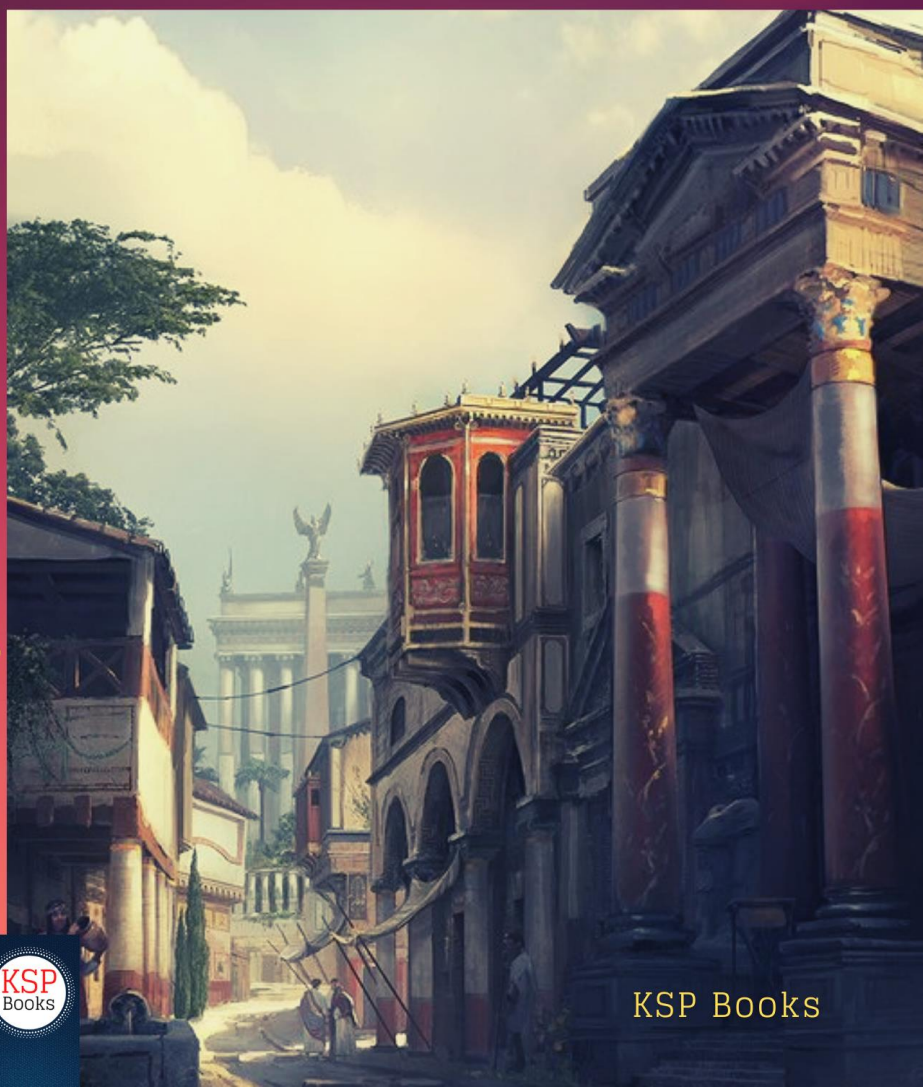


JAN-ERIK LANE

ESSAYS IN POLITICAL THEORY

Vol.3

Political Economy Classics - 3



KSP Books



Essays in Political Theory

Vol.3

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University of Geneva, Switzerland

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Essays in Political Theory Vol.3

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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 21. The beginnings of this century sets up the dilemma of more energy or betterment of the environment. If “energy” is the capacity to do work, as often said, then it can be made profitable. If protecting the ecology of Earth is what the COP reunions of the UN aim at, then it is hardly a surprise that China and India reneged against the original formulation of phasing out coal power. Both countries use a lot of coal plants to get cheap energy for rapid economic development. This is dismal fact for COP endeavours.

Ch 22. One may approach the history of political thought through a variety of themes that various philosophers share but handle very differently. I wish here to capture a few trends in political thought by analysis of the following two long lived themes, namely: naturalism against moralism as well as determinism versus voluntarism.

Ch 23. Max Weber contributed to all the social sciences: economic history, politics, sociology, law and religion. Of

special relevance to globalization studies is his theory about the basic difference between the WEST and the EAST—the so-called Weber's thesis about modern capitalism, based upon his profound inquiries into the world religions, like the religions of India and China, and his studies of the economic history of Europe and the Middle East. His *The Protestant Ethic and the Spirit of Capitalism* (1904) is the most discussed booklet in the social sciences, endorsed, rejected and falsified, as well as confirmed. I will show that the focus of his comparative studies, viz modern capitalism, is flawed as well as that his major idea in politics, the type of modern legal-rational authority, is more suited for his EAST-WEST civilization approach, but it needs reformulation.

Ch 24. The theory of chaos has hitherto been pursued in the natural sciences. However, it may illuminate some issues in the social sciences too.

Ch 25. Behind a political regime there is political theory. In the world today—the real world and not merely a possible world—we have some 200 states, but only a handful of regime types. The essence of these few types is to be found in their political theories. We ask what the regime meaning is with key theoreticians.

Ch 26. World Justice Project (WJP) measures the respect for rule of law globally. Its 2021 report establishes a decline compared with earlier years. For the US the ranking is really down. What does it all mean?

Ch 27. Aleppo displays the two faces of the human race. On the one hand, it harbours an incredibly rich history of human civilisation dating back to the Sumer origins of organised society and government. On the other hand, it is today the victim of the worst atrocities human beings and states can commit, invoking religion, ethnicity and reasons of state. The destruction of Syria and its people is not based upon rational behaviour, because why would combatants keep fighting when there is no hope of an end on either side—no Zermelo point in the game? Today, many people worry in the

short-run about the increase in the occurrence of political violence as well as fear more and more for the long-run danger that is global warming. A book with the title *The End of History* by F. Fukuyama (1992) appears completely misplaced, especially when “The Last Man” clause in this book cannot be ruled out from future projections for entirely different reason—climate change. The coming global consensus on democratic capitalism has been completely stuttered by events in the early 21st century: Koranic terrorism, the collapse of the Middle East, the provocations of North Korea, and the new brinkmanship of China in the South China Sea. Only one remedy to civil war and interstate confrontation exists. I wish to say, namely, double rule of law. This notion covers both domestic and foreign affairs, and it belongs more to the domain of normativity than rational choice or self-interest behaviour. Global rule of law is the only viable foundation for the mighty COP21 implementation process that now starts to prohibit that we arrive at the end of human societies.

Ch 28. The political violence seems only to get worse and worse in Aleppo, where Russian bombers target hospitals and employ deep striking missiles against the apartments of ordinary citizens. State reasons or merely shortsighted cruelty? Those who theorize zero sum games with entities like state interests and geopolitical perspective should understand that it is merely a manner of speaking. The principle of methodological individualism entails that only human beings can be actors as well as that they orientate in terms of what Max Weber called “Sinn” or more complex “sinnzusammenhaenge”. This is intentional analysis that focuses upon the mindset of the participants in violent games. It is definitely not in the interests of neither the Syrian people nor the Russian people what Assad-Putin is performing in Aleppo.

Ch 29. The turbulence and political instability in several key Muslim countries have now global consequences, as

thousands of Moslems leave their countries, because they cannot live or even survive there. This must constitute an enormous blame onto the Islamic civilization, harbouring more than 1 billion believers in the prophet Mohammed. Western countries bomb indiscriminately in Syria and Iraq, as a future protection against the new phenomenon of Islamic terrorism. It should be pointed out that the major co-ordination bodies in the Islamic civilisation – the Arab League and the Muslim Conference – have done little to stop the ongoing civil wars and the horrific political violence. Similarly, the rich Gulf States offer no help for refugees, as they turn instead to the EU with its protection for human rights. How can we explain these civil wars within the Koranic civilisation? The ultimate reason is the rise of radical Islamic fundamentalism within the Sunni community during the 20th century. And it is not going to disappear soon. Could this civilisation implode from within in an unstoppable series of bombings, suicide killings and civil wars?

Ch 30. Jurisprudence is a dogmatic science teaching various domains of law. Legal philosophy discusses the fundamental problems of dogmatic teaching, namely, what is law? Is jurisprudence an empirical science and does law exist being valid?

J.E. Lane

Switzerland

March 15, 2022

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Energy and environment

Introduction

It is trivial to state the humans use a lot of energy for their purposes, for survival and lifestyles besides the ever costlier armaments and occasional warfare. Much of this energy is derived somehow from nature. Most energy is delivered by Earth, which raises the problem of energy exhaustion. The sun energy is on such a scale that the problem is not exhausting but availability. Figure 1 shows the major kinds of energy today.

