



Jan-Erik Lane

Essays in Political Theory

Political Economy Classics - 1



KSP BOOKS

Essays in Political Theory

Vol.1

Jan-Erik Lane

University of Geneva, Switzerland

KSP Books
econsciences.com

Essays in Political Theory

Vol.1

Jan-Erik Lane

KSP Books
econsciences.com

ISBN: 978-625-7501-77-4 (e-Book)

KSP Books 2022

Essays in Political Theory Vol.1

Author: **Jan-Erik Lane**

University of Geneva, Geneva, Switzerland.

© KSP Books 2022

Open Access This book is distributed under the terms of the Creative Commons Attribution-Noncommercial 4.0 IGO (CC BY-NC 4.0 IGO) License which permits any noncommercial use, distribution, and reproduction in any medium, provided ADB and the original author(s) and source are credited.

Open Access This book is distributed under the terms of the Creative Commons Attribution Noncommercial License which permits any noncommercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited. All commercial rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, re-use of illustrations, recitation, broadcasting, reproduction on microfilms or in any other way, and storage in data banks. Duplication of this publication or parts thereof is permitted only under the provisions of the Copyright Law of the Publisher's location, in its current version, and permission for commercial use must always be obtained from KSP Books. Permissions for commercial use may be obtained through Rights Link at the Copyright Clearance Center. Violations are liable to prosecution under the respective Copyright Law. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use. While the advice and information in this book are believed to be true and accurate at the date of publication, neither the authors nor the editors nor the publisher can accept any legal responsibility for any errors or omissions that may be made. The publisher makes no warranty, express or implied, with respect to the material contained herein. KSP Books is a sub-brand of Asos Publications and publishes only English language and economic sciences books.



This book licensed under [Creative Commons Attribution-NonCommercial license \(4.0\)](https://creativecommons.org/licenses/by-nc/4.0/)



econsciences.com

Dedications

To the memory of

Gordon Smith

London School of Economics and Political Science

Jens Joackim Hesse

Free University Berlin

Foreword

It is possible to present a brief summary of the subjects that the chapters in this book focus on.

Ch 1. Karl Popper discovered the link between the open society and scientific discovery with the help of his analysis of growth of scientific theories (Popper, 1945, 1959). Only in an open society can hypotheses or models be falsified. His principle of falsification applies not only to scientific argument but also to social science beliefs and political propaganda. Thus, democracy nourishes an open society seeking the truth. Actually, democracy is the sole political regime that promotes the truth in an open society. The rationale for democracy is to be found in game theory, in particular the principal agent framework in the economics of information.

Ch 2. What is true information in today's world? The hunt for information is not only in the private sector—market trends and enterprise data, but also on the public sector. Information is strongly linked with incentives; leaking news and you have an extra rent. This paper tries to model the

crucial role of information and its incentives in government and it started in the public sector.

Ch 3. The World Bank now launches the concept of developmental governance as commitment, coordination and cooperation. When unpacked, development governance is no clearer than the concept of development administration. It is true that countries need development to improve living conditions for their citizens, but development includes more than governance or good governance.

Ch 4. The United Nations' endorsed notion of good government or governance can be analysed in a clear fashion with the concepts of rule of law – rule of law I (legality) and rule of law II (democracy). Principal-agent modelling shows how politicians and the bureaucracy can be restrained by rule of law institutions.

Ch 5. The often heard call for other forms of democracy than the adversarial type is not realistic. MWCs and MSCs offer a peaceful mechanism for voting to handle social conflicts by means of political parties under the constraints of rule of law and the principal-agent interaction. Switzerland is the only consociational state today, but operating under heavy referenda restraints.

Ch 6. Max Weber is now almost generally acknowledged as the greatest social scientist ever. The genius from Heidelberg mastered all varieties of social science: economics, politics, religion and history. And he adhered to the canons of modern philosophy of science. His most famous books on religion and capitalism "Weber's Thesis" are debated over and over again. For understanding globalization today, a critique of the Weber thesis is essential with available information a hundred years later than Weber. I wish to argue that Weber made a mistake in focusing upon modern capitalism as well as that his concept of legal-rational authority is ambiguous. What distinguishes the civilisations of the world now is the enforcement of the rule of law.

Ch 7. A book so overall critical as *The Idea of Justice* by A. Sen requires a Popper inspired examination. The results are that his rejection of Rawls is flawed and that he entirely lacks meta-ethics. The continental Weberian approach to normative enquiry has been severely neglected by many scholars in the Anglo-Saxon tradition, trying in vain to identify the true nature of justice.

Ch 8. The theory of separation of powers in the state by Montesquieu (1748) is the longest serving theory in real politics, maintaining its relevance for more than 200 hundred years. Most constitutions in written form follow his paradigm, at least from a formal point of view. Constitutional democracies certainly apply or enforce Montesquieu's ideal-type for rule of law and political stability. How does this great political theory fit with the major schools in jurisprudence about what is law and the role of judges in adjudication? This question has never been raised, but it is as essential to Montesquieu's paradigm as the changing relations between executive and legislature in for instance parliamentarism and presidentialism.

Ch 9. Reading the newspapers and listening to the media news channels for the last decade, one makes the observation that cheating has increased, or at least accusations of such behaviour. This is commonly called "corruption", but there are several kinds of cheating to be distinguished and analysed apart. Two approaches to cheating are conceivable. First, the micro approach attempts to account for why individual persons cheat – the reason and their calculation of benefits and costs. Here, we can now draw upon new results in game theory. Second, in the macro approach one tries to explain or understand why cheating seems to augment over the entire society, in both the public and private sectors. This paper looks at one form of cheating more closely, namely corruption, as well as suggests a few hypotheses about the increase in so-called "affairs" in several capitalist economies.

Ch 10. Norwegian macro-oriented Social Scientist Stein Rokkan often argued for the relevance of comparative historical inquiry. What can comparative longitudinal analyses of the state teach? The term “state” is core in politics. When do states appear on the real stage? My assessment is that F. Fukuyama’s *The Origins of Political Order* ([Fukuyama, 2014](#)) attempts to demolish the established perspective. I believe that he is incorrect.

J.E. Lane

Switzerland

March 15, 2022

Contents

Dedication

Foreword

1	Democracy, the open society and truth	1
2	Democracy: Public contracting in open societies	14
3	Developmental governance	33
4	A theory of good governance or good government	44
5	Political parties, coalitions and democracy	106

6	Civilisation today: Rule of law difference	137
7	Ideas of justice: Relevance of Weber's approach	154
8	Law and politics: Montesquieu and the 4 schools of legal theory	167
9	Opportunistic behaviour	184
10	The modern state in comparative inquiry	220

1

Democracy, the open society and truth

Introduction

Looking for democracy in the history of political philosophy or theory, one is bound to be somewhat disappointed. No major democratic theory was propounded until 1762 when J.J. Rousseau's *Social Contract* (Rousseau, 1962) appeared. It clearly suggested a revolutionary concept of the people, but Rousseau's theory of democracy was arguably romantic, based on the dangerous notion that the people are always right, as well as that a majority could force a minority to be "free". Thus, popular sovereignty was identical with justice.

In the philosophy of the Ancient Period, one encounters little appreciation for democracy, with the exception of a few Cynics. The Greek and Roman empires were slave-based civilizations with roughly half of the population in captivity. Buying and selling human labour was the commodity that drove the expansion of regimes and military adventures. When trading slaves was no longer

profitable, the Middle Ages transformed slavery into serfdom. Free peasants survived in

Western Europe and were divided between promoting democracy with the Workers Movement or supported dictatorship as in the case of Germany. The ultimate outcome was the victory of democracy over dictatorship in WWII. The end of the war saw the emergence of major books in democratic theory by Dane Alf Ross (1952), Swede Herbert Tingsten (1965), Norwegian Arne Naess (1956) and Stein Rokkan as well as American Anthony Downs (1957). Nevertheless, there remained a doubt in the literature on the viability of the democratic regime.

Democracy in the history of ideas

Ordinary men and women do not appear in political theory until the coming of the democratic regime in the 20th century. Aristotle argued that democracy entails the risk of mob rule turning into tyranny. Stoicism and Epicureans did not favour democracy. And the union of Christianity with Stoicism in late Antiquity may have made slavery unethical, but in medieval Europe, hierarchy prevailed in both Church and State.

When Grotius (2012) secularist political thought, he spoke about natural law rights and never democratic right. In fact, this was Stoicism modernised. The modernisation of Epicurism came with Hobbes (1651) and Spinoza (2000), starting from the axiom of universal selfishness and rational self-aggrandisement instead of Grotius eternal rules:

- 1) Do not lie;
- 2) Do not steal;
- 3) Do not hurt anyone;
- 4) On damage pay compensation.

Hobbes (1651) and Spinoza (2000) found no such duties but only rational self-preservation. Modern post-stoics found

such rules in Right Reason (Rawls, 1967; Dworkin, 2002), but was there no role to play for the demo? Post-Epicureans looked elsewhere, namely in the authority of the state. Thus, Hobbes (1651) envisaged an authoritarian government with many control over people. However, Spinoza (2000) was sceptical about monarchy and could accept democracy, fearing that one-man rule would make total selfinterest on his part possible. Hitler not only sent millions of German youth into gruesome death for his ideosyncratic objectives (Beevor, 1999; Clark, 1985), but also became quite wealthy “selling” his only book to schools and enterprises.

Spinoza died before finishing his Political Treatise, although he argued that political choice involved weighing the pros and cons of monarchy, oligarchy and democracy. Locke following Stoicism claimed that rights were inborn and could not be alienated, but he placed the plebiscite with the wealthy. Constitutional monarchy with restricted plebiscite was also recommended by Kant (1996). He took interestingly his definition of the concept of social justice from the great Romania lawyers:

- 1) Speak the truth;
- 2) Live a decent life;
- 3) Give to each one his or her “due”.

However, he never told us what is due to is: food, freedom, equality, environment, culture, etc.

Rousseau (1962) presented a contract theory of democracy moving from a Hobbesian predicament of epicurean egoism to the romantic unity of the people always acting Right, populist democracy. He originated the theory of totalitarian democracy (Talmon, 1976); where people can be forced to be free.

Arguments over the nature of the democratic regime played a major role in the Arbeiterbewegung, as Social Democracy and Communism took different stances to the

idea of a dictatorship of the proletariat. When Communist regimes were established after WW2 they were claimed to be “true” democratic polities. Lenin put the Tjeka in place already in 1918 to get rid of opponents, called “enemies” of something.

In any case, the real-life democracy won the Great War and numerous countries turned to the democratic regime including Latin America. But its legitimization remained undecided in front of new ideologies. Swedish political scientist Herbert Tingsten (1933) published early 1933 a penetrative analysis of “Victory of Democracy and its Crisis” that looked at why the democratic regime may not persist.

Dahl’s distinction

Thus, the world’s most wellknown expert on democracy, Robert Dahl, hesitated to name any country a “democracy”. Instead, he argued that some 50 countries were a “polyarchy”, i.e. an unaccomplished democracy (Dahl, 1971). He rejected the hypothesis that democracy leads to mob rule, but he still feared that the role of the people would not be decisive on all issues at any time. Dahl’s distinction between democracy/constitutional democracy (polyarchy) on the one hand and ideal type democracy (the rule of the people) on the other side is not clarifying. One must point out that in any political order there will be principal agent relationships, because the *demos* have to hire agents in order to get the job of the Government carried out: policy making and policy implementation.

In roughly half of the world’s countries, there are democratic regimes operating in an open society. These nations are characterized by free speech, rule of law, free and fair elections, political competition and a dominant role of higher education in information. They are also market economies, with decentralized information. Here

we have Poppers idea of falsification as the driving force. Any attempt to hide, control or eliminate the truth will be crushed by the spontaneous order of an open society.

Democracy is the political regime of an open society. At the end of the day, the voters show their agents information on what policies they wish to be implemented. The secrecy of the success of democracy lies in principal agent relationships, as the electorate selects three kinds of agents with countervailing power; executive, legislative and judicial agents.

The term democracy has a positive evaluation in the sense that it has spread widely (Naess, 1956). I agree with Ross (1952) and Tingsten (1965) that democracy is majority rule and not related to economic democracy, real equality or democratic society. Democracy is politics in an open society with an unlimited quest for the truth. Any statement, judgment or policy can in principle be falsified by new knowledge. If something is so bad that it must be hidden, it must not be true. The core of democracy is uncontrolled information. Often democracy is advocated as the realization of the preferences of the people but if the *people* are divided democracy picks the majority winner as the principle of the polity. The foremost genius of political philosophy is Marquis de Montesquieu from Bordeaux.

One may separate between two kinds of undemocratic political regimes. While both have a flawed principal agent relationship, in the first authoritarian type, political agents rule beyond the control of the people, fusing legislative power. In the second genre of totalitarian regimes, the political leader and his/her clique reverse the principal agent relationships, subjugating to serve as an instrument of their own power.

Information

Information is the glue of society, connecting the individuals together. When information is systematically false, the entire society degenerates. The superiority of democracy lies neither in high participation nor communication, rather in the impossibility of hiding errors and spreading lies.

1) Authoritarian Regimes: Their essence is to suppress information and deny truth by incarcerating citizens, e.g. Franco (Spain), Latin American dictatorships.

2) Totalitarian Regimes: Essence is to replace truth with myths by means of propaganda. From 1933 Germany was transformed from a cultured nation into the inculcation of lies, in particular about human nature. The war effort was also untruthful. Thus, the attack on the Soviet Union was ludicrously named “operation Barbarossa” after a feudal king. When the Third Reich had been defeated by the Britons in the skies over England, another war had to be instigated. They chose the Soviet Union in spite of the Molotov Ribbentrop treaty, sending millions of young countrymen to gruesome deaths. It was referred to as “Blitzkrieg”, but they had to march with 700,000 horses. The propaganda boosted that this was a modern war fought with tanks, but Germany only had 3000 of them where as the Red Army disposed of them in much higher numbers, most prominently the outstanding T-34. Reichsführer Adolf Hitler was the supreme commander of the Wehrmacht, but he had no military education, merely a corporal from World War I who ended up in a mental asylum. He played around with his renowned generals, moving divisions up and down and back and forth on a map. Criticism was met by violent outbursts and anger. No person in German history has ever misled the people to such an extent in a closed society. The political myth recurred in Italian and Japanese authoritarianism. How

many Italian families lost a son or a father in the wars in Northern Africa, falsely inspired by the Roman Empire? The atrocities committed by Japan's Armed Forces in the Pacific were inspired by false information.

3) Democratic Regimes: Essence is the revelation of falsehood and the unstoppable search for the truth by independent agents. In a democracy, political propaganda runs aground due to criticism, falsification and refutation in an open society.

A contemporary Montesquieu system

Many well-ordered societies of present times adhere to the basics of the Montesquieu (1989) model. In the context of the principal agent framework, these rule of law countries employ three kinds of political agents and they offer mechanisms for the principal to control them. The outcome is that true information will always be forthcoming sooner or later in an open society. By checking each other, nobody can assume total power or misuse false information. Civil society and mass media further contribute to the system of checks and balances, a legacy of the ingenuity of French philosopher Montesquieu (1989).

Judicial agents

In general, the principal would welcome judicial integrity and the option to test public decision-making before the judiciary. More contested is the structure of legal review. Is it at all necessary for democratic decision-making?

Enquiries into policy implementation by national government bureaux, agencies, boards or regional and local authorities are essential for reducing the information advantage of politicians and political parties. These enquiries may be recurring or special ones. The structure of judicial overview varies much from ordinary courts to

special tribunals. Some countries have administrative court as well as the Ombudsman—the Swedish, Danish or Swiss type.

The position of the single individual is much better when the practice of public administration can be challenged in some court somehow. The possibility of appeal has an enormous impact, especially on anticipations or expectations on the bureaucracy. The Scandinavian contribution to constitutionalism –OMBUDSMAN- is important for ordinary citizens.

Judicial enquiries can be done in several shapes, where for instance judges collaborate with legislators or experts from public administration.

Legislative agents

Politicians in the legislature' or groups of them like parties—have a strong wish to get re-elected for various reasons like position, income, prestige or good work. At elections, one expects that falsity occurs as lying or exaggerations could pay off.

Peltzman (1980) models the strategy of rational politicians to present a policy mix maximizing the probability of electoral victory.

In order to reduce their information gap in relation to the executive and public administration, the legislature engages in oversight of public programs and the use of public money. A variety of oversight committees and boards are available for legislatures to make enquiries into program performance, both legality and efficiency. Not only the US and other presidential systems but also parliamentary regimes—a truly large institutional variation, have procedures for disclosure of executive malpractice.

To be a legislator earns you prestige and, in several countries, good money, as in the EU Parliament. The

American system with PACS (political action committees) leads to huge budgets for legislators seeking election or re-election. However, legislative oversight is hampered by the influence of organized interests, lobbying both policymaking and policy implementation—the capture theory.

Executive agents

The executive has a range of agencies at its command. Can they be trusted? As responsible for the performance in almost all public programs the executive depends upon the flow of information. How can the executive control for asymmetrical information -the basic incentives problematic in public administration?

The amount of resources controlled by the executive as well as the bureaucracy and public enterprise sector under its wings is normally overwhelming. The public sector comprises public resource allocation and transfers payment, making up between 20-55 percent of GDP, depending on the political-economy regime of the country. How are these resources to be used, ideally as well as employed reality?

Information

Information about politically relevant events and circumstances is much sought after. The mass media turns it out all day long. Political agents strive to be the first to know but also the population often follows the stream of research on a daily basis. Montesquieu's (1989) separation of powers entails stating that there are three kinds of expertise - executive, legislative and judicial- and they are to be separated on a personal level.

Access to information as well as control of information is central in day-to-day political competition. New information alters the behaviour in principal-agent interactions. The dynamics of politics and policy are to a

large degree influenced or even shaped by the flow of new information. The arrival of new domestic or international news may have a profound impact on the principal and the political agents: government and its bureaucracy, the legislative and the judiciary. In the search for correct information, the principal may draw upon the separation of powers to reduce the asymmetric information advantage of agents, for instance by one agent engaging in oversight of another agent.

A penetrative attempt to derive a rational and just public sector for an advanced economy was made in the so-called public finance approach. The lessons of this exercise were also relevant for Third World countries. Using criteria on rationality in resource allocation as well as some criterion on justice in social security the public sector would remove market failures of various kinds.

The successful public finance models were to be found in the analysis essays of efficiency, micro or macro. But the concept of income and wealth redistribution towards more of social justice proved very contested among social scientists and economists as well as philosophers. How much and in what forms?

Consider, please, the difference between ultra liberal Nozick (1974) -no redistribution- and socialist Barry (1995)—equalise until impartiality. In any case the book by Musgrave & Musgrave (1973) is still instructive—Public Finance in Theory and Practice.

The difference between constitutional democracy and other regimes is merely the comprehensive occurrence of these selfish tactics as well as the systematic absence of corrections and disclosure. The people as the ultimate principal of the polity can only be vigilant as electorate as well as instruct legislative and judicial agents to check and balance the executive and public administration. At the end of the line, the firing option must be employed.

The quality of the public sector can only be protected by countervailing powers. Countries that are ill-fated drown in government mismanagement. A country where an elite rule unhindered allows the capture of a huge rent for politicians. The market economy adds to the openness of society, but a mixed economy is preferable over pure capitalism. In a mixed economy, public expenditures promote real equality. Especially *redistribution in kind* is important for the equalization of life opportunities, which as a matter of fact socialist Piketty fails to underline (Piketty, 2019).

Conclusion

Philosophy of science has emerged after WWII as a complex theory of the growth of knowledge, informing us about two possible kinds of growth processes: incremental and non-incremental growth, respectively. To the former belongs the slow cumulative process of minor refinements and new applications of existing theories. The latter is connected to the scientific revolutions when a major new theory or breakthrough in data processing is presented. A sustained process of growth of knowledge is only possible in an open society with a democratic regime. The search for truth in Natural Sciences, Arts and Social Sciences can only flourish in the presence of institutions of democracy and an open society. The so-called “Western World” is the home of this triad of entities: democratic political regimes, open society and free universities. Their existence should not be taken for granted, instead, its *ethos* ought to be spread to the Moslem civilization as well as to the Far East.

References

- Barry, B. (1995). *Justice as Impartiality*. Oxford, United Kingdom: Clarendon Press.
- Beevor, A. (1999). *Stalingrad*. London, United Kingdom: Penguin Books.
- Clark, A. (1985). *Barbarossa: The Russian-German Conflict, 1941-45*. New York: HarperCollins Publishers.
- Dahl, R. (1971). *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press.
- Downs, A. (1957). *An Economic Theory of Democracy*. New York: Harper.
- Dworkin, R. (2002). *Sovereign Virtue*. Cambridge, MA: Harvard University Press. [10.1086/341579](https://doi.org/10.1086/341579)
- Grotius, H. (2012). *On the Law of War and Peace*. Cambridge, UK: Cambridge University Press.
- Hobbes, T. (1651). *Leviathan*. London, England.
- Kant, I. (1996). *The Metaphysics of Morals*. Cambridge, UK: Cambridge University Press. doi: [10.1017/CBO9780511809644](https://doi.org/10.1017/CBO9780511809644)
- Montesquieu (1989). *Montesquieu: The Spirit of the Laws*. Cambridge, UK: Cambridge University Press.
- Musgrave, R., & Musgrave, P. (1973). *Public Finance in Theory and Practice*. New York: McGraw-Hill.
- Naess, A. (1956). *Democracy, Ideology and Objectivity. Studies in the Semantics and- Cognitive Analysis of Ideological Controversy*. Oslo, Norway: Norwegian Research Council for Science and the Humanities.
- Nozick, R. (1974). *Anarchy, State and Utopia*. New York: Basic Books.
- Peltzman, S. (1980). The Growth of Government. *Journal of Law and Economics*, 23, 209-287. doi: [10.1086/466962](https://doi.org/10.1086/466962)
- Piketty, T. (2019). *Capital and Ideology*. Cambridge, MA: Harvard University Press.
- Popper, K. (1945). *The Open Society and Its Enemies*. Abingdon-on-Thames, United Kingdom: Routledge.
- Popper, K. (1959). *The Logic of Scientific Discovery*. Abingdon-on-Thames, United Kingdom: Routledge. doi: [10.1063/1.3060577](https://doi.org/10.1063/1.3060577)
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Harvard U. Press.
- Ross, A. (1952). *Why Democracy?* Cambridge, MA: Harvard U. Press. doi: [10.4159/harvard.9780674433557](https://doi.org/10.4159/harvard.9780674433557)
- Rousseau, J. J. (1762). *The Social Contract*. Paris, France.
- Spinoza, B. (2000). *Political Treatise*. Cambridge, MA: Hackett Publishing Co.
- Talmon, J. L. (1976). *The Origins of Totalitarian Democracy*. London, United Kingdom: Secker & Warburg.
- Tingsten, H. (1933). *Demokratins Seger och Kris*. Stockholm: Bonniers.
- Tingsten, H. (1965). *The Problem of Democracy*. New York: Bedminster Press.

2

Democracy: Public contracting in open societies

Information

To approach government or the polity in terms of the concept of a contract has a long standing in the history of philosophers. One thinks about the Epicureans, Hobbes, Rousseau, and Kant as well as Rawls.

What is at stake is to interpret the relationships between the ruler and the ruled. Various kinds of contract have been proposed: one-sided, two-sided, realistic, romantic, historical, imagined, normative, fictional, etc. Here we explore the democratic regime as contracting between government and the demos.

What is crucial in a contract is the reciprocity between the parties: One party pays another party and expects to receive a good or service. This is consideration or *quid pro quo*.

If government power is guided by a contract between rulers and the ruled, the democratic regime starts from an election and runs typically for four years with an evaluation and a new election. Thus, there is a gap in time between

contact-making and performance. The actors involved in governance pursue their goals with opportunities and guile.

The argument below focuses upon information and political regime. The first is a short comment on information in the opposite regime dictatorship.

Stalingrad

A dictatorship manipulates first and foremost information. Millions of young men are sent to die for “Lebensraum”—What is it? Where is it? Barbarossa is “Blitzkrieg” to be over in a few months. But the generations of generations of Germans starving and Austrians as well as others had to walk besides the 700,000 horses pulling materials and artillery. What could they do in Soviet Union? Creating “Lebensraum”? The loss in German soldiers was staggering and bad management.

No information about the “Untergang” of whole armies by simple Soviet “Kessels” at Moscow and Stalingrad. German took same strategy twice and got same outcome. We sometimes said Germany could defeat Soviet Union. No, the German tactics were driven by “Vernichtung”, not liberation.

Information spurred the Russians and others to heroic resistance against a Wehrmacht that lacked vital resources.

Information: Barbarossa was a sham from the beginning in June 41 to the end in “Citadel” in 43 with incredible losses in youth. Why? How could Germany run a defeated Soviet Union? Let us try to imagine:

- (1) If Hitler had decided to concentrate the fall attack 41 on Moscow with all three armies, Germany had won.
- (2) If Hitler had decided, according to (1), Germany had still lost.

Both (1) and (2) are true—How to decide between them? In reality, Hitler kept sacrificing Germans in wars he was incompetent to conduct. A former corporal steered millions to

death, moving divisions and their generals around in a meaningless manner.

Did Germany need or deserve this catastrophe? Could a democracy do this to its own people? No, conferring the Vietnam War and student protests to fight the war. What a demo needs?

The leaders in a non-democratic state tend to demand sacrificing in war by the families for metaphysical entities, such as the nation, the proletariat, or the leader himself. Take the example of Italian aggression onto Ethiopia resulting in the death of many young people. Political myths are quickly exposed and demolished in an open society. In an open society, criticism of the politics and policies of the governmental agents is ongoing concern by a wealth of interested parties including the political opposition. A necessary condition for the democratic regime is an open society.

The Bergson's (1932) category—closed society—is to find with fanatics, religious, or secular. Popper's (1945) quest for a fallible society can only be realised in a democracy. What would the people want in an open society? Not Plato's ideal-type state that Popper argued in his unusual attack on Socrates' pupil.

It says something about human history that it was until the 1950s that the concept of an open society became much talked with Popper. It does occur with the great English tradition from Hobbes to Austin, nor with the major continental philosophers from Spinoza to Marx or Kierkegaard and Nietzsche. An open society is intimately linked with democracy that emerged with the Great War.

The needs of people

At the end of the Second World War, a few major books appeared debating the consequences of the defeat of right wing authoritarianism; one may mention books, such as

books by Danish Alf Ross, Swedish Herbert Tingsten as well as Italiano Giovanni Sartori and Dutch Arene Lijphart. They all focused on the value of democracy as a method for collective decision-making, i.e., for a nation or country. They approached democracy as a political regime, based upon the consent of a majority of voters. And they saw a necessary condition for democratic stability in the endorsement of democratic election outcomes by a substantial part of the electorate.

The first scholar to look at the democratic regime economically was Anthony Downs' Economic Theory of Democracy from 1957, modeller of two parties' competition as a marker game over vest winning position in space of voters' attitudes, the median voter theorem of location. However, there is nothing here about the gains from democracy.

Why set up parties in the first place?

A democratic regime would find its rationale ultimately with the people of the country.

Their needs of government would be decisive for the means and ends of the state. But in political philosophy, WWE found theorized and other ultimate objectives. If the state is the political organisation of the country, all kinds of goals may be mentioned: national power or aggrandisement, economic development, equality, rule of law, dictatorship of the proletariat or of the superior race, etc. Here I focus upon the demos as the principal, and the needs of government with the population.

Who are the people? A democratic vision of the state presumes a positive attitude to single individuals and his or her capacity to instruct a set of agents in the branches of government. Democracy may not be ideal, but a platonic view is not recommendable. Neither Plato philosophers nor Nietzsche Zoroaster would provide the demos with task of

giving instructions to government and hold these agents responsible.

The demos are the electorate, as it provides instructions to government agents along various channels. If you distrust the people to give instructions for policy-making, you can deny their knowledge competence like Plato or dispose their trivial needs and projects, like Nietzsche, and you will not support the idea of democratic process. One cannot help wondering why such a sick man, like Nietzsche, in Engadin was admired so intensifying the “great men”, like Caesar and Napoleon. They were in reality his opposite and he ridiculously declares himself the greatest of philosophers in his autobiography.

Democracy is government of the people; the electorates instruct political agents about the policies they want to be implemented. What, then, would be the best policies for the people? Many have thought about the real needs of the demos, but I will favour peace and lack of starvation as well as a safe environment. Let me discuss two other theories:

(1) Primary goods: Rawls came up with this concept in order to identify what must be rendered to people in a well-ordered society: Basic mental and bodily abilities, liberty and opportunity, income and wealth, and basic self-respect, because they are desirable for every human being, and useful. When these needs of ordinary man and women are met, justice deliberations may begin.

This amounts to a too abstract approach to the question of what a well-ordered society is.

Rights require an independent judiciary that exists in a minority of countries. What is more “primary” for people is survival, i.e., to live in peace and be able to feed oneself and breed in safety in the environment.

A majority of the population of the world does not possess several of these Rawlsian primary goods. Are they really their primary or most important objectives?

(2) Capability: Sen has launched a different approach

underlining each individual's need for well-being: "Poverty is not just a lack of money; it is not having the capability to realize one's full potential as a human being", each person's capability, that is, what is capacity? A bad or evil person has also capabilities to well-being, right?

I believe Thomas Hobbes (1651) was on the correct line of thought when focusing on civil war:

Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry...no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.

A country or society in a Hobbesian predicament is hardly worth living in. But it occurs from time to time. Periods of internal warfare or external aggression, famines or ecological disasters result in enormous suffering for citizens. Lack of violence, access to food and safe shelter are the key "primary goods".

Hobbes saw a great authority as the mechanism to stop or prevent the "omnium bellum contract omnes" monarchy. Hobbes suggested that a monarch would be more trustworthy in keeping peace, law, and order than Parliament. Strange! Sed quid custody ipso custos? Hobbes argued simplistically that it is more likely that a group of people start quarreling and fighting between each other than a single individual would do that, so he outlined an authoritarian regime as the best. Hobbes failed to anticipate the principal-agent nature of political authority.

Spinoza did not. His *Political Treatise* was written a couple of years after *Leviathan* (1651) and offered a deep analysis of which regime would be the best given the egoism and

aggressive behaviour of ordinary people. Although left unfinished, Spinoza seems to have preferred democracy before monarchy and oligarchy on the basis of his assumption of selfishness of people: If each and every one puts his/her interests first, then the people would carry less risk than monarchy or oligarchy!

What would happen when the “people” are divided and cannot speak with one voice—Rousseau’s ideal of a unanimous “people” with one Volkgeist? Rousseau refused to accept the practical necessity of representation, allowing only administrators to implement the will of the people.

In this romantic talk of “volume generale” as well as the so-called enemies of the people, we have a principal-agent model that restrains the political agents as much as possible. In public finance literature, economics rendered a logical account of the needs of people from public goods to private goods, passing over semi-public and semi-private ([R. Musgrave & P. Musgrave, 1973](#)). The more public a good or service is, the more rational for democracy it is to allocate it. The demos may also want so-called merit goods, i.e., redistribution in kind or in money in order to promote, e.g., equality. However, the demos cannot allocate these services or redistribute money by itself. As the principal of government needs various agents to do the job, thus crucial problems about information arise, *ex ante* and *ex post*. The demos need agents: the executive and public administration, the legislature and oversight bodies as well as the judiciary and law enforcement agencies—*Sed quis custodiet ipsos custodes?*

Democracy without agents: Transaction costs

Swiss economists often claim that their country has a superb constitutional set of arrangement, via direct democracy at all levels of government in a genuine federation.

The argument is linked not to Rousseau and his General Will but to Swedish world-renowned Wicksell.

Wicksell (1967) searched for Pareto effective allocation of local public goods that benefitted each and every one. Since the good is lumpy, individual charges will not work. Somehow there must be an aggregation of the individual willingness to pay such that the entire cost of the public good is covered. Since the “people” may be divided in two groups—one very eager minority and a lukewarm majority, the collective should reflect this fact, which is what unanimity does, forcing a common negotiated outcome.

However, Wicksell’s theory falters on two grounds:

(A) Opportunism, the group of people less willing to pay can hold out forcing the other stakeholder to pay much more, which could result in endless negotiations;

(B) It violates the rule of equality between YES and NO, favouring the status quo. What is unanimity concretely—cf. the General Will?

Democratic decision-making is simple majority with equal chance for YES or NO. However, Wicksell (1967) clearly foresaw that more costly decisions could require qualified majority. This amounts to an insight into the economic search of inertia rules in constitution.

The logic of Swiss democracy is not Wicksellian. It follows more political opportunity where small group use Volksinitiative to overturn a law of Parliament as fewer than half of the electorate participates.

Democracy and party: Agency costs

Principal-agent modeling of political parties could adduce numerous attempts to capture a political “rent”. The information asymmetrical advantages are all on the side of the party. We have in the large literature the following:

- (a) Promise without intention to deliver;
- (b) False accusations or explanations of policy;

- (c) Denials of failure;
- (d) Use of public purse to pay for parties;
- (e) Internal operation secrecy;
- (f) External animosity towards other parties and at times internal quarreling.

Yet, despite these misgivings, political parties are dominant players in many countries be they well-ordered or not. Partitocrazia may temper by direct democracy with few or many referenda. The evaluation of parties varies from one extreme—rip off agency to another—cost effective transmission of signals from electorate to Parliament. Parties exist over the whole world, openly or clandestinely.

The logic is economies of collaboration: Only highly charismatic politicians can handle all costs and burdens of an election. Ordinary politicians organise to share these efforts and divide the spoils afterwards. The party is keen about its reputation for honesty, cohesion, and closeness to voters, fearing deviant behaviour of party members as much as voter volatile downside.

The legislature and the population at large engage in principal-agent gaming continuously under each election period of four or five years. Legislative agents play with asymmetrical knowledge advantages saying that:

- policy errors are abundant or just exaggerated;
- rules have been broken or they are denied;
- the economy goes well or faces imminent disaster;
- the environmental is threatened or just a little damaged;
- new legislation is urgently needed but we are looking into the matter;
- too many foreigners arrive and yet we need more labour.

The legislature organises itself into political parties who confront each other with ideology, blame game, and opportunistic behaviour with guile. Coalitions are created ad hoc in order to meet the 51 percent requirement.

Democracy as sovereignty of parliament

The principal-agent interactions inherent in the regime of a Parliament suzerain are shaped by the parties to a large extent. It so to speak unfetters the partitocrazia. This is British constitutional legacy from Cromwell, to be found in a few countries with historic ties to England.

Tactics as well as strategy on a Parliament suzerain fulfils all the implications of the theory of asymmetrical information in the relationship between principal and agents. Politics and policy-making are in effect delegated to Parliament alone to be dominated by the premier with no countervailing powers except a coming new election.

Minister Caesarism is an extreme principal-agent model mitigated only by Common Law and a few other legal documents. This is British constitutional practice, never codified. It plays out differently in Westminster and Singapore, being merely contingency political theory, only theorised by Bagshot stressing its Hobbesian tendencies when compared with the US constitutional outcome 1860 to 1865.

The “living” British constitutional framework includes no legal review: How could Parliament be wrong? It could never enact rules that constrain its power tomorrow. This is the outcome of the often-present feudal struggle, which in very few countries ended in Parliament victory over the King.

British constitutionalism is changing with devolution, human rights, law lords, referendum, etc. Drawing upon recent events around so-called Brexit, one can say that the British people or electorate would benefit from judicial codification, as present confusion about minister Caesarism would subside.

When Parliament is incapable of designing a majority premier, the so-called Committee Parliamentary Government or simply an intermediary solution with caretaker neither promotes the principal’s interests generally.

Democracy as checks and balances

Information about politically relevant events and circumstances is much sought after. The mass media turns it out all day long. Political agents strive to be the first to know but also the population often follows the stream of research on a daily basis. Montesquieu's separation of powers entails stating that there are three kinds of expertise—executive, legislative, and judicial, and they are to be separated on the personal level.

Access to information as well as control of information is central in day-to-day political competition. New information alters the behaviour in principal-agent interactions. The dynamics of politics and policy are to a large degree influenced or even shaped by the flow of new information. The arrival of new domestic or international news may have profound impact on the principal and the political agents: government and its bureaucracy, legislative, and the judiciary. In the search for correct information, the principal may draw upon the separation of powers to reduce the asymmetric information advantage of agents, for instance, by one agent engaging in oversight of another agent.

Modern constitutional democracy comes two ideal-type: American presidentialism and constitutional monarchy or weak presidentialism. Both follow Montesquieu's separation of powers stating that the principal would be best off when government is divided onto three branches. In reality, there are some institutional variations of the framing of these key powers. What benefits the principal here or the population/electorate? Let me point out:

(1) *Judicial autonomy*: In general, the principal welcome judicial integrity and the option to test public decision-making before the judiciary. More contested is the structure of legal review. Is it at all necessary for democratic decision-making?

(2) *Judicial oversight*: Enquiries into policy implementation by national government bureaux, agencies, boards, or regional and local authorities are essential for reducing the information advantage of politicians and political parties. These enquiries may be recurring or special ones. The structure of judicial overview varies much from ordinary courts to special tribunals. Some countries have administrative courts as well as the Ombudsman—the Swedish, Danish, or Swiss type.

(2) *Complaint and redress*: The position of the single individual is much better when the practice of public administration can be challenged in some court somehow. The possibility of appeal has enormous impact, especially on anticipations or expectations on the bureaucracy. The Scandinavian contribution to constitutionalism-Ombudsman-is important for ordinary citizens.

Judicial enquiries can be done in several forms where for instance judges collaborate with legislators or experts from public administration.

(3) *Legislation*: Politicians in the legislature or groups of them like parties have a strong wish to get re-elected for various reasons, like position, income, prestige, or good work. At elections, one expects that falsity occurs as lying or exaggerations could pay off.

Peltzman (1980) modeled the strategy of rational politicians to present a policy mix maximizing the probability of electoral victory.

In order to reduce their information gap in relation to the executive and public administration, the legislature engages in oversight of public programs and the use of public money. A variety of oversight committees and boards are available for legislatures to make enquiries into program performance, both legality and efficiency. Not only the US and other presidentialisms have procedures for disclosure of executive

malpractice, but also parliamentary regimes—large institutional variation.

To be a legislator earns you prestige and, in several countries, good money, as in the EU Parliament. The American system with political action committees (PACs) leads to huge budgets for legislators seeking election or re-election. However, legislative oversight is hampered by the influence of organized interests, lobbying both policy-making and policy implementation—the capture theory.

Premier, president and public administration

The executive has a range of agencies at its command. Can they be trusted? As responsible for the performance in almost all public programs, the executive depends upon the flow of information. How can the executive control for asymmetrical information—the basic incentives problematic in public administration?

The amount of resources controlled by the executive as well as the bureaucracy and public enterprise sector under its wings is normally overwhelming. The public sector comprises public resource allocation and transfer payment, making up between 20 and 55 percent of GDP, depending on the political-economy regime of the country. How are these resources to be used, ideally as well as employed reality?

Classic public finance models

A penetrative attempt to derive a rational and just public sector for an advanced economy was made in the so-called public finance approach. The lessons of this exercise were also relevant for the Third World countries. Using criteria on rationality in resource allocation as well as some criterion on justice in social security, the public sector would remove market failures of various kinds.

The successful public finance models were to be found in the analysis essay of efficiency, micro or macro. But the concept of income and wealth redistribution towards more of social justice proved very contested among social scientists and economists as well as philosophers. How much and in what forms?

Consider, please, the difference between ultra liberal Nozick (1974) -no redistribution and socialist Barry (1995)-equalise until impartiality. In any case, the book by the Musgraves from 1980 is still instructive -*Public Finance in Theory and Practice*.

Politics and administration

In most European countries, there is somehow a separation between the recruitment of public employees on the one hand and politicians on the other hand. Thus, when there is a change of government in the UK, France, and Germany, the bureaucracy remains the same. This pattern may also be found in regional and local governments. The argument is that the bureaucracy is merely a machine to be employed by the master or politicians in power. The higher echelons are neutral and may serve any political party ruling. Matters are different in the USA.

In American public administration, the distinction between politics and administration is accepted in neither theory nor practice. In practice, the so-called spoils system applies; the incoming president may recruit a large number of public officials rewarding his/her team in the election. Theoretically, Appelby rejected any separation in Policy and Administration from 1949—policy-making is always political just as well as judicial review.

Weber believed that policy and implementation had two distinct components: ends and means. To deliberate upon and decide about goals and their priority is the key task of politicians whereas the considerations of the efficacy of the

means or tools of policy belong to the experts in the bureaucracy. By offering bureaucrats and professionals, a secure position in the bureau, the political elite would guarantee access to expertise knowledge.

If means-end relationships are crucial in policy and implementation, then the choice between alternative means is value ingrained. Some countries have put in politically recruited personal at the apex of hierarchy of each bureaucracy but not on the scale of what is Washington practice. In policy implementation, public employees are generally seen as under obligation to implemented objectives—ends and means—even though they would wish to engage in resistance to change. Should there be much resistance to change by old and large bureaucracy, the government as principal may decide to cut it up into smaller bureaux—agencification or even a sharper reply with outsourcing.

