80; Amstutz, Mark. 2013, *International Ethics: concepts, theories, and cases in global politics*. 4th ed. Lanham, Rowman & Littlefield Publishers Inc., Gordon, Joy. 2010. pp. 216–219; Gordon, Joy. 1996. "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions". *Ethics and International Affairs* 13: 123–142; Winkler, Adam. 1999. "Just Sanctions", *Human Rights Quarterly* 21: 133–155.; Pierce, Albert C. 1996. "Just War Principles and Economic Sanctions", *Ethics and International Affairs* 10: 99–113.

governing economic sanctions.⁴ This approach to the ethics of economic sanctions ought to be abandoned.

I start in section one by providing some background on the nature of economic sanctions. In section two I explain how the just war principles have been used in moral assessments of economic sanctions. In section three I consider and reject a property rights-based objection to use of the just war principles. In section four I consider Drew Christiansen and Gerard Powers's objection to the use of the just war principles. Whilst their view has some merit, I argue that they do not go far enough in their objection and I also reject the revised principles that they offer. In section five I introduce my own objection to the use of the just war principles. Using three examples I show how crucial differences between war and economic sanctions render the just war principles inappropriate for use in the moral assessment of economic sanctions.

Economic Sanctions

For the purposes of this paper, 'economic sanctions' are 'the deliberate withdrawal of customary trade or financial relations'⁵ ordered by a state, supra-national or international governmental organization (the 'sender') from any state, sub-state group,

⁴ Just war theory is not the only framework that has been used to assess the moral permissibility of economic sanctions. Particularly popular in recent years have been human rights approaches, particularly those with a focus on due process issues, e.g. Biersteker, Thomas J. 2010. "Targeted sanctions and individual human rights." *International Journal* 65: 99–117; Eckert, Sue E. and Biersteker, Thomas J. 2012. "Due Process and Targeted Sanctions: An Update to the Watson Report", Providence, RI: Watson Institute for International Studies, Brown University; Heupel, Monika. 2009. "Multilateral Sanctions against Terror Suspects and the Violation of Due Process Standards", in *International Affairs* 85: 307–321; Bianchi, Andrea. 2007. "Assessing the Effectiveness of the UN Security Council's Anti-terrorism Measures: The Quest for Legitimacy and Cohesion" in *European Journal of International Law* 17: 881–919; Porretto, Gabriele. 2008. "The European Union, Counter-Terrorism Sanctions against Individuals and Human Rights", in M. Gani and P. Matthew (eds.), *Fresh Perspectives on the War on Terror*, ANU E Press. The rise in human rights and due process concerns mirrors a shift away from the collective trade sanctions of the 1990s (to which just war theory is *prima facie* more applicable) to the financial sanctions targeted at individuals which are more common today. However, even if the just war framework is less popular there is still good reason to refute it. First, broader trade sanctions appear to be making a comeback – North Korea is just one example. Idriss Jazairy makes this point in his recent paper. See Jazairy, Idriss. 2019. "Unilateral Economic Sanctions, International Law, and Human Rights", *Ethics & International Affairs* 33.3: 291–302. Faced with broader sanctions once again, theorists may well turn again to the older just war approach to assess their moral permissibility. Second, just war theory is still in current use as a tool of moral assessment (even if less often than alternative approaches). Third, the critique of the just war approach contains insights into the nature of economic sanctions that are interesting and worthwhile in themselves.

For more alternative approaches to the ethics of economic sanctions see thorough treatments by Fabre, Cecile, *Economic statecraft: Human rights, sanctions, and conditionality*. (Harvard University Press, 2018) and Pattison, James, *The alternatives to war: from sanctions to nonviolence*. (Oxford University Press, 2018). Although neither uses just war theory to analyse the ethics of economic sanctions, they do not properly explain why.

⁵ Hufbauer et al. 2007. *Economic Sanctions Reconsidered*. 3rd ed. Washington: Peterson Institute for International Economics, 3.

organization or individual (the ‘target’) with the aim of changing some actual or threatened political policy or behaviour of that target.

To this it might immediately be objected that not all economic sanctions have the aim of changing actual or threatened political policies or behaviour; they might, for instance, be aimed at expressing disapproval or at imposing retributive punishment.⁶ This may be so. However, the authors who apply the just war principles to economic sanctions focus specifically on sanctions which *do* have the aim of changing objectionable political policies or behaviour. Therefore, I limit my analysis to such types of economic sanctions.

My definition should also make it clear that economic sanctions (in my sense) are not simply the withdrawal of trade; they are the withdrawal of trade *with particular aims*. A state may order a withdrawal of trade for many reasons and with many aims. State A may suspect that state B’s beef exports are infected with mad cow disease and hence refuse to import beef from that state. This is the withdrawal of trade for health reasons. It is not an economic sanction. Similarly, imagine that state A has invested funds in state B which has a banking system that is no longer considered stable. State A may order the withdrawal of the funds out of concern for their security. This is not an economic sanction. To be an economic sanction (in my sense), the withdrawal of trade must have the aim of changing some actual or threatened political policy or behaviour of the target.

