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Economic Sanctions, well-being, and the duty to trade

ABSTRACT: *In this paper I would argue that, in the context of the ethics of economic sanctions, there is a duty to trade, and that duty is grounded in the practical and instrumental indispensability of trading for well-being of the people of the states. I understand well-being as the optimal conditions for survival and self-realization that states must warrant to people. I will answer the arguments against a duty to trade, as well as the arguments for a duty not to trade in those cases where the parties to the trade are dictatorships. I will develop my argument based on the metaethical argument about deliberative indispensability in favor of moral facts, developed by David Enoch, and raise an analogy with practical indispensability. The way of states to promote well-being is by trading. If trade is essential for survival, states have a strong prima facie duty to trade. If trade is not essential for survival, but nonetheless it is important for well-being, then states have a weak prima facie duty to trade.*

KEYWORDS: *prima facie duties, survival, self-realization, indispensability, state.*

Introduction

In the context of political theory and the ethics of international relations and warfare, the issue of economic sanctions, their effects, their moral and political legitimacy and their effectiveness have been extensively discussed. From the normative point of view, all the answers given to these issues define approaches ranging from the immorality of such sanctions¹, to their moral enforceability², and intermediate positions such as their being an adequate, effective and morally acceptable means to avoid war³.

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1 Gordon 1999; 2011; Peksen 2009; Peksen 2019a.

2 Nili 2016.

3 Pattison 2018.

The ethical framework for these approaches is constituted by utilitarianism, deontology and just war theory. From a utilitarian standpoint, the core of the question lies in whether these sanctions promote the overall welfare. In this sense, the question of the effectiveness of economic sanctions should not be confused with their aptitude to generate better or worse states of affairs from the welfare point of view. In general, the outcomes of economic sanctions worsen the situation of the people's well-being of both sender and target countries, including their allies as well as their political situation⁴. With respect to just war theory, it has been convincingly argued in my view that economic sanctions do not meet the minimum standards of respect for the principles of both *ius ad bellum* and *ius in bello*. Comprehensive sanctions violate the principle of discrimination of *ius in bello*⁵, but also the principles of chance of success and proportionality of *ius ad bellum*⁶. Finally, from a deontological perspective, economic sanctions imply the instrumentalization of persons. In my opinion, this argument has a broader and more radical scope than the previous ones. Both comprehensive and targeted sanctions have an instrumentalizing effect on individuals and on the intermediate bodies (companies, institutions, etc.) of the societies affected by the sanctions. Considering all these points, how would it be possible to consider economic sanctions as ethically acceptable?

I think that, if the argument that there is no duty to trade is successful, then it will never be the case that economic sanctions are immoral. But, on the other hand, it seems highly counter-intuitive to think that there are no immoral economic sanctions.

The argument I shall present will be a general argument for the existence of a duty to trade. I think that this duty is *prima facie*. It is *prima facie* in the sense that we have a duty to trade unless we have a weightier duty not to trade. In what follows I will present the general argument for the non-existence of a duty to trade. I will rely on the argument developed by Elizabeth Ellis. I will then analyze Shmuel Nili's argument, which argues for a positive duty not to trade with dictatorships. Finally, I shall present an argument for a *prima facie* duty to trade.

My argument is that trade is instrumentally indispensable for well-being. By well-being I mean the conditions necessary both to survive and to live a good life. States have a duty to promote well-being to their people, and economic sanctions inhibit the fulfillment of this duty. As will become clear later, welfare must be understood in such a way that, although it is sufficiently broad to allow for diverse interpretations, some general deontological limits arise. Survival, as a basic condition of welfare, has a very strong normative weight, which, in the application of the argument I will develop, generates a strong *prima facie* duty. On the other hand, self-realization gives rise to weak *prima facie* duties, but which – and this is the point that interests me now – is compatible with a plurality of reasonable

4 Escribà-Folch y Wright 2015; Peksen 2009; Rosas 2001.

5 Gordon 1999.

6 Early y Schulzke 2019.

comprehensive doctrines. I am thinking, for example, of natural law approaches⁷, perfectionist approaches⁸, capability approaches⁹, and so on.

I said that my argument will defend a *prima facie* duty to trade. Why a *prima facie* duty? Why not a perfect duty? It seems to me that a perfect duty is a very demanding obligation. My view is that it is possible to override the duty to trade based on strong considerations, and because trade is not always and necessary the only way to promote well-being. However, I shall argue that, nonetheless, it is the most common way, and because of that, the most important. And if this is the case, we need very strong reasons to consider economic sanctions as morally acceptable.

1. The idea of a duty to trade

Considered in the abstract, the existence of a duty to trade seems unlikely. No one can force me to sell my things, or to go into business, or force me to buy certain things. Moreover, it is understood that with respect to certain goods I possess a right of property which, not being absolute, allows me a certain freedom in the use of my goods.