Asymmetrical information

Recognising the information advantage of the executive and her/his agents forces one to acknowledge the role of opportunism with guile in political affairs. Enter things into the public sector like:

- insincere voting;
- vote trading or cycling;
- embezzlement;
- bribery;
- kickback;
- conflict of interest;
- mishandling of emails;
- unlawful threat;
- favouritism or patronage;
- tribalism;
- inefficiency;
- deliberate misinformation;

- dishonesty;
- negligence or intended lack of competence; misuse of competence, power, and office;
- prebendalization;
- vote fraud.

The difference between constitutional democracy and other regimes is merely the comprehensive occurrence of these selfish tactics as well as the systematic absence of corrections and disclosure. The people as the ultimate principal of the polity can only be vigilant as electorate as well as instruct legislative and judicial agents to check and balance the executive and public administration. At the end of the line, the firing option must be employed.

The quality of the public sector can only be protected by countervailing powers. Countries that are ill-fated drown in government mismanagement. A country where an elite rule unhindered allows the capture of a huge rent for politicians.

Conclusion

The postmodern society is information writ large: quantity, speedy access, control, etc. When a person is more informed, he or she sees the opportunities that come with it and tries to capitalise upon it. In public sector, information asymmetry is a most important source of power and perhaps rent.

In the history of political thought, we encounter two philosophers who are especially relaxant for the principal-agent framework, viz Hobbes and Montesquieu. The first recognised the close link between anarchy and politics whereas the second understood the link between separation of powers and political order and freedom.

Is a new theory of politics possible on the basis of how information is handled tactically and strategically? What is now played out in Washington and Westminster suggests so. Politics focuses on how to tell false information from true as well as how to spread it. Democracy is the ideal-type regime

for these games, as it pits the public at large against three different agents: executives, legislators, and judges. Shirking and pretending will sooner or later be confronted with true information, which is why democracy is superior.

References

- Appleby, P. (1949). *Politics and administration*. Tuscaloosa, AL, United States: University of Alabama Press.
- Arrow, K. (1951). *Social choice and individual values*. Hoboken, NJ, United States: John Wiley and Sons.
- Barry, B. (1995). *Justice as impartiality*. Oxford, United Kingdom: Clarendon Press.
- Beevor, A. (1999). *Stalingrad*. London, United Kingdom: Penguin Books.
- Bergson, H. (1932). *The two sources of morality and religion*. Basingstoke, United Kingdom: Macmillan.
- Brams, S.J. (1975). *Game theory and politics*. New York, NY, United States: Free Press.
- Campbell, D.E. (2006). *Incentives*. Cambridge, United Kingdom: Cambridge University Press.
- Clark, A. (1985). *Barbarossa: The Russian-German conflict, 1941-1945*. New York, NY, United States: HarperCollins Publishers.
- Coleman, J.S. (1990). *Foundations of social theory*. Cambridge, MA, United States: Harvard University Press.
- Hobbes, T. (1651). *Leviathan*. London, England: British Library.
- Laffont, J.J. (2002). *The theory of incentives: The principal-agent model*. Princeton, New Jersey, United States: Princeton University Press.
- Montesquieu. (1748). *The spirit of the laws*. [Retrieved from].
- Musgrave, R., & Musgrave, P. (1973). *Public finance in theory and practice*. New York City, NY, United States: McGraw-Hill.
- Nozick, R. (1974). *Anarchy, state and utopia*. New York, NY, United States: Basic Books.
- Nurmi, H. (1987). *Comparing voting systems*. Dordrecht, Netherlands: D. Reidel.
- Peltzman, S. (1980). The growth of government. *Journal of Law and Economics*, 23, 209-287.
- Popper, K. (1945). *The open society and its enemies*. Abingdon-on-Thames, United Kingdom: Routledge.
- Rawls, J. (1971). *A theory of justice*. Cambridge, MA, United States: Harvard University Press.
- Ross, A. (1952). *Why democracy?* Cambridge, MA, United States: Harvard University Press.
- Rousseau, J.J. (1762). *The social contract*. [Retrieved from].
- Sen, A. (1985). *Commodities and capabilities*. Oxford, United Kingdom: Oxford University Press.
- Sen, A. (1999). *Development as freedom*. New York, NY, United States: Albert A. Knopf.
- Spinoza, B. (2000). *Political treatise*. Cambridge, MA, United States: Hackett Publishing Co.

Ch.2. Democracy: Public contracting in open societies

Tingsten, H. (1965). *The problem of democracy*. New York, NY, United States: Bedminster Press.

Wicksell, K. (1967). A new principle of just taxation. In R.A. Musgrave and A.T. Peacock (Ed.), *Classics in the theory of public finance* (pp.72-118). London, United Kingdom: Macmillan.

Williamson, O. (1973). Markets and hierarchies: Some elementary considerations. *American Economic Review*, 63, 316-325.

3

Developmental governance

Information

From the title, one may anticipate that this publication will connect with the old discussion about the possibility of government governing economic growth. As is well known, there was a long debate about import substitution as against export orientation as the chief policy to stimulate development. On the one hand the adherence of the developmental state, like Prebisch and Myrdal, and on the other hand, the marketers like Friedman and Bhagvathi. Today, the idea of an open economy operating under equal rules of the WTO is accepted. What the World Bank now suggests is to identify the mechanism that supports stable economic goals arguing that political elites must develop more of commitment, coordination and cooperation not only among themselves but also with social and economic elites. Thus, the World Bank recommends changes that improve rule of law: accountability, equality of power and resources as well as policy responsibility.

What is developmental governance?

One may remind of the debate concerning developmental administration. It was at first a popular phrase, signaling a new discipline analyzing development in the Third World in combination with practical recommendations to policies ([Levi-Faur, 2012](#); [Bevir, 2013](#)). Gant describes it as follows:

“The term development administration came into use in the 1950s to represent those aspects of public administration and those changes in public administration, which are needed to carry out policies, projects, and programs to improve social and economic conditions ([Gant, 2006](#))”.

But it later became obvious that development administration was merely a phrase, hiding the lack of substantial knowledge about the implementation of developmental goals. Perhaps the same will occur with developmental governance. It seems, indeed, difficult to talk about development governance without entering the theory of economic growth. Development or socio-economic development is usually considered as the outcome of processes of economic growth, emphasizing the impact on education, health, housing and employment. Developmental Governance would by implication be made up of the policies that enhance education, health, housing and employment. Perhaps developmental governance is related to the concept of “developmental state” ([Wade, 2018](#)). The World Bank Report ([World Bank, 2017](#)) claims that three factors are crucial for the successful implementation of such developmental goals: commitment, coordination, and cooperation. This follows the concentration of the World Bank on the role of elites in societies, arguing that these people decide whether positive development is achievable or not.

The World Bank report ([World Bank, 2017](#)) speaks of “governance” and alternatively “governance with rule of law”. These phrases do not have the same connotation or denotation as not all countries have rule of law despite being

governed. Perhaps the World Bank would reply to this criticism that governance based on commitment, coordination, and cooperation amounts to governance with rule of law, but this is hardly the case. Developmental governance has taken place in China as well as in Japan, although the models of policymaking and implementation have been vastly different. Let me discuss the three factors of governance a little more closely.

I will use the concept of principal-agent relationships to clarify the problematics of developmental governance. Below, the population of a country constitutes the principal whereas the Government and its bureaucracy make up the development agents together with internationally funded aid agents, and the question is, of course, how the agents can be given incentives to work for the development of the country and its people.

Governance as commitment

From the fact that the elites in society, e.g. Nigeria, South Africa or Brazil, state that they adhere to the idea of development, it does not imply that there will be genuine progress. It may all be a matter of propaganda, including lies. It is difficult to tell what a person is really committed to as guile often occurs among opportunistic elites; however, it is not even true that real commitment to development is successful, i.e. results in developmental advances. For instance, economic forecasts about the pace of development tend to be optimistic or even opportunist. In well-ordered societies, the commitment to economic growth is almost like a spontaneous order in Hayek's sense. When an economic depression is predicted, various countermeasures are taken, or automatic stabilizers enter in action. When companies fail, management is replaced. When exports fall, the currency is devalued or depreciated.

Yet, one understands the emphasis on development as commitment by the World Bank, given the many experiences of rulers who destroyed their own nation by self-centered activities—e.g. former Zimbabwe leader Robert Mugabe or former Iraqi president Saddam Hussein.

Governance as coordination

“Coordination” is an opaque word that could take on different meanings. What kind of coordination is involved in developmental governance? Could it be macroeconomic coordination of the entire economy as in classical Keynesianism? Or does it involve merely coordination between the natural Governments and sub-level Governments? In fact, coordination sounds nice but is not easily achieved. One telling example is the Greek economic crisis where the EU imposed sharp cutbacks in Greek public spending while certain Greek economists claimed that these policies of austerity only served to worsen the crisis.

Governance as cooperation

An essential component of development is economic growth. Only by having access to new resources can new policies be implemented. There are various opinions on what advances economic growth, leading to clashes of opinion or even direct conflict between capital and labor, or between political parties. Confrontation in democratic politics has not hindered economic growth in well-ordered societies. Political elites may in perfect cooperation choose the wrong growth policy. In a developmental process that lasts many years leading to enhanced prosperity, conflicts of the distribution of wealth are bound to occur. Where is the augmentation of national wealth going to end up—in the private or the public sector? Let us look at Thomas Piketty’s argument ([Piketty 2013, 2015](#)).

Piketty and Rubinstein

Piketty has received worldwide attention for his theory that capital remuneration now tends to grow faster than labor income. He writes:

“I can now present the first fundamental law of capitalism, which links the capital stock to the flow of income from capital. The capital/income ratio β is related in a simple way to the share of income from capital in national income, denoted α . The formula is

$$\alpha = r \times \beta$$

where r is the rate of return of capital.

For example, if $\beta = 600\%$ and $r = 5\%$, then $\alpha = r \times \beta = 30\%$ (Piketty, 2015: p. 42) .

The attention given to his argument about the distribution of national income in many countries and over time has been much debated, because equality as a value in policies and for society has been underlined in modern political theory and economic philosophy (Rawls, 1971; Sen, 2009; Atkinson, 1983; Barry, 1995) . It came almost like a shock for politicians that inequality was on the increase to the advantage of capital owners.

Now, Piketty has two main ideas:

- 1) Capital remuneration is its percentage share time's total capital assets as a percentage of national income,
- 2) Economic equality can only advance when economic growth is substantial.

It is argument 2) that is the key to his theory that development up to World War I resulted in huge economic disparities, whereas much of the 20th century witnessed higher equality. From 1980 and onwards, the share of capital in national income is again rising, which is why Piketty proposes inter alia a global progressive tax on capital income.

It must be clarified that he never explains why we have seen this history of decreasing, increasing and then again decreasing equality. Surely, development not only is cooperation but also provides many issues of conflict, especially with regards to distribution of prosperity. Let us not forget that distribution was a main focus for the classical economists. I suggest that the struggle between capital and labor over the division of yearly national income should be analyzed as a negotiation game with the help of the Ariel Rubinstein model (Rubinstein, 1982). Negotiation games have several Nash equilibria which require only that the two parties manage to divide the whole cake. Thus, a lockout from the side of capital or strikes on the part of labor signals a coordination failure. One has discussed several solutions to the negotiation game, e.g. equality of outcomes, maximization of the share of least advantage, and the maximization of total output. Rubinstein showed that the likely Nash-equilibrium depends on the patience of the players in rounds of negotiation, and this outcome will not necessarily be equality. In well-ordered societies, the labor share of national income tends to be larger income than for capital, yet it is alarming that Piketty has discovered that labor's share is shrinking, and capital's share is rising. I would argue that this reflects changes in negotiation strength. Labor has become less willing to accept the losses from strikes, reducing their bargaining patience. The internationalization of capital movements and the globalization of the World economy have made capital less vulnerable to strikes and more capable of threatening labor with lockout and similar actions. In the interwar years and after WWII, labor was much stronger both politically and in trade unions. The fall in trade union membership rates has been rather drastic, making them less powerful in negotiations on collective bargaining agreements. Finally, it seems that Piketty bypasses redistribution in kind, i.e. when government through public policy offers subsidized

services to the population (education, health care and social benefits). For instance, many European nations provide tertiary studies free of charge, benefitting especially wage earners and their families.

Instead, Piketty's works analyze the historical evolution of the quantities r (capital share of national wealth) and g (economic growth). He states:

"When the rate of return on capital exceeds the rate of growth of output and income, as it did in the nineteenth century and seems quite likely to do again in the twenty-first, capitalism automatically generates arbitrary and unsustainable inequalities that radically undermines the meritocratic values on which democratic societies are based (Piketty, 2013)." The consequences of an r value greater than for several nations as well as globally are examined in several enquiries. However, Piketty fails to explain the capital advances that come with neo-liberalism; he merely calls for more governmental intervention in the form of global redistribution using capital taxes. Yet the division of national wealth between capital and labor can be explained as a rational adaptation to bargaining strength. Wage settlements including collective agreements are determined by the negotiating strength of capital and wage earners, respectively. Let x connote the share of capital and y the share of labor. Then by definition

$$x + y = 1$$

Capital proposes x_1 or x_2 while labor offers y_1 or y_2 . The patience of the players determines the outcome according to various discount rates, δ_1 and δ_2 , Rubinstein states:

$$x = (1 - \delta_2(1 - \delta_1\delta_2))x = (1 - \delta_2(1 - \delta_1\delta_2))$$

and

$$y = 1 - x$$

If the distribution of national income between the two players (capital owners/wage earners) depends on rational choice concerning bargaining power and Piketty is correct that r values are rising, the possibility of global redistribution policies seems unlikely.

Neoclassical Economic Growth and Development

It is interesting to observe that the World Bank has dramatically enlarged its vision of development from a narrow focus on economic growth to an emphasis on the attitudes towards development among elites, whether they are political, social, religious or economic. Another way of stepping outside of the narrow theory of balanced economic growth—proportionate increase in capital and labor, innovations or technical advances—is to focus on the role of institutions in fostering development or commitment, coordination and cooperation. It draws my attention that the study of developmental processes has recently come to include not only colonial experiences but also widespread diseases or long-term exposure to lethal insects, e.g. malaria. We are only waiting for an inquiry into the effects of global warming on development.

Nevertheless, economic growth remains a necessary part of the story of a successful developmental process, and economic growth always consists of increases in capital, labor and innovation (Solow, 2001) only when output increases can a government find the resources to spend on services to its population. And here the market economy is central. Case example Vietnam: After the tragic and pointless Vietnam War, Hanoi introduced command economy in the entire country and the outcome was perfectly Hayekian as mass poverty and economic stagnation. With the turn to the institutions of market economy in the 1990s, they have

recovered quickly and become an important player in the ASEAN.

When a country is integrated into the global economy, its potential for development increases. Respect for market institutions is an integral part of the rule of law. The 20th century harbors the story of the competition between two systems: Soviet socialism vs. Chicago-style capitalism. The outcome was the compromise of the welfare state in well-ordered societies. The model of the mixed economy is highly relevant for third world nations or rapidly developing countries, e.g. South Korea, and public spending has a fundamental egalitarian impact which Piketty does not really emphasize enough. Welfare state services, even when small in size, create vital job opportunities, especially for women in less affluent nations.

Conclusion

French Economist Jean-Baptiste Say stated that developmental advances for a state can only come through increased production of goods and services: Supply determines Demand. Say's law holds also for any development strategy. To reduce poverty and lift people out of dismal living conditions, they must have employment and receive public services, hopefully free. Cooperation, Coordinate and Commitment among elites could push development forward, but it is no universal panacea. Neither the attitudes nor the institutions of World Bank developmental governance offer a necessary condition for developmental success. Only positive and balanced economic growth makes developmental governance and good governance possible.

It is not an exaggeration to say that equality is almost as politized as the environment. Many political theories and moral philosophers claim that the concept of justice in well-ordered societies requires more parity in terms of income and

life opportunities. The politics of distribution and redistribution will become more relevant in the years to come. National income (GNP) is divided between owners of capital, wage earners and State entities. The state may redistribute to the advantage of labor, making statements about increasing inequalities uncertain (Musgrave, 1959).

Development is impossible without a prolonged period of economic growth, involving more work, new investments and technological advances (Bhagwati, 2007). If the three factors of the World Bank—cooperation, coordination, commitment—support economic growth then so much for the better. Distributional and re-distributional matters will loom large in a development process. Governance plays a big role in redistribution, e.g. when government offers vital services free of charge. In fact, redistribution may reduce an inegalitarian division of the national income, as has been the case in the Scandinavian welfare state with heavily subsidised or free education, healthcare and social care. But poor countries can only develop by raising output in accordance with Say's law that supply creates demand. Any and all economic production must from now be governed by Greta Thunberg maxim: minimise ecological impact!

References

- Atkinson, A. B. (1983). *The Economics of Inequality*. Oxford: Clarendon Press.
- Barry, B. (1995). *Justice as Impartiality*. Oxford: Clarendon Press.
- Bevir, M. (2013). *The Sage Handbook of Governance*. London: Sage Publications.
- Bhagwati, J. (2007). *In Defense of Globalization*. Oxford: Oxford U. Press.
- Gant, G.F. (2006). The Concept of Development Administration. *Comparative Public Administration (Research in Public Policy Analysis and Management)*, 257-285.
- Levi-Faur, D. (2012). *The Oxford Handbook of Governance*. Oxford: Oxford University Press.
- Musgrave, R.A. (1959). *The Theory of Public Finance*. New York: McGraw-Hill.
- Piketty, T. (2013). *Capital in the Twenty-First Century*. Cambridge, Massachusetts: Harvard University Press.
- Piketty, T. (2015). *The Economics of Inequality*. Cambridge, Massachusetts: Belknap Press.
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, Massachusetts: Belknap Press.
- Rubinstein, A. (1982). Perfect Equilibrium in a Bargaining Model. *Econometrica*, 50, 97-109.
- Sen, A. (2009). *The Idea of Justice*. Cambridge, Massachusetts, Harvard University Press.
- Solow, R. (2001). *Growth Theory: An Exposition*. New York: Oxford University Press.
- Wade, R.H. (2018). The Developmental State: Dead or Alive? *Development and Change*, 49, 518-546.
- World Bank (2017). *World Development Report 2017: Governance and the Law*. Washington, D.C., World Bank.

4

A theory of good governance or good government

Introduction

Good governance or good government entails limited government, i.e. a political regime that respects the rule of law. Moreover, limited government in relation to civil society implies a state that operates under certain key rules ([Bradley & Ewing, 2010](#)):

1) *Legality*: government is exercised by means of laws, enforced ultimately by an independent judiciary;

2) *Lex superior*: there is a higher law – the constitution - that guarantees certain rights for the citizens, like e.g. equality under the law, due process of law and habeas corpus;

3) *Trias politica*: executive, legislative and judicial powers are to be separated;

4) *Accountability*: Governments can be held responsible for their actions and non-actions through various established procedures of criticism and complaint, enquiry and removal from office as well as redress;

5) *Representation*: The people have a SAY somehow in government through representative institutions.

These principles above emerged hundreds of years ago, long before democracy was introduced in many countries at the end of the First World War in Europe and America (Lloyd, 1991; McIlwain, 1958; Neumann, 1986). Today all existing democracies endorse these constitutional principles in the form of constitutional democracies.

Rule of law I, whether combined with any form of democracy – referendum type, parliamentary type, presidential dispensation – or not, as in semi-democratic countries that are one party states, comprises: Predictability: Public law when properly implemented makes it possible for people to increase the rationality of behaviour. They know what rules apply, how they read as well as how they are applied consistently. This is very important for the making of strategies over a set of alternatives of action. Transparency: Societies operate on the basis of norms prohibiting, obligating or permitting certain actions in specific situations. Rule of law entails that these norms are common knowledge as well as that they are not sidestepped by other implicit or tacit norms, known only to certain actors. Due Process of Law: When conflicts occur either between individuals or between persons and the state, then certain procedures are to be followed concerning the prosecution, litigation and sentencing/incarceration. Thus, the police forces and the army are strictly regulated under the supervision of courts with rules about investigations, seizure, detainment and prison sentencing. No one person or agency can take the law into their own hands. Fairness: Rule of law establishes a number of mechanisms that promote not only the legal order, or the law, but also justice, or the right. For ordinary citizens, the principle of complaint and redress is vital, providing them with an avenue to test each and every decision by government, in both high and low politics. Here one may emphasize the existence of the

Ombudsman, as the access to fairness for simple people. People have certain minimum rights against the state, meaning that government respects obligations concerning the protection of life and personal integrity. Thus, when there is due process of law – procedural or substantive – one finds e.g. the habeas corpus rights ([Raz, 2009](#)).

Some 50 per cent of the world cherish rule of law in the strong or thick meaning, i.e. rule of law I combined with popular democracy – rule of law II. Its spread is partially linked with the level of human development, which is a function of economic output to a considerable extent. However, countries that implement rule of law II also establish rule of law I, i.e. legality and rights. It is the opposite that does not hold, meaning that several countries honour rule of law I but not rule of law II. In countries where neither rule of law I nor rule of law II exists, political agents face almost no restrictions upon what they may wish to do.

The two concepts of “rule of law”

In continental political theory, rule of law tends to be equated with the German conception of a Rechtsstaat in its classical interpretation by Kant ([Reiss, 2005](#)). It signifies government under the laws, i.e. legality, lex superior and judicial autonomy (rule of law I). In Anglo-Saxon political thought, however, rule of law takes on a wider meaning, encompassing in addition also non-judicial institutions such as political representation, separation of powers and accountability (rule of law II). In general, the occurrence of rule of law II is a sufficient condition for the existence of rule of law I. But rule of law I – legality and judicial independence – is only a necessary condition for rule of law II – constitutionalism as voice and accountability.

RI: Legality and Judicial Independence

According to the narrow conception of rule of law, it is merely the principle of legality that matters. Government is in accordance with rule of law when it is conducted by means of law, enforced by independent courts. The law does not need to contain all the institutional paraphernalia of the democratic regime like separation of powers and a bill of rights. The legal order may simply express the authority of the state to engage in legislation, as expounded by legal positivists like e.g. Kelsen (2009) in his pure theory of law. The basic norm implies legislation that in turn entails regulations that implies instructions and commands. However, whatever the nature of the legal order may be, the principle of legality restricts governments and forces it to accept the verdicts of autonomous judges. 2 Countries that lack the narrow conception of rule of law tend to have judges who adjudicate on the basis of short-term political considerations, twisting the letter of the law to please the rulers. Thus, law does not restrain the political agents of the country, employing the principal-agent perspective upon politics (Besley, 2006).

One observes a connection between socio-economic development and judicial autonomy. Poor and medium affluent countries are not characterized by judicial independence. Yet, besides socio-economic development many other factors impinge upon the institutionalisation of judicial independence like inherited legal system, religion and the party system. When judges are not independent they change their verdicts in accordance with the political climate of the country. Whatever protection the constitution or the law offers in writing for citizens or foreigners visiting a country becomes negotiable when a case is handled by the police. Even if a country does not possess a real constitution with protection of a set of inalienable rights, it still makes a huge difference whether the courts constitute an independent arm of government.

Thus, also in countries with semi-democracy or with dictatorship, matters become much worse when judges cannot enforce whatever restrictions are laid down in law upon the political elite. The independence of courts is a heavily institutionalised aspect of a mechanism that takes years to put in place. Judges are paid by the state by means of taxation, but the formula of “He who pays the piper calls the tune” does not hold. In order to secure judicial independence from politics and the rulers an elaborate system of appeal has to be erected, meaning that the behaviour of lower court judges will be checked by higher court judges. The standard institutional solution is the three partite division of the legal system with a supreme court at the apex. However, countries may have one than one hierarchy of courts making the judicial system complex. An independent judiciary secures a fair trial under the laws. From the point of view of politics this is important in order to avoid that accusations for any kind of wrong doing is used for political purposes. When there is an autonomous legal machinery in a country, then also politicians or rulers may be held accountable for their actions or non-actions – under the law. This is of vital importance for restricting corrupt practices of various kinds.

RII: Constitutional Democracy

Legality and judicial independence are not enough to secure rule of law in the broad sense of the term. Broad rule of law involves much more than government under the laws, as it calls for inter alia: separation of powers, elections, representation and decentralisation of some sort. In the WB governance project the broad conception of rule of law is measured by means of the indicator “voice and accountability”. Since rule of law II regimes are invariably rule of law I regimes, but not the other way around, countries that score high on voice (of the principal) and accountability (of the agents) can be designated as constitutional states.

There is a positive relationship between socio-economic development and the constitutional state, albeit not as strong as in the classical studies on democracy and affluence (Diamond, 1999). There is a set of countries that deviate from this pattern. On the one hand, a number of countries have reached a high level of socio-economic development without institutionalising the mechanisms of the constitutional state: the Gulf monarchies and the Asian tigers. On the other hand, a set of countries with the constitutional state are to be found at a low level of socio-economic development, mainly India, Botswana and Mauritius. In some Latin American countries there is a medium level of socio-economic development and a medium degree of rule of law institutionalisation. This association between affluence on the one hand and democracy on the other hand has been much researched and various explanations have been adduced about what is cause and what is effect. Here, we note that there are quite a few countries that have reached a rather high level of human development due to economic advances in GDP but they have not established a full rule of law regime, comprising of both rule of law I and rule of law II. Finally, one may enquire into the empirical association between rule of law I and rule of law II. It holds generally that countries that institutionalise the constitutional state also respects judicial independence, but the converse does not hold. Some countries only honour one form of rule of law, namely legality. Numerous countries have neither rule of law I nor rule of law II.

Good governance with the World Bank project

The concept of good governance has no standard definition in the dictionaries. Instead, I will rely upon the approach of the World Bank Project to governance. The World Bank (WB) states: "Governance consists of the traditions and institutions by which authority in a country is exercised. This

includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them." [Retrieved from].

The World Bank's Worldwide Governance project, mapping good or bad governance around the globe during the last decade, identifies six dimensions in of the concept introduced in the quotation above.

In the World Bank Governance project, one encounters the following definition of "rule of law": Rule of Law (RL) = capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence (Kaufmann, Kraay, & Mastruzzi, 2010: 4).

Rule of law (RL) is explicitly separated from voice and accountability (VA), which is defined as follows in the World Bank project thusly:

Voice and Accountability (VA) = capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media (Kaufmann, Kraay, & Mastruzzi, 2010: 4).

The WB Governance project suggests four additional dimensions of good governance (political stability, government effectiveness, regulatory quality, and the control of corruption). The World Bank Governance project employs a host of indicators in order to measure the occurrence of rule of law RL around the globe, which results in a scale from -3 to + 3.

In a constitutional democracy, there is a combination of both rule of law (RL) and voice and accountability (VA). But rule of law was conceived already in the Ancient and

medieval periods, whereas Western type democracy belongs to the 20th century. Thus, I will separate between a narrow concept of role of law (RL), corresponding to the World Bank's terminology, and rule of law in a broad concept, as including voice and accountability (VA). Several countries have or may introduce rule of law I without accepting rule of law II, i.e. party competitive democracy.

Rule of law principles offer mechanisms that restrain behaviour. We distinguish between rule of law in a narrow sense (legality, due process) – RULE OF LAW I – and in a broad sense – RULE OF LAW II (constitutional democracy). Some countries practice only rule of law I, whereas other countries harbour both mechanisms. A few countries have neither rule of law I or rule of law II, especially failed or rogue states or states in anarchy or anomie. Figure 1 shows the overall global picture with Rule of Law II on the x-axis (voice and accountability) and Rule of Law I on the y-axis (legality and judicial autonomy).

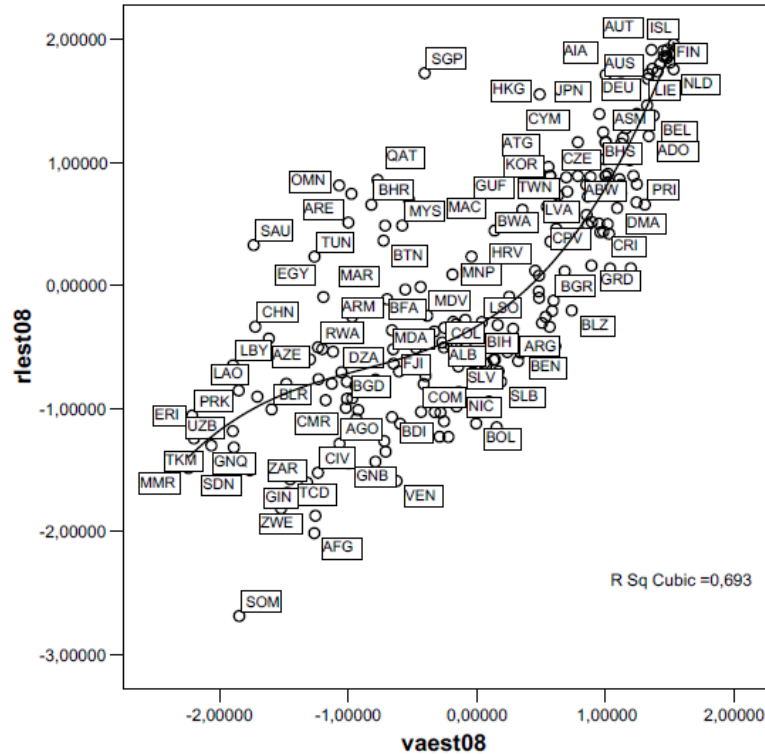


Figure 1. Rule of Law I (rlest08) and Rule of Law II (vaest08)

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: vaest08, rlest08.

On may divide Figure 1 into four boxes with the countries scoring negative on rule of law I and rule of law II in the left bottom box. They are mostly African and Asian countries. A few African and Asian states are to be found in the upper left box, meaning they score zero or medium positive on rule of law I but negative on rule of law II. Why is this global pattern so strong and persistent? For the populations in these African and Asian countries with a lack of rule of law, especially rule of law I (legal integrity and judicial autonomy), it is a dismal predicament, especially when analysed from a principal-agent perspective.

Principal-agent modelling

The principal-agent problem in politics and public administration refers to how the people as principal – demoes – empower the political leaders and their bureaucrats to govern the country. The principal-agent contract consists of promises about what these agents will do as well as what they may expect in remuneration. The mutual understanding between the principal and the agents – political consideration – tend to become institutionalised. Thus, constitutional and administrative law and praxis makes up political consideration.

Rule of law is the regime that offers the best guarantee against political agents dominating the principal, or even worse, exploiting the principal. It is a question of constraining agents, i.e. the principal would want the political agents to be powerful enough to safeguard the state or nation, but he or she would also want to constrain the agents so that abuse of power becomes less likely, such as embezzlement of public money or torture and sudden disappearances of opponents.

However, one must make a distinction between rule of law on the one hand and democracy on the other hand. Countries that are not likely to endorse Western style democracy may still cherish rule of law. Let us start by mapping the spread of rule of law in Africa and Asia by comparative scores and then interpret the findings in terms of more often used principal-agent framework from advanced game theory.

The principal-agent framework has enjoyed far reaching success in modelling interaction between persons where one works for the other. This interaction is to be found in many settings, such as agriculture, health care, insurance and client-lawyer (Rees, 1985: Laffont and Martimort, 2002). As a matter of fact, the principal-agent problematic is inherent in any employment relationship where one person works for another, who pays this person by means of the value of the output.

Whenever people contract with others about getting something done, there arise the typical principal-agent questions:

i) What is the quid pro quo between the principal and the agent?

ii) How can the principal check the agent with regard to their agreement?

iii) Who benefits the most from the interaction between principal and agent?

These questions concerning principal-agent interacting arise whenever there is a long-term contract between two groups of people, involving the delivery of an output against remuneration as well as a time span between the making of the contract and the ending of the relationship with the delivery of the output. One finds this type of interaction in the client- lawyer relationship in the legal context, in the owner-tenant interaction in sharecropping as well as in the asset holder-broker relation in financial markets.

Agents and demos

The agents – politicians and public officials - and the principal – demos - are the two key components of political interaction that run through all political systems, whatever their nature may be. The problem of institutionalising the polity originates in this opposition between agents and the principal.

The strength of the principal-agent model is that it bridges rational choice and neo- institutionalism, as its model takes into account three basic elements in interaction, namely rules, incentives and information besides underlining reciprocity. The model is open to the occurrence of opportunistic behaviour, even with guile. When a player has information advantage, then this will be transformed into some form of cash premium. The principal may diminish the information advantage of the agent as specialists by framing the rules of

the game such that he/she may have the option of counter-play or replay as well as complaint and judicial redress.

Constitutional government

Constitutional government embodies institutions or rules that constrain those active in domestic or international politics today. Thus, the meaning of “constitution” is a set of principles or rules that constrain rulers, politicians, governments or states. But there can be constitutional government without Western democracy, based upon competitive elections among political parties.

The spread of rule of law II (democracy) seems to be culture bound, as countries with an Islamic (The Koran as constitution) or Buddhist tradition (Asian values) hesitate to adopt fully Western democracy as competitive party government. However, the introduction and enforcement of rule of law I is an entirely different matter. Due process of law is relevant for all states in the world. Where it is lacking, we find arbitrary government, embezzlement of public money and the unpredictable seizure and violent treatment of persons.

Consider Figure 2, constructed with the WB Governance Project data. It links the control of corruption on the y-axis – state transparency – with the rule of law I on the x-axis.

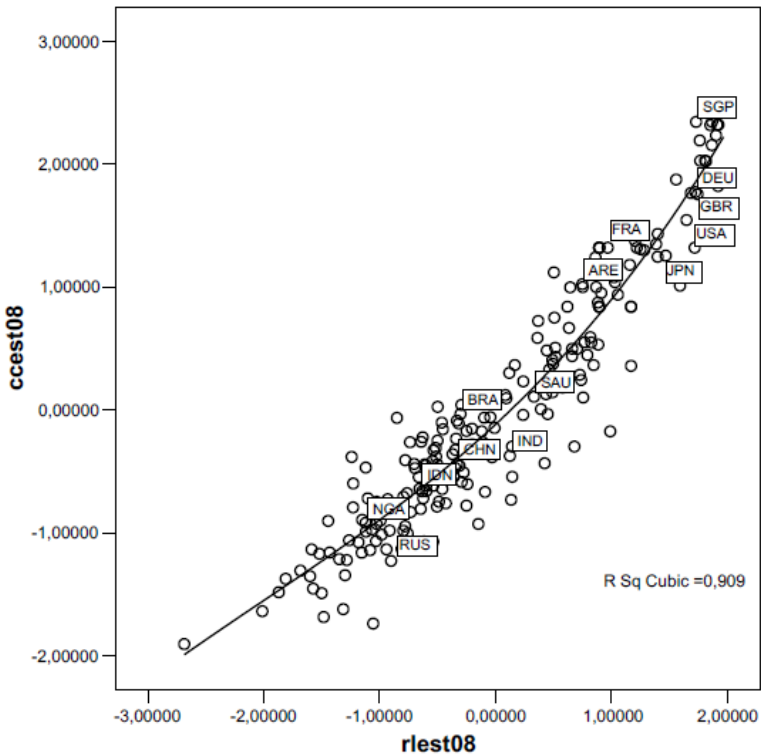


Figure 2. *Rule of Law I and Transparency*

Source: Governance Matters 2009. Worldwide Governance Indicators 1996-2008: rlest08, ccest08.

Rule of law I can be promoted by institutional policy-making by the political elites in a country. A key institution is the Ombudsman, checking the legality of public administration. Rule of law I is highly relevant for the state, also the countries that are non-democracies: military government, charismatic rule, kingdoms, sultanates, failed states, one-party states. It is the best antidote against much long-lived presidents (Burkina Faso, Malawi), arbitrary court rulings (Egypt, China), kleptocracy (Mobutu, Ben Ali), torture (Idi Amin), terrorist attacks (Kenya, Pakistan), civil war (Iraq, Syria), violent civil protests (Bangladesh, Thailand),

patronage or favouritism (Saudi family, Jacob Suma) and religious judicialisation (Iran, Afghanistan).

Why rule of law: What is the basic rationale?

There is a form of interaction that tends to be long-term between individuals, which involves a hiatus between the agreement about what is to be done against remuneration (*ex ante*) and the later in time fulfilment of this contract (*ex post*). This time interval, lasting often more than several months or years, sets up the monitoring problem: Has the agreement been fulfilled in accordance with the considerations when the contract was made? This type of interaction does not take place in the various market forms, but constitutes a problem of analysis in itself (Arrow, 1963). The more this special type of contracting was analysed, between a principal asking for a service or job on the one hand and a set of knowable agents delivering this service or job on a long-term contract, the more often it was found in various important sectors (Ross, 1973; Grossman & Hart, 1983; Sappington, 1991; White, 1992; Ackere, 1993; Althaus, 1997). What came to be known as “the principal’s problem” was found in lengthy interactions within legal affairs, psychiatry, stock-market trading and agricultural production (sharecropping).

Two basic aspects of long-term contracting are transaction costs and asymmetric information, which never entered in the standard assumptions of the neo-classical decision model in mainstream economics. Since the agent(s) is supposed to have much more knowledge about the service or job to be done, the principal needs to diminish this advantage, but without running up too heavy transaction costs, through costly monitoring or litigation. The agent(s) wants remuneration, which has to come from the value of the service or job delivered. Thus, there is both cooperation and conflict.

The theory of transaction costs stimulated this way of looking at long-term contracting (Rao, 2002). It was also furthered by insights into the nature of institutions, where rules could be employed to prop up the position of the principal (Furubotn & Richter, 2005; Weingast, 1989; Persson & Tabellini, 2003). Now, rule of law is nothing less than the regime that hands down institutions that counter-act agent opportunism, bolstering the principal.

Opportunism of Politicians and Bureaucrats

Political agents are no different from any other human beings. They are driven by the same mixture of egoism and altruism as the average person. Sometimes political agents may be completely obsessed by protecting their own self-interests, as with cruel personalities like Genghis-Khan, Tamerlane, Hitler and Stalin. Sometimes political agents display great generosity and forgiveness towards their opponents, like Gandhi and Mandela. But on average political agents – politicians and public officials – would be self-seeking, often with guile – the opportunism assumption.

The implications of assuming opportunism on the part of agents are strengthened in terms of importance when one adds the basic fact about long-term interaction of the principal-agent type, namely asymmetric information. It is the agent who delivers the output who knows the most about all things relevant to the interaction. And the agent will use this information advantage to capture a rent, or a set of benefits.

Strategy is a pervasive trait of human interaction, both in the micro setting and in the macro setting. Taking strategic considerations into account goes well in hand with opportunism and asymmetric information. The same applies to tactics. What, then, is the basic issue of contention in the principal-agent interaction? Answer: the division of advantages, given a certain size of the mutual gains to be had. The state helps the population produce an output, a set of

goods and services, to be denoted here with “V”, meaning value. By providing peace and stability, the population may engage in productive labour, resulting in an output of increasing value year after year. The political agents will claim a part of this value V for their contributions. It is the principal who ultimately has to pay the agents out of the total value V in society.

The agreement about what the agents are to contribute with as well as what they are to be paid may be only a tacit one. It may not even be a voluntary one, as the political agents may force the principal to accept an agreement by the employment of force.

Two things are of great concern to the principal:

i) The maximisation of V: If the political agents act in such a manner as to reduce V, then this is not in the interest of the principal.

ii) Reasonable agent remuneration R: If the agents manage to capture a considerable portion of V for themselves, then that would be counterproductive to the principal.

It follows from these two principles that principals would be very unhappy with a situation where their political agents contribute to a low output V, while at the same time providing them with a considerable share of V by maximising R.

What is included in the output V? One may confine V to the set of public or semi-public goods. The country contracts with a set of agents in order to protect V, but the country must remunerate the agents (R) from V. How can the country select and monitor its agents so that V is maximised, given the constraint that the set of agents must be compensated for their effort R, from V? One may offer a most comprehensive definition of R, denoting both tangible assets and intangible ones? R includes all things that are valuable: goods, premises, services, assets, perks, prestige, esteem, etc.

The interaction between political leaders and the population is omnipresent. Whatever the leaders are called

and whichever rules apply for their behaviour, human societies have not been leaderless. Even among groups with a highly egalitarian culture, political leaders somehow emerge. This sets up the principal-agent problematic inherent in the state.

When two people or sets of people interact, they may arrive at a mutual understanding of the terms of interaction. These expectations may be enshrined in a contract, written or verbal. Yet, even when the expectations governing the interaction between the political agents and the principal are not codified somehow, there is still consideration.

Consideration is at the core of human exchange and contracting: Something of value is given for getting something from another person. Consideration is the inducement, price or motive that causes a party to enter into an agreement or contract. In politics, the leaders receive ample consideration for governing the country. They take a part of total value V for their needs. And they are expected to deliver services to the political club, first and foremost maintain the peace, deliver public goods and enhance the GDP.

Since the consideration must be some benefit to the party by whom the promise is made, or to a third person at his instance, or some detriment sustained at the instance of the party promising by the party in whose favour the promise is made, politics is replete with consideration. The agents of the state employ a variety of techniques to raise value to themselves as consideration for their governance activities.

