

Secondary economic sanctions

*Cécile Fabre**

Abstract: Many states, or rather their leaders and officials, routinely violate the fundamental human rights of both their compatriots or outsiders. Faced with this depressing catalogue of abuses, the international community's response of choice consists in imposing economic sanctions on wrongdoers. The relatively scant philosophical literature on the topic tackles primary sanctions - where the sanctioning party (Sender) restricts economic relationships between, on the one hand, the sanctioned party (Target) and, on the other hand, agents of any nationality who are located on its own territory, or its own nationals wherever they are located – in other words, agents who are subject to its territorial and/or personal jurisdiction. In this paper however I focus on unilateral secondary sanctions, whereby Sender seeks to restrict the economic activities of agents who are not subject to its territorial and/or personal jurisdiction, on the grounds that they trade with or invest in Target. I provide a cosmopolitan defence of those sanctions as a means to stop ongoing grievous human rights violations. I proceed as follows. First, I outline the central tenets of cosmopolitan morality which I take for granted throughout this paper. I then mount my cosmopolitan defence of unilateral secondary sanctions. I end by rejecting the view that multilateral authorisation is a necessary condition for sanctions in general and secondary sanctions in particular, though I consider cases where such authorisation is warranted.

Introduction

Many states, or rather their leaders and officials, routinely violate the fundamental human rights of both their compatriots and outsiders—often grievously and shockingly so: genocidal policies, lethal oppression on grounds of race, gender, sexual orientation, torture, rape, military aggression, the threat thereof . . . the list goes on. Faced with this relentlessly depressing catalogue of abuses, the international community's

* Senior Research Fellow, All Souls College, Oxford OX14AL. Email: cecile.fabre@all-souls.ox.ac.uk. Earlier versions of this article were presented at the London School of Economics (Popper Seminar), the Nuffield Political Theory Workshop, and at UCL's Law Faculty as part of the lecture series *Current Legal Problems*. I am grateful to participants at those seminars for illuminating discussions, and to Negar Habibi, Joseph Lacey, David Miller and Annette Zimmermann for their follow-up written feedback. Two anonymous reviewers for *Current Legal Problems* supplied a raft of enormously helpful suggestions and critical comments—as did Jeff King in his capacity as Journal Editor.

response of choice consists in imposing economic sanctions on wrongdoers. Those measures involve (*inter alia*) restricting their target's ability to engage in trade and financial activities with the so-called sender party and/or with third parties. Paradigmatically, the sanctioning party—or Sender—decides to freeze the financial assets of key members of Target's regime or key businesses within Target, or to ban commercial transactions between its own citizens/residents and Target's citizens/residents with respect to valuable commodities. Economic sanctions are imposed not just as a means to stop ongoing human rights violations but also to the following ends: restricting nuclear proliferation, supplementing counter-terrorism measures, giving Target inducements to comply with the laws of war or to adopt liberal reforms, and so on. They are imposed by states and multinational organizations such as the United Nations and the European Union.¹

Given how often and how prominently sanctions are used, one could be forgiven for assuming that moral and political philosophers have given them thorough attention. Such is not the case—particularly compared to war. The relatively scant philosophical literature on the topic tends to focus on three questions, and tackles one kind of sanctions. It focuses on the question of whether just war theory provides a useful normative framework for assessing the morality of sanctions; whether sanctions are effective; and whether the harms which they occasion to innocent civilians in Target are such as to render them impermissible. It tackles primary sanctions—where Sender restricts economic relationships between, on the one hand, Target's agents and, on the other hand, agents of any nationality who are located on its own territory, or its own nationals wherever they are located—in other words, agents who are subject to its territorial and/or personal jurisdiction.²

¹ See, eg David A Baldwin, *Economic Statecraft* (Princeton University Press 1985); Gary Clyde Hufbauer, Jeffrey J Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered - History and Current Policy* (2nd edn, Institute for International Economics 1990); Gary Clyde Hufbauer, Jeffrey J Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered - Supplemental Case Histories* (2nd edn, Institute for International Economics 1990); David Lektzian and Mark Souva, 'Institutions and International Cooperation: An Event History Analysis of the Effects of Economic Sanctions' (2001) 45 *Journal of Conflict Resolution* 61; Lisa L Martin, *Coercive Cooperation - Explaining Multilateral Economic Sanctions* (Princeton University Press 1992); Zachary A Selden, *Economic Sanctions as Instruments of American Foreign Policy* (Praeger 1999); Otto Wolff von Amerongen, 'Economic Sanctions as a Foreign Policy Tool?' (1980) 5 *International Security* 159; Peter Wallensteen, 'Characteristics of Economic Sanctions' (1968) 5 *Journal of Peace Research* 248.

² See, eg Elizabeth A Ellis, 'The Ethics of Economic Sanctions' *Internet Encyclopedia of Philosophy* <<http://www.iep.utm.edu/eth-ec-s/>> accessed 12 July 2016; Elizabeth A Ellis, 'Economic Sanctions and the Just War Principles' in Michael L Gross and Tamar

These are important issues. In this article however I focus on unilateral *secondary* sanctions, whereby Sender seeks to restrict the economic activities of agents who are not subject to its territorial and/or personal jurisdiction, on the grounds that they trade with or invest in Target. To illustrate, consider the sanctions which the USA has imposed on economic relationships with Iran, Cuba, and North Korea.³ The USA has restricted economic relationships with Iran since the hostage crisis of 1979–81. Its sanctions regime, still in place, is complex and multifaceted. In the main, it prohibits US nationals, US residents, US-registered companies and their foreign subsidiary companies from trading with Iranian privately and publicly owned businesses. In addition, non-US companies which invest in Iran's energy sector are liable to (*inter alia*) being frozen out of the US banking system. Finally, agents who are not based in the US may not re-export to Iran goods which were initially exported from the US, if those goods would have fallen foul of export restrictions had they been exported directly from the US—and *this even if the re-exporters did comply with legislation in their own country*. Criminal penalties against such agents have sometimes been sought.

Cuba, for its part, has been subject to US sanctions since 1917. The sanctions are set out in a number of legislative instruments, notably the 1917 Trading with the Enemy Act, the 1977 International Economic Powers Act, the 1992 Cuban Democracy Act, the 1996 Cuba Libertad Act (or so-called Helms-Burton Act), and the 2000 Trade Sanctions Reform and Export Enhancement Act. US nationals and US-registered firms are banned from entering into trade and financial agreements both with the Cuban regime and with Cuban private economic actors, over all commodities except food and medical goods. In addition, any US agent

Meisels (eds), *The Ethics of Soft War* (Cambridge University Press forthcoming - under contract); Joy Gordon, 'A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions' (1999) 13 *Ethics & International Affairs* 123; George A Lopez, 'More Ethical than Not: Sanctions as Surgical Tools: Response to "A Peaceful, Silent, Deadly Remedy"' (1999) 13 *Ethics & International Affairs* 143; George A Lopez, 'In Defense of Smart Sanctions: A Response to Joy Gordon' (2012) 26 *Ethics & International Affairs* 135; Robert A Pape, 'Why Economic Sanctions Do Not Work' (1997) 22 *International Security* 90; Robert A Pape, 'Why Economic Sanctions Still Do Not Work' (1998) 23 *International Security* 66; Albert C Pierce, 'Just War Principles and Economic Sanctions' (1996) 10 *Ethics & International Affairs* 99; James Pattison, 'The Morality of Sanctions' (2015) 32 *Social Philosophy and Policy* 192.

³ The relevant legislation and explanatory notes from the Department of Treasury can be found at < <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> > accessed 12 July 2016. The bans do not apply to provision of humanitarian relief and so-called informational goods (CDs, etc.). For useful case studies of the role of economic sanctions in US foreign policy, see Richard N Haass (ed), *Economic Sanctions and American Diplomacy* (Council on Foreign Relations/Brookings Press 1998).

can sue in American courts anyone, irrespective of nationality and residence, who has traded in or benefitted from property confiscated by Fidel Castro's regime from US citizens after the 1959 Cuban revolution; furthermore, foreign nationals can be barred from entry into the USA for having traded in such property.⁴

Although the USA has recently taken steps to normalize their diplomatic relationships with Iran and Cuba, the sanctions have not been fully lifted yet. Cuba is still subject to an embargo, Iran is still subject to trade and financial restrictions, and third parties are still vulnerable to the extraterritorial reach of the relevant legislative provisions.