And yet, in concrete terms, we often recognize that we have a duty to trade. For example, according to Chilean law, “suppliers may not unjustifiably deny the sale of goods or the provision of services included in their respective business under the conditions offered” (Ley 19.496, art. 13). In 2018, Jack Phillips, a U.S. baker, won a Supreme Court case for refusing to bake a cake for a gay couple. Many claimed that the baker had a duty to bake the cake. Regardless of the reasons given for rejecting the baker’s behavior, if there is no duty to trade, we cannot make the baker morally accountable for not baking the cake.

These examples are not conclusive. They only show that, in some cases, we consider that we have a duty to trade, and that the freedom to trade is limited. However, they challenge the idea that there is never a duty to trade. In what follows I want to show that the limitation is stronger, and that there is a duty to trade, and that this duty affects our understanding of economic sanctions.

2. There is no *pro tanto* duty to trade

Let us return to the issue of economic sanctions. Elizabeth Ellis¹⁰ has argued convincingly against the use of just war theory as a criterion for rejecting economic sanctions:

7 For example: (Crowe 2019; Finnis 1980; Murphy 2001; 2006).

8 For example: (Hurka 1993).

9 For example: (Alkire 2002; Alkire y Black 1997; Comim, Qizilbash, y Alkire 2008; Sen 1991).

10 Ellis 2021, 410.

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.

In this same article, Ellis¹¹ addresses an argument that, in her view, has not been developed by anyone to her knowledge, but is somehow informally accepted, namely, that since there is no pro tanto duty to trade, economic sanctions would not face any moral objection:

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.

The purpose of Ellis' article is to argue that just war principles do not always lead to the obvious conclusion that economic sanctions are morally impermissible. However, in her article she addresses a crucial issue for the argument I want to develop, namely the idea that there is no duty to trade. The argument is based on an idea of absolute property of individuals with respect to their goods, and an analogy with states: just as individuals cannot be forced to trade with respect to goods over which they have absolute property rights, so neither can states be forced to do so. For Ellis¹², 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.

Ellis tries to fix the argument by considering the consent of the citizens of the sender state. Only in that way could such a state respect the property rights of its citizens. But, even in this case, it is implausible to think that property rights are absolute¹³. In this way, the overall argument loses strength.

She also discusses the following assumption: from the fact that I have the right to not buy/sell X, it follows that I have the right to reject to buy/sell X. Ellis accept this conclusion, but criticizes the fact that this assumption is valid when I have decided to buy/sell X¹⁴:

11 Ellis 2021, 416.

12 Ellis 2021, 417.

13 Ellis 2021, 418.

14 Ellis 2021, 419.

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.

I agree with Ellis that, if I decide to sell my car, I cannot refuse for arbitrary reasons. However, I will defend an even stronger thesis: I believe that we have a general duty to trade, and for reasons that go beyond respect for people. In general, one must distinguish between trading a particular good, and trading in general. As I see it, trade is, usually, not optional. Trade is the most common way of earning a living, either by selling our labor force or our products and/or services. It follows that trade is usually obligatory if we are to obtain a sufficient level of well-being. Of course, trade is not the only way to earn a living; we have other ways such as direct transfers from the state, barter, and inheritance. But in all these cases, an initial distribution is assumed which is normally the fruit of either trade or appropriation¹⁵. This indispensability of trading suggest that trade is, in a sense to be clarified later, morally obligatory. And, if trade in general is morally obligatory, so is trade of specific goods. And while I believe that there is a general duty to trade, I can accept the existence of certain exceptions to trade certain goods for moral reasons. But these exceptions must be properly justified.

3. There is a duty not to trade

Shmuel Nili, in his paper *Rethinking Economic "Sanctions"*, has developed an argument for limiting trade with dictatorships. Nili's problem is trade with dictators who use the natural resources of the countries they rule, and that, in his opinion, there is a strong duty to avoid trade with them, and specifically with respect to their natural resources¹⁶. He begins his reflection from what he calls the "conventional view on economic sanctions", "a world in which there is no rejection of trade is considered the norm – the default starting point"¹⁷. The problem is that the conventional view is also applied to trade with dictators.

Nili holds a distinction between flawed democracies and dictatorships. The former "take free and fair elections seriously, even if imperfectly" and the dictatorships "simply avoid elections... make elections irrelevant to the actual exercise of political power... or routinely 'fix' electoral results"¹⁸.