Political monopoly

The external costs to the state may be very high, if there is political monopoly. What the principal would not want to have, all other things equal, is a situation where the political agents not only take a huge remuneration R for their work but also accomplish mediocre or straightforward disastrous outcomes, reducing the value of society V . In the principal-

agent literature, excessive remuneration on the part of the agent is referred to as “rent-seeking”, whereas the failure of the agents to deliver on what they have promised is called “dissonant” actions. The important point here is that political agents may disappoint their principal on two grounds: (1) Dissipation of value V , meaning underperformance as measured by outcomes; (2) Looting, i.e. engaging in excessive remuneration R .

A virtue of the principal-agent perspective is that it alerts people to the possibility of large- scale looting in politics and public administration. The worst case scenario for the principal is the combination of bad outcomes in politics and excessive remuneration for agents responsible for the results. This happens often when there is looting.

“Looting” refers to any form of taking of value that amounts to an un-proportional compensation in relation to the effort exerted. It may be illegal, as when soldiers go on a rampage. But political looting is often more refined than populist looting when law and order breaks down. The appropriation of the resources of the administrative apparatus (“slack”) is a typical form of political looting, much emphasized by Weber for his comparative institutional analyses (Weber, 1978). The concept of political looting is broader than the notion of corruption or embezzlement, which are strictly illegal phenomena.

Looting may occur with or without value dissipation. Political agents may successfully claim a huge portion of the value in society without at the same time reducing the total size of value. In many Third World countries, political looting goes hand in hand with value dissipation though. An extreme case is that of present day Zimbabwe, which country according to its president “is mine”.

Sophisticated forms of looting may occur in constitutional democracy, as when the executive allows itself to be surrounded by vast staff of advisors, experts and the like. Or

political agents in the legislature manage to provide themselves with excessive budgets and perks. The fact that corruption allegation is an almost constant theme in public debate indicates how sensitive the principal is to the risk of looting. One form of political looting is of course nepotism or favouritism with regard to family members or cliques of friends when conducted by a president or premier for instance. Petty forms of looting involve negligence about the line of separation between private and public expenditures.

The rule of law regime is highly aware of the risk of looting, offering restraining rules about taxation, budgeting and financial accountability. It also aims at counteracting the dissipation of social value through representation, election and re-election. The dissipation of value is a problem of aggregation in society (size of the cake), whereas the risk of political looting presents a distributional problem (who gets what).

Value dissipation

The constant focus of policy-makers upon economic growth shows how aware the principal is today about the risk of value dissipation. The population worries not only about various forms of looting but also about the risk of unfortunate or disastrous policy-making that reduce aggregate income or wealth. A set of political agents may be extremely costly to the country because they are incompetent although honest. Political consideration as defining the *quid pro quo* relation underneath political leadership would comprise some mechanism for replacing one set of agents with another, especially in a rule of law regime.

There is the possibility of a dramatic effect from the combination of looting and dissipation of value, like for instance as matters now stand in countries like Myanmar, Zimbabwe and North Korea. One should not, however, assume that the risk of value dissipation is unique to Third

World countries. On the contrary, value dissipation occurs also in First World countries, where the 2003 American led invasion of Iraq offers a telling example, resulting in so huge costs – human and economic - and so little. And even a country like the UK with its rule of law tradition does not appear to be immune from various looting strategies on the part of parliamentarians, definitely immoral but not always illegal. Consider Figure 3 depicting the relationship between rule of law I and the level of human development.

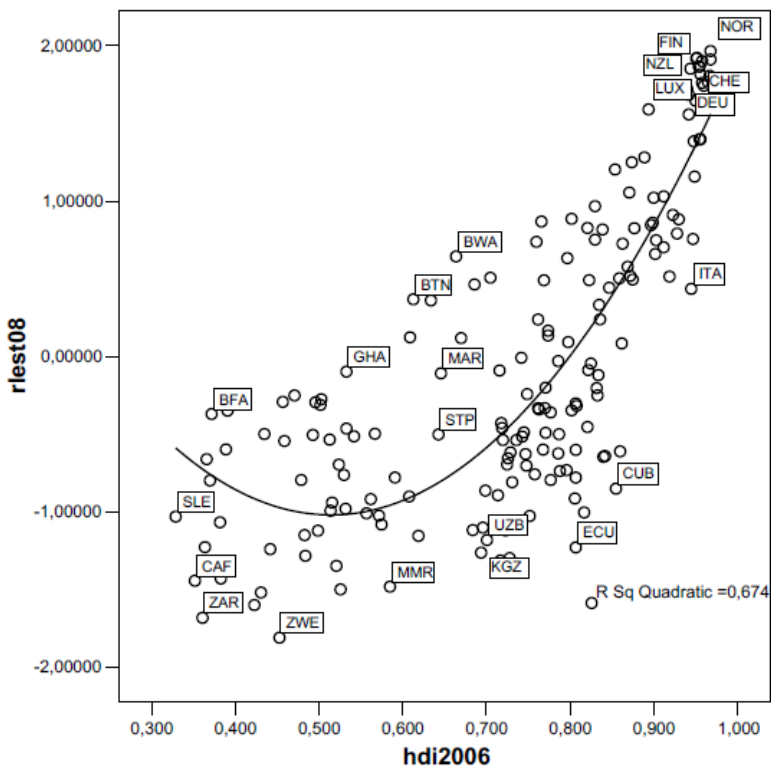


Figure 3. *Human Development Index 2008 and Rule of Law I*
Sources: Governance Matters (2009). Worldwide Governance Indicators (1996-2008); RLEST (2008); UNDP (2008): HDI (2006).

The theory of good governance entails that a government adhering to rule of law precepts will tend to be more successful in enhancing socio-economic development than a government that fails to respect them. Thus, economic activity will be stimulated by legal predictability, the protection of property, and the autonomy of judges when testing cases for assumed violations of law (Cooter & Ulen, 2010).

Constraining politics and administration

Rule of law institutions constrain the political agents – politicians at various levels of governments, political parties, rulers, bureaucrats, agencies, etc. - to the advantage of the demos, i.e. the population in a country. Only rule of law institutions can restrain political agents from engaging in opportunistic behaviour, like e.g. corruption, favouritism, embezzlement or patronage.

Within a country normally the constitution outlines a set of constraints upon the political agents, when it is enforced. Internationally, states accept to participate in regional and international organisations that also may restrain the political agents. The process of globalisation has reinforced the regional and international bodies, constraining more and more the states of the world.

One may view the structure of political agents as a nexus of principal-agent relationships. Thus, groups choose their political parties, who when elected to the national assembly in turn select government officials. The population as the principal may wish to have a set of different types of agents, confronting and controlling each other – separation of powers. Competition among agents in elections is one mechanism for restraining political agents, counter-veiling agents like judges constituting another mechanism.

The principal would, one may imagine, support the recruiting of agents in the regional and international bodies, as they offer further restrictions upon the governments of

states. Public international law offers some important protections for the country population against abuse of power by their own governments.

The idea of a principal-agent relationship is simple when one person hires another to do work for him against compensation in a contract with a long-term duration - consideration. Typical of political institutionalisation is that there are several principal-agent relationships and they are not all of the same kind.

First, one may distinguish between executive, legislative and judicial agents – the classical doctrine of trias politica in constitutionalism. The interaction between executive and legislative agents may be structured alternatively, like in parliamentarism or presidentialism. What is crucial with the judiciary, whether structured as in the Common Law tradition or as in the Civil Law tradition, is the political independence of the judges from the executive and legislative agents.

Second, a state may be organised on a territorial basis with communes, regions and the national government under alternative institutional arrangements. With federalism, there is a complete replica of the trias politica at each level in the complex system, each province being organised as a state. In a unitary state, the nation-state prevails over the regional and local governments in a single dispensation.

The principal of the state – the citizenry or population - club may fear two kinds of external costs, namely the costs imposed by intruders from outside or troublemakers from inside on the one hand, as well as the costs stemming from the actions of the political agents. The principal would be willing to empower the political club in order to reduce the first type of cost. But strengthening the political club leads to the risk that the political agents become so powerful that they abuse the strength of the state for their aggrandizement.

The domination of the agents over the principal may take many forms in politics. Most of them involve political monopoly, meaning that a subset of agents eliminate all other contending agents. Political monopoly may take a few institutional expressions: a) Hereditary monarchy; b) Gerontocracy, c) Aristocracy, d) Racial or ethnic domination; and e) the one-party state.

Political monopoly allows the agents to engage in looting, meaning that the agents take a huge part of the total value V in society for covering their own needs. Looting is an agent strategy that may take different forms. One may point at the revenue system of the Mughal emperors in India, which degenerated slowly into oppressive forms, impoverishing the population, as different agents one after the other squeezed out their "bonuses" from the peasants' V (Keay, 2001). Looting as e.g. tax farming or sharecropping definitely leads to the dissipation of value also in Imperial China (Keay, 2008) and in the later Ottoman Empire (Darling, 1996: Inalcik *et al*, 1997).

A third form of agent domination is when agents ravage the country, rendering havoc and promoting anarchy. In civil war and anomie, opposing subsets of agents fight each other, while making the life of ordinary people miserable and often short. Civil war entails that the political club no longer exists, or operates in accordance with the original political consideration. It is a marginal case of agent domination, but it is not infrequent.

The mechanism of political monopoly involves exclusion, perpetuation and concentration. Thus, only one subset of agents is tolerated. This subset attempts to prolong its grip on power using various strategies. Finally, advantages – economic or other – are concentrated in this subset of agents.

Thin or thick constitutionalism

A constitutional state affords two kinds of mechanisms that enhance stability in political decision-making, one creating so-called immunities or rights that cannot be changed and the other introducing inertia in the decision-making processes. Immunities and so-called veto players would reduce the consequences of cycling, strategic voting and log-rolling. The critical question in relation to the constitutional state is not whether immunities and veto players per se are acceptable, but how much of these two entities are recommendable? Given the extent to which a state entrenches immunities and veto players, one may distinguish between thin constitutionalism versus thick constitutionalism. In a strong constitutional state there would be several immunities, surrounding in particular private property. In addition, there would be a constitution institutionalized as a Lex Superior, which would be difficult to change and which would be protected by strong judicial review either by a supreme court or a special constitutional court. Would not such a strong constitutional state set up too many barriers for political decision-making? In a thin constitutional state, there would be less of immunities and not much of constitutional inertia in combination with only weak judicial review. Such a weak constitutional state would safeguard the classical negative liberties by designating them freedom of thought, religion and association with the possible exception of private property, which would only be regulated by ordinary statute law. There would be constitutional inertia, but not in the form of qualified majority rules and the legal control of public administration would be important but judicial review would not take the form of a power of a court to invalidate legislation. The problem with a thick constitutional state is that it may bolster the status quo to such an extent that democracy is hurt. These mechanisms that thick constitutionalism involve - immunities, qualified majorities,

judicial review - all come into conflict with desirable properties identified above in relation to the making of social decisions: neutrality, anonymity and monotonicity or positive responsiveness. Ultimately, strong constitutionalism runs into conflict with the egalitarian stand in the concept of democracy, viz that any alternative should be relevant for social decision, that each and every person should have the same say. A thick constitutional state may enhance political stability but be difficult to bring into agreement with the notion of populist democracy (Tsebelis, 2002). There would simply be too many immunities and too much of inertia for democracy to be able to allow the people to rule. However, it is difficult to see how a thin constitutional state could present a threat to democratic institutions. On the contrary, the institutions of a thin constitutional state could complement the institutions of a democratic state by making social decisions more stable. A constitutional state may be erected by means of a minimum set of institutions or a maximum set. In the minimum set up there would have to be institutions that safeguard the following: (1) legality; (2) representation; (3) separation of powers; (4) control of the use of public competencies and the possibility of remedies. It is difficult to understand that such a minimum set of institutions would threaten democracy. When there is a maximum set of institutions in a constitutional state involving numerous checks and balances, then there is a potential collision no doubt.

Institutional set-ups

One of the key issues in neo-institutionalist research is the comparison between two basic executive models: parliamentarism with the Premier and presidentialism with the President. Which executive model is to be preferred or performs the best? Examining data on the advantages or disadvantages of alternative structuring of the executive, one

is confronted by the problematic of the presidential regime. It comes in several forms: pure presidentialism, mixed presidentialism and formal presidentialism. In the empirical enquiry below, pure and mixed presidentialism is displayed against rule of law I and rule of law II, with the following scoring: 0= parliamentarism, 1 = mixed presidentialism, and 2 = pure presidentialism. Formal presidentialism as in some parliamentary regimes or as in the Communist dictatorships will not be included in this enquiry. Also in this somewhat different classification of executives, one receives the finding that pure and strong presidentialism tends to be a negative for rule of law I or II.

Election Techniques: I would be inclined to argue that multi-partism is better than two-partism from the standpoint of principal-agent theory, but it is not easy to prove. In general, having several agents working in the interests of the principal is a conclusion from this theory. However, in a two-party system changes in government tend to be more clearcut and effective than in a multi-party system. The danger with a two-party system is that it develops into a one-party system in disguise. And the main disadvantage of the multipartism is the risk of complete fragmentation of the electorate with more than 10 parties getting seats in the national assembly, creating problems to form a stable government. The distinction between two-partism and multi-partism is closely connected with electoral institutions, although not in a perfect manner. The effective number of parties is lower with majoritarian election formulas (e.g. plurality, run-offs and alternative vote) than with PR schemes (e.g. D'Hondt, St Lague, STV).

It seems that the excellent performance of the institutions of the Washington model is more of an American exception than the general rule. Presidentialism and a majoritarian election formula tend to be negatively related to both kinds of rule of law (I and II). How, then, about a federal dispensation for government? State Format Federalism in a narrow sense is

an institutional theory about the structure of any state, democratic or authoritarian. Thus, India and Switzerland are federal but so are the United Arab Emirates and Pakistan. Federalism in a broad meaning is an institutional theory about constitutional democracy, claiming that the federal dispensation works better than a unitary for all constitutional democracies. It is easy to mix up federalism I with federalism II above. Here we only deal with federalism I. Does a mere federal dispensation enhance the probability of rule of law? In a federal state format the provinces would ideally constitute states with a constitutional framework, they are represented in a federal chamber in the capital and they engage in legislation supervised nationally by a constitutional court or supreme court. Why would such a dispensation promote rule of law better than the simple unitary state format?

Federalism scores better than unitary states on both judicial independence (rule of law I) and democratic constitutionalism (rule of law II). But they also show that this is mainly due to the low number of federal state and the high number of unitary states. Empirically, federalism has only a weak relationship to judicial independence or constitutional democracy. This comes as no surprise as several unitary countries are deeply committed to the autonomy of judges. The next piece of evidence concerning federalism and rule of law shows the lack of a strong relationship between this state format and constitutionalism. Again, this was to be expected, given that federalism is defined narrowly as a mere state format that is just a self-designation by the country in question ([Kavalski, & Zolkos, 2008](#)).

Legal Review: The legal system in some countries offers the ordinary courts or a special constitutional court has the privilege of testing the constitutionality of the laws of the legislative assembly or the acts of the executive. This form of political judicilisation – judicial review - is to be found in all countries that emulated the American constitutional tradition

(supreme court) as well as in European or Asian 18 countries that adopted the Kelsen model of a constitutional guardian (constitutional court). Although legal review when exercised properly tends to result in spectacular decisions with great political relevance, one may still ask whether legal review matters generally speaking. Countries may endorse judicial review in its written constitution but fail miserably to employment it in the real constitution. Again, the lack of any clear association between legal review and rule of law I or rule of law II respectively is not difficult to explain. On the one hand, also several countries that have institutionalised a profound respect for judicial independence and the constitutional state reject the relevance of legal review. This is most explicit in countries adhering to the Westminster legacy, in which judges apply the law but do not make it. On the other hand, some countries that adhere to legal review in their constitutional documents have a shaky record in achieving the institutionalisation of either judicial independence or the constitutional state in general. Thin constitutionalism may actually perform better than strong constitutionalism, especially when combined with the Ombudsman institution.

Ombudsman

In thin constitutionalism, there is less emphasis upon veto players like for instance the Supreme Court or the Constitutional Court. In stead, thin constitutionalism attempts to combine political flexibility with judicial independence and constitutionalism. Typical of thin constitutionalism is the strong position of the Ombudsman, as the legal guarantor of the national assembly.

Principal-agent interaction

The principal-agent model is especially valuable when understanding interaction that takes some time to evolve from ex ante to ex post, involving moves and countermoves

on the part of both parties. Politicians and bureaucrats versus the population (demos) is an example of such interaction that has a longer time span, as the principal will evaluate whether the agents perform well or not at distinct points in time

When governance is modelled as a principal-agent game, then it is not merely a matter of the interaction between two or more persons. The agent(s) is hired to accomplish an output or outcome, to be paid for his/her effort to do so. Here we have the two key foci in a principal- agent evaluation of governance: (1) the achievements or V – good or bad performance; (2) the remuneration or R – high or low.

In the literature, these two aspects – performance and remuneration – are not always kept separate. Thus, one speaks of bad performances when there is only high remuneration like in “corruption” or “rent-seeking”. Moreover, bad performance is sometimes equated merely with a failure to live up to promises made. The principal-agent framework is applicable to governance and public administration even when there is no form of embezzlement by the agents, but merely reneging on lofty promises.

A state that runs according to rule of law would satisfy a few conditions that constrain the exercise of political power (Vile, 1967; Tierney, 1982). Rule of law entails that power is exercised according to the following precepts concerning due legal process and judicial accountability:

- 1) Legality (*nullum crimen sine lege*);
- 2) Constitutionality (*lex superior*);
- 3) Rights and duties: negative human rights (*habeas corpus*);
- 4) Judicial independence: complaint, appeal, compensation.

From the rule of law perspective, two unresolved questions are central in political agency, whatever the political regime may be:

- (1) What is the proper remuneration of the agents, both salary and perks - R?

(2) Do agents really deliver, i.e. how can agent performance be evaluated systematically in terms of outcome data - V?

The remuneration of political agents, whether in legal or illegal forms, has not been much researched, not even in democracies where information is in principle available. For countries where the state controls such information not much is known, for instance about China or the Gulf monarchies. And political agents may destroy much value V in society - see Meredith on Africa (1997).

Entry and exit in politics

Membership in a political club is vital to people, as the status of citizen or permanent resident brings many advantages. When countries lack a political club, supplying public or semi-public goods and services, it is in a state of anarchy: where the life of man is solitary, poor, nasty, brutish and short. Political clubs always involves a principal-agent problematic: population against leaders. Two central aspects of this interaction between political elites and ordinary people are the remuneration R of the leaders for their service to the club as well as the value V of the output of the leaders to society. Politics is about the entry to and exit from leadership positions as well as the relation between R and V.

One interpretation of the concept of homo politicus (zoon politicon) with Aristotle is that human beings evolve political organisation in the course of the evolution of civilisation. Political organisation comes in different forms of types of clubs of members and leaders: city- states, empires, oriental despotism, and feudal structure of authority, republics, monarchies, democracies and the authoritarian or totalitarian state. The common core of all forms of political systems is the relationships between leaders on the hand and followers – the members on the other hand (Weber, 1978). From a legal point of view, political clubs may constitute states, but political

sociology would speak about political communities, or nations. A neutral term is “government”.

Given that government or the state can be modelled as a political club, government or the state is a collective endeavour by its club members. Political clubs can be small like islands states in the Pacific or Caribbean, and they can include a million or more of people, like India and China. Political clubs are defined by their membership rules that organise persons to participate in the pursuit of collective goals. Persons do not need government for their own individual objectives that they can pursue in markets. Collective goals are lumpy goods and services that require human collaboration to secure on a large scale: infrastructure, education and health care, defence and crime. To allocate these bulky things, the political club amasses resources. Thus, the following question of governance arises: Who is going to decide over the employment of these collective resources? Political club have members as well as leaders.

The entry and exist problematic has been meticulously analysed only in relation to ne social system, namely the market. In the theory of monopoly and anti-trust regulation, great emphasis is placed upon the conditions of entry and exit, as openness of the market to all potential contenders is considered essential to market efficiency, a version of this theme is the “creative destruction” theory of Schumpeter. For losers in market games, there seems to be little comfort except bankruptcy protection? How about the losers in political competition? If the only alternative in exit is personal defeat as bankruptcy, then maybe they will do anything to stay on, once they gained the entry into the political game?

Clubs

According to Rasmusen (2006), the principal-agent model includes a principal searching to maximise the value V of some output(s) by means of contracting with a set of agents,

remunerating them, R for their efforts in producing the output. The payments of the agents derive from the value of the output of the agents, meaning that the principal-agent contract must involve considerations covering the ex ante to the ex post stages.

Political clubs are powerful in proportion to the resources they can muster and control. When they are capable of taking action, the entry to leadership of the club becomes attractive. Clubs are stable when the actions and decisions of its leadership are accepted and obeyed by the members. When the likelihood of obeying is considerably reduced, the club risks disintegration or disappearance.

Leadership in political clubs are sought after, because of two things basically:

- o R = remuneration from work done for the club;
- o V = influence directly over the value of the output that the club produces as well as indirectly over the entire economy (GDP).

Although this distinction has often been confused, a major institutional development of political clubs is the separation of R from V, making appropriation of public assets impossible, or at least more difficult.

Both R and V are highly important to political elites, as R may give them a decent standard of living, whereas control over parts of V presents them with opportunities for rewarding the people who work for them or support them, i.e. the followers of the leaders.

The principal-agent framework has enjoyed far reaching success in modelling interaction between persons where one works for the other. This interaction is to be found in many settings, such as agriculture, health care, insurance and client-lawyer (Ross, 1973; Rees, 1985; Laffont & Martimort, 2002). As a matter of fact, the principal-agent problematic is inherent in any employment relationship where one person works for another, who pays this person by means of the value of the

output. Whenever people contract with others about getting something done, there arise the typical principal-agent questions:

- 1) What is the quid pro quo between the principal and the agent?
- 2) How can the principal check the agent with regard to their agreement – the monitoring problem?
- 3) Who benefits the most from the interaction between principal and agent – who takes the surplus?

These questions concerning principal-agent interacting arise whenever there is a long-term contract between two groups of people, involving the delivery of an output against remuneration as well as a time span between the making of the contract and the ending of the relationship with the delivery of the output. One finds this type of interaction in the client- lawyer relationship in the legal context, in the owner-tenant interaction in sharecropping as well as in the asset holder-broker relation in financial markets.

In politics, transaction costs are minimised by handing over the responsibility for the tasks of the political club to a set of people, called the leaders, or “agents”. The agents provide the members of the political club – the principal – with the chief goods and services of this type of community, when they are successful that is.

The agents and the principal are the two key components of political interaction that run through all political systems, whatever their nature may be. The problem of institutionalising the polity originates in this opposition between agents and the principal while taking transaction costs into account (Barro, 1973; Ferejohn, 1986; Weingast, 1989; Rao, 2002; Besley 2006; Helland & Sørensen, 2009).

When governance is modelled as a principal-agent game, then it is not merely a matter of the interaction between two or more persons. The agent(s) is hired to accomplish an output or outcome, to be paid for his/her effort to do so. Here

we have the two key foci in a principal- agent evaluation of governance: (1) the achievements or V – good or bad performance in producing outputs; (2) the remuneration R of the agents or leaders – high or low.

The output of goods and services is the value that governments bring to the affluence of the country, its GDP. It may consist of allocative programs or re-distributive ones. It can be positive, as when government succeeds in harbouring a period of economic growth and a mixture of public services. But it can also be negative, for instance when leaders use part of the country resources to remunerate themselves. Political leaders want access to both R and V . Thus, entry to the leadership of the political club is a necessity.

Entry

Entry can be open or closed. Openness of political entry as against closed leadership access is a most determining aspect of a political club in the sense that it is linked with many characteristics of a political club. What counts is *de facto* open entry, but *de jure* openness is not merely legal formalism. Constitutional regulation of entry is often a first step towards real openness, but it may also be a façade.

Closed Entry

Many kinds of restrictions upon open entry into the leadership of a political club are conceivable. In traditional societies, the ascriptive criteria of ethnicity and religion constitute barriers, while in modern societies political party adherence tends to be the major stumbling block, as in authoritarian and totalitarian clubs. In democratic clubs, there is firstly formal openness of entry and secondly real openness, to some extent. Finally, we have the clubs of warriors who try to take over leadership if a club. They are characterised by tight relations between leaders, i.e. maximum closeness in often charismatic bounds to one of the leaders.

Thus, openness of political entry is a most important feature of a political club. By means of open entry, old leaders may be challenged by new ones, having a different idea about the objectives of the political club. It is also the means with which new elite may secure its financial basis, providing them with R. One may distinguish between different types of political clubs on the basis of the openness of political entry:

- Closed political clubs: clans, tribes, kingdoms, sultanates, juntas, one-party states, hierocracies;
- Open political clubs: constitutional monarchies, republics, democracies.

Biological heritage or lineage constitutes a powerful mechanism for recruitment in closed political clubs. Closing the political club to the family or the wider clan is a tool to control R and V. Interestingly, one form of entry in Islam was adherence to the family of the prophet, i.e. the clan Quraysh, but it was overrun by oriental despotism, meaning a family dynasty for the ruler who happens to be in power.

The closure of political entry always involves violence, or the threat thereof. Political violence is the use of violence against persons for political reasons, i.e. relating to the goals and means of the political club. In a closed political club, political violence may be employed to back up the sitting leaders. Or it may be resorted to by revolutionary new elite, attempting to crush the established one.

In order to uphold dominance in a closed political club, leaders are willing to engage in all forms of political violence, from stabbing contenders, even children in their entourage – “palace politics” – to large scale military manoeuvres, like for instance genocide towards minorities perceived as threats.

Political clubs operating with closed entry are fundamentally instable. The only exception to this generalisation is the set of Gulf monarchies, where tradition, religion, wealth and naked power combine to buttress the

ruling elite, although infighting has not been absent, including assassinations.

Closed political clubs in the form of military juntas or one-party regimes display few restrictions upon the use of political violence to control entry, from faked legal proceedings to underground hidden operation, outside the law. In addition to external opposition, closed political clubs face the possibility of secret internal factions, plotting against the ruling elite. Or such perceived, imagined or constructed threats may be employed for ruthless repression inside the ranks of club leadership.

Closed entry provokes resistance from excluded groups, which sometimes may be handled through co-optation on a limit scale. When political violence occurs, it may remove one elite only to be replaced by other elite. Or rebellion may replace closed entry with openness of entry.

Revolutions, especially the great ones, constitute reactions to closed entry. They may result in more of openness of entry, like the American or French revolutions for a time, or they may end in closed entry again, like the Russian and Chinese revolutions. The closed club of Lenin is especially calamitous, as it preserved the tsarist characteristics of the country, to some extent even up to today. The second American revolution of Lincoln consolidated the open club, inviting a rapid economic development in contrast to the decline of Russia during totalitarianism.

Open Entry

The central question about political clubs with open entry concerns how much openness there is. It has often been the case that open entry was restricted to some groups of club members but denied other groups, who sometimes were not even regarded as “members” although living within the borders of the club. Various exclusion criteria have been employed: race. income and wealth, age, religion. social

strata. Open entry entices fierce competition, focussing upon the electoral mechanism. Elections in closed political clubs have entirely different functions than channelling competition into peaceful channels. It no doubt requires a structure of institutions.

Yet, open entry is never completely free in the sense that anybody could enter politics just as he or she wishes. The typical manner in which free entry is played out is the competition among the groups of leaders we call “political party”.

The political party tends to be the key actor in open entry. Its rationale is to gather individual forces into a collective effort to win the elections, opening the road to the leadership positions. Leadership in a political club offers not only remuneration R but also some control over the value V in society.

Political parties are nothing but coalitions among individuals who wish to compete in open entry. Together they stand a better chance of gaining than going along alone. To act as a collective unit, they need some coherence of commitments – the ideology. The party program or platform makes it possible for the coalition of party members to campaign with a reasonably clear message that has some coherence in the views of supporters. On the other hand, the necessity of a political party for competing successfully constitutes a real hindrance for loners who would wish to enter but lacks a party affiliation.

Not even a charismatic person can in open entry alone. Some form of political party is necessary. To distinguish one group of political from another, these coalitions we can “parties” employ a variety of tools: ideology, slogans, labels, logos, etc. The coherence of a party is never 100 per cent, as infighting and factions often occur. Politicians interpret the vocabulary of the party differently.

The prevalence of political parties in open entry implies that party organisations with huge staff and resources enter the basic equation of R and V. One could argue that the remuneration of the party staff should be the burden of the political elite or its followers, but one often encounters public mechanisms for the reimbursement of the costs of political parties, i.e. their R is taken from V. The political party may be inclined to use whatever command it has over V to benefit especially themselves – see the literature on the political business cycle.

Partitocrazia involves a fierce struggle among various elite groups for remuneration and access to leadership position. It may degenerate into infighting to such an extent that the party in question cannot operate adequately. And it may make a political club ungovernable with huge costs for society.

In open entry political clubs, political parties or coalitions among leadership groups compete on the basis of promises and blame. The first strategy is basically what the parties claim they can do for the size of V: Higher economic growth; Investments in infrastructure; Improvements in public services; Better control of violence and crime, including terrorism now; More of income and wealth redistribution. Are these promises credible? Could not the leadership of a club result in losses in V? Here is where the logic of political competition comes in. The second strategy is the blame, with a strong call for change. In open entry clubs, political competition should in principle be conducive to the maximisation of V, given a modest R. However, the parties in competition may promise too much and blame unreasonable.

The principle of spoils (*spolia*) is essential to party government in open entry clubs. By winning an election, the party(ies) may employ state resources (jobs, contracts, assignments, etc.) to remunerate the party leaders for their effort to secure victory. In some countries, the costs of the political parties have been more or less entirely transferred to

the state coffers by means of public support for them. Spoils, however, require electoral success.

Exit

The exit problematic in political club is of great importance, as it reveals essential aspects of the club. Exit can be chaotic or violent on the one hand, as in closed political clubs. Or exist can follow ordinary patterns, like retirement at old age, electoral loss, transition to other roles in the political club, etc. Also the open access political clubs can experience violent forms of exist, as when leaders are assassinated. However, the unpredictable forms of exit are typical of the closed political clubs.

The exit question is how to induce leaders to step down or end their power position. In closed political clubs, all forms of sorties are possible:

- Natural death: Some leaders are so firm in control of events in closed political clubs that only death from age or illness can eliminate them: Stalin, North Korean leaders, Mao, etc;
- Unnatural death: leaders are from time to time murdered, either by a secret plot from their inner circles or through a popular uprising: Ceausescu or Mussolini for instance as examples of the latter:
- Suicide: The most spectacular case is of course that of Adolf Hitler;
- Escape: A convenient form of exit is the chosen exile, like Ben Ali managed when Tunisia turned against his dictatorship;
- Expatriation: When a long-lasting figure is thrown out of his/her position, sending him or her far away constitutes a form of exit: the Shah of Persia would be an example;
- Confinement: the forceful removal of a leader can place him/her in an involuntary confinement within the

country. It could be an imposed retirement (Chrustschow) or house arrest, as with Aung San Suu Kyi in Myanmar;

- Imprisonment: in order to exile leaders, they may simply be put in prison (Mubarak) or sent to labour camps, as in Soviet Union and Nazi-Germany.
- Foreign invasion: one cannot neglect the relations to other countries when leaders engage in major atrocities; the falls of Pol Pot or Mobutu are examples.

The unpredictability of exit appears starkly when leaders attempt to stay on longer than agreed upon from the start of their rule. In the grey zone between a closed club or an open club, leaders often fall for the temptation to prolong their period in power, stopping the expected exit from the scene. Many leaders in Africa have secured long time power holdings simply by changing the constitution to allow for unlimited re-election, or having no elections at all ([Meredith, 1997](#)).

Open entry can be undone by several means of the coup d'état, which leads to a shorter or longer closed political club when successful. It may of course fail, sometimes resulting in anarchy.

Asymmetric information

The two essential parameters in a political club is the remuneration R of the leaders or the political elite as well as the value of the output that the leadership produces, V . The information about R and V is known to the “agents”, but not to the principal – asymmetric information. The members of a political club seldom know the full range of remuneration R to the political leaders: salaries, pensions, perks, etc. And they get to know the entire situation of the public sector and the whole economy much later than the political elite. In closed political clubs, they may never know much about R and V . In open political clubs, competition among leaders may reduce

the amount of asymmetric information about R and especially V.

Closed political clubs are characterized by massive amounts of asymmetric information. The members of the club know little about the key parameters, R and V. They are left with assurances, i.e. cheap talk and promise never to be kept. Let me give two drastic examples:

- Nazi-Germany: Hitler made himself the “Fuehrer” of the German people, with the promises of a thousand years Reich, but assembled a great personal fortune by various tricks, only to leave the country with almost no value left at his suicide;

- Sierra Leon became independent from the British with flourishing public and private sectors. The political runs down all value in their chase for “blood diamonds”, in order to augment their personal remuneration.

This conflict between R and V often occurs in closed political clubs. In Africa after independence, one leader after the other fell for the temptation to increase remuneration R at the cost of the value of output, through embezzlement, patronage and conspicuous consumption in the entourage of the political elite. As R went up, V stagnated or declined.

The tension between R and V are certainly not absent in open political clubs. The full range of R for political leaders is hardly known even in competitive political clubs, where sometimes leadership creates disastrous outcomes with value losses. One example is the Operation Cobra II (Iraqi Freedom), masterminded with little transparency by president Bush, vice-president Cheney and defence secretary Rumsfeld, resulting in enormous costs for the US, both personnel and resources, while this leader trio somehow ended up as millionaires or billionaires, partly due to relationships with the defence industry.

Yet, open clubs do try to reduce the amount of asymmetric information between leaders and members, partly through

competing elites (counter-veiling agents) and partly through the institutions of constitutionalism (Furubotn & Richter, 1991, 2005; McIlwain, 1958; Neumann, 1986; Vile, 1967; Weingast, 1989).

The state forms a political club, comprising as members the people of the country in question and the political elite as its leaders. Due to transactions, leadership is a necessity for delivering a public sector as well as promoting a thriving private sector (Rao, 2002). In this human organisation, two parameters are central: the remuneration of the political elite R , and the value V of the output, directly and indirectly that the leadership accomplishes. The parameter R targets the motivation of leaders, whereas the parameter V examines their performance.

Approaching the state or government as a political club with leadership and membership entails an analysis of entry and exit in both open and closed political systems. The members would prefer low remuneration and high performance, but it does not always occur. On the contrary, in closed or semi-open political clubs, we find excessive remuneration and negative performance. In marginal cases of political exploitation, R may go as high as V .

How turbulent entry into and exit from political clubs can be appears from the lives of Boukassa (Central African Republic) or Sankara (Burkina Faso) or Nkrumah and Ali and Benazir Butto (Pakistan). Predictable and peaceful avenues of exit from the political club stabilises also the entry into it.

Political instability is not absent from “well-ordered societies” (Rawls), but it takes another form than coup d’état, embezzlement and states of emergency.

Under any political or in any state, the citizens hire and instruct a set of agents – politicians and officials - to work for them against remuneration to be taken out of the value that the agent contributes to. The agents can put in high effort or low effort, schematically speaking, which has an impact upon

the value that is created. The factor “effort” captures all that lead an agent to be either highly or poorly performing. Both parties are assumed to maximise their utility, which for the agents involves compensation for the disutility that high effort imposes upon him/her. Thus, there arises a gaming situation where the agent wants to maximise his/her compensation while the principal wants to maximise the value that the agent helps producing minus the remuneration of the agent. All kinds of solutions to this game are conceivable, depending upon contingencies such as the availability of agents as well as the existence of asymmetric information. In politics, it is the agents who know the most.

The principal would wish to maximise the contribution of the agents to total value and its fair distribution in society, subject to the restriction that the agents need to be remunerated for their effort. Thus, we have the two key equations: (1) Principal: Max total value or income subject to fairness in distribution; and (2) Agent: Max remuneration covering both salary and perquisites. Given perfect information, there is a first best solution to the problem, namely: that the principal installs the most efficient agents, taking (1) and (2) into account. However, given asymmetric information the principal is forced to look for second best solutions that all will involve a better deal for the agents.

In well-ordered societies, the political agents in government operate the set of governance mechanisms that we call “state” (Kelsen, 1961; 1967). It claims sovereignty over its country, but it enters into a web of relationships with other states, governed by the rule of law principles of the international society, namely the so-called public international law (Schwobel, 2011).

A state may be seen as flowing from an agreement among the members about helping each other in securing peace and stability. A body of rules would codify this mutual agreement. A state quickly develops a division of labour between leaders

and followers, the subgroup who implements the rules and the subgroup who follow the rules in their behaviour. I will call the followers the “principal” of the political club and the leaders the “agents”. Thus, the political club will be modelled as confronted by the principal-agent problematic, comprising inter alia:

- Who are the political agents?
- How are these agents selected?
- Can agent power be laid down formally?
- Are there restraints on the power of the agents?

In politics, transaction costs are minimised by handing over the responsibility for the tasks of the state to a set of people, called the leaders and their public servants. I will employ the word: “agents”. The agents provide the members of the state – the citizenry or the principal – with the chief goods and services of this type of community, when they are successful that is.

Enemies of good governance: Islamic fundamentalism

To understand the 20th century emergence of radical Islamic fundamentalism and its doctrines about Jahiliyyah, Caliphate and Jihad, I will look at the three key personalities behind the ideology or religion of radical Islam movements: Mawdudi, Qutb and Faraj.. Modern Islamic fundamentalism was to a significant extent conceived in the Indian Deobandi movement, from which comes Mawdudi, the Pakistani who inspired the Egyptians: Qutb and Faraj. Their ideas about islamisation, caliphate and jihad constitute the very theoretical legitimisation of terrorist events.

When searching for the roots of radical Islam, one cannot bypass Moslem thought in greater India under British rule. Several non-Arab scholars had a profound influence on Islam in Arabia, such as for instance Mawdudi, theorising not only

islamisation but also the relevance of the now blossoming Islamic finance. More research is needed to uncover the influence of Muslim thought in India before partition on the Koranic civilisation, especially the Deobandi School.

The Koranic civilisation

Radical Islamic fundamentalism has as its main objective to guard the borders of the Koranic civilisation to other religions. Thus, they fear proselytise or mission or conversion campaigns by other religions, the occurrence of apostasy among their own adherents as well as the emergence of schisms or dogmatic splits within their own ranks. All the world religions have reacted with violence against these three threats. Perhaps the posture of Islam is the least open or tolerant in these matters. In the Muslim civilisation marriage, for instance, entails that a women adhering to another religion than Islam converts to the same religion as her husband. It is not difficult to find within the Koran very strong admonitions against proselytism, apostasy and schisms.

Global radical Islamic terrorism has a disastrous impact not only upon the groups targeted but also upon the Muslim countries themselves, setting in motion millions fleeing. In his comparative religion studies, Max Weber put the concept of jihad at the centre of Islam – “a religion of warriors” - in his short historical analysis of the fate of this religion with the Prophet and after him. Several Muslim scholars would sharply deny the correctness of Weber’s theory of Islam as a religion of warriors, pointing to the fundamental fact that Islam has just five fundamental duties, which do not include jihad ([Huff & Schluchter, 1999](#)).

The new concept of jihad together with the new caliphate, based upon the notion of “pagan ignorance” (jahiliyyah) constitute the core of the radical transformation of Islam in the 20th century by three men. But it has not brought happiness and prosperity to Moslems in general.

“Islamisation”

Mawdudi, Abul ‘Ala’ (1903–1979) has been considered as the architect of contemporary Islamic revival. He is considered by many to be the most outstanding Islamic thinker of the 20th century. Mawdudi was influenced by Hasan al-Banna and the Egyptian Muslim Brotherhood. He founded the Jama’at-i-Islami movement in 1941 in the Indian sub-continent, an extremely well-organised association committed to the establishment of an Islamic world order that has played an important role in the politics of Pakistan, India, Bangladesh and other South-East Asian countries.

The Muslim community in India responded to the British destruction of the Mogul Empire in 1859 with a seminary in Deobandi in 1866 by former students of the Delhi madrasa, destroyed after the “Revolt of 1857”. The new seminary in Deobandi aimed at (1) indoctrinating Muslim youth with Islamic values, and (2) cultivating intense hatred towards the British and all foreign (i.e. non-Islamic) influences. The seminary exposed their students only to the spiritual and philosophical traditions of Islam with the goal of islamisation of state and society in view.

Mawdudi opposed to the secularist nationalist Muslim League led by Jinnah, but on the formation of independent Pakistan he emigrated there, hoping to influence a change from being merely a state for Muslims to an Islamic state. His political involvement and criticism of government policies, as well as his anti-Ahmadiya agitation, led to his imprisonment in 1953, but the death sentence passed was never carried out. Mawdudi saw Islam as threatened by a wave of Westernisation. He criticised the West and the Westernised Muslim elites as degenerate, and he called for a renewal and purification of Islam. He conceived of true Islam as a total comprehensive system and ideology, incorporating society, politics and the state. Mawdudi differentiated sharply between jahiliyyah, which included most contemporary

Muslim societies and true Islam. His goal was an ideological Islamic state based on God's sovereignty (hakimiyya) and on Sharia. As an explanation for the decline of Muslim power, Mawdudi concluded that diversity was the culprit: the centuries old practice of interfaith mixing had weakened and watered down Muslim thought and practice in that region of India. In his reinterpretation of Islam, he suggested the following:

(Q1)" Islam is a revolutionary faith that comes to destroy any government made by man. Islam doesn't look for a nation to be in better condition than another nation. Islam doesn't care about the land or who own the land. The goal of Islam is to rule the entire world and submit all of mankind to the faith of Islam. Any nation or power in this world that tries to get in the way of that goal, Islam will fight and destroy."

