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Free Trade Then and Now, or Still Manchester United

MAIMON SCHWARZSCHILD*

Liberal thinkers from at least the eighteenth century onwards were firm supporters of free trade, on grounds that it promoted prosperity, peace, and mutual knowledge, and tolerance among people and between peoples. In a sense, support for international free trade was, and is, a subset or a particular instance of support for free markets generally, and for the legal and cultural frameworks that enable and are in turn enabled by economic freedom: these include the rule of law, property rights, enforcement of contracts, and freedom of movement. But the idea of international free trade in particular was near the heart of Enlightenment and post-Enlightenment liberal thought; it could fairly be called a defining element of it.

In the eighteenth century, Montesquieu emphasized the nexus between international free trade and peace. “The natural effect of commerce is to lead to peace. Two nations that trade with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.”¹ Trade tends to cure “destructive prejudices” and to render manners (*moeurs*) more gentle.²

Adam Smith and in the early nineteenth century David Ricardo made the classic economic case for free trade: that through increased opportunities for exchange, and drawing upon comparative advantage, free trade would

* © 2015 Maimon Schwarzschild. Professor of Law, University of San Diego School of Law; Affiliated Professor, University of Haifa.

1. BARON CHARLES DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 338 (Anne M. Cohler et al. eds. & trans., Cambridge Univ. Press 1989) (1748).

2. *Id.*

mean greater prosperity.³ But the nineteenth century's practical campaigners for free trade, Richard Cobden, John Bright, and the Manchester School—and Frédéric Bastiat and the free trade movement he promoted in France—insisted on the tie between free trade and social equity: that free trade would make essential products more available to all.⁴ Not incidentally, it would also curb the power of the landed aristocracy. Free trade was closely associated with advocacy for peace as well, and with the nineteenth century movement for the abolition of slavery. John Bright sat in the House of Commons for more than forty years, where he campaigned for free trade, religious freedom, electoral reform to democratize the franchise, land reform in Ireland, and opposed the Crimean and other wars.⁵ Bright is said, by the historian A.J.P. Taylor, to have done “more than any other man to prevent the intervention of [Britain] on the side of the South during the American Civil War.”⁶ The motto on Richard Cobden's commemorative medal was “Free Trade, Peace, Goodwill Among Nations.”⁷

The association of free trade with prosperity, tolerance, and peace was not merely theoretical. For nearly a century after 1585, when the Netherlands became practically independent of Spain, Holland enjoyed a “Golden Age” in which Amsterdam became the hub of European world trade.⁸ Amsterdam and other Dutch ports were, at the time, uniquely open to foreign goods and traders. This inspired interest and admiration in England and elsewhere, and ultimately provided a precedent for England's later moves towards more unrestricted free trade.⁹ Holland and its prosperous middle and mercantile classes are reflected in the art of Rembrandt and other

3. See ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 194 (Encyclopædia Britannica 1952) (1776) (“If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry employed in a way in which we have some advantage.”); DAVID RICARDO, *ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* 146 (London, John Murray 1817).

4. See, e.g., LORD WELBY & SIR LOUIS MALLET, *COBDEN'S WORK AND OPINIONS* (1904).

5. See, e.g., HERMAN AUSUBEL, *JOHN BRIGHT: VICTORIAN REFORMER* (1966); Miles Taylor, *Bright, John (1811-1899)*, in *OXFORD DICTIONARY OF NATIONAL BIOGRAPHY* (2004).

6. A.J.P. TAYLOR, *John Bright and the Crimean War*, in *FROM NAPOLEON TO THE SECOND INTERNATIONAL: ESSAYS ON NINETEENTH CENTURY EUROPE* 229 (Chris Wrigley ed., 1993).

7. *Monuments to Free Trade: Bastiat and Cobden*, ONLINE LIBR. OF LIBERTY, <http://oll.libertyfund.org/pages/monuments-to-free-trade-bastiat-and-cobden> [https://perma.cc/XX3Q-2LKK] (last modified Apr. 10, 2014).