Ch.21. Energy and environment

Global direct primary energy consumption

Direct primary energy consumption does not take account of inefficiencies in fossil fuel production.

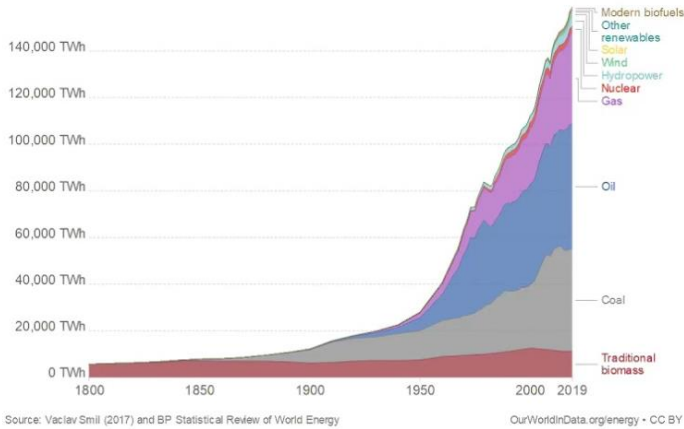


Figure 1. *Energy Consumption by Source (Our World in Data, 2017)*

The energy profile in Figure 1 indicates two of the fundamental facts for this century:

- A) Enormous growth in energy consumption;
- B) The almost 90 percent reliance on burning of energy resources.

Combining A and B, we arrive at the greenhouse predicament of heating Earth. We can follow this mechanism in operation by consulting the Keeling curve of CO₂ emissions. Nature is robbed of its resources and receives a heavy dose of pollution. This energy–environment conundrum must be undone or mankind goes down under. Now when the Keeling curve stands at 420 units life on Earth is negatively affected.

Humans and energy

Why energy is so essential to humans appears from Figure 2. All societies need these functions.

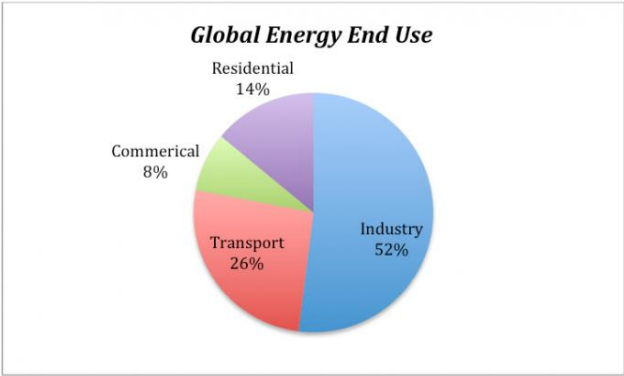


Figure 2. *Energy End Usage by Sector* (Bice, 2022)

Of course, different countries have their specific energy profile with regard to both Figure 1 and Figure 2. In fact, the variation in energy consumption in societies is immense, no doubt reflecting the GNP variation in per capita income.

Today total consumption of energy is roughly 70 Gigajoules per capita. Yet, the differences in per capita energy access are enormous—look at the following country numbers in Table 1.

Table 1. *Per Capita Energy Consumption (giga joules per year)* (BP, 2021)

	2010	2019
Africa	15,4	15,2
Asia Pacific	50,7	60,9
Australia	240,5	233,2
Brazil	56	58,9
China	76,2	99,1
Germany	169,6	156,3
India	18,2	24,8
Japan	164,2	144,8
Middle East	135,3	146,2
Russia	195,1	204,9
South Korea	218,3	239,1
Sweden	229,8	223,4
United States	300,7	288,4

A human needs about 10 mega joules per day to survive healthy, or 3,8 GJ annually. Total energy per capita in Africa is only about 15 meaning risks of starvation as energy is needed for other purposes ad well. On the contrary, the very high per capita energy number for the US entails a decent lifestyle for many and an exuberant one for the few very rich.

Coal power in India and China

The energy situation in the most populous countries in the world is of great concern. It is not only that coal power makes up about half of total energy consumed–see Figure 1 and Figure 2.

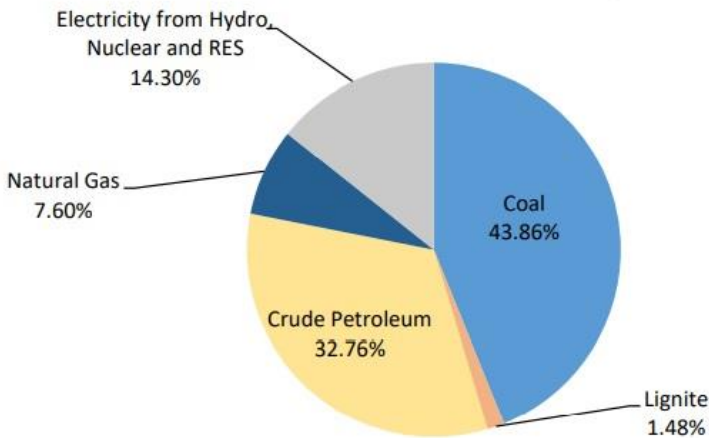


Figure 3. *India Consumption of Energy 2019* (*Energy India, 2021*)

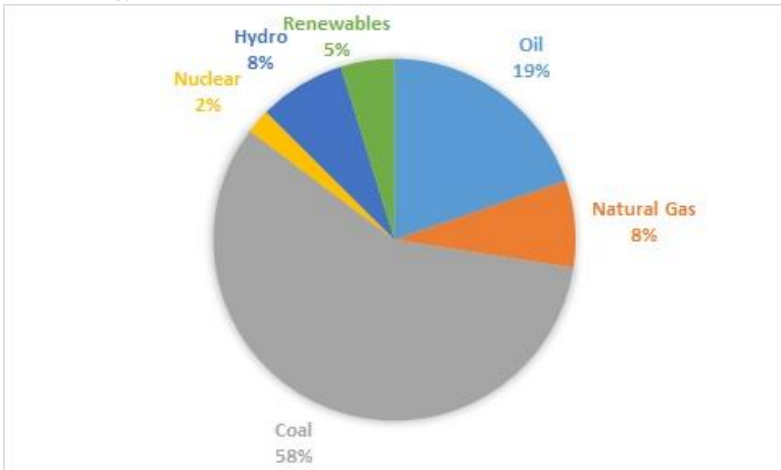


Figure 4. *China Consumption of Energy 2019 (BP, 2021)*

Although both countries have access to renewable power sources, coal and other fossil fuels dominate. They are projected to undergo rapid economic growth over the course of the 21st century (OECD 2018), drastically increasing demand for energy beyond already alarming levels. In addition, the electric power in India and China is overwhelmingly produced by coal—see Figure 3 and Figure 4.

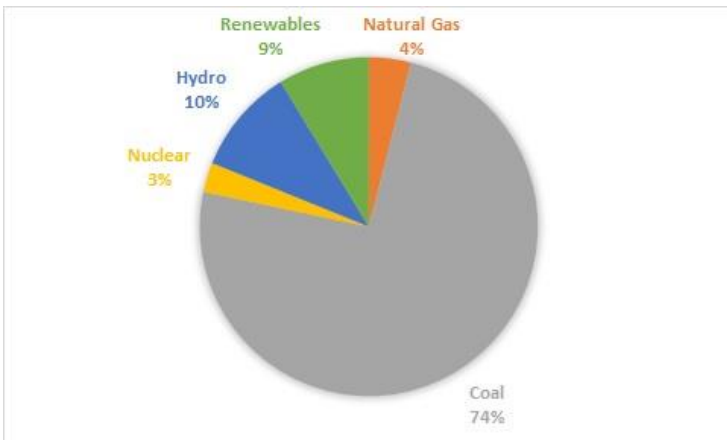


Figure 5. *Electricity Production in India 2019 (BP, 2021)*

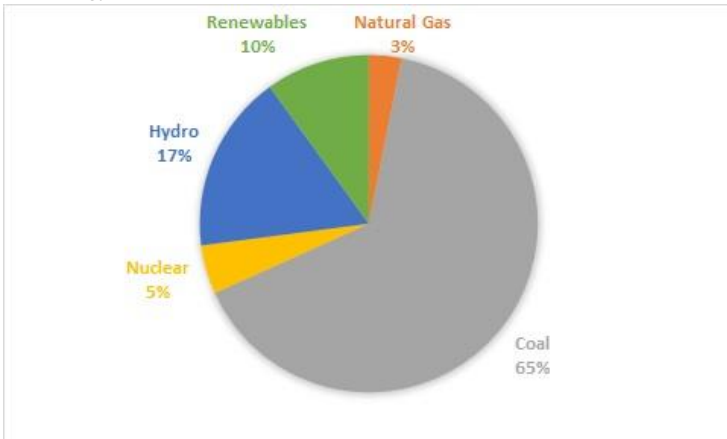


Figure 6. *Electricity Production in China 2019* (BP, 2021)

Both countries face enormous challenges:

- 1) Retrieve electricity from non fossils;
- 2) Replace fossil fuel power with electricity;
- 3) Increase total power supply considerably.