There are—broadly speaking—two mechanisms by which a sender may use economic sanctions to change the behaviour of a target: the direct mechanism and the indirect mechanism.⁷

‘Direct’ economic sanctions seek to change the objectionable behaviour directly by denying a target the resources it needs to pursue it. For example, if a state’s objectionable behaviour is its rapid militarization and aggressive stance towards its neighbours; direct economic sanctions could take the form of the refusal to supply arms, military aid, military technology, oil, loans, or any other resources that could facilitate militarization.

‘Indirect’ economic sanctions by contrast seek to pressure the target into changing the objectionable behaviour *themselves*. Indirect sanctions are imposed with an explicit or implicit proposal: ‘change your objectionable behaviour, and we will lift the sanctions’. The sender hopes that the target will perform a cost/benefit analysis and decide that it is better to comply with the wishes of the sender than to continue the objectionable behaviour. Where the target is a state, both its citizens and its government come under pressure to change the objectionable policy. For target-state *citizens*, economic sanctions attach new costs to any continued support of (or acquiescence to) the target government’s objectionable policy. Each target-state citizen must assess whether the net benefits of continuing to support/acquiesce to the objectionable policy outweigh the net benefits of withdrawing their support or actively

⁶ Baldwin, David A. 1985. *Economic Statecraft*. Princeton, New Jersey: Princeton University Press.; Nossal, Kim Richard. 1989. “International Sanctions as International Punishment”, *International Organizations* 43 (2): 301–322.

⁷ I borrow the terminology of ‘direct’ and ‘indirect’ sanctions from Gordon 1996, 123.

protesting against it. The sender hopes they will conclude that withdrawing their support or active protest is their best option and that this will cause the government to change its policy or behaviour to avoid the risk of losing power. Economic sanctions, then, aim to turn the citizens of target states into the sender's agents—citizens are pressured into demanding that their government fulfil the sender's wishes rather than their own. If the strategy succeeds, they are effectively 'conscripted' to the sender's cause. The target *government*, on the other hand, must assess whether the net benefits of continuing the objectionable policy in the face of economic hardship, protest and the risk of losing power, outweigh the net benefits of abandoning it. Again, the sender hopes the target government will decide its best option is to abandon the objectionable policy.

Indirect economic sanctions can take many forms. Comprehensive economic sanctions (the refusal to buy/sell any goods/services) may operate with an indirect mechanism: the aim would be to harm the economy as a means of pressurizing citizens and/or the government to change an objectionable policy. Withdrawing trade in certain commodities, e.g. oil, timber or even luxury goods, can do similar work. Likewise, freezing government officials' assets can pressure them to change policies.

A final distinction between what I will call 'collective' economic sanctions and what are known as 'targeted' or 'smart' economic sanctions is worth making. Collective economic sanctions are those which aim to harm a state's economy as a whole. Collective sanctions harm everyone within the state who engages in that economy in however limited a capacity. Targeted economic sanctions are targeted more narrowly, e.g. at military supplies or the personal assets of government officials.⁸

Economic Sanctions and Just War Principles

In this section I explain how theorists Early and Schulzke, Amstutz, Gordon, Winkler and Pierce apply the just war principles to economic sanctions.⁹ Note that Gordon applies the just war principles only to comprehensive sanctions; Early and Schulzke only to targeted sanctions (though they clearly believe just war principles apply to all types of economic sanctions); other writers apply them to *all types of economic sanctions*.

Just war theory is split into two parts: *jus ad bellum*, which sets out the principles that must be followed for the resort to war to be just and *jus in bello*, which sets out the principles that must be followed during war for it to be just. (A more

⁸ For the purposes of this paper I do not consider the issue of 'secondary' sanctions. Secondary sanctions are sanctions imposed by senders on third party actors in order to discourage them from trading with the sender's ultimate target. For example, the US has imposed primary sanctions on its ultimate target, Iran. It has also imposed secondary sanctions on non-US actors that trade with Iran. Secondary sanctions are commonly criticized for their perceived extra-territorial nature. Though secondary sanctions are undeniably worthy of moral enquiry, consideration of secondary sanctions would not change my conclusion that it is wrong to apply just war theory to sanctions. Therefore, for the sake of simplicity, I set them aside.

⁹ Early & Schulzke, 2019; Amstutz, 2013; Gordon, 2010, 1996; Pierce 1996; Winkler, 1999.

recent addition, *jus post bellum*, sets out the principles to be followed post-war but is largely ignored by those writers focusing on economic sanctions so I will not consider it here.)¹⁰ All of the writers use an orthodox interpretation of the just war principles and so it is an orthodox interpretation that I set out below, noting any departures they make. Note that the authors only discuss in detail the principles they think most interesting with regard to economic sanctions though they appear to believe that all the principles apply.¹¹

The six principles of *jus ad bellum* are applied to sanctions as follows:

