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Sukrit Sabhlok

Editor's Note

In a stump speech during his run for president in 2007, Congressman Ron Paul declared that his campaign was about peace, prosperity and freedom. He made the point that economic and political liberties are two sides of the same coin, and that the split between the two – with the left defending civil liberties and right-wing conservatives favouring economic liberties – could not be justified.

The Journal of Peace, Prosperity and Freedom is an academic journal that treads a similar path as the Congressman, in the sense that it tries to promote understandings that will bring about greater amounts of peace, prosperity and freedom. It seeks to advance, in a non-partisan fashion, research that contributes to this objective. This means the journal is necessarily interdisciplinary in its scope, covering virtually all the social sciences and is open to any article that is within its broad mandate.

That said, the journal has a particular affinity for the ideas associated with the Austrian School of economics and libertarian political philosophy. Using the latest insights from Austrian economics and libertarianism, the journal seeks to cultivate scholarship which applies to current events in Australia and around the world. In the process it will inject new ways of looking at public policy debates and encourage more rational thinking by publishing cutting edge papers that go beyond traditional mainstream perspectives.

Although the ideas we hope to cultivate are located within a specific school of thought – mainly associated with Ludwig von Mises and his followers F.A. Hayek and Murray Rothbard – I strive to encourage discussion and debate of opposing perspectives. Papers from opposing viewpoints will not be excluded and in some cases will be actively solicited.

Happy reading!

Sukrit Sabhlok

Liberty Australia

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Hans-Hermann Hoppe

The State – Errors of Classical Liberalism

[Another version of this article was delivered as a speech at the Australian Mises Seminar in Sydney during November 2011]

I. The Problem Of Social Order

Alone on his island, Robinson Crusoe can do whatever he pleases. For him, the question concerning rules of orderly human conduct — social cooperation — simply does not arise. This question can only arise once a second person, Friday, arrives on the island. Yet even then, the question remains largely irrelevant so long as no *scarcity* exists. Suppose the island is the Garden of Eden. All external goods are available in superabundance. They are 'free goods,' just as the air that we breathe is normally a "free" good. Whatever Crusoe does with these goods, his actions have no repercussions — *neither* with respect to his own future supply of such goods *nor* regarding the present or future supply of the same goods for Friday (and vice versa). Hence, it is impossible that a conflict concerning the use of such goods could arise between Crusoe and Friday. A conflict is possible only if goods are scarce; and only then is there a need to formulate rules that make orderly, conflict-free social cooperation possible.

In the Garden of Eden only two scarce goods exist: a person's physical body and its standing room. Crusoe and Friday each have only one body and can stand only at one place at a time. Hence, even in the Garden of Eden conflicts between Crusoe and Friday can arise: Crusoe and Friday cannot occupy the same standing room simultaneously without coming into

physical conflict with each other. Accordingly, even in the Garden of Eden rules of orderly social conduct must exist — rules regarding the proper location and movement of human bodies. Outside the Garden of Eden, in the realm of all-around scarcity, there must be rules that regulate the use not only of personal bodies, but of *everything* scarce, such that *all* possible conflicts can be ruled out. This is the problem of social order.

II. The Solution: The Idea Of Private Property

In the history of social and political thought, myriad proposals have been offered as solutions to the problem of social order, and this multitude of mutually incompatible proposals has contributed to the widespread belief that the search for a single "correct" solution is futile and illusory. Yet a correct solution does exist. There is no reason to succumb to moral relativism. Indeed, the solution to the problem of social order has been known for hundreds of years. The solution is the idea of private property.

Let me formulate the solution first for the special case represented by the Garden of Eden and subsequently for the general case represented by the *real* world of all-around scarcity.

In the Garden of Eden, the solution is provided by the simple rule stipulating that everyone may place or move his own body wherever he pleases, *provided only that no one else is* already *standing there and occupying the same space*.

Outside of the Garden of Eden, in the realm of all-around scarcity, the solution is provided by four logically interrelated rules:

1. Every person is the private (exclusive) owner of his own physical body. Indeed, who else, if not Crusoe, should be the owner of Crusoe's body? Friday? Or Crusoe and Friday jointly? Yet that would not help *avoid* conflict. Rather, it would *create* conflict and make it permanent.

2. Every person is the private owner of all nature-given goods that he has perceived as scarce and put to use by means of his body, *before* any other person. Again, who else, if not the first user, should be their owner? The second user? Or the first and the second user jointly? Yet such rulings again would be contrary to the very purpose of norms: of helping to avoid conflict, rather than to create it.

3. Every person who, with the help of his body and his originally appropriated goods, produces new products thereby becomes the proper owner of these products, provided only that in the process of production he does not physically damage the goods owned by another person.

4. Once a good has been first appropriated or produced, ownership in it can be acquired only by means of a voluntary, contractual transfer of its property title from a previous to a later owner.

I can spare myself here the task of providing a detailed ethical as well as economic justification of these rules. This has been done elsewhere. However, a few statements in this connection are in order.

Contrary to the frequently heard claim that the institution of private property is only a *convention*, it must be categorically stated: a convention serves a *purpose*, *and* it is something to which an *alternative* exists. The Latin alphabet, for instance, serves the purpose of written communication and there exists an alternative to it, the Cyrillic alphabet. That is why it is referred to as a convention.

What, however, is the purpose of action norms? If no interpersonal conflict existed — that is: if, due to a prestabilized harmony of all interests, no situation ever arose in which two or more people want to use one and the same good in incompatible ways — then no norms would be needed. It is the purpose of norms to help avoid otherwise unavoidable conflict. A norm that generates conflict rather than helping to avoid it is *contrary to the very purpose of norms*. It is a dysfunctional norm or a perversion.

With regard to the purpose of conflict avoidance, however, the institution of private property is definitely *not* just a convention, because no alternative to it exists. Only private (exclusive) property makes it possible that all otherwise unavoidable conflicts can be avoided. And only the principle of property acquisition through acts of original appropriation, performed by specific individuals at a specific time and location, makes it possible to avoid conflict *from the beginning of mankind* onward, because only the *first* appropriation of some previously unappropriated good can be conflict-free — simply, because — *per definitionem* — no one else had any previous dealings with the good.

III. The Enforcement Of Social Order And The Protection Of Private Property: The State

As important as this insight is — that the institution of private property, ultimately grounded in acts of original appropriation, is without alternative given the desideratum of conflict avoidance (peace) — it is not sufficient to *establish* social order. For even if everyone knows how conflict can be avoided, it is still possible that people simply do not want to avoid conflict, because they expect to benefit from it at the expense of others.

In fact, as long as mankind is what it is, there will always exist murderers, robbers, thieves, thugs and con artists, i.e., people *not* acting in accordance with the above-mentioned rules. Hence, every social order, if it is to be successfully maintained, requires institutions and mechanisms designed to keep such rule breakers in check. How to accomplish this task,

and by whom?

The standard reply to this question is to say that this task, i.e., the enforcement of law and order, is the first and primary duty — indeed, the raison d'être — of the *state*. In particular, this is the answer also given by classical liberals such as my own intellectual master, Ludwig von Mises. Whether or not this answer is correct depends on how "state" is defined.

The state, according to the standard definition, is not a regular, specialized firm. Rather, it is defined as an agency characterized by two unique, logically connected features. First, the state is an agency that exercises a territorial monopoly of ultimate decision making. That is, the state is the ultimate arbiter in every case of conflict, including conflicts involving itself. It allows no appeal above and beyond itself. Second, the state is an agency that exercises a territorial monopoly of taxation. That is, it is an agency that unilaterally fixes the price that private citizens must pay for the state's service as ultimate judge and enforcer of law and order.

IV. The Fundamental Error Of 'Statism'

As widespread as the standard view regarding the necessity of the institution of a state as the provider of law and order is, it stands in clear contradiction to elementary economic and moral laws and principles.

First of all, among economists and philosophers two near-universally accepted propositions exist:

1. Every "monopoly" is "bad" from the viewpoint of consumers. Monopoly is here understood in its classic meaning as an exclusive *privilege* granted to a single producer of a commodity or service, or as the absence of "free entry" into a particular line of production. Only one agency, A, may produce a given good or service, X. Such a monopoly is "bad" for consumers, because, shielded from potential new entrants into a given area of production, the price of the product will be higher and its quality lower than otherwise, under free competition.

2. The production of law and order, i.e., of security, is the primary function of the state (as just defined). Security is here understood in the wide sense adopted in the American Declaration of Independence: as the protection of life, property, and the pursuit of happiness from domestic violence (crime) as well as external (foreign) aggression (war).

Both propositions are apparently incompatible with each other. This has rarely caused concern among philosophers and economists, however, and in so far as it has, the typical

reaction has been one of taking exception to the first proposition rather than the second. Yet there exist fundamental theoretical reasons (and mountains of empirical evidence) that it is indeed the second proposition that is in error.

As a territorial monopolist of ultimate decision making and law enforcement, the state is not just like any other monopoly, such as a milk or a car monopoly that produces milk and cars of comparatively lower quality and higher prices. In contrast to all other monopolists, the state not only produces inferior goods, but "bads" (nongoods). In fact, it must first produce bads (such as taxes) before it can produce anything that might be considered a (inferior) good.

If an agency is the ultimate judge in every case of conflict, then it is also judge in all conflicts involving itself. Consequently, instead of merely preventing and resolving conflict, a monopolist of ultimate decision making will also *cause and provoke* conflict in order to settle it to his own advantage. That is, if one can only appeal to the state for justice, justice will be perverted in the favor of the state, constitutions and supreme courts notwithstanding.

These constitutions and courts are *state* constitutions and courts, and whatever limitations on state action they may set or find are invariably decided by agents of the very same institution under consideration. Predictably, the definition of property and protection will be continually altered and the range of jurisdiction expanded to the state's advantage. The idea of some "given" eternal and immutable law that must be *discovered* will disappear and be replaced by the idea of law as *legislation* — as arbitrary, state-*made* law.

Moreover, as ultimate judge the state is also a monopolist of taxation, i.e., it can unilaterally, without the consent of everyone affected, determine the price that its subjects must pay for the state's provision of (perverted) law. However, a tax-funded life-and-property protection agency is a contradiction in terms: an expropriating property protector. Motivated, as everyone is, by self-interest and the disutility of labor, but equipped with the unique power to tax, state agents will invariably strive to *maximize expenditures* on protection — and almost all of a nation's wealth can conceivably be consumed by the cost of protection — and at the same time to *minimize the actual production* of protection. The more money one can spend and the less one must work for it, the better off one will be.

V. The Error Compounded: The Democratic State

Apart from the fundamental error of statism generally, additional errors are involved in the special case of a *democratic* state. A detailed treatment of this subject has been provided elsewhere, but a brief mention is indicated.

The traditional, premodern state form is that of a (absolute) monarchy. Yet monarchy was faulted, in particular also by classical liberals, for being incompatible with the basic

principle of "equality before the law." Monarchy instead rested on personal *privilege*. Thus, the critics of monarchy argued, the monarchical state had to be replaced by a democratic one. In opening participation and entry into state government to everyone on equal terms, not just to a hereditary class of nobles, it was thought that the principle of the equality of all before the law had been satisfied.

However, this democratic equality before the law is something entirely different from and incompatible with the idea of *one* universal law, equally applicable to everyone, everywhere, and at all times. In fact, the former objectionable schism and inequality of a higher law of kings versus a subordinate law of ordinary subjects is fully preserved under democracy in the separation of "public" versus "private" law and the supremacy of the former over the latter.

Under democracy, everyone is equal insofar as entry into government is open to all on equal terms. Everyone can become king, so to say, not only a privileged circle of people. Thus, in a democracy no *personal* privileges or privileged persons exist. However, *functional* privileges and privileged functions exist. Public officials, as long as they act in an official capacity, are governed and protected by public law and occupy thereby a privileged position *vis-à-vis* persons acting under the mere authority of private law.

In particular, public officials are permitted to finance or subsidize their own activities through taxes. That is, they do not, as every private-law subject must, earn their income through the production and subsequent sale of goods and services to voluntarily buying or not-buying consumers. Rather, as public officials, they are permitted to engage in, and live off, what in private dealings between private-law subjects is considered "theft" and "stolen loot." Thus, privilege and legal discrimination — and the distinction between rulers and subjects — will not disappear under democracy. To the contrary. Rather than being restricted to princes and nobles, under democracy, privileges will be available to all: everyone can engage in theft and live off stolen loot if only he becomes a public official.

Predictably, then, under democratic conditions the tendency of every monopoly of ultimate decision making to increase the price of justice and to lower its quality and substitute injustice for justice and is not diminished but aggravated. As hereditary monopolist, a king or prince regards the territory and people under his jurisdiction as his personal property and engages in the monopolistic exploitation of his "property."

Under democracy, monopoly and monopolistic exploitation do not disappear. Rather, what happens with democracy is this: instead of a prince and a nobility who regard the country as their private property, a temporary and interchangeable caretaker is put in monopolistic charge of the country. The caretaker does not own the country, but as long

as he is in office he is permitted to use it to his and his protégés' advantage. He owns its current use — *usufruct* — but not its capital stock. This does not eliminate exploitation. To the contrary, it makes exploitation less calculating and carried out with little or no regard to the capital stock. Exploitation becomes shortsighted and capital consumption will be systematically promoted.

VI. The Solution: Private-Law Society Instead Of State

If the state, and especially the democratic state, is demonstrably incapable of creating and maintaining social order; if, instead of helping avoid conflict, the state is the source of permanent conflict; and if, rather than assuring legal security and predictability, the state itself continuously generates insecurity and unpredictability through its legislation and replaces constant law with "flexible" and arbitrary whim, then inescapably the question as to the correct — obviously, *non*statist — solution to the problem of social order arises.

The solution is a *private-law society*, i.e., a society in which every individual and institution is subject to one and the same set of laws. No public law granting privileges to specific persons of functions (and no public property) exists in this society. There is only private law (and private property), equally applicable to each and everyone. No one is permitted to acquire property by any means other than through original appropriation, production, or voluntary exchange, and no one possesses a privilege to tax and expropriate. Moreover, in a private-law society no one is permitted to prohibit anyone else from using his property in order to enter any line of production he wishes and compete against whomever he pleases.

Specifically regarding the problem at hand: in a private-law society the production of security — of law and order — will be undertaken by freely financed individuals and agencies competing for a voluntarily paying (or not-paying) clientele, just as the production of all other goods and services.

It would be presumptuous to predict the precise shape and form of the security industry emerging within the framework of a private-law society. However, it is not difficult to predict a few central changes that would fundamentally — and favorably — distinguish a competitive security industry from the present, all-too-well-known statist production of (in)justice and (dis)order.

First, while in a complex society based on the division of labor *self*-defense will play only a secondary role (for reasons yet to be explained), it should be emphasized from the outset that in a private-law society everyone's right to defend oneself from aggression against one's person and property is entirely undisputed. In distinct contrast to the present, statist practice, which renders people increasingly unarmed and defenseless against aggressors,

in a private-law society no restrictions on the private ownership of firearms and other weapons exist. Everyone's elementary right to engage in self-defense to protect his life and property against invaders would be sacrosanct, and as one knows from the experience of *The Not So Wild, Wild West*, as well as numerous recent empirical investigations into the relationship between the frequency of gun ownership and crime rates, more guns imply less crime.

Just as in today's complex economy we do not produce our own shoes, suits, and telephones, however, but partake in the advantages of the division of labor, so it is to be expected that we will also do so when it comes to production of security, especially the more property a person owns and the richer a society as a whole. Hence, most security services will without doubt be provided by specialized agencies competing for voluntarily paying clients: by various private police, insurance, and arbitration agencies.

If one wanted to summarize in one word the decisive difference and advantage of a competitive security industry as compared to the current statist practice, it would be this: *contract*. The state, as ultimate decision maker and judge, operates in a contractless legal vacuum. There exists no contract between the state and its citizens. It is not contractually fixed, what is actually owned by whom, and what, accordingly, is to be protected. It is not fixed, what service the state is to provide, what is to happen if the state fails in its duty, nor what the price is that the 'customer' of such 'service' must pay.

Rather, the state unilaterally fixes the rules of the game and can change them, per legislation, during the game. Obviously, such behavior is inconceivable for freely financed security providers. Just imagine a security provider, whether police, insurer, or arbitrator, whose offer consisted in something like this:

> 'I will not contractually guarantee you anything. I will not tell you what specific things I will regard as your to-be-protected property, nor will I tell you what I oblige myself to do if, according to your opinion, I do not fulfill my service to you — but in any case, I reserve the right to unilaterally determine the price that you must pay me for such undefined service'.

Any such security provider would immediately disappear from the market due to a complete lack of customers. Each private, freely financed security producer instead must offer its prospective clients a *contract*. And these contracts must, in order to appear acceptable to voluntarily paying consumers, contain clear property descriptions as well as clearly defined mutual services and obligations. Moreover, each party to a contract, for the duration or until the fulfillment of the contract, would be bound by its terms and conditions; and every change of terms or conditions would require the unanimous consent of all parties concerned.

Specifically, in order to appear acceptable to security buyers, these contracts must contain provisions about what will be done in the case of a conflict or dispute between the protector or insurer and his own protected or insured clients as well as in the case of a conflict between different protectors or insurers and their respective clients. And in this regard only one mutually agreeable solution exists: in these cases the conflicting parties contractually agree to arbitration by a mutually trusted but independent *third party*.

And as for this third party, it too is freely financed and stands in competition with other arbitrators or arbitration agencies. Its clients, i.e., the insurers and the insured, expect of it that it come up with a verdict that is recognized as fair and just by all sides. Only arbitrators capable of forming such judgments will succeed in the arbitration market. Arbitrators incapable of this and viewed as biased or partial will disappear from the market.

From this fundamental advantage of a private-law society all other advantages follow.

First, competition among police, insurers, and arbitrators for paying clients would bring about a tendency toward a continuous fall in the price of protection (per insured value), thus rendering protection increasingly more affordable, whereas under monopolistic conditions the price of protection will steadily rise and become increasingly unaffordable.

Furthermore, as already indicated, protection and security are goods and services that compete with others. If more resources are allocated to protection, fewer can be expended on cars, vacations, food, or drink, for example. Also, resources allocated to the protection of group A (people living along the Pacific, for instance), compete with resources expended on the protection of group B (people living along the Atlantic).

The state, as a tax-funded protection monopolist, will necessarily allocate resources arbitrarily. There will be overproduction (or underproduction) of security as compared to other competing goods and services, and there will be overprotection of some individuals, groups, or regions and underprotection of others.

In distinct contrast, in a system of freely competing protection agencies all arbitrariness of allocation (all over- and underproduction) would disappear. Protection would be accorded the relative importance that is has in the eyes of voluntarily paying consumers, and no person, group, or region would receive protection at the expense of any other one. Each and every one would receive protection in accordance with his own payments.

The most important advantage of a private, contract-based production of law and order, however, is of a qualitative nature.

First, there is the fight against crime. The state is notoriously inefficient in this regard, because the state agents entrusted with this task are paid out of taxes, i.e., independent of their productivity. Why should one work if one is also paid for doing nothing at all?

In fact, it can be expected that state agents will have an interest in maintaining a moderately high crime rate, because this way they can justify ever-increased funding. Worse, for state

agents the victims of crime and the indemnification and compensation of such victims play an at best negligible role. The state does not indemnify the victims of crime. To the contrary, the harmed victims are still further insulted in making them, qua taxpayers, pay for the incarceration and 'rehabilitation' of the criminal (should he be captured).

The situation in a private-law society is entirely different. Security providers, insurers in particular, have to indemnify their clients in the case of actual damage (otherwise they would find no clients) and hence, they must operate efficiently. They must be efficient in the prevention of crime, for unless they can prevent a crime, they would have to pay up. Further, even if a criminal act could not be prevented, they must be efficient in detecting and recovering stolen loot, because otherwise they must pay to replace these goods. In particular, they must be efficient in the detection and apprehension of the criminal, for only if the criminal is apprehended is it possible for them to make *him* pay for the compensation owed to the victim and thus reduce their costs.

Moreover, a private, competitive, and contract-based security industry has a general peace-promoting effect. States are, as already explained, by nature aggressive. They can cause or provoke conflict in order to then "solve" it to their own advantage.

Or, to put it differently, as tax-funded monopolists of ultimate decision making, states can externalize the costs associated with aggressive behavior onto others, i.e., the hapless taxpayers, and accordingly will tend to be more aggressive vis-à-vis their own population as well as "foreigners."

In distinct contrast, competing private insurers are by nature defensive and peaceful. On the one hand this is because every act of aggression is costly, and an insurance company engaged in aggressive conduct would require comparatively higher premiums, involving the loss of clients to cheaper nonaggressive competitors.

On the other hand, it is not possible to insure oneself against every conceivable "risk." Rather, it is only possible to insure oneself against 'accidents,' i.e., risks over whose outcome the insured has no control and to which he contributes nothing. Thus, it is possible to insure oneself against the risk of death and fire, for instance, but it is impossible to insure oneself against the risk of committing suicide tomorrow or setting one's own house on fire.

Similarly, it is impossible to insure oneself against the risk of business failure, of unemployment, or of disliking one's neighbors, for in each case one has some control over the event in question. Most significantly, the uninsurability of individual actions and sentiments (in contradistinction to accidents) implies that it is also impossible to insure oneself against the risk of damages resulting from one's own prior aggression or provocation.

Instead, every insurer must restrict the actions of his clients so as to exclude all aggression and provocation on their part. That is, any insurance against social disasters such as crime must be contingent on the insured submitting themselves to specified norms of civilized,

nonaggressive conduct.

Further, due to the same reasons and financial concerns, insurers will tend to require that their clients abstain from all forms of vigilante justice (except perhaps under quite extraordinary circumstances), for vigilante justice, even if justified, invariably causes uncertainty and provokes possible third-party intervention. By obliging their clients instead to submit to regular publicized procedures whenever they think they have been victimized, these disturbances and associated costs can be largely avoided.

Lastly, it is worthwhile pointing out that while states as tax-funded agencies can — and do — engage in the large-scale prosecution of victimless crimes such as "illegal-drug" use, prostitution, or gambling, these "crimes" would tend to be of little or no concern within a system of freely funded protection agencies. "Protection" against such "crimes" would require higher insurance premiums, but since these "crimes" — unlike genuine crimes against persons and property — do not create victims, very few people would be willing to spend money on such "protection."

Still more: while states, as already noted, are always and everywhere eager to disarm their populations and thus rob them of an essential means of self-defense, private-law societies are characterized by an unrestricted right to self-defense and hence by widespread private gun and weapon ownership. Just imagine a security producer who demanded of its prospective clients that they would first have to completely disarm themselves before it would be willing to defend the clients' life and property. Correctly, everyone would think of this as a bad joke and refuse such on offer.

Freely financed insurance companies that demanded potential clients first hand over all of their means of self-defense as a prerequisite of protection would immediately arouse the utmost suspicion as to their true motives, and they would quickly go bankrupt. In their own best interest, insurance companies would *reward* armed clients, in particular those able to certify some level of training in the handling of arms, charging them lower premiums reflecting the lower risk that they represent. Just as insurers charge less if homeowners have an alarm system or a safe installed, so would a trained gun owner represent a lower insurance risk.

Last and most importantly, a system of competing protection agencies would have a twofold impact on the development of law. On the one hand, it would allow for *greater variability* of law. Rather than imposing a uniform set of standards onto everyone (as under statist conditions), protection agencies could compete against each other not just via price but also through product differentiation. There could exist side by side, for instance, Catholic protection agencies or insurers applying canon law, Jewish agencies applying Mosaic law, Muslim agencies applying Islamic law, and agencies applying secular law of one variety or another, all of them sustained by a voluntarily paying clientele. Consumers could choose the law applied to them and their property. No one would have to live under "foreign" law.

On the other hand, the very same system of private law-and-order production would

promote a tendency toward the *unification and harmonization of law*. The "domestic" — Catholic, Jewish, Roman, etc. — law would apply only to the person and property of those who had chosen it. Canon law, for instance, would apply only to professed Catholics and deal solely with intra-Catholic conflict and conflict resolution.

Yet it is also possible, of course, that a Catholic might come into conflict with the subscriber of some other law code, e.g., a Muslim. If both law codes reached the same or a similar conclusion, no difficulties exist. However, if competing law codes arrived at distinctly different conclusion (as they would at least in some cases), a problem arises.

In this case, 'domestic' (intragroup) law would be useless, but naturally every insured person would want protection against the contingency of intergroup conflicts as well. In this situation, it cannot be expected that one insurer and the subscribers of its law code simply subordinate their judgment to that of another insurer and its law. Rather, as I have already explained, in this situation there exists only one credible and acceptable way out of this predicament: from the outset, every insurer would have to be contractually obliged to submit itself and its clients to arbitration by an independent third party. This party would not only be *independent* but at the same time the unanimous choice of both parties.

It would be agreed upon because of its commonly perceived ability to find mutually agreeable (fair) solutions in cases of intergroup disagreement. If an arbitrator failed in this task and arrived at conclusions that were perceived as "unfair" or "biased" by either one of the insurers or their clients, this person or agency would not likely be chosen as an arbitrator in the future.

As a result of the constant cooperation of various insurers and arbitrators, then, a tendency toward the unification of property and contract law and the harmonization of the rules of procedure, evidence, and conflict resolution would be set in motion. Thus, in buying protection insurance, every insurer and insured becomes a participant in an integrated system of conflict avoidance and peacekeeping. Every single conflict and damage claim, regardless of where and by or against whom, would fall under the jurisdiction of one or more specific insurance agencies and would be handled either by an individual insurer's 'domestic' law or by the 'international' or 'universal' law provisions and procedures agreed upon by everyone in advance.

Hence, instead of permanent conflict, injustice, and legal insecurity — as under the present statist conditions — in a private-law society, peace, justice, and legal security would hold sway.

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Peace, Prosperity & Freedom

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Natural Law and the Liberal (Libertarian) Society

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Introduction

Many prominent libertarian theorists have augmented their moral and economic criticism of the actions of governments with the claim that these actions constitute crimes.[1] In particular, Rothbard is famously attributed with the view that government is merely "a gang of thieves writ large".[2] Certainly, if some private citizen did the same actions that government agents regularly perform, these he rightly be considered a criminal.[3] If a private citizen attempted to impose taxation on another, this would be regarded as theft. If he undertook a policy of drug prohibition, in the absence of some existing government policy backing him up, this would involve acts of assault and robbery. If he attempted to

1 For example, see Rothbard, M.N. (2006) *For a New Liberty: The Libertarian Manifesto*. The Ludwig von Mises Institute: Auburn, pp. 55-86; Rothbard, M.N. (2002) *The Ethics of Liberty*. New York University Press: New York, pp. 161-174; Hoppe, H.H. (1989) *A Theory of Socialism and Capitalism*. The Ludwig von Mises Institute: Auburn, pp. 127-144; Rand, A. (1967) *Capitalism: The Unknown Ideal*. Signet: New York.

2 Interestingly, this specific statement does not actually appear in any of Rothbard's published writings, though the statement is commonly attributed to him. Certainly the sentiment pervades his works. The closest statement to the attributed one is found in Rothbard (2002) where he observed that"...if the bulk of the public were *really* convinced of the illegitimacy of the State, if it were convinced that the State is nothing more nor less than a bandit gang writ large, then the State would soon collapse to take on no more status or breadth of existence than another Mafia gang." In any case, the view that the state is "a gang of thieves" is commonly attributed to Rothbard and it is clear from his writings that he held such a view.

3 This was one of the central points made by the classical economist Frederick Bastiat in his works on the law (see Bastiat, F. (1850/2007) The Law. The Ludwig von Mises Institute: Auburn.)

draft others into his employment for some purpose, military or otherwise, this would be regarded as an act of kidnapping and enslavement. If he undertook a policy of business regulation on a local business, this would involve acts of trespass against property.

In order to sustain the view that these private actions are crimes, but equivalent government actions are not, one must have some good reason to exempt government agents from the laws of conduct applying to private citizens. Libertarians have rejected this view, and held instead that all people, including government agents, are subject to the same moral injunctions concerning the use of force. It stands to reason that, if judged by the nature of the actions themselves, rather than the identity of the actor taking these actions, government actions which initiate force against others should be regarded not only as bad policy, but as acts of crime, in the sense of acts that they are acts that are *malum in se* (i.e., acts that are wrong or evil in themselves). This view is at odds with the more commonly accepted view of crimes as acts that are *malum prohibitum*, (i.e., acts that are regarded to be unlawful only because they are prohibited by government command).[4] The latter exempts government agents from its ambit in many cases, by referring directly to the commands of government institution on whose behalf they are acting (We will talk later about the semantic issue of how one should properly define "crime". All we need to accept for now is that the acts we are talking about are things that would be regarded as crimes if done by an actor who is not a government agent).

This seems a fairly straightforward argument, and yet this claim often arouses scepticism and bewilderment from members of the public, who regard law as being something that is made by the government, and hence, is incapable of being opposed to its actions, except in cases involving government agents overstepping their government-proscribed authority. Though common now, things were not always this way. Legal theorist Stephen Kinsella notes that "…previously, law was thought of as a body of true principles ripe for discovery by judges, not as whatever the legislator decreed. Nowadays, however, legislation has become such a ubiquitous way of making law that "the very idea that the law might not be identical with legislation seems odd both to students of law and to laymen."[5] And, one might add, to many libertarians."[6]

In light of this common perception of law and crime, the Rothbardian claim that government is a criminal institution might be regarded by many as being mere hyperbole. Indeed, if one accepts that laws are merely the decrees of legislators, and crimes are actions which

4 On this distinction see Note (1930) The distinction between "mala prohibita" and "mala in se" in criminal law. *Columbia Law Review* 30(1), pp. 74-86. The distinction between these offences at common law is set out in *State v Horton* (1905) 139 NC 588; 51 SE 945. In that case, Hoke J held at 946 that "[c]riminal offenses can be broken down into two general categories *malum in se* and *malum prohibitum*. The distinction between *malum in se* and *malum prohibitum* offenses is best characterized as follows: a *malum in se* offense is "naturally evil as adjudged by the sense of a civilized community," whereas a *malum prohibitum* offense is wrong only because a statute makes it so."

5 Leoni, B. (1961) *Freedom and the Law (Expanded 3rd Edition)*. Liberty Fund: Indianapolis, p. 6 (note 2).

6 Kinsella, S.N. (1995) Legislation and the discovery of law in a free society. *Journal of Libertarian Studies* 11(2), p. 136.

violate these decrees, then this statement cannot possibly be correct. Yet the contention that government is a criminal agency is clearly meant literally, and hence, must be grounded in some view of law and crime that differs from the account that it now dominant.

I. The Goal Of This Paper

In order to assess this claim, and issues associated with it, the present article examines the subject of *jurisprudence*, which is the theory and philosophy of the nature of law. The purpose of jurisprudence is to analyse the nature of law and figure out what we mean when we say that some rule in society is a law, or that some person has committed a crime or a non-criminal breach of law (e.g., a tort or breach of contract). This issue is clearly important to libertarian theory, since the claim that government is a criminal institution must be backed by some jurisprudential analysis of the nature of "law" and "crime". (In short, if libertarians want to make this claim, they need to define their terms and support their usage of these terms.) Such an analysis provides the underlying philosophical rationale for claims that the actions of governments are crimes and that these governments may properly be regarded as an organised criminal enterprises.

Our purpose here is twofold. One is to examine some conceptions of the nature of law and the semantic issue of which meaning of the terms "law" and "crime" is the most sensible in the context of an examination of the actions of government agents. Another is to see why this semantic issue matters in the advocacy of libertarian ideas.

A cautionary word is appropriate here: Since this paper is concerned in large part with the proper meaning of the words "law" and "crime", in the context of a particular problem, some readers will be tempted to dismiss the issue entirely: "Why, it's all just pointless semantics!" Well, yes, it is semantics, but semantics are not pointless — they are important in coherently grounding an argument and elucidating the nature of a claim. If libertarians are to claim that governments are criminal enterprises then it is important that this claim be clearly understood (especially given that it is contrary to the dominant view in our society).

In fact, in the advocacy of libertarian ideas, semantic concessions to one's opponents can harm one's case a great deal. One major semantic concession that occurs in the advocacy of libertarian ideas is to accept the prevailing discourse of government actions as a matter of "public policy". When one makes an argument related to the actions of government it is common to hear the argument described in terms of competing conceptions of proper "public policy" (e.g., libertarians favour a free-market policy and statists favour an interventionist policy). A libertarian who wants deregulation of the health system might argue in favour of this "public policy" and his opponent who wants state regulation would argue instead for a contrary "public policy". But clearly, if governments are mere criminal agencies, and their actions are crimes, then this must be regarded as a hopeless euphemism.

When libertarians accept this description of their ideas, they have made a major concession

in argument, and lost a powerful explanation of the reasons for their views. Moreover, they are being less-than-candid about what it is they advocate. If government is indeed a "gang of thieves" as some prominent libertarians claim, then their thievery ought to be described candidly, as criminal in nature, not euphemistically, as "public policy". The latter term neutralises the implicit but powerful normative judgement that underlies an assertion of acts that are *malum in se*, and inoculates the discussion against the recognition that government agents are committing such acts. By accepting the euphemism of "public policy" and framing their views in this way, libertarians unwittingly hide their true motivation and thesis: that what they want is for governments to stop committing crimes.

This is by no means the only semantic concession commonly made by libertarians, but it is the most important and the most harmful. Though an analysis of jurisprudential theories and semantics may sound like a task that is far removed from the issues in political philosophy that are usually discussed by libertarians, it is my contention that this issue is actually very important in understanding libertarian theory and proper framing its ideas.

II. A Motivating Example For Our Analysis

Let us start off by discussing a simple example which calls for an analysis of jurisprudence. Suppose you are walking alone at night in some city streets, and you take a wrong turn down a dark alley. You are confronted by a mugger with a gun, who demands your wallet and other valuables. You would have no problem in concluding that this man is a criminal, and that his actions are a crime.

But wait! Suppose that the mugger tries to characterise his actions as being consistent with a "policy" of wallet-relief, and your actions as being consistent with a competing "policy" of wallet-retention. Since his policy of wallet-relief affects the public, he reasons that it can properly be described as a "public policy".[7] Is it still a crime? Why of course not! As you can see, it is clearly just a policy disagreement! You prefer that he not take your wallet, but he prefers that he does, and of course, reasonable people can disagree on matters of public policy can't they?

What do you think of this characterisation? Is it accurate to call this a policy disagreement? Or is this merely a euphemism to whitewash an obvious crime? Why does this even make a difference?

Probably you have concluded that no, this is not an accurate characterisation of the situation, and yes, the notion that this is a "public policy" issue is indeed serving to euphemise a

7 This does not mean that the mugger would not accept the legitimacy of property rights and laws against robbery in other cases. He would probably accept such rights and laws in cases where he is not the perpetrator of the act, and would probably feel entitled to avoid being robbed himself. As Adam Smith pointed out, "[i]f there is any society among robbers and murderers, they must at least, according to the trite observation, abstain from robbing and murdering one another." (see Smith, A. [1757] (1982) *The Theory of Moral Sentiments*. Liberty Fund: Indianapolis, II.II.3.)

crime. You would not accept the proposition that you and the mugger are engaged in a policy disagreement and you would not allow the mugger to describe his actions in this way without some retort against this. (A retort made later, in the safety of the courtroom.) You would realise that if the mugger is able to convince people that his taking of your wallet stems from a "policy disagreement" then he has *already* succeeded in a major sematic change that serves to immunise him against the proper moral condemnation that is called for. You could still argue over his "policy" and convince others that it is a bad idea, perhaps even an unjust one. But nevertheless, he has now succeeded in setting the terms of the debate in a way that views his crimes as a mere political disagreement. The situation is no longer recognised as a debate between a criminal and his victim, but rather, a debate between people with different views on "public policy". The mugger has managed to avoid the issue of law and crime, which means he has succeeded in whitewashing his own crimes with euphemism.

At root in this kind of situation is a jurisprudential and semantic view about what constitutes a law, and what constitutes a crime. When you judge that this man with a policy of wallet-relief is actually a criminal, and his implementation of his "policy" is a crime, that is because you believe that the action of robbery is against "the law". You have a theory of law which underlies this judgement (even if only implicit) and a semantic view of why the appellation of "law" properly describes the principle involved.

III. Jurisprudence: Why Is Armed Robbery A Crime?

Recall that our ultimate purpose in this paper is to determine whether or not it is proper for libertarians to regard a government as a criminal enterprise (e.g., as "a gang of thieves"). In order to assess this, we will begin with an examination of jurisprudential theories of law applied to the motivating example of the mugger in an alley. *Why* is it proper to describe the mugger's action as a crime? What makes it so? Why do we say that he is a criminal? What about murder? Why is it proper to describe this as a crime? What about assault, rape, battery, arson? Why are those crimes? These might all seem like silly questions to many people, but they are at the heart of competing theories of jurisprudence, which tell us the nature of law.

Here's one possible reason you might give for why the mugger's actions are a crime: his robbery is a crime because it says so right here in this statute. Parliament has gone through the process of enacting this statute on criminal laws, and it has a section on armed robbery right here, and look: it says that it's not allowed.[8] So the mugger here is a criminal because he has defied the commands of the parliament who developed criminal law statutes, or the judiciary who developed the common law that preceded them.

8 Even before such statutes were enacted, with a little research, you could find judgements from judges telling you that this was already considered to be a crime under common or civil law, depending on what country you are in.

If you were a policeman or a prosecutor, this is exactly what you would rely on when the mugger in our example is apprehended and appears before a judge. You would refer back to a statute or common law doctrine, and this would be taken as an appropriate embodiment of law. If you were dissatisfied with this explanation, you might go a bit deeper than this. You might say: armed robbery is a crime because that statute book we mentioned, which prohibits it, is a valid expression of the "will of the people," as determined through the acts of their duly-elected parliamentary representatives. So the mugger here is a criminal because he defied laws that are determined indirectly by the will of the people.

IV. The Positivist Theory Of Law

The explanation we have just given, perhaps with some further nuance added, is popular with many legal theorists and political philosophers. It is a theory of jurisprudence called **legal positivism**. This theory asserts that law is solely a *social construct* — that the content and force of law comes not from any objective or natural source, but from facts about society and human social conventions. The first explanation above took the force of law to be derived directly from the commands of parliament, whereas the second took the force of law to be derived indirectly through the aggregated wills of the members of society which elect the parliament (presuming that such an aggregation can properly exist). Though one of these explanations appeals more directly to the theory of democracy, both are expressions of the view that the force of law comes from the fact that some group of people have adopted some convention or custom pertaining to the subject matter of the law. In short, both explanations view law as a social construct.

The legal theorist John Austin gave a more specific formulation of the positivist view, which seeks to explain exactly which group is the source of law and why. He explained the theory of legal positivism as a view of law based on the commands of the "sovereign". The identity of the sovereign differs from place to place and time to time, depending on the nature of the society, but it is always some authority whose commands are habitually obeyed by most people in the society which it rules over.[9] If such a person or body of people exist in society, then Austin argued that *this* is the source of law.

Austin argued that, when a society has some sovereign institution that enforces its commands by coercive sanctions (including sanctions that merely nullify the ability to enforce contracts, etc.), then those commands amount to laws.[10] In describing law, and

9 Legal theorist Roger Cotterrell notes that Austin's sovereign-based theory is best understood by reference to an office or institution of sovereignty, rather than by reference to a particular person who acts as ruler at a given time (see Cotterrell, R.B.M. (2003) *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy (second edition)*. LexisNexis: London, p. 63). This conception of Austin's theory avoids problems that would arise due to the elevation of a new person as ruler, since such a person could not yet be "habitually obeyed". In such cases, Cotterrell argues that the *institution* of the sovereign is still habitually obeyed, even if the new person exercising the power of that institution has only just taken office.