Finally, the USA, in line with the United Nations, has imposed several rounds of economic sanctions on North Korea in response to the latter's development and adoption of a nuclear programme and policy of grievous rights violations against its people. On 16 March 2016, President Obama issued an Executive Order as a retaliatory measure against Pyongyang's latest ballistic missile test. The order broadens the reach of extant US and UN sanctions to persons who are not subject to the territorial and personal jurisdiction of the USA.⁵

My aim in this article is to provide a cosmopolitan defence of unilateral secondary sanctions as a means to stop ongoing grievous human rights violations. I argue that the cosmopolitan considerations which (I briefly claim) support primary sanctions also support secondary sanctions. This might seem obviously true if one drops the view that states have *full* jurisdictional sovereignty over their nationals and within their borders. However, as we shall see below, cosmopolitans can and indeed do grant some degree of jurisdictional authority to states. To the extent that they are sympathetic to primary sanctions as an instrument of foreign policy, it is appropriate to inquire whether they can and should accept secondary sanctions.

I proceed as follows. Firstly, I outline the central tenets of cosmopolitan morality which I take for granted throughout this article. I then mount my cosmopolitan defence of unilateral secondary sanctions. I end by

⁴ For a clear historical account of the US sanctions against Cuba, see Kam S Wong, 'The Cuban Democracy Act of 1992: The Extraterritorial Scope of Section 1706(a)' (1993) 14 *University of Pennsylvania Journal of International Business Law* 651.

⁵ See <<https://www.whitehouse.gov/the-press-office/2016/03/16/executive-order-blocking-property-government-north-korea-and-workers>> accessed 12 July 2016. For a clear discussion of those three cases, see Jeffrey A Meyer, 'Second Thoughts on Secondary Sanctions' (2009) 30 *University of Pennsylvania Journal of International Law* 905.

rejecting the view that multilateral authorization is a necessary condition for *any and all* sanctions, though I consider cases where such authorization is necessary.

Note that I focus on cases where Target's regime clearly violates the most fundamental human rights of some other party—in other words, where there can be no reasonable disagreement as to the moral status of its acts as grievously wrong. I do not address cases where there can be reasonable disagreement as to whether or not Target's policy is wrongful. On some views, in such cases, Sender ought to err on the side of respecting Target's right to political self-determination and thus not impose sanctions, at the costs of protecting what in fact are Target's victims; on other views, it may and perhaps even ought to err on the side of protecting what it believes are Target's victims, and thus impose sanctions, at the cost of mistakenly undermining Target's right to political self-determination. What Sender ought to do is likely to depend on factors such as whether sanctions are likely to be effective and/or disproportionate. For lack of space, however, I set those issues aside. Relatedly, I do not address cases where the reasons why Target's regime violates human rights have partly to do with other states' wrongful policies, including Sender's. A closer scrutiny of those difficult cases must await another occasion.

Furthermore, my concern is with defensive sanctions, whose aim is to stop ongoing human-rights violations, and not with punitive sanctions, whose aims is to punish the perpetrators of those violations. In tackling defensive sanctions, I focus in the main on agents who trade with one another, and against whom those sanctions directly apply—though I shall have a few things to say about innocent victims.

Finally, I assume throughout that extant property holdings are just—such that economic agents have a *prima facie* right to transact with one another in respect of those holdings. This is a seriously oversimplifying assumption.⁶ At the same time, one has to start somewhere. If one can show, as I hope to do here, that secondary sanctions are justified even under that assumption, then *a fortiori* one will have buttressed the case in their favour under current circumstances, where those holdings clearly are unjust.

⁶ As admirably shown by Leif Wenar. See Leif Wenar, *Blood Oil* (OUP 2016); Leif Wenar, 'Coercion in Crossborder Property Rights' (2015) 32 *Social Philosophy and Policy* 171.

Cosmopolitanism and Property Rights: Secondary Sanctions in Focus

Cosmopolitanism can be broadly defined as the three-pronged view that (i) human beings are the fundamental and primary *loci* for moral concern and respect and (ii) have equal moral worth, (iii) whichever group (cultural, familial, ethnic and national) they belong to. It is individualist, egalitarian, and universal, and insists that individuals' fundamental entitlements, duties, privileges, and liabilities should not be affected by political borders. As such, it takes a stand on the scope of principles of justice rather than on their content. *Qua* account of justice, it must say something about content. In this article, I posit that cosmopolitan justice requires that all individuals wherever they reside should enjoy the freedoms and have the resources without which they cannot lead a flourishing life. More specifically, this requires that they have the full set of civil, political and social rights enshrined in the main international charters and declarations. At the bar of *cosmopolitan* justice, moreover, all individuals, wherever they reside, have the aforementioned rights against everyone else, irrespective of their country of birth, nationality or residence. By implication, they are under a duty to everyone else in the world, irrespective of those factors, to provide them with the requisite assistance. However, the duty to provide assistance is subject to a 'no undue sacrifice' proviso, in virtue of which agents are not under an obligation to sacrifice their own prospects for a flourishing life in the course of helping others.⁷

As I argue elsewhere, in stipulating that individuals should have prospects for a flourishing life, justice requires that they should be able to frame, revise, and pursue a conception of the good that is meaningful to them.⁸ It is an open question whether or not this in turn means not just that they should have the material resources to do so, but also that they should have meaningful and exclusive control over those resources—in other words, whether justice so construed requires secure property rights in general—and over the means of production in particular. It may be that, as G. A. Cohen powerfully argues in his very last book, a just society

⁷ Two points arise from this discussion. Firstly, when I say that cosmopolitanism is egalitarian, I simply mean that it is committed to the principle of fundamental equality. I do not mean to suggest that to be a cosmopolitan is to be committed to the view that all inequalities are unjust. Secondly, for cosmopolitans, the rights and obligations enshrined in international public law are ultimately owed to individuals by individuals—not to states by other states.

⁸ Cécile Fabre, *Social Rights under the Constitution: Government and the Decent Life* (Oxford Clarendon Press 2000).

is a socialist, market-free society; or it may be that, as David Miller once argued, a just society is compatible only with the conferral of highly constrained property rights and highly restricted markets—a form of market socialism.⁹ For what it is worth, I am deeply sympathetic to the socialist project. If justice is indeed antithetical to private property rights in general, and to all but the most tightly regulated markets in particular, the burden lies on the shoulders of those who wish to defend property rights against economic sanctions, rather than on those who wish to defend sanctions in the face of robust property rights. However, I have little space and no hope to defend socialism in this article. Instead, I will assume that justice does require a fairly exhaustive set of individual property rights, albeit constrained by the rightful claims of those in need of assistance. *Even if* justice grounds a presumption in favour of such rights, I shall argue, there are cases where unilateral secondary sanctions are morally justified.¹⁰

Standardly, property rights include (i) Hohfeldian claims in respect of things and/or money, which correlate into duties that third parties not interfere with one's use thereof; (ii) Hohfeldian powers to change one's bundle of claims, etc. over money or things, notably by giving, selling, buying.¹¹ The powers to sell and buy in turn ought to be decomposed into the following incidents. The right to sell *g* comprises the power to change one's entitlements in respect of *g* vis-a-vis buyers and third parties against payment. The right to buy comprises the power to change one's entitlement over both *g* and the money one will pay for it vis-a-vis sellers and third parties. Both include a claim that third parties not interfere with the transfer of entitlements by, eg physically seizing *g* or confiscating the money before or after buyer and seller agree to transact. Finally, both include a claim against those third parties that they should recognize the transaction as valid. If I sell you a valuable painting which has been in my family's possession for a long time but which is now rightfully mine, my

⁹ GA Cohen, *Why not Socialism?* (Princeton University Press 2009); David Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism* (OUP 1989).

¹⁰ I should make it clear that throughout this article, I assume that the goods which are the object of economic sanctions *can* in principle be bought and sold (unlike human beings, for example, or love.).

¹¹ For a classic analysis of the incidents of ownership, see T Honore, 'Ownership' in AG Guest (ed), *Oxford Essays in Jurisprudence* (OUP 1961). As Jeff King pointed out to me, the right to transact is not explicitly regarded as a human right—though the right to own property itself is (see, eg, art 17 of the 1948 Universal Declaration of Human Rights, and art 1 of the 1952 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.) Yet I do think that it should be so regarded, in just the same way as a people is granted by the 1966 Convention on Economic Social and Cultural Rights the right to dispose of its wealth as it wishes (art 1(2)).

cousin (who really wanted to buy the painting from me) ought to recognize you as its rightful owner—and, thus, not pass it off as his when having his assets evaluated for insurance purposes, etc.

