

ECONOMIC WARFARE IN DEFENSE OF LIBERTY¹

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Peace is very much more than the absence of war.

—Edward Teller

WHEN THE SIGNATORIES to Jefferson's message to George III declared life, liberty, and the pursuit of happiness to be unalienable, as they pledged their lives, their fortunes, and their sacred honor to the defense of that trinity of principles, they implicitly ranked liberty first. For while survival they deemed dispensable, and without fortune happiness is awkward to pursue, the one mistress our forefathers coveted above all was freedom, the right to order their lives as they saw fit. To that end they were willing to dump English merchandise into the ocean and even, as events were soon to prove, wage war. History has testified to the wisdom of that move—the economic success of this nation having surpassed even the most sanguine expectations of Marx's early critics. But the inspiration behind the Founders' revolutionary zeal appears to have been fueled at least as much by principle as by prudence, by self-respect perhaps even more than by utilitarian calculus. Not that the two must be in conflict—in fact, they usually are not; but it helps to distinguish between them, if only to gain a better perspective on what moves men to exceptional and even revolutionary action.

WAR AND COMMERCE—THE SPECIAL PROBLEM OF ECONOMIC WARFARE

Among the grievances of the idealistic colonists against the English king whom they accused of nothing less than tyranny was his "cutting off [their] trade with all parts of the world"—an interference insulting not only to the pride but to the pocketbook as well. Indeed, was that

alone not conclusive proof that he did not have their best interest at heart? Was that alone not tantamount to a declaration of war on his part? The connection between commerce and war, in this instance as in many others, has given rise to much speculation among political philosophers—nearly everyone agreeing about its significance, though views diverge as to its meaning. Like most human interaction, trade is an attempt to transcend self-sufficiency, to meet a need by appealing to assistance from someone else. War, of course, is the ultimate breakdown of social intercourse, the surrender of reason to passion when voluntary, civilized channels are no longer available.

Yet one famous author has it that commerce and war differ merely in degree:

War and commerce are but two different means of arriving at the same aim which is to possess what is desired. Trade is nothing but a homage paid to the strength of the possessor by him who aspires to the possession; it is an attempt to obtain by mutual agreement that which one does not hope any longer to obtain by violence. The idea of commerce would never occur to a man who would always be strongest. It is experience, proving to him that war, i.e., the use of his force against the force of others, is exposed to various resistances and various failures, which makes him have recourse to commerce, that is, to a means more subtle and better fitted to induce the interest of others to consent to what is his own interest.²

On the face of it, this seems right: would it not be desirable to just take what we want, to fulfill our wishes with no payment? A very little reflection, however, will soon reveal that most of mankind think otherwise: there is surely nothing intrinsically repulsive about satisfying someone else's wishes while also fulfilling one's own. There is no reason why happiness should increase in direct proportion to the amount of one's possessions, nor is it sensible to deny that exchange stimulates production and can even generate a certain *joi de vivre* unknown to the hermit no matter how self-sufficient he may be. The contrast is plain: while war is the result of aggression and cannot fail to cause pain, barter is mutually agreeable; while war is an expression of hatred, trade may foster camaraderie or at the very least it must imply consent.

These distinctions would seem to disappear, however, in the case of economic warfare, which knows none of the congeniality that may accompany commerce, even if such warfare actually dispenses with the bloodshed of military confrontation. Its impact varies from mild to devastating without a shot having been fired or even a nasty comment uttered. By way of definition, one can distinguish two kinds of economic warfare—differing in degree though not necessarily in intention: (1) in a narrower sense, the concept may refer to the practice of international economic measures that enhance a country's relative strength; and (2) more generally, it may refer to all the foreign economic policies that may have as their long-run objective the enlargement of a country's sphere of economic influence (and possibly

a consequent contraction of that of a political adversary).³ Neither of these practices is alien to ordinary economic life insofar as every country always seeks its own advantage; the difference, however, is that economic warfare presupposes a certain degree of antagonism. It involves policies whose intent is hostile at least in part, designed specifically to strengthen a country politically as a result or in the expectation of conflict. Filled as the pages of history may be with instances of bloody rivalry between territorial groups variously defined, economic warfare is nevertheless the exception rather than the rule: ordinarily, in international as in interpersonal activity men are, if not friendly, at least not ill disposed toward one another. Even the less altruistic, those not inclined to supererogation, do not usually set out deliberately to cause harm to others or seek to make the needy even needier. Yet this is just what appears to take place in economic warfare: the pursuit not only of goods but of relative power, symptomatic of discord.