8. See, e.g., RUSSELL SHORTO, *AMSTERDAM: A HISTORY OF THE WORLD'S MOST LIBERAL CITY* 117, 184 (2013).

9. *Id.* at 216–17.

painters of the era.¹⁰ Dutch free trade was not just associated with prosperity; it was also associated with religious and intellectual tolerance.¹¹ Holland, for example, offered admission and freedom of religion to Jews, and it became a center of the Sephardic diaspora after the expulsion of the Jews from Spain and Portugal, and the subsequent closure of markets—and minds—in the Iberian Empires.¹² Holland was a generous and long-lasting example, but by no means the only one, in Jewish history of tolerance and a suspension of persecution in free-trading cities and polities.¹³ Whether in mediaeval and Renaissance Italian trading cities like Venice and Livorno, or even in various Central and Eastern European principalities over the course of the centuries, Jews were allowed to settle in relative safety and religious freedom essentially only when host communities or governments wished to promote freer trade; and such safety and freedom almost invariably came to an end—often violently—whenever there was a turn against free trade.¹⁴

The conjunction of free trade with prosperity, in fact, has been a constant throughout world history. The Italian trading cities, the Dutch Golden Age, England in the free trade era, all were conspicuous for relative prosperity in their time. The United States adopted a free-trading common market on a domestic, but ultimately continental, basis as the constitutional foundation for American economic success, and as a foundation for political and social solidarity as well. After all, the States under the Articles of Confederation, and even under the pre-Civil War Constitution, were semi-sovereign, and hence the American common market had a quasi-international as well as domestic flavor. The European Common Market—launched after the Second World War as the European Coal and Steel Community, and evolving into today’s European Union—inaugurated the European economic “miracle” (*das Wirtschaftswunder* in Germany;

10. J.W., *Rembrandt: The Late Works*, THE ECONOMIST (Oct. 17, 2014, 2:54 PM), <http://www.economist.com/blogs/prospero/2014/10/rembrandt-late-works> [<https://perma.cc/79VH-CJ8A>].

11. CRAIG A. LOCKARD, *SOCIETIES, NETWORKS, AND TRANSITIONS: A GLOBAL HISTORY* 360 (3d ed. 2015).

12. See, e.g., MIRIAM BODIAN, *HEBREWS OF THE PORTUGUESE NATION: CONVERSOS AND COMMUNITY IN EARLY MODERN AMSTERDAM* 1–2 (1997).

13. See LOCKARD, *supra* note 11, at 359–61.

14. See, e.g., I MORDECHAI BREUER & MICHAEL GRAETZ, *GERMAN-JEWISH HISTORY IN MODERN TIMES* 84 (Michael A. Meyer & Michael Brenner eds., William Templer trans., 1996) (“Jews were admitted simultaneously along with a small number of Calvinists in the hope that both groups would help promote commerce . . .”).

les trente glorieuses in France) out of the ashes of the Second World War.¹⁵ Korea was impoverished, and Japan was devastated, at the end of that war: their opening to world trade is generally acknowledged as decisive in transforming Japan, and South Korea, into prosperous—and socially fairly equitable—“Tigers.”¹⁶ India languished economically for decades after Independence under a closed, protectionist economic regime: the low standard of living in India was a by-word, and a perennial shock to visitors from abroad.¹⁷ Since the 1990s, liberal reforms have created an opening for international trade, and India has enjoyed unprecedented economic growth. No one would claim that India’s problems have all vanished, nor that Nirvana has been achieved, but economic growth and the spread—albeit uneven—of a better standard of living is there for all to see.¹⁸ Singapore had been perennially impoverished when it became independent in the 1960s; a policy of free trade open to the world, and a government notably free of corruption, have made Singapore a notably prosperous and stable city-state, despite—or on some accounts, because of—an authoritarian pattern of government and a population divided by race, religion, and national ancestry.¹⁹ The association of free trade with greater prosperity has been demonstrated across the globe and through time: it is difficult or impossible to think of counter-examples.