10 Austin, J. (1998) *The Province of Jurisprudence Determined and The Uses of the Studies of Jurisprudence*. Hackett Publishing Company: Indianapolis.

violations of the law, Austin is describing acts by reference to the commands of the rulers of society. In modern representative democracies, the government would be an institution whose commands are habitually obeyed, and therefore it would constitute a sovereign under the positivist view, with its commands being understood to be laws.

The positivist conception of law has been developed further by other jurists, notably by Herbert Hart, who took issue with some of the specifics of Austin's formulation, and sought to improve on it. Hart pointed out that not all commands of agents of a sovereign body have legal force. To have legal force, and be habitually obeyed, a command from agents of a sovereign institution must usually comport to some "rules of recognition" which shows the rule to have been formulated by the institution, and supported by the social pressure it exerts, as opposed to being merely the will of some agent of the sovereign, acting outside his authority.[11] Hart's view of the "rules of recognition" allows one to distinguish between commands of officials of the sovereign body that have legal force, and commands that have no legal force.

In modern representative democracies, the rules of recognition require commands of the sovereign to pass through legislative and judicial procedures before they are accepted as valid laws. For example, proposed laws must pass through houses of parliament by vote, and may be required to be signed off by the Head of State. The commands of officials who work for the sovereign body will generally only be habitually obeyed if people are satisfied that these commands are processed through this mechanism.[12] (Constitutions may exist, but these too are interpreted and administered by the ruling sovereign.) Commands are often challenged if they are thought to be procedurally defective, and this serves to differentiate between valid executions of power by an official *on behalf of the sovereign institution*, and invalid uses of personal power which are not made on behalf of the sovereign institution.[13] Hence, the rules of recognition serve to demark the actions of the sovereign *institution*, from the actions of its particular *agents*.

One school of legal positivists, known as the "legal realists"[14] take a slightly different view,

11 Hart, H.L.A. (1994) *The Concept of Law (second edition)*. Oxford University Press: Oxford, p. 94.

12 Hart also argues that coercion alone cannot enforce habitual obedience, and is a flimsy basis for power —that the power of the sovereign must usually rest on some voluntarily acquiescence to its authority. Commands that do not comport to the rules of recognition are more likely to be challenged and disobeyed by the people in society. This point was also examined in depth by the French jurist Étienne de la Boétie. (see de la Boétie, E. (2008) *The Politics of Obedience: The Discourse of Voluntary Servitude*. Ludwig von Mises Institute: Auburn. Available at http://mises.org/rothbard/boetie.pdf).

13 The requirements of the "rules of recognition" exist to allow the sovereign institution to limit the powers of its officials and agents to act in their personal capacity, so that not all commands issued by these agents amount to laws. They do not constrain the institution, since this institution creates or administers the rules of recognition.

14 On the assertion that legal realists are a species of legal positivist, see Leiter, B. (2001) Legal realism and legal positivism reconsidered. *Ethics* 111(2), pp. 278-301. Though legal realism is sometimes presented as opposing legal positivism, it is actually opposed only to particular positivist theories such as the Austin-Hart theory. Clearly the legal realist theory explains law as a social construction and so it is a species of positivist theory, by the accepted definition of this term.

arguing that the actions of the specific enforcement agents who implement the commands of the sovereign are the determinative factor in what constitutes law, rather than the abstract commands of the institution. Legal realists are critical of the claim that legal decisions are determined by the higher-level commands of the sovereign, such as pieces of legislation. They believe that these commands are indeterminate and that, in practice, they may be merely *post hoc* rationalisations for decisions that are determined, in large part, by extralegal considerations such as the prejudices of judges and other enforcers.[15] The theory of legal realism holds that the command theory of law in legal positivism is unrealistic, and that law is best described as *the actions of the enforcers* of the sovereign, rather than the commands themselves. Under this view, "law" is whatever judges or other enforcement officials actually do.[16] [17]

Other legal positivists have also given subtly different explanations of the command-based theory, or disagreed with the requirements posited for sovereignty, or disagreed as to the type of commands that are obeyed. Nevertheless, the overriding thesis of legal positivism has remained the same: that "laws" are commands issued by a powerful group within society to enforce their will. In essence, the positivist view amounts to the claim that *laws are the commands of the powerful* —specifically, those commands that can properly be regarded as being done on behalf of the most powerful and habitually obeyed institution in society.

At this point it is important to emphasise that we do not reject this view as an adequate descriptions of the government legal system or as an accurate description of what is often characterised as "positive law". We will consider later whether this description serves well for the goal of our analysis, and it is at that point that we will consider the competing claims of different theories of law.

In any case, if we take a positivist view of law as correct, then we can come up with an explanation for why the mugger in our example is a criminal. We can point to the fact that the government is habitually obeyed by most of the people in its jurisdiction and it has issued commands against armed robbery (or at least, against armed robbery by

15 Similar insights are made in Hasnas, J. (1995) The myth of the rule of law. *Wisconsin Law Review* 14, 199. (Also published in Stringham, E.P. (ed.) (2007) *Anarchy and the Law*. Transaction Publishers: New Brunswick, pp. 163-192.)

16 Holmes J argued for a clear distinction between laws and morals, saying that "[t]he law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race. … When I emphasize the difference between law and morals I do so with reference to a single end, that of learning and understanding the law" (see Holmes (1897) The path of law. *Harvard Law Review* 10, p. 457).

17 Leiter (ibid) argues that legal realism can be regarded as a descriptive theory of the process of adjudication, rather than a theory of law. Under this view, legal realism is not a theory of law, but rather, it assumes the correctness of the positivist theory and then makes claims about the adjudication process under the law. This view is contrary to the claims put forward by some legal realists (e.g., Cardozo), who have most certainly claimed it as a theory of what constitutes law. Actually, many observations about adjudication processes made by the realists are quite insightful, and it is only its use within legal positivism that we take issue with here.

others). Moreover, we can point out that the government imposes sanctions for violating these commands. These commands have been processed through legislative procedures comporting with rules of recognition that are habitually obeyed by the officials of the government, and recognised by society at large. The actions of the mugger are contrary to these commands, and he is therefore committing a crime under the positivist account. He is a criminal because his actions violate the commands contained in government statutes. In short, he has acted contrary to the commands of the powerful. (A legal realist might take things a bit further, and say that the mugger is a criminal because the judge in his case said that he is, presuming he was convicted. In either case, the mugger is regarded as a criminal based on commands or rulings of the agents of the sovereign.)

Under the positivist view, actions are judged as crimes by virtue of being prohibited by the sovereign. If this view of law is applied to the assessment of government actions, then clearly it is not correct to describe government actions as crimes and the libertarian claim that government is "a gang of thieves" cannot be sustained. Agents of government may commit crimes against positive law if they step outside the bounds of their government-proscribed authority, but the *institution* of government cannot be regarded as criminal in nature in this positive law sense.

V. The Interpretive Theory Of Law

An alleged alternative to the positivist theory was put forward by the legal theorist Ronald Dworkin, who argued that the meaning of law is determined by a constructive interpretation of the institutional history of a legal system; in particular, that law is the set of principles that best explain and justify what the institutions of the legal system have done in the past.[18] Dworkin described this as the view of "law as integrity," meaning that the principles that constitute law must integrate and describe the actual historical practices of the legal system under consideration.

Although Dworkin's theory is offered as an alternative to the positivist account, it is actually a positive theory itself, insofar as it still posits law as being socially constructed.[19] The most limiting aspect of the interpretive theory, for our present purposes, is that the meaning of law is defined in terms of the practices of institutions of an existing "legal system," which presumes that one already accepts these institutions as valid expositors of law. Since one begins with the supposition of a recognised "legal system" under the interpretive approach, the historical practices of institutions within this system are taken as being determinative of the meaning of law. This approach does not consider whether or not this system is actually applying law; instead it seeks to interpret what this system is doing, and takes this result to be law. (Though we will deal with this issue in detail later, it is important to

18 See Dworkin, R. (1998) *Law's Empire*. Hart Publishing: Oxford.

19 Though Dworkin allows objective theories to be used to explain and justify the legal system, these are only descriptive of law insofar as they rationalise the actual actions of people in society. Hence, law is a social construct which is found inductively from social acts.

understand at this point that the interpretive theory makes no claim about the justness of the legal system in question. Its purpose is merely to establish how the system operates.)

Dworkin left no doubt that when he talked of the "legal system" he was referring to the legal enforcement institutions of the sovereign —i.e., the government legislature and judiciary. It is possible to combine the interpretive view with the positivist account of the sovereign, to obtain an argument in favour of this choice, and if this is done, then we see that the thesis of interpretive theory is that "law" is another name for *the best ex post facto rationalisation of the historical actions of the powerful* — specifically, the principles which best rationalise the past actions of the most powerful and habitually obeyed institution in society.

Now, the term "rationalisation" may be in issue here. It connotes the idea that the principles established to integrate and describe past actions operate as an excuse or justification for these past actions. We do not mean this in the normative sense of rationalising the justice of these acts, and the interpretive theory does not make this claim. However, the interpretive theory does rationalise the *legality* of past actions in the legal system, if these are in question. It can properly be described as a *legal* rationalisation of these past actions. Again, since the purpose of the doctrine is to describe an already accepted "legal system" the fact that it provides a legal rationalisation for past practices in that system is somewhat tautological —the majority of actions in the system must be seen to be legal by virtue of the fact that the system as a whole is pre-emptively accepted as being a "legal system".

If we were to take an interpretive view of law, then we could come up with an explanation for why the mugger in our example is a criminal. We would analyse all possible rationalising principles for the past actions of the government courts and legislature, and once we found the best rationalisation for their past actions, we would regard this set of principles as being "the law". Since this would need to be consistent with past practice (to the maximum extent possible) and since the government has imprisoned private muggers in the past, in accordance with its statutory commands, this set of principles would therefore hold that the mugger is doing something that is against the law. (If it did not then it would be difficult to see how it could be rationalised with the past imprisonment of muggers, and therefore difficult to see how it could be regarded as the best explanatory theory.) In short, the mugger is a criminal because he is acting contrary to the best rationalisation we can think of for the past actions of the government courts, who have previously applied statutes to imprison muggers.

VI. Summary Of The Positivist Theories Of Law

We are now in a position where we can state, in their baldest and most basic form, the three leading positivistic accounts of law. If we understand "the powerful" to refer to the sovereign body under the positivist account (i.e., the body whose commands are habitually obeyed) then the three leading theories of jurisprudence existing today can be stated as follows:

Positivist Theories of Law

Legal positivism (Austin-Hart): Laws are the commands of the powerful.

Legal realism (Cardozo): Laws are the enforcement actions of the powerful.

Interpretive positivism (Dworkin): Laws are the principles that are the best ex post facto rationalisations for the past actions of the powerful.

As applied to a society in which there is an established government (i.e., a monopoly enforcer of disputes, capable of taxation and determination of outcomes in disputes occurring within its jurisdiction) this institution would be regarded as the sovereign under positive law. The reason for this is that such an agency would command habitual obedience. This means that law in the positivist sense refers to the commands of governments in the context of our present society where these entities exist.

Applied to a libertarian private-law society with no government (i.e., a state of private-law anarchism) things are more complicated. In such a society there would be competing private agencies providing resolution and enforcement services in disputes. Each of these agencies would probably command habitual obedience in some small sphere of its own operations, but the monolithic adherence to the commands of a single agency would be absent. Nevertheless, since such a structure would require some co-operation and agreement between competing agencies, and since each agency would operate with a view to enforcing libertarian rules of social conduct, it is likely that they would collectively enforce adherence to roughly the same set of principles, subject to minor differences in interpretation. One could perhaps make an argument that the libertarian political philosophy and its consequential legal principles would then constitute a single system of positive law, with the arbitration and enforcement agencies being regarded collectively as a sovereign in this context. This matter is beyond the scope of the present paper and we remain agnostic on this point here.

Again we stress that our goal is to answer the question of whether or not a government can be regarded as a criminal institution. We do not dispute the fact that the commands described by positive law exist, and that the concept is useful in many contexts. In particular, we do not deny that there are such things as commands issued by bodies that command a great deal of power in society and are habitually obeyed, and that these are conventionally referred to as "laws" by people. Nor do we deny that there are principles

which might be used to try to rationalise the actions of institutions in the "legal system," to explain in general principles how it operates. We recognise that such bodies exist, that their commands are real, and that there are often serious sanctions for disobeying them. Our concern is whether or not the positivist theory can provide insight into the question at issue.

VII. Legal Positivism And Unjust Laws

So far we have considered a simple example of armed robbery by a private mugger. This is an action which is clearly immoral, and is also recognised as a crime by the ruling sovereign power. The act of the mugger is contrary to the commands of the sovereign, and a good rationalisation for the actions of the sovereign would include a prohibition on such conduct. We have therefore considered a situation in which the positivist and interpretive conceptions of law accord nicely with our conception of what is and is not moral conduct. In such a context a person may be satisfied with these accounts of law and criminality, since they both accord well with our moral intuitions about what is a crime. In short, in this case, positive law accords nicely with our conception of moral conduct.

We now turn our attention to the possibility of *unjust* positive laws. Rather than our present example involving a legally prohibited robbery in our present society, suppose we now consider the situation of a person living as a slave in a society where slavery is habitually accepted as a valid positive law, and enforced by the ruling sovereign of the day. We needn't be too specific here as to the particular society we are talking about; it suffices to note that there have been many societies in the past where the ruling sovereign power has commanded that certain people may be kept as slaves, and has granted their purported owners the prerogatives of ownership over them. In such societies the sovereign body has almost always prohibited slaves from defying their owners or attempting to escape their captivity and has granted slave-owners the legal prerogative to execute their slaves.

Suppose then, that a slave in such a society attempts to escape from their slave-master, in defiance of the commands of the sovereign body in that society —a body which is habitually obeyed, and meets the criteria for a legal sovereign under the positivist view. In the course of the escape attempt, the slave is captured by the slave-master, and executed by him, as a warning to other slaves who might also contemplate escape. In other words, the slave-master has intentionally killed the slave; something which we would now regard as an act of murder if it were done by one private citizen to another.

So who is the criminal here? Well, according to the positivist viewpoint, it is the slave who is the criminal here; the slave-master is not. It is the slave who has violated the commands of the sovereign, which are regarded as having the status of law under the positivist account. The killing here is done in accordance with the recognised property rules commanded by the sovereign, and the slave-master is in fact a *victim of crime* under the positivist account —his interests have been harmed by the criminal act of the slave, who unlawfully attempted to escape, and thus deprived the slave-master of his legal property.

Similarly, according to the interpretive positivist account, we must search for the principles which best rationalise the actions of the legal system. In this case, that system allows the slave-master to kill his slave without any sanction, and it assists with the capture and enslavement of the slave while he is still alive. Hence, it is clear that the rationalising principles must recognise the legality of slavery and must again conclude that the slave is the criminal, and the slave-master is the victim of crime.

Now, in fairness to positivists (of all varieties), this does *not* mean that they countenance acts of unjust killing and enslavement, or condemn the slave's attempt to escape. In the present case a positivist may decide that the slave is morally right to try to escape, but that it is nonetheless against the law to do so, and the law in this case is unjust. He may also decide that the slave-master is morally wrong to capture and execute the slave, notwithstanding that he is legally permitted to do so. The positivist may regard slavery as an abomination and may have contempt for the actions of the slave-master.

This means that it is open to a positivist to describe the actions of government agents as being lawful while disagreeing with these actions. It is open to the positivist to regard these actions as unjust. However, it is not open to the positivist to regard government as acting criminally itself. The positivist cannot say that the government is "a gang of thieves," since any such talk would be contradictory under the positivist account; the government does not act contrary to its own commands.[20]

VIII. The Separation Of Morality And Law Under Legal Positivism

Though positivists are not in the habit of describing slave-owners of fugitive slaves as victims of crime, they are nonetheless aware of the divergence between criminality and morality that emerges under their account of law. Hart uses a positivist account of law when he accepts the legal validity of slavery in societies where this was the dominant social norm.[21] In fact, positivists hold that there is no "inherent or necessary connection" between morality and the validity of laws, meaning that the morality or immorality of an action does not have any direct bearing on its lawfulness.

There can still be an indirect connection between morality and positive law. In his interpretivist view of law, Dworkin saw that people working within the legal system hold moral beliefs, and these beliefs affect their practices in that system.[22] Hence, since moral principles affect the institutions of the legal system, he argued that moral principles play

20 In fact, even if the government as an institution did act contrary to its own commands, it could be argued that its actions would yield implicit commands in favour of its own actions. We do not pursue this line of thought here, since it is beyond the scope of our present analysis.

21 Ibid, Hart (1994), pp. 201.

22 This is not to say that other positivists would disagree. Nevertheless, the epistemological connection between law and morality under positivism arises most clearly under the interpretive approach, since this approach seeks rationalising principles for the actions of the sovereign, and these rationalising principles may be the moral beliefs of the agents of the sovereign.

a part in the set of principles derived from a constructive interpretation. But even here, the connection between law and morality in the interpretive theory exists only through the beliefs of the people in institutions of the legal system; it does not exist in any direct objective sense —in other words, the morality of an action has no direct effect on its lawfulness. Since moral principles can only affect the law through the beliefs and actions of practitioners within the institutions of the legal system, this account of the connection is epistemological; there is still no direct connection between moral truth and the content of law.[23]

Legal positivists need not agree with the content of those rules that they recognise as laws, and they may believe that it is morally right to disobey valid laws in some instances, but they nonetheless argue that the *validity* of laws is a social matter, determined solely by social conventions, and with no inherent or necessary connection to morality. Hence, they cannot regard the government as acting criminally even in cases where its agents undertake actions that would be regarded as crimes if done by private citizens.

The legal positivist account of law and crime must conclude that any people who are the victims of reprehensible actions of the powerful and attempt to defend themselves through defiance of these commands, or lack of compliance with enforcement actions, are *themselves* criminals, even if the law in question is unjust and their actions are good. In such cases the sovereign is an evil but lawful authority and its victims are good criminals. To the present author, this seems to be a rather topsy-turvy way of looking at things, and it is proper that we examine the semantic claim made in the positivist account.

IX. Semantics: Why Are Positive Laws Called 'Laws' At All?

We start our semantic consideration with a simple question: Why do the positivists use the terms "law" and "legal system" at all? The positive definitions of these terms refer directly to commands, or actions taken in furtherance of these commands (or for legal realists, to actions that appear to be taken with a view to enforcing commands, but may actually be motivated by other considerations). So why do positivists not simply refer to positive laws as "commands" and refer to the resulting system of these commands as a "command system"? This would encapsulate the concept described by positive law more directly and it would also have the beneficial effect of severing any unwitting connotation of moral legitimacy. So why don't we see positivists undertaking a movement towards this language?

If the positivists genuinely wished to separate their description of sovereign commands from any connotation of justice, they could easily develop their theory in these terms,

23 Echoing the work of Dworkin, legal theorist David Carlson has argued that standard positivism cannot successfully separate morality and law as it purports to, and must admit is as an epistemological connection, since it must rely on a moral principle of fidelity to the spirit of the law in order to function without collapsing into legal realism (see Carlson, D.G. (2010) *The collapse of positivist jurisprudence into legal realism after Dworkin*. Cardozo Legal Studies Research Paper No. 289. http://ssrn.com/abstract=1557354).

and indeed, there would be no reason not to do this.[24] Indeed, by encouraging members of the public to refer to positive laws as "commands," they would affect a change toward language that is more accurate and less confusing under their own theory, since people do not imagine that the term "command" has any connotation of moral legitimacy. The fact that positivists do not do this suggests that something else must be going on.

Observe also that "law" under the legal positivist account lacks all the properties of what we call law in any other context. In the context of the physical sciences we refer to the laws of physics, the laws of chemistry and so on. In the context of the social sciences we refer to the laws of economics, the law of supply and demand, Gresham's law and so on. In each case we are referring to some immutable principles derived objectively from nature. By referring to positive laws as "laws" rather than "commands" we are surely adopting a linguistic usage that is at odds with our normal practice in other contexts. In doing so, we invite conceptual confusion, and yet this is precisely what the positivists complain about. So again, why do they adopt this term at all?

All of this can be explained by the fact that legal positivists are, in practice, almost always statist in their political views. An important part of their concern in jurisprudential work is to provide a legal justification for government power and action. The real purpose and effect of legal positivism is to act as an impediment to rational criticism of government, by creating the conceptual impediment of "law," imbued unconsciously with moral authority through its usage in referring to immutable rules in other areas of description, but divorced in definition from actual morality. Positivists take advantage of the fact that ordinary people view "law" and "criminality" as being terms which are inherently imbued with moral authority. They ride on these terms while simultaneously denying any normative assertion. This allows them to provide an implicit normative defence to government actions while denying that they are doing any such thing.

There is a major divergence between the legal positivist conception of "law" and the general meaning of this term in every other context in which it is applied. For instance, when we examine the laws of physics we understand that these are determined *by nature* and that it is the physicist's job to *discover* these laws, not invent them. We understand that a physics paper or textbook is an exposition of an expert opinion on the content of a natural law; it has no authority in its own right to determine what these laws are. We understand that the physicist's exposition of the laws of physics may be correct or incorrect, and the ultimate authority for this is nature itself. We do not believe that the laws of physics are created by the theories of physicists or their published works, and we therefore understand that the proper focus of attention in an examination of the laws of physics is on the arguments for or against different conceptions of nature. In short, the goal of physics is not to undertake a textual analysis of physics textbooks.

24 One might argue that this would mean that it is no longer a theory of jurisprudence, since it would no longer answer the question "What is law?" Positivists could then merely assert that "law" is a useless word which causes confusion, and that the proper term for the concept which they refer to is "commands". This would still constitute an answer to the jurisprudential question, albeit one which denies the premise.

This also applies in every other scientific endeavour in which we refer to laws. Whether we are talking of the laws of physics, the laws of economics, the law of reveal preference, or any other law of nature, we always refer to something that is *determined by nature* and *discovered by man*. In each case the term "law" imports the imprimatur of nature, and refers to a fixed, immutable principle.

We have already noted that, until the dominance of the positivist viewpoint in legal theory, this was also the way that the common law was viewed. Indeed, one of the major benefits of the notion of common law, and the sparing use of command-based statute, was the fact that it allowed for the discovery of principles of conduct based on reason rather than decree. Writing in the late-nineteenth century, prior to codification of the positive laws of New York, lawyer James Carter made the following argument against the proposed codification:

'At present, when any doubt arises in any particular case as to what the true rule of the unwritten [common] law is, it is at once assumed that the rule most in accordance with justice and sound policy is the one which must be declared to be the law. The search is for that rule. The appeal is squarely made to the highest considerations of morality and justice. These are the rallying points of the struggle. The contention is ennobling and beneficial to the advocates, to the judges, to the parties, to the auditors, and so indirectly to the whole community. The decision then made records another step in the advance of human reason towards that perfection after which it forever aspires. But when the law is conceded to be written down in a statute, and the only question is what the statute means, a contention unspeakably inferior is substituted. The dispute is about *words*. The question of what is right or wrong, just or unjust, is irrelevant and out of place. The only question is what has been written. What a wretched exchange for the manly encounter upon the elevated plane of principle!'[25]

Since this time, common law has been largely replaced by statute, and the positivist notion of laws as commands has become more firmly entrenched. The semantic notion of sovereign commands as "law" has led to a situation in which "law" refers almost exclusively to the statutory commands of legislators, and the proper approach to establishing their content is to undertake textual analysis, rather than moral reasoning. This has established a system that is unlike any other system of law recognised in wider scientific endeavours. One particular characteristic of this conception of law is that a person's actions are judged as lawful or unlawful, criminal or non-criminal, depending not only on the nature of the action, but on the person's relationship to the sovereign. This allows different actions for different people, and particularly for the agents of the sovereign.

This already counts as a major strike against the positivist conception of law. This doctrine creates a concept that is a "package deal," purportedly referring in a purely descriptive sense to the commands of the sovereign, but choosing language which unnecessarily

25 Carter, J. (1884) *Proposed Codification of our Common Law* (a paper prepared at the request of the committee of the bar association of the city of New York). Evening Post Printing Office: New York, pp. 85-86.

imports the imprimatur of an immutable principle of nature, taken from its application in other contexts. Legal positivism holds that power alone creates law, and hence, there is no means to criticise the legality of action but for criticism on the grounds of lack of power. The power of governments to command habitual obedience to their commands allows these commands and consequent actions to be viewed as "law" without regard to whether there is any rational or moral basis for those actions. No matter how arbitrary, irrational, immoral and unjustifiable the actions of government may be, by the mere fact that it is an institution which is habitually obeyed it is able to apply the appellation of "law" to these actions, and thereby boast that it is acting lawfully (and those who refuse to follow its commands are acting unlawfully). This allows the defenders of the state to conflate law and morality, by simultaneously using the notion of "law" as an expression of moral authority, while at the same time being careful not to let this intrude on the definition (As a caveat, I will freely concede that there are many honest positivists who genuinely wish to avoid conflation between the identification of sovereign commands and moral principles. For these people, I ask again, why not just call your positive laws "commands" and thereby avoid the confusion altogether?).

X. The Natural Theory Of Law

Analogy to the wider application of the term "law" to immutable principles of nature suggests a possible application to the social system as well. Just as there are natural principles of physics which are fixed principles amenable to the discovery of man, there are also natural principles of morality pertaining to the proper use of force. This gives us another account of law called the theory of **natural law**.

The theory of natural law holds that there is a body of proper social principles pertaining to the use of force — this body of law is not merely a social convention, but rather, consists of fixed moral principles that are derived objectively from the nature of man (hence the term "natural"). Since man's nature is fixed, these principles are immutable and universally valid for all times and places and all societies.[26]

The theory of natural law is a consequence of the view that objective ethical principles can be established from the nature of man. If ethics is itself merely a social convention, with no objective basis, then natural laws cannot properly be established. However, if objective ethical principles can be justified, then it stands to reason that some of these principles would pertain to the proper uses of force. If a person accepts this view, then they are a believer in the substance of natural law, whether or not they choose to describe it by that name (we will discuss this semantic issue later). Hence, natural law is a very wide concept, which can be said to apply in any theory of ethics that purports to be grounded in objective

26 Patterson, E.W. (1953) *Jurisprudence: Men and Ideas of the Law*. Foundation Press: Brooklyn, p. 333. Note that natural law theory has sometimes been used to refer to the claim that positive law cannot be properly understood without reference to natural laws. When we refer here to the theory of natural law, we merely mean the theory that such laws can be established (this is sometimes referred to as natural moral law theory).

principles derived from a natural source (e.g. the nature of man). Natural laws are merely the objective ethical principles applying to the use of force.

Under the libertarian account of natural law, the principles of law are derived from the account of private property homesteading and the non-aggression principle which underlie the libertarian theory. Roughly speaking, the libertarian view mimics the standard view people have of the moral principles governing interactions between private citizens: they should not kill, assault, rape, steal or commit other kinds of violence. What is unique to libertarian theory is that it applies these principles to *all* people, including those people who act as agents of the government. Under the libertarian view, the agents of government must also obey these principles, and hence, they cannot continue to act as a government, under the standard defining criteria for such.[27]

The justification for the libertarian theory is grounded in various different arguments, each of which is derived solely from facts about the nature of man and his actions. The libertarian theory is grounded in the homesteading rules of property (including self-ownership) and the non-aggression principle which follows as a corollary from this. Murray Rothbard argues in favour of the theory of natural law on the basis of rational first-appropriation rules.[28] Hans Hoppe argues in favour of the non-aggression principle on the basis of an axiomatic argument involving argumentation, establishing the principle as an "argumentation ethic".[29] Ayn Rand argues in favour of the non-aggression principle on the basis of an analysis of man's means of survival and the proper beneficiary of actions under a moral theory of egoism.[30] (Rand refers to the resulting set of principles as "objective law" rather than "natural law," though what she has in mind is identical to what we call natural law.) Other theorists have argued in favour of the non-aggression principle on the basis of other arguments.

(Questions over the proper basis of these moral rules are common; in particular, the question repeatedly arises as to whether these rules are deontological or consequentialist. The proper approach here is the to recognise that all moral rules arising from an examination of nature must be justified on the grounds of their consequences in reality, but the consequentialist calculation involved in their justification does not form a part of the moral rule. The reason for this is that moral rules must provide operational guidance, and appeals to consequences do not provide an adequate basis for this. Hence, an objective moral theory must put forward rules of conduct that stand on their own and not refer to consequences, even though they are derived from an examination of their consequences.[31])

27 The standard definition of a government is as a territorial monopolist of the use of violence, or alternatively, as a territorial monopolist of the functions of decision-making in conflicts (including conflicts involving itself). As has been established many times by various libertarian theorists, neither function can be reconciled with the libertarian view of natural law.

28 Rothbard, M.N. (1998) *The Ethics of Liberty*. New Your University Press: New York, pp. 29-62.

29 Hoppe, H.H. (1989) A Theory of Socialism and Capitalism. Kluwer Academic Publishers: Boston.

30 Peikoff, L. (1991) *Objectivism: The Philosophy of Ayn Rand*. Meridian: New York, pp. 187-324.

31 For a detailed account of this argument, see Smith, T. (1995) *Moral Rights and Political Freedom*. Rowman and Littlefield Publishers Inc: London, pp. 85-100.

All of the arguments in favour of the libertarian view of natural law make reference to facts about the nature of man or his actions, and use these facts to establish moral principles pertaining to the use of force, which is the subject matter of law. Thus, all of these arguments can properly be regarded —if correct— as establishing a natural conception of law. There has often been confusion on this issue, owing mostly to the failure to recognise the actual meaning of what natural law is.[32] It is not something *super*-natural, nor is it something imbued into the physical material of nature. The theory of natural law asserts nothing more than the fact that objective moral principles pertaining to the use of force exist, and these can be derived from facts about the nature of man or his actions. Unfortunately, most people are so imbued with the positivist account of law that they find the very idea of "nature" being used in law or ethics to be somewhat dubious.[33]

(Incidentally, some objections to the idea of natural law seem to be based on an objection to doctrines that assert that there is some kind of God-made law. It is nonsensical to call such a viewpoint "natural" law since it is clearly an assertion of a super-natural source. A proper conception of natural law would exclude such theistic doctrines, and hence, the mysticism inherent in these theistic doctrines is no argument against the natural law position, properly construed. Other objections refer to specific formulations of natural law that are indeed false. It is important to stress that we argue here in favour of the validity of the *concept* of natural law, and the correctness of the libertarian view of its *content*. Hence, any argument against the content of some other doctrine of alleged natural law is of no consequence to us.)

If we take the natural theory of law, based on the libertarian view of its content, then we can come up with an explanation for why the mugger in our example is a criminal. Criminality here means the violation of law, and in the context of an acceptance of natural law, this is the proper standard for adherence. To establish the criminality of the mugger we would use information about the nature of man to establish objectively that it is morally wrong for a person to rob another of their property using a threat of violence. This would establish the right to property, and we would see that the mugger is violating this right. He is a criminal because he is acting contrary to the dictates of natural law. He is a criminal regardless of whether or not there are commands against robbery in the society he is in. He is a criminal regardless of whether he is caught and punished for his crimes and regardless of the actions of the enforcement agents of the sovereign.

32 For example, in arguing in favour of the argumentation ethic of non-aggression, philosopher Gary Madison says that "...the various values defended by liberalism are not arbitrary, a matter of mere personal preference, nor do they derive from some natural law. ...they are values that are implicitly recognized and affirmed by everyone by the very fact of their engaging in communicative reason." But actually, the very conclusions he establishes —namely, an objectively true statement of liberalism, grounded in an aspect of man's nature (that he engages in argumentation)— *is* a statement of natural law. (See Madison, G.B. (1986) The Logic of Liberty. Greenwood Press: New York, p. 266.

33 Ibid, Rothbard (1998), pp. 9-10.

XI. Semantics: Which Has A Better Claim To The Title Of 'Law'?

Those who posit the correctness of the natural law theory do not deny that there are *also* such things as commands issued by bodies that command a great deal of power in society and are habitually obeyed. Nor do they deny that there are principles which might be used to try to rationalise the actions of institutions in this system. They recognise that such bodies exist, that their commands are real, and that there are often serious sanctions for disobeying them. It is most accurate to refer to these commands simply as "commands" since this term is well-understood, and does not have any normative import. However, due to the presently common usage of the word "law" to describe such commands (an effect of positivist doctrine) it is an adequate concession to present language use to describe these commands as "positive laws". (Of course, it would still be preferable to move towards calling these "commands", so as to be clearer on their nature.) This term describes a body of rules telling you what you must do in a society to avoid running afoul of the authorities.

However, to the natural law theorist, such commands do not have an exclusive claim to being called laws — in fact, their claim to being called laws is far weaker than for natural law. Positive law is dissimilar from all other forms of principle described as laws in nature, whereas natural law conforms nicely with these other forms of principle. Just as in physics or chemistry, it is possible to discover a natural law which is derived objectively from the nature of man, and this law has a proper claim to the title of law in the same way that the laws of physics have a proper claim to the title of law. Such laws are immutable principles that are not dependent on time or place and are applicable to any society.

To the natural law theorist, the mugger in our example is a criminal, under the natural law conception of the term, because he has engaged in an act which is objectively criminal in nature, since it uses force in violation of the rights of another. He is a criminal regardless of whether or not there exist statutes or legal judgements condemning his actions and regardless of the views of the "sovereign" or society in general. His criminality is **not** a social construction; it is a consequence of the fact that armed robbery is an objectively indefensible use of force; it is contrary to a proper objective view of morality, as derived from facts about the nature of man. Similarly, to the natural law theorist, there is no divergence in criminality and morality in the institution of slavery. The slave-master in our previous example is the criminal; the killed slave is the victim of crime, even though they are not recognised as such by the "positive law" of their time.

But isn't this all just a matter of semantics? Why should we prefer to apply the descriptor "law" to one of these concepts rather than the other? For this, we can let Hart do the talking:

'Plainly we cannot grapple adequately with this issue if we see it as one concerning the proprieties of linguistic usage. For what really is at stake is the comparative merit of a wider [positivist] and a narrower [natural] concept or way of classifying rules, which belong to a system of rules generally effective in social life. If we are to make a reasoned choice between these concepts, it must be because one is superior to the other in the way in which

it will assist our theoretical inquiries, or advance and clarify our moral deliberations, or both'.[34]

To assist our theoretical enquiries we need to consider the *purpose* of talking about 'law'. If the purpose is merely to describe the commands and enforcement actions of the institutions of government, then clearly the positivist conception is the more useful, though it could still most accurately be referred to as a command system. In this context, the positivist theory gives a concept that directly tells us what we can and cannot do if we wish to avoid sanctions being imposed on us, and what we may expect from the enforcers of the sovereign body. In such a case we do not want a natural law theorist, we want an actual lawyer who knows about the case law and statutes of the government, and the past actions of the courts and other enforcement agents.

For this reason, most people are in the habit of regarding positive law as the exclusive body of rules that should be described as law. Indeed, the legal positivists argue that objective rules of morality should not be referred to as 'law' since this would only create confusion.[35] But is it really more confusing? Let's see.

Our purpose here is to answer the question of whether or not the government can properly be described as a criminal institution. The positivist rules this out by persuasive definition: any action done by people acting in the government apparatus, in accordance with rules of recognition of its own determination, must *ipso facto* be regarded as lawful, regardless of the nature of the action.

So which advances and clarifies our moral deliberations in this context? A theory which grounds law and crime in objective facts derived from nature, just as with references to laws in every other scientific endeavour, or a theory which grounds law and crime in the pronouncements of the powerful? A theory that applies equally to all people, or a theory that defines law and crime by reference to the whims and actions of the powerful? Which is really more confusing? A theory which allows for the possibility that people may be criminals or not, depending on their *actions*, or a theory that rules out the possibility that certain parties may act as criminals, merely by their *identity* as powerful people? To even ask these questions is to see that legal positivism does *not* clarify these matters in the context of such an evaluation, but rather, confuses them.

XII. Conclusion

At root in the libertarian theory is the judgment that aggression is objectively morally wrong —that it is a violation of rights. Since this conclusion is derived from facts about the nature of man, it can properly be regarded as a theory of natural law. Those who violate this law are criminals, regardless of who they are, or what position they hold in society.

34 Ibid, Hart (1994), p. 209.
35 Ibid, Hart (1994), pp. 207-208.

If libertarian theory is correct, then it follows that governments are criminal institutions. Their agents and enablers are engaged in crimes, and should properly be regarded as criminals, no different in principle, to a mugger in an alley.

As a result of this theory, libertarians have one simple demand: they ask that people obey the law (i.e., natural law). They ask them not to kill, steal, assault, rape, and so on. Though this is sometimes presented in more abstract terms (using political concepts such as free-market capitalism, anarcho-capitalism, non-interventionism, etc.) the entire theory of libertarianism is merely an elaboration of this one simple mandate.

Libertarians can make use of the concept of "positive law" just as well as anyone else, and they should regard this concept as a valid description of a useful thing in its proper context. (Each of the above theories of positive law has some merit in describing some aspect of the institutions of government enforcement systems. Nevertheless, there is no good reason that they should not be called by the more accurate term as "commands".) However, their belief in objective moral principles pertaining to the use of force means that they should regard natural law as having the stronger and more permanent claim to the title "law". Concession on this issue to legal positivism allows governments to whitewash their crimes under the euphemism of "public policy" and thereby command more respect and legitimacy than their actions deserve.

We began with an examination of a mugger in an alley, and the fanciful notion that he might try to describe his crime as a "public policy disagreement". When you read that, you may have thought: Surely no-one would ever make such a preposterous claim! And I would never be fool enough to fall for it if they did!

Wouldn't you? Are you sure you haven't already?

Actually, this happens almost every time libertarians talk about their preference for free-market policies in some context, and contrast these with interventionist or socialist policies that they don't like. In such discussions, it is common for libertarians to couch an argument in the language of a "free-market policy" or an "anti-interventionist policy" or a "liberal policy". But what does this mean? All it means is that the libertarian opposes some form of government intervention which involves the initiation of force against someone. In short, they oppose some act of robbery, assault or other trespass, and the preferred "policy" is that the government should not commit this crime.

When arguments of this kind occur, with no attempt to cut through higher level abstractions to show their roots in the concept of law and crime, libertarians have already given up most of the argument by conceding an important conceptual and semantic issue. These are not disagreements about "public policy". They are appeals to refrain from committing crimes.

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Sukrit Sabhlok

Secession as Political Reform: The Case of Western Australia

In my opinion Western Australia should never have entered the Federation, but having done so, there is, I feel convinced, only one complete and satisfactory remedy for her present disabilities, viz., secession.