(Q2)" It [Jamaat-e-Islami] is not a missionary organisation or a body of preachers or evangelists, but an organisation of God's troopers."

(Q3)" In our domain we neither allow any Muslim to change his religion nor allow any other religion to propagate its faith."

(Q4)" Leaves no room of human legislation in an Islamic state, because herein all legislative functions vest in God and the only function left for Muslims lies in their observance of the God- made law."

Thus, Mawdudi sought to purge Islam of what he looked upon as alien elements. Moreover, the social and political ties with Hindus must be severed. Non-Muslims, for Mawdudi, constituted a threat to Muslims and to Islam and must be contained by restricting their rights. Mawdudi and others founded the Jama'at al-Islami Party in Lahore, Pakistan in 1941. Mawdudi based his call to arms against those who reject Islam on Sura 2: 190–193 from the Koran and on the Hadith, "I have been ordered to fight people (al-nas) until they say 'There is no God but God'. If they say it, they have protected

their blood, their wealth from me. Their recompense is with God”.

Mawdudi envisioned a particular set of institutions for his ideal Islamic state. An Islamic state will have a President, an elected shura council (consisting only of Muslims who have been elected solely by Muslim suffrage), an independent judiciary and a cabinet formed by a Prime Minister. Dhimmis (non-Muslims living under Muslim protection) would have the right to vote in lower-level (i.e. municipal) elections as well as the right to serve on municipal councils and in other local organisations. Mawdudi's objective was jihad until the whole natural universe has been brought under the rule of Islam, as he states, quoted here from *Jihad in Classical and Modern Islam* (1996):

(Q5) “Islam wants the whole earth and does not content itself with only a part thereof. It wants and requires the entire inhabited world. It does not want this in order that one nation dominates the earth and monopolizes its sources of wealth, after having taken them away from one or more other nations. Islam requires the earth in order that the human race altogether can enjoy the concept and practical program of human happiness, by means of which God has honoured Islam and put it above the other religions and laws. In order to realize this lofty desire, Islam employs all forces and means that can be employed for bringing about a universal all-embracing revolution sparing no efforts for the achievement of his supreme objective. This far-reaching struggle that continuously exhausts all forces and this employment of all possible means are called Jihad.” (Peters, 1996: 128).

The idea of islamisation wreaks havoc in Muslim countries. Since he included the Shias in the set of non-believers, he bears responsibility for the tragic civil war in the Koranic civilisation: (Q6) Mawdudi wrote regarding the Imami Ja'fari Shia, "despite their moderate views (relative to other Shia

sects), they are swimming in disbelief like white blood cells in blood or like fish in water."

Mawdudi's thought shows without doubt that non-Arabs have played a major role in Islamic religion and philosophy. His ideas were taken up by two important Arab scholars, thus continuing the very important and dire Deobandi link in present Islam.

"Re-inventing the Caliphate"

Radical Islamic societies (jama'at) have emerged out of the Muslim Brotherhood founded 1928, but drawing mainly on the thought of its main ideologue, Sayyid Qutb (1906-1966. Qutb's reinterpretation of several key Islamic concepts inspired some to split off from the Brotherhood and use his writings to legitimise violence against the regime. He argued that the existing society and government were not Muslim but rather dominated by "pagan ignorance" (jahiliyyah). The duty of righteous Muslims was to bring about God's sovereignty (hakimmiyya) over society, denounce the unbelief (takfir) of the current national leaders, and carry out a holy struggle (jihad) against them.

Qutb was an Egyptian. The first excerpt below comes from an early work, *Social Justice in Islam*, which he wrote in 1949. Qutb builds on the Islamic idea of tawheed (the singularity of God and, therefore, of the universe):

(Q1) "So all creation issuing as it does from one absolute, universal, and active Will, forms an all-embracing unity in which each individual part is in harmonious order with the remainder ... Thus, then, all creation is a unity comprising different parts; it has a common origin, a common providence and purpose, because it was produced by a single, absolute, and comprehensive Will ... So the universe cannot be hostile to life, or to man; nor can "Nature" in our modern phrase be held to be antagonistic to man, opposed to him, or striving against him. Rather she is a friend whose purposes are one

with those of life and of mankind. And the task of living beings is not to contend with Nature, for they have grown up in her bosom, and she and they together form a part of the single universe which proceeds from the single will.” (Social Justice in Islam)

In Milestones he wrote (Beirut: The Holy Koran Publishing House, 1980: 7–15, 286):

“If we look at the sources and foundations of modern ways of living, it becomes clear that the whole world is steeped in Jahiliyyah (pagan ignorance of divine guidance), and all the marvellous material comforts and high-level inventions do not diminish this Ignorance. This Jahiliyyah is based on rebellion against God’s sovereignty on earth: It transfers to man one of the greatest attributes of God, namely sovereignty, and makes some men lords over others. It is now not in that simple and primitive form of the ancient Jahiliyyah, but takes the form of claiming that the right to create values, to legislate rules of collective behaviour, and to choose any way of life rests with men, without regard to what God has prescribed. The result of this rebellion against the authority of God is the oppression of His creatures.”

Qutb rejected all forms of study of religions, or a faculty of religion at Western universities. There is only ONE true religion in the world! His most important achievements to Moslems were his reinterpretation of traditional concepts such as hakimiyya, jahiliyyah and takfir as well as the caliphate, turning them into contemporary revolutionary concepts in his Islamic ideological system.

(Q2) “The Islamic civilisation can take various forms in its material and organisational structure, but the principles and values on which it is based are eternal and unchangeable. These are: the worship of God alone, the foundation of human relationships on the belief in the Unity of God, the supremacy of the humanity of man over material things, the development

of human values and the control of animalistic desires, respect for the family, the assumption of the vice regency of God on earth according to His guidance and instruction, and in all affairs of this vice-regency, the rule of God's law (Sharia) and the way of life prescribed by Him."

(Q3) "Humanity will see no tranquillity or accord, no peace, progress or material and spiritual advances without total recourse to Allāh. This, from the Qur'ānic point of view, can mean only one thing: the organisation of all aspects of human life in the Qur'ān. The alternative would be corruption, regression and misery."

"Qutubism" stands for the core of radical Sunni fundamentalism. Qutb is most widely read in the Koranic civilisation – especially his Milestones, but also feared for his violent message. If the idea of islamisation is combined with the notion of the caliphate, the third logical element in the new Islamic terrorism is the re-interpretation of the idea of jihad.

"Offensive Jihad"

Faraj recruited for his organisation mainly in ahli (independent) mosques in the poor quarters of Cairo, where he delivered Friday sermons. He succeeded in recruiting members of the presidential guard, military intelligence and civil bureaucracy, as well as university students. Faraj's short book *Al-Farida al-Gha'iba* (The Neglected Duty) had an immense impact on all radical Islamic movements. Following Sadat's assassination, Faraj was executed in 1982.

Whereas Mawdudi was a learned theologian writing massively on The Koran and its interpretations, delivering a long list of books and pamphlets, Faraj only published one text. But its message about jihad added the explosive fuse to the ideas of Mawdudi and Qutb concerning islamisation and unification of religious and secular leadership. Faraj was read among the radicals, in seminaries or in prison, who later went on to set up terrorist groups, in and outside of Egypt. It should

be emphasized that the many well-known leaders of these groups had known each other, reading and discussing Qutb and Faraj.

Let me take a few quotations (Q) from Faraj:

(Q1) "Hence the implementation of Islamic law is incumbent upon the Muslims. Therefore establishing the Islamic State is obligatory upon them because the means by which the obligation is fulfilled becomes obligatory itself. By the same token, if the state can only be established by fighting, then it is compulsory on us to fight. Besides the Muslims were agreed upon the obligation of establishing the Khilaafah, the declaration of which depends on the existence of the core, which is the Islamic State." (p.20).

(Q2) "So fighting in Islam is to raise Allah's word highest, either offensively or defensively. Also, Islam was spread by the sword, but only against the leaders of kufr, who veiled it from reaching the people, and after that no one was forced to embrace it. It is obligatory upon the Muslims to raise their swords against the rulers who are hiding the truth and manifesting falsehood, otherwise the truth will never reach the hearts of the people." (p.51-52).

(Q3) "As for the Muslim lands, the enemy resides in their countries. In fact the enemy is controlling everything. The enemies are these rulers who have snatched the leadership of the Muslims. Thence Jihad against them is fardh 'ayn. Besides, the Islamic Jihad is now in need of the effort of every Muslim. And it should be borne in mind that when Jihad is fardh 'ayn (an individual obligation), it is not required to seek permission from one's parents for the to march forth as scholars said: 'it becomes like praying and fasting.'" (p.61).

(Q4) "And what if the scholars of the Salaf saw our scholars of today - except those upon whom Allah has shown Mercy - who have inclined to these tyrants, beautified their actions to them, made fair their murders of the Muslims, the mujahedeen (upholders of Tawheed - Oneness of Allah),

weakening their honour by issuing fatwa (legal verdicts) after fatwa to make their thrones firm, and safeguard their kingdoms, by labelling everyone opposed to them as a rebel or khaariji (one of the extreme deviant sect of the khawaarij)?." (p.108).

"Holy terror" is a term for "holy assassination" and was propagated by Muhammad Abd al Salam Faraj (1954–1982) in his booklet, *The Neglected or Absent Duty*. Faraj arrived at this jihad (holy war) duty by considering and rejecting non-violent options: participation in benevolent societies; obedience to God, education, abundance of acts of devotion, and occupation with the quest of knowledge; exerting oneself in order to obtain an important position; and democratic options such as engaging in civil liberties such as freedom of speech, the founding of a political party to compete freely with other parties in elections, and the creation of a broad base of support resulting in majority rule. Faraj believed that none of these would lead to the messianic goal of establishing of an Islamic state and ultimately reintroducing the caliphate.

Despite the imprisonment and execution of al-Jihad's leaders following Sadat's assassination, offshoots managed to regroup, declaring jihad against Mubarak's regime. Al-Jihad has continued to be linked to terrorist incidents and outbreaks of communal violence ever since. One wing seems to be loyal to Abbud al-Zammur, one of the original founders, now imprisoned in Egypt. Another wing is called Vanguard of the Conquest or The New Jihad Group led by al- Qaeda's Ayman al-Zawahiri.

Al-Qaeda, ISIS, Boko Haram, Al Shabaab and the Taliban are Sunni Muslim terrorist groups that consider Shias to be heretics. Osama Bin Laden, al-Zarqawi and al-Zawahiri are close to either Salafi, or Deobandi or Wahhabi brands of Sunni Islam. And the leading thinkers behind modern Islamist movements such as al-Qaeda are all Sunnis: Abul-Ala Mawdudi, Sayyid Qutb and Muhammad Faraj. Their ideas

are communicated daily in the schools, madrasas as well as in the religious faculties at universities.

ISIS replacing Al-Qaeda

How the ISIS group related to Al Qaeda in Iraq is not fully known. The key person was Abū Muṣ'ab az-Zarqāwī, who was a leader of the insurgence against the Allied invasion of Iraq. He was not only violently anti-Western but also a sworn enemy of Shiism. He was so bloody in his strategy and tactics – suicide and car bombs – that al-Zawahiri objected, leading to a split from Al Qaeda by az-Zarqāwī. After his death, his main ideas inspired the creation of ISIS. These are the basic ideas of the man called “AMZ”:

“i. Remove the aggressor from Iraq. ii. Affirm tawhid, oneness of God among Muslims. iii. Propagate the message that “there is no god but God”, to all the countries in which Islam is absent. iv. Wage jihad to liberate Muslim territories from infidels and apostates. v. Fight the taghut ruling Muslim lands. vi. “Establish a wise Caliphate” in which the Sharia rules supreme as it did during the time of Prophet Mohammad. vii. “Spread monotheism on earth, cleanse it of polytheism, to govern according to the laws of God...” (Hashim, 2014).

When Al Qaeda asked AMZ not to target ordinary Moslems, especially Shias, the reply was in the style of future ISIS (Hashim, 2014):

“We did not initiate fighting with them, nor did we point our slings at them. It was they who started liquidating the cadres of the Sunni people, rendering them homeless, and usurping their mosques and houses.”

Thus, AMZ or az-Zarqāwī is much more to be seen as the forerunner of ISIS than al-Zawahiri. But his ideology or religion is the radical Sunni fundamentalism, created by the three: Mawdudi, Qutb and Faraj. Al-Zawahiri wrote several

books on Islamic movements, the best known of which is *The Bitter Harvest* (1991/1992), a critical assessment of the failings of the Muslim Brotherhood. In it, he draws not only on the writings of Qutb to justify murder and terrorism, but prominently references Pakistani Jamaat-i-Islami founder and ideologue Mawdudi on the global mission of Islamic jihad. Global jihad as Mawdudi had prescribed became al-Zawahiri's obsession. However, the ISIS is now calling the shots and they employ the ruthless tactics of AMZ or az-Zarqāwī.

Sunni fanaticism acts like the scourge of Islam for the Middle East, leaving behind immense human and capital destruction. How can ecological policy-making be feasible in so-called "failed states"? The Muslim countries and communities are confronted with handling major environmental resources, like water, forest, sewage, waste, oil and gas, etc. What can a government do if confronted by the "religion of warriors" (Weber). Global ecological coordination will also be hampered by the lack of rule of law in many African and Asian countries – no doubt a legacy of oriental despotism, colonialism and widespread corruption.

Asia: China, South East Asia and the "stans"

Milton Friedman (2002, 2008) argued over a long career for the basic idea that capitalism and democracy are closely related. The argument hinges on an intimate connection between economic and political freedom. However, the empirical evidence does not vindicate this argument. The empirical analysis also shows that a set of countries deviates from this interaction, managing to reach both affluence and state firmness without institutionalising rule of law II. Economic freedom and political freedom are not as closely

relate as Friedman claimed, especially not in the ASEAN region.

The association between the rule of law I and rule of law II is much weaker than the connection between economic output and rule of law I, especially in the ASEAN region. Higher levels of affluence are yet to result in voice and political accountability in East and South East Asia. Most countries in the ASEAN region are at zero or below when it comes to rule of law II.

Sen's (2000) theory that economic development is freedom must be understood against the background of his analysis of freedom as capability (Sen, 1995). Of course, it is not the sole conception of freedom. In political theory, there is Hobbes' idea of freedom as absence of heteronomy; that is, the lack of constraints imposed on a person by other people or government.

There is also Rousseau's notion of freedom as participation; that is, people are free when they together decide on the laws that restrain their lives. Following these concepts of freedom, it is necessary to focus on the scope and range of rule of law I and II in a country, with human rights as well as voice and accountability being considered. Countries may experience tremendous economic growth without experiencing similar advances in freedom as human rights or freedom as participation in collective choice. As stated above, Sen (2000) maintains that economic progress results in increasing freedom. From a normative point of view, this is a highly acceptable or desirable standpoint. But is it really true in the world we live in? In the ASEAN region, rapid economic development in several countries has not yet resulted in the rule of law. Stunning economic advances in several of the East and South East Asian countries have been accomplished, without resulting in either economic freedom or political freedom. Singapore and Hong Kong are interesting exceptions as these two entrepot entities score

high on rule of law I. Only Japan, Taiwan and South Korea come out at a reasonable level on both types of rule of law: rule of law I as judicial autonomy and legal integrity, and rule of law II as voice and political accountability. The typical global association between economic advances and the rule of law is weaker in the ASEAN region than in other regions of the world. This is worthy of more detailed research along the lines indicated in this discussion.

Conclusion

Under any political or in any state, the citizens hire and instruct a set of agents – politicians and officials - to work for them against remuneration to be taken out of the value that the agent contributes to. The agents can put in high effort or low effort, schematically speaking, which has an impact upon the value that is created. The factor “effort” captures all that lead an agent to be either highly or poorly performing. Both parties are assumed to maximise their utility, which for the agents involves compensation for the disutility that high effort imposes upon him/her. Thus, there arises a gaming situation where the agent wants to maximise his/her compensation while the principal wants to maximise the value that the agent helps producing minus the remuneration of the agent. All kinds of solutions to this game are conceivable, depending upon contingencies such as the availability of agents as well as the existence of asymmetric information. In politics, it is the agents who know the most.

The principal would wish to maximise the contribution of the agents to total value and its fair distribution in society, subject to the restriction that the agents need to be remunerated for their effort. Thus, we have the two key equations: (1) Principal: Max total value or income subject to fairness in distribution; and (2) Agent: Max remuneration covering both salary and perquisites. Given perfect information, there is a first best solution to the problem,

namely: that the principal installs the most efficient agents, taking (1) and (2) into account. However, given asymmetric information the principal is forced to look for second best solutions that all will involve a better deal for the agents.

In Rawlsian well-ordered societies, the political agents in government operate the set of governance mechanisms that we call “state” (Kelsen, 1961; 1967). It claims sovereignty over its country, but it enters into a web of relationships with other states, governed by the rule of law principles of the international society, namely the so-called public international law (Schwobel, 2011).

A state may be seen as flowing from an agreement among the members about helping each other in securing peace and stability. A body of rules would codify this mutual agreement. A state quickly develops a division of labour between leaders and followers, the subgroup who implements the rules and the subgroup who follow the rules in their behaviour. I will call the followers the “principal” of the political club and the leaders the “agents”. Thus, the political club will be modelled as confronted by the principal-agent problematic, comprising inter alia:

- Who are the political agents?
- How are these agents selected?
- Can agent power be laid down formally?
- Are there restraints on the power of the agents?

In politics, transaction costs are minimised by handing over the responsibility for the tasks of the state to a set of people, called the leaders and their public servants. I will employ the word: “agents”. The agents provide the members of the state – the citizenry or the principal – with the chief goods and services of this type of community, when they are successful that is.

References

- Adamson, P., & Taylor, R.C. (Eds.). (2004). *The Cambridge Companion to Arabic Philosophy*. Cambridge: Cambridge University Press. doi. [10.1017/CCOL0521817439%20](https://doi.org/10.1017/CCOL0521817439%20)
- Adib-Moghaddam, A. (2014). *A Critical Introduction to Khomeini*. Cambridge: Cambridge University Press.
- Ahktar, S. (2007). *The Quran and the Secular Mind: A Philosophy of Islam*. London: Routledge.
- Al-Tamany, S.M.S. (2014). *Averroes, Kant and the Origins of the Enlightenment: Reason and Revelation in Arab Thought*. London: I.B. Tauris.
- Albert, G. & Bienfait, A. (eds) (2007). *Aspekte des WeberParadigmas: Festschrift for Wolfgang Schluchter*. Verlag for Sozialwissenschaften.
- Averroes. (n.d.). The Decisive Discours. [[Retrieved from](#)].
- Beaud, M. (2006). *A History of Capitalism 1500-2000*. Aakar Books.
- Bendix, R. (1960, 1992). *Max Weber â An Intellectual Portrait*. Berkeley: University of California Press.
- Bendix, R. & Roth, G. (1971). *Scholarship and Partnership: Essays on Max Weber*. Berkeley: University of California Press.
- Besley, T. (2006). *Principled Agents? The Political Economy of Good Government*. Oxford: Oxford University Press.
- Bruun, H.H. (1972, 2012). *Science, Values and Politics in Max Weber's Methodology*, New Expanded Edition. Aldershot: Ashgate Publishing.
- Bruun, H.H. & Whimster, S. (eds) (2012). *Max Weber: Collected Methodological Writings*. London: Routledge.
- Calvert, J. (2010). *Sayyid Qutb and the Origins of Radical Islamism*. New York: Columbia University Press.
- Calvert, J. (2010). *Sayyid Qutb and the Origins of Radical Islamism*. C Hurst.
- Chaudhuri, K. (2010). *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750*. Cambridge: Cambridge U.P.
- Cheibub, J.A. (2006). *Presidentialism, Parliamentarism, and Democracy*. Cambridge, Cambridge University Press.
- Cooter, R.D., & Ulen, T. (2011). *Law and Economics*. New York: Pearson.
- Davidson, L. (2013). *Islamic Fundamentalism: An Introduction*. Praeger.
- Diamond, L. (1999). *Developing Democracy.: Towards Consolidation*. Baltimore: John Hopkins U.P.
- Easton, D. (1965). *A Systems Analysis of Political Life*. New York: Wiley.
- Elgie, R. & Moestrup, S. (2008). *Semi-presidentialism in Central and Eastern Europe*. Manchester: Manchester University Press.
- Friedman, M. (2002). *Capitalism and Freedom*. Chicago: University of Chicago Press.

Ch.4. A theory of good governance or good government

- Friedman, M. (2008). *Milton Friedman on Economics: Selected Papers*. Chicago: Chicago University Press.
- Ellis, M., Emon, A.M., & Glahm, B. (Eds.). (2010). *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press.
- Fakhry, M. (2004). *A History of Islamic Philosophy*. New York: Columbia University Press.
- Glaser von, H. (1951-52). *Die fünf grossen Religionen: Two volumes*. Dusseldorf, In: Diederichs.
- Gordon, S. (2002). *Controlling the State: Constitutionalism from Ancient Athens to Today*, Harvard U.P.
- Hallaq. (2010). *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.
- Hardin, R. (2003). *Liberalism, Constitutionalism, and Democracy*, OUP.
- Held, D. (1995). *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. Stanford: Stanford U.P.
- Hobbes, T. (1982). *Leviathan*. London: Penguin.
- Huff, T.E. & Schluchter, W. (1999) *Max Weber and Islam*. Piscataway: Transaction Publishers.
- IMF, (2009). World Economic Outlook Database; data. [\[Retrieved from\]](#).
- Jackson, R. (2010). *Mawlana Mawdudi and Political Islam*. London: Routledge.
- Kamali, M.H. (2008). *Shari'ah Law: An Introduction*. One world Publications.
- Kaufmann, D., Kraay, A., & Mastruzzi, M. (2010). *The Worldwide Governance Indicators: Methodology and analytical issues*. World Bank Policy Working paper No 5430. [\[Retrieved from\]](#).
- Kavalski, E. & Magdalena Z. (2008) *Defunct Federalisms: Critical Perspectives on Federal Failure*. Aldershot: Ashgate.
- Keefer, P. (2007). *DPI2006 Database of Political Institutions: Changes and Variable Definitions*, Washington, DC: The World Bank. [\[Retrieved from\]](#).
- Kelsen, H. (2009). *Pure Theory of Law*. London: The Lawbook Exchange.
- Klabbers, J., Peters, A., & Ulfstein, G. (2011). *The Constitutionalization of International Law*. Oxford: Oxford U.P.
- Kocka, J. (2016). *Capitalism: A Short History*. Princeton: Princeton U.P.
- Kumar, D. & Desai, M. (1983). *The Cambridge Economic History of India: Volume 2, c.1751-c.1970*. Cambridge: Cambridge U.P.
- Lane, J.-E. (2011). *Constitutions and Political Theory*. Manchester: Manchester U.P.
- Lane, J.-E. & Ersson, S. (2000) *The new institutional politics: Performance and outcomes*. London: Routledge.
- Leaman, O. (2009). *Islamic Philosophy: An Introduction*. Cambridge: Polity Press.
- Mainwaring, S. & Matthew S.S. (1997) *Presidentialism and Democracy in Latin America*. Cambridge: Cambridge University Press.

Ch.4. A theory of good governance or good government

- Malthaner, S. (2011). *Mobilizing the Faithful: Militant Islamist Groups and Their Constituencies*. Chicago: University of Chicago Press.
- Manne, R. (2016). *The Mind of the Islamic State: Milestones Along the Road to Hell*. Black Inc. Redback. Mawlana Mawdudi and Political Islam: Authority and the Islamic state. London: Routledge.
- Miller, T., & Holmes, K.R. (2009). *Index of Economic Freedom*. The Heritage Foundation.
- Mommsen, W.J. (2004) *Max Weber und die deutsche Politik 1890-1920*. Tuebingen: Mohr und Siebeck.
- Nasr, S.H. (2006). *Islamic Philosophy from Its Origin to the Present: Philosophy in the Land of Prophecy*. New York: State University of New York.
- Neal, L., & Williamson, J.G. (2015) *The Cambridge History of Capitalism, 2 Volumes*. Cambridge: Cambridge U.P.
- Rapoport, Y., & Ahmed, S. (2010). *Ibn Taymiyya and his Times*. Oxford: Oxford University Press.
- Raz, J. (2009). *The Authority of Law*. Oxford: Oxford U.P.
- Reiss, H.S. (2005). *Kant: Political Writings*. Cambridge: Cambridge U.P.
- Ringer, F. (2004). *Max Weber: An Intellectual Biography*. Chicago: University of Chicago Press
- Rodinson, M. (1993) *L'islam: Politique et croyance*. Paris: Fayard.
- Rodinson, M. (1994). *Mahomet*. Paris: Seuil
- Rodinson, M. (2009). *Islam and Capitalism*. Paris: Saqi.
- Roy, O. (2009). *The Politics of Chaos in the Middle East*. Oxford: Oxford U.P.
- Baranger, D. & Anthony W.B. (2007). *Constitutionalism and the role of - parliaments*, Oxford : Hart.
- Samuelson, K. (1964). *Religion and Economic Action. A critique of Max Weber*. New York: Harper Torchbooks.
- Sayed, K. (2009). *The Political Thought of Sayyid Qutb: The Theory of Jahiliyyah*. London: Routledge.
- Sombart, W. (2001). *Economic Life in the Modern Age*. Piscataway: Transaction Publishers.
- Tawney, R.H. (1922, 2012). *The Acquisitive Society: Greed and Society*. London: CreateSpace Independent Publishing
- Tawney, R.H. (1930, 2015). *Religion and the Rise of Capitalism*. Verso. The Koran. (1995). London: Penguin.
- Tsebelis, G. (2002). *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press.
- UNDP (2008) Human Development Indices: A statistical update 2008; data. [[Retrieved from](#)].
- Weber, M. (1947). *The Theory of Social and Economic Organisation. With an introduction by T. Parsosns*. New York: Free Press.
- Weber, M. (1949). *The Methodology of the Social Science*. New York: Free Press.

Ch.4. A theory of good governance or good government

Weber, M. (1978). *Economy and Society I-II*. Berkeley: University of California Press.

Weber, M. (2001). *Economie et societe dans l'Antiquite*. Paris: La Decouverte.

Weber, M. (2003). *General Economic History*. Dover.

Weber, M. (1988). *Gesammelte Aufsätze zur Religionssoziologie I-III*. Tuebingen: Mohr. Studentausgabe.

Weber, M. (2010). *The Protestant Ethic and the Spirit of Capitalism*. Oxford: Oxford U.P.

Weingast, B.R. (1977). The Political Foundations of Democracy and the Rule of Law, *American Political Science Review*, 91(2), 245-263.

Wittfogel, K. (1957). *Oriental Despotism*. New Haven: Yale U.P.

World Bank (2009) Governance Matters 2009: Worldwide Governance Indicators, 1996-2008; data. [[Retrieved from](#)].

World Bank: Worldwide Governance Indicators (2016). [[Retrieved from](#)].

Ziegler, K.S., Baranger, D., & Bradley, A.W. (2007). *Constitutionalism and the role of parliaments*, Oxford: Hart.

5

Political parties, coalitions and democracy

Introduction

It is popular among scholars to speak about various types of democracy again, like after the Second World War. It is argued that competitive democracy or adversarial democracy has flaws enough to warrant searching for alternatives while respecting the rule of law principles of constitutional democracy.

In the social sciences, semantic deliberations often offer a route to increased clarity. Where there is fierce theory contestation and a lack of an established set of hypotheses for various domains of inquiry, the question of the usage of key terms may pay off in reducing theoretical confusion and word ambiguity. The term “democracy” comes readily to one’s mind as a classic example of contending definitions of words.

An early example of a major semantic study in the social sciences was the UN sponsored inquiry into “democracy” by Norwegian philosopher Naess (1956). In reality, it was conducted by no one else than Stein Rokkan. Using Naess’

methods of empirical semantics, a lot of distinctions were presented like true or real democracy.

*responsible for the Banzhaf section.

We hear about unitary democracy (Mansbridge), negotiated democracy (Johansen), inclusive democracy (Gare) and consensus democracy (Lijphart) and ecological democracy. I will argue that these new theories bypass the insights of Riker (1962) that politics is much about value conflicts and that simple majority is an excellent peaceful mechanism for political parties to resolve societal clashes.

Typology, taxonomy and classification

When a phenomenon X is said to belong to type T, then the reason can be that X has property P or a few properties P1, P2, ..., PN. Or the reason can be that X is a member of a set S, comprising all phenomena similar to X. Thus, the CH is a consensus democracy due to its property of oversized governments and it has for quite some time been a member of a set of such democracies, like earlier the Austria plus Uruguay ("collegiado") and Lebanon.

In comparative social enquiry, it is essential to separate between property and set S. Given a property or a few properties, one may ask which units X1, X2, ..., XN satisfy the property(ies). Or one may proceed the other way around, asking for instance what, if any, are the common properties of Asian authoritarianism in China, South East Asia and the "Stans". The methods of comparison—see Pennings, Keman, & Woldendorp (2006)—are useful whether one starts with P or S. One may come to realize that the set S is in reality two subsets S1 and S2 with only a few trivial common properties. Then it is relevant to speak of different combinations of properties P in a typology.

In the social sciences, the match between P and S is often problematic, which is why one attempts to launch so-called pure types or ideal types. Pure type constructions have a

complex of properties but are not true of any real life units. Max Weber liked to construct pure types in order to measure how close or far away real phenomena were. This conceptual strategy is not without risk, as one cannot be sure one has hit the essential mix of properties.

Political science lacks a parsimonious classification of constitutional democracies. There are presidential and semi-presidential democracy sub-sets. But how can one make divisions among the large set of parliamentary democracies? Too many properties P1, P2, ..., PN would result in complicated sets of cross-classifications without uniqueness and simplicity.

Is the well-known model of consensus democracy by Arend Lijphart an ideal-type for NON-BRITISH democracy, or is it taxonomy over all constitutional democracies? Sweden is said to be a consensus democracy (Lewin), India (Lijphart), Switzerland (Kriesi, Vatter), Germany (Schmidt)—is this a correct classification of the set of democracies? Let us start with the chief actors—political parties—and their coalitions, whether minimum sized (adversarial democracy) or oversized (consensus democracy). What do parties maximize?

Nature of a political party: Weber

Political parties can be recognized on the basis of their visible characteristics, viz.: formal organisation, electoral contestation, parliament representation and government participation, having at least 2 of these 4 features. But what is the objective of these actors, i.e. the people in the parties in a representative democracy? Max Weber answered in his realist perspective on humans: power (Weber, 1919, 2012 ; Michels, 1962; Katz & Mair, 1995).

Weber (1978: 1395-1396) makes a number of theoretical comments on parties in a Parliamentary regime. He states again at one place: “Parties” reside in the sphere of power.”

But is the political party a means or an end and for whom? Given his realism, one would guess that power is the goal of parties, but he is much more nuanced.

Weber (1978: 1395-1396) lists five characteristics of a political party:

- 1) Parties are basically voluntary organizations;
- 2) Today the goal of the parties is vote-getting in an election for political positions or a voting body;
- 3) A hard core of interested members is directed by a leader or a group of notables; this core differs greatly in the degree of its hierarchical organization, yet is nowadays often bureaucratized.; it finances the party with the support of rich sponsors, economic interests, office seekers, or dues-paying members;
- 4) The hard core creates program and selects the candidates. Even in mass parties with very democratic constitutions, the voters and most of the rank and file members do not participate in the drafting of the program and the selection of the candidates,. By their very nature such parties develop a salaried officialdom or bureaucracies.
- 5) The voters exert influence to the extent that programs and candidates are adapted and selected according to their chances of receiving electoral support.

The Weber list of party properties is from “today”, he writes i.e. Germany around 1918. What acute observations, still valid today, i.e. 100 years after. But his definition excludes parties in the so-called Second and Third World, which just shows that Weber was concerned with the modern democratic regimes. It had to have a representative dispensation with political parties of basically two types, viz.:

- 1) Parties “essentially organizations for job patronage, as they have been in the United States since the end of the great differences about the interpretation of the Constitution. In this case they are merely interested in putting their leader into the

top position so that he can turn over state offices to his following ...”

2) “The party is primarily ideological (Weltanschauungspartei) and intended to accomplish the realization of substantive political ideals. In relatively pure form this type was represented in Germany by the Catholic Center party of the eighteen-seventies and the Social Democrats before they became bureaucratized.” Moreover:

“Parties are, therefore, only possible within groups that have an associational character, that is, some rational order and a staff of persons available who are ready to enforce it. For parties aim precisely at influencing this staff, and if possible, to recruit from it party ‘embers’.” (Weber, 1978: pp. 904-906).

Yet, why do politicians create and support parties in the first place? One should avoid analysing political parties as unitary actors—reification or the fallacy of misplaced concreteness. They are nothing but a group of politicians (Dahl, 1957).

The party as itself a coalition: Minimising transaction costs

Political parties are nothing but coalitions among individuals who wish to compete in open entry. Together they stand a better chance of gaining than going along alone. To act as a collective unit, they need some coherence of commitments—the ideology. The party program or platform makes it possible for the coalition of party members to campaign with a reasonably clear message that has some coherence in the views of supporters. On the other hand, the necessity of a political party for competing successfully constitutes a real hindrance for loners who would wish to enter but lacks a party affiliation.

Not even a charismatic person can in open entry alone. Some form of political party is necessary. To distinguish one

group of political from another, these coalitions we can “parties” employ a variety of tools: ideology, slogans, labels, logos, etc. The coherence of a party is never 100 per cent, as infighting and factions often occur. Politicians interpret the vocabulary of the party differently, and splits can be very serious indeed.

The prevalence of political parties in open entry implies that party organisations with huge staff and resources enter the basic equation of remuneration R and value V . One could argue that the remuneration R of the party staff should be the burden of the political elite or its followers, but one often encounters public mechanisms for the reimbursement of the costs of political parties, i.e. their R is taken from V . The political party may be inclined to use whatever command it has over V to benefit especially themselves—see the literature on the political business cycle.

Partitocrazia involves a fierce struggle among various elite groups for remuneration and access to leadership position. It may degenerate into infighting to such an extent that the party in question cannot operate adequately. And it may make a political club ungovernable with huge costs for society.

In open entry political clubs, political parties or coalitions among leadership groups compete on the basis of promises and blame. The first strategy is basically what the parties claim they can do for the size of V :

- Higher economic growth;
- Investments in infrastructure;
- Improvements in public services;
- Better control of violence and crime, including terrorism

now;

- More of income and wealth redistribution.

Are these promises credible? Could not the leadership of a club result in losses in V ? Here is where the logic of political competition comes in. The second strategy is the blame, with a strong call for change. In open entry clubs, political

competition should in principle be conducive to the maximisation of V, given a modest R. However, the parties in competition may promise too much and blame unreasonable.

The principle of spoils (*spolia*) is essential to party government in open entry clubs. By winning an election, the party(ies) may employ state resources (jobs, contracts, assignments, etc.) to remunerate the party leaders for their effort to secure victory. In some countries, the costs of the political parties have been more or less entirely transferred to the state coffers by means of public support for them. Spoils, however, require electoral success.

Party coalitions in government

We face a methodological choice between two established frameworks:

1) Riker

In his *Theory of Political Coalitions* (1962), W. Riker suggested a parsimonious taxonomy for coalitions that still works today with some modifications for connectedness among players (de Swann):

a) Minimum winning coalition (MWC) $> 51\%$, if one players leaves, the coalition loses;

b) Minimum sized coalition (MSC) $> 51\%$, but there is no superfluous player;

c) Oversized coalition $> 60\%$ with superfluous player(s);

d) Grand coalition: encompassing, $> 75\%$.

And he derived a basic coalition principle—the size principle—to explain changes in coalitions. We shall see below that “grand coalition” in Germany can stand for a MWC between the two biggest parties on the Right and Left (Schmidt, 2015), meaning that it can be MWC but hardly MSC.

2) Lijphart

There are many sources for the content of the concept of consensus democracy, but they all give a complex of properties P1, P2, ..., PN, including coalitions. This entails that

we need to inquire into whether there is a set S of countries that satisfy these properties, or some them. We look especially at the FRG.

H1: “concentration of executive power in single-party majority [MWC] cabinets versus executive power-sharing in broad [not MWC] multiparty coalitions.” (MWC means “minimal winning coalition”; is the cabinet just barely large enough to control a parliamentary majority (51%), or does the cabinet include more parties than it has to?)

Thus, it is an axiom: Consensus democracy does not harbor MWC or MSC. We check for the FRG.

FRG (Chancellors and coalitions).

Adenauer (MWC, MSC), Erhard (MWC, MSC), Kiesinger (MWC, MSC), Kiesinger (MWC, Oversized), Brandt (MWC, MSC), Schmidt (MWC, MSC), Kohl (MWC, MSC), Schroeder (MWC, MSC), Merkel (MWC, Oversized), Merkel (MWC, MSC).

Note: MWC = minimum winning coalition; MSC = minimum sized coalition

Source: Wiki Summary, [[Retrieved from](#)].

H1 satisfies CD? No.

H2: “the executive (president or cabinet/prime minister) is dominant over the legislature vs. a legislative-executive balance of power.”

The FRG practices what is called Kanzlersdemocratie that provides the chancellors about the same position as the British Premier.

H2 satisfies CD? No.

H3: “two-party vs. multiparty system. (This is partly a function of electoral rules”: pluralistic first-past-the-post electoral rules (which lead to disproportionate results) vs. proportional representation (PR).

H4: “pluralist (i.e. atomistic) interest groups vs. “corporatist’ interest group systems aimed at compromise and concertation.”

H3 and H4 satisfy CD, as Germany has PR and “drittelparitaet.”

H5: “unitary vs. federal/decentralized structure.”

H6: “unicameral vs. bicameral legislature (with two ‘equally strong but differently constituted houses’).”

H7: “flexible, easily amended (or non-existent) constitutions vs. rigid, supermajority-amended constitutions.”

H8: “legislatures determine constitutionality of own legislation vs. judicial review of constitutionality by an independent court.”

H9: “executive control of central bank vs. central bank independence.”

H5-H9 satisfy CD, as German constitutionalism has been built strongly with numerous restraints.

Consensus democracy comprises as model so many properties that no one set satisfies them all. When two most essential properties are lacking, how to characterize a case? If one ranks the properties above in terms of relevance, then clearly H1 and H2 come on top.

As events unfold in real life, a pure or ideal type may lose all connection with reality, making it more or less useless. I would argue that Lijphart’s model of Westminster democracy (1985) has suffered this fate, but on the other his other ideal type of consensus democracy seems still relevant. First, “Westminster” as a proper noun and not all a theoretical term cannot be used properly in abstract taxonomy. Second, the changes in the UK have been so far-reaching that it no longer harbours the pure type of a centralized democratic regime—devolution: Scotland is more autonomous than German Laender. Of course, issues in the UK are complex and there are constitutional documents with even a little legal review (Lewin, 1998; Lijphart, 2012). Third, it may not survive the Brexit disaster that is now unfolding.

Lijphart's classification is not acceptable from the point of view philosophy of science, i.e. exclusiveness, uniqueness, simplicity. Too many, maybe all (!) democracies fall in both sub-sets—not allowed. Moreover, I am somewhat baffled by the theory of prominent professor Manfred Schmidt at UNI Heidelberg, appointed as the best in Deutschland, saying that the German democracy is basically a consociational (consensus). Writing about "The Grand Coalition" state, Schmidt concludes an excellent overview of the FRG:

This is part of a more general message to be derived from the political institutions in Germany. It is almost impossible in the Federal Republic of Germany not to be governed by a grand coalition of federal government and state governments and a grand coalition of the major established parties—whether hidden or formal. Diverging majorities in the Lower House and the Upper House intensify this requirement. Particularly during periods in which formal coalitions have been formed between the CDU-CSU and the SPD, but also in periods of non-oversized coalitions and diverging majorities in the Bundestag and the Bundesrat, the Federal Republic of Germany can be regarded as the embodiment of the Grand Coalition State, a German-style consociational democracy. [[Retrieved from](#)], page 36 (February 5, 2015) ([Schmidt, 2003, 2005 ; Vatter, 2009](#)).

This is, I fear, flawed, as most governments are minimum sized a la Riker—also the "grand coalitions". One gets the impression that grand coalition is not distinguished from oversized coalition. The present Merkel government fits the size principle and has nothing to do with a German style consociationalism. CDU + CSU together with SDP just maximized power. Which, then, are the constraints upon parties?

The principal-agent restraint

If Weber was correct about political parties maximizing power, then what restrains them from authoritarian behavior, like in so many dictatorships? The first source of constraints is the rule of law regime in a constitutional democracy. The second source of constraint is the principal-agent nature of the interaction between party and supporter. The capacity to shift to another party holds the party down on a carpet that can be pulled from underneath in any election. The number of party switchers may reach 50% in earth quake elections.