So construed, property rights are natural, pre-institutional rights.¹² At the same time, the interests which they protect are important enough to have those rights themselves durably protected, through and by institutions with coercive powers of enforcement—in other words, something like the state. Legally enforcing moral property rights stabilizes them: by enabling rights-holders to rely on one another's compliance, it makes it possible for them to enjoy their rights of transfer and disposal, as well of use, with respect to their property.

There are three ways in which political institutions with powers of enforcement can and ought to protect the rights to sell and buy. Firstly, so long as the goods at issue are legitimate objects of transactions, they can and ought to regard the transaction as valid. Returning to my painting example, those institutions are, or at any rate ought to be, disempowered (or as Hohfeld would have it, disabled) from conferring, post-sale, title to the painting on me, and title to the money on you. For were they so to act, they would fail to respect us as autonomous moral agents with the ability to enter into transactional relationships. As they are under a duty so to respect us, they lack the morally justified power to invalidate our decision to transfer the relevant rights and duties in respect of the painting/money to one another. By implication, they are also under a duty not to arrogate that power.

Secondly, they are under a *prima facie* obligation not to subject me to penalties for selling my painting to whomever I wish. Although the claim that I should be immune from penalties for so acting is entailed by the claim that the transaction should be recognized as valid, it does not presuppose it: the state may decide, without inconsistency, not to recognize the transaction as valid yet at the same time not to penalize me for entering it. For example, a jurisdiction may refuse to confer legal validity on surrogacy contracts yet at the same time decide not to subject surrogate

¹² What follows in this paragraph is, in effect, a Lockean account of what property rights are, together with a somewhat Hayekian understanding of the role of the law. See John Locke, *Second Treatise of Government* (first published 1689, CUP 1960), esp ch 5; FA Hayek, *Law, Legislation and Liberty - A New Statement of the Liberal Principles of Justice and Political Economy* (Routledge 1982) ch 5. I am grateful to Jeff King for reminding me of Hayek's argument. A referee for *CLP* pointed out to me that on an institutional account of property rights (whereby property rights are created by the state for the good of all), economic sanctions are easier to justify. I agree. But, first, I do not subscribe to such an account; and, second, even if I am wrong, it pays to show that proponents of natural property rights can and should endorse economic sanctions in some cases.

mothers or contracting parents to civil and/or criminal penalties. As we shall see, the obligation not to subject parties to a transaction to such penalties is defeasible by weightier moral considerations. The burden of proof however is on those institutions to make the case in favour of such restrictions, for were I to be subject to heavy penalties of that kind merely for selling and buying goods, I could not be described as securely enjoying the exercise of my property rights. Note that those points apply to penalties construed as criminal punishment as well as to the civil penalties and restrictions attendant on (eg) being locked out of the international banking system, not being able to travel freely to conduct one's economic activities, and so on.

Thirdly, it is not enough that those institutions should regard you, and not me, as the rightful owner of the painting, and me, and not you, as the rightful owner of the money. They must also enforce our property rights over the relevant goods through the law.

The foregoing remarks support a presumption in favour of free trade constrained by compliance with the demands of justice. Together with cosmopolitanism, they also support a presumption in favour of *international* free trade, similarly constrained. Suppose that the British government were to say that British citizen Ben's interest in disposing of his resources is strong enough to be protected by the relevant Hohfeldian rights so long as he does not trade with Russian citizen Rodia, on the mere grounds that Rodia is Russian. This would restrict Ben's and Rodia's economic freedom on the wholly arbitrary grounds of their respective political membership.¹³

With those points in hand, we are in a better position to see what sanctions do to those against whom they apply. In so far as they impede international trade, they harm both direct participants therein and those who are dependent on it. When Sender passes legislation or issues an executive order to the effect that transactions with respect to goods g are to be sanctioned, it exercises the Hohfeldian power to change economic agents' bundles of ownership rights over money and g itself. Agents who own goods which they might want to sell to their counterparts in Target are denied the power to do so, as well as the claim-right not to be interfered with and immunity from penalties should they nevertheless go

¹³ For recent defences of constrained free trade, see Clara Brandi, 'On the Fairness of the Multilateral Trading System' (2014) 1 *Moral Philosophy and Politics* 227; Aaron James, 'A Theory of Fairness in Trade' (2014) 1 *Moral Philosophy and Politics* 177; Mathias Risse and Gabriel Wollner, 'Three Images of Trade: On the Place of Trade in a Theory of Global Justice' (2014) 1 *Moral Philosophy and Politics* 201; Andrew Walton, 'Do Moral Duties Arise from Global Trade?' (2014) 1 *Moral Philosophy and Politics* 249.

ahead. In so far as selling this particular good is a means for them to derive income, they lose opportunities to earn more money thanks to which they would be able to implement their conception of the good. Similarly, agents who wish to buy this good from Target-agents are denied the power to dispose of their money to those ends, and the aforementioned claim-right and immunity. To the extent that *g* contributes to their conception of the good life, they too lose opportunities to implement the latter. The same applies, conversely, to Target-agents.

Moreover, although economic sanctions apply to goods which are themselves directly and indirectly instrumental to the realization of individuals' conceptions of the good life, their effects are usually much more diffuse. A firm which suddenly cannot sell its wares to its regular buyers within Target may have to lay off some of its employees, who might find it difficult to find another job and might lose personal income as a result. Likewise, a firm in Target which suddenly cannot buy the goods it needs from its regular suppliers might not be able to survive—with similar effects on its employees. More generally, sanctions which impair agents' access to international trade may have knock-on effects on economic growth in those agents' countries, which in turn may impair tax revenues and, by extension, those countries' ability to provide essential services to its residents, maintain its infrastructures, and so on.

Hence the question at the heart of this article: on what grounds if any may a sovereign state justifiably interfere in the economic and financial affairs of agents who are not subject to its political and territorial jurisdiction? Here is a simple example to illustrate the issue at hand. The European Union has imposed a raft of sanctions against the Syrian state, its regime and President. Those sanctions target the supply to those actors of (*inter alia*) arms, telecommunications monitoring and interception equipment, and equipment related to the exploitation of gas and crude oil.¹⁴ Suppose that Ben, a British citizen located in Britain, exports telecommunication equipment to Syrian businessman Sami, who sells it to Syria's armed forces. By imposing sanctions against those transactions, Britain (as part of the EU) refuses to recognize Ben's and Sami's contract of sale as valid in a court of law; by enforcing those sanctions, it coerces them not to transact with each other—or at least makes them vulnerable to criminal and civil penalties. This is a case of *primary sanctions*.

¹⁴ See <http://eeas.europa.eu/cfsp/sanctions/docs/asures_en.pdf> for a summary of those sanctions accessed 23 June 2016. At the time of writing (23 June 2016, mid-morning), Britain is *still* a member of the EU and those sanctions are therefore binding on its citizens.

But suppose now that Sami also buys telecommunications equipment from Russian citizen Rodia, who is trading from within Russia. The Russian leadership has consistently vetoed attempts by the UN Security Council to vote UN-wide sanctions on Syria. Rodia acts in compliance with Russian law.¹⁵ This case raises the following question—at the heart of secondary sanctions: may the EU extend to Rodia’s economic relationship with Sami the sanctions regime which it imposes on Ben’s transactions with Sami? They could so do in several ways. For example, they could lock Rodia out of EU-based financial institutions, by refusing to recognize the transaction as valid and on that basis by including as part of his assets (and thus as collateral for loans) the money he will have generated from that sale. It could also subject him to criminal and civil penalties. Were it to do so, it would directly interfere in the economic and financial affairs of an agent who is not subject to its territorial and personal jurisdiction. The question is whether they may so act.

Justifying Unilateral Secondary Sanctions: A First Cut

A Simple Case

Defensive sanctions are meant to stop wrongdoers from violating the rights of Sender’s members or of third parties. A successful justification for such sanctions, whether those are primary or secondary sanctions, must show that all the parties in the transaction under consideration may justifiably be deprived of the benefits of that transaction. The point is not specific to sanctions: generally, a successful argument to the effect that some agent—typically, the state—may interfere with an economic transaction between two parties must show that *both* parties may justifiably be subject to such interference. This applies to, eg prostitutional transactions, surrogate motherhood contracts, and restrictions on the sale and purchase of dangerous goods. In the case at hand, to justify secondary sanctions requires justifying subjecting Sami *and* Rodia to the costs attendant on being disempowered from transacting with each other and of (possibly) being subject to civil and criminal penalties.