J. Entwistle[1]

Introduction

Last year, Norman Moore suggested that Western Australia ought to secede from the Commonwealth in protest at the carbon tax and Minerals Resource Rent Tax being imposed by the federal government. Moore is WA's Mines Minister, so the Labor opposition was scathing in its criticism of his comments – calling him 'dangerous', 'disrespectful' and 'preposterous'.[2]

But is secession really so radical? After all, even the State's Premier Colin Barnett has warned that WA is likely to split from Canberra if revenue created in the state keeps shifting east. Admittedly Barnett has been careful to tread a fine line by keeping a distance from the more strident elements of the separatist movement. For Barnett his observation that Western Australia could secede is 'not a threat' but merely 'reality', and '[i]t's a trend you may see over the next 20 years… the WA economy…will simply move away from the rest

1 Quoted in Committee on the Case for Secession, 'The Case for Secession', WA Parliament, 1934, p. 5. Mr. J. Entwistle was the dissenting member on the Commonwealth Government's 1924 Royal Commission into Western Australia's financial disabilities under federation.
2 Lee-Maree Gallo, 'Barnett backs away from senior WA minister's secession call', *WAToday.com.au,* 13 July 2011.

of Australia and get closer and closer to Asia in every respect'.[3]

It is my argument that secession is not something foreign to Australian traditions, is already occurring in Australia and that there should be more of it. North of Perth near the town of Northampton, there is already a micro-nation known as the Principality of Hutt River. The Hutt River Province has declared its independence and does not pay tax to the Australian Government, has titles and regalia for its leaders and issues its own passports. Other micro-nations include the Province of Bumbunga in South Australia, the Sovereign State of Aeterna Lucina in New South Wales and the Independent State of Rainbow Creek in Victoria, just to name a few. His Imperial Majesty George II of Atlantium observes:

> You'll find there's a greater concentration of micro states in Australia than anywhere else - there have been dozens - and if you look at it per capita, Australia is wildly in excess of every other part of the world. It comes from our convict heritage and disrespect for authority. American groups like the Davidian Branch tend to be more violently whacko, whereas Australians are just quaintly eccentric.[4]

Although secession strikes at the heart of many debates surrounding Australian federalism, it is not often raised as an option by reformers of intergovernmental relations. Most proposals from experts focus on tinkering with the federal system by changing elements of the tax and grant distribution systems or creating Special Economic Zones that provide targeted relief from central government intervention.

In rare instances when separation is raised, numerous legal, political and economic obstacles are placed in its way. George Williams writes that 'The constitution simply does not contemplate any part of the nation breaking away, with no state having the right to unilaterally leave the federation'.[5] Others have opined that departure would leave a seceding state exposed and defenceless against foreign enemies, or that a unified system is essential for minimising inter-jurisdictional conflicts in the Oceanic region. Some have questioned whether secession will yield economic benefits for the breakaway region, as there is no guarantee state governments will be less oppressive than the national one.

Our task in this paper is to analyse the arguments pertaining to the exit of a minority from a majority, i.e. to inquire into whether secession is justifiable. The case study of Western Australia will take centre-stage, because in 1933 nearly 70 per cent of West Australians voted in favour of leaving the Australian federation.

I. Relevant Literature

Public choice economist James Buchanan has observed that although much has been written about the theory of external exit, or the notion that people can 'vote with their feet'

3 Joe Spagnolo, 'WA threat to split from Canberra', *The Sunday Times,* 19 May 2012.
4 Justin Norrie, 'The boy from Hurstville who now rules a big flat', *Sydney Morning Herald,* 7 May 2004.
5 George Williams, 'Too rich, too weak to succeed seceding', *Sydney Morning Herald,* 11 May 2010.

and emigrate from one country to another, comparatively little has been written about the ability to withdraw persons, space and goods from an existing country to create a new country; or in other words, the capacity to secede.[6]

An edited collection entitled *Secession, State and Liberty* released in 1998 seeks to alleviate this relative neglect by bringing together essays mounting a vigorous defence of secession from all angles – economic, philosophical and legal. Secession, it is argued by the editor David Gordon, 'follows at once from the basic rights defended by classical liberalism'.[7] It is desirable in a free society because it exerts a check on monopolistic centralised power and places a limit on the taxing proclivities of government.

Ludwig von Mises also saw that permitting secession is the 'only feasible and effective way of preventing revolutions and civil and international wars'.[8] In his *Liberalism*, Mises does not require jumping through elaborate hurdles but sees a simple majority vote as being sufficient to grant self-determination to every 'independent administrative unit' that desires it. Mises' disciple Murray Rothbard takes the right of secession a step further into the realm of anarchy, where every individual is free to unilaterally exit from the governmental system and contract with private agencies for services currently provided by the public sector.[9]

Mises and Rothbard justify their approach on the grounds that individuals have a right to decide who rules them. Current geographic boundaries often merit change since they may be artificial creations carved up by some strongman. The pursuit of fairness requires us to 'transform existing nation-states into national entities whose boundaries could be called just, in the same sense that private property boundaries are just; that is, to decompose existing coercive nation-states into genuine nations, or nations by consent'.[10]

Not everyone is quite so sympathetic towards the idea of declaring independence. In Allan Buchanan's *Secession*, Buchanan submits that secession would not be defensible in a perfectly just state. His Remedial Rights Only theory proposes that extreme circumstances would have to exist before a right to secede could arise; that is, separation is a measure of last resort to be used when a state violates human rights or engages in discriminatory policies towards minorities. Such a view places emphasis on the notion that it is *the government's* territory and that in departing to form a new nation, secessionists are taking what does not belong to them and so should have to rationalise their actions.

Most classical liberal philosophers, however, would disagree with the characterisation of territory as *belonging* to the government. Ownership of real property comes about in one

6 James Buchanan and Roger Faith, 'Secession and the Limits of Taxation: Toward a Theory of Internal Exit', *American Economic Review,* No. 5, 1987.
7 David Gordon (ed), *Secession, State and Liberty,* Transaction Publishers, 2007, p. ix.
8 Ludwig von Mises, *Liberalism: The Classical Tradition,* Liberty Fund, 2005, p 79.
9 Murray Rothbard, *For a New Liberty: The Libertarian Manifesto,* Ludwig von Mises Institute, 2006.
10 Murray Rothbard, 'Nations by Consent: Decomposing the Nation State' in David Gordon (ed), *Secession, State and Liberty,* Transaction Publishers, 2007.

of two ways: original appropriation and the mixing of labour with land, or alternatively through voluntary exchange. The process of finding unused land and then adding value to it is known as homesteading and was famously described by John Locke. Yet governments typically do not acquire land through homesteading or voluntary exchange; they are effectively parasitic organisations subsisting on coercively acquired tax revenue, and tend to seize assets through the use of force. So this means that their title to land is not valid or just, and liberal philosophers are unlikely to accept that governments 'own' territory.[11]

Hans-Hermann Hoppe cites other rationales for secession.[12] Firstly, in an environment where increasing tendencies towards world government are evident (through the IMF, WTO, UN etc.), secessionism fosters economic competition by encouraging the emergence of numerous smaller entities and thereby instilling discipline in governments who wish to prevent their subjects from emigrating to other jurisdictions. Secondly, secession increases the likelihood these entities will opt for a policy of free trade, since smaller nations find it comparatively difficult to be self-sufficient given they may lack natural resources or capital and are compelled to import what they need. Free trade is beneficial both because it reduces the prices of goods and services domestically and because it contributes to peaceful relations.[13]

II. Western Australia's Dilemma

Federalism is defined as a system of government where sovereignty is constitutionally divided between a central body and constituent units (states or provinces). It can be contrasted to unitary systems such as the United Kingdom, in which political authority is vested in a single sovereign for the whole of the country. In 1901, Australia was established with the intention of being a federal state – power was to be divided between the Commonwealth and the six states, with each an equal in its sphere of constitutional authority.

It is clear by now that this ideal has not been achieved in practice. The national government has greatly increased in size and scope over the past century, and the states are rapidly losing their share of the bargain. It is a trend has been evident at least since 1920, when the High Court handed down the *Engineers Case*. That case revolutionised the way in which the Court interprets the Constitution – no longer was deference to be paid to the importance of upholding the federal-state balance, rather Commonwealth powers could be given a plenary interpretation if the judges, in their infinite wisdom, decided that the text demanded it.

That WA was always reluctant to enter the Commonwealth is well known; its entry was the product of inducements offered by the federal government coupled with the influence

11 Murray Rothbard, *The Ethics of Liberty,* New York University Press, 1998, p. 69.
12 Hans-Hermann Hoppe, *Democracy: The God That Failed,* Transaction Publishers, 2001, pp. 107-118.
13 Murray Rothbard, *Protectionism and the Destruction of Prosperity,* Ludwig von Mises Institute, 1986.

of its goldfields region which was populated by loyal federalists from the east.[14] Thanks to these two factors, Western Australians in 1900 came out in favour of federation by a margin of more than two to one.

Were the inducements – which comprised five years of tariff protection per section 95 of the Constitution and an intercontinental railway –worth the price of giving up self-government? Lang Hancock points out that between 1890 and 1900 (while free from Canberra) the state enjoyed 'the ten greatest years in the history of [its] development'.[15] Yearnings for these pre-federation days led to secessionist rumblings in 1906, with the Legislative Assembly passing a resolution declaring that federation had 'proved detrimental to the best interest' of Western Australia and that a referendum should be held to canvass support for 'the possibility of withdrawing from such a union'.[16]

Vertical Fiscal Imbalance

Western Australia's disabilities under federation have been most prominent in the area of raising revenue, courtesy of the *Uniform Tax Cases* that allowed the federal government a monopoly over income tax.[17] Sir Robert Menzies is quoted in *The Argus* lamenting the court's decision: 'From now on the Government of Australia must be regarded as much more of a unitary Government and much less of a Federal system than was thought to be the case previously'.[18] Henceforth, Menzies indicated, 'the finances of the States are at the mercy of the Commonwealth'.[19]

With the loss of revenue raising ability has arisen a gross vertical fiscal imbalance between the states and federal government. The federal government raises more revenue than it needs, while the States, due to the loss of their taxing powers, raise less revenue than they need and are dependent upon the Commonwealth Grants Commission.

Unfair Distribution of Grants

The Commission distributes monies on the basis of a 'horizontal fiscal equalisation' formula. The problem is that this formula penalises success by redistributing income away from richer states with low expenditure needs to poorer states with high expenditure needs.[20] So WA is effectively punished for its booming economy and the low level of social

14 Thomas Musgrave, 'The West Australian Secessionist Movement', *Macquarie Law Journal,* Vol. 3, 2003, p. 97. It is interesting to note that the Colonial Secretary of the time pressured WA to join federation lest it lose the goldfields (which had threatened to secede). This is an example of the British government supporting secession – at least indirectly – when it suited its interests.

15 'Hancock Puts Case for Secession', *Western Intelligence Report*, Nov 1973, p. 17.

16 Quoted in Thomas Musgrave, 'The West Australian Secessionist Movement', 2003, p. 100.

17 *South Australia v Commonwealth* (1942) 65 CLR 373 ('the First Uniform Tax case'); *Victoria v Commonwealth* (1957) 99 CLR 575 ('the Second Uniform Tax case').

18 'Federal Era Ends, Says Mr Menzies', *The Argus,* 24 July 1942.

19 Ibid.

20 Julie Novak, 'Beyond Its Use-By Date: Australia's System of Fiscal Equalisation, and How to Reform It', Submission to the Federal GST Distribution Review, September 2011, pp. 6-7.

security and health benefits received by its residents.[21]

Western Australia's government has frequently complained about receiving an unfair share of revenue from the Commission. According to the WA Treasury, in 2010–11 the Commonwealth took $41.9 billion from the state, while expenditure for the benefit of the State totalled only $27.0 billion, a difference of $14.9 billion.[22] Table 1 shows that WA's net contribution to the Australian Government exceeds that of the other States in both per capita and absolute terms.

Table 1: Net Redistribution of Resources, 2010-2011[(a)]

	GST only[(b)]		**Total**	
	$m	$ per capita	$m	$ per capita
NSW	1, 043	144	2, 190	301
Victoria	1, 085	194	1, 314	235
Queensland	99	22	-6, 019	-1, 325
WA	**1, 692**	**730**	**14, 939**	**6, 447**
South Australia	-1, 244	-754	-5, 095	-3, 087
Tasmania	-776	-1, 524	-3, 414	-6, 706
NT	-1, 898	-8, 272	-3, 915	-17, 058
Total	0	0	0	0

(a) All Commonwealth outlays and revenue relating to the Australian Capital Territory are allocated to the other States according to population shares. This recognises that the ACT would be unlikely to exist as a separate entity if the federation dissolved.

(b) Difference between estimated GST revenue raised from economic activity in each State and GST grants paid to the State.

Source: West Australian Department of Treasury[23]

So there is some truth to the claim that the state is being milked for taxes (e.g. company tax, income tax, Goods and Services Tax) while receiving a smaller amount in return.

Regulatory Costs

There are also the regulatory costs of federal government intervention to take into

21 For example, in the 2012-2013 financial year WA will receive only $2.9 million in GST grants – a $600 million loss from the previous year, as stated in Todd Carney, *Barnett blames GST for service, program cuts*, Retrieved from <http://www.perthnow.com.au/news/western-australia/barnett-blames-gst-for-service-program-cuts/story-e6frg14c-1226312617012> on 26 June 2012. See also the West Australian Treasurer Christian Porter's 2012-13 Budget Speech available from <http://www.treasury.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2012_13/2012-13_budget_speech_bp1.pdf >.

22 Department of Treasury, *Fiscal Redistribution Across States by the Commonwealth,* Retrieved from < http://www.treasury.wa.gov.au/cms/content.aspx?id=1912#impact> on 26 June 2012.

23 Using a range of data sources including the Commonwealth Final Budget Outcome publications and Australian Bureau of Statistics publication 5220.0.

account. The imposition by the Commonwealth of an import tariff, for instance, pushes up production costs on inputs by preventing West Australian businesses from purchasing these cheaply from overseas. Although tariff rates have declined since trade liberalisation in the 1980s it remains a legitimate grievance as it protects the interests of manufacturing-intensive eastern states at the expense of WA's agricultural interests.[24]

Federal industrial relations law has likewise imposed costs upon consumers and businesses. One example is the *Workchoices Case* in which the High Court expanded the scope of Australian Government authority to cover practically all aspects of the employer-employee relationship.[25] The effect has been to decrease the responsiveness of workplace laws to local preferences, undermine flexibility and in turn increase labour costs for businesses.[26] Instead of being able to set their own standards in consultation with state parliaments, employers in WA must adhere to time-consuming national rules and regulations.

Accountability

Last but not least, federation has diminished the political accountability that is said to be part and parcel of liberal democracy. Vertical fiscal imbalance has broken the nexus between revenue raising and expenditure: the residents of WA, and the other states for that matter, have many of their 'public goods' such as health and school education funded by the Commonwealth yet responsibility for spending the money is placed upon the states.

This has led to confusion about which tier of government should be held accountable in the event that performance is below expectations across a range of areas. On the one hand, states pass the blame to the Commonwealth, citing not enough funding and red tape. On the other, federal parliamentarians allege that the states are sanctuaries of mismanagement and incompetence. And while this is going on, average citizens continue to experience the effects of lacklustre outcomes in service provision.

III. Choosing The Right Remedy

The result of WA's dependence upon the Commonwealth is that it has lost autonomy in a host of policy domains, and this is undoubtedly detrimental from the point of view of West Australians who would prefer to retain control over their lives at a local and more accountable level. The situation is aggravated by section 96 of the Constitution which has been used by the Australian Government to guide and oversee planning in health, education and other areas of state responsibility.

In these circumstances it seems appropriate that secession be considered as one of many possible remedies, the others being some type of reform of federal-state relations – e.g. to the grants system, or shifting to a confederal model where the centre is less powerful than

24 Thomas Musgrave, 'The West Australian Secessionist Movement', 2003, pp. 99-101.
25 *New South Wales v Commonwealth* (2006) 229 CLR 1.
26 Campbell Sharman, 'Secession and Federalism', *Upholding the Australian Constitution*, Vol. 3, 1994.

the states – or nullification of federal laws on a case-by-case basis. Nullification would entail WA refusing to obey specific federal laws it believes are outside the proper scope of the central government's powers, but otherwise remaining within the union.

Reforming federalism can be dismissed as an unrealistic course of action; the institutional framework of federation is biased against the states and fixing it is a Herculean task because it would require the federal government to voluntarily scale back its impositions upon the states.

From a practical point of view, nullification and secession are more realistic options because they only require the approval of a majority of voters in a single state, rather than approval by all Australian voters, as would be necessary in any form of constitutional amendment towards a confederal model for instance. Nullification has been used to good effect in the United States, with socially liberal states such as California resisting federal anti-marijuana laws. Nullification could be a first step before secession as it is less confronting but secession could be used as a last resort.

Whether nullification or secession is the appropriate remedy will depend upon the level of oppression that West Australians feel they are faced with. If oppression by the Commonwealth is so great that only secession would remedy the problem, then the question of withdrawal should be put to the people in a plebiscite and then departure should be affected unilaterally by the state parliament in accordance with the wishes of their residents whom they are arguably obligated to protect from federal depredations.

IV. The Legality Of Secession

When West Australians voted in favour of seceding in the 1930s, the unilateral option was not pursued. Instead, the Labor government at the time decided to appeal to the United Kingdom's Privy Council to grant permission for its withdrawal. This, it was thought, was the proper legal course of action. Yet the Council rejected WA's arguments and cut the momentum out of the secessionist movement. Before any future attempt at seceding is made it should be acknowledged that unilateral secession is also a legally valid option for WA to pursue.[27]

Many central governments have used military force against a state that secedes unilaterally. Thus, if WA were to pursue the option of unilateral secession it risks incurring the armed wrath of the Commonwealth government. Nevertheless there are strong constitutional arguments in the state's favour that it can use to persuade others of the rightness of its

27 William Meritt, 'In Response to Timothy Sandefur', *Liberty*, December 2002, p. 40: 'Parsing words from previous generations for no better reason than to thwart actions by living people reflects the worst kind of discredited 20th-century thinking. Real people get to throw off real governments for whatever reasons seem real to the people at the time. No board can bind a future board. No legislature can bind a future legislature. And no generation can peaceably bind its children to any form of government whatsoever – no matter what words they use, or fail to use – if their children do not wish to be so bound'.

cause.

In the first place, it should be noted that Australia's states co-exist with the federal government in a constitutional contract and when that contract is breached a valid claim for termination would arise.[28] In Thomas Jefferson's *Kentucky Resolutions of 1798*, Jefferson went about demonstrating that the US Constitution was a contract between the states and the federal government, and that 'the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers'.[29] Since early Privy Council and High Court authorities do refer to the Constitution as a 'compact' this indicates the Jeffersonian doctrine is plausible in the Australian context.[30]

Secondly, it needs to be acknowledged that breaking away cannot possibly be illegal, because if it were, enforcing a judgement against a belligerent state would involve the application of significant unauthorised coercion. During the American War Between the States, for example, Abraham Lincoln relentlessly prosecuted the South at the expense of some one million Americans who perished. Though Lincoln held that his actions were perfectly constitutional, James Ostrowski thinks otherwise:

In 1861, the Constitution did not authorize the federal government to use military force to prevent a state from seceding from the Union. The Constitution established a federal government of limited powers delegated to it by the people, acting through their respective states. There is no express grant to the federal government of a power to use armed force to prevent a secession, and there is no clause which does so by implication.[31]

Likewise, it is doubtful that the Australian Constitution empowers the national government to invade a belligerent state and garrison troops in said state in what would be – for a short

28 Consider the remarks of Sir Hal Colebatch, a former Premier of Western Australia:

> Our contention is that the words 'under the Constitution hereby established' are of equal significance, and if we can demonstrate – as we are prepared to do – that in a number of essentials, the Constitution has been violated to our detriment, we are entitled to be relieved from our bargain. The federation is a partnership between six States in which certain guarantees were given and certain safeguards were provided. We can show that these guarantees have been violated – that these safeguards have been swept aside – and so we ask for the annulment of the partnership.

Retrieved from <http://www.liswa.wa.gov.au/federation/sec/065_lond.htm> on 26 June 2012.

29 On the import of Jefferson's ideas see Thomas Woods, *Nullification: How to Resist Federal Tyranny in the 21st Century,* Regnery Publishing, 2010, pp. 46-47.

30 Although none of the following judgments explicitly state that if the Commonwealth were to step outside its enumerated functions then the states might be justified in taking remedial measures including secession, they are nevertheless worth reading. *Attorney-General for the Commonwealth v Colonial Sugar Refinery Co. Ltd* [1914] AC 237, 256; *Federated Service Association v NSW Railway Traffic Employees Association* (1906) 4 CLR 488, 610; *James v Commonwealth* (1936) AC 578, 613. Additional authorities are cited in James Thomson, 'The Australian Constitution: Statute, Fundamental Document or Compact?', *Law Institute Journal,* Vol. 59, 1985.

31 James Ostrowski, 'Was Invasion of the Confederate States a Lawful Act?' in David Gordon (ed), *Secession, State and Liberty,* 2007, p. 179.

period at least – a military dictatorship. The proposition is itself in conflict with structure of the document, which purports to establish a federal system of elected representatives.

V. Some Possible Objections

We now turn to some common objections raised against secession. Harry Beran recognises a general right to secede, however he suggests that withdrawal may be prohibited in situations where a group (1) is too small to assume the basic responsibilities of an independent state; (2) is not prepared to permit sub-groups within itself to secede; (3) seeks to oppress a sub-group within itself that cannot secede; (4) occupies an area fully enclosed by the borders of the existing state; (5) occupies an area that is culturally, economically or militarily essential to the existing state; or (6) occupies an area that has a disproportionately high share of the economic resources of the existing state.[32]

To what extent are Beran's conditions defensible?

His first condition misses the point because there is probably no size that is 'too small' to secede. City-states like Hong Kong and Singapore are essentially the same size as New York City yet are extremely successful. The second and third objections are equally misguided. That oppressed subgroups are not allowed to secede, while regrettable, is not something that affects the validity of a claim for secession. In a situation where A oppresses B, and B in turn oppresses C, it is not defensible to suggest that A should only stop oppressing B once B has stopped oppressing C. Beran's fourth claim that enclaves within another nation cannot secede appears to be disproved by the Vatican City – which is surrounded by Rome. So long as free movement of people and goods is permitted by the surrounding state, secession poses no quandary. Finally, the argument about culturally, economically or militarily essential areas can be given short shrift – this requires a value judgment on the part of the rulers with respect to what is 'essential' and is likely to disguise exploitation.[33]

It has also been suggested that for much of its history Western Australia has been a recipient of the financial generosity of Victoria and New South Wales, both of which also remain net donors to the GST cake, and that it is inadvisable to secede lest the assistance of the other states be required again. However if Mises, Rothbard and Hoppe are correct, then WA should secede regardless of whether times are good *or* bad because secession improves incentives for wealth creation and moreover is the moral right of every Westralian.[34] Defence, infrastructure, law and order and other services can be provided by the WA Government by raising the necessary revenue itself, forging alliances with other countries or through competitive private provision.[35] Hence, the state need not be dependent upon

32 Harry Beran, 'A Liberal Theory of Secession', *Political Studies,* 1984, pp. 30-31.

33 My analysis here draws upon Robert McGee, 'Secession Reconsidered', *Journal of Libertarian Studies,* 1994.

34 Hans-Hermann Hoppe, *Democracy: The God That Failed,* 2001, p. 111: 'It is not by accident that capitalism first flourished under the conditions of extreme political decentralization'.

35 On the private provision of so-called public goods such as defence, roads etc see Edward Stringham (ed),

grants from the Commonwealth.

VI. Rethinking Secession

When the evidence is fairly considered it does seem that Western Australia is deserving of the remedial measure of secession. This would dramatically reduce the shifting of blame for policy failures, promote economic integration and raise standards of living through inter-jurisdictional competition. The proper course of action is to unilaterally split and avoid the futile path of seeking permission from the federal government, Britain or any external party.

Secession was popular in the 1930s largely because of the Great Depression and the poor economic health of Western Australia at the time. Blame for many of the state's ills was shifted to the central government by state politicians and a people desperate for answers to high unemployment. But secession was also relevant in the 1970s, when mining magnate Hancock financed a pro-secession political party and wrote a book – *Wake Up Australia* – making the case for freedom from the Commonwealth. Hancock's prominent daughter Gina Rinehart has likewise spoken in favour of the notion. The 1990s and 2000s saw articles and letters to the editor analysing the pros of departing the federation keep appearing in *The West Australian* and other popular media. So there is room to grow and build a movement in favour of the idea.

Intriguingly, secession has sometimes been supported by the same Commonwealth that now opposes WA secession! Consider the Howard Government's support for East Timor's secession from Indonesia, for instance. Or consider the precedent set by Australia's own peaceful departure from the British monarchy: *The Statute of Westminster 1942*, the *Australia Act 1986* – these pieces of legislation are examples of separatist tendencies being supported by national parliamentarians.

Since WA will fare better if the rest of Australia is understanding of its actions, the state should exhaust other potential options – most obviously, nullification – first. Politicians must take the lead in pointing out that all political safeguards that the framers put in place have miscarried. The Senate which was supposed to serve as a chamber protecting state interests has been overtaken by party loyalties. And since the outcome of federal elections is sometimes decided before any West Australian votes are even counted, residents of the state can be forgiven for considering themselves a marginalised and powerless people.[36]

Anarchy and the Law: The Political Economy of Choice, 2007.

36 In 1977, John Singleton and Bob Howard wrote: 'Before a single vote was counted from Western Australia, the last two Australian Governments had already been elected to Canberra' Retrieved from <http://economics.org.au/2011/03/singo-howard-and-hancock-want-to-secede/> on 26 June 2012. See also *Secession – And Why,* Retrieved from <http://economics.org.au/2011/07/secession-and-why/>.

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Mises' Apriorism: Tautology or Theory of Praxis?

Introduction

This paper will attempt to reposition Ludwig von Mises's methodological apriorism and the Austrian economic method firmly in the Aristotelian realist tradition of apriorism, rather than the more problematic apriorism associated with Kantian idealism. The author will argue that the Misean method whilst aesthetically Kantian, is far more nuanced than semantics suggest. That being, Mises's methodological apriosm closely mirrors in method and application the imminent realism of Aristolean apriorism, circumscribing to a large degree the analytic/synthetic dichotomy that many positivists claim render Mises's Kantian methodology both epistemologically sterile and hopelessly anachronistic. Thus, if we can prove Mises was Kantian in a purely semantic sense, we can render obsolete the positivist claim that the praxeological method is mere tautology, and instead establish it as a theory of praxis[1], given it is claims to the contrary that constitute the most consistent and potentially problematic criticism levelled at the aprioristic science of human action.

Thus the paper will take the following form. After providing a brief introduction to and contextualisation of Misean praxeology and the aprioristic method in part one, part two will attempt to realign Mises's methodological apriorism in the Aristotelian realist framework rather than the more problematic aprioristic idealism associated with Immanuel Kant, of which Mises was said to subscribe.

This will have a dual purpose. First it will allow the author to refute the consistent claim that Mises's action axiom contains no empirical truth value, and thus contrary to such

1 *Praxis* is a term used to denote the process from which a theory, philosophical doctrine, or an idea is enacted in practice. Put simply, it is translating an idea into action or the introspective into the existential.

claims, does in fact bequeath empirical knowledge regarding the real world. The rationale for doing so is to refute the positivist claim that Misean praxeology, given it deduces its scientific postulates from the apriori of human action, is little more than a procession of tautological assertions that have no operational meaning and thus are void of praxis, hence epistemologically impotent. For as I will assert, one can just as easily purport Mises was an imminent realist in practice who employed an Aristotelian strand of apriorism by exhibiting the belief there exists real and universal existential moorings that establish a strong reciprocal relationship between apriori categories of the mind and empirical laws of objective reality.

Secondly, this will allow me to maintain that Mises's apriorism to a large extent bridges the mind/reality dichotomy that continues to plague Neo-Kantian apriorism and thus insulates the praxeological method and its axiomatic deductive approach against claims of Idealism which orthodox interpretations of the Misean method are unable to adequately refute. It is only in providing such a rigorous epistemological defence of the praxeological method as a philosophy of praxis, that the postulates deduced therein from the apriori of action can be asserted with apodictic certainty. It also gives rise to a contextual integrity which otherwise would be absent if one could reject the notion that Praxeology constitutes a theory of praxis.

I. Mises And The Action Axiom: A Primer

The praxeological method commonly referred to as the science of human action is the distinctive methodology of the Austrian School of economics[2]. It was first contextualised by the Aristotelian realist Carl Menger in his *Principles of Economics* ([1871] 1981)[3] and later painstakingly and most famously constructed by the 'Neo Kantian' Ludwig von Mises in *Human Action* (2007). It is for this reason Mises is considered the primary architect of what today provides the epistemological nucleus of the Austrian school of economics, and hence why we will proceed to reference him heavily in the opening section.

Praxeology's economic postulates are deduced from the synthetic apriori of 'human action' and its logical implications concerning not only market phenomena, but more generically, epistemology. Put plainly; it is a science that deals exclusively with acting man. Praxeology derives its theoretical force from the somewhat elementary fact that man engages in purposeful behaviour by virtue of employing scarce means which he believes *ex ante* will allow him to attain some subjectively valued ends. As such, praxeology is exclusively concerned with the "formal implications of the fact that men have ends and employ means

2 For a introduction to the Austrian school of Praxeology, economic theory and philosophy see Ludwig Von Mises, *Human Action* (2007); Rothbard, M, *Praxeology: The Methodology of the Austrian School of Economics* (1976) pp.19-39; Grassl, W & Smith, B, *Austrian Economics: Historical and Philosophical Background* (1986) pp.1-36; and Gordon, *The Philosophical Origins of Austrian Economics* (1993a).

3 Carl Menger's economic thought which later provided the theoretical scaffolding from which Misean Praxeology emerged was introduced in his two books, *Principals of Economics* (1871) and later in *Investigations into the Method of the Social Sciences with Special Reference to Economics* (1883).

to attain them" (Rothbard, 2009, p.73). Ludwig von Mises best surmises the science in his economic treatise *Human Action* (2007) stating:

> "Human action is purposeful behavior. Or we may say: Action is will put into operation and transformed into an agency, is aiming at ends and goals, is the ego's meaningful response to stimuli and to the conditions of its environment, is a person's conscious adjustment to the state of the universe that determines his life. Such paraphrases may clarify the definition given and prevent possible misinterpretations. But the definition itself is adequate and does not need complement or commentary" (Mises, 2007, p.11).

Praxeology presupposes that two conditions be present in order for action to occur. First, the goal of all action is time invariant and ultimately given: "Acting man is eager to substitute a more satisfactory state of affairs for a less satisfactory. His mind imagines conditions which suit him better, and his action aims at bringing about this desired state" (Ibid, p.13). Without some sense of uneasiness man would ultimately not act: "a man perfectly content with the state of his affairs would have no incentive to change things. He would have neither wishes nor desires; he would be perfectly happy. He would not act; he would simply live free from care" (Ibid. p.13-4).

Second, the actor must consider himself/herself able to interfere at an early stage to remedy a future state of perceived disutility. Thus acting presupposes causality: "Only a man who sees the world in the light of causality is fitted to act. In this sense we may say that causality is a category of action. The category *means and ends* presupposes the category *cause and effect*...Where man does not see any casual relation, he cannot act. This statement is not reversible. Even when he knows the casual relation involved, man cannot act if he is not in a position to influence the cause" (Ibid, p.22).

Given that action constitutes the employment of means in the attempt to remedy a future state of disutility, praxeology implies that all action is rational from the *ex ante* perspective of the actor. There can be no such thing as irrational behaviour when applied to the science of means, the acting agent always believes the chosen means will bring about the attainment of a desired end regardless of *ex post* evaluations. Thus "Human action is necessarily always rational. The term *rational action* is therefore pleonastic and must be rejected as such. When applied to the ultimate ends of action, the terms *rational* and *irrational* are inappropriate and meaningless. The ultimate end of action is always the satisfaction of some desires of the acting man" (Ibid, p.19), given such is the subjective nature of man's ends that "nobody is in a position to substitute his own value judgments for those of the acting individual, it is vain to pass judgment on other people's aim and volitions" (Ibid, p.19).

When one departs from this value neutrality they no longer employ the praxeological method, but instead venture into the realm of ethics: "the idea of an action not in conformity with needs is absurd. As soon as one attempts to distinguish between the need and the action and makes the need the criterion for judging the action, one leaves the domain of theoretical science, with its neutrality in regard to value judgments" (Mises, 2003, p.158).

To avoid any future confusion regarding the deductive process it is important to recognise praxeology is a value-free science entirely non-normative in character. It is not concerned with the value content of mans ends[4], and should not be confused with the science of psychoanalysis or the philosophical exercise of ethics or social justice. As Rothbard asserts, praxeology is commonly mistaken to be a branch of both:

> "all these [Psychology, Ethics, Praxeology] disciplines deal with the subjective decisions of individual human minds, [thus] many observers have believed that they are fundamentally identical. This is not the case at all. Psychology and ethics deal with the content of human ends; they ask, *why* does man choose such and such ends, or *what* ends *should* man *value*? Praxeology and economics deal with *any* given ends and with the formal implications of the fact that men have ends and employ means to attain them" (Rothbard, 2009, p.73).

End-orientated action, whether it be manifested through outward processes of the body in sensory reality or hidden by virtue of introspective processes, all constitute purposeful action. "All ends and means, both material and ideal issues, the sublime and the base, the noble and the ignoble, are ranged in a single row and subjected to a decision which picks out one thing and sets aside another" (Mises, 2007, p.3). Even if one were to attempt to abstain from purposeful action and entertain the illusion he has relieved himself of the need to act, it would be of little consequence for the action axiom:

> "Praxeology consequently does not distinguish between the active or energetic and passive or indolent man. The vigorous man industriously striving for the improvement of his condition acts neither more nor less than the lethargic man who sluggishly takes things as they come. For to do nothing and to be idle are also action, they too determine the course of events. Wherever the conditions for human interference are present, man acts no matter whether he interferes or refrains from interfering...Action is not only doing but no less omitting to do what possibly could be done" (Ibid, p.13).

Instead, all that can be implied from inaction is that the actor intentionally chose the means of non-interference to attain the end that some given inaction would likely attain, it by no means circumscribes the corollary that man acts. Thus, where man's will is free and unmolested by external forces, he acts purposefully to achieve his most desired goals. If he chooses to impose his will on reality,, he acts; if he chooses not to impose his will on reality, he also acts, action is inescapable given man's volitional nature.

4 As Mises asserts, "the ultimate goal of human action is always the satisfaction of the acting man's desire. There is no standard of greater or lesser satisfaction other than individual judgments of value, different for various people and for the same people at various times. What makes a man feel uneasy and less uneasy is established by him from...his personal and subjective valuation. Nobody is in a position to decree what should make a fellow man happier" (Mises, 2007, p.14).

From this elementary aprioristic truth that man acts in order to attain chosen ends, comes the methodological force of the praxeological method via the process of axiomatic deduction "The praxeological method spins out by verbal deduction the logical implications of that primordial fact [Human acts]. In short, praxeological economics is the structure of logical implications of the *fact* that individuals act" (Rothbard, 1976, p.19-20). These include but are not limited to: causality, ends, means, cost, profit and loss, preference, scarcity, choice, marginal utility, total utility, opportunity cost, time preference and interest. Employing these subsidiary axioms a whole host of Praxeological economic postulates can been logically deduced from the apodictically true axiom (apriori category) of action. For example Hoppe (2007, pp.14-5) cites among others:

> "(1) whenever two people A and B engage in voluntary exchange, they must both expect to profit from it. And they must have reverse preference orders for the goods and services exchanged so that A values what he receives from B more highly that what he gives to him, and B must evaluate the same things the other way around [thus all voluntary exchange must be considered a mutually beneficial exchange, by virtue of demonstrated preference]; (2) Law of Diminishing Marginal Utility states whenever the supply of a good increases by one additional unit, provided each unit is regarded as of equal serviceability by a person, the value attached to this unit must decrease. For this additional unit can only be employed as a means for the attainment of a goal that is considered less valuable than the least valued goal satisfied by a unit of such a good if the supply were one unit shorter; (3) Whenever minimum wage laws are enforced that require wages to be higher than existing market wages, involuntary unemployment will result; and (4) Whenever the quantity of money is increased while the demand for money to be held as cash reserves on hand is unchanged, the purchasing power of money will fall [law of diminishing marginal utility]."

Now that we have provided a brief overview of Mises's apriorism and its basic postulates, we must now turn to its epistemological foundations if we are to refute the oft-repeated claim that praxeology's aprioristic methodology renders it void of praxis, thus epistemologically impotent.

II. Mises, Kant And The Apriori Of Action

In the *Critique of Pure Reason* Kant (2010) asserts facts pertaining to reality are never presented to the intellect tabula rasa, ala Hume or Locke[5], but rather are abstracted via the aid of natal or pre-rational mental categories i.e., apriori laws of the intellect, that exist prior

5 See David Hume (2010); also see John Locke (1974). Central to Locke's argument is the notion that when we are born the mind is like a blank slate void of aprioristic mental categories "Let us then suppose the mind to be, as we say, white paper void of all characters, without any ideas; how comes it to be furnished? Whence comes it by that vast store, which the busy and boundless fancy of man has painted on it, with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from *experience*: in that, all our knowledge is founded; and from that it ultimately derives itself" (Locke, 1974, pp.89-90).

to any empirical observation. Thus the human mind, according to Kant, is pre-empirically in possession of apriori categories of logic[6] that whilst pre-rational are nonetheless able to impart a logical cohesiveness and order to otherwise kaleidoscopic sensory data [7](Kant, 2010, pp.32-50). Kant maintained these apriori axioms of thought constitute the universal zero point, without which no empirical knowledge could be objectively validated.

Kant termed such knowledge apriori synthetic propositions. Apriori synthetic propositions -- unlike those of apriori analytic or synthetic aposteriori truths[8] -- can be characterised as "those whose truth_ value can be definitely established, even though in order to do so the means of formal logic are not sufficient (while of course necessary) and [empirical] observations are unnecessary" (Hoppe, 2007, p.18). Hence in short, man can attain apodictically undeniable knowledge, via the process of introspection, of empirical reality that is neither derived or contingent on empirical falsification nor verifiability, but nonetheless imparts real knowledge about the material world he/she inhabits.

Kant maintained these apriori synthetic propositions are much more than mere psychological laws of which the human mind can immediately grasp, i.e., the aprioristic truth that B cannot at the same time be non-B, or if A is part of B, and B is part of C then A must also be part of C; instead "On the contrary, Kant insists, it is usually much more painstaking to discover such axioms than it is to discover some empirical truth such as that the leaves of trees are green" (Ibid, p.18). However, their truth, according to Kant, is self-evident to all who employ the tool of reason in the process of ascertaining their aprioristic validity, for "one cannot deny their truth without self-contradiction; that is, in attempting to deny them one would actually, implicitly, admit their truth"[9] (ibid, p.18). Hence the truth

6 Take the work of Carl Stumpf (1907) for instance, who asserted there was a whole host of apriori synthetic assumptions or 'pre sciences' of which accordingly provide "the atrium and the organon of every other science insofar as the object of science includes their object, since all research makes use of relational concepts and laws...In an ideal encyclopaedia of knowledge everything which can be said about relations between arbitrary elements in general would have to come first" (Stumpf, 1907, p.39).

7 Lesson & Boettke (2006) explain that Kant "contended that *apriori axioms* known to us apart from experience were embedded in us as categories of the human mind. These apriori concepts are necessary in order to use the human faculty of judgement to understand objects in the world... According to Kant then, our understanding of objective reality has objective validity via the employment of concepts known apriori' arguing 'we do not derive concepts from nature, but interrogate nature with the aid of these concepts" (Lesson & Boettke, 2006, p.250).