Nili also endorses a view in which there is no duty to trade¹⁹:

15 Nozick 2013.

16 Nili 2016, 636.

17 Nili 2016, 638.

18 Nili 2016, 637.

19 Nili 2016, 640-41.

It is precisely because of market freedoms that under normal circumstances, no agent needs to provide special justification for a decision not to trade with any other agent. When we stop purchasing our groceries at one store and move to another, we do not owe the former special justification. If someone offers me a painting for sale, even repeatedly, I do not owe him special justification for refusing to buy. Analogously, why should a sovereign society owe special justification for refusing to trade with other across the border?

But Nili goes further. In addition to arguing that, in principle, there is no duty to trade, he also argues that there is a positive duty not to trade with dictatorships. “The burden of proof rests on those who contend that dictators should have the right to sell natural resources on behalf of their people, rather than on those who argue that dictators should not have such a right”²⁰. The argument would be as follows:

- (1) Agents only can have a right to acquire property from licit sources.
- (2) If agent *A* wants to buy property *X* from agent *B*, then *B* must have acquired *X* from licit source.
- (3) If *B* acquired *X* from illicit sources, then *A* have a duty not to buy *X* from *B*.

This is a very intuitive idea. In Chile, for example, it exists the offence of “reception” (“receptación” in Spanish) which prohibits the trade of goods from illicit sources. In the same way, dictators who takes the natural resources of their people for perpetuating in power and other undemocratic measures cannot trade those resources licitly.

I shall assume that there is an analogy between the trading of individual agents or persons and states. I think this analogy is well established, and it is in the core of the reflection of the ethical issues in war. And, because it is an assumption that, to my knowledge, all parties in this issue share.

Nili’s first argument is rejected by the argument given by Ellis: if there is no special duty to trade then it is trivially true that no economic sanctions are morally wrong, since that, by the market freedoms, no one can require me to trade if I don’t want to. Note that wanting is the only requisite to trade. We don’t need to give more reasons to exercise this right. But, as I said before, this conclusion is highly counterintuitive. We usually think that there are some cases of economic sanctions that are unjust. The fact that we can disagree on the justice of some sanction reveals that the mere reference to market freedoms don’t close the issue.

Nili’s second argument is more plausible. It basically states that I have a duty not to trade with someone who has unlawfully acquired a good that is the subject of the transaction. I believe that the duty stated by Nili is *prima facie*, and that it has exceptions, and one of these exceptions is when the (licit) state trading with the illicit target state has no choice but to trade with the illicit party, or else, that the alternatives are too costly. In other words: State *A* has no sanctions and has given no reason to be sanctioned. *A* trade with *B*, which is a state that has been subject

to sanctions. While *A* has the option of trading with state *C*, this option, being very costly, will affect the welfare of the people in *A*. If the cost of trading with *C* is very high, and since *A* has a duty to promote the welfare of its people, then it is morally obligatory for *A* to trade with *B*, even if the good it trades with *B* is acquired from illicit sources.

4. An argument for a *prima facie* duty to trade

In this section I would like to make my case for a *prima facie* duty to trade.

The structure of my argument is borrowed from other field of philosophy. In his book *Taking Morality Seriously*, David Enoch formulates an argument for the existence of normative facts. He calls it “the argument from deliberative indispensability”²¹. The idea behind his argument is to claim that normative truths are instrumentally indispensable to deliberation, and deliberation is an intrinsically indispensable project. The argument goes as follows:

(1) If something is instrumentally indispensable to an intrinsically indispensable project, then we are (epistemically) justified (for that very reason) in believing that that thing exists.

(2) The deliberative project is intrinsically indispensable.

(3) Irreducible normative truths are instrumentally indispensable to the deliberative project.

(4) Therefore, we are epistemically justified in believing that there are irreducible normative truths²²

Following this line of reasoning, I will change the epistemic emphasis for the practical emphasis. In this regard I hold that *trading is instrumentally indispensable to an intrinsic indispensable project*. The intrinsically indispensable project is *well-being*. I shall understand well-being as the conditions necessary to both survive and living a good life. The “survive” condition I will understand it as referring to minimum duties of justice that states have with regard to their citizens of providing necessary conditions to ensure life (which also entails health and other basic services). The “living a good life” condition I will understand it as the search of self-realization and can be understood as referring to what Rawls calls comprehensive reasonable doctrines. So, if trade is (practically) instrumentally indispensable to well-being, then we have a duty to trade.

The force of the duty to trade, of course, will depend on the condition for what it will be indispensable. If trade is instrumentally indispensable to survival, trade will be a strong duty, but if trade is indispensable for self-realization, the duty to trade will be weaker.

21 Enoch 2011.

22 Enoch 2011, 83.

The argument will be as follows:

- (1) If an act, behavior (or any human action that can be morally judged) is instrumentally indispensable to an intrinsically indispensable project, then we are (practically) required (for that very reason) in doing that act, behavior, or action.
- (2) Well-being is intrinsically indispensable.
- (3) Trade is a practically and instrumentally indispensable project for well-being (no matter whether it is the sender state or the target state or other).
- (4) Therefore, we are morally required to trade.