Now, consider the following plausible scenarios. (i) Target’s leadership and armed forces (for short, Target) annex a territory which belongs to another sovereign state, without just cause. (ii) It embarks on a genocidal campaign within its borders. (iii) It provides military assistance to an ally

¹⁵ See <<http://www.un.org/press/en/2012/sc10714.doc.htm>> accessed 23 June 2016.

which is itself waging an unjust war elsewhere. (iv) It adopts severely repressive measures against one of its minority, though falls short of killing them. Are Sender's leaders and citizens (for short, Sender) justified, *vis-à-vis* those agents, in using economic sanctions as a means to block those ongoing human-rights-violations?

To say that individuals together have a just cause for imposing economic sanctions is to say that they are *prima facie* justified in depriving agents, whether from Target or Sender, who are avoidably contributing to violating Sender-residents' non-fundamental rights, of the benefits of trade relations with Sender-agents (whether those benefits are the income they derive from those transactions or simply access to the relevant goods.) Let us begin with a simple case. Suppose that Sender-economic agents trade with their counterparts in Target in goods which Target's regime needs to carry out its rights-violating policy. Suppose further that both Sender-agents and Target-agents can reasonably be expected to know that Target's regime is using those goods to those ends, that they could avoid entering into those transactions altogether, *and* that they lack an-all-things considered justification for so acting.¹⁶ In so acting, those agents wrongfully contribute to those rights-violations. This is clearly so in the case of Target's economic agents, but also of Sender's: remember, at the bar of cosmopolitan morality, individuals are under cross-border duties not to wrongfully contribute to violating the rights of other individuals. In so far as Target-agents and Sender-agents wrongfully contribute through their economic activities to Target's rights-violating policy, they have forfeited their right not to incur harm that is necessary to block this policy. Put differently, they are *liable* to such harm, which Sender thus has the *prima facie* right to impose. In addition, so long as the harms brought about by sanctions are

¹⁶ Two points. First, I am assuming that they are not contributing by dint of their economic activities to improving the life chances of Target's citizens to a degree that would justify their trading with one another and defeat the presumption against contributing to a wrongdoing. (In making that assumption, I am ruling out cases where Target would rather buy weapons from Senders' agents, and yet would be able and willing to procure more destructive weapons from other agents if Sender were to impose sanctions on its agents. In such cases, Sender would at the very least be permitted, and might in fact be obliged, *not* to impose sanctions. There is more to say about this kind of case than I have the space to do here.) Secondly, I am also assuming that it is not open to those economic agents to say that, as they are not *themselves* committing those rights-violations, they ought not to be thwarted when trading with one another. In other words, the fact that Target's leaders commit those rights-violations does not exonerate agents who contribute to their doing so from responsibility for those acts. That said, in so far as they are less directly implicated in those rights-violations than Target's leaders (or armed forces for that matter), they are liable to lesser harm. I am grateful to a reviewer for *CLP* for pressing me on these points.

proportionate to the just end of blocking Target's policy and do not deliberately target the innocent, they are all things considered justified.¹⁷

Now, with respect to Sami, secondary sanctions are no different from primary sanctions. To see this, let us thus assume, for the sake of argument, that the EU is justified *vis-à-vis* Sami in preventing its own private economic actors from trading with him, on the grounds that Sami's business activities directly help Syria's regime commit grievous rights-violations. Let us also assume, again for the sake of argument, that denying Sami access to goods as originating in the EU is an effective and proportionate way to pressurize Target's regime to change this policy. With those assumptions firmly in hand, the EU is equally justified *vis-à-vis* Sami in preventing Rodia and other foreign economic agents who are not subject to its political or territorial jurisdiction from trading with him. The fact that Sami engages in separate transactions with a Russian businessman rather than a British businessman (other than Ben) is irrelevant to the permissibility of sanctioning him.

The key issue, then, is whether the EU's imposition of secondary sanctions on *Rodia's* transactions with Sami would be justified and, if so, would be subject to a higher justificatory burden than its imposition of primary economic sanctions on Ben's transactions with Sami. After all, Rodia is not subject to its political and/or territorial jurisdiction *and* he is compliant with Russian law. By what right, thus, could the EU arrogate jurisdictional authority over his economic relationship with Sami?

The Legal and Moral Presumption in Favour of States' Jurisdictional Sovereignty

Whether the EU (or indeed any state or association thereof) can arrogate jurisdictional authority over economic transactions is a matter of private international law, of which respect for jurisdictional sovereignty is a cornerstone.¹⁸ That is, so long as a foreign court renders a judgment within its jurisdiction, other courts will not invalidate it by substituting

¹⁷ I also assume that economic sanctions are legitimate only if they are a necessary means to bring about morally legitimate ends at proportionate costs. There are many objections to sanctions, of course. See, esp, Joy Gordon, 'Reply to George A. Lopez's "More Ethical than Not"' (1999) 13 *Ethics & International Affairs* 149; Joy Gordon, 'Smart Sanctions Revisited' (2011) 25 *Ethics & International Affairs* 315; Gordon, 'A Peaceful, Silent, Deadly Remedy' (n 2). For a good recent defense of sanctions against common objections, see Pattison, 'The Morality of Sanctions' (n 2).

¹⁸ I can do little more than barely skim at the surface of this hugely complex field. For a classic introduction, to which much of what I say here owes, see Adrian Briggs, *The Conflict of Laws* (3rd edn, OUP 2013).

their own domestic law, on the grounds that such judgment is an act of sovereignty which is fully effective within the borders of that court's jurisdictional domain. In legal parlance, out of respect for state sovereignty and in due deference to reciprocity, courts ought to act with *comity* with foreign courts, even if they hold that, as a matter of fact, those foreign courts got it wrong.¹⁹ Although the principle mainly holds for courts, it should also hold for states whose laws courts enforce. State S1 acts with comity towards another state S2 if it recognizes S2's sovereignty over its territory and, more specifically, if it instructs its courts to acknowledge that S2's courts have authority over that territory. In so far as the underlying rationale of comity is respect for state sovereignty, there is considerable value to each domestic jurisdiction developing a system of private international law. There is also considerable value to harmonizing those systems, as has long been recognized: the Hague Conference on Private International Law has seen to it since 1893; and EU law is arguably the most sophisticated attempt to date of harmonizing multiple domestic provisions in private international law.

At first sight, those justifications for private international law do not seem particularly consonant with cosmopolitanism, since they rest on and instantiate respect for legislative sovereignty. Yet, cosmopolitans can and indeed ought to support the principle of recognition of foreign jurisdictions, laws, and judgments in private matters. When setting out my account of cosmopolitan justice above, I claimed that all individuals wherever they reside have a right to the material resources which they need to lead a flourishing life and have property rights over those resources. They also have a meta-right that their acquisition of new property rights through economic transactions should be recognized as valid, and that those rights be enforced. It may well be that a world state, and an international court of justice, are the best *fora* for developing a system of legal property rights applicable to all individuals in the world. At the same time, there are two reasons for devolving to jurisdictional entities such as nation-states the task of legal recognition and enforcement of property rights. Firstly, and purely practically, it simply is not feasible to ask one institution to do it all. Secondly, it stands to reason that a universal system

¹⁹ For very clear accounts and defences of the principle of comity and its underlying rationale, see Adrian Briggs, 'The Principle of Comity in Private International Law' (2011) 354 *Collected Courses of the Hague Academy of International Law*; Timothy Endicott, 'Comity among Authorities' (2015) 68 *Current Legal Problems* 1. As Briggs notes, the principle is far from being accepted by all common law courts as a norm for judicial decisions (as distinct from a norm for state conduct).

of property rights admits of morally equivalent interpretations which states ought to have latitude to adopt within their borders. To illustrate, neither English law nor French law regarding the acquisition of property contains grievously unjust clauses such as banning women from house-ownership—in which case they would fall foul of cosmopolitan justice. Still, they do differ in various ways—though one could not plausibly say that French law is morally better than English law in this respect—and vice versa. It is thus open to a cosmopolitan to accept those differences and the principle of legislative sovereignty on which they rest.²⁰

Lifting the Presumption

Against that background, the claim that secondary economic sanctions are morally justified implies that Sender is justified in not recognizing that a law other than its own dispositively applies to those transactions. Standardly, in law, a state may apply its domestic legislation beyond its borders only if it has a connection of a relevant kind with the object or individual to whom it wants its legislation to apply. Those connections are the following:

Nationality principle with respect to persons, whereby a state's laws govern the conduct of a national of that state, wherever she lives.