8 Positivists claim Apriori Analytic propositions are those whose truth value are purely definitional and which can be ascertained via formal logic alone, i.e. they are apodictically true in a tautological sense only. Meaning they infer nothing real about reality, rather they pertain only to matters of linguistic expression. For example, the proposition that 2+2=4, is undeniable, thus tells us nothing new (Block & Barnett, 2005, p.92). Synthetic aposteriori are applicable to empirical reality, information of this kind is abstracted via induction through observational experience, for instance the earth is round, Mars is red or the GDP of Australia is larger than that of Nepal. Both categories of knowledge are generally considered by positivists to be the only means via which human knowledge is gained.

9 Some might object to the fact that the self contradiction principal is able to prove the apodictic truth of any given proposition. However such an assertion has no epistemological value whatsoever. For as the Thomistic philosopher Toohey points out "A man may say anything he pleases, but he cannot think or do anything he pleases. He may say he saw a round square, but he cannot think he saw a round square. He may say, if he

of apriori synthetic propositions according to Kant can be revealed through the process of rational application via a process of mental introspection rather than empirical induction: "the truth of a apriori synthetic propositions derives ultimately from inner, reflectively produced experience" (Ibid, p. 19). It is this notion of synthetic aprioristic truths that would occupy Mises's epistemological position and shape his understanding of the action axiom i.e. methodological apriorism, and the deductive force of its subsidiary economic propositions.

Mises in the tradition of earlier economists[10] of the praxeological method endeavoured to establish the existence of universal time invariant qualitative laws pertaining to economic reality, despite his claim they could be neither derived via formal logic alone, nor abstracted from observational reality. Hence Mises employed Kant's notion of synthetic apriorism as the starting point for his axiomatic deductive process, or what he termed, *methodological apriorism.* "Praxeology is a theoretical and systematic, not a historical science...Its statements and propositions are not derived from experience. They are, like those of logic and mathematics, a priori" (Mises, 2007, p.32), for they are "the mental equipment by dint of which man is able to think and to experience and thus to acquire knowledge. Their truth or validity cannot be proved or refuted as can those of posterior propositions, because they are precisely the instrument that enables us to distinguish what is true or valid from what is not" (Mises, 2006, p.15). Hence for Mises, much like Kant, the synthetic aprioristic status of the action axiom flowed from the fact it constitutes a pre-rational mental tool that enables man to grasp sensory reality:

> "The human mind is utterly incapable of imagining logical categories at variance with them [apriori categories of action]. No matter how they may appear to superhuman beings, they are for man inescapable and absolutely necessary. They are the indispensable prerequisite of perception, apperception, and experience...The fact that man does not have the creative power to imagine categories at variance with the fundamental logical relations and with the principals of causality and teleology enjoins upon us what may be called *methodological apriorism* " (2007, p.34-5).

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likes, that he saw a horse riding astride its own back, but we shall know what to think of him if he says it" (Toohey, 1937, p.10).

10 Jean-Baptiste Say (1964) maintained there was a distinct advantage gained by employing the axiomatic approach in the economic method "Hence the advantage enjoyed by everyone who, from distinct and accurate observation, can establish the existence of these general facts, demonstrate their connection and deduce their consequences. They as certainly proceed from the nature of things as the laws of the material world. We do not imagine them; they are results disclosed to us by judicious observation and analysis.... Political economy...is composed of a few fundamental principles, and of a great number of corollaries or conclusions, drawn from these principles...that can be admitted by every reflecting mind" (pp. xxv-xxvi, xlv). Similarly, John Elliott Cairnes (1875) posited '*The economist starts with knowledge of ultimate causes*. He is already, at the outset of his enterprise in the position which the physicist only attains after ages of laborious research.... For the discovery of such premises no elaborate process of induction is needed... for this reason, that we have, or may have if we choose to turn our attention to the subject, direct knowledge of these causes in our consciousness of what passes in our own minds, and in the information which our senses convey...to us of external facts' (pp. 87-88);

More specifically, Mises reasoned the action axiom's status as an apriori synthetic truth stems from the fact that it can neither be denied without self contradiction[11], nor conceivably abstracted via observational reality, but none the less can impart real and radically empirical knowledge about the world and its processes. "[I]t is because Mises subscribes to this claim that he can be called a Kantian" (Hoppe, 2007, p.18). Hence Mises reasoned any attempt to deny the aprioristic status of the action axiom itself constitutes an action, as one implicitly asserts its truth (argumentation is an action employing means, ends, profit, loss, preference and time) in the very process of refutation. Thus for Mises, argumentative negation of the action axiom implicitly asserts its aprioristic status, given pure logic alone is unable to establish the truth value of the action axiom because rational application is predicated by the category of action itself: "the fundamental logical relations [aprioristic propositions] are not subject to proof or disproof. Every attempt to prove them must presuppose their validity. It is impossible to explain them to a being who would not possess them on his own account. Efforts to define them according to the rules of definition must fail. They are primary propositions antecedent to any nominal or real definition" (Mises, 2007, p. 34).

Additionally Mises maintained the action axiom cannot be derived from empirical observation, given all one can view is the bodily manifestations of mental processes and the animation of sentient entities (See Hoppe, 2007 pp. 22-5). For instance one can view a man walking from his car to his back door via observation, but the mental processes which prompt such action are in no sense self-evident to anyone but the actor himself. All we view is a being moving from point A to point B. Thus to posit one could acquire an understanding of an actor's psychological processes via observation without presupposing one already possesses knowledge regarding certain apriori categories of human action and what it means to act[12] is for Mises an absurdity:

> "If we had not in mind the schemes provided by praxeological reasoning, we should never be in a position to discern and to grasp any action. We would perceive motions, but neither buying nor selling, nor prices, wage rates, interest rates, and so on. It is only through the utilization of the praxeological scheme that we have become able to have an experience concerning an act of buying and selling, but then independently of the fact of whether or not our senses concomitantly perceive any motions of men and of nonhuman elements of the external world" (Mises, 2007, p. 40).

11 This is almost identical to Aristotle's notion of *First Principals,* which asserts truth propositions are sound [of course contingent on other factors] as long as they can withstand dialectical scrutiny. It was Aristotle's assertion that without such first principals both the deductive and inductive process of truth abstraction would become caught in infinite regress and circularity (Plauche, 2006, p.20). As Plauche (2006) states the action axiom although termed a synthetic apriori is identical to the Aristotelian notion of first principals "the action axiom is the primary first principal of Praxeology and it can be proven by demonstration... in a manner similar to the way Aristotle proves the Principal of Non Contradiction...namely by showing that the truth of the concept must be assumed in any attempt to refute it" (Plauche, 2006, p. 20).

12 The fact that man acts must be considered logically antecedent to any physical manifestation of action. One must possess a concept of action before they may recognise action in the real world, or for that matter act in the real world.

Thus Mises maintained since the economic propositions deduced from the pure logic of action are not derived from empirical reality, but via inner produced experience through a process of introspection[13], ultimately they are not subject to the process of verification or falsification as are aposteriori propositions, given "They are both logically and temporally antecedent to any comprehension of historical facts" (Mises, 2007, p. 32). Therefore, the action axiom is forced upon us by the very structures of our minds, it is neither arbitrary or contingent, but the indispensable tool, or zero point, we use to process then make sense of raw sensory data from the world we both inhabit and act in. "[T]he starting point of praxeology is not a choice of axioms and a decision about methods of procedure, but reflection about the essence of action" (Mises, 2007. pp. 39). Therefore Mises asserted that the economic propositions i.e. synthetic types, deduced from the apriori of action can be known with apodictic certainty, providing there is no flaw in the deductive process: "the conclusions that such reasoning yield must be valid a priori because their validity would ultimately go back to nothing but the indispensable axiom of action" (Hoppe, 2007, p. 26). Thus Mises concluded that epistemology "indirectly rests on our reflective knowledge of action and can thereby claim to state something a priori true about reality...[and] that economics does so too and does so in a much more direct way" given subsidiary economic propositions "flow directly from our reflectively gained knowledge of action; and the status of these propositions as a priori true statements about something real...derived from our understanding of...the action axiom"[14] (Ibid, p. 22).

Now whilst Mises derives much of his epistemological vigour via Kant's notion of synthetic apriori propositions, it is his adherence to Kant's 'primacy of consciousness' mantra and strict rationalism that paradoxically provides the greatest avenue for sustained criticisms of the praxeological method, and in turn, the veracity of its subsidiary economic propositions.

The two most consistent criticisms of Mises methodological apriorism are (1) he was under the idealist assumption, as Kant was, that the mind plies reality in order for it to fit into the pre rational framework of the mind's own categorical structures, therefore, the subsidiary

13 When we state Mises believed apriori synthetic propositions are ultimately derived via inner reflectively produced experience or more simply introspection, we are not talking of empirical experience is the positivist sense, but rather about the minds ability to identify facts regarding actual existing entities, including the identifier himself. This kind of experience is not the sort you subsume under verifiable or falsifiable experimentation. It is therefore empirical but not empirically contingent. Hence "the fact that the axiom is based on introspection cannot open the praxeologist to the charge that his deductions are of a purely personal and unscientific character. We are dealing here with universal inner experience" (Rizzo, 1978).

14 Take for instance the law of marginal utility: Whenever the supply of a good increases by one additional unit, provided each unit is regarded as of equal serviceability by a person, the value attached to this unit must decrease. For this additional unit can only be employed as a means for the attainment of a goal that is considered less valuable than the least valued goal satisfied by a unit of such a good if the supply were one unit shorter. This can be inferred by deductive reasoning alone employing the apriori of action, it is clearly neither analytic in the modern empirical sense of synthetic in the aposteriori sense, none the less, it does produce real knowledge pertained to the world of action. As discussed in part one, all action presupposes the fact that man prefers what satisfies him more rather than what satisfies him less, this is implicit in the fact that man acts. Provided there is no flaw in the deductive process this economic postulate must be considered valid apriori.

postulates derived from the action axiom are nothing but arbitrary mental constructs that never exist in reality[15], given they are deduced via the apriori of action in what amounts to an empirical vacuum. And (2) the positivist claim that knowledge is either apriori analytic or aposteriori synthetic, therefore Mises synthetic apriori propositions are nothing but tautologies that provide no knowledge that is not already asserted in the semantic content of the economic statements themselves.

It is my view that both claims are unwarranted and largely stem from an arbitrary selection of Mises' writings. In particular the claim that he was a neo-Kantian idealist ignores the fact that both his method and writings are permeated with strong ontological realist influences. Therefore if we can prove claim (1) is in fact a null criticism, claim (2) will be rendered impotent given the praxeological propositions are empirically pertinent whilst aprioristic in nature.

A. *The Positivists' War on Methodological Apriorism*

Empiricist-positivist epistemology[16], or what in economics can be termed economic modernism[17], accepts two primary propositions regarding the truth content of human knowledge; that truth claims are either (1) Analytic apriori or (2) Synthetic aposteriori, they can never be both apriori and synthetic simultaneously .i.e. Misean apriorism, thus according to the positivists, nothing about reality can be known to be true apriori.

Characteristic of this view is the work of Paul Samuelson, the Nobel Prize winning economist who championed what can only be described as a virulent strain of modernist econometrics. Samuelson's *Collected Scientific Papers* (1966) is clear regarding what he deems as the epistemological sterility of aprioristic reasoning: "every science is based squarely on induction, on observation of empirical facts...Deduction has the modest linguistic role of translating certain empirical hypotheses into their logical equivalents" (Samuelson, 1966, p.1752). Samuelson outright dismisses the claim that an apriori theory of economics such as Misean praxeology is capable of producing 'real' knowledge at all,

15 Max Webber (1949 [2011) for instance, states of ideal types that they "cannot be found empirically anywhere in reality. It is a utopia" (Webber, 1949. Pg.90) they are but "conceptual construct[s] which are neither historical reality nor even a true reality" (*ibid,* pg.93) positing the typical ideal concept "is even less fitted to serve as a scheme under which a real situation or action is to be subsumed as one instance. It has the significance of a purely ideal limiting concept with which the real situation or action is compared and surveyed for the explication of certain of its significant components" (*ibid,* pg.93). Similarly Machlup (1978) in a typically positivist tone suggests that ideal types are equivalent to mental constructs void of operational content 'the real in the real type is, in my opinion, the set of phenomena visible, audible or tangible to the observer' and 'the ideal in the ideal type [i.e. exact or universal types] lies in its belonging to the domain of ideas' (Machlup, 1978, pg.259-60).

16 For empiricist-positivist epistemology generically employed see: Alfred J Ayer *Logic,* (1953); Karl Popper, *Logic of Scientific Discovery* (1959); C.G Hempel *Aspects of Scientific Explanation* (1970); Ernest Nagel *The Structure of Science* (1961); and Felix Kaufmann, *Methodology of the Social Sciences* (1944).

17 For empiricist-positivist interpretations of economic theory see Milton Friedman 'The Methodology of Positivist Economics" (1953); Mark Blaug '*The Methodology of Economics*' (1980); and Terrence Hutchinson '*The Significance and Basic Postulates of Economic Theory (*1938).

given "no apriori empirical truths [synthetic apriori propositions] can exist in any field. If a thing has apriori irrefutable truth, it must be empty of empirical content" (*Ibid,* p.1757). With this, Samuelson goes on to equate those who employ apriorism to modern day sophists or medieval mystics: "The only exceptions [to the positivist orthodoxy] are to be found in certain backwaters of economics, and I shall not here do more than point the finger of scorn at those who carry into the twentieth century ideas that were not very good even in their earlier heyday" (*Ibid,* p.1757).

This virulent condemnation of Mises's methodological apriorism ensues from the positivist claim that analytic statements are apodictically true apriori but only in a trivial or purely semantic sense. For example, it cannot be denied that all bachelors are unmarried men, that 5+5=10, or that man acts, these statements are unfalsifiable whilst their denial involves a logical contradiction. For this reason, apriori statements for the positivist pertain exclusively to tautological information regarding the use of symbols and linguistics; they bequeath no factual knowledge (synthetic) besides that which is asserted in the statement itself (i.e. 5+5=10). In other words, they are true by social convention, reflecting arbitrary truth constructs of existential discourse. Thus economic positivists refute the notion that economic postulates can be derived via the process of rationalistic axiomatic deduction from first principles (i.e. man acts); given according to the positivists the process exists in a neo theoretical vacuum. Hence positivists assert it is highly doubtful that apriori knowledge should be regarded as knowledge at all, but rather something more akin to pure theory or mere semantics.

However claims such as Samuelson's and those echoed by the wider positivist camp should strike one immediately as dubious. Take for instance the apriori propositions of Euclidian geometry, which are deemed 'mere tautology' and anachronistic under the auspices of empiricism/positivism[18]. Who could deny the fact these apriori truths lend themselves to synthetic application? As Mises states: "the practical engineer cannot deny that this geometry aided him in his endeavours to divert events of the real external world from the course they would have taken in the absence of his intervention...He must conclude that this geometry, although based upon definitive apriori ideas, affirms something about reality and nature" (Mises, 2006, p.11). Similarly, in economics take the law of supply and demand, which endows us with the analytical tools from which to analyse the rationale behind and processes involved in the establishment of the market price system. Although such a law could never be falsified nor easily verified via empirical observation (given the ordinal or qualitative nature of utility), it is nonetheless radically empirical, for without it, we would not be in a position to make sense of any market forces, nor the interdependency of prices and utility i.e. the notion that price fixing causes gross distortions in the price system leading to surplus and shortages for instance.

18 For instance Lesson & Boettke maintain "attempts to empirically test economic theory are not only fruitless, but indicate the wrong headedness of the scientists who attempt to do so, such scientists are in the same position as those who believe that they can validate or invalidate the Pythagorean theorem by measuring right triangles in the real world" (Leeson & Boettke, 2006, p.259).

Thus it should become immediately apparent to anyone who employs a modicum of rationale, contrary to being mere semantics, aprioristic theorems constitute the indispensable mental constructs that make it possible for man to decipher and give form to that which exists in the real world i.e. empirical analysis. As Long (2004) posits, the notion that one may divorce theory from application is simply absurd:

> "Using a concept involves applying it to the real world...from this it follows that one must assent to certain *factual* propositions employing the concept in order to count as possessing it in the first place, so that no analytic uses of a concept is intelligible unless it is embedded in a network of synthetic uses of that same concept. Hence propositions of the form of empirical propositions, and not only propositions of logic, form the foundation of all operating with thoughts (with language). But in this case it no longer makes sense to ask whether conceptual truths are analytic or synthetic. The analytic/synthetic distinction itself presupposes a separability of concept from application that cannot be sustained" (*Ibid*, p. 363).

Contrary to analytic apriori propositions, empiricists/positivists assert knowledge pertaining to empirical reality or 'real knowledge', termed synthetic propositions, are those which truth value is verifiable or at minimum falsifiable via observational experience, that is, they are known aposteriori. For example, the proposition that the planets revolve around the sun or that one molecule of water is comprised of one atom of oxygen and two atoms of hydrogen, are considered synthetic aposteriori truths. However, given they are abstracted inductively via empirical particulars, their truth content, is hypothetically, forever contingent. For some empirical data observed at a later date can always falsify a synthetic proposition. Hence for the empiricist or economic modernist, real knowledge is never apodictically certain and meaningful at the same time, but rather, always hypothetically contingent:

> "either a statement applies to the real world [synthetic], in which case it is forever contingently true, unless repudiated by further empirical evidence [aposteriori], in which case it is false and, therefore, in either case it is not apodictically true; or it is necessarily so – its denial involves self contradiction- in which case it is only trivially true, and cannot concern empirical reality [analytic apriori]" (Block & Barnett, 2005, p.93).

This belief is reflected by what could only be described as a methodological skepticism in contemporary economics characterised by the belief "nothing can be known with certainty to be impossible in the realm of economic phenomena" (Hoppe, 2007, p.52).

Thus truth for the Positivist is always truth of the past, there are no laws pertained to reality invariant of space, time or social conventions, only tentative hypotheses that can be overturned in the future. Hence the positivist mantra follows from the dictum that there can be no truth at all, only speculation. A sentiment echoed by neo-empiricist economist Milton Friedman (1953):

> "the ultimate goal of a positive science [including economics] is the development of a theory or hypothesis that yields valid and meaningful (i.e. not truistic) predictions about phenomena yet observed...Factual evidence can never prove a hypothesis, it can only fail to disprove it, which is what we generally mean when we say, somewhat inexactly, that the hypothesis has been confirmed by experience...any theory is necessarily provisional and subject to change with the advance of knowledge" (Friedman, 1953, pp. 7, 9, 41).

Again this too seems rigidly dualistic. The law of marginal utility for instance certainly does not appear to be a provisional law. To suggest one must forever subsume it to confirming and disconfirming empirical data in order to validate its truth, in addition to applying quantitative magnitudes to what is entirely unquantifiable i.e. ordinal utility analysis, strikes one as ludicrous. Rather, its apodictic status may be inferred from the very notion of what it means to act in a world of both scarce means and time, both being apriori concepts of existence and secondary precepts of action.

Thus positivism, given its vehement rejection of synthetic apriori truths, must categorically reject Mises's assertion that we can deduce synthetic truths pertained to economic reality via the apriori of human action, for truth for the positivist can never be synthetic/apriori. For positivists would likely claim all praxeological propositions are mere analytic tautologies, given Mises's assertion they are neither abstracted via empirical observation nor forever contingent on its premises. Critics would no doubt claim that for Praxeology, charges of Kantian idealism are highly problematic. For even the most ardent praxeologist cannot deny the positivist charge that praxeology bereft of existential meaning is rendered nothing but a theoretical tool void of practical application, regardless of the dubious nature of their own rigidly dualistic notion of what constitutes knowledge.

Therefore we must attempt to frame Misean praxeology as a theory of *praxis,* under the auspice that it may be couched in a realist or Aristolean strand of apriorism rather than the more problematic transcendental idealism of Kantian apriorism. For the strict demarcation between apriorism and empiricism is by and large a red herring argument perpetuated by the fallacious analytic/synthetic dichotomy championed by the positivists, obfuscating the fact the action axiom and its deductive process is both apriori and radically empirical in its theoretical force.

B. *Moving Mises from Kant to Aristotle*

One can take for instance the following idealistic statement from Kant:

> "Hitherto it has been assumed that all our knowledge must conform to objects. But all attempts to extend our knowledge of objects by establishing something in regard to them a priori, by means of concepts, have, on this assumption, ended in failure. We must therefore make trial whether we may not have more success in the tasks

of metaphysics, if we suppose that objects must conform to our knowledge"[19] (Kant, 2010, p.15).

However this raises the question as Hoppe attests, "how can it be explained...that reality, conforms to the principals of causality, if this principal has to be understood as one to which the operation of our mind must conform? Don't we have to make the absurd idealistic assumption that this is possible only because reality was actually created by the mind" (Hoppe, 2007, p.19).

For inevitably, under this idealistic assumption one would have to assume reality when separated from human cognition ceases to operate to the laws of causality, and instead reverts to a chaotic muddle of unintelligible processes void of form, relation and consistency, but arguably this is not the case. For instance, take the law of transitivity, which states; if A is a part of B, and B a part of C, then A is also a part of C. Now if one were to employ the Kantian notion of transcendental Idealism, they would have to assert that such a law is entirely context determined and that it exists only by virtue of being present in the mind, but reality alone suggests such a notion is fallacious. One only has to consider the law of transitivity applied to the parts of a non-volitional object such as a stone, plant or piece of furniture to realise the law would still apply in a world void of thinking constituting beings, for it is not the mind that constitutes what an object is, instead, the object simply is. It should thus be considered impossible to think of such laws as mere 'laws of thought'.

For this reason, Barry Smith an Aristolean realist (1990) draws a demarcation between two variants of aprioristic reasoning, idealist/impositionism and reflectionist/realism. For reasons of analytical clarity and the purposes of the immediate line of argumentation, I will employ Smith's polemical representation of Kantian impositionist apriorism and Aristotelian reflectionist apriorism as a theoretical reference.

The impositionist/idealist view for Smith holds that "a priori knowledge is possible as a result of the fact that the content of such knowledge reflects merely certain forms or structures that have been imposed or inscribed upon the world by the knowing subject. Knowledge... is never directly of reality itself" but instead "reflects the 'logical structures of the mind' and penetrates to reality only as formed, shaped or modelled by a mind or theory" (Smith, 1990, p.9). On the other hand, the reflectionist/realist view holds "that we

19 In a similar vein we may take the following statement from Kant in which he infers the object-domain abstracted by the observer must first have been pre formed in some transcendental manner, belying the notion that we have coerced reality in order to fit out prenatal mental categories "When Galileo caused balls, the weights of which he had himself previously determined, to roll down an inclined plane . . ., a light broke upon all students of nature. They learned that reason has insight only into that which it produces after a plan of its own, and that it must not allow itself to be kept, as it were, in nature's leading-strings, but must itself show the way with principles of judgment based upon fixed laws, coercing nature to give answer to questions of reason's own determining. Accidental observations, made in observance to no previously thought-out plan, can never be made to yield a necessary law, which alone reason is concerned to discover" (Kant, 2010, pp.13-14).

can have apriori knowledge of what exists, independently of all impositions or inscriptions of the mind, as a result of the fact that certain structures in the world enjoy some degree of intelligibly in their own right" (Ibid, p.10). Smith argues the reflectionist view is held primarily by Aristotelian realists, whilst the impositionist view was held by Kant[20] and as Smith asserts, Mises (Ibid, pp.12-3).

Now, whilst it is undeniable Mises's writings exhibit clear idealistic nuances[21], Smith's assertion that Mises was an impositionist in the tradition of Kant appears at best a tenuous one. For whilst Mises employed the Kantian notion of synthetic apriorism, he clearly did not subscribe to the idealist/impositionist view which continues to plague Kantian epistemology. For as Selgin (1990) notes among others[22]: "What Mises regarded as crucial in Kant was...not Kant's formal analysis of a priori knowledge or his epistemological idealism, but rather his conviction, *contra* empiricism and historicism, that reason could give universal and necessary knowledge [Economic Postulates]- knowledge that was

20 The popular notion that Kant was an Impositionist to the degree Smith (1900, pp.10-4) asserts is itself an issue of contention. Smith's views, to a large extent, represent the popular notion of Kant's transcendental shortfalls, some scholars reject this view outright. For instance see Sciabarra (2000, pp.56-57); or one can look to Kant himself (2010) who appears to subscribe to that which Smith describes as that of the Aristotelian reflectionist strain of Apriorism: "That all our knowledge begins with experience there can be no doubt. For how is it possible that the faculty of cognition should be awakened into exercise otherwise than by the means of objects which affect our senses, and partly of themselves produce representations, partly rouse our powers of understanding into activity, to compare to connect, or to separate these, and so convert the raw material of our sensuous impressions into a knowledge of objects which is called experience? In the respect of time, therefore, no knowledge of ours is antecedent to experience, but begins with it." (Kant, 2010, p. 31).
Given such a statement, one has to question the veracity of Smith's claims Kant, and as an extension Mises, can be deemed Impositionist at all.

21 One does not have to search for long to establish the fact Mises writings appear, when read in isolation, to have reflected what could only at first be labelled Neo Kantian or Impositionist. Take for instance this "What we know is what the nature or structure of our senses and of our mind makes comprehensible to us. We see reality, not as it "is" and may appear to a perfect being, but only as the quality of our mind and of our senses enables us to see it" (Mises, 2006, pp.15-6). Or this "all experience concerning human action is conditioned by the praxeological categories and becomes possible only through their application. If we had not in our mind the schemes provided by praxeological reasoning, we would never be in a position to discern and to grasp any action" (Mises 2007, p.40).

22 Hulsmann asserts in the intro to *Epistemological Problems of Economics* (2003) while it is clear Carl Menger (a predecessor of the Misean Praxeological method) was predominately influenced by Aristotelian Realism, "in Mises's case there is the difficulty posed by the Kantian language in his statements on the epistemology of economics. But a closer look at Mises's actual economic writings, clearly reveals that he stands firmly in the traditional Austrian line of Aristotelian Realism" (Mises, 2003, p.lii). Similary, Lachmann a contemporary of Mises's commented that Mises sought "a reputable philosophical position that would supply him with enough intellectual armour to withstand the onslaughts of Positivism and to espouse the cause of rationalism in human affairs" suggesting he was "driven to seek refuge in Neo-Kantianism" (Lachmann, 1982, p.36). Hence rather than being a pure Kantian, he was one in spite of what he saw as the corrosive effects of positivism and historicism in the social sciences. Likewise David Gordon (1994) asserts although Mises like Kant believed that the human mind abstracted reality through its own categories "unlike his great predecessor, Mises did not claim that a particular set of categories is a necessary presupposition of experience. To Mises, the categories are ones that human beings now in fact use. He essays no transcendental argument in the style of the *Critique of Pure Reason* to derive them" (Gordon, 1994, pp.96-7).

fresh and informative" (Selgin, 1990, p.21). Implicit in such assertions is the fact Mises's interpretation of synthetic Apriorism arguably reconciles the Mind/Reality dichotomy that continues to plague Kantian epistemology, which when combined with the fact there are clear reflectionist/Aristotelian ontological undertones exhibited in Mises method and practice, strongly suggests that the supposed gulf between reflective cognition and observational reality is not as stark as Mises's Kantian terminology aesthetically implies.

C. *Reframing the Apriori of Action -- a Reflectionist Perspective*

Mises's writings clearly infer he believed reality was neither transcendentally conditioned nor incomprehensible bereft the intellect, but intelligible in its own right. For instance take the following statement by Mises regarding the notion of transcendentalism and aprioristic thinking: "How can the human mind, by aprioristic thinking, deal with the reality of the external world? As far as praxeology is concerned, the answer is obvious. Both, a priori thinking and reasoning on the one hand and human action on the other, are manifestations of the human mind. The logical structure of the human mind creates the reality of action. Reason and action are congeneric and homogenous, two aspects of the same phenomena" (Mises, 2006, p.37). Thus to a large degree claims of idealism levelled at the praxeological method ultimately disintegrate upon the realisation, as Hoppe attests, "our mind is one of acting persons" given "Our mental categories have to be understood as ultimately grounded in categories of action. And as soon as this is recognised, all idealistic suggestions immediately disappear. Instead, an epistemology claiming the existence of true synthetic apriori propositions becomes a realistic epistemology. Since it is understood as ultimately grounded in categories of action, the gulf between the mental and the real, outside, physical world is bridged" (Hoppe, 2007, p.20).

However this alone will not be enough to quell charges of idealism/impositionism, it is but one facet of Mises's aprioristic reasoning. Therefore we must look deeper into Mises writings to show beyond doubt he was clearly no Kantian impositionist. There are some key Aristotelian/reflectionist precepts, as described in the work of Smith (1990), which will need to be proven present, or at minimum implied, in order for such a claim to be legitimate (See Smith, 1990, pp. 3-6, for explanation of key theses). Thus, we can employ Smiths Aristotelian reflectionist criteria to highlight the inadequacies of his own thesis that Mises was an impositionist of the Kantian kind, and in the process, render unwarranted the positivist claim that the Misean method equates to mere tautology.

There can be no doubt upon reading Mises he was of the opinion that the ability of the intellect to apprehend and then develop an elementary awareness of the reality in which it exists, must by sheer necessity, presuppose the ontological belief that there exists structured relationships between universal essences existing in reality, that constitute intelligible relations bereft that of the mind itself. This is almost identical to the Aristotelian/reflectionist premise that there is an *inherent causality that can be discovered in reality*, which takes the form of structured relationships between universal essences, a reality that while exterior to that of the intellect can nonetheless be recognised as pre-ordered

and invariant of space and time[23] (See Smith, 1990, p.3). For example, Mises asserts "No thinking and no acting would be possible to man if the universe were chaotic, i.e., if there were no regularity whatever in the succession and concatenation of events" (Mises, 2006, p.16). Stating even more emphatically that "in a world without causality and regularity in phenomena there would be no field for human reasoning and human action. Such a world would be a chaos in which man would be at a loss to find any orientation and guidance. Man is not even capable of imagining the conditions of such a chaotic universe" (Mises, 2007, p.22). Thus Mises appears to be of the belief that it is only by virtue of the fact "The first and basic achievement of thinking is the awareness of constant relations among the external phenomena that affect our senses" (Mises, 2006, p.17), that the intellect has the ability to grasp first principals or conceptual forms from which all theoretical inquiry is derived[24]. For if this were not the case "All experience would be merely historical, the record of what has happened in the past. No inference from past events to what might happen in the future would be permissible. Therefore man could not act. He could at best be a passive spectator and would not be able to make any arrangements for the future, be it only for the future of the impending instant" (Ibid, p.17).

For Mises, the apriori of action rather than producing non-operational propositions that are imposed by the mind and consequently severed from reality, is instead both antecedent and constitutive of any comprehension of operational reality. Not a reality that we construct then impose in a transcendental Kantian fashion, but a reality that is forced upon us by the world we inhabit, where we must by sheer necessity employ the apriori categories of action i.e. first principals, in order to affect the most elementary of change by discerning pre-cognitive laws of cause and effect i.e. causality. "The purpose of action is to attain success in the world that is our environment. Adjusting to the conditions of this world and its order is therefore expedient in any case" (Mises, 2009, p.109). Given this, "[apriori categories are] not arbitrarily made, but imposed upon us by the world in which we live and act and which we want to study. They are not empty, not meaningless, and not merely verbal. They are - for man - *the most general laws of the universe*' (emphasis added)" (Mises, 2006, p.12) "They are the necessary mental tool to arrange sense data in a systematic way, to transform them into facts of experience, then [to transform] these facts into bricks to build theories, and finally [to transform] the theories into technics to attain ends aimed at"

23 Smith (1990) puts it in these terms "there are in the world simple essences or natures or elements as well as laws, structures or connections governing these, all of which are strictly universal, both in that they do not change historically and in the sense that they are capable of being instantiated, in principal (which is to say: if the appropriate conditions are satisfied) at all times and in all cultures" (Smith, 1990, p.3).

24 Further elaborating the point, Mises asserts "the starting point of experimental knowledge is the cognition that an A is uniformly followed by a B. The utilization of this knowledge either for the production of B or for the avoidance of the emergence of B is called action. The primary objective of action is either to bring about B or to prevent it happening...the fact remains that no action could be performed by men not guided by it...the man anxious to remove by purposive conduct some uneasiness felt, the question occurs: Where, how, and when would it be necessary to interfere in order to obtain a definite result? Cognizance of the relation between cause and effect is the first step towards man's orientation in the world and is the intellectual condition of any successful activity...[therefore] All we can say about causality is that it is a priori not only of human thought but also of human action[reality] " (Mises, 2006, p.17).

(Ibid, pp.13-4).

Typifying this belief that certain ontological categories or laws of reality exist outside of the intellect itself, is Mises's speculative hypothesis regarding the apriori nature of logical categories of the mind, which he frames in a quasi-Darwinian manner (Ibid, pp.12-14). Again, whilst Mises asserts that the categorical concepts of human action are antecedent to experience, he clearly infers reality is more than a mere bystander:

> "We are not prevented from assuming that in the long way that led from the nonhuman ancestors of man to the emergence of the species Homo sapiens some groups of advanced anthropoids experimented, as it were, with categorical concepts different from those of Homo sapiens and tried to use them for the guidance of their conduct. But as such pseudo categories were not adjusted to the *conditions of reality* (emphasis added)...Only those groups could survive whose members acted in accordance with the right categories, i.e., *with those that were in conformity with reality and therefore-to use the concept of pragmatism-worked* (authors emphasis added)" (Ibid, p.12).

This reflectionist bent is even more evident when he posits "However we may think about this problem, one thing is certain. Since the apriori categories emanating from the logical structure of the human mind have enabled man to develop theories the practical application of which has aided him in his endeavours to hold his own in the struggle for survival and to attain various ends that he wanted to attain, *there categories provide some information about the reality of the universe* (emphasis added)" (Ibid, p.13).

This seems to suggest Mises believed there was an interactive process between the apriori categories of the intellect and the world exterior to it, or as Leeson & Boettke (2006) assert "[Mises implied] there is a mutually interactive process between our minds and the world, forming a feedback loop between the evolution of our apriori mental categories that determine the world we experience, and the reality of the world that conditions our way of thinking and understanding reality" (Leeson & Boettke, 2006, p.257). Hence reference to an objective reality for Mises "does not impair the aprioristic character of praxeology and economics. Experience [of this reality] merely directs our curiosity toward certain problems and diverts it from other problems. It tells us what we should explore, but it does not tell us how we could proceed in our search for knowledge [this is the job of aprioristic reasoning]" (Mises, 2007, p.65).

Given Mises's quasi-evolutionary thesis that apriori mental categories evolve over time and are partially conditioned by the world in which we exist, authors Leeson & Boettke (2006) assert there is a falliblistic reflectionist element (see Smith, 1990, p.4)[25] to Mises'

25 As Smith (1990) states reflectionist Apriorism maintains "the general aspect of experience need be in no sense infallible...and may indeed be subject to just the same sorts of errors as is our knowledge of what is individual...Our knowledge of laws can nevertheless be exact. For the quality of exactness or strict universality is skew to that of infallibility. *Episteme* may be ruled out in certain circumstances, but true doxa... may be

conception of apriori knowledge:

> "[H]is evolutionary explanation of the emergence of these categories, which conditions them on the reality of the world, suggests a reflectionist view since a priori knowledge evolves over time with the evolution of individuals' mental categories. In this sense, there is a Smith-like 'falliblistic' element to Mises's conception of a priori knowledge, which, though 'true' for acting man at the present may ultimately be revealed to be mistaken (i.e., inconsistent with objective reality) with further developments in the evolution of man's mind" (Leeson & Boettke, 2006, p.258).

Mises in fact eludes to such fallibilism when positing that aprioristic reasoning and deduction from the action axiom is itself not infallible, but at best contingent on sound rationale:

> "Man is not infallible...this means for the economist to trace back all theorems to their unquestionable and certain ultimate basis, the category of human action, and to test by the most careful scrutiny all assumptions and inferences leading from this basis to the theorem under examination. It cannot be contended that this procedure is a guarantee against error. But it is undoubtedly the most effective method of avoiding error" (Mises, 2007, p.68).

For example, he posits the subsidiary postulate of the disutility of labour holds only in a reality in which labour represents a source of dissatisfaction, i.e. it is in the nature of man to prefer leisure over toil:

> "[T]he disutility of labour is not of a categorical and aprioristic character. We can without contradiction think of a world in which labour does not cause uneasiness... but the real world is conditioned by the disutility of labour. Only theorems based on the assumption that labour is a source of uneasiness are applicable for the comprehension of what is going on in this world. Experience teaches that there is disutility of labour. But it does not teach it directly...there are only data of experience which are interpreted, on the ground of aprioristic knowledge" (Ibid, p.65).

Thus although all the economic concepts and theorems of praxeology are implied in the concept of human action, its deductive force is restricted to acting man or "to the study of acting under those conditions and presuppositions which are given in reality"[26] (Ibid, pp.64-65). This point is integral, given popular misconceptions Mises subscribed to the belief his economic postulates derived via the synthetic apriori of human action were

nonetheless available" (Smith, 1990, p.4).

26 Mises similarly asserts "economics does not follow the procedure of logic and mathematics. It does not present an integrated system of pure aprioristic ratiocination severed from any reference to reality. In introducing assumptions into its reasoning, it satisfies itself that the treatment of the assumptions concerned can render useful services for the comprehension of reality...it adopts for the organised presentation of its results a form in which aprioristic theory and the interpretation of historical phenomena are intertwined" (Mises, 2007, p.66).

axiomatic or plied in a neo theoretical vacuum, but this is simply not the case. As Rothbard asserts, "It should be noted that for Mises it is only the fundamental axiom of action that is a priori; he conceded that the subsidiary axioms of the diversity of mankind and nature, and of leisure as a consumers good, are broadly empirical" (Rothbard, 1976, p. 21). Thus one can infer from this that for Mises, praxeological reasoning and the categories derived from the apriori of action while not abstracted via or contingent on empirical induction, are empty conventions when void of empirco-historical considerations.

The immediate implication these observations (causality and fallibilism) render is that Mises contended all laws of the mind are simultaneously laws of reality, given a mind anterior to reality ceases to be a mind at all, it would not even exist. The mere fact that the mind can engage in existence action and is capable of plying entities and organisms exogenous to it, implies it is able to discern then harass laws of cause and effect in material reality, a reality that is constituted by objects that possess a pre cognitive nature in and of themselves.

For instance, reality clearly dictates that some means are more suited to achieving desired ends then others. For if ones end is sustenance, some means, e.g. eating oranges, will satiate them, whilst other, e.g. eating dirt, will not. Mental willing here cannot alter what an entity is. It is only by virtue of the fact that the mind has come to discern 'the nature of things' pertained to reality, via the employment of the apriori category of action, that it may form the hypothesis; a casual link exists between the means (eating of oranges) and the ends (sustenance); hence where eating dirt will clearly not achieve his ends, eating oranges will. Thus while man is in possession of pre rational aprioristic categories of the mind (in this case action categories; means and ends) they only intelligibly manifest themselves via the process of interacting with pre constituted entities by discerning that which is casual or intelligible in the reality those entities exist, then processing such laws of causality via a process of intensive introspection (falliblistic process). Therefore, although the action axiom is antecedent to any comprehension of sensory phenomena, given it both predicates and constitutes the process itself, it does not stand outside of it, one must realise "Acting is a cognitively guided adjustment of a physical body in physical reality. And thus, there can be no doubt that a priori knowledge, conceived of as an insight into the structural constraints imposed on knowledge qua knowledge of actors, must indeed correspond to the nature of things" (Hoppe, 2007, p.70).