Through the centuries there have always been, to be sure, what Eric Mack calls a “complex critique” of free markets—and hence of free trade—that has “united traditionalist and revolutionary opponents of capitalism:”

This critique invokes a number of familiar themes: alienation from self; alienation from community; the loss of values and of a sense of rationality that transcends the instrumental; the corruption or narrowing of moral sensibility. Almost any

15. CONTEMPORARY EUROPE 35 (Richard Sakwa & Anne Stevens eds., Palgrave Macmillan, 3d ed. 2012) (2000).

16. See e.g., BYUNG-NAK SONG, THE RISE OF THE KOREAN ECONOMY 82–83 (1990); Joel Lee, *Economists Discuss Benefits of Free Trade in N.Y.*, THE KOREA HERALD (Apr. 1, 2015, 10:08 PM), <http://www.koreaherald.com/view.php?ud=20150101000312> [https://perma.cc/SDA6-BXSB].

17. See *India: Foreign Trade Policy*, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSARREGTOPINTECOTRA/0,,contentMDK:20592520~menuPK:579454~pagePK:34004173~piPK:34003707~theSitePK:579448,00.html> [https://perma.cc/TEV2-FRZG] (last visited Dec. 20, 2015).

18. See Daniella Markheim, *Promoting U.S. and Indian Prosperity Through Freer Trade and Economic Liberalization*, THE HERITAGE FOUND. (Feb. 21, 2007), <http://www.heritage.org/research/reports/2007/02/promoting-us-and-indian-prosperity-through-freer-trade-and-economic-liberalization> [https://perma.cc/4FCY-D3YH].

19. See generally, IMF, *Singapore: A Case Study in Rapid Development*, Occasional Paper 119 (Feb. 1995).

malaise that is directly experienced or believed to be suffered by others in market societies has been laid at the doorstep of liberal individualism and the market.²⁰

The neo-feudalist and radical critiques were of course joined in opposition to free trade by economic interests who stood to lose from it, typically by losing their monopoly or semi-monopoly economic position.²¹ Interestingly, the intellectual and radical opposition to free trade did not quite extend to Karl Marx. In his “Speech on the Question of Free Trade,” Marx said “[t]o burden foreign corn with protective duties is infamous, it is to speculate on the hunger of the people.”²² In fact, a kind of support for free trade was consistent with Marx’s paradoxical admiration for capitalism as “progressive” in the dialectical march of history towards Communism. Hence, Marx concluded,

[G]enerally speaking, the Protective system in these days is conservative, while the Free Trade system works destructively. It breaks up old nationalities and carries antagonism of proletariat and bourgeoisie to the uttermost point. In a word, the Free Trade system hastens the Social Revolution. In this revolutionary sense alone, gentlemen, I am in favor of Free Trade.²³

In any event, it would appear that the nineteenth-century argument—for the imperative—for free trade largely carried the day in its time and in the twentieth century as well. There were surely elements of protectionism in United States law and policy in the nineteenth and twentieth centuries, as there were in other countries as well, but there was almost always something apologetic about protectionism. Protectionist measures were often at least claimed to be temporary, and some flagrant exercises in protectionism, like the Smoot-Hawley tariffs, were eventually but quite generally acknowledged to be disastrous.

The question is whether the nineteenth and twentieth century arguments for free trade have lost some or all of their force; or even if they haven’t, whether other considerations—such as claims for *social justice*—now outweigh the case for free trade.

It is difficult to see how support for free trade based on its promoting overall prosperity has lost any of its force. Countries and economic unions

20. Eric Mack, *Dominos and the Fear of Commodification*, in *MARKETS AND JUSTICE: NOMOS XXXI* 198 (John W. Chapman & J. Roland Pennock eds., 1989).

21. Jagdish Bhagwati, Protectionism, *The Concise Encyclopedia of Economics* (2008); <http://www.econlib.org/library/Enc/Protectionism.html>.

22. Karl Marx, *Speech on the Question of Free Trade*, in 6 *KARL MARX & FRIEDRICH ENGELS, COLLECTED WORKS* 450 (Progress Publishers 1976).

23. *Id.* at 465.

with freer trade are in almost all cases—perhaps unanimously—more prosperous than states with more restrictive trade policies. Lest the differences in prosperity should be attributed to other factors—cultural, geographic, or whatever—one need only look at a country like India, which languished for decades under a highly restrictive regime, and has enjoyed significantly greater economic growth with the easing of trade restrictions; or at divided countries like East and West Germany or North and South Korea, one part open to world trade, the other largely or entirely closed.