Protection principle, whereby a state's laws aim to protect that state's vital interests irrespective of the nationality or residence of the agents to whom the laws apply.

Passive personality principle, whereby a state's laws aim to protect nationals of that state, wherever those nationals are under threat, and irrespective of the nationality of the threateners.

In addition, a state under some circumstances enjoys:

Universal jurisdiction, whereby a state's laws aim to protect anyone in the world from the commission of so-called international crimes such as war crimes, piracy, and so on.

Under the principle of universal jurisdiction, the state need not have a territorial or political connection to the target or beneficiary of its laws: rather, it is connected to the act to which its laws pertains by that act's

²⁰ The argument here mirrors standard arguments* for devolving to entities such as the nation-state the task of meeting obligations of global distributive justice (*such as deployed by R. E Goodin. See Robert E Goodin, 'What Is So Special about Our Fellow Countrymen?' (1988) 98 Ethics 663.) Endicott invokes the principle of subsidiarity to make essentially this point. See Endicott, 'Comity among Authorities', *ibid*.

very nature as being of concern to all states and, more deeply, to humankind as a whole.²¹

Finally, in the context of sanctions, some sanctioning parties, notably the US, have applied what one may call a principle of territoriality with respect to goods:

Principle of goods-territoriality, whereby Sender bans the re-exportation of goods initially produced on its territory and which would have been subject to sanctions had they never left that territory before being sold to Target's agents, even though the final transaction takes place outside its territory and is conducted by individuals who are not subject to its personal jurisdiction.

Each of those legal principles rests on secure moral cosmopolitan foundations, but not all can justify secondary sanctions.²² Consider the nationality principle. All individuals, wherever they are in the world, have rights to the resources and freedoms needed for a flourishing life, and are under corresponding duties to everyone else in the world. On the plausible assumption that they cannot properly discharge those duties absent a state, it makes sense to allocate to a given state the task of ensuring that they so act, via the conferral of nationality. This does not preclude other jurisdictions from enforcing those duties when appropriate, but it does mean that the state of nationality may step into the breach with the consent of the jurisdiction where the crime was committed, and absent its consent if it is unwilling to prosecute. Thus, British citizens suspected of pedophilic abuse abroad against non-British children are liable to be punished by British courts—on the grounds that some jurisdiction has to take on the task of protecting children against sexual abuse wherever and by whomever it occurs in the world, and that Britain might as well do it as far as British citizens are concerned. Quite clearly, the nationality principle allows Sender to impose sanctions against its nationals and, by extension, on companies based on its territory.²³ Equally clearly, however, it does not support sanctions against third parties such as Rodia in my illustrative case.

²¹ For discussions of the four principles, with particular reference to international criminal law, see, eg Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (OUP 2004); Luc Reydam, *Universal Jurisdiction: International and Municipal Legal Perspectives* (OUP 2003); James Crawford and Ian Brownlie, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012) chs 21 and 30; Antonio Cassese, *International Criminal Law* (OUP 2008) ch 16; Alejandro Chehtman, *The Philosophical Foundations of Extraterritorial Punishment* (OUP 2010).

²² For a defence of secondary sanctions which appeals to the principles of nationality and territoriality, see Meyer (n 5). Meyer argues that *in law*, only those two principles, and neither protection nor universal jurisdiction, can justify sanctions.

²³ The USA has also argued that the nationality principle allows them to extend sanctions to *subsidiaries* of US companies. This has proved controversial, particularly in the case of sanctions against Cuba. In response to this policy, some countries, particularly Canada,

Contrastingly, the principle of goods-territoriality *does* support sanctions against any party, irrespective of nationality or residence at the time the transaction is made. Target's regime needs resources to conduct its policy (fuel, weapons, money, etc.). At the bar of cosmopolitan morality, Target's victims have a right against the world at large that it should stop the flow of relevant resources to Target. In this case too, it makes sense to devolve to each state the task of controlling how the resources which are produced on *its* territory and which Target needs are used. Sender may thus apply defensive sanctions in respect of those resources at the point at which those resources are on its territory. Once those resources have left Sender's territory, it is up to the states on whose territory they end up to exercise such control. Should they be unwilling or unable to do so, however, Sender may step into the breach. With respect to those goods, territoriality furnishes Sender with a justification for sanctioning third parties.²⁴

By implication, however, it does not capture sanctions against third parties' transactions over goods *not* originating in Sender's territory. To justify secondary sanctions with respect to those goods, we must turn to the protection principle and the principle of universal jurisdiction. On a capacious construal of what a state's vital interests are and of what protecting one's nationals should amount to, the principle can be deployed in support of Sender's reach beyond its territorial and personal jurisdiction, when Sender acts in defence of the fundamental human rights of its own citizens. To the extent that Target's economic agents contribute to violating those rights, they are liable to sanctions. By parity of reasoning, to the extent that third-party agents, by trading with Target's agents, also contribute to those rights-violations, they too are liable to sanctions. At the bar of cosmopolitan justice, you recall, all human beings wherever they

have imposed countermeasures aimed at mitigating the adverse consequences of those sanctions – thereby confronting those companies with the dilemma of having to comply with Canadian legislation at the risk of falling foul of the US sanctions regime, or complying with the latter at the risk of falling foul of the former. For exploration, see Wong (n 4); Harry L Clark, 'Dealing with US Extraterritorial Sanctions and Foreign Countermeasures' (2004) 25 University of Pennsylvania Journal of International Economic Law 455. I shall return to this below. Clark notes that the extension of the notion of nationality to companies owned by Sender's nationals wherever they are contravenes customary international law, whereby companies acquire the nationality of the state under which law it is registered.

²⁴ As Annette Zimmermann pointed out to me, agents who produce goods from within Sender might wish for those goods not to reach Target, precisely on the grounds that Target's regime is guilty of grievous rights violations. Due to the complexities of global trade, they are not always in a position to exercise such control—which furnishes Sender's regime with a further reason for applying the principle of goods-territoriality. I am grateful to Zimmermann for helping me clarify my thoughts in this paragraph.

reside in the world are under duties not to contribute to human rights violations wherever those occur. Sender thus is not more justified in preventing *its own* members or residents from contributing to those rights violations by trading with Target, than in preventing third parties from doing exactly the same. Return to the case where Rodia sells EU-sanctioned telecommunications equipment to Sami. If Rodia's business were located on EU territory, we would not say that he is liable to sanctions to a lesser degree than Ben, a British national trading from Britain with Sami. We would, or at any rate should, regard *nationality* as irrelevant. For consistency's sake, territorial location is also irrelevant. Combined together, as they are in Rodia's case, nationality and territorial location are equally irrelevant.

The principle of universal jurisdiction, for its part, can be deployed in support of Sender's sanctions in those cases where Target violates the fundamental human rights of parties other than Sender's own members—for example, an ethnic minority within Target, or the members of another sovereign state. By transacting with Sami, Rodia enables wrongdoings which in the parlance of criminal international law are deemed to be international crimes—typically, as we saw, war crimes and piracy. At the bar of the principle, Rodia is liable to be deprived of the benefits of this kind of trade. This is not as controversial as it might seem. Thus, we would not and certainly should not regard as valid a legal system in which some human beings are treated and exchanged as chattels. Nor would and should we regard as valid a legal system sanctioning the wholesale coercive appropriation by a section of the population (say, men) of property initially owned by another section of the population (say, women). Grievously unjust foreign dispositions with respect to property rights can legitimately be discarded at the bar of the principle of universal jurisdiction—indeed, *have* been so discarded.²⁵

Of course, the more restrictive one's conception of international crimes, the narrower the range of cases where sanctions are morally appropriate under universal jurisdiction—and the less likely it is that Sender will be justified in applying sanctions against third parties contra the latter's domestic law. The worry (if it is a worry) is particularly acute when economic sanctions are applied in response to rights-violations not severe enough to justify war. Most scholars of international criminal law rely on precisely such a narrow definition, whereby only the most grievous

²⁵ For a very good discussion of this point, see Wenar, 'Coercion in Crossborder Property Rights' (n 6), esp 180–81. More generally, international law does restrict municipal property law with respect to rights to use, exclude and transfer. See John G Sprankling, *The International Law of Property* (OUP 2014) esp ch 3.