Mises also makes a clear demarcation between that of empirco historical data and praxeological apriorism, or what he termed methodological dualism. Roderick T Long, a libertarian philosopher, maintains Mises clearly subscribed to the school of thought within the social sciences that holds there exists a clear methodological distinction (or dualism) "between history, which follows what Mises called the 'thymological method' of understanding [the hermeneutical method]" (Long, 2003, p.3) and Praxeology "which follows what Mises calls the praxeological method of conceiving...while thymology is a posterior, praxeology is apriori, and indeed represents the apriori conditions of thymology's intelligibility; it is the timeless logical features of purposeful action that constitute the

sphere of history" (Long, 2003, pp.3-4)[27].

However in saying this, thymological and praxeological theory never stand isolated from one another "Praxeology without thymology is empty; thymology without praxeology is blind" (Long, 2004, p.364). Therefore thymology represents the necessary empirco-historical data or specific cases through which praxeological theories may manifest their rational praxis, theories of which are needed in order to make intelligible that of thymological experience itself:

> "[I]t's not as though praxeology can exist without thymology, but in an empty condition, or that thymology can exist without praxeology, but in a blind condition. The thymological ability to apply praxeological concepts is constitutive of the possession of such concepts. Praxeology and thymology are distinguishable, but inseparable, aspects of an integrated unity...thymology is the best picture of praxeology and vice versa. It is through the application, the use, of our concepts that we are best able to understand them" (Long, 2004, p.364).

Thus as Mises attests, "Theory [Aprioristic reasoning] and the comprehension of living and changing reality [empirco-historical data] are not in opposition to one another. Without theory, the general aprioristic science of human action, there is no comprehension of the reality of human action" (Mises, 2007, pp.38-39). Given this "the end of science is to know reality. It is not mental gymnastics or a logical pastime" (Ibid, p.65).

Hence what emerges is the notion that Mises intended praxeology to be an existential ontological foundation for the meaningful inquiry of empirical economic phenomena, through the application of apriori categories of action, or pure theory. "The economist does not base his theories upon historical research, but upon theoretical thinking like that of the logician of the mathematician. Although history is, like all other sciences, at the background of his studies, he does not learn directly from history. It is on the contrary, economic history that needs to be interpreted with the aid of the theories developed by [praxeological] economics" (Mises, 2006, p. 66).

This too is similar to the Aristotelian realist notion that all experience in this world involves both a universal exact type, i.e. aprioristic truth, and a particular, i.e., a real empirical type (Smith, 1990, p.3). This notion is indicative of the work of Carl Menger, for whom if remembered, Smith (1990) deemed an Aristolean reflectionist. Similar to Mises, Menger reasoned that we could detect apriori categories of '*exact laws*' pertained to economic reality that reflect intelligible relations among essences or '*economic universals*' (exact types) that are neither spatiotemporally contingent nor context determined, via a process of inductively abstracting the economic *particulars* (real empirical types) of economic phenomena then searching for "the simplest elements of everything real [exact laws]"

27 For Mises's Methodological dualism and his clear demarcation between that of theory (Praxeology) and history see; Human Action (2007, pp 47-58) and The Ultimate Foundations of Economic Science (2006, pp.41-46).

(Menger, 1883. p.60). In this way, exact laws of economic phenomena can be ascertained via external observation than introspection, whereby universal essences (exact types) are abstracted via the spatiotemporally contingent particulars (empirical real types). Menger distinguished 'exact types' from 'real types' by describing exact types as pure types of economic phenomena which pertain only to general features and allow for no development i.e. apriori truths, and real types on the other hand as characterised by both general and particular features as well as development i.e. synthetic aposteriori truths (Menger, 1883, p.57).

An archetypal example of real and exact types is the notion of money. Maki (1997) states it as follows:

> 'This particular penny and the cheque book in my pocket now belong to the category of money. They are *particular* instances of money, they are money tokens. Coin in general, bank notes and cheques in general, and, earlier in history, cattle and shells in general are to be likewise categorised as money. But they are not money tokens; they may be called *generic* instance of money. It is these generic instances...that Menger had in mind when talking about *real types*. They embody both the general features of money and some of its more specific manifestations...thus real types are not the true universals. Exact or strict types are. Money in general is one of these universals, exemplified by it particular and generic instances" (*Ibid,* p.479-80)

Thus:

> "The money universal has been purified [abstracted via the particulars] from particularities in the form of which we encounter in daily life. Consequently, the money universal is not observable in isolation from it particular instantiations, yet it is one of the abstract referents of economics as an exact science" (Maki, 1997, p.480).

It seems for Menger as it was for Mises, what is general (universal/apriori of action) does not exist in isolation from what is individual (particular/thymological empiricism), as Maki explains, Menger "formulates his methodology in terms of the classical problem of [Aristotelian] universals. Types as the recurring aspects of things are universals which are exemplified by concrete entities and phenomena, the particulars. To put it in classical terms, a universal is the one, particulars are the many, and consequently economic theory, being concerned with economic types like money and price, is about the one in the many" (Maki, 1997, pg.479). This as seen by the aforementioned, closely mirrors the Misean method and his demarcation of thymology (spatiotemporal particulars) and Praxeology (universal first principles), validating Emil Kauder's assertion "only von Mises, the most faithful student of the... [Austrian] pioneers, maintains the ontological character of economic laws [Mengerian Aristotlianism]. His theory of human action . . . is a reflection about the essence of action. Economic laws provide ontological facts" (Kauder, 1957, p. 417).

III. Conclusion: The Misesian Method - Theory Of Praxis Or Just Tautology?

It appears to be ineffectual whether one labels Misean praxeology impositionist/idealist in method, employing Smith's description it is clearly not in a strictly orthodox sense, rendering claims to the contrary unfounded and reactionary. Mises's writings are permeated with a myriad of realist/Aristotelian ontological nuances which imply a reflectionist orientation (fallibilism, pre cognitive causality in nature, methodological dualism of praxeology/thymology), suggesting given his Kantian terminology, he was either ambivalent or dismissive of the synthetic/analytic dichotomy positivists claim render the action axiom epistemological sterile, for in many regards he managed to transcend entirely the mind/reality dichotomy altogether. Claims the Misean method is tautological, and therefore epistemologically barren, appear to be borne from the positivists' rigidly dualistic criterion of knowledge production combined with a purely aesthetic understanding of the Misean method.

Yes, the Misean method is no doubt tautological in nature, but so what? It is empirically relevant tautology that bequeaths us with the overarching theoretical structure or first principles that give meaning and order to all socioeconomic data. What is general or universal does not and cannot stand in isolation from what is individual or particular; theory without application and application without theory is a manifest impossibility, an apodictic truth Mises was intimately aware of. The apriori of action does not stand outside or above empirco historical data, instead it is both antecedent and constitutive of it, meaning its rational praxis may only manifest itself through thymological experience i.e. empirical reality.

Therefore I would agree with Murray Rothbard that whether one considers the praxeological method Kantian or Aristotelian has little epistemological consequence for the action axiom and its deductive force, for it is a theory of praxis underwritten by tautological principles both aprioristic and radically empirical:

> "[W]hether we consider the Action Axiom 'apriori' or 'empirical' depends on our ultimate philosophical position. Professor Mises, in the neo Kantian tradition, considers this axiom a law of thought and therefore a categorical truth a priori to all experience. My own epistemological position rests on Aristotle and St. Thomas rather than Kant, and hence I would interpret the proposition differently. I would consider the axiom a law of reality rather than a law of thought and hence 'empirical' rather than a priori. But it should be obvious that this type of empiricism is so out of step with modern empiricism that I may just as well continue to call it a priori for present purposes. For (1) it is a law of reality that is not conceivably falsifiable, and yet is empirically meaningful and true (2) it rests on universal inner experience, and not simply on external experience, that is, its evidence is reflective rather than physical [reflection constitutes action], and (3) it is clearly a apriori to complex historical events" (Rothbard, 1957, p. 6.).

References

Ayer, A, 1953 'Logic, Truth and Language' Dover Publishing, New York.

Blaug, M, 1980 'The Methodology of Economics' Cambridge University Press, Cambridge.

Block, W, Barnett, W, 2005 'Austrian Economics, Praxeology and Intervention' Advances in Austrian Economics. Vol. 8, pp 87-104.

Cairnes, J.E, 1875 'The Character and Logical Method of Political Economy, 2nd e. Macmillan Publishing, London.

Freidman, M, 1953 'The Methodology of Positivist Economics' in idem, Essays in Positivist Economics, Chicago University Press, Chicago.

Gordon, D, 1994 'the Philosophical contributions of Ludwig Von Mises' The Review of Austrian Economics, Vol. 7, No. 1, pp.95-106.

Grassl, W, Smith, B, 1986 'Austrian Economics: Historical and Philosophical Background' Croon Helm Publishing, London, UK.

Hempel, C, 1970 'Aspects of Scientific Explanation' Free Press, New York.

Hoppe, H, 2006 'The Economics and Ethics of Private Property' Ludwig Von Mises Institute, Alabama, USA.

Hoppe, H, 2007 'Economic Science and the Austrian Method' Ludwig Von Mises Institute, Alabama, USA.

Hutchinson, T, 1938 'The Significance and Basic Postulates of Economic Theory' Macmillan Publishing, London.

Hume, D, 2010 'Part One: A Treatise on Human Nature' Nabu Press, USA.

Kauder, E, 1957 'Intellectual and political roots of the older Austrian School' Zeitshcrift fur Nationalokonomie, XVII (4), S. 411-25.

Kaufmann, F, 1944 'Methodology of the Social Sciences' Humanities Press, Atlantic Highlands.

Kant, I, 2010 'The Critique of Pure Reason', http://www2.hn.psu.edu/faculty/jmanis/kant/Critique-Pure-Reason.pdf, Viewed 15th May, 2012.

Lachmann, L, 1982 'Ludwig Von Mises and the extension of subjectivism' in I.M Kirzner (ed.), Method, Process and Austrian Economics: Essays in honour of Ludwig Von Mises, Lexington Books, Massachusetts, USA.

Leeson, P, Boettke, P, 2006 'Was Mises Right?' Review of Social Economy, Vol. LXIV, No.2 (June), pp.247-265.

Long, R, 2003 'R.G. Collingwood: Historicist or Praxeologist?" Presented at the Austrian Scholars Conference 9; http://www.mises.org/asc/2003/asc9long.pdf.

Long, R, 2004 'Anti-Psychologism in Economics: Wittgenstein and Mises' The Review of Austrian Economic, Vol.17, No.4, pp.345-369.

Locke, J, 1974 'An Essay Concerning Human Understanding' Oxford University Press, Oxford, UK.

Maki, U, 1997 'Universals and the Methodenstreit: A Re-examination of Carl Menger's Conception of Economics as an Exact Science' Studies in History and Philosophy of Science, Vol. 28, No. 3, pp. 475-95.

Machlup, F, 1978 'Methodology of Economics and Other Social Sciences' Academic Press, New York.

Menger, Carl, [1871] 1981 'Principles of Economics, Translated in English by James Dingwall and Bert. F. Hoselitz, New York, New York University Press.

Menger, Carl, [1883] 1985 'Investigations into the Method of the Social Sciences with Special Reference to Economics' Translated in English by Francis J. Nock, New York, New York University Press.

Mises, L, 2003 'Epistemological Problems of Economics' Ludwig Von Mises Institute, Alabama, USA.

Mises, L, 2006 'The Ultimate Foundation of Economic Science' Ludwig Von Mises Institute, Alabama, USA.

Mises, L, 2007 'Human Action: A Treatise of Economics' Liberty Fund Publishing, Indianapolis, USA.

Mises, L, 2009 'Memoirs' Ludwig Von Mises Institute, Alabama, USA.

Nagel, E, 1961 'The Structure of Science' Brace and World Publishing, New York.

Plauche, G, 2006 'On Praxeology and the Question of Apriorism', http://gaplauche.com/docs/aristotelianapriorism.pdf, Viewed 4th May, 2012.

Popper, K, 1959 'Logic of Scientific Discovery' Harper & Row Publishing, New York.

Rand, A, 1963 'For the New Intellectual: The Philosophy of Ayn Rand' Signet Publishing,

USA.

Rizzo, M, 1978 'Praxeology and Econometrics: A Critique of Positivist Economics', http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=106&chapter=6006&layout=html&Itemid=27, Viewed 10th May, 2012.

Rothbard, M, 1957 'In Defence of Extreme Apriorism', http://mises.org/rothbard/extreme.pdf, Viewed 22nd May, 2011.

Rothbard, M, 1976 'Praxeology: The Methodology of Austrian Economics' in The Foundations of Modern Austrian Economics, Edwin G. Dolan, ed., Sheed & Ward Publishing, Kansas City, USAhttp://files.libertyfund.org/files/104/Misc_0724_EBk_v6.0.pdf , Viewed 27th May, 2011.

Rothbard, M, 2009 'Man, Economy, and State with Power and Market Scholars Edition' Ludwig Von Mises, Institute, Alabama, USA.

Samuelson, P, 1966 'The Collected Scientific Papers of Paul A. Samuelson' MIT Press, USA.

Say, J.B, 1964 'A Treatise on Political Economy' Augustus Kelley Publishing, New York, USA

Sciabarra, C, 2000 'Total Freedom: Toward a Dialectical Libertarianism' Pennsylvania State University Press, Pennsylvania, USA.

Selgin, G, 1990 'Praxeology and Understanding'. https://dev.mises.org/journals/rae/pdf/rae2_1_2.pdf. Viewed 4th October, 2012.

Smith, B, 1990 'Aristotle, Menger, Mises: An Essay in the Metaphysics of Economic', http://balda.unas.cz/files/smith.pdf, Viewed 20th May, 2011.

Stumpf, C, 1907 'Zur Einteilung der Wissenschaften' Abhandlugen der Koniglichen Preussischen Akademie der Wissenschaften.

Toohey, J, 1937 'Notes on Epistemology: Revised Edition' Georgetown University, Washington, USA.

Weber, M, 1949 [2011]'Methodology of the Social Sciences' trans. E. A. Shills and H. A. Finch, Free Press Publishing, Chicago, USA.

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Alex Robson

Individual Freedom, International Trade, and International Conflict: Cobden Was Right

"There is no invisible hand in foreign affairs."

- **Brink Lindsey**

"If the tailor goes to war against the baker, he must henceforth produce the bread for himself."

- **Ludwig Von Mises**

"The natural effect of commerce is to lead to peace."

- **Baron de Montesquieu**

Introduction

Free countries do not tend to engage in foreign wars, in both an overall sense and against other free countries.[1] And, if we accept—as Hayek asks us to in *The Constitution of*

1 For empirical evidence on this proposition, see Chan (1984).

Liberty—that a state of individual freedom exists when coercion of some by the arbitrary will of others is reduced by as much as possible,[2] then it is readily apparent that there is no long run trade-off between security and peace on the one hand, and individual freedom on the other. It is not possible for a state of individual freedom and a state of war to coexist.[3] Deliberate interventions such as wars of liberation, violent rebellions against tyrants, and the overthrow of despots can and have altered the underlying conditions which have prevented freedom from flourishing, but in many instances they have not; and in any case such interventions cannot guarantee that a condition of freedom will persist after the despot has fled or been killed. Many conflicts begun in the name of promoting freedom have ended up reducing or eliminating freedom by allowed the state to grow,[4] by destroying human life, and by obliterating the institutions and physical resources that are required for production, free exchange and wealth creation. To rely solely on the ability of seemingly benign states to conduct and succeed in military interventions overseas; to forever entrust our own elected and unelected officials and the officials of foreign allies with the task of imposing peace and securing the individual rights of foreign nationals; and to argue that "there is no invisible hand in foreign affairs" and instead hope that the machinery of government and various national and international bureaucracies will ensure that freedom advances throughout the world and across time—these all appear to be positions that are completely inimical to classical liberal ideas and a commitment to limited government. For classical liberal scholars, a more viable method for peacefully advancing freedom at home and abroad—one that does not rely on the success of violent foreign interventions by seemingly benevolent states—is preferable, if such an approach exists.

To begin to explore such an approach, it is instructive to investigate exactly why, at any given point in time, not all countries are engaged in armed conflict with one another. On the one hand, our own statesmen and diplomatic officials may be unelected warmongers; on the other hand, their foreign counterparts may be elected, benevolent pacifists possessed of no great diligence or skill in their negotiations with other diplomatic officials. This does not mean that war will break out instantaneously. International rules and customs may constrain the behavior of statesmen and diplomatic officials. More importantly, officials cannot completely ignore their own interests or the nature and composition of politically effective coalitions in their own countries.[5] In some countries there exist potentially large

2 Chapter 1, page 11 of *The Constitution of Liberty*.

3 Cobden, for example, states that "it is not by means of war that states are rendered fit for the enjoyment of constitutional freedom; on the contrary, whilst terror and bloodshed reign in the land, involving men's minds in the extremities of hopes and fears, there can be no process of thought, no education going on, by which alone can a people be prepared for the enjoyment of rational liberty." [Cobden, 1878, p 20]

4 See, for example, Higgs (1987). Peltzman (1980) takes the opposite view and argues that the evidence suggests that government does not need wars or crises to grow.

5 We will assume throughout this essay that the reader accepts the proposition that diplomats act in their own self-interest, where "self-interest" is broadly defined. It is widely accepted by economists that even terrorists act in their own interests and will behave according to the perceived costs and benefits of various actions available to them. In more familiar political systems (but not necessarily democracies), Stigler (1988) (at pages x-xi) argues convincingly that "political outcomes in the political "marketplace" for legislative goods and harms will depend on the nature and composition of the politically effective coalitions and the size and

agency costs between citizens and their representatives, so that domestic political concerns do not enter that strongly into an official's calculus of the costs and benefits of conflict. But it will nevertheless be the case that, from the official's own point of view, the higher the perceived costs of armed conflict, the less likely that official will advocate conflict with another nation.[6] At any point in time, the lack of accountability between citizens and their representatives will be determined by domestic political institutions, customs and constitutional rules, and these, like international rules and institutions, cannot be altered in the short run by international negotiations. An important determinant of the behavior of nations and their diplomatic representatives, then, will be the perceived costs and benefits of conflict, relative to peace. The key to developing a classical liberal approach to international affairs is to understand exactly how these costs and benefits are determined, and how they might be exploited over the long run to influence the behavior of government officials and diplomats.

I. International Organizations And International Rules: The Problems Of Incomplete Knowledge And Imperfect Enforcement

In *Law, Legislation and Liberty*, Hayek emphasized that modern human societies are *not* organizations: the order we observe is not a *made* order, or what Hayek also refers to as *taxis*.[7] Hayek's observations have important implications for international affairs. International institutions like the United Nations Security Council, the World Trade Organization, the International Monetary Fund and the World Bank *are* indeed organizations in the Hayekian sense. They follow certain procedures to create their own internal order, but at the same time they attempt to create a made order between the citizens of different nations by endeavoring to regulate national defense policies, international trade, international financial transactions and capital flows, and foreign aid.

These organizations have failed to prevent international conflict,[8] international financial collapses, and trade wars, and have not alleviated world poverty; in short, they have failed in their endeavors to create an international order. These facts should not surprise classical liberal scholars. As Von Mises states:

> 'It is futile to place confidence in treaties, conferences, and such bureaucratic outfits as the League of Nations and the United Nations. Plenipotentiaries, office clerks and

nature of the programs they achieve."

6 The recent diplomatic disputes in the UN Security Council on the Iraq issue between France, Russia and Germany on the hand, and the US and the UK on the other, are a perfect illustration of how rational actors pursue their own interests in international affairs according to a cost-benefit calculus, where such costs and benefits are broadly defined to include political wealth. The behavior of all parties in this episode strongly supports the empirical validity of the analytical approach of methodological individualism that underpins public choice analysis.

7 See Hayek, *Law Legislation and Liberty*, Volume I, p 37.

8 For example, the Cold War, the Korean War, the Vietnam War, and the two Gulf Wars have all occurred in the UN era.

> experts make a poor show in fighting ideologies. The spirit of conquest cannot be smothered by red tape'.[9]

Hayek and other Austrian economists emphasized that a made order—an international *taxis*—will only be possible if these international institutions possess complete knowledge of the end desires of the citizens of all nations, the means available to them, and all other relevant facts in all conceivable particular situations (including the actions available to all nations and the consequences of those actions).[10] From a purely bureaucratic standpoint, if international organizations had full knowledge of all of the consequences of the particular actions of all citizens in all countries, then individuals in those countries could simply find out which actions best serve their interests (or be directed by fiat), and then take those actions. Direct *commands* by international organizations in order to achieve some overarching international goal (such as "world peace") would then be feasible, although *international rules* may be no less desirable as a way of "creating" this order.

There are at least two major problems with international organizations that attempt to create an international *taxis*.[11] First, such bodies will never have perfect knowledge of the end desires of individuals or their representatives. This is particularly true in the modern international economy, where billions of international economic transactions and social interactions take place every day, and where national defense policies respond to, and are determined by, alliances and rivalries between nations, which in turn are determined by the perceived interests that are at stake and which change on a regular basis. The second problem is that of *enforcement*: who will enforce commands by an international body against the governments of belligerent nations? The establishment of a world government is not a viable solution, as it would not eliminate the problems associated with limited knowledge (and may in fact exacerbate them).

International order cannot be created by human design; instead, in the long run the order that we observe is a *grown* or *spontaneous* order—what Hayek referred to as *kosmos*. But how does international order grow? In pursuing their own ends, the citizens or governments of some come countries may carry out acts of aggression against the citizens or governments of other countries. *International rules of conduct* or general principles of behaviour between nations might be required to minimize such coercion. Such rules bring states together into an international order, but they cannot be structured separately from, and nor are they logically or factually antecedent to, international society. The rules and institutions that survive are mostly procedural. For example, the theory of a "just war", codified by St. Augustine and Thomas Aquinas, has ancient roots dating back to Cicero. In many cases these rules are not formally devised and enforced, but may simply take the

9 See Von Mises (1996), page 825.

10 We do not mean to argue here that these institutions are irrelevant or have no effect on international affairs; clearly, they do. But they do not, by themselves, create international order.

11 The arguments here apply equally well to individual national governments who might consider attempting to "create" international order.

form of traditions or conventions.[12] They may frequently be "irrational", in the sense that nobody can articulate them or explain why they exist. The reason that international rules work where commands fail in a world of incomplete knowledge is that in the vast majority of situations, what an individuals lacks in knowledge of particular factual situations he can make up for by building up knowledge of the *abstract*. Individuals can and do acquire knowledge of abstract, general, simple rules quite readily. Because human knowledge of the particular is limited, the distinction between general international rules, and not international commands—*international law*, as opposed to *international government*—is the key to understanding how international order grows.[13]

Such international rules and traditions can be regarded as long-term international contractual agreements to observe particular norms, limit the buildup of weapons, and so on. But in a world of incomplete knowledge, such a system of complete contingent contracts is not possible, and if contingencies arise that are not planned for, one or all of the parties to such implicit international agreements might have an incentive to breach contractual terms. Thus, while abstract rules attempt to deal with the lack of knowledge inherent in international affairs, they can potentially run into the same problem as commands; to wit, in a system of international rules we are still left with the same question: if they are breached, who enforces them?

The answer is that in the long run, such rules will only be observed by any given pair of nations if they continue to serve the mutual interests of those nations. In other words, if international rules of conduct are to minimize international conflict and allow individual freedom to flourish, they must be *self-enforcing*. The fundamental question, then, is how a system of stable, self-enforcing rules of international conduct—a self-enforcing international *kosmos* which maximizes individual freedom and minimizes international conflict—can emerge and endure over time.

II. Growing An International Order By Increasing The Opportunity Costs Of Conflict: The Positive Security Externality Of Free Trade

A. *The Classical Liberal Position: Cobden, Smith and Montesquieu*

A self-enforcing system of common rules between nations has a greater chance of surviving if, in the unforseen contingencies where countries can *ex post* act opportunistically, the costs of such actions are high, relative to the benefits. The unconditional right of nations to engage in self-defense in response to unprovoked aggression is an important example of a longstanding international convention which acts as a deterrent by increasing the expected costs of unprovoked, opportunistic aggression. Such a rule is only credible, however, if it is

12 This view of international law has a long tradition, dating back to the Dutch jurist and natural law scholar Hugo Grotius. See, for example, Beck et al (1996), Chapter 2.
13 Note that a perfect international order can never, in fact, be realized by any system. Man is not perfectible, and neither are his institutions.

if backed up by the development of weapons of self-defense by all nations. If such weapons can also be used for offensive purposes, then any equilibrium in international affairs will be inherently unstable. There is another, simpler measure that might increase the costs of aggression and conflict, and which can be taken *unilaterally* by countries: free trade (broadly defined). As Von Mises points out:

> 'There is perfect agreement…that total war is an offshoot of aggressive nationalism. But this is merely circular reasoning. We call aggressive nationalism that ideology which makes for modern total war. Aggressive nationalism is the necessary derivative of the policies of interventionism and national planning. While laissez faire eliminates the causes of international conflict, government interference with business and socialism creates conflicts for which no peaceful solution can be found. While under free trade and freedom of migration no individual is concerned about the territorial size of his country, under protective measures of economic nationalism nearly every citizen has a substantial interest in these territorial issues. … What has transformed the limited war between royal armies into total war, the clash between peoples, is not technicalities of military art, but the substitution of the welfare state for the laissez-faire state'.[14]

There are at least two ways in which the expansion of international trade—broadly defined—may reduce the possibility that conflict arises, and thereby allow freedom to flourish. First, exchange of cultures and ideas reduces the possibility of conflict by encouraging the development of rules, conventions and mutual understandings which can be used to manage *low-intensity conflict* between states, so that, even if low-intensity conflict arises (as it inevitably must), it will not escalate into total war.

Secondly, and more importantly, trade has a direct effect on the likelihood of conflict by increasing the net costs of conflict. It is widely recognized that international trade in goods and services, factors of production, and the free exchanges of ideas and cultures generates great material wealth.[15] By creating the promise of future riches, such exchanges create large mutual dependencies between the citizens of different countries, and these dependencies enter into the costs and benefits of conflict and peace in a straightforward way: the greater is the mutual dependence between citizens of different countries, the greater is the cost of armed conflict, since conflict is likely to temporarily or even permanently put an end to trade. If self interests, rather altruistic desires for world peace, drive international relations, and if mutual dependence influences these interests, then, *ceteris paribus*, it is such dependencies—not the individual skills, abilities of diplomats or their personal feelings about war and peace, or bureaucratic outfits and their "plenipotentiaries, office clerks and experts"—which will ultimately matter in international relations in the long run. If mutual dependencies between the individual citizens of different countries can somehow be strengthened, independently of the actions of government officials—if the

14 *Human Action*, p 823–824.
15 See section B below.

political and economic costs of armed conflict could be increased—then it is possible that conflict would be less likely to occur, and freedom more likely to flourish.

These ideas are not new. They can be found in the writings of Emeric Cruce, Francois Quesnay, David Hume, Adam Smith, Baron de Montesquieu, John Bright, and in Richard Cobden's speeches and pamphlets. For example, in 1850, Cobden declared:

> 'I believe the progress of freedom depends more upon the maintenance of peace and the spread of commerce and the diffusion of education than upon the labor of Cabinets or Foreign Offices. And if you can prevent those perturbations which have recently taken place abroad in consequence of your foreign policy, and if you will leave other nations in greater tranquillity, those ideas of freedom will continue to progress, and you need not trouble yourselves about them'.[16]

Cobden's advocacy of the policy of non-interventionism in international affairs did not mean that he was indifferent to the affairs of other countries, or that he advocated a policy of moral isolation,[17] since this was inconsistent with his pleas for greater international interdependence and increased material intercourse between countries. He simply believed, as Smith, Montesquieu and others did before him, that international trade, rather than discrete interventions in the internal affairs of other countries, was more likely to lead to international cooperation, peace and freedom over the long run. In doing so, Cobden attempted to bring the peace movement into the free-trade coalition. In other words, Cobden, Smith, Montesquieu and others argued that free trade produced a *positive security externality* which would promote peace and enhance the progress of individual freedom.[18] Friedman (1962) makes a related claim:

> 'Instead of making grants to foreign governments in the name of economic aid—and thereby promoting socialism—while at the same time imposing restrictions on

16 The quote is from a speech given by Cobden in the House of Commons on June 28, 1850. Cobden was responding to a motion of confidence regarding the foreign policy of Lord Palmerston (Henry John Temple), who was the foreign minister in the Whig government of Lord John Russell. Earlier, on June 15, Palmerston had directed 15 ships of the Royal Navy to enforce payment of several small claims by British subjects (worth a total of 33,000 pounds) against the Greek government. A Greek naval vessel was seized and a harbor was blockaded, but ultimately a compromise of 6,400 pounds on the outstanding debts was reached before Cobden gave his speech. Palmerston was eventually sacked by Russell in 1851 for congratulating Louis Napoleon Bonaparte on his coup in France, and for recognizing the government formed by Napoleon without consulting with his fellow cabinet ministers. For further details of the episode, see Hinde (1987), chapter 10.

17 Many scholars suggest that Cobden "never advanced the opinion that all wars not undertaken for self defence were always wrong or inexpedient", and contend that he merely argued against a policy of intervention in the internal dissensions of other countries. See, for example, Mallett (1878), pp xiii-xiv.

18 Although Cobden was heavily involved in the movement to abolish the Corn Laws [see, for example, Prentice (1968)], he did not take positions that could be described today as classically liberal on all topics. For example, on the role of government in education, he wrote that "I am convinced that government interference is as necessary for education as its non-interference is essential for trade. Any voluntary scheme is a chimera." [emphasis in original] (Letter to Coppock, 15 June 1847).

> the products they succeed in producing—and thereby hindering free enterprise—we could assume a consistent and principled stance. We could say to the world: We believe in freedom and we intend to practice it. No one can force you to be free. That is your business. But we can offer you full cooperation on equal terms to all. Our market is open to you. Sell here what you can and what you wish to. Use the proceeds to buy what you wish. In this way cooperation among individuals can be world wide yet free'.[19]

Cobden's proposition, then, depends on the size of the gains from free trade and the mutual dependencies that trade links create. If these are not large or are in fact negative, then we can immediately reject Cobden's hypothesis. On the other hand, if we conclude that there are large gains from free trade, then further examination of Cobden's hypothesis is warranted.

B. *The Gains from Free Trade*

Although the importance of the gains from trade are frequently highlighted by many classical liberal economists, the classical liberal case for free trade does not stand or fall on utilitarian arguments regarding the size of the welfare gains that are associated with shifting from a policy of autarky to free trade. The right of two individuals to exchange the fruits of their own labor at any price that is voluntarily agreed upon is a strong theme running through many natural rights and non-consequentialist approaches to individual freedom, and does not change if the voluntary exchange occurs across national borders. However, because the arguments of Cobden, Smith, Montesquieu and others regarding the positive security externalities of free trade *explicitly* rely on the size of the costs and benefits of conflict relative to peace, it is necessary to consider these gains in some detail.[20]

The standard microeconomic argument for opening up an economy to free trade from a position of autarky relies on differences between the prices of goods and services that arise in autarky on the one hand, and the existing prices that prevail on world markets on the other. If there are no price differences, then no gains from trade exist. Price differences can arise from either differences in consumer tastes or from differences in production conditions (factor endowments, technological capabilities, and so on). The latter give

19 *Capitalism and Freedom*, page 74.

20 We are assuming here that the reader understands the other fundamental roles that markets play in promoting economic freedom. First, markets solve the resource allocation problem: they shift finite resources away from individuals who place a low value on them, to individuals who place a higher value on them, in a voluntary, mutually beneficial fashion, without resources being needlessly wasted. While there is no guarantee that these market allocations will eliminate the jealousy and envy of certain individuals—also known among socialists as "social justice", "equity" or "fairness "- but in a complex world where billions of economic decisions are made every day, the ability of markets to solve the vast majority of resource allocation problems is unquestioned: there are no simply no other mechanisms known to humans that can perform this function at all, let alone as successfully as markets actually do. Secondly, prices in competitive markets act as signals to tell individual producers and consumers how they should act in the future, even though these individuals do not know (or care) why prices are changing. See Hayek (1945).

rise to the idea of comparative advantage: a country has a comparative advantage in the production of a good if the opportunity costs of producing a unit of that good are lower than the corresponding opportunity costs of producing a unit of that good in the rest of the world. In standard trade theory there are two sources of comparative advantage: technological differences, which were first analysed by David Ricardo; and differences in relative factor endowments, which were first analysed by Heckscher and Ohlin.

Although the sources of comparative advantage differ in these two approaches, the consequences of an economy opening up to free trade are the same, and are essentially due to a separation of consumption and production decisions that occurs under conditions of free trade.[21] In autarky, a country is constrained to consume exactly as much as it produces. If the country is opened up to free trade and world prices differ from autarky prices, there are two potential sources of gains. First, suppose that the country is still constrained to produce its autarky level of output. The country may now exchange this output on world markets at world prices, and is no longer constrained to consume what it produces. This *consumption gain* allows consumers to rearrange their consumption patterns in ways which were not possible under autarky, even if production is unaltered. Secondly, the ability to sell goods at different international prices allows produces to rearrange their production patterns in ways that were not possible under autarky, and to even specialize completely in the production of a single good. This *production gain* arises because producers are no longer constrained to sell all of their output on domestic markets, but can sell as much as they want to the rest of the world at prevailing world prices. Neither the production or consumption gains depend on whether world prices are higher or lower than domestic autarky prices—this simply determines which goods the country will export and import.[22]

There have, of course, been many empirical studies which estimate the welfare gains of removing various trade restrictions, but it is difficult to measure the gains from moving from *complete* autarky to *complete* free trade, since almost no modern country is completely autarkic or completely free of trade barriers. However, some studies of such episodes do exist. For example, in an important paper, Huber (1971) examines the move by Japan from a position of virtual autarky in 1858 to one of nearly free trade in the 1870s after the Meiji Restoration, and finds that the gains were dramatic—real national income rose by as much as 65 percent in 15 years, and the Japanese terms of trade improved by 340 per cent.

There are other static sources of gains from international trade that have been explored in the literature. For example, if industries are characterized by high fixed costs, then in autarky domestic producers may find only it profitable to produce one good, and consumers must consume that good alone. Under free trade consumers may now consume more than one kind of good, and if they have a 'love of variety' there will be a consumption gain from free trade, even though the prices of goods may not change after free trade occurs.[23]

21 Irving Fisher was the first to point out this separation.
22 The gains can also be illustrated diagrammatically. For example, see Bhagwati et al (1997), page 283.
23 See, for example, Krugman (1979) and Helpman (1981).

The idea of comparative advantage can also be extended to deal with *intertemporal* trade in a straightforward fashion. In this case, instead of countries having comparative advantage in the production of goods at a single point in time, countries have different attitudes towards intertemporal substitution in consumption and different factor endowments over time.[24] Again, in this context autarky simply means that a country's aggregate savings (postponed consumption) must equal its aggregate investment at any given point in time. But opening up to international trade again leads to two potential sources of welfare gains, as long as the autarky interest rate differs from the interest rate that prevails on world markets. At the prevailing world interest rate, both consumers and producers may now rearrange their consumption and production decisions over time and borrow or lend as much as they wish. Aggregate savings need no longer equal aggregate investment—the discrepancy in any one period is simply reflected as a current account deficit (if the country is a net borrower) and a current account surplus (if the country is a net lender).

Finally, the principle of comparative advantage may also apply to *trade across states of nature*, or risk sharing, which takes place on domestic and international equity markets.[25] If risk averse producers and consumers in different countries face different risks, have different attitudes towards risk, or have different assessments of the probabilities of various events, then there will typically be large potential welfare gains if there is a possibility of insuring against these risks on international markets. Again, the principle is the same: opening up to international trade removes the constraint that domestic demand for various risky assets must equal domestic supply.[26]

It is also interesting to note that the mobility of factors of production (for example, labor and capital) can act as a substitute for trade in goods and services.[27] In other words, even if a country does not engage in free trade in goods, if it allows factors of production to freely cross its borders, then the welfare gains are identical to those it could realize under free trade in goods and services. The explanation for this result is based on the equalization of factor prices that occurs when there is free trade in goods and services and identical technology in all countries. Under free trade, welfare gains exist as long as there are price differences across countries. The prices of goods change as trade is opened up, and as firms produce more of the goods in which they have comparative advantage, demand for factors of production change. When goods prices are equalized, as they are under perfectly free trade, then the prices of factors must also be equal. Thus, an alternative way of capturing the gains from free trade is to allow factors to flow freely across borders, until factor prices are equalized. Since, under such conditions, factor prices are equal, it must also be the case that goods prices are also equal, in which case all gains from trade in goods and

24 See, for example, MacDougall (1960). For a textbook treatment, see Obstfeld and Rogoff (1996).
25 See, for example, Svensson (1988) and Obstfeld (1994). Again, for a textbook treatment, see Obstfeld and Rogoff (1996).
26 The application of the gains from trade to intertemporal trade and international risk sharing is a simple consequence of the idea, first pioneered by Debreu (1959), that goods are distinguished by their date of availability, location, and the state of nature in which they are available.
27 See, for example, Mundell (1957) and, more recently, Wong (1986).

services have been exhausted. In this sense, as far as the gains from international trade are concerned, we can define international trade in quite a broad fashion, at least for the purposes of analyzing the security externalities of trade. In other words, it does not matter whether we are thinking about trade in goods and services, factors of production, or exchanges of culture and ideas; in all cases, we should expect to find large gains from international trade.

C. *Trade, Security and Conflict: The Security Externalities of International Trade*

1. Early Research: The Model of Polachek

Economists have explored the gains from international trade in great detail ever since the issue was raised by David Ricardo and Adam Smith, but up until very recently there has been very little attention paid to the relationship between trade on the one hand, and international security and conflict on the other. The gains from trade may indeed be large, but how exactly does this inhibit conflict?

In a series of important papers, Polachek[28] has formalized the idea, long believed by classical liberal scholars in economics and political science, that opening up to international trade can reduce the possibility of conflict between nations. The essence of Polachek's argument is straightforward. Countries produce a given level consumption goods and consume a given amount of "hostility", a term which is meant to encompass weapons production, the severity and frequency of threats against other countries, and so on. Both consumption goods and hostility enter into the utility function of the nation in a positive fashion. The relationship between world prices and autarky prices determines which goods the country will import and export. If a country is behaving optimally, it will choose consumption goods and hostility in such a way that the marginal costs of hostility are equal to its marginal benefits.

In Polachek's model, the marginal costs of hostility depend negatively on changes in the costs of the country's imports and positively on changes in the value of the country's exports. An unfavorable change in the terms of trade faced by a country (an increase in the price of imports), reduces the marginal cost of hostility, and so is likely to increase the amount of hostility that a country engages in. Similarly, an increase in the world price of a country's exports increases the marginal cost of conflict, and is likely to lead to a reduction in consumption of hostility. In autarky, the price of the country's exported goods are as low as possible, and the price of the country's imported goods are as high as possible. Hence, autarky leads to the maximum amount of hostility, and a country will enjoy a positive security externality if it opens its markets to the rest of the world. The larger the gains from trade, the greater the positive security externality. Quantity restrictions on international trade in the form of quotas or price distortions in the form of tariffs also result in countries engaging in more hostility than it would in a free trade environment, where such distortions are absent.