1. *Just Cause*: In orthodox just war theory, just cause for war is limited to (1) defence against aggression (actual or imminent), and (2) humanitarian intervention in extreme cases. Winkler is broadly orthodox on this point though he allows that *being sanctioned* is also a just cause for sanctions.¹² Amstutz also appears broadly in line, stating that just cause can involve ‘promoting peace among states, but it can also involve promoting human dignity within states when regimes systematically abuse basic rights’.¹³ Likewise, Early and Schulzke argue that ‘we should expect [sanctions] to conform to the same standards as military force...if sanctions are permissible then it is only when they are used defensively against aggressors’.¹⁴
2. *Proportionality*: As for war, the harm that will foreseeably be caused by the economic sanctions must not be disproportionate to the good of achieving the just cause.¹⁵

¹⁰ An exception is Early & Schulzke who do consider *jus post bellum* albeit only briefly, noting that *jus post bellum* has no agreed upon principles and more research is required here, p. 73–74.

¹¹ Early & Schulzke and Amstutz discuss all the just war principles. The other writers discuss only those just war principles they believe particularly interesting with regards to economic sanctions. Gordon discusses only the principle of discrimination. Winkler discusses the principles of discrimination, just cause and right intention. Pierce discusses the principle of discrimination, proportionality and the probability of success. Winkler and Pierce are explicit that all the principles of just war theory apply to economic sanctions, even though they are not discussing them all. According to Winkler: ‘the author has omitted discussion of these additional requirements of *jus ad bellum* not because they are unimportant, but because they translate to sanctions either in obvious ways or without significant modification’ (n48 p141). According to Pierce: ‘while all seven [principles of *jus ad bellum*] can be applied to the sanctions issue, the focus here will be on two of them’ (p105). Gordon (1996, p123–4) is a little more circumspect but she certainly *implies* that the other just war principles apply to economic sanctions. In what follows I describe the orthodox just war principles as generally accepted because it is reasonable to believe these authors have these orthodox principles in mind even though they do not discuss them (given their orthodox interpretation of the principles they *do* discuss and the fact that they cite orthodox writers in this respect, e.g. Walzer, Michael. 2006. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th edition. New York: Basic Books. Finally, note that the authors intend their just war analyses to apply to both unilateral and multilateral (e.g. United Nations) economic sanctions.

¹² Winkler 141–142.

¹³ Amstutz, 216.

¹⁴ Early & Schulzke, pp 70–71.

¹⁵ Pierce is broadly in line with this view. For example he cites the US Catholic bishops: ‘proportionality [in *jus ad bellum*] means that the damage to be inflicted and the costs incurred must be proportionate to the good expected by taking up arms’. Catholic Bishops, *Challenge of Peace*, 28–31. Quoted in Pierce, 105. Likewise, Amstutz states that ‘the good intended from sanctions must be proportional to the harm inflicted on the target state’ (Amstutz, 217). For Early and Schulzke, the proportionality principle ‘[urges] us to weigh costs and benefits of any type of coercive policy’ (Early & Schulzke, 59).

3. *Right Intention*: As for war, the intention of the sender must be to achieve the just cause.¹⁶
4. *Legitimate Authority*: As for war, the decision to impose economic sanctions must be made by a legitimate authority. In orthodox just war theory there is a presumption that the governments of all states are legitimate authorities. Interestingly, Amstutz states that this condition does not apply to economic sanctions (I take this point up in section five).¹⁷
5. *'Penultimate' Resort*: There is a requirement in just war theory that war be the *last resort*. Obviously, economic sanctions cannot also be the 'last resort'. Amstutz requires that sanctions are preceded by 'less coercive instruments'.¹⁸
6. *Reasonable Chance of Success*: As for war, there must be a reasonable prospect that the economic sanctions will achieve their objectives.¹⁹

Jus in bello, recall, sets out the principles that must be followed during war. According to the *in bello* principles, individual acts of war must be necessary, discriminate and proportionate. However, in the case of economic sanctions there are not discrete episodes of sanctioning within a period of economic sanctions that are akin to individual acts of war (which is not to say that sanctions cannot be 'tweaked' once imposed). This is probably why writers on economic sanctions ignore the *in bello* requirements of necessity and proportionality altogether.²⁰ They *do* consider the *in bello* principle of discrimination. However, they treat the principle of discrimination as an *ad bellum* principle (something to be considered *before* sanctions are imposed). This is presumably because it is—to some extent—foreseeable that certain sanctions will harm innocent people, even before they are imposed. For example, it is reasonably foreseeable prior to imposition that collective sanctions will harm anyone who engages in a target state's economy to some degree.

1. *Discrimination*: Attackers are required to distinguish between two classes of people in war: combatants and non-combatants. According to this principle, combatants may be directly attacked but non-combatants may not (though it may be permissible to harm non-combatants as an unintended side effect of an attack on combatants under the doctrine of double effect).

¹⁶ Amstutz and Winkler are in line with orthodox theory here. Amstutz states that 'sanctions are legitimate only if they are imposed to promote just structures and policies. Sanctions are not justified to increase national power or extend economic influence.' (Amstutz, 216). Winkler states that sanctions must be 'designed to restore peace' (Winkler, 144). For Early & Schulzke, right intent 'requires that the reason for fighting be consistent with a just cause' (Early and Schulzke, 72).