China says it can accomplish all these goals by 2050, whereas India wants a delay until 2060.

Double tragedies: Brazil and Indonesia

Global warming is attended by a whole set of commons deteriorations linked somehow to each other. There are two countries in particular that worsen the climate and ecology of Earth. First, Brazil and Indonesia have not protected the rainforests that are the lungs of Earth. Second, both resort to massive employment of coal and other fossils despite hydropower. Figures 5 and 6 display their fossil dependence.

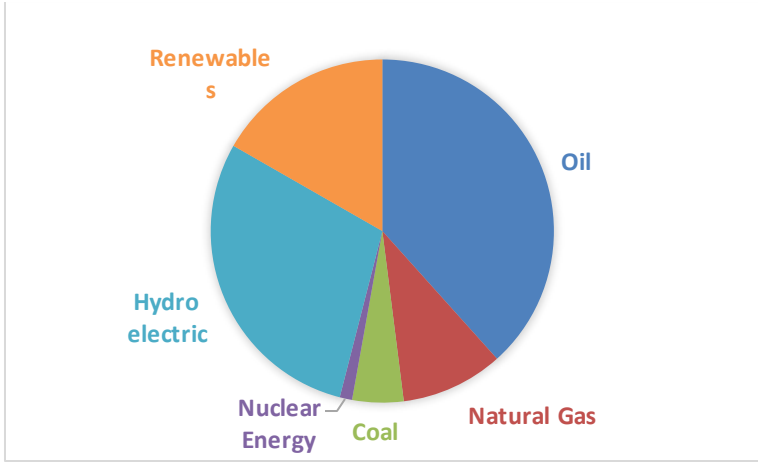


Figure 7. *Primary Energy Consumption Brazil 2020 (BP, 2021)*

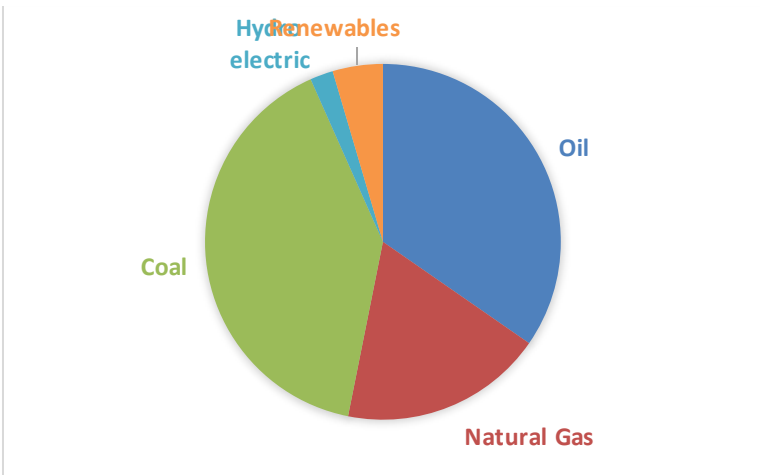


Figure 8. *Primary Energy Consumption Indonesia 2020 (BP, 2021)*

An oceanc club

The debate about climate change involves all aspects of ecological deterioration. Global warming on the other hand deals with greenhouse gases. To save nature globally lots of measures are necessary, while the global warming phenomenon has been attributed in particular to CO₂ emissions.

The amount of CO₂s in the atmosphere depends upon emissions of greenhouse gases and these depend upon the size and economic development. Table 4 defines the 20 biggest emitters of CO₂.

Table 4. *CO₂ Share of World Emissions by Country 2016* (*Worldometers, 2021*)

Country	Share of World emissions
China	29.18%
United States	14.02%
India	7.09%
Russia	4.65%
Japan	3.47%
Germany	2.17%
Canada	1.89%
Iran	1.80%
South Korea	1.69%
Indonesia	1.48%
Saudi Arabia	1.45%
Brazil	1.29%
Mexico	1.23%
Australia	1.16%
South Africa	1.09%
Turkey	1.03%
United Kingdom	1.03%
Italy	1.00%
France	0.93%
Poland	0.83%

CO₂s are only one kind of greenhouse gases. The so-called Keeling curve goes slowly upwards with the exception of 2020. Now it stands at about 415 ppm. Earth scientists and climate experts like the UN have demonstrated that this rise is the chief cause of temperature increase. Thus, the global club decided to start cutting the CO₂s according to various promises: 2030, 2050 and 2060 on the assumption that temperature rise would stay between 1.5 and 2 degrees Celsius. The Keeling curve would level off at some

point securing a sustainable solution for the conundrum. Is this likely? Once again negative based on the facts at hand.

The Keeling curve has increased by 2 percent per year since global warming was diagnosed by researchers at the NASA Goddard Space Center in 1988 ([Hansen *et al.*, 1988](#)), driven by CO2 emissions. The amount of greenhouse gases has augmented sharply, driven by energy increases. The latter will not decrease. On the contrary, both greenhouse gases and energy consumption is up 2021 from 2020. Here is the crux of the matter. When global emissions go up 1%, the Keeling curve goes up 2%. It is all about energy.

The demand for energy goes up year after year. Since 1990 the increase is 0.8 per cent per year ([BP, 2021](#)). Total energy supply is sharply up even when energy decarbonisation takes place. It is true that renewable energy sources have been put in place in many countries, but fossil fuel energy still dominates much. The transition from coal, oil and natural gas occurs at the time as demand for energy augments. With the shift to electric cars and trucks the consumption of electricity will more or less skyrocket in many countries. Figure 6 shows some estimates of energy.

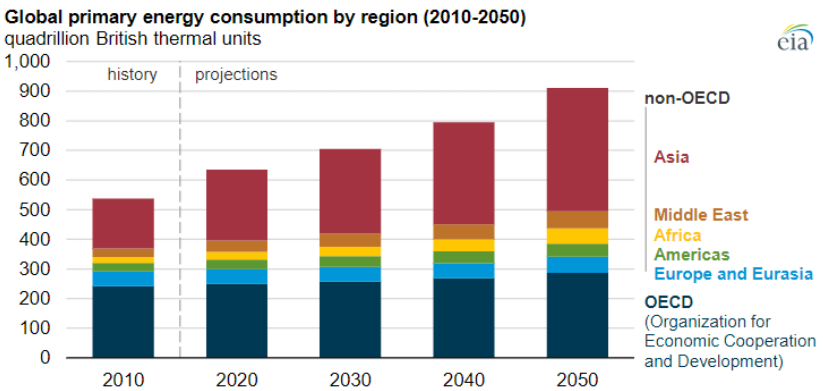


Figure 9. Projected Energy Demand 2020-2050 ([EIA, 2021](#))

Conclusion

The *ecology crisis* of Earth is driven to a large extent by the insatiable demand for energy. Despite the rise in greenhouse gases governments plan for large increases in energy consumption.

The importance of renewables has been recognised but fossils still play the major role. And coal in various forms dominate. At the time the forest is diminished. This infernal logic of energy versus ecology threatens the existence of life on Earth.

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22

A set of new interpretations in political thought

Introduction

The history of political thought may be arranged along certain major themes that recur from the Ancients to the Post-moderns ([Wolin, 1960](#)). Here, I have chosen two such themes, often encountered among the major political philosophers ([Hacker, 1961](#)). They are:

a) Moralism against naturalism: Are humans driven by the aim to validate inalienable rights or is needs, power and force the main drive?

b) Determinism versus voluntarism: Do humans exercise free will when e.g. setting up and running polities. Or is their behaviour determined by forces—micro or macro—beyond their control?

Of course, there are several other interesting themes to be found in the history of political theory, but these two can certainly be said to have dominated the debate with several political philosophers, some of whom will be analyzed in this paper. There are excellent examinations of the theme of

determinism-indeterminism outside of the social world and humanity, to which I will add nothing here. One may debate whether determinism or indeterminism is warranted from an ontological or epistemological point of view ([Hook, 1958](#)).