Let me explain first how I step from the epistemically justified to the morally obligatory. In both epistemology and ethics there is some kind of normativity. The normativity of epistemology is about the truth²³, while the normativity of ethics is about acting behaving and deciding correctly or rightfully. From the epistemic point of view, if a proposition *p* is true, then I *must* believe that *p*. From the practical standpoint, however, if *A* is a right thing to do, I *must* do *A*. Epistemology is about beliefs, ethics is about acting. So, if some act, action or behavior *A* is instrumentally indispensable for *X* (granting that *X* is good), then I must do *A*.

But what if trading is not the only way to fulfill well-being? The argument entails that trading is instrumentally indispensable for well-being. My impression is that we can interpret the instrumental indispensability of trading in two ways. In one sense it is the only way, but in another it is the best way, though not the only way. If it is the only way, there is a strong *prima facie* duty. If it is not the only way, but the best way, it is a weak *prima facie* duty. But nonetheless who argues that we have a duty not to trade has the burden of proof.

In the same vein, it can be argued that nothing prevents trade from being domestic and not international. However, limiting trade only to domestic trade may have consequences that are not favorable for the economy of the target state and that, on a balance of reasons, it may end up being very costly to limit trade to domestic trade.²⁴

Finally, I think that we can extend the argument in cases in which we have many options to trade, but some of them are better for well-being than others. For example, if Europe can have much cheaper gas from Russia than from US, my suggestion is that we have a *prima facie* duty to opt for the better alternative in terms of well-being, and thus, we have a *prima facie* duty to buy gas from Russia than from US. Especially if we consider what kind of things states fail to give to their people for buying to the non-sanctioned state. This failing has also heavy moral costs, considering what I called the “survival condition”.

²³ Cuneo 2007.

²⁴ International trade can lead to increased efficiency and lower costs, as countries can specialize in the production of goods and services that they are most efficient at producing and then trade with other countries for the goods and services that they need. Additionally, international trade can promote cultural exchange and understanding between states (Berkowitz, Moenius, y Pistor 2006; Julio y Yook 2013; Partridge et al. 2017).

How this applies to economic sanctions? First, if trading is instrumentally indispensable in a strong sense (given the “survival” condition), then we have a strong *prima facie* duty to trade. If trading is a duty in the weaker sense (given the “self-realization” condition) then we have a weak *prima facie* duty to trade. In the first case, the duty is defeasible only in some very special cases; in the second, it is a more defeasible duty, regarding other consideration. But in both cases, the burden of proof is on who denies that such a duty exists.

Some comments on well-being. What I have argued is that well-being is a practically and instrumentally indispensable project. Indispensable for what? For the well-being of people, those living both in the sender state and in the target state, and in general, in every state. The point is that states, in general, have a duty to promote the well-being of people, or, at least, they have a negative duty not to interfere with other states promoting the well-being of both their citizens and the citizens of other states. Of course, this can lead to conflicting duties (as in fact happens with the issue of economic sanctions) but these duties can be properly weighed to define preeminence to certain *prima facie* duties over others. In short, the argument says that, if there are reasons to impede the trade of certain states, and if the impediment of trade generates negative outcomes for the welfare of the citizens of those states, then these must be very powerful reasons. Otherwise, any impediment to trade will be morally impermissible.

All that said, I consider that all the reasons given in the literature regarding the effects of economic sanctions are reasons that supports a *prima facie* duty to trade, insofar as they affect survival or self-realization of people in target states. For example, Dursun Peksen has argued that sanctions have effects on “reduced access to essential goods and products, [that] are intended or expected consequences of trade and financial restrictions. Others are secondary effects and thus may not be explicitly anticipated, such as the disproportionate suffering of marginalized segments of society”²⁵.

But these effects cannot only be observed in target countries. Peksen finds that “sanctioning countries are more likely to induce compliance against their allies than rivals”²⁶. The effects of sanctions on Russia for its invasion on Ukraine have had important effects on Europe. Recession, inflation and raises in oil and gas prices are some of their effects. And these effects have impact on people’s well-being.

5. Conclusions

I have argued that, in general, there is a duty to trade. This duty is grounded in the instrumental indispensability of trading for well-being. I understand well-being as the conditions for survival and for self-realization that states must warrant to people in general. The way of fulfilling these conditions is by trading. If states

25 Peksen 2019a, 204.

26 Peksen 2019b, 637.

cannot trade, states cannot fulfill their duties. If trading is essential for survival, then there is a strong *prima facie* duty to trade. If trading is not essential for survival, but nonetheless it is important for promoting self-realization of people, then we have a weak *prima facie* duty to trade. This poses the burden of proof on those who argue that there is no duty to trade.

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