Is freer trade associated with a lesser likelihood of war, as Cobden and Bright believed? It is common to cite, mockingly, Norman Angell's best-selling book "The Great Illusion," which argued that international trade and economic interdependency make war futile: many readers inferred that therefore war was now unlikely, although Angell merely argued that war would now be more irrational than ever.²⁴ The book was published, in a sense inauspiciously, in 1910: barely four years before the European powers launched themselves into the catastrophe of the First World War. There are other examples of trading nations going to war: there was a series of wars, in fact, between England and the Dutch Republic during the seventeenth and early eighteenth centuries, the era of the "Golden Age" of world trade in Holland. But the Anglo-Dutch wars were largely sparked by disputes over trade restrictions and monopolies; specifically, by England's mercantilist efforts to restrict overseas trade to its own ships, to "rule the waves," and to exclude the Dutch.²⁵ In any event, the claim is not—or ought not to be—that freer trade makes war impossible or guarantees peace. Rather, the question is whether freer trade, and greater economic interconnection, makes war less likely. There is evidence that it does, just as there is evidence that democracies go to war against one another less readily than non-democratic regimes do. This, certainly, was the conviction upon which the post-Second World War European Common Market, and eventually the European Union, were built.

Finally, there is the question whether freer-trading societies today are more tolerant—religiously, intellectually, and in other ways—than economically more closed societies. There is a strong case that they are, just as they were in earlier centuries. Trade creates a practical incentive for travel, for acquiring knowledge about unfamiliar people and places, and for fostering relationships—at a minimum, actual or potential trading relationships—regardless of human differences. To the extent that the presence, in safety and freedom, of Jewish communities is a test or

24. NORMAN ANGELL, *THE GREAT ILLUSION* 3 (4th rev. ed. 1913).

25. See J.R. JONES, *THE ANGLO-DUTCH WARS OF THE SEVENTEENTH CENTURY* 117 (1996).

bellwether of tolerance, as it was in the days of the Italian trading cities and the Dutch Republic, today's largest Jewish communities by far are in Israel and the United States, followed by France—at least for now—, Canada, and the United Kingdom: countries all substantially open to world trade.²⁶

Today's opposition to free trade is often couched not as outright opposition to commerce, but as a call for more regulation: of wages, hours, and conditions for foreign workers in the stream of world trade; on behalf of environmental concerns for foreign countries; perhaps in the name of trying to safeguard, or to reform, social conditions in such countries; and sometimes, abashedly or otherwise, on behalf of protecting domestic labor—and hence domestic enterprises and employers—or other domestic interests.²⁷

Support for international free trade does not, in principle, preclude reasonable regulation, just as belief in a market economy does not preclude reasonable domestic economic regulation.

At least two considerations, however, suggest greater skepticism as to ambitious regulation of world trade, especially in the interests of social justice, even by comparison to regulation of domestic markets.

The first, in the spirit of F. A. Hayek, is the problem of knowledge.²⁸ Difficult as it may be for any one authority to know how best to allocate resources within a single country or society, it is all the more difficult—it hardly seems much of an exaggeration to call it exponentially more difficult—to know what rules or even what principles would be best, and to foresee the consequences of this or that one, in many different countries and societies all round the world. What rules for wages, hours, or conditions will actually improve labor conditions in this or that country, and what rules will have unintended or perverse effects, leading to fewer jobs, or payroll evasion and misrepresentation, or more outsourcing to entities not subject to regulation? What environmental rules will promote environmental interests and, which such rules will provoke cover-ups or perverse substitutions that actually degrade the environment? What will be the

26. Over 80% of the world's Jews live in Israel and the United States alone; together with France, Canada, and the UK, about 90% of the world's Jews are accounted for. See Sergio DellaPergola, *World Jewish Population, 2014*, in 114 AMERICAN JEWISH YEAR BOOK 2014, at 301, 303 (Arnold Dashefsky & Ira Sheskin eds., 2014).

27. See, e.g., NICOLE HASSOUN, GLOBALIZATION AND GLOBAL JUSTICE: SHRINKING DISTANCE, EXPANDING OBLIGATIONS 143–65 (2012).