Whatever its intention, however, whether retaliatory or frankly aggressive, economic warfare would appear to be morally unobjectionable insofar as it involves no taking, no forceful seizure of foreign property, no physical harm. For example: whatever the reasons for A's not buying B's goods, he certainly has the right to so abstain if he wishes. Or, no matter now unfriendly the reasons for persuading others not to sell to B, A is entitled to such freedom of speech (indeed, he may hurt himself more in the process and decide to stop—but if he continues, he fully deserves his loss). Whatever A's purpose in building up his strength, provided he does not use it to maim or coerce someone else, he may freely indulge in the exercise—he might, for instance, wish to help out someone else who is weaker. Economic warfare, therefore, unlike armed aggression, is not only often legitimate, it may even, at times, prove commendable. To be sure, many economists have been fond of pointing out—notably against the mercantilists—that the practice is more often than not counterproductive in its effects; but few would debate the fact that it is a far more civilized way to express antagonism than is unloading one's rifle into the body of the enemy.

But can one distinguish between justified and unjustified reasons for antagonism? No more than we could decide once and for all the nature of true beauty or perfect love. Among nations, as among individuals, hostility is based on motives as varied as are the grounds for envy, jealousy, and fear. But most people would hesitate to condemn a response to the threat of annihilation or enslavement. *Caeteris paribus*, if A intends to destroy B or to deny him the right of self-rule, which amounts to destroying his integrity, it is fair to say that B is entitled to do whatever he can to resist such danger to himself. Throughout history, therefore, men have acknowledged the right of a nation to use whatever means were at its disposal—even military, but certainly economic—to strengthen its ability to withstand foreign aggression. Rather more recent in origin is the belief that states may use

such means for humanitarian intervention as well, to assist people whose survival was being threatened but who were unable to defend themselves alone.

A current paradigm case that involves both defense and humanitarian considerations is the relationship of the United States with communist (or "nonmarket") countries. If their rhetoric is to be believed, they have been our avowed enemies from the outset; and their human rights record speaks through barbed-wire frontiers and fishing-boat escapes by millions. Considering these countries' economic performance, it would seem that the West would be well equipped to try to modify their aggressive stand by nonviolent means, by such measures as requiring them to pay their debts before giving them further credits unless they show greater tolerance, or at the very least by not offering them easy payment plans that our own citizens are asked to subsidize. This is not the place to speculate about the psychology of American (and, in general, Western) policymakers who have consistently failed to take advantage of capitalist technological superiority to gain moral and strategic concessions from our ideological opponents, preferring instead to assist them—sometimes at a remarkably high cost to ourselves. This has been the subject of other studies, notably Antony Sutton's three-volume *Western Technology and Soviet Economic Development* and, more recently, Carl Gershman's "Selling Them the Rope."⁴ Perhaps no single answer exists to the complex question as to why we have declined to use the leverage we undoubtedly have in order to modify the attitudes of our enemy. In recent years, however, Congress has shown uncommon resolve in attempting to introduce a provision of principle in our trade policy toward "nonmarket" countries. Known as the Jackson-Vanik Amendment to the 1974 Trade Act, this provision denies extending government credits and most-favored-nation status to any country that violates the human rights of its citizens by failing, in particular, to allow them to emigrate if they so wish. Undoubtedly humanitarian in intent, this amendment has implicit strategic significance as well, for it is hoped that liberalization in the communist block might lead to a decrease of international tension, that a greater degree of internal tolerance will be accompanied by at least some good will toward regimes such as our own that are opposed ideologically. In sum, the amendment is a statement in defense of liberty as such—and in this respect stands in the same noble tradition as Jefferson's Declaration of Independence penned 200 years earlier.

As a legal document, however, the Jackson-Vanik Amendment is surely unique. To cite Professor Naum Meiman who wrote from Moscow to the late Sen. Henry Jackson (D-Wash.),

[t]he Amendment is more than an important act of Congress. It is something altogether new, something unprecedented. For the first time in history the top legislature of a great country deemed it necessary to pass a law supporting one of the basic human rights, that of freedom of movement, on a global scale. This right was throughout history the main criterion, the main test, distinguishing the freeman from the slave and the serf.⁵

Professor Meiman himself had been unable to publish these words—they were transmitted in a letter personally handed to Rep. Patricia Schroeder (D-Colo.) on her visit to the Soviet Union in 1978. They speak eloquently to the significance of the Jackson-Vanik Amendment as part of this country's trade policy.