In this paper I will put forward the following fresh arguments:

1) Stoicism against Epicurism is the great division in Ancient moral philosophy;

2) Grotius re-invigorates Stocism that lasts up to the modern philosopher of natural law: Nozick and Dworkin;

3) Spinoza maintains naturalism and determinism, but enters voluntarism in his political theory about institutionalism, somewhat inconsistently though;

4) Helvetius and Holbach are coherent materialists and determinists;

5) Kierkegaard is the greatest philosopher of the freedom of the will;

6) Nietzsche is a major voluntarist with a somewhat inhuman message;

7) Liberal egalitarianism is highly moralistic like Dworkin, except Rawls.

Voluntarism against determinism

However one phrases this opposition—indeterminism versus determinism, voluntarism against predetermination—one ends up with the classical problem of the freedom of the will. The question of determinism against indeterminism deals not only with the interpretation of human behaviour and the history of mankind. The same problem is discussed about natural phenomena, like the evolution of the universe and of biological species. The contradiction between macro physics and micro physics is one version of this question, resulting in heated debate between Einstein and quantum physicists about determinism against indeterminism

([Earman, 1986](#)). Here, we deal only with human behaviour and its question of free will.

Scholars who deny the existence of free will refer to either micro causation or macro causation. The first theory claims that human behaviour is driven by strong forces that humans only control to some extent, like emotions, needs, power, prestige, hidden motives etc. Reason can to some degree direct needs and emotions, as in the theory of enlightened self-interests.

The second theory focuses upon macro causation, explaining human behaviour with historical, economic or social forces, which constrain activities to such an extent that there is not set of choice opportunities. Such forces include nationalism, dialectical materialism, religious fanaticism, capitalism's inevitable path, history's development law, group pressure, etc. ([Popper, 2000](#)).

Against determinism as a theory about human behaviour, one may adduce game theory, which spells out the theoretical implications of human choice ([Riker & Ordeshook, 1973](#)). Determinism would have to counter that the parameters of rational choice—preferences and information—are in reality strictly determined by factors outside, outlines either in the micro or the macro approaches ([Hastie & Dawes, 2009](#)).

Nature's Laws against Natural Law

In the nowadays huge literature on the political theory of the 16th 17th, and 18th century's, one finds several neat and fruitful distinctions ([Skinner, 1979](#); [Tuck, 1993](#); [Plamenatz, 2012](#)). For my aim, the distinction between two concepts of Nature is critical ([Plamenatz, 1992](#)).

Thus, when for instance Hobbes and Locke are said to have different views on "Nature"—their staring-point for argumentation, it is bypassed that they refer to entirely different things with this label ([Tuck, 2010](#)). The same holds for Spinoza and Rousseau as well as other philosophers.

Several of the classics speak about “Nature”, but they refer to one of two different entities: a) the physical nature or Universe, and b) humanity, or the human species. The classics from Lipsius to Kant debate the laws of “Nature”, but the same distinction reappears with a vengeance, namely:

a) Nature’s regularities—scientific laws, or law-like generalization—the mechanistic conception with Hobbes ([Retrieved from](#));

b) Norms: The fundamental legislation for human beings, i.e. moral laws as revealed by reason, divine revelation or human contract—the Grotius’ conception ([Oxford English Dictionary](#)).

Not separating between a) and b) is conducive to misunderstanding, confusing two different kinds of human rights, namely: a) each individual’s drive to survive, fight and seek power and wealth—human real nature = IS; b) rights as moral obligations, i.e. claims, privileges, competences and immunities = OUGHT ([Hohfeld, 1917](#)).

Now, one may argue that moralism entails indeterminism—Ought implies Can ([Pigden, 1990](#)), whereas naturalism implies determinism. But let us look at some major political philosophers from this 2 × 2 Table with four possible combinations:

The key problem for research into political ideas is, of course, if some of these combinations present logical types, i.e. type I and Type IV are the coherent ones. Perhaps not, i.e. also types II and III could be coherent combinations of themes. We discuss this, when we place scholars like Spinoza, Helvetius, Holbach, Kierkegaard, Nietzsche, and modern liberal egalitarians into this basic 2 × 2 Table.

The origins of distinctions: Stoicism against Epicurism

The origins of the distinction introduced in Table 1 are to be found in Greek-Roman philosophy from the Ancient

Ch.22. A set of new interpretations in political thought period, especially with the Pre-Socrates and the Post-Socrates. Although most of the writings or manuscripts have been lost, one may draw an opposition between the Epicureans and the Stoicists (Long, & Sedley, 1987; 2012).

Table 1. *A few major themes in political thought.*

		Causation	
		Voluntarism	Determinism
Morals	Natural law	I	II
	Naturalism	III	IV

One school had its core in atomism (Demokritos) and adhered to its implications, such as determinism and naturalism. 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. However, the determinism of early atomism was reinterpreted to allow for an amount of indeterminism that opened up for free will.

The other school had spiritual origins, which made it attractive to later Christian theology. The entire world is a 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 Stoicist virtues. Stoicism is deterministic as well as spiritual.

The question of how determinism is to be interpreted in Ancient philosophy has been the topic of a large debate, where one has observed that both epicurism and stoicism developed in such a manner to recognize some indeterminism or free will (Bobzien, 2002). Thus, there is hardly a clear and

strict conception of determinism during the Ancient period. The same, actually, holds for the notion of rights, which can hardly be identified with the modern human rights doctrine (Garrett, 2008).

Grotius: Modern Stoicism

Based on a vast enquiry into the Old Testament, the New Testament and Greek-Roman philosophy with almost endless quotes, Hugo Grotius arrived at pinning down the essence of modern Stoicist natural law thinking (Grotius, 1625), namely the following properties of mankind and its immunities:

1) Sociability of humans; 2) not harming others or taking their belongings; 3) compensate for damages inflicted upon others; 4) “pacta sunt servanda”.

Grotius finds these 4 principles to be valid for individuals in domestic affairs and states in international affairs, because they are Right Reason:

(Q1) IX. From this Signification of Right arose another of larger Extent. For by reason that Man above all other Creatures is endued not only with this Social Faculty of which we have spoken, but likewise with Judgment to discern Things 1 pleasant or hurtful, and those not only present but future, and such as may prove to be so in their Consequences; it must therefore be agreeable to human Nature, that according to the Measure of our Understanding we should in these Things follow the Dictates of a right and sound Judgment, and not be corrupted either by Fear, or the Allurements of present Pleasure, nor be carried away violently by blind Passion. And whatsoever is contrary to such a Judgment 2 is likewise understood to be contrary to Natural Right, that is, the Laws of our Nature (Grotius, 1625).

This Right Reason philosophy is to be found with several political theorists over these three centuries in one version or another, with Lipsius, Locke, Rousseau and Paine (Finnis, 2011). Thomas Hobbes rejected moralism in his Leviathan,

Ch.22. A set of new interpretations in political thought stating the case for naturalism, i.e., “Laws” in the sense of scientific law, or law-like regularities in Nature refers to the IS, or the discovery of the laws of the Universe and the living organisms, with e.g. Newton and Darwin (Skinner, 2008). To Hobbes, legal laws are merely the commands of the sovereign, never moral laws. Spinoza argues similarly.

Table 2. *Moralism versus naturalism.*

Moralism	Naturalism
1) Altruism	Egoism, power
2) Respect other’s property	Obey only positive law
3) Compensate for damages done	Only if court rules so
4) “Pacta sunt servanda”	Rational cheating

The Renaissance initiated the search for these natural regularities, Aristotelian teleology. A number of prominent political thinkers have tried to formulate laws politics without moral connotations, emphasizing not rights and altruism but power and egoism. Thus, we have the following two themes—Table 2.

It should be emphasized that Grotius derives the four principles of altruism or sociability from universal right reason together with the Jewish-Christian 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.

We find these sub-themes with many political philosophers from the Pre-Socrates over Nietzsche to modern political theory.

Spinoza: Modern epicurism

Spinoza admits choice, but rejected indeterminism or freedom of will (Wolfe, 2008; Lucero-Montano, 2012), i.e. especially choice with regard to the political regime that promotes general welfare, peace and security. Spinoza is not

only one of 10 - 15 greatest philosophers in the West due to his Ethics ([Garrett, 1996](#); [Nadler, 2001](#)). He is also a major politician theoretician as a result of his two treatises, where *Tractatus Politicus* is much underestimated.