¹⁷ Winkler and Pierce refer to a 'competent authority' rather than a 'legitimate authority' but they mean the same thing.

¹⁸ Amstutz, 217. Early and Schulzke consider the principle of last resort at length but their focus is on undermining arguments to the effect that economic sanctions are justified because they are a means of avoiding war. Therefore, their comments are not directly relevant here.

¹⁹ Pierce is in line with this view. See Pierce, 108–110. Also Early & Schulzke, 67–68.

²⁰ Early & Schulzke are the only ones explicit about this – see p.59.

With regard to economic sanctions, the distinction is usually not drawn between combatants and non-combatants as this may not be relevant. Instead, Pierce argues that it is those who are causally responsible for the objectionable policy who may be directly targeted by economic sanctions²¹, Winkler argues it is those who ‘plan and carry out’ the policy²² and for Amstutz it is ‘the government and the elites who support it’.²³ Gordon is less clear about who may be directly targeted but she is clear who she thinks may not: ‘those who are least able to defend themselves, who present the least military threat, who have the least input into policy and military decisions, and who are the most vulnerable’.²⁴ Early and Schulzke are a little vague, referring at times to ‘civilians’, ‘innocent populations’, and ‘average citizens’ throughout.

The result is seven necessary and jointly sufficient conditions for morally permissible use of economic sanctions. If any one of these conditions is not met, the economic sanctions are not morally permissible.

All of the writers agree that collective economic sanctions are necessarily morally impermissible because they do not discriminate between those who may be targeted directly and those who may not.²⁵ However, they accept that targeted sanctions may sometimes meet the just war criteria and are morally permissible in those circumstances. Though note that Early and Schulzke, unlike the other writers, are very pessimistic about any given targeted sanctions episodes actually meeting the criteria.

In section five I will explain why I object to the use of the just war principles as described. Before that, I consider and reject two other objections.

The Property Rights Objection

When presenting my work, it is often suggested to me that economic sanctions do not require any moral justification because there is no duty to trade. On this view, economic sanctions are *always* morally permissible and are not subject to any restraining moral principles—including the just war principles. To the best of my knowledge, no one defends this argument in print. However, I want to consider the argument in some detail—partly because it is so common, partly because I believe it is wrong, but mostly because I believe it contains a crucial insight. For that reason I hope I will not be accused of attacking a straw man.

Let us start by acknowledging that war and economic sanctions are very different things. War paradigmatically involves shooting, bombing, stabbing and so on—all acts which are ordinarily considered wrong and which call for strong moral

²¹ Pierce, 1996, 102.

²² Winkler, 1999, 149.

²³ Amstutz, 2013, 217.

²⁴ Gordon, 1996, 125.

²⁵ Gordon and Winkler explicitly follow Walzer’s thinking on sieges and blockades here (to which they liken economic sanctions). Walzer acknowledges that such tactics are permitted by international law but nevertheless condemns them on the grounds they are indiscriminate. He argues that in a siege or blockade the harm is targeted at combatants and non-combatants alike—no effort is made to aim at combatants specifically or to aim *away* from non-combatants. See Walzer, 2006.

justification. It is uncontroversial to say that there are pro tanto duties to not shoot, bomb or stab anyone. Economic sanctions, on the other hand, involve the refusal to buy or sell goods and services, acts which are not ordinarily considered wrong and which, on the face of it, do not call for moral justification.²⁶ There is, arguably, no pro tanto duty to trade or engage in financial relationships with anyone. If I walk past a shop or a bank without buying anything, there is no need for me to justify my actions. If I decide to stop shopping at one supermarket and start shopping at another, there is no need for me to justify my actions. These are the kind of considerations that, from the conversations I have had, seem to lead people to the claim that there is no duty to trade and that economic sanctions are always morally permissible. In what follows I have attempted to construct a more formal version of this argument.

- P1. Individuals have property rights over certain goods/money (henceforth ‘their goods’). These property rights include the absolute²⁷ right to transfer (or not transfer) ownership of their goods.
- P2. If an individual has the absolute right to transfer (or not transfer) ownership of their goods then an individual has the right to:
 - (a) Refuse to transfer ownership of their goods for any reason at all and with any aim,
 - (b) Propose the transfer of ownership under any terms and conditions she sees fit.
- P3. States, like individuals, have these same property rights.
- P4. Economic sanctions are the state-ordered withdrawal of trade, i.e. the state-ordered refusal to transfer ownership of goods to a target (with the aim of changing the actual or threatened political policy or behaviour of the target).
- C. States have the right to order this. Economic sanctions are always morally permissible. Any moral framework that places constraints on the use of economic sanctions (such as the just war principles) is misguided.

As it stands, this argument is invalid. If individuals have an absolute right to transfer ownership of their property as they see fit, then economic sanctions are almost always *morally wrong*. Economic sanctions involve a state placing legal restrictions on their own citizens’ ability to trade with whomever they choose. This, of course, is a violation of their absolute property rights and therefore morally impermissible. For the most part then, this argument would actually prove the converse of what its proponents intend. (The only exception to this is the case of *state-owned* property.)