28 See Polachek (1978, 1980, 1992, 1997); Polachek and Gasiorowski (1982); and Polachek et al (1999).

2. Recent Research

The main criticism of Polachek's work is that it does not take into account the fact that hostility is an inherently *strategic* variable. In an important recent paper, Skaperdas and Syropoulos (2001) [SS] examine the security externality of trade in more detail, using the modern tools of non-cooperative game theory. They consider a two country, two good general-equilibrium trade model, in which there are insecure international property rights over one of the commodities. Countries can invest in weapons in order to capture a fraction of this commodity, which can either be consumed or traded on world markets at a fixed world relative price. They model conflict as a *probabilistic* contest, using a rent-seeking approach which is widely used by public choice scholars, and which was originally developed by Tullock (1980) and axiomatized by Skaperdas (1996).[29]

Skaperdas and Syropoulos find that a country's incentives to arm depend on the price of the insecure commodity on world markets, relative to the price that obtains in autarky. If the world price of the insecure commodity is above the autarky price, then opening up to trade makes the insecure commodity more valuable, and encourages each country to invest in arms, increasing the intensity of conflict and reducing welfare in both countries. Thus, autarky may be preferred to free trade, both because welfare is lower and there is a greater intensity of conflict. The security externality of trade is negative in this case. However, if the world relative price of the insecure commodity is sufficiently low, then opening up to trade with the rest of the world creates a disincentive to invest in arms, since the marginal benefit of arming is lower, the less valuable is the insecure commodity on world markets. In this case, the security externality from free trade is positive. This conclusion is similar to the conclusion of Polachek, in the sense that exogeneous changes in world prices can influence the incentives to engage in armed conflict. The main difference in two approaches, however, is that in the SS model, autarky may in fact reduce the intensity of conflict. This proposition is testable.

D. *Anti-Liberal Arguments*

It is instructive to briefly examine the arguments of modern political scientists who take an opposite stance on the relationship between trade and conflict to that of classical liberals. While nearly all of these arguments are based on false claims regarding the benefits of free trade which were rejected by economists long ago, some economists refute Cobden's hypothesis for other reasons. For example, in relation to the recent US intervention in Iraq, economist Brink Lindsey writes:

> 'What is the basis for assuming that interventionism always makes matters worse? In economic policy, there are extremely solid grounds for opposing intervention in markets. In economics, market competition has enormous advantages over

29 Hirshleifer (2001) uses this approach to analyze a variety of similar question in economics and political science. Other recent work on this topic includes Anderson and Marcouiller (1997) and Anderton et al (1999).

> government action in making use of and coordinating dispersed information, in encouraging innovation, in supplying appropriate incentive structures, etc. Accordingly, anyone arguing that intervention in the marketplace can improve economic performance has an extremely difficult case to make. But . . . there's no invisible hand in foreign affairs. There are no equilibrating mechanisms or feedback loops in the Hobbesian chaos of state-to-state relations that give us any assurance that, if the United States were only to stand aside, things would go as well for us in the world as they possibly could'.[30]

Some political scientists refuse to even concede Lindsey's first point regarding intervention in markets. For example, one school of thought regards mutually consensual exchange as a negative sum game. Although these scholars agree that the outbreak of armed conflict between nations is likely to reduce trade, they claim that the market for international goods and services is essentially like a fixed pool of resources, for which countries compete in a perpetual hostile struggle of all against all.[31] As a greater number of countries trade with one another, more global resources are dissipated, and the more likely is conflict between nations. In this approach, colonialism and imperialism are the natural result of globalisation.[32] International trade is essentially a large negative sum prisoner's dilemma with many players. Countries are stuck in a Pareto inferior equilibrium of free trade, which they would like to escape from—if only they could coordinate their actions on the mutually preferable situation of global autarky!

A second school of thought in international relations is based purely on a belief in the benevolence of nationalistic governments towards their own citizens. Scholars in this school agree that globalization restricts the ability of states to act against the interests of their citizens, but they take exactly the opposite position to classical liberals, arguing that this is likely to lead to conflict between states, since states feel "weak and vulnerable" and "threatened" by other states when globalization occurs and restricts their options.[33]

Some political science scholars reject the classical liberal position for the reason that trade is driven by envy rather than absolute individual gains.[34] They argue that although freeing up international trade results in absolute welfare gains for a country, it is *relative* gains that are really more relevant for the behavior of states. In other words, if nations differ in the gains that they receive from freeing up international trade, simple jealousy can drive those nations to engage in hostilities with one another. In this approach, free trade is a kind of "rat-race" which will always lead to international conflict unless some kind of centralized global redistribution mechanism is established to deal with the "global inequalities" that

30 See Lindsey (2002). We are not making any claims about the wisdom of the recent US intervention in Iraq; we are simply arguing that Lindsey's assertion that "there is no invisible hand in foreign affairs" is incorrect.
31 See, for example, Hobson (1902).
32 The foundations of this approach can be traced to the writings of Lenin, who in the title of his 1916 book claimed that "imperialism is the highest stage of capitalism."
33 See Waltz (1970).
34 See, for example, Gowa (1994).

"inevitably" result from free trade.

Finally, some political scientists and economists argue that foreign aid is superior to free trade as a way of raising living standards in poor countries and reducing hostility. This contention—based on an attachment to international wealth redistribution—is essentially a variety of global socialism, the success of which is simply contradicted by the evidence. As Friedman (1958), Bauer (1971) and Lal (1997) point out, no country ever grew rich from foreign aid. Other economists have recently destroyed many other popular myths regarding foreign aid. For example, Alesina and Dollar (1998) find that foreign aid flows are determined more by national defense and strategic concerns than by genuine need and poverty, and Alesina and Weder (1999) find that corrupt governments tend to receive more foreign aid.

E. *Was Cobden Right? Empirical Studies of the Trade-Conflict Nexus*

While it might be easy for economists to dismiss the approaches of anti-liberal political scientists to the trade-conflict question, it is not so easy to ignore the recent challenge by Skaperdas and Syropoulos to Polachek's original prediction. The matter must ultimately be settled by examining the empirical evidence. Had Cobden been alive in the 50 years of "Pax Britannica" and the great prosperity that followed his 1850 speech, his belief that free trade would lead to peace and freedom would perhaps have been reinforced. But he would also have been discouraged by the onset of the First World War and the return of mercantilism in the interwar years. These and other episodes of war and peace, mercantilism and free trade provide us with data and enable us to test Cobden's proposition. Fortunately, there is a wealth of econometric studies on the issue. The majority of these studies support Cobden's hypothesis.[35]

The studies typically proceed by using conflictual "events" of varying degrees of severity between pairs of countries as the independent variable, with controls including formal alliance formation, degree of democracy, political change, economic interdependence (measured by trade flows relative to GDP), geographical contiguity, population, military capabilities, economic growth, and other variables. Because the direction of causation may run from more conflict to less trade, the studies also correct for the potential simultaneity biases that may exist in the data. In Polachek's original 1980 article, he tests a ten-year, thirty country cross section, and finds that countries with the greatest levels of economic trade engage in the least amounts of hostility. He also finds that on average, a doubling of trade leads to 20 percent diminution of hostility between countries.

In later work, Polachek (1992) finds similar results for the period 1948–1978 for over 105 countries, while Polachek et al (1999) finds similar results for the 1958–1967 period for 30 countries. . Polachek (1997), using the same data set as Polachek (1992), examines the question of why democracies rarely fight each other, and finds that the fundamental factor

35 The empirical literature is surveyed by Reuveny (1999/2000), McMillan (1997), Morrow (1999) and Barbieri and Schneider (1999).

causing bilateral cooperation is trade, rather than democracy *per se*. The interpretation is that, because liberal democracies tend to trade more than non-democracies, they will engage in less conflict with one another because of trade links, rather than because of similarities in political systems.

Other researchers have found similar results. Oneal et al (1996) analyze episodes of conflict over the 1950–1985 period, controlling for alliances, geographic contiguity, and relative power. They find that trade has a powerful influence on peace, particularly among contiguous states, which are, on average, more war prone. Oneal and Russett (1997, 1999) obtain similar results, using a wide variety of specifications.

Still more studies give indirect support to Cobden's hypothesis . Pollins (1989) tests a model of bilateral trade flows for a cross section of countries over the 1960–1975 period. He finds that trade flows are significantly affected by broad political relations of amity and enmity between nations. Richardson and Kegley (1980) analyze foreign policy relations between the United States and 25 of its trading partners between 1950 and 1973, and find that greater dependence leads to compliance with US foreign policy preferences.

Examples of findings in the opposite direction include Barbieri (1996). Gasiorowski (1986) and Barbieri and Levy (1999) find evidence that both supports and refutes the Cobden hypothesis. But McMillan (1997), in her summary of this body of work, analyzes the findings of twenty empirical studies. Overall, she finds that the majority support the hypothesis that interdependence inhibits violent conflict. On the whole, then, most studies support Cobden's hypothesis.

III. Concluding Remarks

The proposition that international trade in goods and services, factors of production, ideas and cultures increases mutual dependencies, lowers the possibility of international conflict by making it more costly, and allows individual freedom to flourish can be found in the writings of Emeric Cruce, Francois Quesnay, David Hume, Adam Smith, de Montesquieu, John Bright and, more recently, Ludwig von Mises. Richard Cobden, was also a powerful advocate of this idea. Although trade and economic interdependence can contribute to the peaceful resolution of disputes, they are not, by themselves, sufficient to guarantee the absence of war and the reduction of arming, and so they are not sufficient to guarantee the spread of international freedom. But, all else being equal, the gains from international trade—long emphasized by microeconomists as desirable in their own right—are a powerful deterrent against international conflict. And since freedom cannot exist under conditions of conflict or total war, international trade has an important indirect effect on the spread of individual freedom, both within countries and throughout the world.

This paper applied the insights of Austrian economists such as Hayek and von Mises to international affairs and international rules of conduct, and found that Cobden's intuitive arguments regarding foreign affairs and the progress of individual freedom are accurate,

at least in principle. We then briefly examined the most recent theoretical and empirical work by economists and political scientists on the link between international trade and conflict. The majority of studies support Cobden's position: there *is*, in fact, an invisible hand in foreign affairs, and it is the very same invisible hand of self-interested, mutually consensual exchange, which Adam Smith first brought to our attention in the *The Wealth of Nations*.

References

Alesina, A. and Dollar, D. (1998) "Who Gives Foreign Aid to Whom and Why?" NBER Working Paper Number w6612, NBER, Cambridge, MA.

Alesina, A. and Weder, B. (1999) "Do Corrupt Governments Receive Less Foreign Aid?" NBER Working Paper Number w7108, NBER, Cambridge, MA.

Anderson, J. and Marcouiller, D. (1997) "Trade and Security I: Anarchy." Unpublished manuscript, Boston College, October.

Anderton, C., Anderton, R. and Carter, J. (1999). "Economic Activity in the Shadow of Conflict," Economic Inquiry, January, 37(1), pp. 166–79.

Barbieri, K. (1996) "Economic Interdependence: A Path to Peace or a Source of Interstate Conflict?" Journal of Peace Research, 33(1): 29–49.

Bauer, P. (1971) Dissent on Development, London: Weidenfeld and Nicolson.

Beck, R. et al (eds) (1996) International Rules: Approaches from International Law and International Relations, Oxford: Oxford University Press.

Bhagwati, J. et al (1998) Lectures on International Trade, Second Edition, Cambridge: MIT Press.

Bright, J. and Rogers, J. (eds) (1878) Speeches on Questions of Public Policy by Richard Cobden, M.P., London: Macmillan and Co.

Chan, S. (1984) "Mirror, Mirror on the Wall…Are Freer Countries More Pacific?" Journal of Conflict Resolution, 28: 617–648.

Cobden, R. (1878) The Political Writings of Richard Cobden, London: William Ridgway.

Debreu, G. (1959) Theory of Value, New York: Wiley.

Friedman, M. (1958) "Foreign Economic Aid," Yale Review, 47: 500–516.

Friedman, M. (1962) Capitalism and Freedom, Chicago: University of Chicago Press.

Gasiorowski, M. (1986) "Economic Interdependence and International Conflict: Some Cross-National Evidence" International Studies Quarterly, 30(1): 23–38.

Gowa, Joanne (1994). Allies, Adversaries, and International Trade. Princeton, NJ: Princeton University Press.

Hayek, F. (1945) "The Use of Knowledge in Society" American Economic Review, 35, No. 4; September, 519–30.

Hayek, F. (1994a) The Constitution of Liberty, Chicago: University of Chicago Press.

Hayek, F. (1994b) Law Legislation and Liberty, 3 Volumes, Chicago: University of Chicago Press.

Helpman, E. (1981) "International Trade in the Presence of Product Differentiation, Economies of Scale and Monopolistic Competition: A Chamberlinian, Heckscher-Ohlin Approach" Journal of International Economics, 11: 304–340.

Higgs, R. (1987) Crisis and Leviathan: Critical Episodes in the Growth of American Government, New York: Oxford University Press.

Hinde, W. (1987) Richard Cobden: A Victorian Outsider, New Haven: Yale University Press.

Hirst, F. (ed) (1903) Free Trade and Other Fundamental Doctrines of the Manchester School, New York: Augustus M. Kelley Publishers.

Hirshleifer, Jack (2001) The Dark Side of the Force, Cambridge: Cambridge University Press.

Hobson, J. (1902) Imperialism: A Study, Ann Arbor: University of Michigan Press.

Huber, J. (1971) "The Effect on Prices of Japan's Entry Into World Commerce after 1858" Journal of Political Economy, 79: 614–628.

Krugman, P. (1979) "Increasing Returns, Monopolistic Competition and the Gains from Trade" Journal of International Economics, 9: 469–479.

Lal, D. (1997) The Poverty of Development Economics, Second Edition, London: Institute for Economic Affairs.

Lindsey, B. (2002) "There's No Invisible Hand in Foreign Affairs," published on the World Wide Web at http://www.brinklindsey.com/archives/001449.php

MacDougall, G. (1960) "The Benefits and Costs of Private Investment from Abroad: A Theoretical Approach" Economic Record, 36 (Special Issue): 13–35.

McMillan, S. (1997) "Interdependence and Conflict" Mershon International Studies Review, 41(1): 33–58.

Mallet, L. (1878) "Introduction" in Cobden, R. The Political Writings of Richard Cobden, London: William Ridgway.

de Montesquieu (1748) The Spirit of the Laws, 1989 Cambridge University Press edition, edited and translated by Cohler, A., Miller, B. and Stone, H.

Mundell, R. (1957) "International Trade and Factor Mobility" American Economic Review, 67: 321–335.

Obstfeld, M. (1994) "Risk-Taking, Global Diversification, and Growth" American Economic Review, 84(5): 1310–1329.

Obstfeld, M. and Rogoff, K. (1996) Foundations of International Macroeconomics, Cambridge, MA: MIT Press.

Oneal, J. et al (1996) "The Liberal Peace: Interdependence, Democracy and International Conflict: 1950–1985" Journal of Peace Research, 33(1): 11–28.

Peltzman, S. (1980) "The Growth of Government," Journal of Law and Economics, 23: 209–87.

Polachek, S. (1978) "Dyadic Dispute: An Economic Perspective," Papers of the Peace Science Society, 28: 67–80.

Polachek, S. (1980) "Conflict and Trade" Journal of Conflict Resolution, 24(1): 55–78.

Polachek, S. (1992) "Conflict and Trade: An Economic Approach to Political International Interactions", in Isard, W. & Anderton. C. (eds), Economics of Arms Reduction and the Peace Process, New York: Elsevier Science, pp 89–120.

Polachek, S (1997) "Why Democracies Cooperate More and Fight Less: The Relationship Between International Trade and Cooperation" Review of International Economics, 5: 295–309.

Polachek, S., Chang, Y. and Robst, J. (1999) "Liberalism and Interdependence: Extending the Trade-Conflict Model", Journal of Peace Research, 36(4): 405–422.

Polachek, S. and Gasiorowski, M. (1982) "Conflict and Interdependence: East-West Trade and Linkages in the Era of Détente," Journal of Conflict Resolution, 26(4): 709–729.

Pollins, B. (1989a) "Conflict, Cooperation, and Commerce: The Effect of International Political Interactions on Bilateral Trade Flows" American Journal of Political Science, 33(3): 737–761.

Prentice, A. (1968) History of the Anti-Corn League, Volumes 1 and 2, London: Frank Cass and Company.

Reuveny, R. (1999/2000) "The Trade and Conflict Debate: A Survey of Theory, Evidence and Future Research," Peace Economics, Peace Science and Public Policy, 6(1): 23–49.

Richardson, N. and Kegley, C. (1980) "Trade Dependence and Foreign Policy Compliance: A Longitudinal Analysis" International Studies Quarterly, 24(2): 191–222.

Skaperdas, S. (1996) "Contest Success Functions", Economic Theory, 7: 283–290.

Skaperdas, S. and Syropolous, C. (2001) "Guns, Butter, and Openness: On the Relationship Between Security and Trade" American Economic Review, May, 91(2): 353–357.

Stigler, G. (1988) "Introduction" in Stigler, G. (ed) Chicago Studies in Political Economy, Chicago: University of Chicago Press.

Svensson, L. (1988) "Trade in Risky Assets," American Economic Review, 78(3): 375–394.

Tullock, G. (1980) "Efficient Rent Seeking," in Buchanan, J., Tollison, R. and Tullock, G. (eds) Toward a Theory of the Rent Seeking Society, College Station: Texas A & M Press.

Von Mises, L. (1996) Human Action: A Treatise on Economics, Fourth Revised Edition, San Francisco: Fox and Wilkes.

Waltz, K. (1970) "The Myth of Interdependence," in Kindleberger, C. (ed) The International Cooperation, Cambridge, MA: MIT Press.

Wong, K. (1986) "Are International Trade and Factor Mobility Substitutes?" Journal of International Economics, 21(1/2): 25–44.

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McDonaldization: An Analysis of George Ritzer's Theories and Assertions

Introduction

Globalization is a massively powerful force in the 21st century. Defined as 'the world-wide diffusion of practices, expansion of relations across continents, organization of social life on a global scale, and growth of a shared global consciousness' (Ritzer, 2008: 164), globalization is perhaps the most noticeable feature of this Information Age. The growing influence of the ever-expanding technologies and influences stemming from this globalizing phenomenon are irrefutable. In *McDonaldization: the Reader* and *The McDonaldization of Society,* George Ritzer addresses the issue of 21st century globalization in terms of McDonaldization, a concept built on Max Weber's ideas of rationalization and bureaucratization of society. Ritzer focuses on McDonaldization, and by association globalization, as a negative force, or grobalization, one built on dehumanizing and often ultimately irrational principles. However, Ritzer pushes his argument too far, venturing into the realm of inanity.

Ritzer cites Zygmunt Bauman's *Modernity and the Holocaust*, an analysis of the forces of rationality and modernization, and their uses in the perpetration of the Holocaust. Bauman makes the argument that rationality and bureaucratization were essential to the Nazis' plans, and that the Holocaust would not have been possible without them. This argument alone is a contentious one, as to whether the Holocaust can really be considered the logical product, rather than the obscene perversion, of modern principles. Ritzer takes Bauman's assessment as accurate and links it to his own theory of McDonaldization, describing the Holocaust as 'a precursor of McDonaldization' (Ritzer, 2008: 29). This claim

is both frivolous and incongruous. In making such an assertion Ritzer succeeds not only in weakening his own already tenuous arguments against McDonaldization, but also in trivializing the significance of the Holocaust.

The question Ritzer raises is supremely simple: are we facing a future of unprecedented cultural dialogue and sharing through a global community, or are we facing a sterile, homogeneous fast food nation? The truth of course is very different from what Ritzer claims. Globalization, or McDonaldization as Ritzer would have it, offers many opportunities for trade, both economic and cultural. As described by Les Back, in 'Local/Global,' a section of *Core Sociological Dichotomies*, there are innumerable benefits brought about by globalization. Ritzer's grim view of the global marketplace is contrary to observable realities. Globalization has proven to be the way forward to a more prosperous, peaceful world. This paper will address the validity of Ritzer's assessment of globalization and of his comparisons with the Holocaust, and will discuss as a counterargument Back's view of the many positive effects of globalization as a whole.

I. McDonaldization: Ritzer's Global Nightmare

A. *Defining McDonaldization*

According to Ritzer, McDonaldization is 'the process by which the principles of the fast-food restaurant are coming to dominate more and more the sectors of American society as well as of the rest of the world' (Ritzer, 2008: 1). Ritzer uses this concept of McDonaldization in the context of Weber's theory of rationality. According to Weber, there are four major components to the theory of rationalization: 'the modern world managed to become increasingly rational—that is, dominated by efficiency, predictability, calculability, and nonhuman technologies that control people' (Ritzer, 2004: 26).

Ritzer highlights how these four concepts apply to McDonald's by means of numerous examples. He describes the supreme efficiency of McDonald's service as a testament to the assembly lines of Henry Ford, 'speeding the way from secretion to excretion' (Ritzer, 2008: 59). McDonaldized institutions seek constantly to raise efficiency through streamlining production and distribution, simplifying the products themselves, and keeping customers' transactions to a minimum possible time. Coupled with this drive for efficiency is the concept of calculability.

According to Ritzer, McDonaldization values quantification over subjectivity: 'Quantity tends to become a surrogate for quality…emphasis on quantity tends to affect adversely the quality of both the process and the result' (Ritzer 2008, 79). This concept of calculability, Ritzer contends, transforms everything into numbers, simple and impersonal. Profits and quotas become paramount in this distant, rigid form.

Also keyed to McDonaldization is the notion of predictability. The stark uniformity imposed on production and service in McDonaldized industries, Ritzer claims, is sterile and unexciting. This predictability offers customers and workers alike a sense of security:

'Predictability makes for much peace of mind in day-to-day dealings…predictability makes tasks easier' (Ritzer, 2008: 97). Predictability may prove dull, but it also provides a sanctuary to those feeling lost, to people who feel like blades of grass hurled indifferently into an uncaring wind.

The final component of the Ritzer-Weber rationalist scheme is the concept of control. By use of non-human technologies, the McDonaldized organization exerts an extraordinary degree of control over its employees and its customers. By deliberately limiting choices, the McDonaldized organization prevents both human error and individual judgment: 'The more that is done by nonhuman technologies…the less workers need to do and the less room they have to exercise their own judgment and skill' (Ritzer 2008, 117). Ritzer's model of McDonaldization is one that is enormously adaptable, capable of being utilized in a virtually unlimited number of areas. For Ritzer, it is this McDonaldizing influence that is propagating itself across the world. The McDonald's model is endemic in all areas of the economy in hundreds of countries. Yet Ritzer claims, albeit spuriously, to identify key flaws in this unchecked globalizing influence.

B. *Alienation and Irrationality*

According to Ritzer, there are inherent flaws in the super-rationality of McDonaldization. Most noticeable of these flaws is the intrinsic irrationality of the super-rational system of McDonaldization; inefficiency springs up even in the most rationalized set-up. Ritzer gives numerous examples of this apparent contradiction: 'In fast-food restaurants, long lines of people often form at the counters, or parades of cars idle in the drive-through lanes' (Ritzer, 2008:142). These logical irrationalities spring up as the supposedly efficient or convenient system becomes overwhelmed by customers wishing to partake of that very efficiency. McDonaldization appears to be a victim of its own success. Much like a Ponzi scheme in economics, the price of greater efficiency and expansion eventually weighs the system down until it collapses under its own bloated weight, or so Ritzer claims. Ritzer further claims that this inefficiency generally harms the consumer rather than the producer:

> 'Those at the top of an organization impose efficiencies not only on consumers but also on those who work at or near the bottom of the system…the owners, franchisees, and top managers want to control subordinates, but they want their own positions to be as free of rational constraints—as inefficient—as possible'. (Ritzer, 2008: 143)

What Ritzer is describing is a hierarchical double standard entrenched in the institution of McDonaldization. Those individuals in power seek irrational work because it is not only more liberating, but also not nearly as soul-destroying. For Ritzer, the monotonous, supremely rational and efficient world of McDonaldization leaves little or no room for creativity. For Ritzer, it is the ambition of the organizers of McDonaldized institutions to limit this ability for self-expression as much as possible. Paradoxically, Ritzer argues that in this forced rationality are the seeds of irrationality: 'Employees are seldom allowed to use anything approaching all their skills and are not allowed to be creative on the job' (Ritzer, 2008:153). The dehumanizing nature of this

tedious and repetitive work style, Ritzer argues, results in an irrational underutilization of talent. Ritzer contends that McDonaldization's aim is, in essence, to automatize the working classes to the greater benefit of the managerial elite. The globalizing influence of McDonaldization thus works to expand its influence across the planet to encapsulate the lives of as many individuals as its grease-stained, trans-fat coated fingers can reach.

C. *Glocal/Grobal*

The exceedingly dark picture of globalization painted by Ritzer in the previous section is far from the observable realities of the global marketplace. It is clear that Ritzer recognizes this fact, as he tries to unify his theory of globalization with the evidence by fabricating a dichotomy in the globalization process. He engineers a distinction between, what he calls, two discrete forms of globalization: grobalization and glocalization. Grobalization 'focuses on the imperialistic ambitions of nations, corporations, organizations…and their desire…to impose themselves on various geographic areas' (Ritzer, 2008:167). This is the globalization concept that Ritzer compares most closely with McDonaldization. This concept seems to fit with Ritzer's prior assertions, that McDonaldization is exploitive of both employees and customers, and is concerned only with expansion and profit: 'The ability of McDonaldized systems to increase profits continually is based on the need to steadily expand markets throughout the world' (Ritzer, 2008: 168). Ritzer asserts that grobalization, and by extension McDonaldization as a whole, is exploitive, profit seeking, and homogenizing: 'Its standard fare and its basic operating principles tend to threaten, and in many cases replace, local fare and principles of operation' (Ritzer, 2008:182). In essence, Ritzer asserts that McDonaldization destroys local culture as well as alienates its employees and customers. Evidently Ritzer considers his opinion of what sorts of goods and services people consume to be more important than that of the public actively demonstrating its desires through the framework of the market.

Ritzer's vision of corporate imperialism is very difficult to accept, as it flies in the face of a wealth of evidence to the contrary. In point of fact, globalization is far from the monstrously destructive force that Ritzer describes. Contrary to Ritzer's rather bleak assessment of globalization, Les Back offers a much more supportive, and believable case. He essentially argues, in 'Local/Global,' that globalization is a process of glocalization, which according to Ritzer, "emphasizes the integration of the global and the local and involves far more heterogeneity than homogeneity' (Ritzer, 2008: 166). Ritzer asserts that grobalization is larger and more powerful than glocalization. Back begs to differ. Back argues that globalization leads to greater spreading of culture, that every culture, both the importer and importee, are affected and changed, yet retain separate cultural identities: 'Global interconnection cannot completely integrate human societies that remain spatially dispersed. Something distinctly local remains, or may even be being fostered, within the global circuits of capital and culture' (Back, 1998: 64). Back asserts that this globalization, or glocalization as Ritzer would call it, is a two-way street. As new ideas are imported from the West to developing countries, those countries' cultures are changed, but they are not erased or homogenized. Rather, the addition of new material simply adds greater

diversity to the social milieu. Back gives the example of his home town, Deptford, which experienced a massive influx of immigrants during the era of imperialism:

> 'Such diverse communities give this part of London an intensely multicultural and international resonance, and the combination of these differences refashioned the social landscaped yet took on a distinctly local form'. (Back, 1998: 71)

For Back, the amalgamation of many cultures is the result of globalization, whereas Ritzer sees globalization as a destructive influence on individual cultures. Back does not see changes in culture as a reaction to new ideas as destruction. He recognizes that culture and custom is in a constant state of change and flux, and that change is often a good thing. The heart of Back's argument is that globalization and cultural identity need not be mutually exclusive or antagonistic, while Ritzer fails to see past the specter of global homogeny.

II. Rationality And The Holocaust: Bauman's Argument And Ritzer's Fallacy

A. *Modernity and the Holocaust*

In *Modernity and the Holocaust*, Zygmunt Bauman argues that the Holocaust was a logical product of the modernization process and scientific rationality:

> 'The Holocaust was as much a product, as it was a failure, of modern civilization. Like everything else done in the modern—rational, planned, and scientifically informed, expert, efficiently managed, co-ordinated way, the Holocaust left behind and put to shame all its alleged pre-modern equivalents, exposing them as primitive, wasteful and ineffective by comparison'. (Bauman, 1989: 89)

Bauman argues that the rational, bureaucratic execution of the Holocaust sets it apart from past genocides. The purely logical implementation of the death camps, gas chambers, ovens, and firing squads are for Bauman, testaments of the modern rational world that puts such emphasis on efficiency. There is no doubt that the Holocaust 'stands alone and bears no meaningful comparison with other massacres, however gory' (Bauman, 1989: 32). The view of the coldly rational Holocaust Bauman presents is a terrifying one, but more terrifying is the conclusion that it was a product, rather than an aberration of modernity. This is where Bauman's arguments grow thin. The core of Bauman's argumentation is that the Holocaust was the result of modernization and scientific reason: 'It was the rational world of modern civilization that made the Holocaust possible' (Bauman, 1989: 13). It is true that the technology available to the perpetrators of the Holocaust was more advanced, and the bureaucratic networks more refined, which allowed for the sheer scale and speed of the genocide. However, the tools used to enact the Holocaust cannot be blamed for causing it, no more than a car can be blamed for the death of a pedestrian. The driver is the guilty party. Bauman fails to make this distinction. He refuses to recognize that the horror of the Holocaust was not the product of modernity, but of modern tools in the hands of madmen (Moses, 1997).

Bauman further argues that the rational scientific worldview is also to blame for the Holocaust: 'At best, the cult of rationality, institutionalized as modern science, proved impotent to prevent the state from turning into organized crime; at worst, it proved instrumental in bringing the transformation about' (Bauman, 1989: 110). In essence, Bauman accuses scientific reasoning of being an impetus for the Holocaust. This is manifestly false. Bauman attempts to support this assertion by describing how popular scientific methods promoted belief in racial superiority, thus providing a 'rational' impetus for the Holocaust: 'Phrenology (the art of reading the character from the measurements of the skull)…captured most fully the confidence, strategy and ambition of the new scientific age' (Bauman, 1989: 69). The argument that scientific methods were a rational reason *for* the Holocaust is absolutely absurd. Phrenology was debunked as a science in the 19th century (Sabbatini, 1997). The Nazis used it, not as a scientific source, but as a justification for the distinctly irrational behavior of genocide. Had real scientific rationality been in use, the Nazi 'scientists' would have been unable to make conclusions so favorable to the Nazi cause (Sabbatini, 1997). Bauman further cites the works of Carl Linnaeus as motivation for the Holocaust: 'Linnaeus, recorded the division between the residents of Europe and inhabitants of Africa with the same scrupulous precision as that which he applied while describing the differences between crustacea and fishes' (Bauman, 1989: 69). Evidently Bauman does not realize that an enormous amount of research has been done on taxonomy since 1735, when Linnaeus wrote *Systema Naturae*. He also neglects to recall that Linnaeus was writing in a time when casual racism was a part of life (Ereshefsky, 2000). If scientific reasoning is in fact a cause of the Holocaust, Bauman has failed to show it with all his examples dating to a century before its perpetration.

Matching Bauman's ignorance of scientific achievement since the 19th century is his clear misunderstanding of the benefits of technological achievement and discovery: 'Without modern civilization and its most central essential achievements, there would be no Holocaust' (Bauman, 1989: 87). Bauman is correct in insisting that the technological superiority of the Nazis in comparison with previous genocidal groups is a significant part of the Holocaust. However, it is not modernity that is to blame for this. To suggest that the rationale for the Holocaust exists in a society's access to the advanced technology necessary to perpetrate it is to confuse cause and means, to identify 'the efficient and not the final, causes of the Holocaust' (Moses, 1997: 443). Bauman's Luddism is clear especially when he disparages scientific and technological discovery as a device for producing new demands: 'Technological developments produce means beyond the demands, and seek the demands in order to satisfy technological capacities' (Bauman, 1989: 220). Beyond any shadow of a doubt, this is Bauman's most fatuous statement. It is often the case that demand does not exist before the means because there was until then no product to satisfy the demand. Before penicillin was discovered, there was no demand for it because there was until then no concept of anti-biotics (Chemical Heritage Foundation, 2009). Once discovered however, the desire to survive illness created a demand. Before the Haber-Bosch process was invented to enrich soil with nitrogen, the world food supply could sustain 600 million people (Hager, 2008). With the advent of new technology providing the means, the demand grew with the population. Bauman ignores these simple examples,

just few of many, recognizing only the most negative aspect of technology, the ability to destroy.

A final assertion by Bauman is that modern civilization retains the necessary factors for the Holocaust, or something very like it, to happen again: 'If there was something in our social order which made the Holocaust possible in 1941, we cannot be sure that it has been eliminated since then' (Bauman, 1989: 86). For Bauman, modernity is the root cause of the Holocaust, not simply a prerequisite. Thus he insists the risk of another such event cannot be averted so long as society has its basis in rational scientific reasoning. This notion of the Holocaust as a natural result of rational society is clearly absurd. If it were the case, then surely another Holocaust would already have happened as the logical course of events. Bauman attempts to defuse this possibility by suggesting that the type of modernity necessary for the Holocaust no longer exists and the correct mix of factors have not come together since then to precipitate another Holocaust:

> It was the combination of growing potency of means and theunconstrained determination to use it in the service of an artificial, designed order, that gave human cruelty its distinctively modern touch and made the Gulag, Auschwitz and Hiroshima possible, perhaps even unavoidable. The signs abound that this particular combination is nowover. (Bauman, 1989: 219)

Effectively, Bauman claims the factors that precipitated the Holocaust were modernity, but only a special combination of modern elements. He rejects the much simpler notion that the Holocaust was the result of evil decision-makers, statist groups with centralized power, with access to unusually efficient killing methods.

Bauman reaches the crux of the argument, and inadvertently succeeds in directly contradicting himself, when he professes that, 'every 'ingredient' of the Holocaust…was normal…being in full keeping with everything we know about our civilization, its guiding spirit, its priorities, its immanent vision of the world' (Bauman, 1989: 8), while at the same time asserting that the 'German bureaucratic machinery was put in the service of a goal incomprehensible in its irrationality' (Bauman, 1989: 136). Bauman insists that the Holocaust can be explained in rational terms; yet at his own admission the goals of the Holocaust, the expunging of an entire race from the earth and the development of a 'master race', were inherently irrational. Even if every 'ingredient' of the Holocaust can be described in rational terms, the fact that the goal is irrational makes the entire process irrational: 'The Nazi will to kill, the Holocaust's final cause, cannot be reduced to instrumental reason, science, or any other factor' (Moses, 1997: 443). Bauman becomes so concerned with the inherent rationality of the killing process that he fails to recognize the glaring irrationality of the killing drive.

B. *Ritzer's Trivialization of the Holocaust*

Ritzer describes the Holocaust as 'a precursor of McDonaldization' (Ritzer, 2008: 29). Such an assertion is a serious one. To describe the dominant social paradigm of the 21st century

in terms of the most heinous event in human history requires an enormous amount of substantiation. Ritzer gives three arguments for this claim, citing Bauman as his principal source: he describes their mutual reliance on rationality and bureaucracy, their mutual connection to the factory system, and the rationality spread by McDonaldization that Bauman argues could precipitate another Holocaust. Each of these assertions is weak at best, and fatuous at worst. Neither of the first two claims need be associated with the Holocaust in order to describe their historical significance, nor is the third, as described in the previous section, a significant issue.

It is certainly true that the mechanisms of both McDonaldization and the Holocaust are based in bureaucracy and rationality: 'The industrial potential and technological know-how boasted by our civilization has scaled new heights in coping successfully with a task of unprecedented magnitude' (Bauman, 1989: 9). The technology and bureaucratic organization necessary to implement the Holocaust shares some similarities with that used to implement the massive organizations involved in McDonaldization and globalization. However, this is where the resemblance ends with regard to this trait. Like Bauman, Ritzer neglects the purpose for the method. The unparalleled evil and scale of destruction unleashed by the Holocaust cannot be adequately compared to a service industry of any scale or magnitude.

The cursory similarity of the factory models of the Holocaust and McDonaldization must come under similar criticism. The Holocaust was nothing short of 'mass-produced death' (Ritzer, 2008: 27). The similarity to McDonaldization again can only be a superficial one. The shared factory model cannot be used to describe the Holocaust as a precursor of McDonaldization. At best it could be said that they share a common ancestor in the Ford car factories, which Ritzer acknowledges as a precursor of McDonaldization (Ritzer, 2008). The similarity between McDonaldization and the Holocaust is shallow at best. The last comparison Ritzer suggests is that 'the spread of formal rationality today, through the process of McDonaldization, supports Bauman's view that something like the Holocaust could happen again' (Ritzer, 2008: 29). Ritzer appears to completely misunderstand Bauman's assessment of the dangers of another Holocaust. Bauman does claim that it is almost certain that the root societal causes of the Holocaust still remain in the modern social structure of rationality and modernity (Bauman, 1989). However, he also mentions the forces of globalization as a check to the danger:

> 'To be sure, thanks to the late modern surfeit of mutually cancelling authorities and due to the irredeemable polyvocality which goes together with political democracy and the weakening grip of state powers, the chances of such players gaining an upper hand and deploying the absolute powers of the state to set a Holocaust-style 'solution' in motion are slim and remote'. (Bauman, 1989: 231)

Ritzer's argument is torn down by the very source he cites. His fear of a grobalized world is what Bauman himself acknowledges as a force in opposition to a resurgent Holocaust. In essence, Ritzer misconstrues Bauman's argument: He uses him to hold up one pillar of his argument, that of rationality, while ignoring him when he unceremoniously knocks down

the other, that of globalization.

Ritzer's attempt to equate McDonaldization with the Holocaust, or at least to tar it with the same brush, is as absurd as it is petty. He readily recognizes other historical trends and practices as much more closely connected to McDonaldization than the Holocaust, yet still he tries to compare the two. It seems very likely that he does so purely for gratuitous reasons, as there is nothing to be gained from trivializing the Holocaust by describing it as the natural ancestor of contemporary practices. As much as Ritzer may dislike the McDonaldization of society, it neither is the Holocaust, nor bears any closer resemblance to it than numerous other industrial practices. The key feature that Ritzer fails to realize is that regardless of their superficial similarities of technique, the rationality of goals is what sets them apart. Ritzer claims that the Holocaust was rational because it was the Nazis' means to creating a 'perfectly rational society' (Ritzer, 2008: 28). Yet the Nazis' vision was inherently irrational, as all wanton destruction is, setting it apart from the clearly rational goal of McDonaldization, which is to produce goods efficiently for consumption by society. This difference in goal-orientation is what Ritzer, and to some extent Bauman, fail to realize is a key distinction of the Holocaust. Rather than settling for a coherent argument, Ritzer chooses to take a cheap shot, trivializing both his case and the memory of the Holocaust. Bauman actually warns against such flippant use of the Holocaust:

> 'Overt, and hence superficial similarity is a poor guide to causal analysis…having to choose between conformity and bearing the consequences of disobedience does not necessarily mean living in Auschwitz, and the principles preached and practiced by most contemporary states do not suffice to make their citizens into Holocaust victims'. (Bauman, 1989: 87)Bauman recognizes the latent power that the memory of the Holocaust still holds and rightly cautions against using it as an example out of hand. Describing the process of globalization, or McDonaldization, as something as horrendous as the Holocaust is to forget its significance and horror.