It is always stated that Spinoza adheres to rationalism with inspiration from Stoicism and Descartes; but the influence from Hobbes is obvious, but seldom pointed out ([Nadler, 2016](#)). There has been a debate about what Spinoza meant with “nature”, especially when he equates the word with “God”. Was he an atheist, as the Jewish community accused him, or a pantheist? ([Hampshire, 2007](#)) He states:

(Q1) And so by natural right I understand the very laws or rules of nature, in accordance with which everything takes place, in other words, the power of nature itself. And so the natural right of universal nature, and consequently of every individual thing, extends as far as its power: and accordingly, whatever any man does after the laws of his nature, he does by the highest natural right, and he has as much right over nature as he has power ([Spinoza, 2010](#)).

In this key passage, Spinoza confirms his naturalism from Ethics, meaning that everyone does whatever he or she wants. Society is a condition of “natural rights”, meaning power or lack of power. Several commentators have interpreted this naturalism as a form of Stoicism, which is erroneous. Spinoza declines every theory of human rights as natural legal rights. Spinoza speaks of “natural rights” without any legal connotation, as simply natural capacities to safeguard whatever interests a human being may have. We are far from Stoicism and its natural rights conception, as a matter of fact much closer to Epicurism of the two great ethical theories during the Ancient period.

Spinoza rejects completely Stoicist conceptions of human rights, social harmony and the universal soul of all human beings. Thus, we read:

(Q2) From which it follows that the law and ordinance of nature, under which all men are born, and for the most part live, forbids nothing but what no one wishes or is able to do, and is not opposed to strifes, hatred, anger, treachery, or, in general, anything that appetite suggests. For the bounds of nature are not the laws of human reason, which do but pursue the true interest and preservation of mankind, but other infinite laws, which regard the eternal order of universal nature, whereof man is an atom; and according to the necessity of this order only are all individual beings determined in a fixed manner to exist and operate (Spinoza, 2010).

This amounts to the message of Epicurus! Society without government is the Hobbesian jungle. Remember that *Leviathan* was published in 1651, before *Tractatus Politicus*. People are bound by nothing in society, as any notion of “*Pacta sunt servanda*” is foolishness merely.

We could not be further away from the Stoicists like Grotius, Locke and Kant. This is a 17th century version of Epicurism. He distinguishes between “natural rights” and “legal rights”, where the former stands for capacity or power and the latter for the ordinances of the commonwealth. Men and women are guided by emotions and reason in the pursuit of self-preservation—enlightened egoism.

Spinoza is perhaps most famous for his determinism that he derives with his Euclidean method—more geometrico (Byrne, 2007). Let us try to pin down this thesis and then inquire into whether it is in agreement with his political arguments, or whether there is a contradiction. His version of determinism reads as follows in a few quotations from the *Ethics*:

(Q3) In nature there is nothing contingent, but all things have been determined from the necessity of the divine nature to exist and produce an effect in a certain way (Spinoza, 2014).

(Q4) Things could have been produced by God in no other way, and in no other order than they have been produced (Spinoza, 2014).

These propositions have been discussed a lot in the Spinoza literature. They raise questions about free will, indeterminism and voluntarism. Since Spinoza argues that God is part of this determinism, it also leads to a debate about his theology or pantheism (Jousse, 2004).

In *Tractatus Politicus*, Spinoza first sticks to his naturalism and determinism from *Ethics*, spelling out their implication for politics. There is no covenant, and no choice of a regime, as all unfolds from the determinism of nature, or “God” as Spinoza says. Spinoza is not a contractarian philosopher. The state is not based upon any contractual choice but upon natural necessity. Just as an individual is driven by the ambition to survive—principle of *conatus*, so groups of individuals do the same also when they constitute a dominion, or commonwealth. Just like human beings, they augment survival capacity by employing reason, informing the political authority to promote general well-being, or face competition from another commonwealth. Spinoza rejects any choice of opposition or rebellion against the political authority, claiming that people are “bound” to obey. However, such a duty cannot be housed within naturalism. Here, Spinoza breaks with Hobbes.

Secondly, Spinoza is a strong adherent of institutionalism. It is the framing of the institutions that keeps the commonwealth on its right track towards peace and security. He engages in a minute examination of the adequate institutions that reason devises. His model is that the dominion is rule by one person, a few persons or all the people. Every type of dominion can only achieve the natural goals of a commonwealth, namely general well-being. The argument in Spinoza’s political theory is aimed at political realism and avoids moralism. It is much built up upon his

theory of human nature, or how people really behave. They are what they are, and can only be restrained by rules:

(Q5) Institutionalism: A dominion then, whose well-being depends on any man's good faith, and whose affairs cannot be properly administered, unless those who are engaged in them will act honestly, will be very unstable. On the contrary, to insure its permanence, its public affairs should be so ordered, that those who administer them, whether guided by reason or passion, cannot be led to act treacherously or basely (Spinoza, 2010).

Spinoza's *Tractatus Politicus* offers a vast and intriguing enquiry into incentives and institutions that reminds of the principal-agent modelling in the economics of asymmetric information. It is free from any metaphysical assumptions about natural rights in the Stoicist-Locke-Nozick tradition. Naturalism is the basis, coupled with determinism (Russell, 1984). When determinism appears not sufficient, then is Spinoza right in claiming that this involves a mere ignorance? Is free will incompatible with determinism, and thus a Spinoza illusion (Lloyd, 2001)? Is institutionalism compatible with strict determinism? I am doubtful. Spinoza's institutionalism may break with his determinism opening for choice and maybe the freedom of the will.

Helvetius and Holbach: Coherent determinism

Much underrated both, the two French philosophers Helvetius and Holbach developed an original and coherent version of Epicurism. They argued from an atomistic universe to a coherent hedonistic view of men and women. They taught atheism of course, but failed to endorse political democracy. Let us take a few quotes:

(Q1) Self-interest, founded on the love of pleasure and the fear of pain, is the sole spring of judgment, action, and affection. Human beings are motivated solely by the pursuit

of pleasure and the avoidance of pain. These two are, and always will be, the only principles of action in man (Helvétius, 1810).

(Q2) There is but one man who can believe himself free from envy; and it is he who has never examined his own heart (Helvétius, 1810).

(Q3) Every man without passions has within him no principle of action, nor motive to act (Helvétius, 1810).

(Q4) Education made us what we are (Helvétius, 1810).

(Q5) The universe, that vast assemblage of every thing that exists, presents only matter and motion: the whole offers to our contemplation, nothing but an immense, an uninterrupted succession of causes and effects (Holbach, 1734).

(Q6) What, indeed, is an atheist? He is one who destroys delusions which are harmful to humanity in order to lead men back to nature, to reality, to reason. He is a thinker who, having reflected on the nature of matter, its energy, properties and ways of acting, has no need of idealized powers or imaginary intelligences to explain the phenomena of the universe and the operations of nature (Holbach, 1868).

(Q7) The inward persuasion that we are free to do, or not to do a thing, is but a mere illusion. If we trace the true principle of our actions, we shall find, that they are always necessary consequences of our volitions and desires, which are never in our power. You think yourself free, because you do what you will; but are you free to will, or not to will; to desire, or not to desire? Are not your volitions and desires necessarily excited by objects or qualities totally independent of you (Holbach, 1772)?

The combination of naturalism and determinism is most impressive with these two French scholars. It is all strict Epicureanism, i.e. atomism, hedonism, atheism. The political implications of coherency are enlightened government with an emphasis upon education for the people. The political

implications of their basic utilitarianism were hardly revolutionary, but Holbach developed a contract theory in two steps, allowing for the removal of the sovereign if he failed to promote general welfare.

It is time to turn to a few voluntarist philosophers with a more complex view of humans, allowing especially for free will.

Kierkegaard: Peaceful voluntarism

S. Kierkegaard is a great exponent of voluntarism. He also adheres to naturalism. His famous quotes spell out indeterminism. His interpreters place him as a somewhat confused philosopher, haunted by unfulfilled love for a woman, Regine, or as struggling in vain to accommodate Christianity with reason and humbleness (Garff, 2007). To me, he presents a coherent message about the freedom of will and the life necessity of choice.

(Q1) It is perfectly true, as the philosophers say, that life must be understood backwards. But they forget the other proposition, that it must be lived forwards (Kierkegaard, 2011).

(Q2) Freedom's possibility is not the ability to chose the good or the evil. The possibility is to be able. In a logical system, it is convenient to say that possibility passes over into actuality. However, in actuality it is not so convenient, and an intermediate term is required. The intermediate term is anxiety, but it no more explains the qualitative leap than it can justify it ethically. Anxiety is neither a category of necessity nor a category of freedom; it is entangled freedom, where freedom is not free in itself but entangled, not by necessity, but in itself (Kierkegaard, 2011).