²⁶ Note that I assume throughout this paper that the economic sanctions in question are not being enforced by military means.

²⁷ P1 states that individuals have the *absolute* right to transfer or not transfer their goods. To conclude that economic sanctions are *always* morally permissible, then this right *can only* be understood as an absolute right; that is, a right that exists in all circumstances and overrides any other moral consideration.

However, we should not give up on the argument too quickly. Imagine a scenario where the citizens of the sender state are supportive of the economic sanctions and consent to their imposition. Here the state merely plays an organizational role in the sanctions. The economic sanctions do not violate citizens' absolute property rights but rather facilitates them. Premises three and four could be adjusted as follows:

- P3*. If an individual has the absolute right to transfer (or not transfer) ownership of her goods then as part of a collective of consenting individuals (organized by the state), that individual also has the absolute right to transfer (or not transfer) ownership of her goods. She has the right to:
 - (a) Refuse to transfer ownership of their goods for any reason at all and with any aim.
 - (b) Propose the transfer of ownership of their goods under any terms and conditions she sees fit.
- P4*. Economic sanctions are the state-organized withdrawal of trade, i.e. the refusal of many individuals—organized as a collective—to transfer ownership of goods to a target (with the aim of changing the actual or threatened political policy or behaviour of the target).
- C*. The citizens of the state (acting together) each have the absolute right to do this. Economic sanctions are always morally permissible. Any moral framework that places constraints on the use of economic sanctions (such as the just war principles) is misguided.

This variation of the argument seems valid and I will accept P4* for the sake of argument. However, there are problems with P1, P2 and P3*.

P1 states that individuals have the *absolute* right to transfer or not transfer their goods. To conclude that economic sanctions are *always* morally permissible, then this right *can only* be understood as an absolute right; that is, a right that exists in all circumstances and over-rides any other moral consideration. However, *absolute* property rights are clearly implausible. For example, it is clearly not morally permissible to sell your gun to someone you know is planning a murder. Likewise, if you own the only water source in a desert, it is not morally permissible to refuse to sell water to someone dying of thirst. Other moral considerations outweigh the right to refuse to transfer ownership in this case. Even libertarians like Nozick do not think that property rights are absolute. In the desert case, Nozick argues by reference to the Lockean proviso that the 'owner' of the water source must sell water and cannot charge any price he likes for it.²⁸

P2 invokes the highly intuitive idea that if one has the right to not buy/sell X at all, then one has the right to (a) refuse to buy/sell X for any reason and with any aim,

²⁸ Nozick, Robert. 2008. *Anarchy, State & Utopia*. Oxford: Blackwells Publishing, 180.

(b) to propose to buy/sell X with any terms and conditions one sees fit. However intuitive this idea, it is false.

For the sake of argument, let us accept that I have the right to not sell my car at all. It does not follow that, *once I decide to sell my car*, I can refuse to sell my car to whomever I like for any reason. For example, it is not morally permissible for me to refuse to sell my car to someone because she is black. Concern for equality and respect for persons outweighs the concern for property rights.

Finally, we should reject P3*. As a general proposition, it is not true that everything it would be morally permissible to do alone is morally permissible when done with others. One reason is that activities which cause little or no harm if carried out by an individual acting alone, cause serious harms if carried out by individuals acting together. Imagine I live in a small village cut off by snowfall for the winter. My enemy lives in this village and I refuse to sell him any of my food. Arguably, that is morally permissible. Now imagine I persuade everyone else in the village to refuse to sell him any of their food. My enemy starves to death. In this case, all our actions (i.e. refusals) were morally impermissible. P3* is therefore false.

Let us return now to the arguments that prompted this discussion. Recall: if I walk past a shop or a bank without buying anything, or if I switch supermarkets, there is no need to justify my actions. Arguably—unlike the cases above—these are cases where my property rights are *not* outweighed by any countervailing moral considerations. The shop or bank will surely continue in business without my patronage. Competitive markets, moreover, are arguably in the public interest: being free to exercise our property rights as we see fit allows good shops to flourish while poor shops are driven out of business. While this is bad news for the staff left unemployed and the shareholders who lose their investments, it is on the whole, a system which benefits all. In the case of economic sanctions, however, countervailing moral considerations *may* exist.

The view is flawed then: economic sanctions are not always a morally permissible exercise of property rights. Nevertheless, this argument contains a crucial insight: economic sanctions are constituted by ‘not trading’ and so are very different from war which is constituted by shooting, bombing and so on. Therefore, the moral considerations relevant to economic sanctions are different from the moral considerations relevant to war. I take this point up again in section five.

Christiansen and Power’s Objection

Drew Christiansen and Gerard Powers focus specifically on comprehensive (i.e. collective) economic sanctions. As discussed, the just war principles rule out comprehensive sanctions because they violate the principle of discrimination. They challenge this conclusion and the use of the just war principles to reach it.