Justifying an essentially humanitarian law, however, requires serious conceptual consideration. To begin, then, the question arises: why should a nation have a statement of trade policy at all that proclaims the importance of respect for liberty? What is the philosophical basis for such a policy? I will address the question in two stages: first, by examining the issue theoretically, then by taking a look at some illustrious historical precedents arguing for the defense of the idea that the jealous love of freedom must be paramount in determining a nation's dealings with others—its commercial transactions in particular.

THE IDEAL OF LIBERTY AND ECONOMIC WARFARE— THE CONCEPTUAL SETTING

Assuming a *status quo* of voluntary interaction among sovereign trading partners, economic warfare might seem to be irrational from the point of view of mere profit: after all, if it is not economically advantageous for A to trade with B at price P, A will simply not enter into the transaction independently of "warfare" considerations. On the other hand, if it is so advantageous, not to enter into the transaction in the hope, for example, that B will be hurt too, has an air of irrationality about it, at least from a purely materialistic point of view. But mere profit is never all there is to human intercourse, and A may well be acting quite sensibly nonetheless. It has been assumed too often too easily that power—in a nation as in the individual—grows in direct proportion with wealth. As the United States failure in Vietnam indicates (to mention but one glaring case), success in the political arena is the result of complex, often extra-economic factors. As a result, there may be good reasons, both prudential and principled, for pursuing policies that override the goal of profitseeking at least in its more narrow sense.

Many good prudential reasons may be found for taking measures against an enemy, measures such as tariffs or denial of credits, which have the effect of reducing either exports to or imports from that country. One such reason is the expectation of gaining political support and even aid from other nations sympathetic with the plight of the beleaguered country. Another reason might be the heightened morale at home, which may result in increased productivity together with a greater sense of national unity and well-being (sometimes deemed well worth the prosperity it might replace). Above all, there may be hope that one's enemies will see fit to change their behavior so as to avoid embarrassment and ostracism. (This is particularly likely if one's enemies stand to lose more—at least in the short run—from eco-

conomic warfare in the sense that they are less self-sufficient and in need of vital necessities such as food.)

The effectiveness of economic warfare from a purely prudential point of view has been debated at length, with no consensus existing as to its wisdom. Foreign political support, for example, is sometimes a poor exchange for severe economic losses; heightened national unity tends to manifest itself all too frequently in uncivilized xenophobia; and ostracism may be weathered by the recalcitrant enemy longer than one might expect. But men set prudence aside sometimes, as did the American colonists who pledged their sacred honor and all their possessions to the defense of the ideal for which they had originally left their homes on the other shore of the Atlantic. And even the most hard-headed businessmen will concede that profit would be useless to them were their own safety in real danger or were their own autonomy to be robbed through slavery.

As in the individual, so it goes with the nation: security and self-rule are prized above all else, hence trade restrictions are undertaken not only for economic reasons but in the interest of principle. The justification, in the nation as in the individual, may be found in the concept of dignity and self-esteem: for nations, like the people that make it up, sometimes refuse to deal with those who threaten their integrity without some expression of protest, without some statement indicative of resistance and outrage. To question the prudence of such a move is, at bottom, to question people's resolve to maintain their own dignity or, as in the case of humanitarian intervention, their determination to defend the dignity of others. Is there really a need to justify such determination? It would seem that neither survival nor the right to conduct one's life unhindered by coercion requires elaborate argument. It has been argued, for example, that to coerce another involves one in self-contradiction;⁶ to wish to live uncoerced would require much less defense. To want to be completely enslaved, to want not to want, does not even make sense.

Complications arise, however, when nations rather than individuals are involved. In particular, a nation is composed of many different groups that pose different degrees of threat to another country. Conversely, economic measures against another nation affect various groups differently—sometimes hurting most those who are least at fault. No one seriously maintains, for example, that the Russian (or Chinese, or Romanian) *people* wish to wage war on capitalism; yet tariffs and other economic measures are less likely to affect the standard of living of their leaders—the authors of the hostile policies in question. It has been argued, therefore, that it is pointless to starve the captive subjects of a dictatorship to teach the dictators a lesson.

Another important related question of increasing relevance involves the existence of commercial entities such as the multinational corporations and supranational bodies such as the Council for Mutual Economic Assistance (Comecon or CMEA) that certainly complicate the analytic picture. The interests of a particular nation may, at times,

conflict with the interests of such corporations as Gulf or Boeing at least superficially (Angola provides a recent example); and Comecon serves the interest of the Soviet Union—at least as its leaders perceive it—to a larger degree than it does the interests of other members.