(Q3) I was brought up in the Christian religion, and although I can scarcely sanction all the improper attempts to gain the emancipation of woman, all paganlike reminiscences also seem foolish to me. My brief and simple opinion is that

woman is certainly as good as man-period. Any more discursive elaboration of the difference between the sexes or deliberation on which sex is superior is an idle intellectual occupation for loafers and bachelors (Kierkegaard, 2011).

(Q4) Where is the boundary for the single individual in his concrete existence between what is lack of will and what is lack of ability; what is indolence and earthly selfishness and what is the limitation of finitude? For an existing person, when is the period of preparation over, when this question will not arise again in all its initial, troubled severity; when is the time in existence that is indeed a preparation? Let all the dialecticians convene-they will not be able to decide this for a particular individual in concreto (Kierkegaard, 1992).

In reality, Kierkegaard is the first systematic explorer of the principle of free will and its entailment for philosophy. His many books, written feverishly during a short period of time, examine the implications of free will: anxiety, responsibility, feelings of remorse and debt regret, egoism, religious belief, etc. His complete rejection of Hegelianism in Berlin is quite understandable, as he regarded macro determinism as wrong as micro determinism. He discovered the autonomy of freedom.

The famous Kierkegaard distinction between ex ante determinism and ex post indeterminism is helpful here:

		Explaining	Prediction
Determinism	Ex ante	I	II
	Ex post	III	IV

Kierkegaard accepts one type of determinism, Type III, but rejects the other types, I, II, IV. For him, it is not an epistemological fact but an ontological one, because the path of life can be chosen looking forward, correctly or wrongly—Kierkegaard’s (1992): Either-Or (Kierkegaard, 1992).

Nietzsche: Philosopher of aggressive voluntarism

Much has been written about F. Nietzsche, defending him or attacking him. From the point of view in my approach, Nietzsche is strongly indeterminist but also an exponent of naturalism—an extreme voluntarist. Here, I will take some quotes from his later publication to show that he preached a rather aggressive form of voluntarism-and naturalism, making him very different from Kierkegaard, who preceded him in time.

It is true that several scholars have interpreted Nietzsche as a less aggressive philosopher, who merely preached a sincere re-evaluation of established morals in favour of truth and sincerity. However, in his later books, Nietzsche argues for a most assertive kind of voluntarism:

(Q1) You have your way. I have my way. As for the right way, the correct way, and the only way, it does not exist (Nietzsche, 2017).

(Q2) Christianity is called the religion of pity. Pity stands opposed to the tonic emotions which heighten our vitality! It has a depressing effect. We are deprived of strength when we feel pity. That loss of strength which suffering as such inflict on life is still further increased and multiplied by pity. Pity makes suffering contagious. Under certain circumstances, it may engender a total loss of life and vitality out of all proportion to the magnitude of the cause... (Nietzsche, 2016).

(Q3) "Judgments, judgments of value, concerning life, for it or against it, can, in the end, never be true: they have value only as symptoms, they are worthy of consideration only as symptoms; in themselves such judgments are stupidities. One must by all means stretch out one's fingers and make the attempt to grasp this amazing finesse, that the value of life cannot be estimated." (Nietzsche, 2012).

(Q4) Suppose, finally, we succeeded in explaining our entire instinctive life as the development and ramification of

one basic form of the will—namely, of the will to power, as my proposition has it... then one would have gained the right to determine all efficient force unequivocally as—will to power. The world viewed from inside ... it would be “will to power” and nothing else (Nietzsche, 2003).

(Q5) Against that positivism which stops before phenomena, saying “there are only facts,” I should say: no, it is precisely facts that do not exist, only interpretations ... (Nietzsche, 1994).

Nietzsche developed a strong voluntarism that not only covered naturalism but also an emphasis upon subjectivism in epistemology. Thus, he anticipates post-modernism. Moreover, he underlines individualism to such an extent that he becomes a critique of equality and democracy. His preaching of the “Superman” and the “will to power” is not merely a forceful way of rejecting traditional Christian and Jewish moralism, but invites one also maybe to walk the road towards the sublimation of force, physical force into voluntarism.

Naturalism and moralism in Rawls and Dworkin

In the debate about political philosophy after the Second World War, the tone is distinctly different from political thought in the first half of the 20th century. The focus is now much upon rights of all kinds, as in Nozick reviving Locks’s innate and inalienable rights and little upon needs or power (Nozick, 1974). Interesting, the first major theoretician of justice, Rawls, tried actually to found his list of rights upon a realistic theory of choice under ignorance. With Dworkin, we turn basically in a world of Platonic ideas. Justice IS this or that, we hear, but they mean simply: Justice OUGHT to be X, or Y, or Z. Normative political theory completely lacks a meta-ethical foundation.

As a matter of fact, Nozick never gave any foundation for his starting-point of theorizing, namely that human beings have rights. He merely assumes this, just as Locke invoked divine origin. “Rights” is an ambiguous word, as moral philosophy employs it normative, whereas ordinary jurisprudence uses it theoretically to describe a legal system, in accordance with Hohfeld’s scheme. Naturalists in the 20th century have claimed that rights do not exist, when thinking about normative rights (Ross, 2011), whereas normative legal philosophy makes rights its core set of concepts (Dworkin, 1977).

Rawls’ naturalism

Rawls developed his theory of justice, integrating various other concepts in consecutive books and articles (Rawls, 2001). Here, there is only space for considering his original criteria of justice and its theoretical motivation. Firstly, we have the criteria:

(Q1) 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;

(Q2) 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) (Rawls, 1971).

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 the classical liberalism or neo-liberalism of Hayek and Nozick for instance.

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 basic of values, or subjective evaluations morally.

Rawls’ solution—the first and second principles of justice—is based upon the model of a game against nature in the so-called state of nature where people act under a veil of ignorance. Rawlsianism as a moral philosophy belongs under rational choice, as it is in reality based upon a double game against Nature. What would ordinary person P choose if

he/she is under a veil of ignorance—see the dotted line in Figure 1 and Figure 2?

In the first game concerning freedom, the actor will chose the maxmin, as he/she faces complete uncertainty about whether he/she is at the upper or lower node. The worst outcome—subjection—must be avoided.

In the second game that deals with the distribution of resources, the actor will again take maxmin, choosing the welfare state ahead of the welfare society, because he/she does not know which node he/she is at, upper or lower.

Since Rawls assumes that ordinary people are risk avert, it follows that they

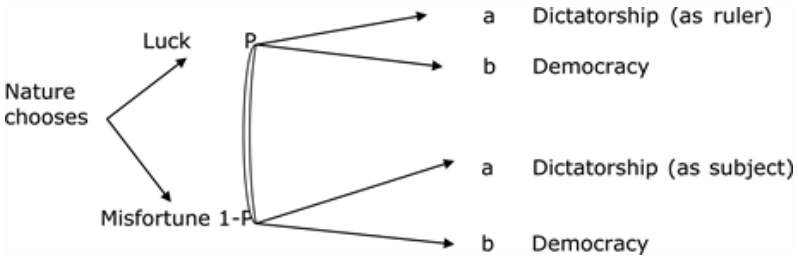


Figure 1. Rawls'first game—freedom under rule of law.

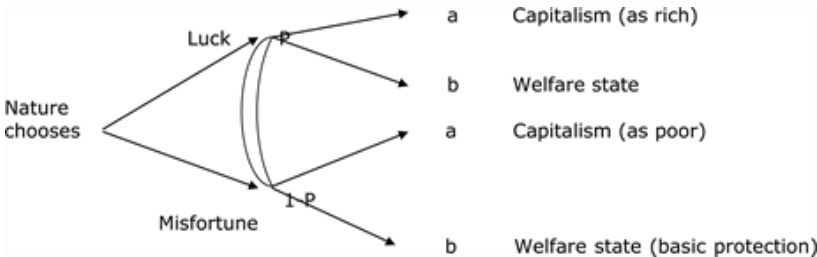


Figure 2. Rawls'second game—equality under efficiency.

will never choose a risky strategy, preferring democracy to dictatorship and the welfare state to unrestrained capitalism. However, these moral conclusions about liberty under rule of law and equality with economic efficiency hold only under this naturalistic assumption, as risk prone people may prefer to gamble for the maxmax.

Dworkin's moralism

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. 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 (Dworkin, 1986).

(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).

Compare this extreme moralism with Nietzsche's naturalism! 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 ambiguity and incompleteness, as Posner argues.

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?