Maximising party power: Banzhaf

Political power under a regime with party government in a multi-party system derives from the capacity of parties to enter into winning coalitions, either ad hoc in relation to the voting on decision issues in Parliament, or as a permanent coalition government. The Banzhaf model of coordination in n-person games offers a method to estimate this form of political power, focusing upon coalitions. In short, the Banzhaf model measures the capacity of a party being successful in contributing to the success of a coalition in representative assemblies.

Parliament makes a huge number of decisions concerning for instance government formation and support, the budget and taxation as well as regulation in the form of legislation and oversight. Under party government, the actors in collective decisions are the political parties that tend to vote with one voice, based on their differential number of mandates. Both the constitutional rules of decision-making and the strategy of coalition formation are decisive for the outcomes of parliamentary decision-making.

Most decisions in Parliament require simple majorities, which is why a minimum winning coalition is enough. Sometimes certain decisions of constitutional relevance are singled out requiring a heavier support or qualified

majority—see Wicksell below. To prevail, a winning coalition would then have to be oversized. In the normal business of government, simple majority (MWC or MSC) suffices in most parliamentary countries.

A coalition that is minimum winning does not need to be a minimum sized coalition. Actually, coalitions may be of many kinds, but the essential thing is that they win in voting (Riker, 1962). Coalitions may be temporary, focusing upon one voting sequence, or they may be permanent over an election period, such as for instance four years. Government coalitions are formed for the purpose of exercising power over a longer period, but government coalitions may break-up prematurely, leading either to a new government or to new elections (De Swaan, 1973; Downs, 1968; Bergman, 1995).

A political party maximizes its voting power by actively participating in the formation of coalitions (Laver, 1998; Shepsle, 2003). If it enters a government coalition, then it shares the voting power of the government with its governing partners. It may also exercise voting power by participating in temporary coalitions that achieve the minimum-winning format. Political power is mainly exercised through the capacity to influence voting in the national assembly. For instance, the election system returns the political parties to the German “Reichstag” or the Austrian “Nationalrat” roughly according to a numerical size that is decided by the election rules (electoral fairness), giving a certain voting support among the electorate.

Banzhaf power: Ex ante and ex post

N-person games have no equilibria, which is why power indices have been launched. The literature is highly theoretical (Shapley & Shubik, 1954; Banzhaf, 1968; Felsenthal & Machover, 1998; Holler & Illing, 2006; Holler & Owen, 2001; Fara, Leech, & Salles, 2014; Leech, 2002, 2012), with

rather few empirical applications except some international bodies. Here, we try the national Parliament.

We distinguish between two parliamentary situations: a majority coalition and a minority coalition. In the first situation, the added Banzhaf power scores of government parties equal always 1. This is a value equally shared by the coalition parties in same proportions, no matter how many seats the party may have won—threat power of quitting. In the second situation, the government Banzhaf power score is always smaller than 1. Other parliamentary actors will receive Banzhaf points as well, since the voting power of the government is shared with some other parliamentary actor(s).

One may further calculate Banzhaf scores for every legislative period and weighted for every single year = modified aggregation. In the first step, the seats and the Banzhaf scores ex ante and ex post government formation are aggregated over time. In a second step, the data is modified by considering only those years, when the parties actually were in parliament or, as the case may be, in power.

According to the voting power scores measured by the Banzhaf approach, it is then most illuminating to look at the differences between the parties' share of seats in the parliamentary assembly and the share of voting power ex ante and ex post government formation. It can be shown how both the parties' influence- and voting-power can be different from the size of seats they hold in parliament and why some parties dominate the political game, whereas others do not play a big role despite their relative strength (Felsenthal & Machover, 2005: p. 491).

To model voting in a national parliament, we will use cooperative game theory, or more specific, n-person games. Here, we have the so-called simple games with two outcomes: win or lose. Given a proposition (bill, budget items, etc.), the players form either supporting or opposing coalitions. The total value the game, the payoff, is subsequently assigned to

the winning coalition, while the losing coalition gets nothing. Since win or lose are the only outcomes of such voting games, we simplify the calculations by normalizing the payoff to 1 and 0, hence the notion of a simple game. We calculate three voting power measures:

- Scores for single parliamentarians;
- Scores for the entire party before government formation—ex ante;
- Scores for the whole party after government formation—ex post.

Examples: The two German states

When comparing party government in Germany and Austria before and after the fascist regimes, one can note the great similarity in terms of both political culture and political institutions (Rudzio, 2011; Pelinka, 2004):

- Parliamentarism: Representative government with the focus upon the chancellor;
- Federalism: Decentralized polity although with considerable competences at the centre;
- Election system: PR system employing alternative schemes delivering a rather high degree of proportionality between votes and seats, generally speaking;
- The decision-making process: An influential committee system and since the after war years also a high degree of (neo)corporatism (Siaroff, 1999).

Also the mass media systems of both countries developed similarly, as their important broadcast stations are mainly based on public law until this day. Focussing these similarities as well as the fact, that both, the German and the Austrian party systems have developed along resembling societal cleavages in the electorate over the last 90 years (Lipset & Rokkan, 1967) and as systems of “moderate polarized pluralism” (Sartori, 1976), one has to ask, why the logic of party government has tended to be rather different in these

two countries—with the political left dominating the Austrian and the political right dominating the German system of government. That's why we compare the two countries' party systems out of a most similar case research design. The analysis is made by using the parliamentary shares of seats in the national assemblies of Austria and Germany, compiled by national authorities. The data is covering the periods from 1919-33 in the Weimar republic and from 1949-2012 in the FRG as well as Austria during the 1st republic 1919-1933 and the 2nd republic (1945-2012). The Nazi-period in both countries is left out of consideration.

Weimar Republic

The average situation of power distribution in the Weimar Republic from 1919-1933 is the following: It was especially the smaller parties and the right wing parties, which often joined government, and which were able to increase their voting- and influence power compared to both their share of seats and their ex ante government status.

The deviations from strict proportionality: DDP and BVP had larger influence- and voting power compared to their share of seats (DDP + 6.7 percent, BVP + 5.3 percent). Larger conservative parties, which frequently joined government, i.e. Zentrum and DVP, were also expanding their voting power by joining one or more of the mostly minority governments in the Weimar republic. Thereby the (here: external) coalitions can be seen as a latchkey to wield power. They can make minority or majority governments winning. In particular between 1923 and 1929 this was an aim, which was successfully followed by DVP's Gustav Stresemann.

Although the Weimar governments often were minority governments, the governing parties had significantly more voting power than they were entitled to, when taking the governmental share of mandates as a basis. This corresponds to the high fragmentation rate of the party system and

provides another and new explanation for the appearance of the governments existing during this period and for the dominance of these parties.

Social democrats (SPD) or the communist party (KPD) were often unable to transform their outstanding mandate strength into effective influence or voting power ex post government formation. Although the Social democrats regularly were the largest party in parliament and their ex ante Banzhaf score is greater than their relative mandate strength, they only rarely joined government due to missing coalition options from the mid-1920s on. This is a phenomenon, which is also reflected by the social democratic loss of power from the ex ante to the ex post stage of government formation.

The nationalist DNVP, often supported by one of the (minority) governments, is different in comparison to the governing parties characterized by nearly constantly (high) ex ante and ex post Banzhaf scores and shows only a small loss of its relative proportion of seats to its power position ex ante government formation—a feature in common with other opposition parties.

One could state that the political centre and the political right is overrepresented both ex ante and ex post government formation, whereas the political left parties, especially the social democrats, are clearly underrepresented in comparison to their relative mandate strength (Table 1).

FRG

Looking at the party systems at first glance, the findings for the FRG are totally different to those in the Weimar republic: after the first consolidating years with a multi-party system (Table 2), the German party system was condensed to a 2.5 party system (Poguntke, 1999). From then on, it was characterized by two “catch all” parties (Kierchheimer, 1965) on the one hand, CDU respectively CSU and SPD, and by the

FDP as a 0.5 “pivotal” party (Keman, 1994) on the other hand. This setting held for nearly 30 years. However, when looking at the distribution of power, measured by the Penrose-Banzhaf-Coleman-approach, the findings are similar to those in the Weimar republic: again, the political left is underrepresented.

Only the liberal FDP can enlarge its power compared to its relative mandate strength. In turn, the Christian democratic CDU, respectively CSU, or “Union” for short, in turn, is despite small losses, only able to score constantly high Banzhaf points ex ante and ex post government formation. Still, with exception of the Brandt—and Schmidt—and Schröder-years, the FRG often had a Christian democratic majority coalition regime with the FDP taking a very powerful position, both due to its pivotal status and its therewith associated status as the longest lasting governmental party. Consequently, the FDP (+28 percent) and to a smaller amount also the Greens (+4.6 percent), are the only parties in sixty years of FRG, to receive a positive value ex post government formation, when looking at the deviations from strict proportionality.

Concerning SPD’s power scores, the Social democrats are often unable to transform their often distinctive mandate strength into effective influence or voting power ex post in government formation. Although they receive large allocations of seats, they have comparatively little power to win voting. Therefore, their lack of power ex post government formation is also much bigger (−18.1 percent) than the Christian democratic one (−9.5 percent).

The weak position of the social democrats in the FRG is a political entity similar to that in the Weimar republic and, as a result, is valid despite the fractionalization of the federal German party system from a 2.5 party system to a polarized four, respectively five, party system during the last two or three decades (Rudzio, 2011). Reason: it is true that these

changes also had influence on the distribution of power in parliament, but it was especially the left side of the party system which changed its shape.

The SPD has indeed had the most coalition options from all relevant parties (Korte & Fröhlich, 2004), but it also has one of the most different bargaining positions because of its lack of power. This is true not only adverse the smaller parties and when accounting ideology adverse the Greens, but also compared to the Christian democratic Union.

Table 1. *Banzhaf Power distribution in the Weimar Republic 1919-1933.*

Party		Modified aggregation	Deviations from strict proportionality (power—seats)
SPD	seats (rel.)	0.254736842	
	ex ante	0.291411	0.0366742
	ex post	0.179639259	-0.0750976
U SPD (1919-1924)	seats (rel.)	0.154	
	ex ante	0.139715	-0.014285
	ex post	0.1057972	-0.0482028
DNVP	seats (rel.)	0.138947368	
	ex ante	0.126354053	-0.0125933
	ex post	0.113363011	-0.0255843
Zentrum	seats (rel.)	0.139635857	
	ex ante	0.129780053	-0.0098558
	ex post	0.155244942	0.0156091
BVP	seats (rel.)	0.037010234	
	ex ante	0.034639444	-0.0023708
	ex post	0.090371939	0.0533617
DVP	seats (rel.)	0.084253906	
	ex ante	0.077607053	-0.0066469

Ch.5. Political parties, coalitions and democracy

	ex post	0.136149469	0.0518955
DDP	seats (rel.)	0.058270387	
	ex ante	0.052078947	-0.00619144
	ex post	0.124839478	0.066569091
NSDAP	seats (rel.)	0.132896772	
(1924-1933)	ex ante	0.148824857	0.015928085
	ex post	0.116784334	-0.016112438
Wirtschafts-	seats (rel.)	0.024752883	
partei	ex ante	0.023595211	-0.001157672
	ex post	0.029837938	0.005085055
KPD	seats (rel.)	0.096936858	
	ex ante	0.094663278	-0.00227358
	ex post	0.045465496	-0.051471362
Dt.-Hannov.	seats (rel.)	0.006994286	
Partei	ex ante	0.006280333	-0.000713953
	ex post	0.001587514	-0.005406772
Christl.-nat.	seats (rel.)	0.020770765	
Landvolk (1924-1933)	ex ante	0.018560071	-0.002210694
	ex post	0.012855946	-0.007914819
CSVD	seats (rel.)	0.015807965	
CDU/CSU	seats (rel.)	0.52482205	
	ex ante	0.501040618	-0.023781432
	ex post	0.429696945	-0.095125105
SPD	seats (rel.)	0.435363492	
	ex ante	0.301324545	-0.134038947
	ex post	0.254545455	-0.180818037
FDP	seats (rel.)	0.111550297	
	ex ante	0.242562455	0.131012158
	ex post	0.395151491	0.283601194
Grüne (since 1983)	seats (rel.)	0.070312448	

Ch.5. Political parties, coalitions and democracy

	ex ante	0.153269967	0.082957519
	ex post	0.116666667	0.046354219
PDS/	seats (rel.)	0.055674471	
Linkspartei.PDS/	ex ante	0.072640727	0.016966256
Die Linke (since 1991)	ex post	0.000000000	-0.055674471
Others	seats (rel.)	0.01402697	
(1949-61)	ex ante	0.01501596	0.00098899
	ex post	0.01301044	-0.00101653

Abbr.: SPD= Sozialdemokratische Partei Deutschlands (social democratic); U SPD = Unabhängige Sozialdemokratische Partei Deutschlands (independent, socialist); DNVP=Deutschnationale Volkspartei (nationalist, conservative); Zentrum = Center party (catholic); BVP = Bayerische Volkspartei (Bavarian, conservative); DVP=Deutsche Volkspartei (liberal); DDP = Deutsche Demokratische Partei (social liberal); NSDAP = Nationalsozialistische Deutsche Arbeiterpartei; Wirtschaftspartei=liberals; KPD = Kommunistische Partei Deutschlands (communists); Deutsch-Hannoversche Partei (local conservative party); Christl.-nat. Landvolk = Christlich-Nationale Bauern- und Landvolkpartei (agrarian, conservative); CSVD = Christlich sozialer Volksdienst (protestant conservative); Konservative Volkspartei = small conservative party; Deutsche Bauernpartei (agrarian).

Table 2. *Banzhaf power distribution in the FRG 1949-2012.*

Party		Modified aggregation	Deviations from strict proportionality (power—seats)
CDU/CSU	seats (rel.)	0.52482205	
	ex ante	0.501040618	-0.023781432
	ex post	0.429696945	-0.095125105
SPD	seats (rel.)	0.435363492	
	ex ante	0.301324545	-0.134038947
	ex post	0.254545455	-0.180818037
FDP	seats (rel.)	0.111550297	
	ex ante	0.242562455	0.131012158
	ex post	0.395151491	0.283601194
Grüne (since 1983)	seats (rel.)	0.070312448	
	ex ante	0.153269967	0.082957519
	ex post	0.116666667	0.046354219
PDS/	seats (rel.)	0.055674471	
Linkspartei.PDS/	ex ante	0.072640727	0.016966256
Die Linke (since 1991)	ex post	0.000000000	-0.055674471
Others (1949-61)	seats (rel.)	0.01402697	
	ex ante	0.01501596	0.00098899
	ex post	0.01301044	-0.00101653

Abbr.: CDU/CSU = Christdemokratische Partei Deutschlands/Christlichsoziale Partei Bayerns (Christian democratic); SPD = Sozialdemokratische Partei Deutschlands (Social democratic); FDP = Freie Demokratische Partei (liberal); Grüne (ecological); PDS = Partei des demokratischen Sozialismus, Linkspartei.PDS, Die Linke (left socialist).

This argument is also supported by the Banzhaf numbers of especially the Greens and Die Linke—at least ex ante government formation, since the latter one is still regarded as “regierungsunfähig” (incapable of governing) by the other four parties. Furthermore, this is a situation, which could in future sharpen and lead to more frequent Grand coalitions, if

classifying the uprising Pirate Party as a left one. Power has increased though rather significantly for the Social democrats lately due to the coalitions with CDU + CSU.

These constructed scores can reflect a realistic picture of the existing power structures in a country's parliament and government across time. This especially becomes clear, if looking at the FRG, for example. Firstly Greens and Left Socialists appeared in the party system in the 1980s/90s. Taking their Banzhaf points from 1949 onwards into account would tamper the results. The same objection could be made, when considering, that for example other parties besides CDU/CSU, SPD and FDP competed only in the first years of the early FRG. Furthermore, reunification greatly changed the build-up of the Bundestag (e.g. the number of parliamentarians).

First Austrian Republic (1919-1933)

Turning towards Austria, the picture has to be drawn less distinctive: when looking at the first republic, the parties standing politically right were (even heavily) overpowered in comparison to their relative share of seats. On the other hand, in the second republic (1945-today), it is, contrarily, both the Austrian social democrats (SPÖ) and the Christian democratic ÖVP, who are able to enlarge voting- and influence power from the ex ante to the ex post stage of government formation, whereas different to the German system smaller parties (FPÖ, greens or BZÖ) only play a minor role in parliament and government.

In the interwar period, after the constitutional assembly in 1918, mainly three political blocks marked the Austrian party system: a socialist (SDAP), a Christian-catholic (Christlichsoziale) and a German nationalist party group, including some smaller parties (Pelinka, 2004: p.535). However, as shown by the Banzhaf power distribution ex ante and ex post government formation, it was the Christian social

party and the smaller German nationalist party group, which were participating regularly in government, neglected the two grand coalition years from SDAP and Christlich soziale until the constitution written by Hans Kelsen was established in 1920.

SDAP is also heavily underrepresented over the years, compared to its relative share of seats (–25.9 per cent). The German nationalist party group was extremely overpowered (+31 per cent) in relation to its mandate strength it obtained in the elections. Although the German nationalist predominance increased over time, both the agrarian Landbund, as well as the paramilitary Heimatbund/Heimwehr formed as secessions from Christlichsoziale and Deutschnationale. However, these new-formed parties could not gain any noteworthy parliamentary power. The German nationalist party group stayed powerful and the Heimwehr especially made its political marks rather outside of parliament—a fact, which is reflected by its both relatively small share of seats and its even smaller Banzhaf power index scores.

Summing up, it can be stated that in the first Austrian republic it was the right wing parties being (here even heavily) overpowered once more. This situation can partly also explain the politically smooth change from Austrian parliamentarism to Austrian fascism by Dollfuss in 1933-34 and to the “Anschluss” to Nazi-Germany in 1938—the SDAP in terms of parliamentary power, literally speaking, was powerless (Table 3).

Second Austrian Republic (1945-2012)

When analysing the political system of Germany after 1949, the FRG is often characterized as “The Grand Coalition State” (Schmidt, 1996). This institutional characterization of the political process, based on the politics in the federal system, is more true for Austria, comparing the number of grand coalitions, Austria (10) and not Germany (2). The here

computed Banzhaf numbers for the parties ex post government formation in Austria do clearly document this: in general, it is only the two catch all parties increasing their power by forming frequently governments together (SPÖ + 42 per cent; ÖVP + 27 per cent).

Table 3. *Banzhaf power distribution in Austria 1919-1933 (1st Republic).*

Party		Modified aggregation	Deviations from strict proportionality (power—seats) modified aggregation
SDAP	seats (rel.)	0.326533333	
	ex ante	0.333333333	0.0068
	ex post	0.066666673	-0.259866666
Christlichsoziale	seats (rel.)	0.462751467	
	ex ante	0.333333333	-0.129418134
	ex post	0.466666666	0.003915199
Deutschnationale	seats (rel.)	0.13902	
	ex ante	0.3333333	0.1943133
	ex post	0.449999967	0.310979967
Landbund	seats (rel.)	0.14	
	ex ante	0	-0.14
	ex post	0	-0.14
Heimatbund/Heimwehr	seats (rel.)	0.04424	
	ex ante	0	-0.04424
	ex post	0.01777767	-0.02646233
Others	seats (rel.)	0.012	
	ex ante	0	-0.012
	ex post	0	-0.012

Abbr.: SDAP = Sozialdemokratische Arbeiterpartei (social democratic); Christlichsoziale = Christlichsoziale Partei (christian-conservative); Deutschnationale = Deutsch-Nationale Bewegung (nationalist); Landbund (agrarian); Heimatbund/Heimwehr (paramilitary, nationalist).

When looking at the actual political situation in Austria, these findings appear to be valid, despite the countries' PR-election system and albeit the meanwhile establishment of newer types of coalition governments or the rise of smaller parties such as the Greens, the Liberals or the nationalist BZÖ. A grand coalition again ruled Austria since 2007 up to 2017 (Table 4).

Table 4. *Banzhaf power distribution in Austria after 1945 (2nd Republic).*

Party		Modified aggregation	Deviations from strict proportionality (power—seats)
KPÖ (1945-1959)	seats (rel.)	0.024675318	
	ex ante	0.035714293	0.011038975
	ex post	0	-0.24675318
Greens (since 1986)	seats (rel.)	0.074190836	
	ex ante	0.058608031	-0.015582805
	ex post	0	-0.074190836
SPÖ	seats (rel.)	0.433602479	
	ex ante	0.391257975	-0.042344504
	ex post	0.475124378	0.041521899
ÖVP	seats (rel.)	0.418770529	
	ex ante	0.366382331	-0.052388198
	ex post	0.445273631	0.026503102
VdU/FPÖ (since 1949)	seats (rel.)	0.104511154	
	ex ante	0.212018132	0.107506978
	ex post	0.084656084	-0.01985507
Liberales Forum (1994-99) Liberales (1994-2002)	seats (rel.)	0.055737705	
	ex ante	0	-0.055737705
	ex post	0	-0.055737705

BZÖ (since 2006)	seats (rel.)	0.089253188	
	ex ante	0.142857	0.053603812
	ex post	0	-0.089253188

Abbr: KPÖ = Kommunistische Partei Österreichs (communistic), Greens= Grünen ? Die grüne Alternative (ecological); SPÖ = Sozialdemokratische Partei Österreichs (social democratic); ÖVP = Österreichische Volkspartei (Christian democratic); VdU/FPÖ = Verband der Unabhängigen (1945-55)/since 1955: Freiheitliche Partei Österreichs (right-wing-demagogic, populist); Liberales Forum (liberal); BZÖ = Bündnis Zukunft Österreichs (nationalist-right-wing demagogic, economically liberal).

Like the German system, the Austrian party system after 1945 was characterized for a long time by a 2.5 party system, existing out of SPÖ, ÖVP and the smaller FPÖ. Different to Germany however, the Austrian FPÖ never reached a “pivotal” status in the party system as the FDP did in Germany. The reason for this political entity, which clearly is shown by a even negative balance from FPÖ’s ex post Banzhaf power points vice versa the parties’ relative share of seats (-0.01985507), is simple: the party’s ability to govern is small due to its right wing and demagogic ideology ([Pelinka, 2002: p.283](#)).

In contrast to Germany, it is in Austria not the political left, which is underrepresented. In contrast, especially the social democrats can enlarge their parliamentary power by joining government. Due to SPÖ’s slightly higher ex ante Banzhaf score and its therewith slightly better bargaining position in parliament, the second Austrian republic was for a much longer period ruled by social democratic chancellors (nearly 40 years) than the FRG (21 years).

Conclusion

Economists (Wicksell, Buchanan) and political scientists (Lijphart, Mansbridge) have argued that adversarial politics is not the best form of democracy. It is too narrow in its typical

coalition making, especially when the MWC is also MSC. Yet, if politics is mostly about conflicts and political parties maximise power, then Riker was correct, with some modifications (de Swann). Today there is only ONE consensus democracy—CH—but even it does not fit the pure type of CD due to the enormous amounts of referenda that are MWC and MSC.

Appendix

A player's power index can be described as follows:

β_i = number of swings of a player / total number of coalitions which do not include the player i
 β_i = number of swings of a player / total number of coalitions which do not include the player i

or in a formula

$$\beta_i = \frac{\eta_i}{2^n - 1}$$

In order to measure relative voting power among players the total number of swings for all players is used as the denominator:

$$\beta'_i = \frac{\eta_i}{\sum \eta_i} \quad \beta'_i = \frac{\eta_i}{\sum \eta_i}$$

Thus, the Banzhaf voting power index (Banzhaf, 1965) models the marginal contribution of a player to the success of a coalition, given a social choice mechanism. Looking here at the Banzhaf framework for solving N-person games, one starts from the characteristic function of a game by considering the set 2^N of all possible employing the assumption of equally likely coalitions. From these 2^n coalitions the Banzhaf score of player i is calculated as the number of coalitions in which i is critical, that is, the number of coalitions that player i is able to swing. The Banzhaf power index of player β_i is defined by the ratio of swings η_i to coalitions. Thus, we have

$$\beta_i = \frac{\eta_i}{2^n - 1} \quad \beta_i = \frac{\eta_i}{2^n - 1}$$

The group capacity of arriving at a decision is the total winning coalitions of the game, d . Relating this group capacity to the total number of possible coalitions of a game we obtain δ , the probability of decisiveness of a game,

$$\delta = \frac{d}{2^n} \quad \delta = \frac{d}{2^n}$$

This parameter is much employed in order to understand the differences between the three basic voting schemes of a group: simple majority (SM), qualified majority (QM) and unanimity (veto). The number of individual swings, η_i is another crucial parameter derived in this index. This parameter measures the number of swings a player can make, either swinging from YES to NO or from NO to YES, thereby altering the group outcome. The Banzhaf index relates this parameter to the total number of winning coalitions, d , in order to obtain the individual probability of blocking of a player i . Thus, we arrive at another basic parameter:

$$\theta_i = \frac{\eta_i}{d} \quad \theta_i = \frac{\eta_i}{d}$$

The Banzhaf overall power index parameter can be factorised into the product of the probability of decisiveness, twice the individual probability of blocking, θ_i . Thus, we have:

$$\beta_i = 2\delta\theta_i \quad \beta_i = 2\delta\theta_i$$

References

- Banzhaf III, J.F. (1965). Weighted Voting Doesn't Work: A Mathematical Analysis. *Rutgers Law Review*, 19, 317-343.
- Banzhaf III, J.F. (1968). One Man? Votes: Mathematical Analysis of Voting Power and Effective Representation. *The George Washington Law Review*, 36, 808-823.
- Bergman, T. (1995). *Constitutional Rules and Party Goals in Coalition Formation. An Analysis of Winning Minority Governments in Sweden*. Umeå: Umeå University.
- Dahl, R. A. (1957). The Concept of Power. *Behavioural Science*, 2, 201-215. doi. [10.1002/bs.3830020303](https://doi.org/10.1002/bs.3830020303)
- De Swaan, A. (1973). *Coalition Theories and Cabinet Formations. A Study of Formal Theories of Coalition Formation Applied to Nine European Parliaments after 1918*. Amsterdam: Elsevier.
- Downs, A. (1968). *Ökonomische Theorie der Demokratie*. Tübingen: J.C.B. Mohr (Paul Siebeck).
- Fara, R., Leech, D., & Salles, M. (eds.) (2014). *Voting Power and Procedures. Essays in Honour of Dan Felsenthal and Moshé Machover*. Berlin: Springer.
- Felsenthal, D.S., & Machover, M. (1998). *The Measurement of Voting Power. Theory and Practice, Problems and Paradoxes*. Cheltenham: Edward Elgar. doi. [10.4337/9781840647761](https://doi.org/10.4337/9781840647761)
- Felsenthal, D.S., & Machover, M. (2005). Voting Power Measurement: A Story of Misreinvention. *Social Choice and Welfare*, 25, 485-506. doi. [10.1007/s00355-005-0015-9](https://doi.org/10.1007/s00355-005-0015-9)
- Holler, M., & Illing, G. (2006). *Einführung in die Spieltheorie*. Berlin/Heidelberg/New York: Springer.
- Holler, M., & Owen, G. (eds.). (2001). *Power Indices and Coalition Formation*. Boston/Dordrecht/London: Kluwer Academic Publishers. doi. [10.1007/978-1-4757-6221-1](https://doi.org/10.1007/978-1-4757-6221-1)
- Katz, R. S., & Mair, P. (1995). *Changing Models of Party Organization and Party Democracy*. The Emergence of the Cartel Party. *Party Politics*, 1, 5-28. doi. [10.1177/1354068895001001001](https://doi.org/10.1177/1354068895001001001)
- Keman, H. (1994). The Search for the Centre: Pivot Parties in West European Party Systems. *West European Politics*, 17, 124-148. doi. [10.1080/01402389408425046](https://doi.org/10.1080/01402389408425046)
- Kierchheimer, O. (1965). *Der Wandel des westdeutschen Parteiensystems*. PVS, 6, 12-40.
- Korte, K.-R., & Fröhlich, M. (2004). *Politik und Regieren in Deutschland. Strukturen, Prozesse, Entscheidungen*. In Paderborn et al. (Eds.), Ferdinand Schöningh.
- Laver, M. (1998). Models of Government Formation. *Annual Review of Political Science*, 1, 1-25. doi. [10.1146/annurev.polisci.1.1.1](https://doi.org/10.1146/annurev.polisci.1.1.1)

Ch.5. Political parties, coalitions and democracy

- Leech, D. (2002). *Computation of Power Indices*. Warwick Economic Research Papers No. 644, Warwick: The University of Warwick.
- Leech, D. (2012). Computer Algorithms for Voting Power Analysis. [Retrieved from].
- Lewin, L. (1998). Majoritarian and Consensus Democracy: The Swedish Experience. *Scandinavian Political Studies*, 21, 195-206.
- Lijphart, A. (2012). *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. New Haven, CT: Yale U.P.
- Lipset, S., & Rokkan, S. (1967). *Cleavages Structures, Party Systems, and Voter Alignments: An Introduction*. In S. Lipset, & S. Rokkan (Eds.), *Party Systems and Voter Alignments: Cross-National Perspectives* (pp. 1-64). New York, NY: The Free Press.
- Michels, R. (1962). *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. New York, NY/London: Free Press.
- Naess, A. (1956). *Democracy, Ideology and Objectivity: Studies in the Semantics and Cognitive Analysis of Ideological Controversy* (Norwegian Research Council for Science Publications; Group Social Science; B308; 1).
- Pelinka, A. (2002). Die FPÖ in der vergleichenden Parteienforschung. Zur typologischen Einordnung der Freiheitlichen Partei Österreichs. *ÖZP*, 31, 281-290.
- Pelinka, A. (2004). *Das politische System Österreichs*. In I. Wolfgang (Ed.), *Die politischen Systeme Westeuropas*. Wiesbaden: VS-Verlag.
- Pennings, P., Keman, H., & Woldendorp (2006). *Doing Research in Political Science* (2nd ed.).
- Poguntke, T. (1999). Winner Takes All: The FDP in 1982-1983: Maximizing Votes, Office, and Policy? In W. C. Müller, & K. Strøm (Eds.), *Policy, Office or Votes? How Political Parties in Western Europe Make Hard Decisions* (pp. 216-236). Cambridge: Cambridge UP. doi. [10.1017/CBO9780511625695.009](https://doi.org/10.1017/CBO9780511625695.009)
- Riker, W.H. (1962). *The Theory of Political Coalitions*. New Haven, CT and London: Yale UP.
- Rudzio, W. (2011). *Das politische System der Bundesrepublik Deutschland*. Wiesbaden: VS Verlag.
- Sartori, G. (1976). *Parties and Party Systems. A Framework for Analysis*. Cambridge: Cambridge UP.
- Schmidt, M. (2003). *Political Institutions in the Federal Republic of Germany*. OUP.
- Schmidt, M. (2005). *Das politische System der Bundesrepublik Deutschland*. Munich: C.H. Beck.
- Schmidt, M.G. (1996). *Germany. The Grand Coalition State*. In J. M. Colmer (Ed.), *Political Institutions in Europe* (pp. 62-98). London/New York, NY: Routledge.

Ch.5. Political parties, coalitions and democracy

- Shapley, L.S., & Shubik, M. (1954). A Method for Evaluating the Distribution of Power in a Committee System. *The American Political Science Review*, 48, 787-792. doi. [10.2307/1951053](https://doi.org/10.2307/1951053)
- Shepsle, K.A. (2003). Perspectives on Politics. *American Political Science Association*, 1, 307-315.
- Siaroff, A. (1999). Corporatism in 24 Industrial Democracies: Meaning and Measurement. *European Journal of Political Research*, 36, 175-205. doi. [10.1111/1475-6765.00467](https://doi.org/10.1111/1475-6765.00467)
- Vatter, A. (2009). Patterns of Democracy: A Sub-National Analysis of the German Länder. *Acta Politica*, 44, 410-438.
- Weber, M. (1919). *Politik als Beruf*. München und Leipzig: Duncker & Humblot.
- Weber, M. (1978). *Economy and Society*. Berkeley, CA: University of California Press.
- Weber, M. (2012). *Gesammelte Politische Schriften Taschenbuch*: Salzwasser Verlag.

6

Civilisation today: Rule of law differencet

Introduction

The literature on Max Weber is by now large, comprising several biographies and numerous interpretations. All of his publications have been translated into English, the last ones being his major articles in the philosophy of science.⁴ Weber possessed an extreme sensibility for philosophical issues, which allowed him to develop the first modern philosophy of the social sciences. He bypassed German dogmatism, Kantianism and Hegelian Marxism, concentrating instead upon model building, scientific objectivity and neutrality, methodological individualism as well as empirical verification. His basic concept is that of “*Sinn*”, or meaning or intention and “*Sinnzusammenhaenge*”, or meaningful motivation or complex of intensions. The social sciences combine interpretation and statistical corroboration. Some scholars have argued that Weber in reality sought the sources of Western rationalism, ax exemplified in both modern capitalism and the modern bureaucratic state as well

as in the sciences. Today, it seems completely impossible to speak of Western rationality as a specific feature of civilization difference. Where, then, can we find a major social system property that separates between civilization legacies, if capitalism and rationality will not do?

Weber's thesis: world religions and modern capitalism

With so much written about the genius from Freiburg and Heidelberg, it is small wonder that the term "Weber's thesis" stands for a set of themes, not one only. One may clarify this multiplicity by two distinctions:

- a) Genetic or systematic theme: Weber's thesis may be about the origins or the pervasive traits of social systems;
- b) Religion or civilization theme: Weber's thesis may deal with the outcomes of religious beliefs specifically, or target the basic differences between the cultural civilizations of the world.

Thus, we have a 2X2 Table, as follows:

- a) Religion Civilization
- b) Genetic I II
- c) Systematic III IV

Actually one finds these four themes in the various books by Weber himself, as he wrote in an almost encyclopedic fashion about the history of political, economic and social systems. He singled out "modern" capitalism as his dependent variable, which would give the following list of themes:

- a) Modern capitalism arose in the West due to Protestantism (I);
- b) Modern capitalism arose in Western rationality (II);
- c) Modern capitalism has an affinity with Protestant ethics (III);

d) Modern capitalism is an expression of Western rationality (IV).

I cannot present a summary of the huge debate about these Weberian themes-see Schluchter.⁵ Nor shall I enter any polemics against the critique of Weber from various scholars, economic historians and sociologists for example. If the *Protestant Ethic and the Spirit of Capitalism* from 1904 (2010) has made Weber's name unforgettable, with new editions coming even some 100 years after, then there are, I claim, three difficulties with Weber's thesis when confronted with today's realities and knowledge.

First problem: what is modern capitalism?

As his dependent variable, Weber had chosen capitalism. It is quite understandable, given that several scholars in German Academia dealt with the subject. And the ascending *Arbeiterbewegung* promised another and better economic system, socialism. Yet, it was hardly a fertile choice, as the concept of capitalism is amorphous and the word itself highly value-loaded. Two meanings should be sharply separated:

- a) Capitalistic spirit or the acquisitive endeavor.
- b) Systems of capitalism, i.e. various institutional set-ups.

Weber obviously used the word "capitalism" in both the micro sense (incentives) and the macro sense (systems of norms). Perhaps he argued that the micro attitudes of the great Protestant leaders and personalities were different enough compared with the Catholic Church fathers to pave the way for "modern" macro capitalism, especially in the theory of predestination, considering greed as somewhat of a call? Yet, "modern" capitalism is conceived institutionally as the market economy with *bourse*: "It is only in the modern Western world that rational capitalistic enterprises with fixed capital, free labor, the rational specialization and combination

of functions, and the allocation of productive functions on the basis of capitalistic enterprises, bound together in a market economy, are to be found". Yet, the institutions of modern capitalism can be exported and adopted by other civilisations, learned and refined, which is exactly what occurred in the 19th and 20th centuries. Thus, even if Protestantism, or the Protestant ethics denying the possibility of magic and accepting rents had something to do with the *origins* of modern capitalism in the West-i.e. economic rationality or even overall rationality (*Entzauberung der Welt*), which though remains an essentially contested issue, it could never guarantee any persisting advantage. It is difficult to chisel out an interesting hypothesis about "modern" capitalism and the world religions that would have any relevance today.

Today, modern capitalism, at least when measured in terms of output, is perhaps stronger in South, East and South East Asia, with a few strongholds also within Islam, like for instance the UEL, Kuwait and Qatar. If "capitalism" stands for a set of institutions, or rules, then one may wish to enumerate a number of different types of capitalisms during known history: ancient, state, feudal, prebendal, modern, oriental, financial, etc. Weber displayed in his historical books that he mastered all these types of capitalism as well as that his emphasis upon mundane incentives meant that he always counted upon the role of the acquisitive spirit.

Perhaps Weber neglected the huge pottery factories, driven capitalistically with huge exports, during various dynasties in China, just as Sombart in his effort to link "modern" capitalism with the finance capitalism of the new merchant class around 1500 by passed the Indian Ocean trade. The Arab, Indian and Chinese merchants on the Indian Sea, from Mocha and Aden to Malacca and Canton, were no less capitalistic in spirit or rational in performance. "Modern" capitalism was not as exclusively European as some authors

have claimed, following Weber. The famous so-called “thirteen factories” in Canton were capitalistically operated.

Is modern capitalism the “take-off” stage?

Scholars analyzing capitalism come up with a list of different kinds of capitalism, institutionally speaking, like Sombart & Schumpeter. Weber separated between at least the following kinds:”

- a) Ancient Period: trade in slaves and tax farming;
- b) Feudal capitalism: exploitation of serfdom as well as fiefs;
- c) Merchant capitalism: profit seeking in luxuries trade and political banking, i.e. lending to monarchs for instance;
- d) Industrial capitalism = modern capitalism above.

Contrary to Sombart and Schumpeter, Weber never envisioned a final stage of capitalism disintegration, because he rejected the functionality of a pure socialist economy, or the command economy. However, the question of a WEST-EAST split in capitalism remains. If it is a matter of industrial capitalism, then the Rostow theory of the take-off stage is very helpful. If modern or industrial capitalism can be dated in time at all, then Rostow’s take-off idea would be the closest-see a stylized listing in Table 1. The interesting observation in Table 1 is of course Japan, experiencing a very fast capitalistic development after the Meiji Restoration, not later than take-off in France and Germany-see *The Economic Development of Japan 1868- 1941*.²¹ The year for China is probably wrong, as there were much earlier developments, especially in Canton. Also India may have to be revised as far as take-off stage is concerned. The evolution of industrial or modern capitalism in South, East and South East Asia needs more study.

Table 1: *“Take-off” dates for modern capitalism: a few countries.*

Country	Take-off in time
Great Britain	1783–1802
France	1830–1860
Belgium	1833–1860
United States	1843–1860
Germany	1850–1873
Sweden	1868–1890
Japan	1878–1900
Russia	1890–1914
Canada	1896–1914
Argentina	1935
Turkey	1937
India	1957
China	1957

Source: [[Retrieved from](#)].

Second problem: the analysis of religion: what are inner worldly and other worldly aspects of religion?

As his independent variable, Weber chose religion. The first step was to detail the link between Protestantism and capitalism. The second step involved a huge comparative enquiry into the economic spirit or ethics of several world religions in order to show that his thesis received negative corroboration in Hinduism, Buddhism, Taoism and Confucianism. It enhanced the study of comparative religion tremendously beyond what Marx and Durkheim accomplished with their simplistic models of “opium of the people” as well as mechanic solidarity or functional needs. But there is a conceptual paradox in Weber’s typology of the world religions. He employed two conceptual pairs:

- a) Salvation: Inner or other worldly religion;
- b) Asceticism: Inner or other worldly asceticism.

Combining these two, we have the following classification scheme:

- a) Salvation

- b) "Diesseitig" "Jenseitig"
- c) Inner worldly I II
- d) Asceticism
- e) Other worldly III IV

A religion that is other worldly has an eschatology outlining the real world to come on judgement Day, whereas an inner worldly religion promises redemption within existing universe. Asceticism or the perfection of the conduct of performance according to an ideal can be inner worldly here and now or outer worldly as in mysticism. Weber finds the drive for capitalism in the mundanely daily and secular (inner worldly) asceticism of the believers in another worldly religion-category II! No doubt a complex "sinnsu zusammenhaege". Where does Islam fit in?

Weber on islam: "virtuosi" and ascetics

The Koran is eschatological, promising the Paradise to its true believers when this world crumbles. But who are the ascetics? Weber replies: "Islam is a religion of warriors". But warfare and capitalism cannot co-exist for long. Weber employed his model of the ascetics in Islam-the warriors-to account for the incredibly quick spread of Islam, from Spain to India within a century after 632-looting, theft of land and pillage against infidels. Moslem scholars never accepted his model, because the Islamic civilisation stabilised into a fixed pattern that lasted up until after the Second World War, as follows:

- a) Sunni majority with the 5 peaceful rules of behaviour;
- b) The many Shia sects with one dominance politically, in Iran;
- c) Saudi Arabic Wahhabism, not accepted outside.