violations of international law, such as war, torture, forced disappearances, genocide, crimes against humanity, slavery and high seas piracy count as international offences and thus under the remit of universal jurisdiction. For my purposes in this article, I am content to restrict my argument for universal jurisdiction with respect to sanctions to such cases. The case of EU sanctions against Syria is a very good example. Another example which fits this particular bill are those sanctions imposed by the USA against the Republic of Sudan following (*inter alia*) its genocidal campaign in Darfur. Although those sanctions are of primary nature in the main, the USA has taken steps to extend their reach to third parties.²⁶

Refining the Case: Three Problems

Narrow versus Wide Strategic Goods

So far, I have focused on sanctions which apply to goods needed by Target to pursue its unjust policy—say, military equipment. Call these narrow strategic goods. Alternatively, Sender might wish to prevent third parties from selling to those agents a good, *g*, which Target does not need to pursue its policy but whose unavailability might be so costly as to induce its leaders to reverse their policy—say, agricultural machines which Target does not manufacture but which are crucial to its farming industry. Call these wide strategic goods.²⁷

In the case of narrow strategic goods, Sender is justified in imposing sanctions on third parties on the grounds that the latter lack the Hohfeldian protected power to sell to Target (via Target's economic agents) the equipment which they need to violate the fundamental human rights of some other party (be it Sender's citizens, a persecuted

²⁶ See <<https://www.treasury.gov/resource-center/sanctions/Programs/pages/sudan.aspx>> accessed 12 July 2016. For discussion, see Meyer (n 5), 931–32. Attempts by the UN to apply sanctions against the Sudanese's regime and warring factions since the mid-2000s repeatedly failed not least because China consistently opposed such measures. See <<http://www.reuters.com/article/us-southsudan-un-sanctions-idUSKBN0LV2FR20150227>> accessed 12 July 2016.

²⁷ See Baldwin (n 1) 214ff, though the labels 'narrow' and 'wide' are mine. Joy Gordon's distinction between indirect and direct sanctions maps onto the distinction between sanctions applied to wide strategic goods and sanctions applied to narrow strategic goods. See Gordon, 'A Peaceful, Silent, Deadly Remedy' (n 2). Note that sanctions must necessarily apply to wide strategic goods, and only to such goods, when Sender seeks to get Target to prevent some of its members (eg a murderous faction in a civil war) from committing grievous wrongdoings. In such cases, availability of weapons (eg) is not the issue. Availability of goods which Target's leaders want (and which they do not need to stop those wrongdoings) is.

minority within Target, or some other sovereign state at the mercy of Target's bellicose policy). To put the point generally, one lacks the *prima facie* power and claim to sell to another party that which he will use to violate human rights, for in so acting one would contribute to those wrongdoings—which would itself be wrong. This is so irrespective of one's nationality or territory.

Can a similar move be made in support of sanctions on wide strategic goods? Although both kinds of sanctions seek to induce Target to change its rights-violating policy, they differ in the following respect. As applied to narrow strategic goods, they restrict the availability of the means by which Target conducts its policy, and thus block the wrongdoing of directly contributing to such policy. As applied to wide strategic goods, they restrict the availability of goods on which Target depends in general, and do not block the commission of a directly contributory wrongdoing.

The distinction between narrow and wide strategic goods is important. It serves to qualify the requirement that sanctions should stand a reasonable chance of success if they are to be justified. The requirement, which is drawn from just war theory, does not apply to narrow strategic goods—goods, that is, which Target needs to pursue its rights violating policy. For we have strong moral reasons, indeed an obligation, not to make those goods available to its agents even if we know that others will. By parity of reasoning: I may not sell you the gun which I have very good reasons to believe you intend to use to commit a murder, even though I know full well that you will be able to procure a gun from someone else.²⁸ Contrastingly, the requirement does apply to sanctions against wide strategic goods—goods, in other words, which Target does not use to pursue its rights-violating policy. For in so far as imposing those sanctions is harmful both to economic agents and to those whose wellbeing depends on their success, those sanctions are legitimate only if they have a reasonable chance of succeeding in inducing Target to rescind its rights-violating policy—in virtue of the general requirement that one may not pointlessly harm another person. To illustrate, if it is correct that sanctions against Cuba over wide strategic goods (such as cigars) have done very little to curb the rights-violations committed by Castro's regime, those sanctions ought to be rescinded.²⁹

So far, so good. But does the distinction between narrow and wide strategic goods contain the seed for a possible objection to the imposition

²⁸ Remember (ft 16): I am ruling out from my inquiry cases where Target would rather buy weapons from Senders' agents, and yet would be able and willing to procure more destructive weapons from other agents if Sender were to impose sanctions on its agents.

²⁹ See, eg Wong (n 4).

of *secondary* sanctions on wide strategic goods? At first sight, perhaps. Consider Rodia again. While he clearly is under a duty not to enable the Syrian leadership, via Sami, to acquire the weapons it needs to violate human rights, he is not (one might object) under a duty to withhold wide strategic goods from Syrian agents since, *ex hypothesi*, by selling those wide strategic goods he would not directly contribute to President Assad's rights-violating policy. And if Rodia is not under such a duty, he does not act wrongly by transacting with Sami, and is therefore not liable to having the sanctions regime which the EU imposes on Ben applied to him. Put differently: the EU are at liberty to decide whether or not to impose on its individual members a boycott on Syria over wide-strategic goods; but given that trading in those goods is not a wrongdoing, the EU acts *ultra vires* by forcing parties over which it lacks jurisdiction to do the same.

Upon closer inspection, however, this putative objection to secondary sanctions against trade in wide strategic goods ought to be rejected, on the grounds that, and when, trading in wide strategic goods is in fact morally wrong. Let me explain. At the bar of cosmopolitan morality, all individuals wherever they are in the world are under duties of assistance to those in grave need—including victims of human rights violations. There are two ways to construe those obligations. On what one may call an institutionalist approach, just as I am under a duty to pay whatever taxes are set by my regime for distributive purposes, I am under a duty to comply with, eg tariff increases and export/import licensing requirements as imposed by my regime: I am not under a pre-institutional duty of justice unilaterally not to sell my products to genocidal tyrants, anymore than I am under a pre-institutional duty of justice to help ensure that all have the resources for a flourishing life. On an individualist approach, by contrast, I *am* under those duties. In the case of sanctions, it is precisely my failure to comply which makes me liable to the burdens arising from not being able to trade with whomever I wish.³⁰

Neither the institutionalist nor the individualist approach to global duties of assistance support restricting secondary sanctions to narrow strategic goods. On the individualist approach, Rodia—together with other similarly situated economic agents—is under a duty to help change Target's incentive structure even if failing to do so would not constitute a direct contribution to its wrongdoings. Were Rodia to sell agricultural

³⁰ This overly simplified account of a complex debate will do for my purposes here. See John Rawls, *A Theory of Justice* (Harvard University Press 1971); GA Cohen, *Rescuing Justice and Equality* (Harvard University Press 2008). For an illuminating discussion of ethical consumerism, see Waheed Hussain, 'Is Ethical Consumerism an Impermissible Form of Vigilantism?' (2012) 40 *Philosophy & Public Affairs* 111.

machinery to Sami even though he is not in a position himself to impose conditions on Syria's regime, he would act wrongly. Given the seriousness of Target's wrongdoings, Rodia's wrongful failure is such that he lacks the power to transact as well as a claim to have that transaction recognized as valid, and immunity from penalties. Put generally, one is *prima facie* disempowered, and *prima facie* lacks a claim, to sell to another party, without conditions, that which the latter so badly wants that he would stop violating fundamental human rights as the price to pay for getting it.³¹

Those points together support the general view that all human beings, wherever they are in the world, are under a *prima facie* duty to boycott regimes which commit grievous human rights violations, by refusing to engage in trade relationships with their residents or nationals. This is a very demanding view of our obligations to one another—perhaps too demanding. Recall, though, that our obligations are partly subject to a no-undue sacrifice proviso. In the present context, Rodia is not under an obligation so to help change Target's incentive structure if he would thereby jeopardise his own prospects for a flourishing life. The proviso is only a partial restriction on Rodia's obligation, however, for Rodia is under an obligation not directly to contribute to Target's rights-violating policy by selling it the weapons it needs to conduct such a policy, even at the cost of his own prospects.

For what it is worth, I believe that this demanding view is an implication of the cosmopolitan commitment to the inherent value and equality of all human beings, wherever they happen to be in the world. If this is right, then one cannot appeal to the claim that Rodia (and others) are not under a duty to boycott Sami (and others) as an argumentative means to reject Sender's imposition of sanctions on the former.