28. F.A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519, 520 (1945).

economic or social side-effects of a given environmental fiat? What will be the real consequences of efforts from afar to preserve, or to reform, social conditions in this or that country? These sorts of questions are highly pertinent, as Hayek observed, to regulatory aspirations within a single country, where the authorities are more or less native to the society and might have, or imagine they have, intimate knowledge of that society. The problem of knowledge, and of unforeseen or unintended consequences, is multiplied when vastly diverse nations, societies, and regions are involved: when prescriptions for social justice are to be handed down—perhaps as Neville Chamberlain unfortunately put it in a different context—in behalf of “far away countries and people of whom we know nothing.”²⁹

The second cause for concern about restrictions on international free trade is that these are not subject to democratic correction in the way that domestic over-regulation might be, and hence the greater danger of externalized costs, and the corruption of decision-making as a result. When domestic markets are subjected to regulation, the losers, as well as the winners, from the regulation are—for the most part—voters. If the minimum wage is raised—or lowered, a highway built—or not built, an energy source authorized—or forbidden, those who bear the burden are there to object, to rally opposition, and put forward alternatives. Often, to be sure, the beneficiaries of a domestic regulation are an organized interest, whilst those who suffer from it are diffuse and unorganized members of the public. But even the unorganized can in principle organize themselves, and sometimes they do, especially if they are grievously enough imposed upon. There is less such check, and sometimes none at all, on over-regulation of foreign trade. If regulations of foreign working conditions actually damage the interests of foreign workers or a numerous subset of them, or if an environmentalist restriction turns out to bring on environmental damage or disproportionate cost to poor farmers, those workers and farmers have no effective way of objecting, and often the global law-givers will never learn of unintended consequences in far-off lands.

This lack of democratic answerability may even promote deception, or self-deception, about the nature of the restrictions in question. A trade restriction can be put forward in the name of social justice for Asian or African or Latin American workers or peasants, but the real effect—and possibly the real motive—might be to insulate a domestic industry or interest against foreign competition. The foreign workers or peasants who lose out on opportunity and a chance for better lives are in no position to make their objections known. Likewise, activists or academic advocates

29. Neville Chamberlain's deeply unfortunate phrase about the Czechoslovak crisis in 1938 was in his Radio Broadcast on September 27, 1938, quoted in *Prime Minister on the Issues*, TIMES, Sept. 28, 1938, at 10.

can pride themselves on their stand for global justice, and possibly advance their institutions or their careers, by promoting restrictions whose gainers—and especially whose losers—have little or no way to make their real interests or their real losses known.

Global markets, like domestic commerce for that matter, can surely disrupt traditional ways of life, offering new opportunities but upsetting old certainties, sometimes transforming physical and human landscapes that may be comely, or may appear so from afar. Traditional ways of life may have particular aesthetic or even ethical appeal to intellectually-minded people in advanced market societies; and perhaps paradoxically, to enthusiasts for social justice and social change as well.³⁰ Hence a kind of convergence of neo-feudalist and “progressive” critiques of free trade. But people around the world, especially amongst the poorest, exercise the choice—often in overwhelming numbers—for the fruits of freer trade whenever the choice is offered. Free trade can mean new opportunity, new hope, and a chance to escape from old ways. Support for free trade does not preclude reasonable regulation: surely against force and fraud, perhaps for other social interests as well. But knowledge costs, and diminished democratic checks, make international trade especially vulnerable to stifling over-regulation, whether in behalf of special interests or in pursuit of ethical illusions. The insights of Montesquieu, of Adam Smith, of Cobden and Bright, even, at unguarded moments, of Karl Marx—on the symbiosis of free trade with prosperity, tolerance, and peace; and against the seductions of protectionism and autarky—still have great force, in our own day as in theirs.

30. “[T]he fairy tale of a distant ‘golden’ past is old indeed. Today many intellectuals believe it and endow some past age—usually the Middle Ages—or even all ages save our own, with a halo.” Walter Kaufmann, *FROM SHAKESPEARE TO EXISTENTIALISM* 22 (Anchor Books 1960) (1959).