What has given Weber's model of Islam much renewed relevance is the rise of fundamentalism, especially Sunni fundamentalism with three scholars, namely Maududi, Qutb

and Faraj *Salafi Jihadism*. As thousands of young Muslims are attracted to their teachings in madras, schools and colleges or even universities but also prisons, the Koranic civilisation faces a dire civil warfare, resulting in so many deaths and tragedies from political violence, both inside and outside of Arabia. Al-Zawahiri created Al Qaeda writing a book about the “Knights of the Prophet” and al-Zarqawi put the ISIS into action in US and UK occupied Iraq. Moslem theologian and philosophers have yet to come up with a strong rebuttal of the gang of three modern *virtuosi* (it can be done to save Islam from disintegration!):

Maududi: completely comprehensive Islamisation;

Qutb: re-invention of the caliphate;

Faraj: total jihad-the real hidden duty of Islam.

Much has been written about Weber’s negative evaluation of Islam and also Muhammad personally. The leading scholar Schluchter has even ventured to outline how a complete Weberian book on Islam would look like. Some say he was too dependent on the *Orientalist* literature at that time, missing out on a proper evaluation of Arab science, philosophy, architecture and capitalism, bypassing the old *virtuosi* like giant Averroes and Avicenna.

Third problem: what is legal-rational authority?

The Governance Project of the World Bank has made a tremendous effort at quantifying the occurrence of rule of law, employing all the indices in the literature-see Appendix in Governance project. The findings are summarized in a scale ranging from +2 to -2 that is a ratio scale. Table 2 presents the aggregated scores for the civilisations, introduced above.

Table 2. *Civilisations and Rule of Law*

	Mean	Std. dev.	Freq.
Communist	-0.75477	0.383265	6
Hindu	-0.53253	0.642828	2
Muslim Non Arab	-0.72383	0.656132	21
Africa	-0.80077	0.621528	38
Arab	-0.3038	0.715167	18
Asia	0.474797	0.963247	9
Latin America	-0.18484	0.788423	34
Orthodox	-0.50738	0.355062	8
Pacific	-0.18706	0.630269	16
Western	1.19717	0.667936	38
Total	-0.10665	0.984421	190

Typical of legal-rational authority is, I would wish to emphasize, government based upon rule of law. Let us first state the definition of “legal authority” from Weber: “The validity of the claims to legitimacy may be based on: 1. Rational grounds—resting on a belief in the legitimacy of enacted rules and the rights of those elevated to authority under such rules to issue commands (legal authority)”.

The key terms in this general definition is rules or institutions. “Today the most usual basis of legitimacy is the belief in legality, the readiness to conform to rules which are formally correct and have been imposed by accepted procedure. The distinction between an order derived from voluntary agreement and one which has been imposed is only relative”. The talk about “voluntary agreement” hints at the democratic regime just as the requirement of “accepted procedure”. Yet, as is well-known, Weber moves on to equate legal-rational authority with bureaucracy: “The purest type of exercise of legal authority is that which employs a bureaucratic administrative staff”.

Yet, bureaucracy as a mechanism for carrying out the policies of rulers has, historically speaking, never operated according to the Weberian ideal-type. Bureaucracies have been invaded by affective ties, embezzlement, tribal loyalties

and opportunistic selfishness in search of turf. 20th century research into the bureaucratic phenomenon has resulted in numerous findings that question the applicability of Weber's bureaucracy model. As a matter of fact, bureaucracies can support traditional domination, as within Chinese Empires or Ottoman Ruler ship. It may also figure prominently in charismatic ruler ship, as with The Third Reich or the Soviet State. Weber recognized a fourth kind of political regime that he simply regarded as marginal, namely total authority based on naked power, because it could not last. The question then becomes whether legal-rational authority entails a legitimating rendering it stable over time as rule of law or whether it is enough with rule by law. I find no answer with Weber. The interpretation that Weber was some kind of "forerunner" to the development of a unique nationalist ideology in Germany in the 1930s, founding a state upon the exercise of naked power, is, in my view, questionable. Legal-rational authority implies a constitutional state respecting Kant's *Rechtsstaat*. As a matter of fact, rule of law trumps democracy, especially plebiscitary democracy.

The key terms: "beruf", "rationality" and "authority"

The link between Protestantism and modern capitalism is theorized in two different hypotheses, one by economic historians and political scientists and the other by sociologists and globalisation scholars. Thus, we have:

- a) Call: Protestantism would have supported the emergence of modern capitalism by its work ethic, underling this worldly asceticism, although the personal goal is other worldly salvation. However, modern capitalism is much more complex than this, especially institutionally. And similar ideas may be found in Buddhism and Confucianism.

- b) Rationality: Protestantism would have inaugurated the crushing of outer worldly asceticism, especially the set of magic behaviours and rites, opening up for secularization. However, Protestantism fought hard against Western secularization and lost. The basic source of Western rationality is Greek philosophy and Roman law, not Calvinism and Lutheranism. One finds elements of rationality in the other civilisations, like medicine, astronomy and mathematics with Muslims, mathematics with Hinduism plus scientific innovations and technology in China. However, one does not find the idea of rule of law and limited government outside of Western Europe, due to the predominance of oriental despotism.
- c) Authority and Naked Power: Weber was well aware of the place of power in social systems, as the capacity to impose ones will against another. However, he argued that power is fundamentally instable as well as that the employment of naked power is costly. Thus, we have his theory of three bases of political legitimating, enhancing authority as obedience. This moral dimension could be filled with tradition as in oriental despotism, charisma or the extraordinary gift to give direction and public law, i.e. constitutions and administrative law. In legal-rational authority, is legal-rational authority *rule by law*, as in China or Russia, or *rule of law*, as in Europe and India?

Evidently, Weber underestimated the effectiveness and longevity of naked power. It may last for decades as in North Korea, Syria and

Table 3. *Regression model for rule of law (RL) (N=162)*

Unstandardized coefficients			Standard coefficients		
B	Std. Error		Beta	t	Sig.
(Constant)	-4,216		471	-8948	0
In2010	507	47	657	10847	0
Ethnic	-474	222	-126	-2139	34
Muslim	-3	2	-118	-2192	30
budd2000	-2	3	-27	-5147	606
R	R Square	Adjusted R Square	Std. Error of the Estimate		
771	595	584	621331		

Sources: Kaufmann DA Kraal & M Mastruzzi (2012) Worldwide Governance Indicators; Pew Forum (2009) Mapping the Global Muslim Population; World Bank (2012) World Bank Databank; Barrett *et al.* (2001) World Christian Encyclopaedia.

Libya or Iraq. Perhaps the only basis of politics that may last is the rule of law, to which we turn now.

Civilisations today: rule of law

One may employ Figure 1 to portray the same findings as in Table 1. It should perhaps be pointed out that poverty accounts to some extent for the disrespect for due process of law-see Figure 1.

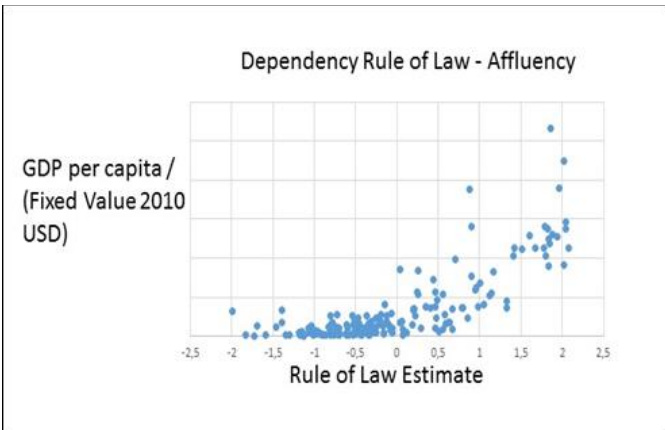


Figure 1. *Rule of law index (RL) against GDP 2015 (N=167, R²=0, 62).*

Note: WB: Worldwide Governance Indicators, 2016; See Kaufmann, Kraay, & Mastruzzi (2010).

“The Worldwide Governance Indicators: Methodology and Analytical Issues”. World Bank Policy Research Working Paper No. 5430; World Bank national accounts data; OECD National Accounts data files. However, culture also matters in the form of civilisations, especially Islam and Buddhism, and Orthodoxy-negatively-as well as Calvinism and Lutheranism-positively. RL cannot be introduced or upheld in a country with considerable tribalism and clan structures. Similarly, RL is not feasible in a country where Sharia has constitutional status. In many countries in the African and Asian civilisations there is both ethnic diversity and Islam. One may employ the regression technique in order to examine the impact of these factors upon RL:- Ethnicity: The fragmentation of a country into different ethnic groups (language, race);-Religion: The proportion of Muslims in country population; the proportion of Buddhist/Confucians in the country population;-Affluence: GDP in 2010. Table 3 displays the findings from an estimation of a regression equation.

Why rule of law?

Rule of law, whether combined with any form of democracy-referendum type, parliamentary type, presidential dispensation-or not, as in semi-democratic countries that are one party states. Comprises.

Predictability

Public law when properly implemented makes it possible for people to increase the rationality of behaviour. They know what rules apply, how they read as well as how they are applied consistently. This is very important for the making of strategies over a set of alternatives of action.

Transparency

Societies operate on the basis of norms prohibiting, obligating or permitting certain actions in specific situations. Rule of law entails that these norms are common knowledge as well as that they are not sidestepped by other implicit or tacit norms, known only to certain actors.

Due Process of Law

When conflicts occur either between individuals or between persons and the state, then certain procedures are to be followed concerning the prosecution, litigation and sentencing/incarceration. Thus, the police forces and the army are strictly regulated under the supervision of courts with rules about investigations, seizure, detainment and prison sentencing. No one person or agency can take the law into their own hands.

Fairness

Rule of law establishes a number of mechanisms that promote not only the legal order, or the law, but also justice, or the right. For ordinary citizens, the principle of complaint and redress is vital, providing them with an avenue to test each and every decision by government, in both high and low politics. Here one may emphasize the existence of the *Ombudsman*, as the access to fairness for simple people. People have certain minimum rights against the state, meaning that government respects obligations concerning the protection of life and personal integrity. Thus, when there is due process of law-procedural or substantive-one finds e.g. the *habeas corpus* rights.

I would dare suggest that most people in the world would want to live in a country where these precepts are respected and enforced. Only human sufferings result when they are not. Even people who adhere to a religion that rejects rule of law regret their absence when trouble starts and anarchy or

even warfare comes. Rule of law is the greatest idea in the history of political thought, from Cicero (very underestimated) to Kant.

Conclusion

The civilisation deviates the most from the *Rechtsstaat* is the Moslem one. This is due to the un-recognised and not fully understood revolution in the mind sets that we call Sunni fundamentalism or radical Islam. It now has started to appear in many Western countries with dire effects. Yet, rule of law is weakly enforced in the Latin American civilisation, non-existent in the Sub-Saharan civilisation and not very frequently occurring in the Buddhist one with its legacy of Oriental despotism, occurring also in the Moslem civilisation as Sultanismus, although not always with a hydraulic foundation. Even in Japan and South Korea like in Taiwan and Singapore, rule of law is not complete, and in the former Soviet republics, the situation could not be worse.

Today, Weber would have wished to take rule of law instead of capitalism as his dependent variable. After all, much of his writings belong to political science proper. Thus, let us turn to Weber's chief accomplishment in political sociology, namely that he identified four types of political regimes: naked power, traditional, charismatic and legal-rational authority—a most often used typology also today. However, he was not clear about the nature of the last type, linking wrongly—I wish to argue—legal-rational authority with his ideal-type Rule by model of bureaucracy, which may appear also in the authoritarian political system. *Rule by law* in China is not to be clustered conceptually with *rule of law* in the UK and the US.

References

- Bendix R. *Max Weber-An Intellectual Portrait*. USA: University of California Press; 1960.
- Bendix R, Roth G. *Scholarship and Partnership: Essays on Max Weber*. USA: University of California Press; 1971.
- Ringer F. *Max Weber: An Intellectual Biography*. Chicago: University of Chicago Press, USA; 2004.
- Bruun HH, Whimster S. *Max Weber: Collected Methodological Writings*. London: Routledge, UK; 2012.
- Schluchter W. *The Rise of Western Rationalism: Max Weber's Developmental History*. USA: University of California Press; 1992.
- Albert G, Bienfait A. *Aspekte des Weber-Paradigmas: Festschrift für Wolfgang Schluchter*. Albert G, Bienfait A, editors. Verlag für Sozialwissenschaften. 2007.
- Samuelson K. *Religion and Economic Action. A critique of Max Weber*. USA: Harper Torchbooks; 1964.
- Tawney RH. *Religion and the Rise of Capitalism*. Verso, USA; 1930.
- Tawney RH. *The Acquisitive Society: Greed and Society*. UK: CreateSpace Independent Publishing; 1922.
- Weber M. *Economy and Society I-II*. USA: University of California Press; 1978.
- Vainker SJ. *Chinese Pottery and Porcelain*. UK: British Museum Press; 1995.
- Glahn von R. *The Economic History of China*. UK: Cambridge UP; 2016.
- Sombart W. *Economic Life in the Modern Age*. USA: Transaction Publishers Piscataway; 2001.
- Kumar D, Desai M. *The Cambridge Economic History of India*. UK: Cambridge UP; 1983.
- Um P. *The Merchants of Mocha*. USA: University of Washington Press; 2009.
- Chaudhuri K. *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750*. UK: Cambridge UP; 2010.
- Beaud M. *A History of Capitalism 1500-2000*. Delhi: Aakar Books; 2006.
- Neal L, Williamson JG. *The Cambridge History of Capitalism*. UK: Cambridge UP; 2015.
- Kocka J. *Capitalism: A Short History*. USA: Princeton UP; 2016.
- Schumpeter AJ. *Essays: On Entrepreneurs, Innovations, Business Cycles and the Evolution of Capitalism*. Transaction Piscataway, USA; 1989.
- Macpherson WJ. *The Economic Development of Japan 1868-1941*. UK: Cambridge UP; 1987.
- Glasenapp von H. *Die fünf grossen Religionen: Two volumes*. Dusseldorf/ Köln: Diederichs, Germany; 1952.
- Rodinson M. *L'islam: Politique et croyance*. Fayard, Paris, France; 1993.
- Davidson L. *Islamic Fundamentalism: An Introduction*. Praeger, USA; 2013.

Ch.6. Civilisation today: Rule of law difference

Calvert J. *Sayyid Qutb and the Origins of Radical Islamism*. C Hurst, London, UK; 2010.

Jackson R. *Mawlana Mawdudi and Political Islam*. Routledge, London, UK; 2010.

Manne R. *The Mind of the Islamic State: Milestones Along the Road to Hell*. Black Inc. Redback, Australia; 2016.

Schluchter W. "Hindrances to Modernity: Weber on Islam". In: Huff, Schluchter, editors. 1999. p. 26–58.

Huff TE, Schluchter W. *Max Weber and Islam*. USA: Transaction Publishers; 1999.

Risso P. *Merchants and Faith*. Boulder, USA: Westview Press; 1995.

Mommsen WJ. *Max Weber und die deutsche Politik 1890-1920*. Mohr und Siebeck, Tuebingen, Germany; 2004.

Raz J. *The Authority of Law*. UK: Oxford UP; 2009.

Weber M. *Economie et société dans l'Antiquité*. La Découverte Routledge, Paris, France; 2001.

Weber M. *General Economic History*. Dover, USA; 2003.

Wittfogel K. *Oriental Despotism*. Yale UP, New Haven, USA; 1957.

7

Ideas of justice: Relevance of Weber's approach

Introduction

Justice, both the word and the conceptions, figure prominently in political science, in both the micro and the macro contexts. And in political history, ideas of justice have been central from the pre-socratics to the emergence of environmentalism and cultural discourses. Of course, other social sciences and philosophy share this interest in questions about what is just with political sciences, as the concepts of justice can be examined from several angles: domestic politics or economics, international economics or politics, gender, culture, inter generations, etc. Here, I focus only upon the general analyses of justice with a few Anglo-Saxon authors, namely Rawls, Barry and Sen. I wish to show the relevance of distinguishing between criteria and justice and the theory that argues in favour of just criteria.

Many other scholars could be drawn into this critical enterprise, but I wish to argue that the approaches of Rawls, Barry and Sen, whatever their major differences, contrast very

much with an entirely different approach to justice and moral theories, namely that of Max Weber (1922), emphasizing conflict like Nietzsche when different ideas of justice clash in politics. The Weberian approach has been completely bypassed in modern justice discourse in Anglo-Saxon culture, despite the fact that it has many adherents, receiving alternative formulations with major authors like Kelsen, Haegerstroem, Kaila, Brecht, Foucault, A. Ross, the logical positivists, etc.

Perhaps there is some crucial insight in the position that principles of justice will ultimately depend upon the acceptance of evaluations, i.e. moral evaluations. Actually, prominent Anglo-Saxon authors like e.g. Hume and Ayer have argument similarly.

Theories of justice and “justice”

Scholars who argue that just principles is merely a set of contradictory ideas about justice, reflecting the interests of the scholar or his community, often rely upon the semantic approach to moral terms or words. Weber did not, but for others the *non-cognitivist* approach to moral words offered a decisive rebuttal of all attempts to arrive at one and only one Platonian idea of justice. In meta-ethics, it was claimed that sentences like “X is just” or “X fulfils justice” were moral propositions with strong emotive content or with normative recommendation. Thus, “justice” is a value biased conception or a propaganda device for influencing people. However, meta-ethics cannot decide moral questions. If words like “just” or “justice” is *value-loaded* conceptions – see Myrdal (1958), then why not use others words like “fair” or “fairness” and “equitable”, etc.?

A lasting achievement in modern meta-ethics is the sharp separation between IS and OUGHT, which recurs not only in Hume but also with Weber. Thus, validating the following two sentences e.g.:

(1) Kashmir is part of Indian state;

(2) Kashmir should be decided by a popular referendum,

Call up the distinction between verification: truth and false against moral justification: just or unjust. The Is and Ought separation is crucial in theories of justice, hardly overcome in American pragmatism.

Finally, a few words on the method of argument below, starting from the Oxford Dictionary entry to "just" as: "Based on or behaving according to what is morally right and fair". The Oxford Thesaurus gives the following synonyms for "social justice": **fairness**, justness, fair play, fair-mindedness, equity, equitableness, even-handedness, egalitarianism, impartiality, impartialness, lack of bias, objectivity, neutrality, disinterestedness, lack of prejudice, open-mindedness, non-partisanship.

One notes especially the many synonyms that carry a risk for circular definitions like "justice" = impartiality," and "impartiality" = "justice". One also sees the need for criteria of justice, which give practical information about how to evaluate the extent of justice and propose concrete policies improving justice. The set of criteria has to be motivated by a theoretical argument about the place of justice in political and normative economic theory.

Perhaps one should point out that social justice and legal justice only partially overlap conceptually. In one Dictionary we have this entry for "justice":

a: the quality of being just, impartial, or fair **questioned the justice of the their decisions (1)**: the principle or ideal of just dealing or right action **(2)**: conformity to this principle or ideal: righteousness **the justice of their causes**: the quality of conforming to law.

Yet, social justice theories are not restricted to the law, but offers criteria to evaluate a just law or legal order.

Rawls

The magnum opus of Rawls, *A Theory of Justice* (2005), was published exactly when the emotive or prescriptive theories of "justice" had run their course as interesting projects in early 1970s. Scholars were not convinced by Kelsen saying that justice could be defined arbitrarily, or Haegerstroem claiming that "justice" simply meant "Oh so good", nor by Ross stating that "justice" lacked meaning entirely. It seemed that utilitarianism despite many developments was not an entirely convincing macro approach.

The dominance of logical positivist's framework for ethical discourse was replaced by innovations of the natural law approach, focusing upon cognitivist meta-ethics, deontological ethics and a micro focus upon the rights of individuals – see e.g. Nozick, 2001 and Dworkin, 2000). Rawls offered the most original ethical theory and perhaps also the most systematic, comprising both the set of justice criteria and an elaborate theory to derive these rights.

Rawls developed his theory of justice, integrating various other concepts in consecutive books and articles. Here, there is only space for considering his criteria of justice and its theoretical motivation. Firstly, we have the criteria:

"First Principle: Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

Second Principle: Social and economic inequalities are to satisfy two conditions:

- a. They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*;
- b. They are to be to the greatest benefit of the least-advantaged members of society (the *difference principle*). (JF, 42–43)"

I will call the first principle "liberty under the rule of law" and the second one "equality under maxim in". Both sets of criteria need no explication but can be applied both to political regimes and in public policies. The maxim in principle was radical at the time when liberalism or public choice dominated. It separated Rawls from Hayek and Nozick for instance, but more radical interpretations of equality would surface with Dworkin and especially Barry. Both sets of justice criteria with Rawls are of course operational.

Rawls justice criteria called for both liberty and equality – thus "liberal egalitarianism". They were revolutionary for the political theory in the US but hardly much different than Social Democracy ideals in Europe. The originality with Rawls came with the argument for these two principles, namely choosing justice under a veil of ignorance. The idea of a veil of ignorance is meant to meet the often made requirement that justice criteria are impartial, i.e. do not merely rationalize the person position of the chooser, endorsing the status quo if in a favourable position and calling changes in a negative position. In a veil of ignorance, the choosing person knows nothing, not even his/her personal characteristics – a remarkably strange construction.

However, the is abstruse construction can be turned into a game of incomplete information where Nature makes the first move, putting a real person into a positive or negative position with regard to life opportunities. Fearing the negative position, a rational choice is to bet upon risk aversion, meaning choosing justice principles that institutionalise liberty under rule of law firstly and secondly equality under economic efficiency. Now, things make sense, as these choices are Nash equilibria.

Now, the only objection that may be raised within this deontological framework is to question risk aversion. Maybe the person could be risk prone? Then Rawls' theory collapses.

In the Weberian approach, these two choices will be made on the basis of values, or subjective evaluations morally.

Barry

Late Brian Barry published much in ethics though never in meta-ethics. The bulk of his ideas on justice are contained in three major books, one evaluating theories, one stating his own contribution in deontological ethics, and a final volume applying his abstract theory of justice as impartiality to practical criteria allowing for the making of public policy.

Barry's theory of justice implies that the legal criterion of justice as impartial treatment in the court and under the law is to be radically extended to all spheres of state and society, to be applied in all public policies in the form of justice criteria that substantiate the notion of impartiality as far as possible, also in the market and the determination of income and wealth.

I will not deal much with his *Why Social Justice Matters* (2005), where he comes up with a whole set of policies of social justice. It is basically all about achieving equality, not of opportunity but of outcomes. I think many of these justice criteria can be dismissed, like for instance the total rejection of merit or deservedness. Some can hardly be "taken seriously," as Barry himself often called some of his opponents like Lijphart and Sartori. Other justice criteria fail the maximin, as they could worsen the groups Barry wants to be treated impartially, namely the lower echelons in society and markets. The interesting originality with Barry is not his brand of socialism but his theory arguing for the idea of justice as impartiality. Why advocate socialism when it has failed at so many places, recently in Venezuela? The Swedish Social Democratic welfare state no longer is in existence, as the so-called "people's home" has been replaced by a welfare society, based on the maximisation of personal greed.

Now, what could be the rationale of extending the principle of impartiality from the legal order to the moral order? In the Weberian framework, such a theory would have to show that positive outcomes outweigh negative ones. At the end of this evaluation, there would be a choice of moral values: equality of opportunity against equality of results. Yet, Barry rejects both utilitarianism and ultimate values as grounds for justice, arguing in his theory based on reason alone for the thesis that impartiality amounts to "what no one can reasonably deny or reject" – the so-called Scanlon criterion.

And why could not people with higher income or more wealth reject a demand for strict equality? They can of course for egoistic reason, but not from the stand-point of the justice criterion. Is then equality of outcomes an implication from the concept of reasonableness? Weber would deny that, perhaps referring to Hume, the greatest philosopher of ethics in Great Britain. Barry's argument goes like this, formally speaking:

- 1) Justice = Impartiality
- 2) Impartiality = Equality
- 3) Equality = Equal results
- 4) Justice = equality of outcomes

The error lies in the 3rd assumption.

When Swedish state and society has been changed by a *Bourgeoisie* government from a welfare state to a welfare society, undoing the mixed economy of the *Arbeiterbewegung*, is that "unreasonable" policy-making? Or is the transition a matter of a different approach to justice, i.e. other ultimate values, favouring merit, deservedness, inheritance, economic freedom, markets – capitalism?

One may feel sympathy with Barry's frustration concerning the global rising inequalities. Together with climate change, they make for profoundly great challenges to the civilisations and mankind in this century.

Sen

Amitai Sen dealt with moral theory in the first half of his life, examine utilitarianism and social choice *inter alia*. He has in the latter half of his life turned much to moralism *inter alia*. Thus, he defends oriental despotism and comprehensively magic Hinduism in one book, knowing of course that rule of law was brought to India and the Nehru family by the British. Moreover, he says in another book that socio-economic development is freedom, but what he really wants to argue is that development should be freedom enhancing – the Hume confusion. Political freedom in China has not augmented with its phenomenal economic development. And the fate of Hong Kong with its strong academic liberties is most probably grim.

The Idea of Justice (2009) comprises a *tour de force* rejection of Rawls' theory, whether his criteria or his derivation from the original position. It contains many errors, like the following for instance:

(1) RT is *transcendental*, no. On the contrary, Rawls' criteria are very mundane and would carry enormous change if implemented around the world. Rawls' derivation comprises the strange image of choosing principles of justice under a veil ignorance about who the person. It is an unnecessary theoretical abstraction that can be replaced by a simple game of incomplete information.

(2) RT is based upon *a priori* assumptions, yes, but all theories of justice are so. One cannot observe justice in reality, as it is in the yeas of the beholder. Man is the measure of all, said Greek philosopher Protagoras (in ethics, I would add). Some criteria of justice have to be introduced before one can evaluate the reality. And they need theoretical justification. To Weber, these must be ultimate values like liberty and equality.

(3) RT is *impractical*, not at all. The two principles of justice – freedom under rule of law and equality under efficiency – can be directly translated into practical policy-making. Thus, authoritarian countries should adopt freedom under equality

and capitalist democracies equality under efficiency. Huge changes are certainly feasible!

(4) RT is *redundant*, wrong again. One may suggest other principles of justice, if one can motivate them. But any justice evaluation of reality requires some principles or criteria. RT is easily applied in rule of law indices as well as in GINI-indices.

(5) RT presumes *total ordering*, not correct. One may employ Rawls' criteria to document basic differences among Asian countries in terms of freedom under rule of law. Similarly, one may enquire into whether the US is scoring higher or lower on equality under efficiency over a long time period. No need to deal with all countries on the globe.

(6) RT can only give *strict orders*, incorrect. Several countries score about the same on the WB rule of law index, corresponding to the first criteria. And countries may be about the same distance from the maxim in.

(7) Weak and partial justice orders are enough, no. One would always want to know what justice criterion (criteria) has generated the ordering and whether alternatives – feasible or ideal – have been left out.

(8) RT admits no *utilitarian criteria*. Correct. But it constitutes no objections as long as the inherent difficulties with utilitarianism remain unresolved, like for instance *The Repugnant Objection*.

(9) Smith's impartial observer is the solution to justice evaluation. No. Since justice is defined as impartiality, it is merely a tautology. The impartial observer can do no wrong, because impartiality judgements are justice propositions per definition.

(10) Smith's impartial observer and Rawls' veil of ignorance flow from the same approach to justice, namely Barry's equation of justice and impartiality.

11) Who is the *impartial observer*? The person who is just – circular reasoning again. The person who endorses equality of opportunity or equality of outcomes? A great scientist like

Keynes or Freedman? A religious guru like Buddha or Confucius? We need a definition of the nature of an "impartial" individual?

12) RT does not recognize non transcendental ethics like e.g. *Karl Marx' system*. Right. But Rawls wants a liberal approach with equality added. Does the idea of the Dictatorship of the Proletariat really belong to liberal egalitarianism? Whenever it has been installed, it lingers on, resulting in massive wealth for the Vanguard of the Proletariat. Marx was definitely a transcendentalist, filling Dialectical Materialism with the Laws of History – (see [Avineri, 2008](#)). Just reflect: If Russia had experienced a regime honouring freedom under rule of law instead of a form of Marxism, it would be as rich and happy as the US, most probably.

13) RT covers the transcendent notion of a social contract about justice, Right. But a contract could be a modern constitution as well as a referendum. Not transcendent framework at all.

Liberal egalitarians deliver alternative theories of justice, but their justice criteria all underline the relevance of equality. This is very understandable, given the mounting evidence of extreme inequality in income and wealth globally, resulting in dismal poverty, child malnourishment and premature deaths. However, the lack for liberty also needs to be emphasized, as authoritarianism is far from a regime of the past. Rule of law seems never to come to Russia for instance.

Rawls' criteria highlights these facts in a comparative moral evaluation His theory may need to be developed in various directions, like global justice, or concrete policies to enhance rule of law or move economies towards the maximin.

Weber: Ultimate values

In the Weberian tradition, including major theoreticians on ethics and meta-ethics in continental Europe but also to some extent in the Anglo-Saxon world, one may arrive at the same justice criteria as in liberal egalitarianism, but there be differences, other emphasis and additional criteria. However, the approach would be entirely different, underlining values and downplaying the role of reason with Rawls or what is reasonable with Barry.

The basic ideas with Weber on science and ethics were laid down in his articles on the philosophy of the social sciences, only recently translated fully into English. Starting from the omnipresence of conflicts about what is just including immense violence and warfare, Weber realistically endorsed the Humean position that:

- 1) Reason alone cannot deduce ethical proposition;
- 2) Reason may play a tremendously important role in analysing ethical alternative and their consequences.
- 3) Ultimately, ethical choices will be based upon moral evaluations, from either the point of view principles or consequences.
- 4) Ultimate moral evaluations are neither true nor false. They are accepted or rejected by emotion or will, not reason.
- 5) Ethical decision tend to be complex, involving both facts and values.
- 6) People tend to have different values, which is due to both interests and principles.
- 7) People's values depend upon several factors, of which social conventions constitute one.
- 8) Modern society is characterized by several ultimate value conflicts, where freedom against obligation and equality of opportunity and equal results constitute two examples.

The social sciences face great tasks in analysing the value conflicts in the world of politics and economics today. If they

also wish to deliver normative judgements about the just society, just policies or the just action, they have to specify the value premises from where they begin, as emphasized by economist Myrdal (1970).

Conclusion

Looking at ethical discourse today, one notes the confrontation between liberal egalitarianism of Rawls, Dworkin and Barry and the neo-liberalism of Nozick and Hayek. It is much related to the conflict between liberty and equality, which is a tension between values, according to the continental Weberian approach. At the end of the day, it cannot be resolved merely by analysing consequences, as with utilitarianism, or deduction from reasonable principles, as with a deontological framework. One has to make up one's mind about one's values – the Kierkegaard insight: *Either - Or*.

Sen appears to lack insight into the philosophy of meta-ethics, proceeding to introduce a partial or weak order on the justice of states of affairs without any moral criterion. This is value objectivism à la Moore! His attack on Rawls is profoundly flawed, comprising absurd accusations about transcendence, etc. Rawls is clear about the criteria of justice and he derives them a theory of ignorance, corresponding to the impartiality requirement of Smith, Barry and Sen!

Yet, Rawls' value judgements would be rejected by neo-liberals and libertarians when it comes to equality under efficiency. Liberty alone would be conducive to the maximisation of economic output (maxmax), which would help the poor infinitely more than Barry's socialism and real equality (minmin). In Asian values, discipline and obedience would trump also the first principle of Rawls, freedom under rule of law.

References

- Avineri, S. (2008). *The Political and Social Thought of Karl Marx*. Cambridge: Cambridge UP.
- Barry, B. (1992). *Theories of Justice*. Berkely: University of Cal Press.
- Barry, B. (1996.). *Justice as Impartiality*. Oxford: Oxford UP.
- Barry, B. (2005). *Why Social Justice Matters*. Cambridge: Polity Press.
- Brecht, A (1967). *Political Theory*. Princeton: Princeton UP.
- Dworkin, R. (2000). *Sovereign Virtue*. Cambridge, MA: Harvard UP.
- Hayek, F. (2006). *The Constitution of Liberty*. London: Routledge. (several editions)
- Kelsen, H. (2007). *Pure Theory of Law*. Oxford: Oxford UP.
- Nozick, R. (2001). *Anarchy, State and Utopia*. Oxford: Wiley-Blackwell (several editions)
- Myrdal, G. (1958). *Value in Social Theory*. London: Routledge
- Rawls., J. (2005). *A Theory of Justice*. Cambridge, MA: Harvard University Press. (several editions sine 1971)
- Ross, A. (2011). *On Law and Justice*. London: Lawbook Exchange.
- Sen, A. (2009). *The Idea of Justice*. Cambridge: Harvard UP.
- Weber, M. (1922). *Gesammelte Aufsätze zur Wissenschaftslehre*. Tuebingen: Mohr.

8

Law and politics: Montesquieu and the 4 schools of legal theory

Introduction

Since Montesquieu (1989), the social sciences are very much interested in law and its impact upon politics. The distinctions between executive, legislature and judiciary remain valid today, very much according to the Montesquieu legacy. Trias politica—the theory of separation of political powers—is essential in the analysis of all constitutions and constitutional reforms (Shklar, 1987). Yet, in none of the four great legal philosophies—or schools of jurisprudence—is there a balanced view of the relations between the executive, legislature and judiciary. Beneath the controversy between legal theories, there is the Montesquieu problematic of a balance between the three state powers (Gordon, 2005). Neither natural law theory nor legal positivism, nor legal realism nor legal pragmatism achieves such a Montesquieu balance.

Montesquieu's theory of the separation of powers is analytical tool for understanding why liberty is low in Central

Asia and East Asia, from Petersburg to Shanghai, as well as in the Koranic world with both Sunnis and Shias. Taking out India with its British legacy, this is actually the same world that was called “Oriental Despotism” by the French Enlightenment (Simmons, 2008). Trias politica offers also a moral tool for reforming several countries in the world, where judicial independence is compromised.

Trias Politica

The theory of three different state competences antedates democratic theory, but has been integrated into it in the form of constitutional democracy. All viable constitutions—formal or informal—adhere to the Montesquieu distinctions as long as they deliver rule of law. The balance between the state organs or state powers depends not only upon the structure of the executive and its relation to the legislature, but also upon the prevailing legal doctrine, as taught by the main school of legal theory.

To understand the fundamental importance of the separation of powers doctrine, one may consider what it would exclude when enforced. We would eliminate:

- i) Decretismo
- ii) Rule by ordinances or regulations
- iii) Military rule
- iv) Emergency law giving power
- v) Executive orders
- vi) Habeas Corpus violations
- vii) Impossibility of appeal
- viii) No complaints procedures
- ix) Dependency of judges
- x) Fakes trials.
- xi) Arbitrary arrests and prison sentences.
- xii) Restrictions on defense of accused.

Trias politica is necessary for rule of law. What, then, is law? Everybody agrees on one point, namely that law

comprises norms, but then the disagreements start about what norms constitute legal norms, and how to study them (Finnis, 2011).

“Law” and legal schools

“Norm” is an ambiguous word, meaning either regular behaviour or normative sentence, or command. By “legal norm”, one may refer to a paragraph in the constitution for instance, or an institution in society’ legal functioning system. norms, and how to study them.

“Norm” is an ambiguous word, meaning either regular behaviour or normative sentence, or command. By “legal norm”, one may refer to a paragraph in the constitution for instance, or an institution in society’ legal functioning system. The same ambiguity is to be found when the legal order or system is called a collection of “rules”, as a rule may be an instruction written down in a law book or the actual regularly that satisfies the written rule. When norms or rules are obeyed or backed by sanctions, one speaks about “institutions”, or “institutionalization”.

A reasonable definition of “law” is that it refers to ordered couples of norm sentences and behaviour regularities, i.e. . Now, let us examine a doctrine that conceptualizes law as morals, denying the separation of moral and legal norms. Take the legal system or order of India as an example. If it is a matter of constitutional law, then one would have to be informed about three things:

- i) Written constitution, the text and supplements;
- ii) The rulings of the constitutional court, i.e. the application and interpretation of its judges;
- iii) The extent to which the norms or rules are met with compliance.

IS- and OUGHT-Jurisprudence

All of this is the IS-jurisprudence. Constitutional analysis would look into the existence of obsolete rules, the conflict of norms and the political struggle over constitutional change and interstate divergence over legal interpretation. However, the separation of powers is also suitable for OUGHT-jurisprudence, suggesting that especially the integrity of the judiciary is of crucial importance for the respect of both human rights and the democratic regime.

Natural law school: Favouring the judicial branch

The natural law scholars claim that there is a set of norms laid down in reason somehow. Right reason offers the law of humanity, transcending so-called positive law, i.e. country or national law. What is natural law that has become so popular in the new moralism in the social sciences? The natural law scholars claim that there is a set of norms laid down in reason somehow. Right reason offers the law of humanity, transcending so-called positive law, i.e. country or national law. The natural law tradition stretches from Ancient Stoicism over Hugo Grotius to Robert Nozick and Ronald Dworkin (Paine, 2017). But it is not really jurisprudence but moral theory, backed by religion, as with Roman lawyers.

Natural law belongs to OUGHT-jurisprudence. It has a long fascinating history including scholars like Lipsius, Locke and Finnis. Focusing upon the concept of rights, it developed slowly into a democratic theory, i.e. the human rights doctrine with Thomas Paine (Long & Sedley, 2012). The beginnings of natural law theorizing are to be found in Greek-Roman philosophy from the Ancient period, especially with the Pre-Socrates and the Post-Socrates (Baltzly, 2014).

Stoicism versus Epicurism

Epicurism, in the hand, had its core in atomism and adhered to its implications, such as determinism and naturalism—Demokritos' atom theory. The Universe followed its laws and humans were driven by the search for pleasure and the avoidance of pain. Only reason could the emotions towards enlightened self-interest seeking. Human life was basically determined just as nature, but the consolation was given by reason, recommending a life in emotional balance of rational insight. Law was merely the norms imposed by the local community or government in place, as with Hobbes and Spinoza. On the other hand, Stoicism had spiritual origins, which made it attractive to later Christian theology. The entire world is a kind of soul, which humans are members of. This soul is a gigantic community of everything, nature and living organisms. To be a member renders every human immunities, i.e. the human rights from sociability. Life consists of reflecting over this universal soul and research harmony by accepting Stoic virtues.

Grotius

Hugo Grotius in *On Laws in War and Peace* (1625) arrived at pinning down the essence of modern natural law thinking, namely the following properties of mankind and its immunities: i) Sociability of humans; ii) not harming others or taking their belongings; iii) compensate for damages inflicted upon others; iv) “pacta sunt servanda”. Interestingly, Grotius finds these 4 principles to be valid for individuals in domestic affairs as well as with regard to the states in international affairs, because they are Right Reason everywhere:

“X. 1. Natural Right is the Rule and Dictate of 1 Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its (Kramer, 1999) Suitableness or Unsuitableness to a reasonable Nature, 2 and consequently, that such an Act is either forbid or commanded

by GOD, the Author of Nature. 2. The Actions upon which such a Dictate is given, are in themselves either 3 Obligatory or Unlawful, and must, consequently, be understood (Kramer, 1999) to be either commanded (Dworkin,1977) or forbid by God himself; and this makes the Law of Nature differ not only from Human Right, but from a Voluntary Divine Right; for that does not command or forbid such Things (Kramer, 1999) as are in themselves, or in their own Nature, Obligatory and Unlawful; but by forbidding, it renders the one Unlawful, and by commanding, the other Obligatory..." (Grotius, 1625).

Grotius derived his four principles of altruism or sociability from universal right reason together with the Jewish-Christian legacy and Greek-Roman philosophy and Roman jurisprudence. He then applied them to both humans and human society, domestically and the international system of states, laying the foundations of public international law.

Dworkin

Ronald Dworkin rejuvenated the natural law school by developing an OUGHT- jurisprudence, clustering upon two moral concepts, namely: a) rights; b) law's integrity (Dworkin,1977; 1988). The term "right" is much disputed in jurisprudence and political theory. It can be employed in both IS-jurisprudence and OUGHT-jurisprudence. Dworkin looks upon the key terms like "justice", "rights" and "entitlements" from the point of view of normative jurisprudence. As a matter of fact, law and morals are inseparable: "law's integrity". Thus, rights always constitute normative trumps, i.e. what people can rightfully claim from government. Let me quote:

(Q1) Moral principle is the foundation of law.

But, which moral system? Kant's, Bentham's, Marx', Rawls'? Moreover, Dworkin says:

(Q2) Without dignity our lives are only blinks of duration. But if we manage to lead a good life well, we create something more. We write a subscript to our mortality. We make our lives tiny diamonds in the cosmic sands (Dworkin, 2011).

I find this last sentence objectionable, when I think about the children of Yemen who die recently because of lack of milk. The superrich Emirates could easily have flown in this vital lifesaving nourishment to these “diamonds”.

One may compare Dworkin’s moralism with Kelsen on the concept of justice (Kelsen, 1957), based on profound insights into the history of morality. The difficulty with dogmatic assertions like these Dworkin quotations is that there is not ONE morality, like a Platonic idea in the ideal world. Typically, there is conflict among the moralities people adhere to. Why would Dworkin’s morality -liberal egalitarianism- be THE morality? There is always conflict over basic moral principles. Morals are contestation. Law is ambiguous, amorphous and incomplete, as R.A. Posner argues (Raz, 1979).