On the institutionalist approach, by contrast, Rodia is not under such a duty, and is not liable to sanctions for transacting with Sami. Rather, he is under a duty to support his regime's decision to impose sanctions against Sami, by not violating the sanctions regime *once it is in place*. The question, then, is whether the EU is nevertheless justified in imposing those sanctions against Rodia himself should his regime not do so (as, in fact, it clearly is not doing). I believe that it is. For even if cosmopolitans need not commit themselves to the individualist approach to duties of justice, they can and indeed must at the very least endorse the following view: all political communities whose officials have the morally protected power to enact and

³¹ Note that my argument in this paragraph assumes that one can be liable to defensive harm for wrongfully omitting to do something (in this case, for wrongfully omitting to help change Target's incentives structure.) I defend that view in Cécile Fabre, *Cosmopolitan War* (OUP 2012) ch 3.

enforce laws in general, and laws with respect to commercial transactions in particular, are under a duty *not* to recognize as legally valid transactions whose successful completion help human-rights violators to achieve their ends; they are also under a duty not to recognize as valid transactions in respect of goods the withholding of which would give Target's leadership a strong incentive to resist; finally, they are also under a duty to enforce the resulting prohibitions. In short, they are under a duty to sanction economic transactions with Target. By extending its sanctions regime to third parties such as Rodia, Sender is in effect stepping into the moral breach left open by Russia's refusal to do its share in protecting President Assad's victims.

To recapitulate, whether one endorses the institutionalist or the individualist approach to justice, Sender may justifiably extend its sanctions regime to economic agents who either directly and wrongfully contribute to Target's human-rights violations (by providing them with the resources its leaders need to those ends), or who wrongfully fail to provide Target's leaders with incentives to desist (by withholding from them goods and resources which they value more than they value the ability to continue with their policy.) This is so irrespective of those economic agents' nationality or residence.

The Problem of Proportionality

As I noted above, economic sanctions are morally justified only if the harms which they occasion are proportionate. But the requirement of proportionality admits of two variants. Firstly, sanctions must be proportionate to what those who wrongfully trade with Target's economic agents actually do—in just the same way as the harm I inflict on you as a means to prevent you from punching me on the nose must be proportionate to a punch on the nose. Call this *narrow proportionality*. Secondly, the harms which sanctions occasion for those who depend on the resulting economic goods and financial revenues, and who have not lost their right to be harmed in this way, must not outweigh the goods which they bring about. Call this *wide proportionality*, breaches of which are extensively recorded in the empirical literature on sanctions.³²

The point holds irrespective of the strategic nature—narrow versus wide—of the goods under sanctions. It also holds whether the goods are single-purpose goods or dual-purpose goods. Single-purpose goods

³² For the distinction between narrow and wide proportionality, see Jeff McMahan, *Killing in War* (OUP 2009) 21–32. On the harms caused to civilian populations by sanctions regimes, see (eg) Thomas G Weiss and others (eds), *Political Gain and Civilian Pain - Humanitarian Impact of Economic Sanctions* (Rowman & Littlefield 1997).

are goods which enable Target to pursue its rights-violating policy, and serve no other purpose—such as cluster weapons. Dual-purpose goods are needed for both wrongful and rightful ends—oil being a primary example: it fuels both the military vehicles which Target’s military uses to ferry political opponents to torture centres, and the ambulances which ferry patients to A&E. Sanctions in general are controversial—to the extent that they are—precisely in so far as they target dual-purpose goods. They are justified only if the harms accruing to Target’s innocent residents are not (widely) disproportionate relative to the good thereby achieved.

Now, if primary economic sanctions are thus justified on the grounds that they have a just cause and are not in breach of proportionality, then so are secondary economic sanctions: the fact that Sender acts outside its territorial and personal jurisdiction does not entail that it has to clear a higher proportionality bar. More precisely, the fact that Rodia is not an EU national and trades with Sami from within Russia does not provide the EU with a justification for conferring lesser weight on the harms he would suffer through secondary sanctions than on the harms Ben would suffer through primary sanctions. Similarly, Sender may not discount the harms done by secondary sanctions to Rodia’s innocent compatriots relative to the harms done by primary sanctions to Sender’s innocent citizens.³³

The Problem of Global Trade

To recapitulate: Sender may impose economic sanctions on third parties as a means to stop Target’s ongoing policy of grievous rights-violations only if, with respect to wide strategic goods, the sanctions are effective, and so long as, with respect to all goods, they are proportionate in the aforementioned two senses.

So far, my argument for secondary sanctions has relied on a very simple, indeed simplistic, case: *one* agent, Rodia, sells goods to one another agent, Sami; we also assume that the policy is proportionate and that it stands a reasonable chance of success (where it is appropriate to apply the latter requirement). The case is simplistic because even if Rodia’s company manufactures those goods, it buys some of the materials and components from other suppliers, not all of whom may be located in Russia—most of whom in fact will be located abroad and outside the jurisdiction of the EU. Those materials and components themselves are

³³ I am grateful to Susanne Burri for pressing me on this.

likely to have been assembled abroad as well. May *those* agents be justifiably subject to sanctions as well?

The claim that they may admits of two interpretations. On the first interpretation, which rests on the individualist approach to justice which I outlined above, those agents are under a pre-institutional duty to help block Target's rights-violating policy; if they fail to discharge that duty, they act wrongly and are liable to being harmed through sanctions (subject to effectiveness and narrow proportionality). On that first interpretation, the question is two-fold: (i) whether *those* agents in far-flung corners of the world who somehow contribute to Target's rights-violating policies are liable to have their prospects for a flourishing life undermined via sanctions; (ii) if those agents are not liable, whether sanctions are nevertheless justified all things considered.

Note that the worry is not unique to secondary sanctions: it also arises for primary sanctions, where Sender might have to decide whether to impose sanctions on all businesses who trade with *its own agents* and in so doing enable the latter's trade relationship with Target. Nor is the worry unique to sanctions *tout court*: it also arises in the context of war, when we might have to decide whether (eg) we may justifiably harm individuals who contribute to our enemy's war effort by working in munitions factories, paying taxes, etc. Still, secondary sanctions seem more vulnerable to this kind of objection than either war or primary sanctions, precisely because the nature of global trade is such that because in this case, a consistent policy would apply to many more agents located in many more parts of the world.

One might think that agents whose economic activities, loosely constructed, somehow contribute to the manufacturing of the goods over which Rodia transacts with Sami (and for which Rodia himself is subject to sanctions) are not liable to sanctions, for two reasons.³⁴ Firstly, the causal connection between, on the one hand the activities of a worker on an assembly line in (for example) China in charge of putting together processors for telecoms equipment, only some of which will be sold to Rodia, and on the other hand Sami's getting the equipment, is too tenuous to support the claim that those workers are liable to the economic harms (possible job losses and attendant poverty) of sanctions. Secondly, those individual workers are unlikely to know, indeed cannot be expected to know, that they are contributing, via a long chain of global trade, to the nefarious activities of Target's leaders (in the case of narrow strategic

³⁴ I am grateful to the participants at the LSE's Popper Seminar of 12/1/2016 for a useful discussion of the issues raised here.

goods) or that they are failing to deprive those leaders with an incentive to rescind their policy (in the case of wide strategic goods). Surely (some will press) they cannot be held liable to economic harm for so acting.

Let me take the point about ignorance first. It presupposes that an agent's frame of mind at the point at which he acts is relevant for establishing whether or not he is liable to be harmed as a means to prevent him from so acting. On that view, if I do not know, and could not reasonably be expected to know, that I am contributing to a wrongdoing, then I have not lost my right not to be defensively harmed.

I can see the force of that point, which I suspect many will embrace. But even if it is true that the Chinese workers on that assembly line are not liable to the harms attendant on the EU's sanctions regime, it does not follow that the EU may not so act. For it may well be that although those workers retain a right not to be so harmed, the imperative of getting Syria's regime to desist furnishes the EU with a *prima facie* justification for infringing it.