They argue that there are two significant differences between war and comprehensive economic sanctions:

1. Economic sanctions are imposed as an *alternative* to war, not as a *form* of war (sieges during war being a form of war). Their intent is to avoid war and its hor-

rors, rather than add to them. (Later in their paper they appear to acknowledge that, as a matter of fact, comprehensive economic sanctions can be imposed *without* the intent to avoid war. However, they make the intent to avoid war a necessary condition for just sanctions.)

2. Economic sanctions—if carefully designed and monitored—cause less harm than war.²⁹

For Christiansen and Powers, the intention to avoid war is laudable and any restraining principles we adopt should allow the imposition of comprehensive economic sanctions where their intent is to avoid war (and other conditions are met). In support they argue:

Another model for thinking about sanctions may be found in the distinction between basic rights and lesser rights and enjoyments. This may prove more useful than the just war principle of [discrimination] as a paradigm for economic sanctions. As long as the survival of the population is not put at risk and its health is not severely impaired, aspects of daily life might temporarily be degraded for the sake of restoring the [more basic] rights of others.³⁰

They conclude by offering their own moral framework which, while clearly influenced by the just war principles, has significant differences. According to their framework, economic sanctions are morally permissible if and only if:

(a) they are a response to a grave evil; (b) they are pursued as one part of a concerted diplomatic effort to avoid war and find a just resolution to the problem; (c) the sanctions avoid irreversible, grave harm to the civilian population of the target country; (d) less coercive means are pursued first; (e) the harmful effects of sanctions are proportionate to the good ends likely to be achieved; and (f) sanctions are imposed by a multilateral entity.³¹

Christiansen and Powers are right that there are significant differences between war and economic sanctions and right to question the use of the just war principles. However, their suggested revisions are problematic.

One problem is the way they conceptualize the effects of sanctions. They paint a picture of innocent individuals tightening their belts in the face of recession and unemployment, passively waiting for the time when the basic rights of others will be restored. But collective economic sanctions (at least indirect ones) do not work like this. They work (if and when they do work) by forcing innocents to actively protest against their government's policies. These innocents are used as a means to

²⁹ The other differences they note (that a population may consent to suffer the harms of sanctions but not the harms of war, and that a population may be considered morally responsible for the objectionable behaviour of their governments in the case of economic sanctions but not war) are implausible. Since they do not rely on them to reach their conclusion, I set them aside.

³⁰ Christiansen, Drew & Powers, Gerard, F. 'Economic Sanctions and Just War Doctrine', in Cortright and Lopez (eds.), *Economic Sanctions: Panacea or Peacebuilding?* (Oxford: Westview Press, 1995), 107.

³¹ Christiansen & Powers 1996, 107.

the sender's ends—effectively 'conscripted' to the sender's cause. In cases where governments are very repressive this exposes them to great risks. Therefore, there are wrongs done to innocents that are not fully captured by Christiansen and Power's claim that their lesser rights and enjoyments are being over-ridden. There is much more to be considered here before they can confidently dispense with the principle of discrimination.

However, the more serious problem with their view is that they do not go far enough in their revisions. In the next section I argue that there are many more differences between war and economic sanctions and that these demand we abandon the principles altogether.

My Objections to the Just War Principles

In this section I give three examples where some crucial differences between war and economic sanctions make the use of the just war principles inappropriate. To be clear, I do not believe these examples to be exhaustive. For reasons of space, I cannot consider them all.

Example One: Duty to Trade with the Enemy

The seven just war principles must *all* be satisfied for the resort to economic sanctions to be just. If even one condition is not satisfied then it is not morally permissible for a state to withdraw trade (or to order its citizens to withdraw trade) with the aim of changing the target's actual or threatened objectionable political policies or behaviour. They must continue to trade. This fact has some odd implications.

Imagine again the case where state A is engaged in rapid militarization and is making aggressive threats towards its neighbour, state B. Now imagine state B is considering stopping the sale of arms to state A and revoking military aid to state A. The aim would be to degrade state A's military capacity, making it less likely that A will attack. However, the plan is very unlikely to work: state A will likely acquire sufficient arms from elsewhere and maintain its military capacity. The just war 'reasonable chance of success' condition is not met. Therefore, it is not morally permissible for state B to impose sanctions on state A; state B must continue to sell arms to state A (or continue to allow its citizens to sell arms to state A) and must also continue to supply them with military aid. This conclusion is clearly absurd, yet it follows quite straightforwardly from the application of the just war principles.

This absurdity is most obvious in the case of arms, but it is also questionable whether one should be morally required to trade (or allow its citizens to trade) other goods and services in such a situation. After all, a strong economy facilitates militarization. Continuing to trade with the target appears to contribute to the threat against the sender.

Perhaps it is concerns such as this that have prevented international law taking a stronger stance on economic sanctions. As Lori Fisler Damrosch notes: if economic sanctions were found to violate international law, this would 'in effect...obligate

donors or trading partners to continue pre-existing aid and trading relations even with a state whose government had taken an unfriendly turn'.³² A conclusion that many would find absurd.