Typical of all Dworkin has written is the confusion of IS and OUGHT. What is the foundation of what law? What morals? Whose morals? Chinese law, South African law, Common or Civil Law? Which moral philosophy: Deontological or utilitarianism or procedural?

When we are told to take “right seriously”, what rights are we talking about: Hayek’s rights regulating laissez faire, Barry’s impartiality that is conducive to democratic socialism, etc. The debate over natural law—ordinary law still continues, with Dworkin as its strongest adherent today. His chief critique R. A. Posner today argues that natural law according to (Q1) and (Q2) is merely a set of moral prescriptions, and not jurisprudence at all. I agree with Posner in his rejection of Dworkin’s confusion of jurisprudence and moral philosophy.

If Dworkin really managed to smash narrow legal positivism of Hart's kind with his rejuvenated natural law philosophy (Kramer, 1999), he certainly did not crush the other alternatives, legal realism and legal pragmatism. Neither law nor jurisprudence is a set of eternal Platonic ideas (Posner, 1996).

Social justice

Dworkin developed his version of liberal egalitarianism, focussing upon the concept of envy and the policy implications of the requirement of socio-economic justice = envy freeness (Dworkin, 2002). It led him to a very original theory of auctions and assurance. However, it has little relevance for the basic problematic of enhancing real equality in social life—Dworkin's goal. A society and polity based upon envy freeness is completely impractical. Social justice can never start from scratch at an isolated island and neglect merit, which is what Dworkin tries to bypass with the utopian auction and the unrealistic insurance scheme. Dworkin's moralism—envy freeness—is utopian.

The natural law school presents the judiciary with many opportunities for political intervention, including reinterpreting the law. It clearly upsets the Montesquieu balance in favour of the judges at the expense of executives and legislators. No distinction between legal and moral theory can be made. Thus, jurisprudence becomes part of moral philosophy and politics. Dworkin pushed his identity of moralism and jurisprudence to the extreme with his position that correct answers to legal problems can always be found. To many legal scholars, natural law teachings are too open ended—how to identify rights?. Law must somehow be separated from morals, and the role of the judiciary limited to the application of decisions by the executive and the legislature.

Legal Positivism: Favouring the Legal Branch

Legal positivism stems from Hobbes, who in Leviathan regarded law as the commands of the sovereign. This idea of law belongs clearly to IS-jurisprudence, underlining the will of the state behind law. Following out definition of law as an ordered couple of norm and behaviour, legal positivism focuses upon the first element, the norms.

Kelsen developed a so called pure theory of law, eliminating all OUGHT- jurisprudence, approaching law as a logically coherent system of norm propositions, starting from a Basic Norm, giving normativity to all law and its set of norms, favouring statute law (Kelsen, 1960).

Hart also looked upon law as rules, separating between primary and secondary rules. Primary rules are imperatives, prohibitions and recommendations. while secondary rules cover several rules of recognition for eliminating merely moral rules. “A rule of recognition” stands for the various markers of law as legality: Parliament, courts, public boards or agencies, etc. (Hart, 1994). Legal positivism was developed rather differently by Kelsen and Hart. The Hart framework is more flexible than Kelsen’s. It makes no assumption of logical coherence and closeness.

Kelsen

A central hypothesis in legal positivism is that of the normativity of law. Norms are imperative sentences, conditional or not, stating what should be done by which persons when and how. These norms constitute valid legal norms when they have objective normativity, according to either the Basic Norm (Kelsen) or Hart’ secondary norms. This validity is the subject matter of IS-jurisprudence. It has nothing to do with moral validity, natural law or OUGHT-jurisprudence.

Kelsen argued famously that legal validity is not only objective but also logical as to its nature (Kelsen, 1960). Thus, from the Basic Law at the constitutional top of government to the most elementary regulation at the bottom of the state there is a logical string of necessity, tying the system together (Kelsen, 1979). Hart never such exaggerated claims for the logicity of the legal norms, but was perhaps content with subjective Normativity with the judges and police, i.e. the applications of the primary rules are considered valid by the officials.

Posner' negative critique

Yet, legal positivism and its ideal of logic normativity hardly stand up to Posner's view of law and jurisprudence. Posner examines existing law or legal order from the point of view of IS jurisprudence (Posner, 1992; 1999) He emphasizes the following features in his polemic against both Dworkin and legal positivism:

- a) Change and evolution;
- b) Inconsistencies;
- c) Lacunas;
- d) Conflicting interpretation;
- e) Biases.

Legal positivism limits the power of the judiciary, instructing the judges to apply the norms recognized by the executive and the legislature, in accordance with Montesquieu's theory. However, the norms may not be comprehensive enough or coherent. This is what so-called inclusive legal positivism argues—see Waluchow (Waluchow, 1994). Judges would then rely upon moral principles, as suggested by Dworkin? Legal realists claim that only the opinion of the Law Maker should count, whether open or hidden in preparatory work.

Legal realism: Downplaying the judicial branch

Legal machinery

To the legal realists, law is real regularities in the behavior of state officials, comprising the “legal machinery”. In their IS-jurisprudence concerning law, the legal realists in Scandinavia did not focus upon validity, which to them meant merely the application and not any form of normativity, objective or subjective (Haegerstroem, 1953; Ross, 1934; Eckhoff, 1974). Jurisprudence is the study of behavior regularities (Hedenius, 1942) or simply facts (Olivecrona).

Legal realism offers a sharp separation between law and morals. Jurisprudence must be IS-jurisprudence and abstain from all forms of moralising. Legal realists go so far as to claim that the vocabulary of jurisprudence is infested by natural law conceptions. One target of their criticism traditional jurisprudence was the rejection of the notion of a right. Several prominent legal realists argued that “rights do not exist” (Olivecrona, 1939).

The negation of rights is hardly tenable (Hohfeld, 1913), as we shall see below in Law and Economics and Constitutional Economics. One may speak of normative rights and descriptive rights, whether it is a matter of moral theory or jurisprudence (Simmonds & Steiner, 2000). To legal realists, the word “right” is an emotive expression, lacking denotation in real life. But this rejection of the terminology of rights, duties etc. bypasses the usefulness of these terms in systematizing legal theory, a most valuable set of concepts in theoretical jurisprudence. Consider here the Hohfeld scheme and how it can be used to describe the legal order, i.e. existing rights, duties, competencies, etc. (Campbell & Thomas, 2016).

Rights

The general analysis of rights was offered by Hohfeld in the early 20th century— see Diagram 1 and Diagram 2 for the variety of rights, their opposites and correlatives.

The Hohfeld distinctions are very helpful in analysing the rights that people actually possess in the legal order of a country, like e.g. India and China. The variety of right concepts may also be employed to state recommendations about urgent legal reforms to improve upon peoples' rights. Dworkin never separates between IS-rights and OUGHT-rights, where the gulf may be immense. Instead, he engages in moralism. Yet, all of this is IS jurisprudence, falsifiable or confirmable propositions. Here. "Rights" is merely a key theoretical term for systematically analysing existing legal order—using Hohfeld's elegant conceptual scheme.

Law and Economics

The rights terminology of Hohfeld is used in Law and Economics, regarding market transactions as the buying and selling of rights. The rejection of the concepts of rights etc. in legal realism is a serious weakness there.

Law and economics school enlarged the perspective of Posner, by theorizing how close law is to the market economy (Cooter & Ulen, 2012). The foundations of the market economy include contract law, labour law and public regulation. "The size of the market is determined by the range of law". And countries with common law or civil law will perform the best, economically.

The Law and Economics school focuses upon the legal prerequisites of the market economy, including low transaction costs, variability and observability of contracts as well as freedom of labour and the advantages of bourses. The more fungible assets are, the more they can be exchanged and properly valued in markets.

Diagram 1. *Legal opposites.*

Right	Privilege	Power	Immunity
No-right	Duty	Disability	Liability

Note: Privilege is the opposite of duty; no-right is the opposite of right. Disability is the opposite of power; immunity is the opposite of liability.

Diagram 2. *Legal correlatives.*

Right	Privilege	Power	Immunity
Duty	No-right	Liability	Disability

Note: A right implies that someone else has a duty. A privilege means that someone else has no-right. A power entails that someone else has a liability. An immunity implies that someone else has a disability.

Constitutional Economics

Here is a theory about law and politics, analysing the pros and cons of alternative political regimes and the impact of rules or norms upon the outcomes of various decision-making processes ([Brennan & Buchanan, 1985](#)). It is a more OUGHT than Law and Economics and its origins are to be found in the political economy of Swedish economist Knut Wicksell and his theory about unanimity voting. Constitutional economics also uses the rights terminology à la Hohfeld, especially seeking safeguards against BIG government.

Constitutional economics searches for the rules of decision-making that prevent the Leviathan.

Legal pragmatism: Judicial activism

Remember our definition of “law” as , we can place legal positivism as concentrating upon norm, while legal realism would involve a concentration upon regularity. Legal pragmatism bypasses the norm and focuses upon the judge and how they reason when deciding a case—judge made law.

Judge-made law

At the end of the day, it is the judge who decides what is law, using legislation and precedents as well as reason. Thus, Oliver Holmes famous statement:

The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law (Posner, 2008).

Of course, he meant the “prophecies” in IS-jurisprudence.

Law and efficiency

Now, Posner argues questionably that judges may tend to take one major consideration into account when deliberating, namely economic efficiency, wealth or utility maximization or Pareto optimality, especially in public regulation as well as tort law (Posner, 2008). Dworkin denies this, putting in instead Right reason. Legal positivists and realists counter-state simply that judges apply the law - period.

Legal realists tend to distance themselves from legal pragmatism, not in the emphasis upon the decisive role of judges but on the notion of economic efficiency as inherent element in jurisprudence. Law is what the judges decide, whether the decision is efficient or not.

One can distinguish two basic elements in Posner’ huge scholarship, namely his idea about law and economics on the one hand and his criticism of Dworkin’s moralism. I agree with the second but am skeptical about the first where we are far from Dworkin’s rosy theory of Law’ empire. We cannot accept the use of vague natural law conceptions in order to argue that legal issues are in principle solvable—“the right answer doctrine” or that law is basically morals.

Conclusions

Montesquieu created the longest lived political theory about freedom and stability, with his theory of separation of powers. It is venerated in polities that have legal review or

constitutional review, but also in polities that lack these two mechanisms. In countries with socialist law, which is state interests, or religious law that in Sharia law is “Qadi Justiz” (Weber, 1979), Montesquieu is absent.

Perhaps the separation of powers theory is more important than even democracy theory. Democracies come in several forms, allowing for manipulation of votes often. Law and politics are closely related (Waldron, 1999). But it is very important to insist upon the objectivity of the analysis of law and politics (Weber, 1904), not confusing IS-jurisprudence with OUGHT-jurisprudence. When Dane Ross insists upon the neutrality of IS-jurisprudence, he wants to eliminate concepts like equality, justice and rule of law, but they are central in OUGHT-jurisprudence (Ross, 1966).

To maintain Montesquieu’s balance, the teachings of legal positivism and legal pragmatism seem most instrumental. When a country says goodbye to Oriental Despotism, then they rely upon Montesquieu more than anything else. It is often claimed that “oriental despotism” was like “orientalism” invented by European like Montesquieu and other Enlightenment philosophers to uplift Europe and downgrade Asia (Stanziani, 2014). But we find despotism in several Central Asian countries still today.

References

- Montesquieu (1989). *The Spirit of the Laws*. Cambridge University Press, Cambridge.
- Shklar, J. (1987). *Montesquieu*. OUP, Oxford.
- Gordon, S. (2005). *Montesquieu: The French Philosopher Who Shaped Modern Government*. Rosen Central, New York.
- Simmons, N. (2008). *Central Issues in Jurisprudence*. Sweet and Maxwell, London.
- Finnis, J. (2011). *Natural Law and Natural Rights*. Clarendon, Oxford.
- Paine, T. (2017). *Rights of Man*. Createspace Independent, London.
- Long, A.A. & Sedley, D.N. (2012) *The Hellenistic Philosophers I-II*. Cambridge University Press, Cambridge.
- Baltzly, D. (2014). *Stoicism*. In: Zalta, E.N., Ed., *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition). [Retrieved from].
- Brennan, G. & Buchanan, J.M. (1985). *The Reason of Rules: Constitutional Political Economy*. Liberty Fund, Washington DC.
- Grotius, H. (1625). On Laws in War and Peace. Chap II. [Retrieved from].
- Dworkin, R. (1977). *Taking Rights Seriously*. Harvard University Press, Cambridge, MA.
- Dworkin, R. (1988). *Law's Empire*. Belknap Press, Cambridge, MA.
- Dworkin, R. (2011). *Justice for Hedgehogs*. Harvard UP, Cambridge, MA.
- Kelsen, H. (1957). *What Is Justice? What Is Justice?* University of California Press, Berkeley.
- Raz, J. (1979). *The Authority of Law*. Clarendon Press, Oxford.
- Kramer, M. (1999). In *Defense of Legal Positivism: Law without Trimmings*. Clarendon Press, Oxford.
- Posner, R.A. (1996). *Overcoming Law*. Harvard University Press, Cambridge.
- Dworkin, R. (2002) *Sovereign Virtue*. Harvard University Press, Cambridge.
- Kelsen, H. (1960, 2017). *Reine Rechtslehre. [Pure Theory of Law.]* Mohr Siebeck, Tuebingen.
- Hart, H.L.A. (1994) *The Concept of Law*. 2nd Edition, Clarendon Press, Oxford.
- Kelsen, H. (1960). *General Theory of Law and State*. Harvard U.P., Cambridge.
- Kelsen, H. (1979). *Theorie Generale des Normes*. [General Theory of Norms.] Manz Verlag. Kramer, M.H., Vienna.
- Posner, R.A. (1992). *The Problems of Jurisprudence*. Harvard U.P., Cambridge.
- Posner, R.A. (1999). *The Problematics of Moral and Legal Theory*. Harvard University Press, Cambridge.
- Waluchow, W.J. (1994). *Inclusive Legal Positivism*. Clarendon Press, Oxford.
- Haegerstroen, A. (1953). *Inquiries into the Nature of Law and Morals*. Almqvist & Wicksell, Stockholm.

Ch.8. Law and politics: Montesquieu and the 4 schools of legal theory

- Ross, A. (1934). *Virkelighed og Gyldighed i Retslaeren. [Reality and Validity in Legal Doctrine.]* Levin & Munksgaard, København.
- Eckhoff, T. (1974). *Justice: Its Determinants in Social Interaction.* Rotterdam University Press, Rotterdam.
- Hedenius, I. (1942). *Om rætt och moral. [On Law and Morals.]* Stockholm.
- Olivecrona, K. (1939). *Law as Fact.* Oxford University Press, London.
- Hohfeld, W.N. (1913). *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning.* 23 Yale Law Journal, 16. doi. [10.2307/785533](https://doi.org/10.2307/785533)
- Simmonds, N.E., & Steiner, H. (2000). *A Debate over Rights: Philosophical Inquiries.* Oxford University Press, Oxford.
- Campbell, D., & Thomas, P. (2016). *Fundamental Legal Conceptions as Applied in Judicial Reasoning by Wesley Newcomb Hohfeld.* Routledge, London.
- Cooter, R. & Ulen, T. (2012). *Law and Economics.* Addison-Wesley, New York.
- Posner, R.A. (2008). *How Judges Think.* Harvard U.P., Cambridge.
- Posner, R.A. (2004). *Frontiers of Legal Theory.* Harvard U.P., Cambridge.
- Weber, M. (1979). *Economy and Society III.* University of California Press, Berkeley.
- Waldron, J. (1999). *Law and Disagreement.* Oxford U.P., Oxford. doi. [10.1093/acprof:oso/9780198262138.001.0001](https://doi.org/10.1093/acprof:oso/9780198262138.001.0001)
- Weber, M. (1904). Die 'Objektivität' sozialwissenschaftlicher und sozialpolitischer Erkenntnis. [The "Objectivity" of Knowledge in Social Science and Social Policy.] Archiv für Sozialwissenschaft und Sozialpolitik, 19, 22-87.
- Ross, A. (1966) Om ret og retfærdighed. [On Law and Justice.] Nyt Nordisk Forlag Arnold Busk, København, The Lawbook Exchange, London.
- Stanziani, A. (2014). *After Oriental Despotism.* Bloomsbury Academic, London.

9

Opportunistic behaviour

Introduction

The cheating phenomena have always interested the political scientists, but only recently has economics taken up the topic to lengthy theorizing. Cheating occurs very frequently in state and market. But one should distinguish between a variety of cheating behaviour. Corruption constitutes a form of cheating, but there are many others. Consulting the standard dictionaries, one receives an unambiguously nice definition, common to all of them. Thus, we read versions of the following core:

“Cheat: to break a rule or law usually to gain an advantage at something”...

The definiens comprise a) break a rule or a law, and b) gain advantage. Thus, we can separate moral cheating in relation to a rule and legal cheating visavi the law. Whether it is the first or the second, the cheater acts rationally to gain something he or she could not otherwise have. This entails

that the expected value of cheating must be larger than 0 as well as higher than the expected value of not cheating.

This paper discusses three forms of cheating, namely reneging in international coordination, the logic of corruption and the new looting in private enterprises and financial institutions. We start to mention the Becker model of cheating behaviour at the micro level. And we end with a theory of the general rise of cheating in capitalist democracies: the bonus culture society.

Opportunistic behaviour is pervasive in political and economic life, but it has never been modelled at length in the social sciences. Its simplest form is the lie or the naked telling of falsehood. It is e.g. omnipresent in international relations, justified by the ideological notion of state reason. Putin for instance is a master of the tactic of lying, saying that Russia is not involved in the civil war the Ukraine as well as that Russia only targets the ISIS and Al Qaeda in the Syrian civil war, reducing Aleppo to rubbles by terror bombing. China denies militarizing the islands in the South China Sea, to which it has no sovereignty rights according to Public International Law that China says it wants to honour. The promise is a more complicated form of cheating, as there is a time difference between *ex ante* and *ex post*, sometimes 100 days or even years. Thus for instance, Trump won the presidency by strategically promising lots of things to various election groups that he knew he could not deliver upon. Opportunism is omnipresent in American politics, yet Trump has shocked many by his skilfulness in opportunism, tactically and strategically, commentators suggesting he is not entirely OK. Denying reality is a typical opportunist mechanism, rejecting facts and overemphasizing minor achievement. Similarly, blaming is another tool of opportunistic activities. If the promises are not fulfilled, then unforeseeable events or insincere enemies come up or appeared

unexpectedly. Trump masters all of these mechanisms of opportunism.

In standard game theory, the opportunism of defection was acknowledged in the discovery of the famous Prisoner's Dilemma game after the Second World War. It released efforts to model reneging and brinkmanship as well as come to grips with the nature of bargaining capacity, where quick or erratic bids may pay as handsomely as long drawn out tactics. This is all 2-person game theory and in N-person game theory the lessons were similar, as for instance voting power could be maximising by shifting from one coalition to another, violating loyalty,

However, it was first with the theory of information that opportunism was modelled systematically in the forms of asymmetric information: shirking and pretending. In management theory, shirking was early recognised in both big firms and bureaucracies, but only lately has it been looked at with the CEO:s. One is stunned by the excessive CEO remuneration in the beginning of this century, also in companies close to failing, like Swedish *Ericsson*. It seems that the hiring of CEO:s constitutes a market failure due to pretending. The principal cannot foresee who is an excellent CEO, which results in looting from the opportunistic CEO:s, demanding extreme remuneration as well as protection against sudden firing.

Logic of cheating behaviour: Chicago calculusally

All forms of cheating must fit into the Becker equations (1968) on rational micro behaviour. The benefits must outweigh the costs. But the cheater(s) can only have subjective estimates of these numbers, meaning that there are bound to occur misjudgements and mistakes about probabilities of success.

Since the probability estimates of success or failure are subjective, they may be very far off the objective probabilities. However, cheaters update themselves in order to come closer to reality. Cheating tends to become a repetitive behaviour, which allows for more accurate estimations. The costs involve the retaliation of other people, personal friends or the legal authority. Cheating can become very nasty for the cheater, for instance in insider trading or faked jobs. If the cheater is disclosed, the harm of his/her reputation may be very costly indeed. But there may also be high lawyer fees for defence.

The benefits may be substantial of course. It may be a one time bonanza or cheating may reap benefits in continuity. A successful cheater become accustomed to his success and keeps going until there is a reaction. Cheating may be rather innocent, as when a person reneges upon a small promise, or it may involve gigantic sums of money, as with insider trading or the rigging of contracts and bidding processes.

Cheating occurs in both government and their bureaux as well as in markets and enterprises. A spectacular example of the former was the housing cheat in Parliament, where several MP:s bent the rules about double residency in an ugly manner. One of the most spectacular cases of private sector cheating was of course the Jew M, who did not even hesitate to embezzle Jewish welfare agencies.

Prosecuting cheating tends to be cumbersome, as cheaters can often afford lawyers with great skills in questioning evidence. If a statesman accepts gifts, then so what? If a Premier employs his family on public jobs, so what? How to present proofs of insider trading, when it could be just accidental? Cheating is not merely theft or murder, making it much more transaction cost heavy to identify and punish. And accusation of cheating are often countered by litigation, again costly transactions.

When cheating takes place in a game of coordination based upon cooperation and promises thereof, we say the cheater commits defection or renegeing. The famous model of the PD game is about defection and has been analysed at great length in all kinds of versions: one shot game, repetitive game, finite repetition and infinite horizon. Defection may occur by one player or both players in a two person situation, but PD games may also involve ocean games, the larger the game the less likely is coordination success. In finite games, renegeing is always the sub game perfect Nash as long as there is no outside enforcement.

In the new developments in game theory assuming asymmetric information, two new types of cheating emerge: shirking and pretending. These forms of cheating refer to long-run contracts in principal-agent gaming, where the agent cheats either *ex post* or *ex ante*. These concepts are useful in analysing the phenomenon of bureaucratic inefficiency and firm looting.

Defection

The coordination masterminded by the UN concerning global warming, the many COPs and the UNFCCC, runs with a great risk of defection. If a small poor country reneges, it is no big deal, because emissions are a function of the size and affluence of an economy. The COP21 Treaty is an Elinor Ostrom common pools' regime (CPR), covering the entire world. Her argument was that CPR:s may work despite the rational response to PD games, namely defection, at least in the last round of play – backwards induction. Now, the US has decided to renege upon the COP21 Agreement, which will destroy much of the coordination effort, as other nations will be tempted to defect too. The size of US emissions is second only to that of China. And other nations like Australia, South Korea and Japan may be tempted to do the same.

Let us look at the energy-emissions problematic from the point of view of US defection. It is in fact not at all forced by the circumstances, as with other countries where alternatives hardly exist.

At the end of the day, some countries may simply renege upon the COP21 goals of decarbonisation. They may feel they cannot afford such an immense energy transformation., at least not without massive assistance the so called Super Fund.

The US is a major carbon polluter, both in aggregation and per person. Figure 1 shows its dependence upon fossil fuels.

United States Primary Energy Consumption by Source (2015)

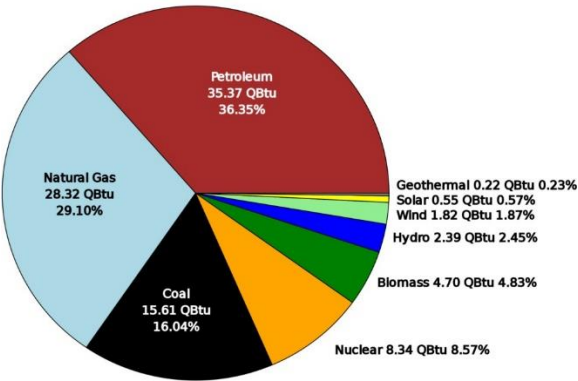


Figure 1. Energy mix for the US

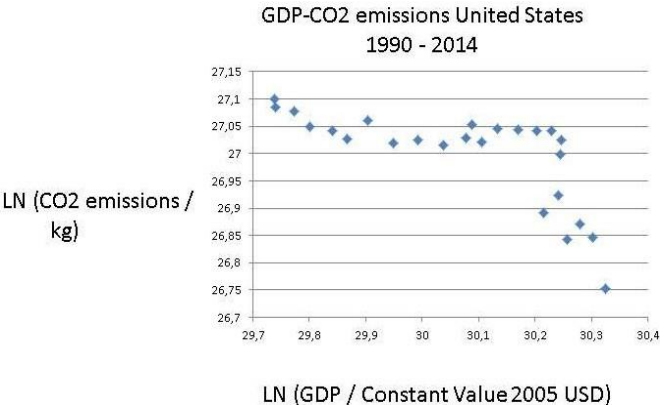


Figure 2. USA: Link GDP-CO2

Yet, the positive signs for the US include a downward sloping curve in Figure 2. But as solar power and wind power expands, so atomic power is reduced and shale oil and gas are augmented. Yet, politics is decisive here, as the US now reneges upon the COP21 decarbonisation goals.

Developments in the US have been looking promising lately, as most countries display upward sloping GDP-CO2 links. But to comply with the draconian COP21 goals, the US would have needed to do much more in terms of reducing fossil fuels, increasing renewables or restart with nuclear power. Now the Trump administration defects, which just reflects that there is no clear and consistent energy policy in the US.

With regard to global warming, the entire globe is a common pool ([Ostrom, 1990](#)), but Ostrom's solution to free riding

–the common pool regime (CPR) - simply does not work. Her argument that CPR may work is small groups due to social pressure is questionable, as even these communities would call in the state against defections.

Corruption

We hear daily about accusations of corruption in politics and economics. One may be led to believe that corruption is very widespread and impacts upon social outcomes in a broad manner. But what is corrupt behaviour? And does it matter so much for outcomes everywhere?

The often cited index of transparency (CPI) is claimed to constitute *the* index of corruption. We cite: "Corruption takes many forms, but always involves the abuse of entrusted power for private gain." [[Retrieved from](#)]. his definition of "corruption" is both too broad, including all forms of government or bureaucracy abuse, and too narrow, excluding the private market sector. It is not a very telling index. We need to go beyond the conventional framework of analysis,

based upon the Transparency Index, which actually is heavily skewed against poor countries, or the Third World.

First we need a concept of corruption that is specific and does not denote any crime or abuse. Second, we must revise the stylized and inherited picture that corruption is mainly a set of Third World phenomena. It is vital to distinguish between two types: *petty* corruption and *big money* corruption.

It should be acknowledged from the outset that data is sparse of obvious reasons. To find actual information about specific cases of corruption, one would need access to lots of legal rulings and processes comparatively. Thus, what follow below is mainly some theoretical notes and conceptual deliberations.

The occurrence of corruption is a hot topic of research now, but what is the meaning of the word “corruption”? A theory of corruption in society with comparative implications has to start from conceptual considerations, separating between various forms of economic vices. One can criticize the approach of Transparency International with its corruption perceptions index that it covers all kinds of public vices but leaves out private sector corruption. The specificity of corruption should be emphasized, underlining implicit contract consideration with a *quid pro quo*. The approach to corruption as bribery or kickbacks in *Law and Economics* with R.A. Posner is not consistent. The distinction between petty and big corrupt practices is crucial for understanding the role of bribery in society.

“Corruption”

One may use various sources for a small scale enquiry into the semantics of “corruption”. Here, we go to a few standard dictionaries, like first the Oxford Thesaurus:

“SYNONYMS: dishonesty, dishonest dealings, unscrupulousness, deceit, deception, duplicity, double-

dealing, fraud, fraudulence, misconduct, lawbreaking, crime, criminality, delinquency, wrongdoing, villainy,

Bribery, bribing, subornation, venality, graft, extortion, jobbery, profiteering, North American payola

Informal crookedness, shadiness, sleaze, palm-greasing, Malfeasance, misfeasance, archaic knavery, rare malversation. Antonyms: Honesty” Source: [[Retrieved from](#)].

Reading this long list, one immediately gets the impression of semantic chaos. “Corruption” has several and different meanings and the claim to synonymy is unclear if not unfounded. One may wish to separate between the following concepts:

- a) Crime
- b) Misconduct
- c) Dishonesty
- d) Fraud
- e) Bribery (illegal kickbacks)
- f) Unscrupulousness
- g) Extortion
- h) Malfeasance.

These concepts are definitely not the same or identical, reducible to one common foundation, i.e. corruption. A crime like manslaughter does not entail corruption, misconduct does not imply corruption, dishonesty neither nor fraud. On the contrary, bribery entails corruption. For unscrupulousness, extortion and malfeasance holds the same, i.e. no necessary link, only contingency. No small wonder that people write that if corruption is stopped, then big wonders arrive.

Corruption is a sufficient condition for crime, misconduct, dishonesty, fraud and malfeasance, but it is definitely not a necessary condition. In a definition, we would like to cite both necessary and sufficient conditions. Approaching the definition of the concept of corruption, one may travel along the broad route above, but it makes the concept too broad or

hollow. Only bribery is an essential property of corruption, in my view.

Public and Private Sector

If the Oxford Thesaurus presents a too broad definition, the perhaps the Oxford Dictionary holds a too narrow definition. First, it presents the adjective “corrupt”:

Having or showing a willingness to act dishonestly in return for money or personal gain: ‘unscrupulous logging companies assisted by corrupt officials’;

Then the Oxford Dictionary goes on to present a definition of the work “to corrupt”:

Cause to act dishonestly in return for money or personal gain: ‘there is a continuing fear of firms corrupting politicians in the search for contracts’.

Source: <https://en.oxforddictionaries.com/definition/corrupt>

Here, the concept of the bribe is essential, but there is no reason to limit its use to the public sector, i.e. politicians and bureaucrats. The bribe or kickback knows no borders, public or private. But the bribe is the essence of corruption, establishing a link between the person who somehow pays and the person who in some manner receives, making both legally or morally culpable – a *binary* relationship.

Thus, corruption is a relationship, a binary word according to logic. One person supplies something valuable that the other person demands for a service or good. Thus, corruption binds two persons together in a *quid pro quo*, which is essential. Following this conceptual development, we must inquire into the definition of the term “bribe” to distinguish it from natural gift or ordinary payment, which actually is quite tricky. Perhaps it can only be done inside the courtroom, as outside of court it could be just an accusation. This emphasis upon:

- a) Binary interaction
- b) Dishonest favour

c) Illegal payment,

makes it possible to identify a specific concept of corruption. And, importantly, one can distinguish the term from other terms, like the following.

- i) Embezzlement
- ii) Favouritism
- iii) "Concubinage"
- iv) Patronage
- v) Cronyism
- vi) Money laundering
- vii) Tax evasion
- viii) Insider trading
- ix) Fake public job

All these phenomena may contingently involve the bribe, i.e. corruption, but it is not a necessity. Embezzlement falls under the concept of theft, whereas the other forms of may involve reciprocity between the favourite and the giver of favours, but it is not necessary. These relations may be one directional and involve no bribe. Having clarified the concepts of corruption and their differences, one faces the difficult task of measuring the occurrence of specific corruption as bribery, as contract "consideration" between two individuals or two organizations, represented by individuals.

Bribes: Payments or Gifts?

Corruption as bribery is nothing but a tacit contract between two parties where the key element of *consideration* is kept or must be kept secret.

In contract law consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promiser and a promisee. They must each receive a benefit and each suffer a detriment. This benefit or detriment is referred to as consideration. We cite again:

“Consideration must be something of value in the eyes of the law - (Thomas v Thomas) (1842) 2 QB 851. This excludes promises of love and affection, gaming and betting etc. A one sided promise which is not supported by consideration is a gift. The law does not enforce gifts unless they are made by deed.” Source: [[Retrieved from](#)].

In a corrupt deal, the consideration is neither explicitly written down nor is it kept open to others. And following Kant’s publicity rule, that what is not capable of being revealed publicly is most probably illegal or reprehensible. A consideration binds both parties to deliver something agreed upon. Thus, there is a binary relation involving a *quid pro quo*. The promisee pays something of value and the promiser delivers a service.

Now, this is a narrow concept of corruption, but it is certainly not restricted in its application to the public sector. The crux of the matter is that the consideration involves the buying and selling of something that is not legally for sale. When proving corruption, it is vital to show that there was consideration about something that cannot be sold, which is not always easy to find evidence for.

Now, how widespread is corruption according to this strictly defined and narrow concept? I would suggest that it is hardly as widespread as claimed, although culture and legal tradition matters. Of course, poverty would be a strong motivation to supply corruption. Poverty may also be a factor on the demand side, but corruption may be expensive. In an economic approach to the demand and supply of corruption, one must start from the benefits and costs of the individuals involved in this binary transaction, the bribe. In addition, the cost of being caught in the act has to be taken into account.

Interesting cases of corruption arises when the accused of supplying a service defends himself/herself that it was only a matter of a gift without consideration. Consider the examples of Giscard d'Estaing and Olmert and Netanyahu in Israel.

Gifts as bribery is tricky, as the quid pro quo may be released a long time after the transaction. Payments as bribes may be negative, as when the consideration involves buying a good (e.g. property) as a much lower price than going market price.

Ambiguity of the gift in politics and public administration

The gift may be an invitation to corruption in the sense of bribery here, but it could also just be a token of sympathy. To prove corruption, one must show the quid pro quo, actual or expected. We are here on the demand side of corruption as a binary relationship, and the gift may constitute a legitimate expectation of some counter offer from the supply side of corruption. When a major politician like the French president or the Israeli Premier receives large valued gifts, then that calls for corruption inquiry. To whom belongs the gift? Is it personal or public? Is there any consideration involved, now or in the future?

In Singapore, known for its stern fight against corruption, gifts to public officials are not really allowed, due to the fact that giving may raise expectations. The regulations about corruption include a strict awareness of the problematic of the gift – one-sided or two-sided. Let us quote about corrupt intent and gift restrictions::

a) “Quid pro quo

Under Singapore law⁷, on satisfaction of the “public body” test, there is no need to prove that the receipt of gratification was an inducement for a specific corrupt act. It is sufficient for the gratification to be given in anticipation of some future corrupt act.⁸ However, the accused must have corruptly accepted the gratification

i.e. believing that it was offered as an inducement, before this presumption is triggered. Case law refers to the sense of obligation the receipt of the gratification must create in the

recipient. The relationship has been characterised by the courts as the purchase of the recipient's "servitude", establishing a "retainer" relationship and the accused being "beholden to"¹¹ the giver."

b) "Gift thresholds

Although there is no specific guidance on monetary thresholds of gifts in Singapore law, practical guidance can be found in the approach of public bodies. The Instruction Manual, published by the Singapore Government, which applies to all Singapore public officials, details when gifts and entertainment can be accepted and when they must be declared. As a matter of practice, all gifts need to be approved by a permanent secretary and only gifts under S\$50 can be accepted. Any gifts valued at more than S\$50 can only be kept if they are donated to a governmental department or independently valued and purchased from the Government. Taking a slightly different approach, Tey's case revealed that the NUS Policy on Acceptance of Gifts by Staff requires consent to be sought for all gifts over S\$100." Source: [[Retrieved from](#)].

Politics of corruption

The broad definition of "corruption" lends itself very well to political gaming. In some countries, accusation of corruption are legio, but one does not know whether it is corruption as bribery or corruption as any crime against the state, like embezzlement, favouritism or patronage. Often these accusations are merely politically motivated and enter into a blame game, where corruption accusations are traded among opponents.

Not many accusations of corruption end up in court, and even fewer result in punishments or incarceration. Proving real corruption, one has to give evidence about the parties involved, the consideration at the centre of the interaction and the following quid pro quo realization. Often, in these

political debates about “corruption”, what is meant is favouritism or embezzlement. This seems to be case for Brazil, where giant firm *Petronas* is said to have provided gifts, like luxury apartments (Lula), although this is difficult to prove. Instead of naming all kinds of bad economic behaviour in the public sector “corruption”, it is better to focus upon the specifics in each case. If it is corruption and not solitary embezzlement or group patronage, then what is the bribe in question? If it is a matter of a general relation of symbiosis, like in cronyism or favouritism, then it is more clarifying to speak of these phenomena directly than place them under “corruption.”

Corruption has a strong illegal connotation, which is lacking in general favouritism. One may even argue that moral accusations of corruption can only be validated by court action. Yet, this would limit the application of the concept too much, because court systems in various countries possess different qualities in terms of the rule of law. Failure to punish corruption does not prove innocence, but it may merely be a matter of lack of evidence or court competence.

Why condemn corruption?

Basically, the rejection of corruption whether in the public or the private sector has to be grounded on some fundamental concept governing social interaction or social systems at large. Political scientists adduce justice, whereas economists argue that efficiency holds the key to forbidding corrupt practices. Jurisprudence would side with the political scientists, although admitting that law varies from one country to another. But *Law and Economics* would claim that also jurisprudence would at the end of the day side with Posner's wealth maximization criterion, i.e. economic efficiency.

The justice argument against corruption focuses upon justice as impartiality or justice as formal equality, buttressed

by several theories (Rawls, 1971; Raz, 2009), However, when justice is interpreted as real equality (Dworkin, 2000; Barry, 2005), then the implications of justice for corruption are less clear. The economic argument against corruption from *Law and Economics* is more complicated, as it depends upon various contingencies, like investments, rent-seeking, etc.

Stylised heralded view

In the literature on corruption (See Bowles, 1999; Holms, 2015), one finds the following standard tenets:

- i) There is massive corruption over the whole world, causing lots of negatives;
- ii) The corruption in Third World countries is much higher than in the First World, counting the Second World to the Third World;
- iii) Public sector corruption is more wide-spread and dangerous than private sector corruption.

Let me quote a typical generalisation about corruption from an encyclopaedia with the entry “corruption”:

“In the world’s worst offending countries, corrupt government officials steal public money and collude with businesses to sell laws, rules, regulations, with and government contracts. The World Bank reports that “higher levels of corruption are associated with lower per capita income” (World Bank 2001, p.105).” (Melese, 2002).

Yet, embezzlement is not the same as corruption. And collusion between government and the private sector occurs in many countries, not only the “world’s most offending countries”. Just reflect over all the pressure groups and the political action committees (PAC) in Washington, DC. The PACs fund the incredible election expenses of candidates and legislators, but how to confine these millions of dollars to non-private spending? And what is the implicit *quid pro quo* when a whole industry supports a candidate or his family, like oil and Bush? One must be more specific about the concept of

corruption and model how it may occur in poor and rich countries – directly and indirectly, and whether it is a matter of petty or big corruption: R.A. Posner states: “The Real Corruption Is the Ownership of Congress by the Rich”. Source: [Retrieved from].

The well-known Transparency Index targets *perceived* (!) corruption, which is a quite different entity compared with real corruption, according to the more specific concept above. CPI will include whatever the experts in the panel asked state. Thus, it is likely that these expert estimates cover most of the above listed abuses under the heading “perceived corruption”.

Perhaps this is the only research approach possible, when it comes to country comparisons? The CPI states the following definition of “corruption”: “Corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.” Source: [Retrieved from].

This amounts to a most wide concept of corruption, but focusing only upon government and its bureaucracy. Perhaps it is both too wide and too narrow as a definition? This is not the place to question the individual country rankings, but some scores are a little stunning, like for all countries in the Balkans, Latin America in general and Tunisia. Both the validity and the reliability of the transparency index may be criticized. How to know whether one African or Asian country is more corrupt than another?

This concept of corruption covers all forms of abuse of public power for private gains – see the above list. Thus, it would be more appropriate to speak of CPI as an index of “economic crimes in government”.

The perceptions of average economic crimes come from a panel of experts with some international organizations. We read in Wikipedia the following: “Transparency International

commissioned Johann Graf Lambsdorff of the University of Passau to produce the Corruption Perceptions Index (CPI). The 2012 CPI draws on 13 different surveys and assessments from 12 different institutions.[5] The institutions are the African Development Bank, the Bertelsmann Foundation, the Economist Intelligence Unit, Freedom House, Global Insight, International Institute for Management Development, Political and Economic Risk Consultancy, Political Risk Services, the World Economic Forum, the World Bank and the World Justice Project.”

Perhaps the country rankings from 0 to 100 were averaged out for these expert groups? We do not know what materials they employed for the rankings, from much corruption to no corruption.

Let us look at the average continent scores for 2015 (Table 1).

Table 1. *Lack of corruption*

The Global Picture	43
EU & Western Europe	67
Eastern Europe & Central Asia	33
Asia Pacific	43
Middle East & North Africa	39
Americas	40
Sub-Saharan Africa	33

Source: [[Retrieved from](#)].

Actually, these average scores do not say much, as the group categories are extremely wide. The span within some groups is quite large, meaning that the category continent explains little. “Americas” comprise both North, Central and South America, although their scores vary much. Let us try affluence first and foremost. The same applies to “Asia Pacific”.