These complications notwithstanding, it is nevertheless useful to consider nations as a whole rather than either subgroups, international, or supranational bodies as the basic unit of research in the present context. For one thing, a major factor in trade today is the availability of government credits—hence national policies are ultimately of the utmost significance. The Jackson-Vanik Amendment in particular places limitations on U.S. government credits and guarantees for trade with communist countries—which means that it regards nation-states as traditionally understood to be the basic units at stake. Accordingly, this study will follow the same principle and overlook the complications arising from considerations of other relevant subgroups or combinations.

Another problem concerns the definition of threat to national security. When does a nation consider itself thus threatened? And what exactly should the threat be directed to? Is it survival alone, or are other values relevant as well? According to Joseph S. Nye, Jr.,

[m]ost national security policies in today's world are designed not merely to insure the physical survival of individuals within national boundaries, but to assure some minimal expected level of economic *welfare*, a certain political and social *autonomy* for the nation, and a degree of national political *status*. Indeed, some national security policies actually increase the risks to physical survival in order to insure greater certainty in the enjoyment of economic welfare, political status and national autonomy.⁷

Broadly understood in this fashion, therefore, in the present age a threat deemed worthy of retaliation involves considerably more than mere survival. Were we to use too broad a concept of national security, however, we would soon open a Pandora's box that would prove more confusing than helpful. For this reason it will be best to limit the concept of threat to national security as referring only to a challenge to liberty—the principle of self-sufficiency and self-governance, the principle for which the Declaration of Independence had originally been written.

The word "liberty," however, is left deliberately ambiguous: for not only is the statement of policy that underlies the Jackson-Vanik Amendment directed at the defense of this nation's liberty, it is also aimed at protecting the liberty of others. Justification would therefore appear to be more problematic. For it is one thing to fight for one's own dignity, one's own survival; quite another to do so on behalf of others. Are the two cases not very distinct? Is humanitarian intervention not an entirely different kind of situation?

It is one thing for an individual to be acting on his own behalf, or for a small group whose common goals are explicit and voluntarily undertaken, and quite another for a government to be taking

measures on behalf of its subjects. If the main function of government is the protection of its people, after all, is not all other action subordinate to that principal goal?

Indeed it is. And if humanitarian actions—or a government's activities intended to protect the rights of another people—in any way conflict with the protection of its own subjects, those actions are surely not justified. The more complex case arises when a government's humanitarian activities, while not endangering in any way the safety of its subjects, cannot be shown to benefit all subjects directly in any unambiguous, immediate fashion. The question then arises: should such actions be undertaken at all?

They should, I submit, when it can be shown that humanitarian actions are ultimately serving to preserve the security and the sanctity of a nation's subjects. International legal scholar Hersch Lauterpacht explains:

In the eyes of government there was often deemed to exist a conflict between the defense of human rights through external intervention. That conflict was, in the long run, more apparent than real. For, ultimately, peace is more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality.⁸

This is to say that in the case of legitimate humanitarian intervention, what is at issue is liberty as such, the dignity of the human personality, which is often—indeed, usually—endangered when someone abuses the right to life and integrity of another. In essence, therefore, humanitarian intervention is ultimately based on—admittedly enlightened—self-interest even fairly narrowly understood, on security, and self-preservation. It certainly requires an appreciation of the ideal of liberty and self-rule. While the Jackson-Vanik Amendment itself as a legislative move is new and quite unique, the concept of humanitarian assistance in the interest of liberty and security has long historical roots.

LIBERTY BEFORE PROFIT—A HISTORICAL OVERVIEW

It should surprise no one to see liberty eloquently defended in ancient Greece, by an illustrious contemporary of Socrates known not only for his atomic theory (which was later revived during the Scientific Revolution) but also for his treatise on economics: his name is Democritus, and he taught that morality—unlike aesthetics—is absolute. Democritus was a strong defender of private property, on grounds of efficiency: he argued that the superior effects of private property on incentive, thrift, and pleasure justify its institution, for “income from communally held property gives less pleasure, and the expenditure less pain.”⁹ But efficiency was not his only, or even his main, concern. He believed, for example, that liberty and mutual aid help cement a society: “When the powerful champion the poor and render them service and kindness, then men are not left desolate but

become fellows and defend one another.”¹⁰ Not that the powerful or the rich ought to be *forced* to help the poor; Democritus speaks of kindness, of generosity, not of the welfare state. He holds self-interest to be a highly sophisticated matter, transcending narrow economic considerations. He evidently attaches a higher value to freedom than to mere material goods: “Poverty in a democracy is as much preferable to prosperity under a despot as is freedom to slavery.”¹¹ In the extant fragments Democritus does not go on to make the argument that in fact democracy tends to enhance prosperity while despotism breeds poverty; in any case that would obscure the main point, which is a defense of dignity regardless and even in defiance of material considerations. Democritus may well have been the first libertarian thinker, the first defender of private property and human rights in the tradition of Western economic thought, the tradition that culminated in the eighteenth century with Adam Smith.