Of course one might object that there are cases where it is clearly *not* absurd. For example, one could imagine a case where state A is completely reliant on state B to provide it with food and innocents will starve if sanctions are imposed. To be clear, my claim is not that it is *always* absurd to obligate states to trade with the enemy; only that it *sometimes* is.

One might further object that even if state B is required to allow its citizens to continue to trade, its citizens will not do so given A's aggressive stance. I have two points to make here. First, it is *possible* that all citizens will refuse to trade in such circumstances but it is also possible that some will continue to trade. Not all citizens will prioritize national security over profits and not all citizens will concur with the judgement of their government—they might not regard A as such a threat. Second, even if we granted the fact that many citizens or companies would refuse to trade in such a situation, it remains absurd that state B is not morally permitted to legally prohibit them all from trading.

Finally, one might object that if economic sanctions are not morally permitted, this does not *necessarily* entail that the state is required to trade (or allow its citizens to trade). Strictly speaking this is true. I defined economic sanctions as:

'the deliberate withdrawal of customary trade or financial relations'³³ ordered by a state, supra-national or international governmental organization (the 'sender') from any state, sub-state group, organization or individual (the 'target') *with the aim of changing some actual or threatened political policy or behaviour of that target.*

The final italicized qualification is important. If economic sanctions are not morally permitted this entails it is not morally permitted for the state to deliberately withdraw customary trade or financial relations from the target *with the aim of changing some actual or threatened political policy or behaviour of that target.* So in our example, state B is not morally permitted to stop selling arms (or stop its citizens selling arms) with the aim of stopping or reducing A's aggression. It can, however, stop selling arms to A if it has other aims. For example, if state C had sudden need of weapons and offered a higher price than B, A could sell the weapons to C instead. This would be morally permitted as B would not be imposing an economic sanction on A, it would simply be making an ordinary commercial decision to sell to a higher bidder. I do not think that this makes things any less absurd. Surely it is absurd that B cannot refuse to sell the arms to A if its aim is to reduce the possibility of an unjust attack on itself but *can* refuse to sell arms to A if its aim is to get a higher price elsewhere?

³² Damrosch, Lori Fisler. 1994. "The Collective Enforcement of International Norms through Economic Sanctions." *Ethics and International Affairs* 8: 59–75, 34.

³³ Hufbauer et al. 2007, 3.

The requirement that all seven conditions must be met for the economic sanctions to be just stems from a presumption against war. War paradigmatically involves bombing, shooting and stabbing people—all acts that there are strong pro tanto duties to avoid and which call for strong moral justification. The presumption against war makes sense. Economic sanctions paradigmatically involve ‘not trading’ and it is much less clear that there should be a presumption against ‘not trading’. (This, recall, was the crucial insight of the property rights objection.) Indeed, sometimes it seems that the presumption should run the other way: requiring that strict justificatory criteria be met when trading arms for instance.

Example Two: Legitimate Authority

According to the just war principles, the decision to impose economic sanctions must be made by a legitimate authority. In orthodox just war theory, there is a presumption that the governments of all states are legitimate authorities.

The legitimate authority condition is particularly important for soldiers involved in fighting: as agents of a legitimate authority, their killings are legitimate acts of war. In the absence of a legitimate authority, their acts are simply murder (or, at best, a kind of vigilante justice).

The writers we have considered, with the exception of Amstutz, appear to believe that the legitimate authority condition also holds for economic sanctions.³⁴ But does this make sense? It would entail that private boycotts of a target state’s products by individuals, companies or other organizations were morally wrong. For example the boycott of South African products by individuals, companies and other organizations during apartheid, would be held morally wrong due to lack of legitimate authority. This conclusion is very counter-intuitive.

Again, the property rights objection sheds light on the issue. Killing is a pro tanto wrong—and one that is usually classed as murder in the absence of justification (such as being an act of war authorized by a legitimate authority). However, refusing to trade is not a pro tanto wrong. Refusing to buy or sell something is not ordinarily a crime. In the case of war, a legitimate authority is required to change the quality of the individual acts of killing from ordinarily wrongful and illegal to a morally and legally justified. In the case of refusing to trade, however, a legitimate authority is not so required.

It has been suggested to me that in the case of economic sanctions, the ‘legitimate authority’ might be the *owner of the property in question*, rather than the government.³⁵ This interesting suggestion would mean that all private boycotters have legitimate authority to refuse to trade their property—something that is intuitively plausible. However, it unclear where that leaves *governments*. If governments

³⁴ Amstutz, argues that the legitimate authority condition does not apply to economic sanctions, claiming that ‘because private actors can contribute significantly to a sanctions regime, the requirement that governments impose sanctions is unnecessary’ (Amstutz, 2013, 216). This is not convincing: just because private actors can contribute significantly to a sanctions regime, it doesn’t mean they should.