Suppose now that the fact that those workers could not be expected to know that they are contributing to a grievously wrongful policy does not help them retain their right not to be harmed as a means to protect the victims of Syria's regime. The question is whether the causal connection between their contribution and the wrongdoings which the sanctions seek to block is strong enough to warrant harming them deliberately without wronging them. The expression 'causal connection' is vague, denoting as it does causal proximity, significance, counterfactual dependence, or magnitude. I lack the space to offer a full account of the kind of causal connection which grounds liability.³⁵ But on any or all of those interpretations, it is plausible that some agents are not liable to sanctions. For example, it is plausible to hold that someone whose job consists in screwing plates of metal which will by a long circuitous route end up encasing Rodia's telecoms equipment has not thereby forfeited his right to the material resources he needs to lead a flourishing life—resources which he would lose if sanctions were imposed on him. Even if that worker is in fact under a pre-institutional duty of justice to Assad's victims *not* to carry out this kind of work, it is plausible that the harm he would suffer through sanctions would be narrowly disproportionate to his wrongful contribution to Assad's rights-violating policy. Once again, however, if it is indeed the case that workers are not liable to the harms of sanctions for the stated reason, those sanctions might still be justified all things considered.

³⁵ I do so, in favour of a pluralist understanding, in my *Cosmopolitan Peace*, s 1.3.

The second interpretation of the claim that those workers may justifiably be sanctioned rests on the institutionalist approach to justice. It holds that, at the bar of cosmopolitan justice, and subject to the no-undue sacrifice proviso, regimes such as Russia are under a duty to set up a sanctions regime as a means to protect Assad's victims. There is no reason, other than considerations of proportionality, to exempt *other* regimes, such as China, from a similar duty. The more global trade is, the more regimes are under the relevant obligation of assistance to those victims. If the EU is justified in stepping into the breach left by Russia's unwillingness to prevent Rodia from trading with Sami, then by parity of reasoning it is justified in stepping into the breach left open by China's refusal to do the same.

Secondary Sanctions and Multilateralism

Let us take stock. I have argued that arguments in favour of primary sanctions, whereby Sender restricts transactions between its own residents/nationals and Target's economic agents as a means to block and forestall grievous human rights violations by Target's regime, also support in principle Sender's imposition of those sanctions on secondary agents who are not subject to its personal or territorial jurisdiction.

At this juncture, many will undoubtedly object that even if sanctions are justified on the stated grounds, *Sender* lacks the authority to impose them. This is because (they will argue) sanctions must be authorized by a global multilateral body such as the United Nations via the Security Council. Unilateral sanctions, those commentators argue, are in tension with two central tenets of the international legal order, namely the principle of sovereign equality between states and the principle of non-interference by states in the domestic affairs of other states.³⁶ This defence of multilateralism is usually meant to apply to primary sanctions. *A fortiori*, it is likely to be deployed against unilateral secondary sanctions, for at least two reasons. Such a body, comprising and representing as it does the community of states, by definition is not restricted, jurisdiction-wise, to any territorial borders, and its decisions are binding on all of its members. Moreover, it is precisely because global trade involves a wide range of

³⁶ See, eg Rahmat Mohamad, 'Unilateral Sanctions in International Law: A Quest for Legality' in Ali Z Marossi and Marisa R Bassett (eds), *Economic Sanctions under International Law* (TMC Asser Press 2015). For a qualified defence of multilateral sanctions, see also Meyer (n 5). For primary sources on the United Nations' extant sanctions regimes, see <<http://www.securitycouncilreport.org/sanctions/>> accessed 12 July 2016.

economic agents, across national borders, into the commission of grievous wrongdoings, that global multilateral institutions are uniquely placed to coordinate and impose the necessary sanctions.

Whether or not unilateral sanctions are illegal under international law, my concern is with their morality. As it happens, I do not think that it is a *necessary* condition for defensive sanctions to be morally justified that they should be authorized by multilateral institutions with global jurisdictional reach. As I also concede, however, there are cases where multilateral authorization is necessary. Let me take both points in turn.

On the first count, jettisoning the requirement of multilateral authorization seems particularly apposite when sanctions are applied self-defensively. Compare with the view that, as per chapter VII of the UN Charter, the United Nations are the prime arbiter of inter-state disputes. All the same, Article 51 unambiguously states that nothing in the Charter should be taken to undermine a state's right to defend itself unilaterally from an unwarranted aggression. There is strong normative support for this view once it is suitably qualified: both as individuals and as members of collectives, we do have the right to defend ourselves from (wrongful) lethal and military threats.³⁷ To say *a contrario* that we must wait until authorized so to act by (something like) the United Nations is to leave us at the mercy of its members' willingness and ability to protect us. Similarly, even if the state does have monopoly over the means of legitimate violence over a given territory, individual members of that state may kill their (wrongful) attacker in self-defence without waiting for the police to arrive.

By parity of reasoning, Sender is not under an obligation to seek authorisation from a multilateral body such as the UN before applying self-defensive sanctions, even if those sanctions apply to third parties. Nor, in fact, is it under a duty to do so before applying other-defensive sanctions. Consider wars of humanitarian intervention. As a matter of principle, multilateral authorization is not a necessary condition of their being just. If it were, a unilateral, unauthorised intervention by a member state to stop a genocide (in Rwanda for example, or Sudan) would be unjust *for that reason alone*.

³⁷ I say 'once suitably qualified' for the following reason. The UN Charter grants a state a collective right of self-defence, and individual soldiers an individual rights of self-defence, irrespective of whether or not they thereby fight an unjust war. As I and others (notably Jeff McMahan) have argued at length, whether or not soldiers are morally justified in killing enemy soldiers partly depend on the justness of their war overall. See, eg Fabre (n 31) ch 2; McMahan (n 32); David Rodin, *War and Self-Defense* (Clarendon Press 2002).

Is this to say that multilateral authorization is never required? Not at all. Sender may not be in a position to know whether or not its sanctions regime meets the requirements of proportionality and (when appropriate) reasonable chance of success. It will often grossly distort available evidence to suit its ends, or at least be suspected of doing so. Sender may also run up against fierce opposition from other political communities whose residents/nationals would be subject to its policy. The problem arises for primary sanctions. But it is particularly pressing with respect to secondary sanctions, for two reasons. Firstly, those sanctions interfere in the very complex networks of transactions which characterize the global trade, and it is much harder, therefore, to assess how well they fare at the bar of success and proportionality. Secondly, Sender may well be right that sanctions in general and secondary sanctions in particular would work, and would be proportionate, but it may be tempted to design the provisions of its sanctions regime which concern third parties in a way that systematically and unnecessarily disadvantages those third parties for the sake of its own nationals—in breach with cosmopolitan morality.

In so far as multilateral institutions are likely to be more transparent and impartial than sovereign states acting unilaterally, and to command greater compliance than the latter, they might be better suited for the task of protecting individuals from rights-violations at the hands of their own or a foreign regime. But by implication, the authority to impose secondary sanctions is entrusted to, and may be wielded by, whomever is best suited for that task. Suppose that those institutions cannot or do not so act, that unilateral state action is likely to be both more effective in this particular case *and* that it will not undermine multilateral institutions in the longer run. Under those conditions, it is not rendered unjustified for being unauthorized. Again, the case of Sudan comes to mind: faced with China's repeated refusal to vote in favour of sanctions at the UN Security Council (on the grounds, presumably, that it wished to secure investment opportunities in Sudan), the fact that the USA has unilaterally extended their own sanctions against President Bashir's regime to agents outside its jurisdiction does not *in itself* render its decision unjust.³⁸

One final point on multilateralism. The case against the claim that multilateral authorization is a necessary condition for the justified imposition of sanctions is all the more plausible the more grievous the human rights violations which Target's regime is carrying out. There is one case, however, where multilateral action is morally necessary. To wit:

³⁸ Meyer '(n 5) 931–32.

when Target is deemed by some states to pose a threat to collective security, when there are conflicting understandings of the extent to which Target does indeed pose such a threat, *and* (should that be the case) when the only or best way to parry that threat is through the multilateral imposition of sanctions (and thus not merely through the multilateral authorization of a sanctions regime which might be imposed by one party.) Strictly speaking, however, those measures are not an instance of second sanctions: rather, they are a global application of primary economic sanctions, which apply to all parties directly engaged in the conflict.

Conclusion

In this article, I have focused on the neglected case of secondary economic sanctions, whereby the sanctioning party interferes in the economic activities of agents who are not subject to its territorial and personal jurisdiction. At the bar of cosmopolitan justice, I have argued, the same considerations which justify primary sanctions justify secondary sanctions. Cosmopolitans can and indeed do grant some degree of sovereignty to states and associations thereof, and can do so by adverting to the norms underpinning the legal principle of comity between states. However, they are committed to lifting the presumption in favour of sovereignty in the realm of economic transactions, by appealing to, and applying, the same principles which underpin international criminal law—in particular the principle of universal jurisdiction.