When we are told to take “right seriously”, what rights are we talking about: Hayekian rights regulating laissez faire (Hayek, 1980), Barry's impartiality that is conducive to democratic socialism, etc. (Barry, 1993). 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 LAW at all (Posner, 1993; 2003). I agree with Posner in his rejection of

Dworkin's confusion of jurisprudence and moral philosophy. If Dworkin managed to smash legal positivism of Hart's kind with his rejuvenated natural law philosophy, he certainly did not crush the other alternatives, legal realism and legal pragmatism. Law is not a set of Platonic ideas, as jurisprudence is a practical discipline.

Justice as envy freeness

Dworkin developed his version of liberal egalitarianism, focussing upon the concept of envy and the policy implications of the requirement of justice = envy freeness. It led him to a very original theory of auctions and insurance. However, it has little relevance for the basic problematic of enhancing real equality in social life—Dworkin's goal (Dworkin, 2000). 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 is utopian.

Conclusions

The themes for analyzing political thought chosen here seem fertile. A number of prominent political philosophers are within the reach of this approach, also a genuine philosopher like the Great Dane, Kierkegaard. The basic problem of the freedom of the will remains, however, a puzzle. Political theory only based upon rights degenerates into moralism and wishes, i.e. utopianism, towards which a dose of naturalism and determinism is a proper antidote.

One may wish to separate strong determinism from weak determinism:

- 1) Everything is determined;
- 2) Some things or events are determined.

Similarly, one may separate strong voluntarism from weak voluntarism:

3) Human volition is entirely free, i.e. a human can do whatever is possible;

4) Human action is free to the extent that it agrees with the model of rational choice, i.e. it is based upon individual preferences and available information.

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23

Max Weber's theory of civilisations today: The rule of law instead of capitalism

Information

The literature on Max Weber is by now large, comprising several biographies and numerous interpretations (Bendix, 1992; Bendix & Roth, 1971; Ringer, 2004). All of his publications have been translated into English, the last ones being his major articles in the philosophy of science (Bruun & Wimsett, 2012). Weber possessed an extreme sensibility for philosophical issues, which allowed to the 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. The social sciences combine interpretation and statistical corroboration.

Some scholars have argued that Weber in reality sought the sources of Western rationalism, as 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 theses: 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 ([Schluchter, 1992](#); [Albert & Bienfait, 2007](#)). One may clarify this multiplicity by two distinctions:

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

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

Religion Civilisation

Genetic I II

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:

- Modern capitalism arose in the West due to Protestantism (I);
- Modern capitalism arose in Western rationality (II);

- Modern capitalism has an affinity with Protestant ethics (III);
- Modern capitalism is an expression of Western rationality (IV).

I cannot present a summary of the huge debate about these Weberian themes – see Schluchter, 1992. Nor shall I enter any polemics against the critique of Weber from various scholars, economic historians and sociologists for example (Samuelson, 1964; Rodinson, 2009; Tawney, 2016). If the *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:

(i) Capitalistic spirit, or the acquisitive endeavour (Tawney, 1922):

(ii) 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." (Weber, 1978: 165).

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 (Vainker, 1995; Glahn, 2016), just as

Sombart in his effort to link "modern" capitalism with the finance capitalism of the new merchant class around 1500 (Sombart, 2001) bypassed 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! (Kumar, & Desai, 1983; Riaao, 2009; Um, 2009; Chaudury, 2010). "Modern" capitalism was not as exclusively European as some authors have claimed, following Weber (Beaud, 2006; Neal & Williamson, 2015; Kocka, 2016). The famous so-called "thirteen factories" in Canton were capitalistically operated.

Is modern capitalism the "take-off" stage?

Scholars analysing capitalism come up with a list of different kinds of capitalism, institutionally speaking, like Sombart (2001) and Schumpeter (1989). 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 WSET-EAST split in capitalism remains. If it is a matter of industrial capitalism, then the Rustow (1960) 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 stylised listing in Table 1.

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](#)].

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* ([Macpherson, 1987](#)). 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.

Second problem: The analysis of religion: What is 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" and "mechanic solidarity", or functional needs.

But there is a conceptual paradox in Weber's typology of the world religions. He employed two conceptual pairs:

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

Combining these two, we have the following classification scheme:

Salvation

"Diesseitig" "Jenseitig"

Inner worldly I II

Asceticism

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 ([Glasesapp, 1951-52](#)). 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 "sinnsuzammenhaege". 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 (Rodinson, 1993), because the Islamic civilisation stabilised into a fixed pattern that lasted up until after the Second World War, as follows:

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

What has given Weber's model of Islam much renewed relevance is the rise of fundamentalism (Davidson, 2013), especially Sunni fundamentalism with three scholars, namely Maududi, Qutb and Faraj (Calvert, 2010; Jackson, 2010; Manne, 2016) – *Salafi Jihadism*. As thousands of young Muslims are attracted to their teachings in madrasa, 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 written about Weber's negative evaluation of Islam and also Muhammed personally. The leading scholar Schluchter (1999) 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 (Huff & Schluchter,

1999, Rodinson, 1993, 1994; Risso, 1995), 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 (Kaufmann *et al.*, 1995). 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).” (Weber, 1978:215).

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 with 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. "
(Weber, 1978:220).

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 Rulership. It may also figure prominently in charismatic rulership, 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 legitimation 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 (Mommson,

2004). 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>.

i) *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.

ii) *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 and 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.

iii) *Authority and Naked Power*

Weber was well aware of the place of power in social systems, as the capacity to impose one's will against another. However, he argued that power is fundamentally unstable as well as that the employment of naked power is costly. Thus, his theory of 3 bases of political legitimation, 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. But is legal+rational authority rule by law, as in China or Russia, or rule by 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 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.

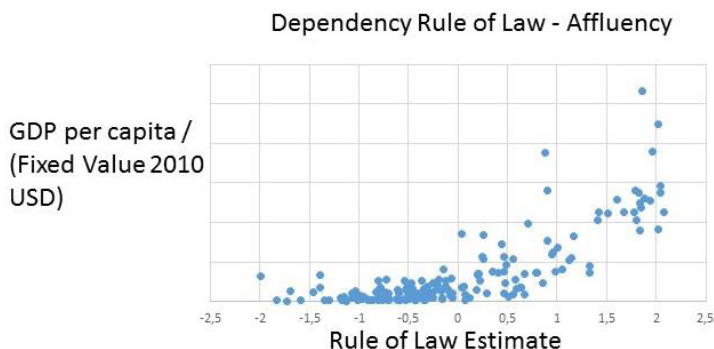


Figure 1. Rule of law index (RL) against GDP 2015 ($N=167$, $R^2=0,62$)

Note: WB: Worldwide Governance Indicators, 2016; See Kaufmann, D., A. Kraay and M. 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.

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, Kraal & 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.

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 (Raz, 2009):

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 I the greatest idea in the history of political thought, from Cicero (very underestimated) to Kant.

Conclusion

The civilisation that 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 ([Weber, 2001, 2003](#)), occurring also in the Moslem civilisation as Sultanismus, although not always with a hydraulic foundation ([Wittfogel, 1957](#)). Even in Japan and South Korea like in Taiwan and Singapore, rule of a 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.

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24

The principal agent approach and public administration

Information

The discipline of public administration is now searching for new theoretical approaches in order to model the vast changes that have occurred in the public sector since 1980. This area covers all programs of public resource allocation, providing vital services to the population as well as many transfer payment schemes. In well-ordered countries, the public sector in total comprises roughly 40 % of the GDP and various levels of Government employs thousands of people, calling for organization.

Public management added new ways of thinking about public administration as new concepts were developed to account for the spread of outsourcing joint stock corporations and individual salaries. Contracting became a key term in the discipline, arguably as important as previous methods focusing on law and regulations. Perhaps some of the concepts in principal agent approach like opportunistic

Ch.24. The principal agent approach and public administration strategies and rent seeking could be employed in the analysis of large scale state management?

Who is a principal and who is an agent?

Since the 1980's, so called principal agent models have been launched in various Social Science disciplines, most notably Economics and Management. The time has come to ask what the principal agent approach could illuminate in the analysis of public administration. As public administration scholars often regard rational choice models with skepticism, principal agent methods assuming rational decision making have been slow to enter the core of public administration theory. However, this is changing rapidly with the recognition of the advantages of the principal agent approach. After all, well-ordered societies have a sizeable public sector, comprising a wide variety of activities performed by agents in the name of the principal, the *demos* or the political body. The principal agent paradigm suggests a range of models concerning how Government can fulfill its obligations. It is basically a set of management models for the public sector, covering how the state organizes its resources, employees, physical assets and revenue. Principal agent models cover long-term contracting (bureaucracy), short-term outsourcing and transfer payments (social security). What makes it so attractive for the analysis of public administration is that it can be said to comprise a few well-known models of the state, early public choice models, e.g. Downs (1967) and Niskanen (1971). The principal for any activity in the public sector is the Government. *Ex ante* elections there are several potential principals. *Ex post* elections there is merely one, Government. It makes a lot of decisions, the implementation of which requires a multitude of agents. Hence, principal agent relationships may be simple or complex. It is all about how goals for an activity are formulated or decided and what

means are employed to enforce these. The principal agent realm emphasizes various modes of contracting, the costs involved and the benefits to be gained.