III. Conclusion

Once analyzed, George Ritzer's dismal predictions about globalization through the lens of McDonaldization, come up short. He repeatedly expounds the dehumanizing effects and inherent flaws of the McDonaldization process. While happy to attack McDonaldization ruthlessly for its potential flaws, he pays only lip service to the great gains it and other trends of globalization have brought. He apparently assigns little benefit to the tremendous economic and social growth that has been precipitated by world trade and free markets, as well as the decentralizing effect it has had on state power, rendering such things as the Holocaust far less likely.

In comparison to Ritzer, Les Back's assessment of globalization is both even-handed, and reasonable. As a force of glocalization, global forces have developed a means of working together, as societies blend and share ideas, and the global tapestry becomes more tightly woven through trade in the worldwide marketplace of knowledge and products. This

pattern of global trade and interconnectedness has also succeeded largely in increasing dialogue between communities while simultaneously decreasing violence and war.

Ritzer's last-ditch effort to drag McDonaldization through the mud is to compare it, ineffectively, to the Holocaust. He uses Zygmunt Bauman's erroneous assessment that the Holocaust was a logical product of modernization, while failing to realize, as even Bauman does, that the globalizing aspect of McDonaldization is one of the major factors preventing another Holocaust. Ultimately, Ritzer's arguments founders under it in-built contradictions and gross unrealities.

It is also clear that scientific advancement and reasoning and progress in technology are not bad things, as both Ritzer and Bauman seem steadfastly to proclaim. It is not technology or science that causes bad things. A gun cannot kill someone of its own accord. An evil person with a gun, however, is more dangerous than one without one. More dangerous still is a government-sponsored killer. This is the distinction both Ritzer and Bauman fail to make. Modernity and rational advancement are not bad processes. In fact, they have brought about an unprecedented increase in wealth and living standards across the world. Unscrupulous individuals with evil intentions can turn any force to evil, especially if they have the backing of a coercive government.

The inherent values of McDonaldization are clear: it provides an efficient, simple, and profitable business model, as well as contributing to greater international dialogue and peace. Though the process of globalization has really only just begun, we can be hopeful and excited for a brighter, better-connected, and more diverse world culture.

References

Back, L. 1998. 'Local/Global' in Chris Jenks (ed.) Core Sociological Dichotomies. London: Sage.

Bauman, Z. 1989. Modernity and the Holocaust. Cambridge: Polity Press.

Chemical Heritage Foundation. 2009. 'Manufacturing a Cure: Mass-Producing Penicillin'. Available online at: http://www.chemheritage.org/women_chemistry/med/rousseau.html.

Ereshefsky, M. 2000. The Poverty of the Linnaean Hierarchy: A Philosophical Study of Biological Taxonomy. Cambridge: Cambridge University Press.

Hager,T. 2008. The Alchemy of Air. New York: Harmony Books.

Moses, A. 1997. 'Modernity and the Holocaust'. Australian Journal of Politics and History 43(3): 441-445.

Ritzer, G. 2008. The McDonaldization of Society. Thousand Oaks: Pine Forge.

Ritzer, G. (ed.) 2004. McDonaldization: The Reader. Thousand Oaks: Pine Forge.

Sabbatini, R. 1997. 'Phrenology: the History of Brain Localization'. Available online at: http://www.cerebromente.org.br/n01/frenolog/frenologia.htm.

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The Years Since September 11, 2001: What Hath Our Rulers Wrought?

> Lord Jesus Christ, Thou Prince of Peace, who hatest wars, in which men slay their own brothers and destroy those things which Thou hast given us to enjoy, forgive us for wars and fightings among us and for the lust of our flesh that begets them.
>
> O Thou who makest wars to cease unto the ends of the earth, bring a speedy end to this reign of destruction and terror. Restore men to sanity so that they may see the insanity of war and avoid it as a sore plague of mankind and an offense to Thy holy majesty.
>
> - **Concordia Publishing House**[1]

Introduction

At the International Military Tribunal in Nuremberg during 1945-46, Anglo-American élites subjected the most senior henchmen of Adolph Hitler – a murderer of millions – to something resembling rule of law and a fair trial. In 1962 the Israeli secret service, Mossad, captured Adolph Eichmann (who during the Second World War managed the mass deportation of Jews to extermination camps) in Argentina and spirited him to Israel. He faced 15 criminal charges, including crimes against humanity and war crimes, and is the only person executed in Israel after conviction by a civilian court.

Yet on May 2, 2011 the U.S. Government did not even consider the pretence of due process and a fair trial according to the rule of law. Instead, its military planned and executed the premeditated murder of Osama bin Laden (who, among other things, masterminded the

1 'Prayer During Wartime', *My Prayer Book,* Concordia Publishing House, 1957.

killing of approximately 3,000 people on September 11, 2001). It could be asked therefore, to what depths have today's rulers sunk? Those who recognise a distinction between justice and revenge would argue it is imperative that a mass murderer, whether a National Socialist or an Islamic fanatic, receive a fair trial – not because he 'deserves' natural justice, but because if he does then chances are very good that ordinary people charged with lesser offences will too. If we take the rule of law seriously then no person is above the law. But if we do not then agents of the state inevitably rise above the law.[2]

One might have assumed that President Barack Obama, a graduate of Harvard Law School, would be at least dimly aware of the ramifications of assassinating bin Laden without due process. But his official remarks dispelled any such illusion:

> Last August, after years of painstaking work by our intelligence community, I was briefed on a possible lead to bin Laden … And finally, last week, I determined that we had enough intelligence to take action, and authorized an operation to get Osama bin Laden and bring him to justice...Today, at my direction, the United States launched a targeted operation against [a] compound in Abbottabad, Pakistan… After a firefight, they killed Osama bin Laden and took custody of his body.
>
> [A]l-Qaeda has slaughtered scores of Muslims in many countries, including our own. So his demise should be welcomed by all who believe in peace and human dignity…[O]n nights like this one, we can say to those families who have lost loved ones to al-Qaeda's terror: Justice has been done.[3]

Many Australians shared these sentiments.[4] According to Australian Prime Minister Julia Gillard, bin Laden's death provided 'some small measure of justice' for the loved ones of the people who died on 11 September.[5] Meanwhile Paul Kelly wrote in *The Australian* that

2 Steven Greenhut, 'But America IS a Police State', Retrieved from <http://lewrockwell.com/greenhut/greenhut66.1.html>; Glenn Greeenwald, 'A Prime Aim of the Growing Surveillance State', Retrieved from <http://www.salon.com/2011/08/19/surveillance_13/>.

3 'Remarks by the President on Osama Bin Laden', Retrieved from <http://www.whitehouse.gov/the-press-office/2011/05/02/remarks-president-osama-bin-laden>.

4 In diametric contrast: Rae and Jack Tompsett don't have much time for feelings of vengeance. No amount of revenge rhetoric after the death of Osama bin Laden is going to ease the daily pain caused by the absence of their son, Steve, from their lives. 'It's nearly 10 years ago. We miss him to this day, and there are hundreds and thousands of families in the same position," Mrs Tompsett said yesterday from her Sydney home. The Tompsetts lost their son in the September 11, 2001, attacks on New York. He was one of 10 Australians to die in the World Trade Centre that day." One of the first things Mrs Tompsett said when speaking to *The Australian* yesterday was that she felt sorry for the hijackers who killed her son and thousands of others that morning. 'I also feel sad for the young men who flew the planes, that they felt they were doing something good for God. They were very misled,' she said. Mrs Tompsett said it was a relief bin Laden had finally been killed and that she 'can't be sorry,' but she does not think it will do much to stop Islamic terrorism … Mrs Tompsett does not view bin Laden and al-Qaeda as representing the true teachings of the Islamic faith. 'Islamic teaching is basically about charity and love and care for one another. Unfortunately, over the centuries some of it has been warped to include annihilating anyone who's not Muslim,' she said (Leo Shanahan and Michael Owen, 'Families of Victims Find Shock Outweighs Relief,' *The Australian*, 3 May 2011).

5 Paul Osborne, 'Bin Laden Death Is Justice for Victims: PM', *The Sydney Morning Herald*, 2 May 2011.

'The killing of Osama bin Laden is an epic event and a rallying triumph for the US'.[6] And on May 5 that same newspaper editorialised:

> Justice and the law are not always congruent and in the haze of war the law of self-preservation is likely to prevail… [M]uch of the legalistic condemnation of bin Laden's death smacks of pointless moral posturing… [T]here are pragmatic reasons why we are all better off without bin Laden surviving to create an international propaganda circus that would have endangered even more lives… bin Laden's imprisonment would… have provided an ongoing rallying cry for terrorists in Afghanistan and further afield, possibly leading to the loss of more soldiers' lives. And fears would have been raised around the world about his fanatical supporters attacking or taking hostage Americans, Australians or any Westerners, to keep the terror alive. In the pragmatic ways of the world, not the abstract realm of attention-seeking human rights lawyers, it is a good and just thing that bin Laden is dead.[7]

Is bin Laden's death really a time to rejoice? Or is it instead a time to reflect and ask that others forgive our sins against them and that we forgive others' sins against us? The unspeakable truth is that the 'War on Terror' is a war *of* terror waged upon innocent civilians in impoverished lands – lands which have been impoverished not least by relentless Western meddling. Moreover, the War on Terror is one of America's most comprehensive diplomatic, economic and military defeats, one which the U.S. Government has inflicted upon its own subjects. In the torrents of discussion, it is likely that the following corollaries of this awful truth will be completely ignored:

• The events of 9/11 were a temporary deviation ('outlier') rather than a permanent shift: they bore no relation to previous terrorist attacks; and thus far nothing like them has recurred. Indeed, outside the Middle East and South Asia, the incidence and toll of terrorist attacks has been falling since the early 1990s. Even including the toll of 9/11, terrorism poses an extremely small and insignificant risk to the life of any American or resident of a Western country (apart from Israel). If a long series of attacks struck the U.S., each on the scale of 9/11, the risk to any one American would still be far smaller than the risks – such as diabetes, heart disease etc. – that cause people to shrug their shoulders rather than lose their heads.[8]

• It is very difficult for terrorists to obtain – much less deploy – chemical, biological or nuclear weapons, and even if they did the resulting toll of death would likely be a small fraction of what our rulers allege. Even if terrorists launched a WMD attack whose death toll were many times that of 9/11, the risk to any one person would still be very small.

6 'Justice Delayed But Finally Delivered', *The Australian,* 4 May 2011.
7 'Don't Cry for Osama bin Laden', *The Australian,* 5 May 2011.
8 In 2005, almost one-half of Americans worried that they or their families could be killed by terrorists – a level of concern higher than it was four years earlier, even though no attacks occurred in the interim (or, for that matter, since 2005). That level vastly exceeds the concern about diabetes, heart disease and stroke – each of which are many times more likely to kill.

I. What Is Terrorism?

Although there exists no universally agreed legally binding criminal law definition of terrorism, politicians routinely use the term to refer to acts of violence undertaken to achieve ideological, political or religious ends. By this conception, terrorism is a means that the relatively weak pit against the comparatively strong. People and organisations whom Western governments label 'terrorists' intend to create fear by targeting or disregarding the safety of civilians. In his study of the subject Bruce Hoffman confirms these attributes, concluding that terrorism:

• has political or ideological motives and aims;

• is violent (or threatens violence);

• seeks a far-reaching psychological impact beyond its immediate victim or target, usually by instilling fear into the general public;

• is conducted by an organisation with an identifiable chain of command or conspiratorial cell structure; and

• *is perpetrated by a sub-national group or non-state entity* (emphasis added).[9]

Hoffman's list conveniently excludes acts of state terrorism and war. Yet is there a legitimate reason to exculpate the state, given that the conventional concept of terrorism is often used by state authorities to delegitimize political opponents and legitimize the state's use of armed force? Senior American military officials – including William Odom, a three-star general who was Director of the National Security Administration under Ronald Reagan – have frankly acknowledged that the U.S. Government has long resorted to state terrorism, and have thus noted the hypocrisy of the conventional use of the term 'terrorism'.[10]

If the last dot point were omitted from Hoffman's list would not the bulk of Western foreign policy be indistinguishable from terrorism? [11] Save for this caveat was not the Anglo-American invasion of Iraq in March 2003 a war crime?[12] In light of the evidence that now

9 Bruce Hoffman, *Inside Terrorism*, Columbia University Press, 2006, p. 41.

10 In *American Hegemony: How to Use It, How to Lose It*, Odom wrote: 'As many critics have pointed out, terrorism is not an enemy. It is a tactic. Because the United States itself has a long record of supporting terrorists and using terrorist tactics, the slogans of today's war on terrorism merely makes the United States look hypocritical to the rest of the world'.

11 See in particular Myra Williamson, *Terrorism, War and International Law: The Legality of The Use of Force against Afghanistan in 2001*, Ashgate Publishing, 2009, p. 38. See also Alex P. Schmid, "The Definition of Terrorism," *The Routledge Handbook of Terrorism Research*, Routledge, 2011 p. 39.

12 A war crime is a general label used to describe one of three specific crimes enumerated and described in Article 6 of the Charter of the International Military Tribunal (IMT). Immediately after the end of the Second World War, the governments of the "Big Four" (i.e., the U.S.A., Soviet Union, Britain and France) established the IMT in order to prosecute the leaders of National Socialist Germany and its allies. The Tribunal's Charter,

crowds the public domain, a strong case can be made that between 2001-2003 American, British and Australian leaders and their advisers engaged in or acquiesced to the 'planning, preparation, initiation or waging of a war of aggression' – that is, they plotted and committed a war crime. Neither Saddam Hussein nor the Iraqi military posed a credible threat to any Western country; nor did either Saddam or his military have the faintest connection to the attacks of 9/11.[13] The many revelations by former insiders, coupled with the Downing Street Memo, Lewis ('Scooter') Libby indictment and numerous other sources, leave little doubt that these insiders intentionally deceived the world in order to invade a country that posed little threat to anybody except its own unfortunate subjects.

Accordingly, and by the precedent set at Nuremberg, the misleading and ever-changing rationales uttered before, during and after the invasion of Iraq exonerate nobody.[14] The precedent established by America and Britain at Nuremberg in 1946 condemned them in 2003: to invade a country that has neither the means nor the intention to attack you – whether or not the invaders know it when they plan and execute their invasion – is a crime against peace. In other words, whether it is waged by Nazis or neo-conservatives, a 'pre-emptive' war is necessarily a war crime. The ironic fact that between 1991 and 2003 Saddam Hussein was virtually the only person (Hans Blix completes the list) who spoke truth to power about WMDs in Iraq speaks volumes about the determination of Western politicians to twist information in order to indulge their inflexible prejudices.

published on 8 August 1945, declared in Article 6: "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

• "*Crimes against Peace*: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing."

• "*War Crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity…"

13 See in particular Justin Raimondo, 'The Lying Game', Retrieved from <http://www.antiwar.com/justin/j020703.html>.

14 The Nuremberg Tribunal explicitly prohibited *tu quoque* ("you did it too!") defences – hardly a surprise, given that it rendered victors' justice. The prosecuting powers sought to obscure the inconvenient fact that during the war their civilian and military leaders, as well as a few of their officers and enlisted men, had issued and obeyed orders that fell well short of the standards imposed upon Hitler's henchmen. This prohibition set a bad precedent. Surely justice, if it is worthy of the name, cannot be restricted to particular times, places and people? That is, if the invasion of Poland was a crime against peace when Adolf Hitler and high-ranking German officers and diplomats planned and executed it in 1939, then surely the invasion of Iraq, when planned and committed in 2001–2003 by George W. Bush, Tony Blair, John Howard and their military and diplomatic subordinates, is no less a crime against peace?

Table 1: Some Recent Victims of Western Democratic Aggression

Source	Number Iraqi Civilian Deaths Attributable to the Anglo-American Invasion and Occupation	From March 2003 to …
Iraq Body Count	80,419 to 87,834 civilian deaths reported in English-language media (including Arabic media translated into English)	Jan 2008
Opinion Research Business survey	1,033,000 violent deaths (range of 946,000 to 1,120,000) as a result of the conflict	Aug 2007
Iraqi Health Ministry survey	151,000 violent deaths (range of 104,000 to 223,000) out of 400,000 excess deaths due to war	Jun 2006
Lancet survey	601,027 violent deaths out of 654,965 excess deaths	Jun 2006

Moreover, and again in light of the body of evidence available to anybody prepared to consider it dispassionately, it appears that senior American and British politicians (and some military personnel obeying their orders) have committed 'violations of the laws or customs of war' including 'murder . . . of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war... plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity'. Acts that fit this description occurred at Falluja, Haditha, Mahmoudiya, Samarra, Tikrit, the Abu Ghraib Prison and other locations.

A. *War on Terror or a War of Terror?*

Is terrorism a crime against the person, or is it an act of war against the state? Although the U.S. Government and media have not, to my knowledge, explicitly asked this question, their rhetoric suggests that since 11 September 2001 they have not for a minute doubted the answer. 'The deliberate and deadly attacks which were carried out yesterday against our country were more than acts of terror. They were acts of war. This will require our country to unite in steadfast determination and resolve. Freedom and democracy are under attack,' declared George W. Bush on 12 September 2001.

According to Wikipedia, 'the War on Terror is an international military campaign led by the United States and the United Kingdom with the support of other North Atlantic Treaty Organisation (NATO) as well as non-NATO countries. Originally, the campaign was waged against al-Qaeda and other militant organizations with the purpose of eliminating them'. That last sentence implies that the War of Terror has vastly over-promised and under-delivered, and has cost far more than even its harshest critics ever envisaged. It has failed to achieve its original goals, and has spawned negative unintended consequences.

On 16 September 2001, George W. Bush first uttered the phrase 'war on terror'. On 20 September, during a televised address to a joint session of Congress, he launched it: 'Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated'. Barack Obama has

rarely used the phrase, but in his inaugural address on 20 January 2009 he declared: 'Our nation is at war, against a far-reaching network of violence and hatred'. In March 2009 his administration requested that American military personnel avoid the use of the term, and that they instead adopt the phrase 'Overseas Contingency Operation'.[15]

Given that this war's enemy is at best indistinct and at worst unidentifiable, and that military means have historically seldom been able to quell terrorism – and, indeed, have often worsened it – its critics have contended that the term 'war' is misconceived.[16] In Britain, the Director of Public Prosecutions and head of the Crown Prosecution Service, Ken McDonald, has stated that the perpetrators of acts of terrorism such as the 7 July 2005 bombings in London are not 'soldiers' or 'combatants' in a war, but 'inadequates' for whom the criminal justice system is the proper jurisdiction.[17] On 19 September 2008, the RAND Corporation presented to the United States House Armed Services Committee the results of a comprehensive study entitled *Defeating Terrorist Groups*. It concluded 'by far the most effective strategy against religious groups has been the use of local police and intelligence services, which were responsible for the end of 73% of [terrorist] groups since 1968'. RAND recommended that the military 'should generally resist being drawn into combat operations in Muslim countries where its presence is likely to increase terrorist recruitment'.

Other critics, such as Francis Fukuyama, have echoed William Odom and go much further: because terrorism is not an enemy but a tactic, a 'war on terror' obscures vital differences between conflicts and launches a war that by definition is unwinnable. As the linguist George Lakoff has argued, terror is an abstract noun (concept).[18] Therefore a war on terror is a logical impossibility – and strong evidence of its proponents' woolly thinking. 'Wars' on ambushes, seeking and turning flanks, patrolling the perimeter, maintaining reconnaissance, creating and using obstacles and defences, using ground to one's best advantage, etc. – not to mention forks, skewers, batteries, discovered attacks, undermining, overloading, deflection, pins and interference – are equally laughable. Lakoff concludes: "Terror cannot be destroyed by weapons or signing a peace treaty. A war on terror has no end." During a visit to the U.S. on 30 July 2007, the British Prime Minister Gordon Brown let the cat out of the bag when he defined the War on Terror as 'a generational battle'.

George W. Bush has effectively conceded that the War on Terror will be perpetual and therefore unwinnable. No matter how many terrorists one captures or how many terrorist groups one extinguishes, if one addresses symptoms rather than causes of terrorism then new terrorists and groups will constantly arise. In August 2005, the Oxford Research

15 See Scott Wilson and Al Kamen, "'Global War on Terror' Is Given New Name," *The Washington Post*, 25 March 2009.
16 See, for example, Todd Richissin, "'War on Terror' Difficult to Define," *The Baltimore Sun*, 2 September 2004.
17 'There Is No War on Terror in the UK, says DPP," *The Times*, 24 January 2007
18 'War on Terror, Rest in Peace', Retrieved from <http://www.alternet.org/story/23810/war_on_terror%2C_rest_in_peace>.

Group reported "al-Qaeda and its affiliates remain active and effective, with a stronger support base and a higher intensity of attacks than before 9/11 … Far from winning the 'war on terror', the second George W. Bush administration is maintaining policies that … are actually increasing violent anti-Americanism". Accordingly, to declare (as Bush did) that the war on terror 'will not end until every terrorist group of global reach has been found, stopped and defeated' is to concede that it will never end.

The notion of a war against terrorism – and the underlying insistence that terrorism is an act of war against the state rather than a crime against the person – is not just logically untenable: it has ensured that, like the state's other wars such as the War on Drugs and War on Poverty, it will fail abysmally. The War *on* Terror has become a war *of* terror.

B. *What Does Al-Qaeda Want?*

In 'Sizing Up the New Toned-Down Bin Laden', Don Van Natta, Jr. wrote:

> What does Osama bin Laden want? The vexing question emerged again last week with the release of an audiotape on which the al-Qaeda leader seems to be speaking. On it, he applauds the December 6 [2004] attack against the United States Consulate in Jidda, Saudi Arabia, and urges the toppling of the Saudi royal family.
>
> The tape indicated that bin Laden has apparently moved the fomenting of a revolution in his Saudi homeland toward the top of his lengthy and ambitious wish list, which also includes the reversal of American foreign policy in the Middle East, the retreat of the American military from the Arabian Peninsula and the creation of a Palestinian homeland.[19]

Why do terrorists attack the West? Not because we're here, but because our rulers and their military forces are over there. Terrorists retaliate against the West not because we're Westerners, but because our political masters relentlessly meddle, oppress, shoot, bombard and otherwise help to make life (particularly in the Middle East) even more miserable than local despotic governments have already made it.[20]

On 11 March 2005, *Al-Quds Al-Arabi* released extracts from Saif al-Adel's document entitled *Al-Qaeda's Strategy to the Year 2020*. This strategy comprises five stages:

1. Provoke the United States and its allies into the invasion of a Muslim nation.

2. Incite local resistance to the occupying forces.

19 *The New York Times*, 19 December 2004.

20 See in particular three books by Chalmers Johnson. The first is *Blowback: The Costs and Consequences of American Empire* (Holt Paperbacks, 2004); the second is *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (Metropolitan Books, 2004); and the third is *Nemesis: The Last Days of the American Republic* (Metropolitan Books, 2007).

3. Expand the conflict to neighbouring countries, and engage the U.S. in a long and widespread war of attrition.

4. Develop al-Qaeda into an ideology and set of operating principles that can be loosely franchised in other countries without requiring direct command and control; and via these franchises incite attacks against the U.S. (and countries allied to it) until they withdraw from the conflict.

5. Bleed the U.S. economy (and those of the nations whose militaries run fools errands for Uncle Sam) so severely that it finally collapses under the strain of too many military engagements in too many places; and more generally to prompt the worldwide economic system which depends upon the largesse of the U.S. also to collapse – leading to global political instability, which in turn will allegedly beget a global jihad led by Al-Qaeda and a Wahhibi Caliphate will then be installed across the world.[21] Regarding the economic collapse of the U.S., Abdel Bari Atwan concludes: 'If this sounds far-fetched, it is sobering to consider that this [strategy] virtually describes the downfall of the Soviet Union'.[22]

A book by Robert Pape of the University of Chicago entitled *Dying to Win: The Strategic Logic of Suicide Terrorism* flatly contradicts many of the mainstream's most cherished and fervent beliefs. Based on an analysis of every known case of suicide terrorism from 1980 to 2003 (315 attacks as part of 18 campaigns), Pape concludes that there is 'little connection between suicide terrorism and Islamic fundamentalism, or any one of the world's religions … Rather, what nearly all suicide terrorist attacks have in common is a specific secular and strategic goal: to compel modern democracies to withdraw military forces from territory that the terrorists consider to be their homeland'.[23] 'The taproot of suicide terrorism is nationalism,' he argues; it is 'an extreme strategy for national liberation'.[24] Pape's research has examined groups ranging from al-Qaeda to the Sri Lankan Tamil Tigers. Notably, he also substantiates a growing body of literature that finds that the majority of suicide terrorists do not come from an impoverished or uneducated background, but rather have middle class origins and a significant level of education.

21 According to Michael Scheuer (*Imperial Hubris: Why the West is Losing the War on Terror*, Potomac Books, 2004) Osama bin Laden has repeatedly demanded that the U.S. make five changes to its foreign policy: i) end all aid to Israel; ii) withdraw military forces from the Arabian Peninsula and all Muslim territory; iii) end all involvement in Afghanistan and Iraq; iv) end U.S. support for the oppression of Muslims in China, Russia, India and elsewhere; and v) restore Muslim control of the Islamic world's energy resources for the benefit of Muslims. A sixth point is the replacement of U.S.-backed regimes in the Muslim world with Islamic ones, but that is really an exhortation on the Muslim population.

22 *The Secret History of Al-Qaeda*, University of California Press, 2006, p. 221.

23 *Dying to Win: The Strategic Logic of Suicide Terrorism,* p. 4.

24 Ibid. pp. 79-80.

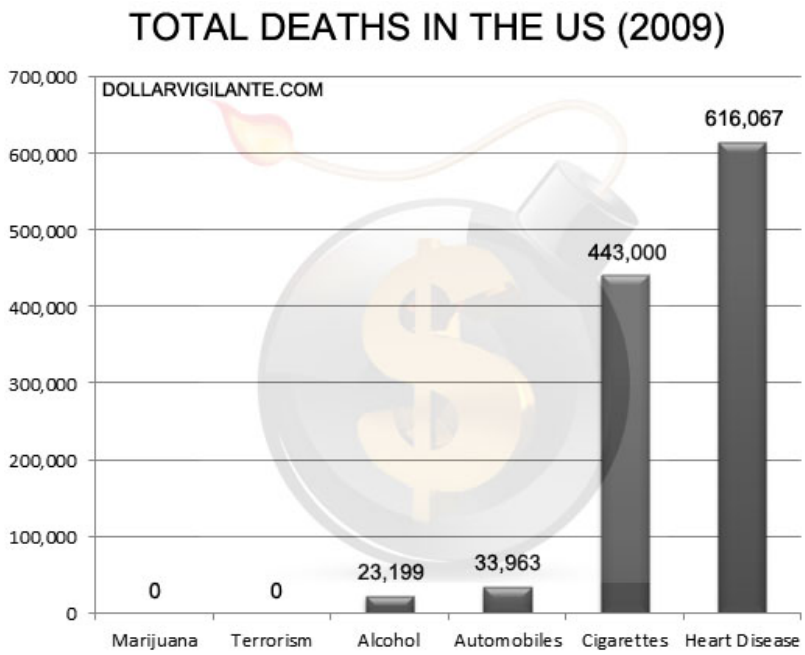
II. Odds Are, You Don't Know How Miniscule The Odds Are

Approximately 3,000 people died in the attacks on 11 September 2001. At the time, the population of the U.S. was around 281 million. The chance that the attacks killed a randomly-selected American resident was therefore 0.00106%, or 1 in 93,000. Similarly, the chance that any randomly-selected person who resided in the New York metropolitan area died was 0.025%, or 1 in 4,000. If a terrorist attack had occurred in the U.S. once each month during 2001, and if each attack killed 3,000 people, then the total number of dead would have been 36,000. That sounds horrific, and it is; but it would not have posed a mortal – or even an unusual – threat to the average American. The chance that this carnage would kill a randomly-selected American would have been about 0.0127%, which is roughly 1 in 7,750. By comparison, the annual risk that an American dies in a motor-vehicle accident is 1 in 6,498. So why hasn't the annual carnage on America's roads – which has existed for a century – prompted Washington to unleash a War on Car Crashes? Is it because it's much more difficult to portray the American Dream as a bogeyman than a Muslim?

According to the RAND-MIPT terrorism database – which seems to be the most comprehensive available – 10,119 international terrorist incidents occurred around the world between 1968 and mid-2007. Those attacks took the lives of 14,790 people (an average of 1.5 people per incident), and thereby extracted an average annual worldwide death toll of 379. Clearly, what the world and particularly Americans saw on 11 September 2001 bore absolutely no relation to what had occurred previously – or what has transpired since. Terrorism (like road crashes, domestic violence, etc.) is dreadful, and every death it inflicts is a crime. But 379 deaths per year is, on a worldwide scale and relative to the total number of deaths from all causes, a microscopic number. In the U.S. alone in 2003, 497 people accidentally suffocated in bed; 396 were unintentionally electrocuted; 515 drowned in swimming pools; police officers killed 347 and garden-variety criminals (that is, criminals other than terrorists) murdered 16,503 Americans.[25]

It is also important to emphasise that the average worldwide number of people killed annually in terrorist incidents, 379, vastly overstates the actual risk faced by Americans, Britons and residents of other Western countries. Most of these deaths occur in distant and tumultuous regions like Kashmir and Sri Lanka. In North America between 1968 and 2007, all terrorists incidents combined – including the attacks on 11 September 2001 – killed 3,765 people, only slightly more than the number of Americans killed whilst riding a motorbike in the single year 2003. In Western Europe, the death toll from terrorism between 1968 and April 2007 was 1,233. That's an average of 32 deaths per year – a mere 6% of the number of lives (500) that experts believe are lost every year in Europe to naturally-occurring radon gas.

25 For background and elaboration, see *Injury Facts* published by the American Safety Council.



In 2005, the U.S. Government requested that K.T. Bogen and E.D. Jones of the Lawrence Livermore National Laboratory conduct a comprehensive statistical analysis of the RAND-MIPT database.[26] Bogen and Jones concluded that, for the sake of a clear understanding of the risk posed by terrorism, the world should be divided into two areas: the State of Israel and Everywhere Else. In Israel, terrorism is indeed a serious threat – and among Palestinians, the Israeli military is an even bigger threat. In Israel, the chance of injury or death through terrorism over a lifetime of 70 years ranged between 0.1% and 1% -- which is high enough that most people in that country will know someone who has been injured, if not killed, in a terrorist attack. But in the rest of the world, the lifetime risk of injury or death is between 1 in 10,000 and 1 in one million. Compare those odds to an American's lifetime risk of being killed by lightning (1 in 79,746), being killed by a venomous plant or animal (1 in 39,873), drowning in a bathtub (1 in 11,289), committing suicide (1 in 119) or dying in a car crash (1 in 84). Bogen and Jones observed that if the risk posed by terrorism were considered in a public-health context, it would certainly fall within the range that regulators called *de minimis* – in plain English, 'too small for concern'.

A. *But You're Ignoring the Existential Threat of WMDs!*

Few Western politicians, regardless of their partisan stripe, accept the above premises and reasoning. Hence they reject the conclusion that terrorism poses a minimal risk to Westerners. Instead, they maintain that this conclusion ignores the 'real risk' of terrorism. The statistics that demonstrate that terrorism isn't a major killer – and at worst is a very

26 See 'Risks of Mortality and Morbidity from Worldwide Terrorism: 1968–2004', *Risk Analysis,* 26:1, February 2006, pp. 45-59.

minor risk – are irrelevant. The declining incidence of terrorist attacks around the world since the early 1990s in most parts of the world is also irrelevant. The fact that 9/11 was very unlikely to succeed, almost didn't and probably wouldn't if it were tried again – that, too, is considered irrelevant. The mainstream shouts in unison: 'if terrorists obtain weapons of mass destruction (WMDs), then they will inflict the sort of devastation that in the past only the state's armies, navies and air forces could wreak!' This risk, they say, is unprecedented; accordingly, they insist that the risk of terrorism vastly exceeds virtually all others. Thus terrorism is an 'existential risk' – one which has the potential to destroy, or drastically restrict, human civilisation. According to Michael Ignatieff:

> Consider the consequences of a second major attack on the mainland United States – the detonation of a radiological or dirty bomb, perhaps, or a low-yield nuclear device or a chemical strike in a subway. Any of these events could cause death, devastation and panic on a scale that would make 9/11 seem like a pale prelude. After such an attack, a pall of mourning, melancholy, anger and fear would hang over our public life for a generation.

An attack of this sort is already in the realm of possibility. The recipes for making ultimate weapons are on the Internet, and the materiel required is available for the right price. Democracies live by free markets, but a free market in everything – enriched uranium, ricin, anthrax – will mean the death of democracy. Armageddon is being privatized, and unless we shut down these markets, doomsday will be for sale. Sept. 11, for all its horror, was a conventional attack. We have the best of reasons to fear the fire next time.[27]

Almost every word of this passage is nonsense, and we need merely to look at Israel's history in order to reject it. International terrorism in its modern form dates from the 1960s, and in all that time Israelis have suffered grievously from its ravages. For many of the world's worst terrorists – those who do not hesitate to strap explosives to children – the State of Israel is the object of intense hatred. Their most ardent desire is to push the tiny country into the Mediterranean, and these terrorists have regularly enjoyed the sponsorship of Middle Eastern states that share the dream of destroying the 'Zionist entity' but don't dare to attack it directly. And yet Israel has never suffered an attack by terrorists armed with WMDs. That seems a strong indication that getting and using such weapons isn't nearly as easy as most of us think – and as our rulers would have us to believe.

In principle, terrorists could obtain viruses, nuclear weapons and the like from black markets; realistically, however, such scenarios are the stuff of James Bond movies and silly newspaper articles trafficking in the realm of rumor and speculation. Terrorists could also obtain WMDs from nations that possess such weapons and would like to see Israel and the U.S. suffer. But the henchmen of any country pondering such a move has to consider the distinct possibility that if their role in such an attack were uncovered, then their country would quickly be reduced to rubble – either by Israel's conventional or nuclear forces.

27 See 'Lesser Evils', *The New York Times Magazine*, 2 May 2004.

Annihilation is a significant deterrent: Osama bin Laden's followers may desire martyrdom – but Kim Jong Il and Iranian dictators do not. In addition they must worry that 'the surrogate cannot be trusted, even to the point of using the weapon against its sponsor,' noted the 1999 report of the Gilmore Committee.[28] These considerations have for decades prevented states from supplying terrorists with nuclear, chemical or biological weapons.

That leaves the Do-It-Yourself option. Many media reports – like that of Ignatieff – imply that WMDs can be manufactured with little more than an undergraduate degree, a recipe hacked from the Internet and some spare space in the garage. In actual fact, found the Gilmore Committee:

> The hurdles faced by terrorists seeking to develop true weapons of mass casualties and mass destruction are more formidable than is often imagined. This report does not argue that terrorists cannot produce and disseminate biological and chemical agents capable of injuring or indeed killing relatively small numbers of persons … or perhaps inflicting serious casualties even in the hundreds. The point is that creating truly mass-casualty weapons – capable of killing tens of thousands, much less in the thousands – requires advanced university training in appropriate scientific and technical disciplines, obtainable but nonetheless sophisticated equipment and facilities, the ability to carry out rigorous testing to ensure a weapon's effectiveness, and the development and employment of effective means of dissemination. [These demands are so formidable that they] appear, at least for now, to be beyond the reach not only of the vast majority of existent terrorist organizations but also of many established nation-states.

Similarly, a report entitled *Weapons of Mass Destruction – the Terrorist Threat* issued by the Congressional Research Service in 1999 concluded:

> Terrorist ability to produce or obtain WMD may be growing due to looser controls of stockpiles and technology in the former Soviet Union and the dissemination of technology and information. However, WMD are significantly harder to produce or obtain than what is commonly depicted in the press and today they probably remain beyond the reach of most terrorist groups. The Central Intelligence Agency believes that it is likely that terrorists will continue to choose conventional explosives over WMD.

The obsession with Islamists has clouded judgment: politicians in the West have forgotten that the first religious zealots to obtain and deploy WMDs belonged to the Japanese cult

28 The U.S. Secretary of Defense, in consultation with the Attorney General, the Secretary of Energy, the Secretary of Health and Human Services and the Director of the Federal Emergency Management Agency entered into a contract with the RAND National Defense Research Institute (NDRI), to establish the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. Commonly known as the Gilmore Committee or the Gilmore Commission, it released it first report in 1999 and its fifth and final report in December 2003.

of Aum Shinrikyo.

Led by Shoko Asahara, Aum was fixated on the idea of inflicting mass-casualty terrorist attacks in hopes of sparking an apocalyptic war. Aum's resources were formidable. At its peak, the cult boasted a membership of 60,000 and offices in Australia, Germany, Russia and the U.S. It had at least several hundred million dollars of cash, and perhaps as much as $1 billion of assets. And it had highly skilled members: Aum went to the best universities in Japan and aggressively courted postgraduate students in biology, chemistry, physics and engineering. Aum also gave them some of the finest equipment and facilities money could buy. At one point, its membership included 20 scientists working on biological weapons, and another 80 investigated chemical weapons. Aum also sought nuclear weapons, and even purchased a 500,000-acre sheep station in a remote part of Australia with plans to mine uranium and ship it to Japan where, according to the Gilmore Committee, 'scientists using laser enrichment technology would convert it into weapons-grade nuclear material'. In Russia, the group bought large quantities of small arms 'and is known to have been in the market for advanced weaponry, such as tanks, jet fighters, surface-to-surface rocket launchers and even a tactical nuclear weapon'.

In short, Aum overlooked no opportunity to wreak mass havoc. When in October 2002 an outbreak of the Ebola virus occurred in central Africa, Shoko Asahara personally led 40 of his followers to the region on what was allegedly a humanitarian mission. Officials now believe Aum attempted to collect samples of the virus so it could be mass-produced in Japan. Their efforts failed.

This was hardly Aum's only failure. The cult's first known bio-terror attack involved the spraying of botulinum toxin – the extremely deadly substance that causes botulism – from three trucks at targets that included American naval bases, an airport, Japan's parliament and the Imperial Palace. No one got sick; indeed, nobody even knew there had been attacks – the truth was discovered three years later. Another botulinum attack in July 1993 also failed. That same month, the cult's first anthrax attack failed. In all, Aum made nine attempts to inflict mass death with two of the most feared bioterrorism weapons. They killed no one. It seems that not even Aum with all its resources could overcome the many practical barriers to isolating virulent forms of the deadly pathogens and disseminating them broadly.

Hence the cult switched its focus to chemical weapons and nerve agents. Here, Aum met with considerable success, producing substantial quantities of mustard gas, sodium cyanide, VX and sarin – the latter two being among the deadliest nerve gases. When police finally raided Aum's facilities in 1995, the cult possessed enough sarin to kill an estimated 4.2 million people. Does that terrify you? Quite the contrary: it should reassure you. After all, here was a cult that wanted to kill millions, and which had cleared the many barriers between it and the possession of weapons that were at least theoretically capable of doing just that. And yet Aum *still* failed to cause mass death.