³⁵ Thanks to [removed for anonymous review] for this suggestion.

impose sanctions over *state-owned* goods and services it seems that they would have the legitimate authority to do so—being the owner of the property in question. However, if governments impose sanctions over privately owned goods and services, things get more complicated. As discussed in section three, there are two ways we can conceive of government-imposed economic sanctions. One way is to imagine economic sanctions as private boycotts writ large—all the citizens of a state voluntarily consent to take part and the state plays a merely organizational role. Conceptualized in this way, the agents imposing the sanctions are the citizens and they each have legitimate authority to do so. However, the other—more realistic—way of conceptualizing economic sanctions is to view the government as taking a coercive role: it imposes restrictions on its own citizen's ability to trade by force of law—their consent is irrelevant. In this second case the government is the agent imposing the sanctions. However, on the assumption that the legitimate authority is the owner of the property in question, the government does not have legitimate authority to do this. Hence such economic sanctions are unjust. It is clearly implausible, however, to state that economic sanctions imposed coercively through law—and against the will of some citizens—are necessarily unjust. Therefore, I reject the suggestion that the legitimate authority is the owner of the property in question.

There is much more that could be said here. Nevertheless, I hope this very brief discussion has at least shown that a straightforward application of the orthodox legitimate authority principle to economic sanctions is inappropriate.

Example Three: Just Cause and Preventive Sanctions

A state engages in preventive *war* when it resorts to the use of force to defend itself or others against a future attack that is not yet imminent. International law and orthodox just war theory rule out preventive war completely.³⁶ A state whose attack is not imminent has not yet committed the crime of aggression, i.e. they have not yet committed a wrong that would justify the lethal response of war. Hence there is no just cause.

The morality of preventive war is often explained via a domestic analogy with self-defence: a person can issue many threats to kill you but it is only when the gun is in her hand and aimed at you that you may justifiably shoot her in self-defence. Her attack on you must be *imminent* for your shooting of her to be morally justified.³⁷

In the case of preventive *economic sanctions*, however, the appropriate analogy is not shooting someone before she shoots you, it is refusing to sell her the gun she plans to shoot you with—at least in the case of arms sanctions. For other

³⁶ Of our writers, only Winkler discusses just cause in any depth and he states that 'under the principle of self-defence, states can resort to doing harm when faced with an actual or *imminent* infringement of state sovereignty' [my emphasis]. See Winkler, 142.

³⁷ For discussions of this argument by analogy with individual self defence see Buchanan, Allen, "Justifying Preventive War" and Rodin, David "The Problem of Prevention", both in Eds. Shue & Rodin, *Preemption* (Oxford: Oxford University Press, 2007).

sanction types the analogy might be: (1) refusing to lend her the money to buy the gun (financial sanctions—direct mechanism), (2) preventing her withdrawing the money she needs to buy the gun (asset freezes—direct mechanism), (3) refusing to trade some or all goods/services with her and her friends/family until she agrees to stop threatening you (indirect economic sanctions—including comprehensive sanctions). Intuitively, it seems to me that at least some of these actions are clearly unproblematic—even in cases where the attack is not imminent. Preventive sanctions might be morally permissible even where preventive war is not. To clarify, this is not to say that preventive sanctions are always morally permissible, my claim here is only that there is no reason to think that orthodox just war theory draws the right line between permissible and impermissible preventive sanctions: ‘not trading’ is very different to shooting, bombing, stabbing etc., and this needs to be taken into account when drawing any line.

At this point it might be tempting to think that we could just make some additional amendments to the just war principles to account for these three examples. We could alter the ‘just cause’ condition to allow for preventive economic sanctions in certain circumstances. We could remove or alter the ‘legitimate authority’ condition. We could also remove the ‘presumption against economic sanctions’ and say that the just war principles are not actually necessary and sufficient conditions for just economic sanctions but something more like guidelines. I do not think that this is the best way to proceed. First, the three examples here are only the tip of the iceberg. There are many more relevant differences between economic sanctions and war. Second, such an ad hoc approach could miss important issues.

Further, one might argue that I have not shown that the just war principles are inappropriate, I have only shown that *an orthodox interpretation* of the just war principles are inappropriate. It could be that there is some revisionist theory of just war—with an alternative interpretation of the principles—that does give us the ‘right answers’ for economic sanctions. Of course this is possible. However, if some set of revisionist just war principles gave ‘the right answers’ (in the sense they matched our intuitions about cases) then it would do so *purely by chance*. Revisionist just war principles—like orthodox principles—are supported by arguments about when it is morally permissible to bomb, shoot and stab people. If revisionist principles nevertheless somehow give the ‘right answer’ for sanctions, this would be due to luck rather than those principles being grounded in any facts about sanctions and their effects.

Conclusion

As I have shown, there are significant differences between war and economic sanctions. It is because of these differences that the just war principles do not provide a suitable moral framework for their analysis. I stress, however, that this does not mean economic sanctions are always morally permissible. This is obviously not true. Whether economic sanctions are morally permissible in any given

case will depend on the circumstances. There are alternative moral frameworks and alternative moral theories that can be—and are—brought to bear here. That is where theorists ought to direct their attention going forward. The just war approach to economic sanctions ought to be abandoned.

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