Before turning to Smith, however, one must give due credit to a man whose reputation otherwise belongs in the area of legal thought: Hugo Grotius, who for the first time in the history of philosophy argued for international recognition of human rights, for nations coming to the defense of individuals whose right to liberty has been violated. In his book *De Jure Belli ac Pacis (The Law of War and Peace)* published in 1625, Grotius wrote that justice was to be defended out of an enlightened sense of self-interest, both on the personal and on the international level. For just as

the national who in his own country obeys its laws is not foolish, even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself,

so with nations;

for just as the national, who violates the law of his country in order to obtain an immediate advantage, breaks down that by which the advantages of himself and his posterity are for all future times assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace.¹²

And in case this does not seem to envoke a sufficiently sophisticated egoism, Grotius makes it clear that

[e]ven if no advantage were to be contemplated from the keeping of the law, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn toward that to which we feel our nature leads.¹³

For one thing, “justice brings peace of conscience, while injustice causes torments and anguish;” moreover, “justice is approved, and injustice condemned, by the common agreement of man,” and by God Himself, in Whom “injustice finds an enemy, justice a protector.”¹⁴ Consequentialist as all these arguments may seem, Grotius nevertheless holds that justice, as embodied in law, “is not

founded on expediency alone.”¹⁵ It rests on the laws of nature, which are “always the same;” indeed, justice “has its origin in the free will of man.”¹⁶ To repudiate it, therefore, is to violate the very principles of one’s own nature.

Grotius was of course in favor of self-defense as a primary value, even if this might involve resistance against a figure of authority. For, he writes, “I should hardly dare indiscriminately to condemn either individuals, or a minority which at length availed itself of the last resource of necessity.”¹⁷ Because ultimately it is the right of man to liberty that is basic, not “the good of the state” as the constitution of a communist country would have it, nor the interest of the sovereign. Neither is justice to be identified with the will of the strongest. Hence Grotius finds it perfectly legitimate for rulers to demand punishment on humanitarian grounds,

not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatever.¹⁸

Any despot who violates the principle of liberty by atrocities against his subjects is thereby entitled to censure, for “the exercise of the right vested in human society is not precluded.”¹⁹ It is not expediency, again, that is at issue; it is justice. Personal dignity, human liberty, should be as important to nations as they must be to individuals.

It seems unlikely that Grotius failed to leave an impression on Adam Smith who encountered his writings at Glasgow College (a copy of Grotius’s work has been found signed by Smith who was then between the ages of fourteen and seventeen). And there is no doubt that Smith also read the works of his friend David Hume (to whom he served as literary executor after Hume’s death in 1776) and was in much agreement with them. Both of them shared a belief in individualism, and a commitment to private property. And even though Hume considered himself a utilitarian, he reached conclusions to which most natural law theorists could subscribe as well.

Though no systematic economist, Hume is entitled to a worthy place in the history of economic thought, for he is among the first to have discussed the subject of international trade. As his essays on commerce indicate, Hume is very much in favor of setting aside national prejudice for the benefit of both prosperity and harmony. In his piece entitled “Of Civil Liberty,” after deploring the paucity of literature on international trade (“Trade was never esteemed an affair of state till the last century; and there is scarcely any ancient writer on politics who has made mention of it”²⁰), he cites some common prejudices:

It is very usual, in nations ignorant of the nature of commerce, to prohibit the exportation of commodities, and to preserve among themselves whatever they think valuable and useful.²¹

Hume is in general distressed by the short-sighted policies of nations whose ill-founded jealousy prevents them from pursuing not only the interest of world peace but their own prosperity. Unfortunately, observes Hume, "nothing is more usual, among states which have made some advance in commerce, than to look on the progress of their neighbors with a suspicious eye, to consider all trading states as their rivals, and to suppose that it is impossible for them to flourish, but at their expense."²² Hume had in mind, of course, the well-known theory of the mercantilists, which held that an increase of wealth of any country is brought about by the loss of wealth to others. On the contrary, holds Hume, "the increase of riches and commerce in any one nation, instead of hurting, commonly promotes the riches and commerce of all its neighbors."²³ The word "commonly" does imply a recognition on his part that there may be exceptions—presumably in matters of defense. Hume certainly does not deny the possibility that a nation will occasionally use its riches to gain strategic advantage, and admits that defense is of paramount importance, commending, for example, Hiero the King of Syracuse for courageously keeping the integrity of his kingdom against foreign domination. Hiero is held up as a prime example of temperate wisdom in the best Greek tradition; for

the maxim of preserving the balance of power is founded so much on common sense and obvious reasoning, that it is impossible it could altogether have escaped antiquity, where we find, in other particulars, so many marks of deep penetration and discernment.²⁴