On 27 June 1994, Aum's members drove a converted refrigerator truck into a residential

neighborhood of Matsumoto, Japan. Inside, terrorists activated a computer-controlled system that heated liquid sarin to a vapour and blew it into the air with a fan. The wind conditions were perfect, slowly nudging the deadly cloud toward windows left open to the warm night air. Seven people died and more than 140 suffered serious injuries. On 20 March 1995, Aum tried another delivery method. Five members dressed in business suits and carrying umbrellas stepped aboard five different trains in the heart of Tokyo's notoriously-crowded subway system. In all, they carried 11 plastic bags filled with sarin. Placing the bags on the floor, the terrorists poked holes in them with their umbrellas and fled the trains. Three of the 11 bags failed to rupture. The other eight spilled roughly 159 ounces of sarin. As the liquid spread, it evaporated and vapors rose. Twelve people died. Five more were critically injured but survived. Another 37 were deemed severely injured, while 984 suffered modest symptoms.

Japanese authorities, belatedly alerted to Aum's scope and intentions, raided its properties all over the country. What they discovered astounded them. Despite the cult's vast resources, despite its murderous ambitions, despite its many efforts to acquire the means of slaughter and despite the repeated attacks, the police had little idea what was happening in their midst. It is hard to imagine a worse scenario: a fanatical cult with a burning desire to inflict mass slaughter has heaps of money, international connections, excellent equipment and laboratories, scientists trained at top-flight universities and years of near-total freedom to pursue its operations. And yet Aum's 17 attacks with chemical and biological weapons took far fewer lives than the 168 people who died in Oklahoma City when Timothy McVeigh detonated a single bomb made of fertiliser and motor-racing fuel.

The Gilmore Committee concluded:

> Aum's experience suggests – however counter-intuitively or contrary to popular belief – the significant technological difficulties faced by any non-state entity in attempting to weaponize and disseminate chemical and biological weapons effectively.

Crucial to this failure, the Committee noted, is the atmosphere within a conspiracy fuelled by mania: 'Aum scientists, socially and physically isolated and ruled by an increasingly paranoid leader, became divorced from reality and unable to make sound judgments'. For terrorists with dreams of apocalypse, this is very discouraging; for exactly this reason, it should comfort the rest of us. Al-Qaeda and other Islamist terrorists possess very few of Aum's advantages. They lack the money, infrastructure and equipment, the freedom from scrutiny and the ability to travel openly. Most importantly, they do not have the scientists – al-Qaeda has tried to recruit them but has consistently failed, which is the main reason they have never shown even a fraction of Aum's technical sophistication.

Aum's experience demonstrates that the probability of mass-casualty terrorist attacks using chemical or biological weapons is greater than zero, but that it is far closer to zero than to one. Terrorists quickly encounter many serious technical and logistical obstacles if they start down this path. That's a compelling reason why even the most sophisticated and ruthless terrorists have stuck to bombs and bullets – or, in the case of the worst terrorist

attack in history, box cutters and aeroplane tickets.

Of course, the calculations change when weapons go nuclear. 'Perhaps the only certain way for terrorists to achieve *bona fide* mass destruction would be to use a nuclear weapon,' wrote the Gilmore Committee. A nuclear attack would undoubtedly be an almost unimaginable horror, and the contemplation of that horror inevitably stirs emotions strong enough to overpower any thought of probabilities. But probability is always important in dealing with risks, especially catastrophic risks. By far the biggest risk that humanity faces is not nuclear terrorism: it is a collision with an asteroid or comet of planet-killing size. If we considered only the potential destruction of such an event and ignored its probability – that is, if we launched a War on Mega-Asteroids akin to a War on Terror – we would pour trillions of dollars into the construction of vast, impenetrable and globe-girdling defence systems to protect our leaders while many of the rest of us died. But virtually everybody would say, quite rightly, that that's a waste of resources because the probability of mass extinction by collision is tiny and the money could do a lot more good down on earth. We shouldn't ignore the threat from asteroids; at the same time, we shouldn't go crazy about it. The same cool head should be brought to bear with respect to nuclear terrorism.

B. *How Likely Is the Mushroom Cloud? What Damage Might It Cause?*

'The problem here,' Condoleeza Rice said, 'is that there will always be some uncertainty about how quickly [Saddam] can acquire nuclear weapons. But we don't want the smoking gun to be a mushroom cloud'. Similarly, Obama has identified nuclear terrorism as 'a threat that rises above all others in urgency … There is no graver danger to global security than the threat of nuclear terrorism and no more immediate task for the international community than to address that threat'. What is the probability that a terrorist cell launches a nuclear attack that destroys a city? It is not possible to calculate. Why not? Because it has never happened and thus there are no numbers to crunch. In the absence of data, all we can do is look at the facts about the construction and availability of nuclear weapons and make a judgment call.

The Gilmore Committee did just that. It started by noting that, despite the widespread fears that prevailed during the 1990s, the collapse of the Soviet Union did not cause the release of ex-Soviet nukes into the black market. In particular, reports that Russia's notorious 'suitcase nukes' went missing did not withstand scrutiny. In any event, the devices require regular, highly technical and expensive maintenance in order to function properly. Even if some disgruntled Russian officer did manage to sell a bomb, the buyers would still have the difficult job of smuggling and detonating it – the latter being particularly difficult because nuclear devices typically have tamper-proof seals and other security measures designed to prevent precisely this scenario.

As for DIY, it's important to emphasise that it's simply not something that the average geek can do in the average suburban garage. 'Building a nuclear device capable of producing mass destruction presents Herculean challenges for terrorists and indeed even for states with well-funded and sophisticated programs,' the Gilmore Committee wrote. In the

1980s, Saddam Hussein poured Iraq's vast oil-funded resources into a nuclear program. But before the first Gulf War he failed to produce even a single weapon. Apartheid South Africa did build a small nuclear arsenal, but it took scientists and engineers –endowed with sophisticated infrastructure – four years to build their first gun-type system (the crudest form of nuclear bomb).

And yet, however unlikely and implausible it is, it could happen. What then? By most accounts, a successful nuclear detonation in an urban centre would kill in the order of 100,000 people. Given such a death toll, the chance of any randomly-selected American being killed in the explosion would be 0.033%, or 1 in 3,000. As for the collective risk, a death toll of 100,000 is not much more than the number of Americans killed each year by diabetes – 75,000 – and it is roughly equal to the number of American lives lost annually to accidents or to infections contracted in hospitals. So simply in terms of number of lives lost, a nuclear terrorist attack would certainly be tragic but not apocalyptic.

A nuclear terrorist attack would inflict massive damage, but the claim of those such as George Tenet that it would 'destroy' the American economy is an exaggeration. Again, the best disproof of Tenet's claim is the aftermath of 9-11 itself. The attack wasn't on the scale of a nuclear detonation, of course, but the terrorists did paralyse the most important city in the U.S., halt all air travel and bring American commerce and society to a shuddering halt. Stock markets plunged – but within 40 days the DJIA returned to its level on 10 September. American exports continued to rise steadily, as did the level of debt, and although the value of global trade dipped slightly in 2001 from $8 trillion to $7.8 trillion – it was a bad year even prior to the attacks – it increased every subsequent year to $12 trillion in 2005. The American economy was not devastated and nor was globalisation reversed. Another demonstration of this point came on 29 August 2005, when Hurricane Katrina breached the levees protecting New Orleans. More than 1,500 people died, and most of the rest fled. The parallel with a nuclear strike is far from exact, but an American city was suddenly smashed and abandoned. The costs in economic terms have been estimated at $80 billion. Neither the storm nor its aftermath crippled the American economy.

C. *All the Groundless Fear Mongering, All the Bloody Time*

Westerners' reaction to the attacks of 11 September 2001 simply does not make sense. In 2005, almost one-half of Americans worried that they or their families might be killed by terrorists – a level of concern that was actually *higher* than it was four years earlier, even though no attack occurred in the interim. And that level of concern vastly exceeds the concern about diabetes, heart disease and stroke – which are many times more likely to kill.

That people's angst was wildly unrealistic in the immediate aftermath of the attacks is understandable. But why did Americans' fear rise as time passed? To understand the reason, we must revisit 12 September 2001 and George W. Bush's declaration that the events of the previous day were 'more than acts of terror. They were acts of war … Freedom and democracy are under attack'. Tony Blair poured his own rhetorical fuel onto the fire a few

days later: 'we know that they would, if they could, go further and use chemical or biological or even nuclear weapons of mass destruction'. This theme recast the destruction wrought by 9/11. According to our rulers, it was not an act of 19 fanatics armed with nothing more than box-cutters and good luck: it was definitive proof of the fantastic powers, reach and sophistication of the enemy.

How could it be otherwise? America, after all, is the greatest and most powerful and best country in the Entire History of the Whole Wide World; only an enemy of fantastic powers, reach and sophistication could possibly lay a hand, much less launch a successful attack, on The Indispensible Nation. A bellicose 'Triple-A nation', to use Obama's phrase, must have Triple-A enemies: otherwise it is simply a bully. Accordingly, to confess the truth that the attacks were an act of 19 rag-tag fanatics would be to confess that America isn't exceptional; and that's something that few Americans can bring themselves to admit. Hence the interpretation of the Best and the Brightest: the attacks of 11 September 2001 were not a horrible deviation from the terrorist norm; they were a new normal – expect more attacks of the same scale – and a sign that much worse was sure to come.

The events of 9/11 could have been framed in several ways, but George W. Bush conceived them as a global clash between mighty forces that can end only in victory or destruction. 'The civilized world faces unprecedented dangers', he declared in his State of the Union Address in January 2002. 'Unless we act to prevent it, a new wave of terrorism, potentially involving the world's most destructive weapons, looms in America's future,' the President's *National Strategy for Homeland Security* warned in 2002. 'It is a challenge as formidable as any ever faced by our nation … Today's terrorists can strike at any place, at any time, and with virtually any weapon'. In the 2003 State of the Union address, Bush said the fight against terrorism was the latest in a succession of struggles against 'Hitlerism, militarism, and communism', and that 'once again, this nation and all our friends are all that stand between a world of peace, and a world of chaos and constant alarm'. In 2007, the White House's web site called the 9/11 attacks 'acts of war against the United States, peaceful people throughout the world, and the very principles of liberty and human dignity'. Month after month, Bush and his administration hammered these themes.

The recurring theme of the Bush administration was that 'we' must act now to preclude the chance of terrorist strikes in the future and anyone who doubts their preferred strategy is either a defeatist or a traitor. Ron Suskind, the author of *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11* traces this mentality to Bush's Vice-President Dick Cheney. According to Suskind, immediately after 11 September 2001 Cheney directed that 'if there was even a one percent chance of terrorists getting a weapon of mass destruction – and there has been a small probability of such an occurrence for some time – the United States must now act as if that were a certainty'.

Hence the rapid rise of the Terrorism Industry. Almost immediately after 11 September 2001, lobbyists and politicians recognised that a foolproof way to secure legislative and executive approval for virtually any spending proposal was to assert that it was a necessary condition of national security. In *Doublespeak and the War on Terrorism*, Timothy Lynch

cites examples of this 'security'. Among the most notable are $250,000 for air-conditioned rubbish trucks in Newark, New Jersey and $900,000 for the ferries in Martha's Vineyard, Massachusetts. Its harbourmaster sheepishly admitted 'I don't know what we're going to do, but you don't turn down grant money'. Non-Governmental Organisations have also used terrorism to push their sectional barrows. Greenpeace and other foes of nuclear energy warned that terrorists could attack existing reactors, and that the construction of new ones would increase the risk that fissionable material fell into the hands of terrorists. Not to be upstaged, the Worldwatch Institute campaigned against Big Agriculture on the grounds that terrorists could infiltrate it.[29]

III. The Score After A Decade: Al Qaeda - 5, Western Democracies - 1

'Terrorism,' writes Brian Michael Jenkins, 'is actual or threatened violence calculated to create an atmosphere of fear or alarm, which will in turn cause people to exaggerate the strength of the terrorists and the threat they pose'. Yet terrorists are clearly *not* formidable foes. If they were, they'd use formidable means. It is precisely their weakness that leads them to the slaughter of innocents – which is one of the very few means available to them. Slaughter *per se* is highly unlikely to inflict a serious – never mind a mortal – blow upon their enemies. But it can and often does generate great fear, particularly when Western governments move heaven and earth in order to fan it; and fear, in turn, can trigger the (over)reactions that, terrorists hope, will advance their cause. First and foremost among these overreactions are the War on Terror, the invasions of other lands and draconian restrictions of civil liberties in the name of national security.

In that sense, George W. Bush fell hook, line and sinker into the trap which Osama bin Laden set. The inescapable truth is that during the past decade al-Qaeda has been spectacularly successful. Osama bin Laden anticipated that the attacks on 11 September 2001 would either lead to an American withdrawal from the Muslim world or an American invasion of a Muslim country. If the American military abandoned the Middle East, then its client-states – such as Egypt and Saudi Arabia – would be fatally weakened. If the American military invaded a Muslim country, then it would confirm bin Laden's claim that the 'crusader nations' were attacking Islam. It would also allow him to do to the U.S. and its allies what he did to the Soviet Union in the 1980s – that is, bleed it militarily and economically. From his point of view, the attacks on 11 September 2001 were therefore a no-lose proposition.

In the 1990s, bin Laden grandiosely 'declared war' on the U.S., but Bill Clinton wisely ignored him. After he bombed American embassies in Kenya and Tanzania, and attacked an American ship off the coast of the Arabian Peninsula, Osama's profile rose somewhat, but he had nowhere near the notoriety he required in order to become the unifying voice of fanatical Muslims who wished to eradicate their corrupt governments and fantasise

29 See, e.g., 'The Bioterror in Your Burger', Retrieved from <http://www.alkalizeforhealth.net/Lbioterror.htm>.

about a new caliphate. When Bush declared that Osama was an existential threat to the U.S., he gave Osama exactly the renown he craved. In the 1970s, the German government refused to let the Red Brigades goad it into an overreaction; after 11 September 2001, the U.S. Government delivered overreaction on a massive scale that surely exceeded bin Laden's and al-Qaeda's wildest fantasies.

Consider this passage from *The Daily Telegraph*:

> The total cost to America of its wars in Iraq and Afghanistan, plus the related military operations in Pakistan, is set to exceed $4 trillion – more than three times the sum so far authorised by Congress in the decade since the 9/11 attacks. This staggering sum emerges from a new study by academics at the Ivy- league Brown University that reveals the $1.3 trillion officially appropriated on Capitol Hill is the tip of a spending iceberg. If other Pentagon outlays, interest payments on money borrowed to finance the wars, and the $400 billion estimated to have been spent on the domestic 'war on terror', the total cost is already somewhere between $2.3 and $2.7 trillion.
>
> And even though the wars are now winding down, add in future military spending and above all the cost of looking after veterans, disabled and otherwise and the total bill will be somewhere between $3.7 trillion and $4.4 trillion … Unlike most of America's previous conflicts, Iraq and Afghanistan have been financed almost entirely by borrowed money that sooner or later must be repaid.
>
> The human misery is commensurate. The report concludes that in all, between 225,000 and 258,000 people have died as a result of the wars. Of that total, US soldiers killed on the battlefield represent a small fraction, some 6,100. The civilian death toll in Iraq is put at 125,000 (rather less than some other estimates) and at up to 14,000 in Afghanistan. For Pakistan, no reliable calculation can be made.[30]

How has al-Qaeda's strategy fared during the past decade? How has the U.S. Government's? Consider in this light the points mentioned earlier:

> 1. Al-Qaeda has successfully provoked the United States and its allies into the invasion of Muslim nations. Preliminary score: al-Qaeda 2 (one point each for Afghanistan and Iraq), U.S. 0.
>
> 2. Al-Qaeda has successfully incited local resistance to the occupying forces. Preliminary score: al-Qaeda 4 (one point each for Afghanistan and Iraq), U.S. 0.
>
> 3. Al-Qaeda has successfully expanded these conflicts to neighbouring countries, and engaged the U.S. in long and widespread wars of attrition. Preliminary score:

30 London, 8 July 2011.

al-Qaeda 5 (one point for Pakistan), U.S. 0.

4. Al-Qaeda has morphed into an ideology and set of operating principles that can be loosely franchised in other countries such as Yemen and Somalia without requiring direct command and control; and via these franchises incites attacks against the U.S. and countries allied to it until they withdraw from the conflict. Preliminary score: al-Qaeda 5 (no points – yet – for this criterion), U.S. 1 (let us give them the benefit of the doubt so that we avoid a whitewash).

5. Al-Qaeda has bled the U.S. economy and those of its allied nations. Will they collapse partly under the strain of too many military engagements in too many places? Preliminary score: al-Qaeda 5 (no additional points – yet), U.S. 1.

Each anniversary of the attacks of 11 September 2001 is a time to reflect, mourn, forgive and ask forgiveness. For the sake of their own sanity, Westerns should forgive the fanatics who planned and launched the attacks on 11 September 2001. Westerners must also beg forgiveness for the meddling of Western political and military fanatics in Muslim lands, ranging from Iran and Saudi Arabia in the 1940s to virtually the entire Arab world today.

The Journal Of
Peace, Prosperity & Freedom

Chris Leithner

The Evil Princes of Martin Place: The Reserve Bank of Australia, the Global Financial Crisis and the Threat to Australians' Liberty and Prosperity

Reviewed by Steve Kates

Moral wrong is related to intentionality. You must wish to do harm if the harm you do is to be a matter of blame. Whatever else the people who run our central bank may intend, they are trying to do good as best they can. To describe the Reserve Bank board as "the evil princes of Martin Place" immediately removes the book from being about economic policy to one about morality and blame.

In spite of that, and to my surprise, the first eight chapters turned out to be a very interesting discussion on Austrian monetary theory and the Austrian theory of the cycle. I have not read everything and there may well be other, better books around. But if you would like to understand the Austrian view of how one of the most crucial parts of our economic system works, and why the way it now operates creates dangers for our prosperity, this would be a very good place to start.

But going back to the title on a different matter this time, I think it's unfortunate that the author chose a title that would make a potential reader assume it is a book mostly about Australia and its central bank when it is a book about the nature of economic policy and central banking everywhere. And the Global Financial Crisis, as the book makes clear, was not a local Australian event but one which began in the United States and has

affected economies across the world. The title will therefore and unfortunately deter many people overseas who might have found the book useful from picking it up because of the implication embedded in the title that it is about Australia without a more general international interest.

Moreover, the arguments of the book are built on a foundation of Christian theology and Roman jurisprudence which may not be everyone's cup of tea and which might also put some people off. It does take some effort to see the point because of this context. But in many ways the historical journey through Roman law, and the distinctions that were important these couple of thousand years ago, provides a basis for seeing that there are other ways of looking at these issues that once did exist and are now lost. I found this discussion fascinating.

The book also provides an historical review of the various issues that is quite extensive. This is the kind of sentence one does not come across very often in anything written nowadays about economics: "From the earliest days of banking, namely in Babylonia perhaps as early as 3500 BCE . . ." but it is representative of Leithner's approach.

And this is the message that the author wants you to understand. Economies in which normal banking practice systematically creates loans from demand deposits necessarily suffer economic crises, and these economic crises include the failure of large numbers of banks. Therefore, we should stop banks from lending out the money they hold on behalf of other people. A bank can be a place where deposits are held in relative safety and can be used to transfer money from one person to another. But as soon as banks are permitted to lend money out to other people so that there is less than 100% of the value of deposits on hand in the bank when depositors might want their funds, we are well on the way to banking crises, instability, unemployment and inflation. If you put a stop to fractional reserve banking, where deposits are created from nothing and lent to third parties, these kinds of crises will come to an end and most financial instability of this sort will cease.

This is an arguable proposition and while I don't think it is a complete story it is a story worth thinking about. The value in this approach is to return theory towards the theory of the cycle where broader causes of recessions and large scale unemployment are seen as intrinsic to the way in which the economy operates. Crises and recessions are not blue sky events but have actual endogenous causes unrelated to deficient demand. It is a different way of thinking about economic issues which has now almost totally disappeared from mainstream economic thought.

But really, the context in which he puts his economic arguments are guaranteed to ensure that hardly anyone at all will pay attention to what he says. What sense can it make to discuss any part of our economic system under the heading, "The Central Bank: Mere Idol or Agent of Satan?" (p 527). He may wish to discuss economic policy and the proper theory behind it, but once he decides to indulge himself in that kind of rhetorical overkill he is ensuring that no one pay the slightest attention to anything he says. Even though there are major moral issues involved which are properly part of any such discussion,

theological arguments are not economic arguments. There will be no converts based on such arguments. This kind of statement loses the battle even before there is any engagement at all.

And then there the title of Chapter 9 to consider. After eight chapters that deal with the nature of the fractional reserve system and the problems it might or might not cause, he titles this chapter: "The Monetary Roots of Democratic Pathologies". And then the first sub-heading in the chapter: "Democracy is Evil!" in bold black letters. Seriously, how completely off putting can any statement be. While nothing is perfect, as Churchill famously said, "democracy is the worst form of government except all those other forms that have been tried from time to time". Those of us who live in democracies like them and do not wish to be rid of them. No one who is apt to read this book would like to live in any other kind of political system. Had he looked to find some means to discredit his own ideas as thoroughly as possible, it is hard to think how he might have done so more comprehensively than this.

And it's not as if he puts up an alternative to democracy. Whatever may be the economic consequences of democracy, the economic consequences of any other form of political system are far far worse. If Leithner doesn't think so, he should at least explain why. To say democracy is bad, and the solution to our economic problems is to get rid of democracy, only makes me think that these problems will never be completely fixed and so we should get on with life.

The bottom line. There is an Austrian theory of the cycle. There is an argument to be made against fractional reserve banking. There are useful theological concepts that might be drawn into these arguments. But when all is said and done, the way the book is written, the political and moral judgements overwhelm whatever economic arguments there are. There is a very interesting book to be written that lurks inside the book that was finally published. If you are able to get past the politics, the morals and the theology, you might find this a very interesting book to read. But these are obstacles that will make it hard for many to see the point.

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The Journal Of
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Ron Paul

Liberty Defined: 50 Essential Issues that Affect Our Freedom

Reviewed by Mark Hornshaw

Written by possibly the most influential libertarian of our generation, *Liberty Defined* is a must read book. In this collection of essays, Ron Paul lays out a libertarian philosophy on 50 topical issues, arranged in alphabetical order from "Abortion" to "Zionism". It is a book that can be read in any order you like. But no matter where you start to read, you have to read more.

'We need intellectual leaders' said Austrian economist F.A. Hayek, 'who are prepared to resist the blandishments of power and influence and who are willing to work for an ideal, however small may be the prospects of its early realization.[1] Such intellectual leaders are hard to find!

A former obstetrician, Ron Paul is a Congressman from Texas and a candidate for the Republican presidential nomination in 2008 and 2012. But nowhere in his book does Paul take even the slightest opportunity to indulge in electioneering or political posturing. Every line and chapter would be equally as potent whether Ron Paul ran for presidential office or not. Nowhere does he say that *he* is the solution to a problem, if only people would vote for him. At its heart, the book is not about policy prescriptions at all; it is the opposite to the usual political message. It's about pulling back the proverbial curtain

1 F. A. Hayek, 'The Intellectuals and Socialism', in *Studies in Philosophy, Politics, and Economics,* University of Chicago Press, 1967, p. 194.

and revealing political schemes and wizardry as being inept and, more often than not, counterproductive. It does this forthrightly, bravely and uncompromisingly – and not just 'for a politician' but for anybody.

Ron Paul uses each of the 50 mini essays to hack away at the thick ivy of mystique surrounding government regulations, taxes, programs and schemes. He takes every opportunity to show that governments are the cause, not the solution, to human problems – whether they are related to 'Slavery' or 'Education' or any other area of concern. The legendary libertarian writer Murray N. Rothbard implores that "the libertarian must never allow himself to be trapped into any sort of proposal for 'positive' governmental action; in his perspective, the role of government should only be to remove itself from all spheres of society just as rapidly as it can be pressured to do so'.[2]

In these 50 short chapters, nothing is spared from the microscope and the axe, not even the notion of 'democracy':

> As much as I defend the freedoms of everyone, those freedoms should be limited in the following sense: People should not be able to vote to take away the rights of others. And yet this is what the slogan democracy has come to mean domestically. It does not mean that the people prevail over the government; it means that the government prevails over the people by claiming the blessing of mass opinion. This form of government has no limit. Tyranny is not ruled out. Nothing is ruled out.

If the problem is government, Ron Paul's solution is summed up in that beautiful and timeless word: liberty. But as often happens with such evocative words over time, liberty has been used and abused in the political mosh pit. It has been so watered down that it can mean anything to anybody. So this book more than anything else is about exactly what the title promises – defining what real liberty is and how a society that embraces liberty might interact with one another in peace and prosperity.

When it comes to foreign policy and trade policy for example, such a society would practice, as Thomas Jefferson famously said, 'Peace, commerce, and honest friendship with all nations — entangling alliances with none'. He says 'sanctions and blockades are dangerous and should be considered acts of war'.

A free society would have no place for 'prohibition'. Paul draws parallels between the various government enforced prohibitions of today, and the havoc wreaked by alcohol prohibition in the 1920s, which bred lawlessness, underworld criminal syndicates, violence and poor quality products that endangered users. Under prohibition *all* honest people must surrender some of their freedom to the busybody inspectors who want to police the behaviour of others in a misguided effort to correct their habits.

Ron Paul minces no words in calling modern day America a 'military client-run empire'

2 Murray Rothbard, *For a New Liberty: The Libertarian Manifesto,* Macmillan Publishing, New York, 1973.

which he compares to the Roman Empire of old or the British colonial empire of recent history. With 900 military bases housing US troops in 135 countries, he says 'Truly, the United States is an empire by any definition, and quite possibly the most aggressive, extended, and expansionist in the history of the world. Do we really find it shocking that some people in the world don't like this?' This empire, consuming the lives of American soldiers and the wealth of future generations, is the 'enemy of American freedom'.

The chapter on unions is particularly well written, and this crude summary may not do it justice. Paul defends the right of people to form groups and to negotiate collectively. But he strongly opposes the use of violence and force against others, and any union powers gained by legislation he puts in this category. Often, big labour, big business and big government combine to enrich themselves at the expense of others. He goes on to show how 'when the goal is liberty, prosperity flourishes and is well distributed. When economic equality is the goal, poverty results'.

Ron Paul writes to an American audience that is often deeply divided between conservative and progressive, religious and secular, etc. Yet none of these rifts pose any problem to the liberty based society Ron Paul envisions. In the chapter entitled 'Evolution Versus Creation' he points out that 'both sides want to use the state to enforce their views on others. One side doesn't mind using force to expose others to prayer and professing their faith. The other side demands that they have the right to never be offended and demands prohibition of any public expression of faith'. But on the other hand, he point out that 'most of the conflict between atheists and believers comes up because of public schools. This issue doesn't exist in private settings such as homes, homeschools, private schools, churches, and art studios, to name a few. In the private sector, every point of view can find a place and these ideas are no threat to others'.

It is no surprise then that Ron Paul is loved by people of all religious or non-religious persuasions – anybody who wants freedom to live their own life and be at peace with others around them. And he is also feared and ridiculed by people of all persuasions – whose insecurities compel them to employ coercion against others by seeking the reins of power.

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The Journal Of
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Randy T. Simmons

Beyond Politics: The Roots of Government Failure

Reviewed by Luke McGrath

It's a familiar tale for those who have studied economics at high school or university. In the first week or two, you're exposed to various ideas explaining the astonishing ability of markets to facilitate the creation of wealth by coordinating individual actions. But lest your enthusiasm for markets get the better of you, you're soon taught that unfettered markets are prone to all manner of deficiencies and shortcomings. Whether it's creating pollution or generating inequalities of wealth, the lesson is clear: though markets are tremendously beneficial, government intervention is needed to counter the ubiquitous problem of "market failure." In his book *Beyond Politics: The Roots of Government,* Randy T. Simmons challenges this notion by defending the robustness of markets and highlighting the much-neglected occurrence of *government* failure.

Beyond Politics is, foremost, a primer on public choice economics, which is the application of economic theory to politics. While economists had traditionally used their tools to understand the behavior of individuals acting in the private, market sphere, beginning in the 1960s economists turned their sights to the public sphere. Could economic analysis be employed to yield new insights about voting, special interest groups, and other factors in democratic polities? If market participants are assumed to be self-interested, for example, should we not similarly apply this standard when evaluating the actions of those in the political domain? The result of doing this can be crushing to one's civic sentimentalities, which is why James Buchanan, one of the fathers of public choice, called such analysis "politics without romance."

The orthodox position as regards market failure is outlined by Simmons in chapters 1

and 2. He introduces us to various economists, particularly welfare economists, whose work established the framework and justification for intervention in the market. People like William Baumol, for instance, whose 1952 book *Welfare Economics and the Theory of the State* 'became the economics profession's standard for the study of market failures and provided an intellectual foundation on which to base proposals for government programs designed to improve on markets' (p. 12). Simmons goes through a whole raft of alleged instances of market failure, explaining the conventional theory with respect to public goods, externalities, imperfect competition, inadequate information, and transaction costs.

In chapters 3, 4, and 5, Simmons expounds public choice theory, particularly as it concerns government failure. Rather than improving on market outcomes, Simmons argues that governments usually make them worse. 'The fundamental reason,' he explains 'is that the information and incentives that allow markets to coordinate human activities and wants are not available to government' (p.49). The provision of 'public goods' is one oft-cited market failure but, as Simmons points out, even if government *does* provide such goods, crucial questions still remain: 'How much is enough? Who shall pay how much? How should payments be made?' (p.55). In politics, there is a fundamental disconnect between the apportioning of costs and benefits:

> In the market, consumers or buyers confront price tags to which they can relate their own estimates of the value of the good. Not so in the polity where there is no direct connection between the costs and benefits of a good or service (p.55-6).

Simmons identifies numerous problems with that most sacred of cows in contemporary democracies: voting. Because the probability of your ballot being the one that decides the election is so infinitesimally low, while the costs of being informed about political issues is so high (staying up to date on the candidates and their positions, voting records, and so on), a situation results where the incentive for voters is to remain uninformed. In one of the many examples one can point to in the book, Simmons eloquently explains and contrasts the underlying economic rationale that distinguishes market behavior and political behavior:

> In the market, prudent consumers must consider income and prices before deciding to buy, which must be done at the margin with an eye to one's future prospects and obligations. In the polity, on the other hand, citizens are not constrained by income or prices. The goods and services of government are provided whether one wants them or not (p.57).

One of the core ideas of public choice is the notion of concentrated benefits and dispersed costs. Simmons sees this 'separation of cost and benefit considerations [as] perhaps *the* fundamental political fact'. It explains much of what we see in the world with regard to the undesirable influence of special interest groups because, in a democracy 'small groups who benefit from government expenditures have more incentives and cheaper means of organizing than do the diffused taxpayers' (p.64). A subsidy may be worth many millions of dollars to a particular interest group but this cost will be spread out amongst millions

of taxpayers. What incentive does an individual have, then, to organize and pressure the government to eliminate such an inefficiency if such action only results in their paying a few cents less for the good at the point of purchase?

In chapters 6, 7 and 8 Simmons dives in to the topics of property, markets, the firm and the law, explaining more thoroughly the importance of these institutions in influencing social behavior. In the seven chapters that then follow, Simmons builds on the theoretical groundwork of the prior sections and evaluates the political pursuit of private gain in numerous case studies. This applied section is very good, with Simons exploring the dynamics of consumer protection legislation, the environment, government schools, the politics of macroeconomic policy, and numerous other issues. The final chapter closes with some general, wide-ranging remarks on how we can use the knowledge of public choice to foster a world that is more free and more prosperous.

It should be noted that *Beyond Politics* is more than just a work in public choice. Simmons draws on a whole lineage of free market scholarship that includes the Austrian School, the Chicago School, and the New Institutional Economics. At the end of each chapter, he provides a very helpful and instructive annotated bibliography of recommended readings that includes such thinkers as F.A. Hayek, Israel Kirzner, Douglass North, Elinor Ostrom, Gary Becker, Armen Alchian, and Anthony de Jasay. Taken together, this body of thought comprises a powerful case for the superiority of markets over government.

Beyond Politics is a book that can be understood by economics students and lay people alike, with only the occasional appearance of a supply and demand graph to buttress Simmons' arguments. It's an accessible and compelling read and is just the book to disabuse people of the notion that government intervention can improve the operation of markets.

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The Journal Of
Peace, Prosperity & Freedom

Vinay Kolhatkar

The Frankenstein Candidate

Reviewed by Sukrit Sabhlok

Well-written fiction books are a pleasure to read. The good ones are full of plot twists, suspense, passion and can be life changing – or at least thought-provoking. They can make you laugh, cry and perhaps even become angry. Really good ones can capture the imagination of an entire generation, or are adapted to hit the movie screens. To use a recent and well known example, consider how much different the world would be without Harry Potter!

The Frankenstein Candidate is intellectually heavier than your average J.K. Rowling. In designing the plot, Kolhatkar seems to have set out with a clear purpose: to present a specific set of ideas about government and society. It's a book that features jargon such as 'Keynesianism', 'economies of scale' and 'inflation'.

The world Kolhatkar constructs is based around a US election where two of the leading candidates are Senator Olivia Allen and the wildcard billionaire Frank Stein. We are taken on a journey where Olivia and Frank, running on different policy platforms, find that they are more similar than they first thought. Stein is spending his fortune on a quixotic and straight-talking campaign for president, and in many ways reminds me of US Congressman Ron Paul's most recent bid for the presidency.

Along the way, various shenanigans inspire interest in the characters' personal stories. It's here that Kolhatkar is at his best. For example, when he delves into the psyche of Olivia in a scene where she is consulting her psychologist about her 'imposter syndrome' (a condition that makes it difficult for her to believe in her own self-worth) the reader feels genuine empathy for her high pressure lifestyle and most people would be able to relate to some degree.

Kolhatkar is a believer in free-markets and libertarianism and the dialogue is written with this strong philosophical undercurrent subtly, and sometimes not so subtly, in mind. Lead characters are in the mould of Ayn Rand's *Atlas Shrugged* – intelligent, principled and determined. Stein, for instance, is the type of person who'd say 'I'd rather be right than be President'.

Where the book might fall short, at least according to mainstream populist standards, is in its focus on technical economic subject matter. Certain passages read like a business article rather than a fiction novel, but this is probably unavoidable given the context in which the story is being told.

Nonetheless, there can be little doubt that this is a novel that will leave readers intrigued. It certainly delivers what it promises: a fast-paced plot packed full of twists and turns that should cement Kolhatkar's place as an original writer.

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Mark Tier

Trust Your Enemies

Reviewed by Marc Lerner

Libertarian novels tend to fall into two categories, one good and one bad. Either they are complex, thought-provoking treatises – typified by Ayn Rand's *Atlas Shrugged*[1] - or they are reference-laden stories where every line of conversation is predictable to anyone who has read anything libertarian, and will likely only serve to annoy anyone who hasn't.[2] Mark Tier's novel, *Trust Your Enemies*, successfully smashes this dichotomy and establishes a third kind; a novel driven primarily through plot, that gets its message across not through long speeches and introspective discussion, but through a gripping progression of events, where the philosophy emerges naturally as a consequence of what happens. Leonard Peikoff has written that "…after she had completed *Atlas Shrugged*, Ayn Rand occasionally said that she wanted to write a pure adventure story without any deep philosophical theme".[3] She never did, but Mark Tier may well have written what it would have been.

The story revolves around three protagonists: Alison McGuire, a chief political advisor to the Deputy Prime Minister, Derek Olsson, a freight and newspaper magnate currently in jail for a drug murder and Karla Preston, a recalcitrant journalist (and Olsson's current girlfriend) seemingly hell-bent on exposing every politician's lie in existence.

The novel's plot twists and weaves, with the first part providing the reader with unsolved drug murders, corrupt politicians, blackmail, religious extremists, dubiously-motivated

1 Ayn Rand *Atlas Shrugged*, Signet, New York, 1957.
2 For example:
"Identity," said the guard, pointing the Taser directly at Harper.
""A is A,"" Mr, Harper replied, evidently bored with the procedure.
J.N. Schulman, *Alongside Night*, Crown Publishers, New York, 1979, p.100.
3 L. Peikoff (ed), *The Early Ayn Rand, Revised Edition: A Selection from her Unpublished Fiction*, Signet, New York, 2005.

foreign interventions, mysteriously helpful computer nerds and ex-KGB agents. The dizzying time-shifting plot fully justifies the novel's length; at over 750 pages, it might at be considered too serious an investment for a thriller, but not a word is wasted. Some distance in, lengthy reminisces about Olsson's painful childhood may make the reader wonder if Tier isn't perhaps being too generous with the complex character development... until they turn the page and realizes that no, *they* just weren't smart enough to see the relevance. Without giving it away, all that can be said about the ending is that it doesn't disappoint, with Tier even managing to include a dash of distinctly Rothbardian optimism.

Whilst there is some overt philosophical discussion in the novel, the libertarian message is most brilliantly spread not through dialogue but through the characters' purposeful actions. Instead of dwelling in depth, for example, on a discussion of the libertarian position on drug use, Tier simply makes one of the main characters get involved in the trade. The character's entrepreneurial nature makes the choice so obvious, so *natural*, that a mainstream reader, perhaps uninterested and disdainful of intellectual pursuits, will temporarily fail to notice that what is being done can, in real life, earn one lengthy jail sentences and death penalties. When the realization does come about (likely again through a twist in the novel's plot), a serious rethink of the issue will be the likely result; whereas had the theme been introduced with a simple conversation, it would likely have resulted in the reader deciding to pick up a Tom Clancy instead. In another example of avoiding the all-too-obvious and painstakingly overt discussion, a side narrative relating to an insider trading and illegitimate mining permits case steers entirely clear of any philosophical dialogue, leaving the reader to figure out the complexities for themselves, a maneuver Tier employs repeatedly and to great effect.

Where the novel does become explicitly philosophical, furthermore, the discussion is almost always in conversation form, and always integrated within the framework of the story itself. For example, when Karla is trying to organize a meeting with Alison's boss, and is explaining why she prefers to pay for her own expenses:

> "'Without their consent'?" Alison said heatedly. "This is a democracy, after all."
>
> "So it is," Karla sighed. "But if taxation were truly voluntary, do you think enough money would be collected to pay your salary? We can talk about it some other time if you want to. In any case, I won't be coming to Canberra just to talk to your boss. So I'll pay my own way, okay?"
>
> *Strange woman*, Alison thought as she put down the phone and turned back to skimming the newspapers (p. 288).

What is most impressive here is how natural the dialogue is and how it fits so easily in the conversation – entirely unlike a philosophical treatise.

Moreover, the novel avoids leaning upon John Galt-style perfect characters. Olsson, perhaps the hero of the story (although it isn't easy to tell with so many candidates), makes many

mistakes along the way, only at the end seriously embracing a well-rounded ideological commitment to libertarianism (which goes unnamed as such, except once when used by a detractor pejoratively). This decision ensures that a reader will not simply be bombarded with what appears to be idealistic propaganda, but rather is taken on a journey alongside imperfect individuals that can be easily empathized with as they develop.

In conclusion, Mark Tier's novel is a standout amongst libertarian novels, and is particularly notable for gently nudging the reader in the right direction rather than bludgeoning them, as many others do. As far as can be determined, it is Australia's first libertarian novel, and one of which we should be proud.

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