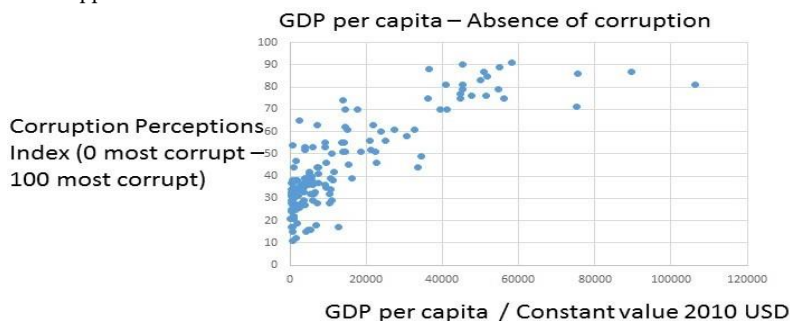


Figure 3. *CPI and GDP globally: $y = 0,0008x$, $R^2 = 0,68$*

Sources: Corruption Perceptions Index 2015. Transparency International, www.transparency.org; World Bank national accounts data; OECD National Accounts data files.

Figure 3 shows instead in a clear fashion that these CPI scores are linked with affluence as GDP per capita.

The finding in Figure 3 is an asymptotic curve, meaning that over a certain threshold of affluence, the lack of corruption is established and transparency not augment with more GDP. This magical threshold seems to take place at 4000-6000 US dollar per capita, which is maybe an income that makes a person less eager to supply corrupt services – see the demand – supply model below.

Examining Figure 3, one is inclined to argue that the CPI measures government abuse in general, and not merely corruption. If one includes all kinds of personal abuses by politicians and bureaucrats, one arrives at the conventional view that public sector criminality is higher in the Third World countries than in the First World countries. But is this really specifically corruption as bribery, covering the entire society, also the market sector? Or is it merely the occurrence of general crime against the state in poor countries?

Is the standard inherited view on crime correct? One may consult other indices that tap the respect for the law and contract enforcement in general, like the rule of law index in the big World Bank Governance project. In the major WB

Governance project, the authors make a distinction between the rule of law on the one hand and control of corruption on the other hand. They state: (1) "Rule of Law (RL) – capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence." (2) "Control of Corruption (CC) – capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests." (Kaufmann, Kraay & Mastruzzi, 2010).

The CC index is evidently very much the same as the CPI, i.e. extremely broad, covering all kinds of public abuse for private gain. The WB Governance project state that they made use of the Transparency Index when calculating the CC index.

However, what is troublesome is that the RL index in reality turns out to be much the same the CPI index, i.e. measuring the backwardness of the Third World. Figure 4 shows the link between WB's rule of law index and Transparency International's CPI. They measure the same phenomenon, namely the link between economic criminality and poverty.

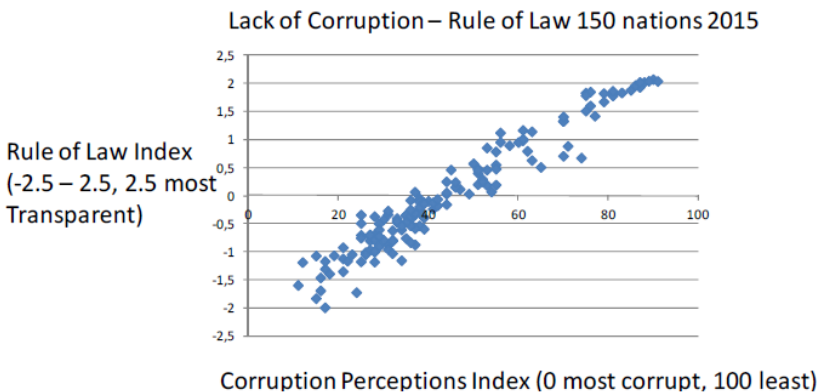


Figure 4. CPI and WB: RL; $R^2 = 0,94$

Perhaps then, the RL index by the WB Governance project is also a Third World index? Look at Figure 5 for the same curvature, very low scores in poor nations and then an augmentation up to a certain level, an asymptotic curve. But the CC or CPI was measured independently of the RL index!

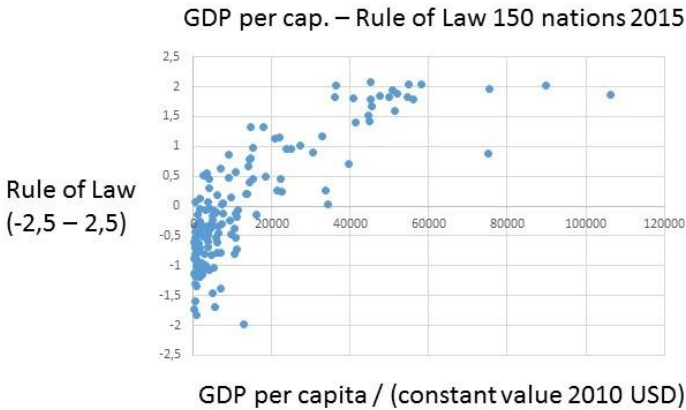


Figure 5. GDP – Rule of Law (WB): $R^2 = 0,6485$

One may pursue this finding one step further, by looking at the link between the GDP scores and the so-called World Justice index. It calculates thus: “The WJP Rule of Law Index relies on over 100,000 household and expert surveys to measure how the rule of law is experienced in everyday life around the world. Indicators are grouped around the following nine factors:”... “Performance is measured using 44 indicators across eight primary rule of law factors, each of which is scored and ranked globally and against regional and income peers: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice.” Source: [[Retrieved from](#)].

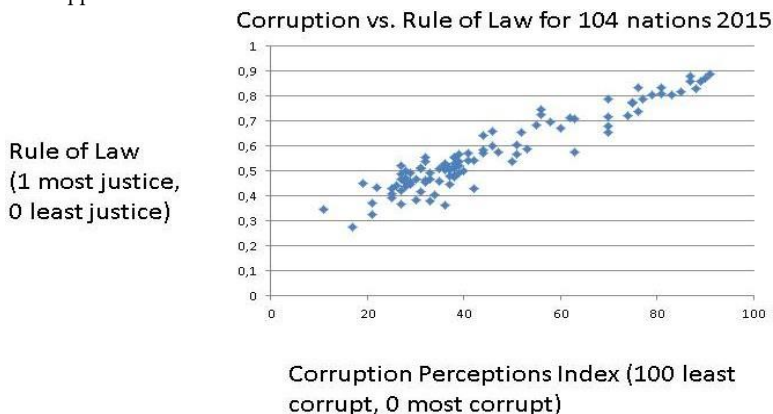


Figure 6. *CPI and Rule of law (WJP): $y = 0,0069x$; $R^2 = 0,90$*

Source: Corruption Perceptions Index from Transparency International, www.transparency.org; World Justice Project, worldjusticeproject.org/

The World Justice Project out of Washington DC covers not only corruption or rule of law but criminality at large at arrive at the picture as the CPI index, namely:

Outline of a new approach

The image of global corruption typically rendered on the basis of the index of transparency is too blunt, placing most corruption with Third World countries under a most general definition of “corruption” as public sector abuse for private gain. Targeting the concept of corruption as bribery, one may construct a more nuanced picture where corruption in the First World is fully recognized on the one hand and corruption in the Third World is better understood as mostly petty corruption on the other hand.

Opacity of Private Sector Corruption

The Transparency Index deals only with the abuse in the public sector. This is a major limitation, because in the private sector the opportunities for abuse are more numerous and much more difficult to spot and correct. Two reasons for this may be identified:

- The rules are less clear and enforceable;

- The spirit of collusion typical of private sector governance often hinders full scale revelations of abuse.

In the market sector with huge multinational enterprises and financial institutions, there is plethora of remuneration types that can be employed in the grey zone between legality and illegality. The amount of money for compensation is often staggering, with so-called bonuses reaching over 100 per cent of normal salary. Another opaque concept besides the ambiguous “bonus” (for success or mediocrity?) that may invite corruption is the “commission” in market dealings. During the last decade, the salaries, firing and pension deals of CEO:s have sky-rocketed to a level that indicates market failure, i.e. a lack of competition in the bidding process for these jobs.

The CEO may often count upon support from the board of his firm for large salary increases, regular or *ad hoc*, because he/she may suggest at the same time huge augmentations of board members’ remuneration – perfect collusion against shareholders or stakeholders.

Principal-agent gaming

Some forms of corruption adhere to the principal-agent model, where an employee uses corrupt practices to go behind his/her principal to get extra revenue in an illegal manner, more or less tacitly. As public employee is bureaucracies in the Third World have a very low income in general, the supply of services or goods for bribes is huge. Similarly, as the quantity and quality of public services is low in poor countries, there is a large demand for improvements that may be the quid pro quo of a bribe.

Big versus petty corruption

Poverty feeds crime. That is the conclusion one draw from the above Figures. But one knows not much about corruption in its more strict meaning as bribery. Theorizing corruption in

a more strict definition as a binary relationship concentrated upon the bribe, one cannot assume that it occurs much more often in poor than in rich countries. It is vital to separate petty corruption from big corruption.

Petty corruption is often occurring in Third World countries. Why? Poverty! Often salaries of public officials are low, or they may not have been paid full salaries for some time. One can analyse petty corruption as a market phenomenon, where the buyer and seller meets, given their ambition to maximize expected value. The bribe has an additional cost or benefit, namely the risk of disclosure and loss of work or punishment.

The occurrence of corruption in Third World countries reflects their poverty and it is mainly a matter of petty bribery of low paid officials. The difference between the Third World and the First World may be visualized in a demand and supply framework (Figure 7).

Some may question the ambition to subject corruption to a demand and supply type of analysis. It could smack of economic model imperialism, as with Becker's framework (2013) or like the ideas of an economic analysis of law with Posner (2004). Yet, the aim here is just conceptual, i.e. to pin down a more precise concept of corruption and offer a reasonable theory of the difference between First World and Third World corrupt practices.

It is of course possible to speak of demand and supply of corruption, since there is the typical element in a contract between two parties, viz. the consideration. On the one hand, the promiser offers something and the promisee receives something and on the other hand there is the contra exchange of something valuable. There may be defection, but it would have to be settled outside of court, by means of retaliation.

One has to add the potential legal costs to the calculation of benefits and costs in corruption. It is a probability assessment that lies at the core of offering and taking bribes,

but it is a question of subjective probabilities that may be completely wrong. In petty corruption, the probability of an incarceration must be taken into account somehow, whereas in big corruption the reputation costs could be enormous for a business.

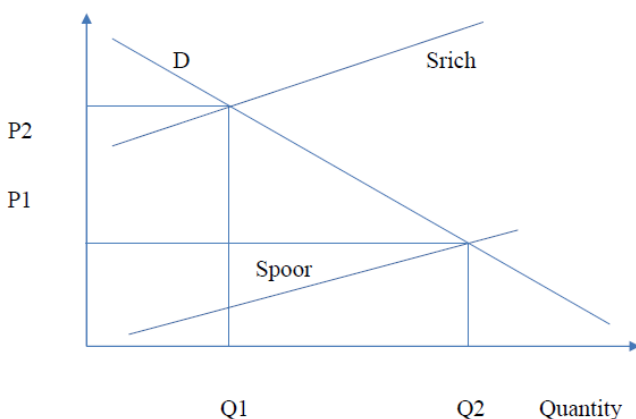


Figure 7. *Demand for and Supply of Petty Bribes in Poor Societies (Q2) and Rich Societies (Q1)*

The supply of petty bribes will be highly restricted in rich societies, because officials are paid decent remuneration and fear much the legal consequences of revelation. The demand curve is the same.

Omnipresence of big corruption

When it comes to big corruption, then each society comprises a clientele who dares to engage in such activities, focussing upon millions or billions of dollars. Here it is the demand curve that differs between the poor and rich country.

Big corruption is not often of the principal-agent gaming kind, but involves organisations, buying for licences or contracts. Kickbacks often take this form, where an organization promises to do some extra favours for the state,

if awarded the deal. A firm may also pay an employee an astonishingly high bonus, if he/she can get hold of the contract in question. Sometimes firms operate a whole system of bonuses that far outweighs the normal salary in order to create inducements. Whether this is legal or not is a question for the grey-zone, but the temptation for the individual employee to fix the deal may become too tempting.

One has recorded several cases of firm corruption in defence procurement as well as in the competition for e.g. Telecom contracts or defence procurement. Rose-Ackerman (2016) argues that corruption has increased, but are we talking about big or petty corruption, corruption as bribery or kickback or merely economic crimes against the state?

Rose-Ackerman presents an analysis along Chicago School Economics of corruption as resulting from the incentives of public officials. She suggests numerous reforms to 'reduce the incentives for bribery and increase the costs of corruption', reminding of Becker's famous analysis of crime – "three strikes and you are out".

Yet, why care about petty corruption? Big corruption is different, violating for instance the World Trade Organisation's rules for public procurement. In petty corruption like in Nigeria, bureaucrats often simply try to stay alive, sometimes not paid or paid properly. Big corruption occurs in the summit of states and markets, but it is not the same as e.g. embezzlement, patronage or money laundering.

An accusation of big corruption must provide evidence of mutual consideration, involving some form of bribery or illegal kickback. See Figure 8 on big corruption.

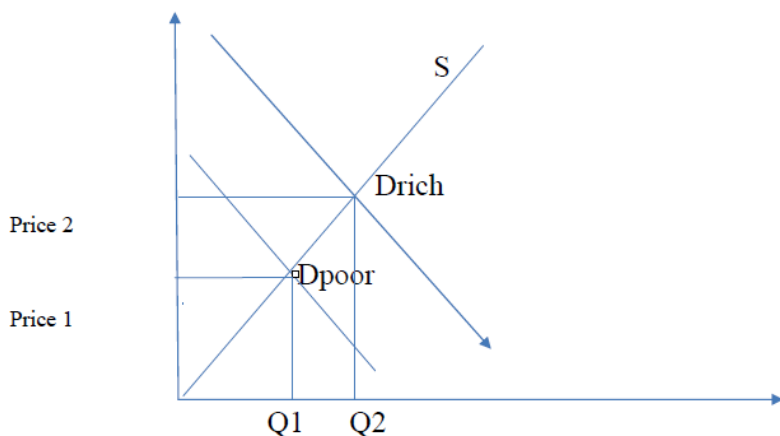


Figure 8. Demand for and Supply of Big Bribes

Comparing Figure 8 with Figure 7, we arrive at the conclusion that petty corruption would be expected to occur mainly in poor countries, whereas big corruption would expectedly take place predominantly in rich countries. Big corruption cases receive lots of attention, because they are important for market ethics and state integrity. But accusations of big corruption are not always validated by a court – see for instance the many cases in Israel! Big corruption typically involves the market sector with private firms seeking illegal favours in some *quid pro quo*. The limitation in the CPI to the public sector is arbitrary!

Dynamic Analysis

Social transformation may reveal itself in the demand and supply of corruption. Thus, when societies develops towards anomie or anarchy, corruption will increase, because it becomes a survival mechanism for both the demand and the supply.

Petty corruption

Using the demand and supply framework for the analysis of corruption as a binary relationship, one may add a few dynamic remarks to the static pictures above. The demand curve shifts outward when a society faces a crisis, economically or politically. People find that the normal ways of getting goods and services do not function smoothly, which is why they may try to offer an extra payment, monetary or non-monetary ones. There will be more corruption for a higher price in poor societies. If there is a *coup d'état* changing the regime towards less institutionalization, the supply curve shifts outwards, as corrupt officials need supplements to their unsafe income, or salaries. The price of corruption goes down and the quantity increases in poor societies.

Big corruption

Also, the phenomenon of big corruption is susceptible to dynamic analysis. Suppose there is a change in government from a hard core left one to a right wing government, friendly to the business community. The supply of corruption increases and the curve shifts downward with a new price and quantity.

Remedies

How to reduce corruption is a much discussed topic. It would seem arguable that corruption could be counter-acted by the legal machinery, but it could not possibly be eradicated in any society. Moralists suggest that altruism, or social capital, is the central remedy.

Social trust (Rothstein, 2015)

A few scholars regard corruption is the “cause” of all evil, almost as in a religious theory. They take the reliability and validity of the corruption rankings in Transparency Index CPI for granted, and they correlate these numbers (low for Third

World, high for First World) with all bad phenomena. They conclude, like religious believers: Eliminate corruption and the world is saved from evilness! They even go on to suggest a basic remedy, viz. social trust. The problem with the concept of social trust is the same as with corruption in the Transparency Index: too many different connotations and no validated unique denotation. It has even been proposed that the R. Inglehart (1999) individual indicator: "Survey question: "Most People can be Trusted" (interpersonal trust or generalized trust) can measure the amount of resistance to corruption in a whole society. This is merely an *ecological fallacy* (Burnham *et al*, 2008, p.41), as it may be the people who answer YES who engage in corruption! I believe that generalized trust may not be a rational strategy in an environment of infested terrorism. The entire framework of social trust or social capital is a conceptual muddle (Guinnane, 2005; Durlauf, 1999; Stirrat, 2004; Franklin, 2004), despite recent attempts to create a Handbook (Li, 2017).

Wealth maximization and corruption (Posner)

For scholars who believe that justice is economic efficiency more or less, the rejection outright of corruption becomes difficult. Whether wealth maximization, Posner's criterion (Posner, 2004) is to be measured in money or utility, it is easy to contrive many situations where corrupt practices satisfy wealth maximization, especially in cases of petty corruption. One may e.g. refer to Tullock's (1996) analysis of corruption, which carries a mixed evaluation, as opposed to the standard condemnation in economics (Bhagwati, 1982; Bardhan, 1997; Tanzi, & Davoodi, 1997).

Institutional economics and corruption

It is a fundamental assumption in the theory of efficient markets that contracts are transparent, visible and enforceable in the legal machinery. There is absolutely no

room for corruption (Cooter & Ulen, 2011), Why? Two reasons paralleling the above justice distinctions:

a) *A priori justice*: a market economy operates per definition upon the notions of impartiality, formal equality and transparency. This may be motivated by some theory of justice like Rawls' well-ordered society. One of Rawls' preceptsof fairness states that offices must be open to all and recruited on the basis of competence. Thus, buying a position would be unjust and constitute a favour against others. This is microjustice that covers for instance jobs and remuneration.

b) *Utilitarian reason*: Here the arguments are many, claiming that big corruption hurts economic efficiency from several angles like growth, investments and overall competence. There is a large literature, attempting to show by numerous examples that corrupt practices are conducive to bad outcomes, especially at the macro level.

Looting

In a principal-agent model of the firm, there is the possibility of looting, meaning that the agent(s) take the entire profit as bonuses. The bonus culture has spread like wild fire the recent decades. And a bonus may now be much larger than the fixed salary of the CEO(s). It used to be linked to a special or separate performance, but it now tends to be awarded indiscriminately, even when the firm operates at a loss. The bonus culture is an integral part of the immense remuneration packages that CEO(s) have been able to negotiate for themselves. Economists Hart & Holmstroem (1987) were awarded the Nobel Prize in economics for their analysis of the principal-agent model of agency pay, given a number of assumptions like e.g. incentive compatibility and the reservation pay, non-observability.

However, they could not show excessive remuneration or foul play. Assuming perfect information, there is a correct remuneration scheme for effort, corresponding to several

things like competence, ambition and hours worked and verifiability. But with asymmetric information, the CEO(s) have the upper hand against the shareholders and the work force. If necessary, the CEO(s) can easily engage in collusion with board members, constantly increasing their fees, on the condition that they receive these incredible pay packages as well as yearly increases whatever the firm result. Is this a form of corruption or cheating perhaps? And the CEOs protect themselves against failure or misfortune (which is which?) with excessive parachutes

For instance, the truly giant state owned enterprise, *Vattenfall*, plays principal-agent looting with great success every year. Despite deep running losses and sharp capital down-writes, the CEOs receive handsome bonuses, which the owner accepts, a socialist governments.

The Bonus Culture Society

The remuneration changes for the top elite in the private sector have by and by contributed to the transformation the entire social structure in advanced capitalist democracies. The post-modern social structure is much different from that of the industrial society in the 20th century. Between the excluded and the super rich families, there is a broad set of middle classes who fear social exclusion and envy the super rich, even to such an extent that the temptation of cheating sometimes becomes irresistible.

The enormous incomes of the private sector leaders are transformed into capital and wealth, pushing housing prices to sky-rocketed levels. And the better off middle class hangs on these developments in real estate and financial assets. For other elites in society, the politicians and higher bureaucrats as well as the academics, the only way to afford a living standard like the CEO's is to procure other incomes, in whatever way. Thus, the bonus culture directly and indirectly

increases cheating in society, as is apparent in the augmentation of affairs, calling for judicial counter-action.

The post-modern society with a bonus culture in a vibrant market economy with more and more of NPM is dominated by the rising inequalities in the economy. Take Sweden for instance where in the course of twenty years a welfare state based on a strong public sector has been changed in to a welfare society with deteriorating public services and meagre pensions.

Looting as a strategy by CEOs stems from their information advantage and greed. With asymmetric information, they will charge an extra cost for the shareholders that often constitutes an ocean. Two example, *Ericsson* and *Nokia*, were brought down not only because the competitors in telecommunications become too difficult to compete with, despite enormous competitive advantage in the beginning. The huge profits of these two Nordic giants stimulated looting.

Conclusion

When the concept of corruption is theorized in a more precise manner as a binary relationship, and modelled according to demand and supply, then it is to be found in both poor and rich countries, but it is not the same type of corruption that dominates – petty against big corruption. I hope this argument contain a more nuanced view of corruption than the CPI.

Cheating occurs in all countries. The poor countries have much of petty cheating, which is annoying but not lethal as is cheating in the anarchic societies, like the Saharan countries: Libya, Somalia, Ethiopia, the two Sudans, etc. Big cheating is to be found in both poor and rich societies. In advanced capitalist economies, the bonus culture frames the inequalities and leads some elites in the public sector to cheat in various ways, like faked jobs for friends, misuse of public funds,

embezzlements, extravagant use of per diem, gifts, excessive pay for lectures, consulting with huge fee levels, non-economic favours, etc. Why would world politicians like e.g. Blair, the Clintons and Fillon accept that CEOs outdistance them in affluence and richness? Global consulting, excessive remuneration for speeches and public family employments help a lot.

References

- Bardhan, P. (1997). Corruption and Development: A Review of the Issues. *Journal of Economic Literature*, 35, 1320–1346.
- Becker, G. (2013). *The Economic Approach to Human Behavior*. Chicago: University of Chicago Press.
- Becker, G. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economy*, 76, 169–217. doi. <https://doi.org/10.1086/259394>
- Bhagwati, J. (1982). Directly Unproductive Profit-Seeking (DUP) Activities. *Journal of Political Economy*, 90, 988–1002. doi. [10.1086/261104](https://doi.org/10.1086/261104)
- Bowles, (2008). “Corruption”, in Burnham, P., Lutz, K.G., Grant and W. Z. Layton-Henry Research Methods in Politics. Basingstoke: PalgraveMacmillan.
- Bowles, R. (1999). “Corruption.” In Encyclopedia of Law and Economics. University of Utrecht, Holland, 1999. [[Retrieved from](#)].
- Clarke, G., & Xu, L. Ownership, Competition and Corruption: Bribe Takers vs. Bribe Payers.” World Bank Development Research Group, Policy Research Working Paper no.2783.
- Clarke, G., & Xu, L. (2002). Ownership, Competition and Corruption: Bribe Takers vs. Bribe Payers. World Bank Development Research Group, Policy Research Working Paper no. 2783. February, 2002.
- Cooter, R., & Ulen, T. (2011). *Law and Economics*. New York: Norton.
- Corruption Perceptions Index (2015). Transparency International, [[Retrieved from](#)]; World Justice Project, [[Retrieved from](#)]. World Bank national accounts data; OECD National Accounts data files. Literature.
- Durlauf, S. N. (1999). The case “against” social capital”, in Focus, University of Wisconsin–Madison: Institute for Research on Poverty.
- Franklin, J. (2004). *Politics, Trust and Networks: Social Capital in Critical Perspective*. Families & Social Capital ESRC Research Group. London South Bank University.
- Guinnane, T. (2005). Trust: A Concept Too Many”, at Yale University. [[Retrieved from](#)].
- Hart, O., & Holmstroem, B. (1987). The Theory of Contracts, in T.F. Bewley (ed.), *Advances in Economic Theory: Fifth World Congress of the Econometric Society*, 71-155, Cambridge University Press: Cambridge UK. doi. [10.1017/ccol0521340446.003](https://doi.org/10.1017/ccol0521340446.003)
- Holmes, L. (2015). *Corruption – A very Short Introduction*. Oxford: Oxford U.P. 9
- Holmstroem, B. (1982). *Managerial Incentive Problems A Dynamic Perspective*, in Essays in Honor of Lars Wahlbeck, Helsinki: Swedish School of Economics, re-published in Review of Economic Studies 66, 169-182.
- Inglehart, R. (1999). *Trust, Well-Being and Democracy*, in Democracy and Trust, ed. Mark E. Warren. Cambridge: Cambridge University Press.

Ch.9. Opportunistic behaviour

- Kaufmann, D., Kraay, A., & Mastruzzi, M. (2010). The Worldwide Governance Indicators: Methodology and Analytical Issues. World Bank: Draft Policy Research Working Paper.
- Klitgaard, R. (1988). Controlling Corruption. Berkeley: University of California Press.
- Krueger, A. (1974). The Political Economy of Rent Seeking. *American Economic Review*, 64(3), 291–303.
- Leff, N. (1964). Economic Development Through Bureaucratic Corruption. *American Behavioral Scientist*, 8(3), 8–14. doi. [10.1177/000276426400800303](https://doi.org/10.1177/000276426400800303)
- Li, Y. (2017) (ed.) *Handbook of Research Methods and Applications in Social Capital*. Cheltenham: Edward Elgar. Martinez-Vasquez, J., & McNab, R. (2002a). Decentralization and Governance. International Studies Program Working Paper. Andrew Young School of Policy Studies, Georgia State University, Atlanta, 2002a.
- Mauro, P. (1995). Corruption and Growth. *Quarterly Journal of Economics*, 110(3), 681–712. doi. [10.2307/2946696](https://doi.org/10.2307/2946696)
- Melese, F. (2002). *The Problem of Corruption*. *Free Market*, 20(6), 6–8.
- Mohtadi, H., Polasky, S., & Roe, T. (2005). *Trade, Information and Corruption: A Signalling Game*. Paper presented at American Economic Association meetings in Philadelphia, January 2005.
- Ostrom, E. (1990). *Governing the Commons*. Cambridge: CUP. doi. [10.1017/CBO9780511807763](https://doi.org/10.1017/CBO9780511807763)
- Posner, R.A. (2004). *Frontiers of Legal Theory*. Cambridge, MA: Harvard U.P.
- Rose-Ackerman, S. (1978). *Corruption: A Study in Political Economy*. New York: Academic Press, 1978.
- Rose-Ackerman, S. (1994). *Reducing Bribery in the Public Sector*. In D. Trang, ed., *Corruption and Democracy*. Budapest Institute for Constitutional and Legislative Policy.
- Rothstein, B. (2015). *Letter to the Royal Swedish Academy of Sciences*. See also: “The Tragedy of Economics and the Nobel Prize” [[Retrieved from](#)].
- Shleifer, A., & Vishny, R. (1993). Corruption. *Quarterly Journal of Economics*, 108(3), 599–617. doi. [10.2307/2118402](https://doi.org/10.2307/2118402)
- Stirrat, R.L. (2004). Yet another ‘magic bullet’: the case of social capital, *Aquatic Resources, Culture and Development*, 1(1), 25–33.
- Tanzi, V., & Davoodi, H. (1997). *Corruption, Public Investment, and Growth*. IMF Working Paper WP/97/139.
- Tullock, G. (1996). Corruption Theory and Practice, *Contemporary Economic Policy*, 14(3), 6–13. doi. [10.1111/j.1465-7287.1996.tb00619.x](https://doi.org/10.1111/j.1465-7287.1996.tb00619.x)
- Wei, S. (1999). Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle? Paper presented at the Sixth Mitsui Symposium on Economic Freedom and Development, Tokyo, June 17–18, 1999.

Ch.9. Opportunistic behaviour

World Bank. (2001). World Development Report 2002: Building Institutions for Markets. New York: Oxford University Press.

10

The modern state in comparative inquiry

Introduction

Confronted with massive historical research, the social sciences may look for patterns, similarities and differences.

The book by F. Fukuyama on the origins of political order (Fukuyama, 2012; 2014) is fascinating. Neither the functionalists nor the system theorists could introduce a tenable theory of political development. The conceptual difficulties as well as the early political events in mankind's trajectory were too hard to grasp. Development theories tend to give rise to philosophical issues about trends and causes.

Politics tend to change fast. Is there one direction to be distilled? Does development over time move toward some fundamental outcomes, like the modern state?

Religion and tribalism

The modern state is secular, a set of structures and functions we call government and administration. The

separation between state and church has not been implemented in all countries.

Fukuyama writes that prophet Mohammed laid the ground or foundation for an *Arab* state. But who was this Mohammed and the 4 right guided caliphs? Perhaps this traditional view is not more than a fairytale like the biblical tales? The traditional story about the rise of Islam is not secured by either objective evidence or historical method.

Fukuyama repeats the theory that religion banded Arab tribes together in the huge conquests from Spain to India. Yet, Fukuyama bypasses the lethal tribal conflict at the core of Islam: between Sunnis and Shias. And the Koran is the constitution of several Moslem countries.

Qin state first?

A modern state existed already in the Qin dynasty 221-207 before Christ, Fukuyama argues. Was it really a state and not merely a dominant dynasty? To Fukuyama the opposite to the state is tribal chiefdom, and political development is the state replacing tribalism. Yet, the empires in Euphrates and the Nile were neither states nor tribal chiefdoms. Nevertheless, these dynasties accomplished much, as the Han dynasty (Gize, Luxor, Babylon and Nineve).

Hinduism

If China created the first modern state in human history, then India was first Government with rule of law. To Fukuyama, the Mughal emperors were constrained by the tribalism of the caste system. Yet, the religions of India delivered *virtuosi*, who were experts on *inner worldly asceticism*, which has nothing to do with rule of *Right Reason*.

Pali myths

Buddhism favoured empires or better emperors, but hardly states. It replaced Hinduism in many places only to be radically pursued by Islam, destroying many Hindu temples and Buddhist shrines and monasteries—oriental despotism. The myths about the Buddha were created several hundred years after he achieved *Nirvana*.

Veda texts

Reading the Veda Tales, one is certainly in an imaginary world of Weber 1 — political fighting—and not in a real world of Weber 2.

Buddhism was linked to dynastic empires, being favoured by India's Northern rulers. When spreading out to East Asia and Southeast Asia, it became oriental despotism. Islam wiped it out of India almost entirely. I have no doubt that France after 1815, Germany after 1870 and Great Britain after 1707 all fulfill the Weber concept 2. Perhaps one could also mention Sweden after 1721, but state formation was late in the rest of the world.

Of course, there was political organisation elsewhere, in Africa and the Americas—type Weber 1. They had other cultures including customs, gods, and myths to bolster the regime.

Philosophical approaches

Ex ante modern state

The human condition *ex ante* the state is analysed by Fukuyama as either stateless anarchy or tribalism. They are, however, not the same. We do not know how people lived before the first great civilisations emerged in Mesopotamia and Indus Valley. The periods up to the first town *Uruk* are hidden, despite lots of new findings in archaeology and genetics. The humans who went from hunter-gatherers to farming were probably organised in tribes (the *Yamnaya*

people for instance), but it was hardly what Hobbes, Locke and Rousseau imagined as the state of nature *ex ante* state.

The movements of people over Eurasia wouldn't have been possible unless there was some *order* in the tribes or among them—tribal federation. A stateless society is not necessarily an anarchy: *omnium bellum contra omnes*. The Huns challenged Rome and the Goths conquered lots of territory, sacking Rome like the Vandals—no doubt confederations of tribes in cooperation.

Autocracy

Hobbes did not invent the concept of the state, as he is the secular theorist of absolute monarchy. He places all competences with one person—*absolutism*.

Fukuyama claims that Hobbes and Locke are not so different. This is the opposite of the truth. Their concepts of law are wide apart in basic legal theory: merely the *command* of the sovereign (Hobbes) against *Right Reason* (Locke).

Weber's approach

Fukuyama goes on to claim the existence of a state in the Chinese dynasties as well as in the various Caliphates and the Ottoman empire. They would fulfill the Weber properties of a modern state. Really?

Let us quote from Weber directly:

The “ruling organization” will be called “political” insofar as its existence and order is continuously safeguarded within a given territorial area by the threat and application of physical force on the part of the administrative staff (Weber, 1978). A compulsory political organization with continuous operations (politischer Anstaltshetrieb) will be called a “state” insofar as its administrative staff successfully upholds the claim to the monopoly of the legitimate use of physical force in the enforcement of its order (Weber, 1978: p. 54).

The emphasis here is upon:

- Continuity;
- Organisation of administration;
- Delineated territory;
- Control of *legitimate* employment of physical force

The Caliphates fought each other until the caliph lost all power, to be replaced by *Sultanism*. The Ottoman Empire was characterized by *palace* politics, also to found in China, where uproars and invasions destabilized the polity (Finer, 1997).

Hayek's neoliberal state

When analysing rule of law, Fukuyama unfortunately employs F. Hayek's model of law against legislation.

For Hayek "*law*" means custom or convention, whereas "*legislation*" stands for enactments. Often customs originated with tribes, which is what Fukuyama wants to overcome (Hayek, 1960)!

The Hayek distinction has little relevance. Constitutional law may result from legislation—e.g. The 1949 Basic Law in Germany—or legislation added to the constitution as amendments (the USA). Legislation is a *sine qua non* in post-modern societies (Hayek, 1973).

Swedish constitution

Hayek's distinction is to be found in the debate about the Swedish constitution, lasting 150 years. On the one hand, it was seen as a copy of the French 1791 constitution. On the other hand, this was rejected with a theory that it was *Law*, or the summary of Swedish customs and tribal laws (Lagerroth, 1915).

There were lots of *law* in Western Europe, but only through codification did they have constitutional consequences. Law and legislation goes together, sometimes supporting codification sometimes changing customs and habits (Roberts, 1966).

Sociological institutionalism

Fukuyama wants to overcome Marx and Weber by moving the analysis of the state back into the dissolution of the tribal society. The insights of other German scholars about the fuzziness of the modern state are neglected, showing that there once were other political organisations than the state (Meinecke, 1924; Brunner *et al.*, 1992; Hintze, 1975; Kantorovicz, 1961).

Weber's taxonomy of regimes is still useful. It is his famous analysis of the origins of capitalism that needs revision and not his regime theory. The legacy of the Presbyterians is *rule of law*, not the market economy. The key person is *socinian* John Locke.

The rise of capitalism is now pushed back in time and includes oriental endeavors like Arab, Indian and Malay merchants. Porcelain was an *industry* in China.

Orientalism is not absent with Weber—see his writing about Islam as a religion of *warriors*. But the Occident harbours the ideal stereotypes: feudal society, state and rule of law.

The concept of political development is value-loaded. But anarchists like Noam Chomsky would not cherish the state. Rule of law is praiseworthy as in Occidental constitutional democracy—the End of political development?

I would connect a Chinese state with communist monopoly control of legitimate use of force, in accordance with Socialist Law. And in India, with monopoly over Common Law rules of physical violence including e.g. *Habeas corpus*, with time after partition disregarding the Sikh slaughter when Indira Gandhi was killed. Unfortunately a country like Myanmar still has no state. As a matter of fact following international law one would date the modern state to 1648 with the Treaty of Westphalia.

Belief and fact: “Axial” misnomer

The idea of a state is obliquely specified when Fukuyama speaks of an Arab state and the catholic church around 1200 as a state. Presumably what is at stake is the governance of the Caliphate and Canon Law—religious institutions.

One must distinguish between ideals and facts. The Catholic Church never fully implement Canon Law, neither yesterday nor today. That scholastic teaching could result in the “*Entzauberung der Welt*” is one of Fukuyama’s fallacies about *modern state* genesis.

One may compare with the so called *axial* theory that draws enormous implications of religion or ethics. Professor B. Wittrock (2012) writes:

“The Axial Age denotes a series of profound cultural transformations that occurred in some of the major civilizations of the Eastern Mediterranean, the Near East, and South and East Asia in the centuries around the middle of the first millennium bce. The term was coined by Karl Jaspers in a small book, *Vom Ursprung und Ziel der Geschichte*, which appeared in 1949. Jaspers, who at the time had played an important role, together with Al-fred Weber and others, in trying to reconstitute the University of Heidelberg after the end of Nazi rule, erroneously believed he was using a term from Hegel’s lectures on the philosophy of history. His objective, however, was not to reenact a version of Hegelian historicism. Instead the book, like Friedrich Meinecke’s *Die deutsche Katastrophe* (1946), was an effort to re- think the intellectual legacy of Europe against the background of the complete human and cultural catastrophe of totalitarian rule, war, and the Holocaust. It was not an effort to abandon historical reasoning but rather to search for an understanding of history that did not take the Europe an experience as the self-evident vantage point or the Christian idea of the birth of Jesus Christ as the only important turning point in history. Perhaps one might read Jaspers’ book as one of the first efforts

by a leading European philosopher and intellectual to decenter our understanding of history and to prepare the stage for a view of history as a set of analogous quests within different civilizations that had hitherto been regarded in isolation from each other or as involved in conflict-ridden contestation. When historians today write about cultural encounters and entangled histories, they seem to owe a debt of gratitude to Jaspers' early contribution".

As a matter of fact, I do not know what events around 500 BC are referred to here. When we consult the Wikipedia entry on "axial age" it becomes much clearer:

"Is a term coined by German philosopher Karl Jaspers in the sense of a "pivotal age", characterizing the period of ancient history from about the 8th to the 3rd century BCE" (Wikipedia).

Yet, the axial age theory is hardly science, especially when developed into a theory of the genesis of world religiosity by K. Armstrong (2007).

The following speaks against any axial age:

1) The existence and teachings are not secured by objective evidence or reliable historical sources from Laoze, Confucius, Zarathustra, the Buddha, Socrates or Jesus.

2) The most important idea in political philosophy falls outside of the axial age, namely the rule of law. It separates open and closed countries. And the originator was none other than Cicero (2009), the most underestimated thinker in the Western world.

3) Religion handles variously the human question of salvation, invoking magic buttressed by stories about charismatic personalities like Moses and Muhammed, resulting in legends and myths, if one extends the arbitrary time span of the "axial age" (800 - 200 BC).

Conclusion

The Chinese dynasties should be compared with dynasties on the Nile or the Tigris. It could arguably be relevant to include the sultanates and Mogul or Mughal emperors, or those of Moscow.

Astonishingly, Fukuyama has little to say about the longest lasting political order: Rome: SPQR.

References

- Armstrong, K. (2007). *The Great Transformation*. Anchor.
- Brunner, O., Kaminsky, H., & Van Horn, J. (1992). *Land and Lordship*. University of Pennsylvania Press. doi. [10.9783/9781512801064](https://doi.org/10.9783/9781512801064)
- Cicero, M. T. (2009). *The Republic and the Laws*. Oxford University Press. doi. [10.1093/oseo/instance.00136660](https://doi.org/10.1093/oseo/instance.00136660)
- Finer, S. (1997). *History of Government I*. Oxford University Press.
- Fukuyama, F. (2012). *The Origins of Political Order*.
- Fukuyama, F. (2014). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. Farrar, Straus, and Giroux.
- Hayek, F. (1960). *The Constitution of Liberty*. University of Chicago Press.
- Hayek, F. (1973). *Law, Legislation and Liberty*. University of Chicago Press.
- Hintze, O. (1975). *The Historical Essays of Otto Hintze*. Oxford University Press.
- Kantorovicz, E. (1961). *The King' Two Bodies*. Princeton U.P.
- Lageroth, F. (1915). *Frihetstidens foerfattning*. Lund.
- Meinecke, F. (1924). *The Idea of State Reason*. R. Oldenbourg.
- Roberts, M. (1966). *On Aristocratic Constitutionalism in Swedish History*. University of Athern Press.
- Weber, M. (1978). *Economy and Society (Vol. 2)*. University of California Press.
- Wikipedia (n.d.). Axial Age. [[Retrieved from](#)].
- Wittrock, B. (2012). *The Axial Age in History*. In R. N. Bellah, & H. Joas (Eds.), *The Axial Age and Its Consequences* (pp. 102-125). Harvard University Press. doi. [10.4159/harvard.9780674067400.c5](https://doi.org/10.4159/harvard.9780674067400.c5)

Essays in Political Theory Vol.1

Author: ***Jan-Erik Lane***

University of Geneva, Geneva, Switzerland.

ISBN: 978-625-7501-77-4 (e-Book)

KSP Books 2022

© KSP Books 2022



Copyrights

Copyright for this Chapter is retained by the author(s), with first publication rights granted to the journal. This is an open-access Chapter distributed under the terms and conditions of the Creative Commons Attribution license

(<http://creativecommons.org/licenses/by-nc/4.0>).





Jan-Erik Lane

Born in 1946 in Gothenburg, Jan-Erik Lane was raised in Stockholm and Malmö. He finished his school education in the classics in 1965. At university of Lund and Umeå he took grades in History, Political Science, Economics and Philosophy. He has held tenured positions at Umeå University, Oslo University and Geneva University. Invited as full professor, he has taught at several universities like e.g. Singapore, Hongkong, Cape Town, Rotterdam, and Jerusalem as well as Freiburg in Breisgau.

KSP Books

e-ISBN

978-625-7501-77-4

© KSP Books 2022