Hume sees no reason to offer special arguments on behalf of so "common sense" an ideal as the preservation of national sovereignty. In his own day, Hume finds solace in the behavior of his native land that has valiantly opposed its enemies,

has stood foremost, and she still maintains her station. Besides her advantages of riches and situation, her people are animated with such a national spirit, and are so fully sensible of the blessings of their government, that we may hope their vigour never will languish in so necessary and so just a cause.²⁵

A cause not only just but outright necessary; Hume endorsed his countrymen's zeal for national sovereignty even as he deplored its excesses. Far from repudiating economic warfare as such, he merely distinguished between "ill-founded jealousy," which maliciously or at least erroneously rejoices in the ill-fortune of other nations, on the one hand, and on the other hand a commendable self-esteem, which dictates a healthy desire for security and integrity in the best ancient tradition.

This point of view was fully shared by his good friend Adam Smith who was however just as wary of any barriers to free trade, on both the intra- and the international scale. His reasons were similar to Hume's: free trade, they both believed, benefits everyone and yields the greatest prosperity to all partners. Yet Smith too specified one ex-

ception to his principle of laissez faire: again, national defense. He was willing to support the Navigation Laws in spite of their deleterious effect on profit and efficiency. One effect of these laws, Smith told his countrymen, is to diminish the number of sellers; thus “we necessarily diminish that of buyers, and are thus likely not only to buy foreign goods dearer, but to sell our own cheaper, than if there was a more perfect freedom of trade.”²⁶ The reason he would nevertheless endorse such a seemingly irrational policy is well known:

As defence, however, is of much more importance than opulence, the Act of Navigation is, perhaps, the wisest of all the commercial regulations of England.²⁷

Clearly, it is not that defense is at least as important as opulence, nor that opulence should be sought in the interest of defense, but rather that material considerations ought to be set aside for a higher ideal, that of national sovereignty. No one can accuse Adam Smith of having advocated the pursuit of profit at any cost; on the contrary, that pursuit could only take place in an atmosphere free of threat, in a liberal society master of its own fate.

The year that saw the publication of *The Wealth of Nations* was also the year when the state of Virginia adopted what has been called the first form of a declaration of the rights of man. Authored by George Mason, it proclaimed that men are by nature free and have a right to life, liberty, property, and the pursuit of happiness. The idea of course, was to be echoed in the Declaration of Independence drafted shortly thereafter by Thomas Jefferson. That document became famous without, however, a crucial paragraph included in its first draft, a paragraph that complained that George III had

waged cruel War against human Nature itself, violating its most sacred Rights of Life and Liberty in the Persons of a distant People who never offended him, captivating and carrying them into Slavery in another Hemisphere, or to incur miserable Death, in their Transportation thither.²⁸

It was not until the Treaty of Ghent that the United States and Great Britain would obligate themselves “to use their best endeavors” to condemn slave trade as “irreconcilable with the principles of humanity and justice.”²⁹ Slavery was condemned on several other occasions internationally—at the Treaty of Paris of 1814, the Congress of Vienna a year later, the Berlin Conference on Africa in 1885, the Brussels Antislavery conference of 1890. State constitutions were slowly beginning to adopt antislavery provisions around the same time,³⁰ but the 1919 Treaty of St. Germain reflected the need to uphold once more the principle of liberty by placing on each signatory power an explicit international obligation for the abolition of slavery—reaffirmed in 1926 at the Geneva conference.

As late as 1956 an antislavery convention was held under the auspices of the United Nations, and it is fair to say that the Jackson-

Vanik Amendment is the most recent American legislative attempt in the tradition of repudiating the practice of denying people their right of free movement. To repeat Professor Meiman's words cited above, "this right was throughout history the main criterion, the main test, distinguishing the freeman from the slave and the serf." Nor is this, again, a matter simply of humanitarian concern. Whenever the rights of life and liberty are denied, the entire community of nations is threatened—admittedly in varying degrees, but nevertheless threatened. In his famous 1948 speech delivered at the opening of the United Nations Assembly in Paris, Secretary of State George Marshall warned that

[g]overnments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field.³¹

It is the repudiation of coercion that is at stake here, the defense of liberty as such.

To be sure, there are times when the threat to international peace of a particular country's violation of its citizens' liberty will be less evident, in which case it is fair to say that another country's interference on behalf of the beleaguered citizens is a case of "humanitarian intervention" more properly so-called. According to E. C. Stowell,

[h]umanitarian intervention may be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.³²

The definition might be extended by including not only reliance on military force but also measures of economic warfare.

The legitimacy of this kind of intervention has been recognized by many, as far back as 1579 when the author of the *Vindicae Contra Tyrannos* defended it when undertaken "in behalf of neighboring peoples who are oppressed on account of adherence to the true religion or by any obvious tyranny."³³ In the twentieth century, Edwin M. Borchard reiterated this attitude eloquently. Noting that at the time of his writing—1929—individuals enjoyed only a minimum of rights under international law, Borchard remarked:

This view, it would seem, is confirmed by the fact that where a state under exceptional circumstances disregards certain rights of its own citizens, over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on the grounds of humanity. When these 'human' rights are habitually violated, one or more states may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled.³⁴

This point of view is fully endorsed by E. C. Stowell. But Stowell once again points out that humanitarian intervention is difficult to distinguish from genuine self-defense. He asks, rhetorically:

If, where such intolerable abuses do occur, it be excusable to violate at one and the same time the independence of a neighbor and the law of nations, can such a precedent of disrespect for law prove less dangerous to international security than the recognition of the right, when circumstances justify, to ignore that independence which is the ordinary rule of state life?³⁵

Perhaps the first recorded case of humanitarian intervention as such dates back to 480 B.C., when Celon Prince of Syracuse made it a condition of peace that the Carthaginians abandon their custom of sacrificing their children to Saturn. Often humanitarian intervention has involved the protection of religious minorities: one early case was the action by Russia's Catherine II who, together with the governments of Prussia and Great Britain, influenced the Catholic king of Poland who was persecuting his protestant and orthodox subjects. Several other instances on behalf of religious minorities may be found in the nineteenth century—such as the European intervention in 1829 to protect Christians who were being massacred by Turkey.

In the twentieth century, an attempt was made by the League of Nations in 1919 to proclaim the rights of life and integrity to minorities in the European community—an attempt whose feebleness, however, became evident a few years later when a Jew from Upper Silesia petitioned before the League on behalf of fellow Jews being persecuted by the Germans. The League, it was found, had no jurisdiction over Upper Silesia and the case was dropped. The year was 1933.

Not much greater is the authority and power of the United Nations today. Although its first article, which sets out the fundamental purposes of the United Nations, provides that one of those purposes is “to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,” there is a very real question as to the force of this lofty ideal, given that the United Nations has no real means of enforcing it. Members of the United Nations are presumably committed to promote, according to Article 55, “universal respect for, and observance of, human rights and fundamental freedoms,” which Article 56 entitles them to defend by taking “joint and separate action in cooperation with the Organization for the achievement of the Purposes set forth in Article 55.”³⁶ But it has been noted that the precise legal significance of this pledge by member states is anything but clear. They are bound merely to “promote,” “encourage,” and “assist in the realization of” human rights, rather than guaranteeing or protecting them. Besides, these “rights” are so hopelessly ill defined that their legal content is very questionable indeed.

Dennis J. Driscoll is among those who argue that “the issue was settled, finally, by the International Court of Justice in 1971 when the Court held, in the *Namibia Case*, that the [U.N.] Charter does indeed impose upon member states legal obligations with regard to human rights.”³⁷ Even if that issue were, indeed, “settled,” the question of enforcement is still very much open—which is why for all practical purposes it falls upon the United States to hold the banner of liberty in the West, not only for the sake of the oppressed but, indeed, in the interest of its own defense, and in the interest of international peace in general. This is especially true in connection with human rights violations in communist countries, violations that are based on ideology—an ideology that puts the triumph of the dictatorship of the proletariat before all other goals.

In his January 23, 1980, State of the Union address, former Pres. Jimmy Carter reemphasized that “our support for human rights in other countries is in our national interest as well as part of our national character.” Conversely, the national interest is, ultimately, the interest of the entire free world—at least as far as its security is concerned. The interrelation is intimate. Carter continued: “As we meet tonight, it has never been more clear that the state of our union depends on the state of the world. And tonight, as throughout our generation, freedom and peace in the world depend on the state of the American union.” The twin values—freedom and peace—are so intimately related that to separate them is to deny our dignity, what Carter has called “our national character.” It is for this reason that the Jackson-Vanik Amendment is so important a statement. In the words of Andrei Sakharov, the Soviet dissident who was exiled on the day before Carter’s speech,

legislative measures such as the Jackson-Vanik Amendment addressed to the defense of human rights and separate from other aspects of detente are extremely important and justified. That is an example of a moral approach to political problems, in accord with the moral principles of American democracy.³⁸

Sakharov also believes that freedom is inseparable from security. As he wrote to presidential candidate Jimmy Carter on October 11, 1976, “I am convinced that guaranteed political and civil rights for people the world over are also guarantees of international security.”³⁹

Whether the Jackson-Vanik Amendment has in practice achieved its goals is a question quite separate from the issue of its legitimacy as government policy. The general consensus is that it has done relatively little to enhance the human rights of people under communist domination in the Soviet bloc. This does not, however, automatically prove that such legislation is useless. It does argue for a more-sophisticated and finely tuned measure that could be—and should be—manipulated to produce the desired results. A practical discussion, however, must be left for another occasion.

1. Written on a grant from the Earhart Foundation as a visiting scholar at the Hoover Institution, Stanford University, 1979-81; updated at the Heritage Foundation, 1984.
2. Benjamin Constant, *De l'Esprit de Conquête et de l'Usurpation dans leurs rapports avec la Civilisation Européene*, part I, chap. 2, cited in Albert O. Hirschman, *National Power and the Structure of Foreign Trade* (Berkeley and Los Angeles: University of California Press, 1945), p. 15.
3. Yuan-Li Wu, *Economic Warfare* (New York: Prentice-Hall, 1952), p. 6, Cash Gershman, "Selling Them the Rope," *Commentary* (April 1979).
4. Antony C. Sutton, *Western Technology and Soviet Economic Development 1917-1930* (Stanford: Hoover Institution, 1968), is a classic. A fine unpublished study is Wayne A. Schroeder's "Soviet-American Technology Transfer and United States National Security," Ph.D. dissertation, University of Southern California, January 1981.
5. Speech by Henry M. Jackson to the National Leadership Assembly of the National Conference of Soviet Jewry, April 10, 1978, mimeographed.
6. See Roger Pilon, "A Theory of Rights: Toward Limited Government," Ph.D. dissertation, University of Chicago, 1979.
7. Joseph S. Nye, Jr., "Multinational Corporations in World Politics," *Foreign Affairs* 53 (October 1974), p. 154.
8. Hersch Lauterpacht, *International Law and Human Rights* (New York: F. A. Praeger, 1950), p. 32.
9. Henry William Spiegel, *The Growth of Economic Thought* (New Jersey: Prentice-Hall, 1971), p. 14.
10. *Ibid.*
11. *Ibid.*
12. Hugo Grotius, *The Law of War and Peace*, trans. Francis W. Kelsey (Indianapolis/New York: Bobbs-Merrill, 1925), p. 16.
13. *Ibid.*
14. *Ibid.*, p. 17.
15. *Ibid.*
16. *Ibid.*, p. 21.
17. *Ibid.*, p. 150.
18. *Ibid.*, p. 504.
19. *Ibid.*, p. 584.
20. David Hume, *Essays Literary, Moral and Political* (London/New York: George Routledge and Sons), p. 50.
21. *Ibid.*, p. 184.
22. *Ibid.*, p. 195.
23. *Ibid.*
24. *Ibid.*, p. 201.
25. *Ibid.*, pp. 201-202.
26. Adam Smith, *The Wealth of Nations*, ed. Robert Maynard Hutchins, Great Books of the Western World, vol. 35 (Chicago: Encyclopaedia Britannica, 1952).
27. *Ibid.*, p. 198.
28. Alessandra Luini del Russo, *International Protection of Human Rights* (Washington, D.C.: Lerner Law Book, 1971), p. 19.
29. *Ibid.*, p. 21.
30. The English Statute of 1838 on emancipation in the English Colonies (3 and 4 Gul. IV, 73), the French Constitution of 1848, the Thirteenth Amendment to the United States Constitution (1865), the Brazilian law of 1971, the Spanish Constitution of 1873, the Portuguese law of 1880, and the Chinese legislation of 1910. (*Ibid.*, p. 21)
31. Walter Laqueur and Barry Rubin, eds., *The Human Rights Reader* (New York/Scarborough, Ontario: New American Library, 1979), p. 51.
32. *Ibid.*, p. 172.
33. *Ibid.*, p. 173.
34. *Ibid.*, p. 174.
35. *Ibid.*
36. *Ibid.*, p. 43.
37. *Ibid.*
38. Andrei D. Sakharov, *Alarm & Hope* (New York: Vintage Books, 1978), p. 26.
39. *Ibid.*, p. 44.