As the response to criticism of Big Government, governments – national, regional and local – initiated considerable reforms in both the provision of services and goods as well as in social security to reduce bureaucratic overload and the lack of incentive compatibility. It started in New Zealand and later in Australia, where decision makers were influenced by classic public choice in the Nordic countries, the UK and the Germany, while Government in the United States had already resorted to outsourcing to a large extent for a long time. As expected, this process became politicized, often attributed to neo-liberalism. If contracting was so successful in the private sector, why could it not be implemented in the public sector too? At the core of several classic public choice models, we find the principal agent idea.

Theoretically, the discipline of public administration, emerging around 1900, can be summarized in the confrontation between Max Weber's ideal-type bureaucracy (Weber, 1978) on the one hand, and on the other side its opponents such as H. Simon (1947), J.G. March (Simon & March 1958), R.H. Murton (1957) and M. Crozier (1963). Policy makers were impressed by the basic idea that they as principals of the public sector faced numerous choices for how to organize and run the supply of a huge range of services. In several nations, the language of contracting principal agent interactions and outsourcing became an integral part of the policy discourse, with both adherents and critics. In the basic fundamental principal agent model there is a contract involving a time lag between *ex ante* – the making of the contract – and *ex post* – the performance of the contract. This gap can amount to months and years and separates principal agent contracting from spot – on contracts in the market. Thus, principal agent theory covers in principle a

large number of contracts, ranging over a time span with the option that agreement is once thing and execution another, implying the difference between promise and fulfillment. The Weberian ideal type of bureaucracy is founded on long term contracting involving tenure. Public management reforms favored short-term contracting, but all forms of contracting can be analyzed using the principal agent approach.

In a stylized principal agent model, a principal aims at employing an agent in order to provide a service or produce a good with a value surpassing the cost of contracting. Alternatives to contracts are suggested to the agent involving various remuneration models and performances. The agent will only choose a contract if it is incentive compatible, meaning that he/she gets compensated for the promised effort level. The concept of effort is central covering all factors impacting the performance of the agent, e.g. education, training, motivation and healthiness. Another central concept is asymmetric information that entails how the agent has a knowledge advantage over the principal as the agent knows her / his true effort, unobservable for the principal. It may also not be enforceable in litigation. The arrival of asymmetric information modeling has had a strong impact on Social Sciences and helps explain different phenomena.

Now, two contractual problems arise, both difficult to resolve and endemic in all public sector management:

I) Ex ante opportunism: the agent is attracted to the opportunity of getting something for nothing by pretending that he / she is at a much higher effort level than what is the real case. Faking is the logic of opportunism before concluding the agreement about salary / performance, where any divergence to the disadvantage to the principal can easily be explained as unintended or due to disfavoured circumstances. To protect against malperformance and early dismissals, the agent opts for favourable conditions of leaving or the parachute.

ii) Ex post opportunism: The agent may have another way to extract an additional rent in the contract with the principal, by not trying hard enough, *shirking* or putting in a significantly lower effort than promised. There are certainly many forms of shirking, some of which border on the concepts of corruption. However, shirking is not the same thing as embezzlement or patronage, as it could just consist of e.g. arriving late and/or departing early to work duties.

These new concepts – asymmetric information, opportunism and guile – have proved interesting for Social Sciences and their explanatory power for public administration will be explored further in coming decades. They emphasize a fundamental flaw in classical Weber theories: the lack of incentive theories.

Perhaps one can say that principal agent theories are relativistic, as the identification of the principal and the agents depend on what level in public administration one looks at.

The basic model

According to the principal agent model, rationality occurs when the principal realizes his/her objective by means of a contract with an agent who delivers an output worth more than the payment, thus the principal makes a *gain*. When applied to policy making, the principal agent approach assumes that the principal contracts with the agent / set of agents for the delivery of a service or a good. If for example the principal contracts for the delivery of energy at the same time as nuclear energy is available, the contractor faces a difficult situation. However if the contractor can draw on experience of oil extraction, they face a more favorable outcome. The key is in either case the effort level of the agent, which can be low or high, summarizing all of the agents' capacities impacting on their performance. Thus we arrive on the contingency table shown below:

Table 1. *Principal Agent Interaction.*

	Difficult situation	Favorable Situation
Low Effort	1	2
High Effort	3	4

The principal prefers high effort and hopes for a favorable situation, as it would maximize its gains, but it all depends on the agent's effort. He/she may demand higher levels of compensation, based on the principle of incentive compatibility. Nevertheless, it is not even sure that the outcome will be in section 4, because the agent may put in low effort despite promising the opposite.

If at the same time the situation proves to be difficult and not favorable, then we end up in section 1 of the table 1 with low effort.

Ex ante: the agent can offer high effort in a favorable situation, but *ex post* deliver low effort in a difficult standing. The agent may excuse him/herself with deteriorating circumstance, or deny any accusation of low effort. Promise is one thing, but the actual performance is another. This phenomenon is called shirking. Some instances of shirking can hit the principal badly

Ex ante: the principal could fail to identify whether the agent is really capable of putting in the required or merely pretending. An agent may promise to work with the high effort level, but in reality they don't possess enough capacity for section 3 or 4 in the table. Again, the principal could contract for section 4 but end up in section 1: *pretending*.

These two problems in principal agent interaction – shirking and pretending – surfaces due to asymmetric information. They may be counteracted in various ways by public sector reforms. Actually, shirking, pretending, and asymmetric information present new concepts for analyzing well-known difficulties in public governance that were hardly pinpointed in the major administration models.

Implications for public administration theory

The principal-agent may be used negatively to point out a few problematic questions in the discipline of public administration. One may distinguish between Weber's focus on rationality and the anti-Weberian emphasis on bounded rationality or irrationality. The principal-agent framework would answer classical questions in the organization of the public sector somewhat differently, as spelled out below:

Firstly, Weber looked upon rationality in the modern state as its capacity to achieve goals by the employment of means. The objective would be decided by government whereas policy implementation was a matter for the employees in the public sector. The vast majority of the employees would be organised in the most efficient form of public organisation : the bureau or the department - at least so he claimed. From a principal-agent perspective the government including the legislature constituting the principal and the agent was a set of bureaus. Moreover, the bureau or department is a team of people organised in terms of classical public administration rules: maximum division of labour and hierarchy of levels, recruitment by objective criteria as well as predictable pensions, and a high degree of functional specification of bureaus or departments.

Secondly, post-weberian public administration engaged in extensive empirical research in order to show that Weber's concept of the rationale bureau was a pigment of his imagination. Especially Herbert Simon and James G. March ([Simon and March, 1958](#)) argued in favour of bounded rationality with both principal and agent, due to their cognitive limitation as well as the omnipresence of standard operating procedure. Johan P. Olsen ([2011](#)) added to irrational decision making by modelling how principal -agent interaction could run into a garbage-can process: leadership is mere luck and expertise has no goals.

The principal agent framework entails that both the Weberian and the post-Weberian schools place the principal in a too weak position. Weber strived to protect the bureaucracy against the politicians by emphasizing expertise, life-long service and policy neutrality, thereby soliciting shirking. In post-Weberian theory the occurrence of so called *dysfunctions* in public administration hindered the principal from arriving at policy success: the confusion of ends and means rendering the bureau most important, the emphasis on rules halting or restraining innovation and the frequently seen rapid growth of the bureau. When a bureau is stuck in *standard operating procedures* or slips into the garbage-can mode, the principal agent calls for the demise of the organization, replacing it with an agency, especially contrived for the implementation of a set of tasks in a time limited perspective. The process known as *agencification* fits the principal agent model superbly, bypassing both Weber and Olsen / March. This process of downsizing state departments or bureaus and replacing with ad hoc agencies has happened in many well-ordered countries. It is explained by several scholars as the full acceptance of the distinction between policy making and policy implementation. In other words, the principal would preoccupy him/herself with decisions concerning policy whereas the set of agents would merely be occupied with the implementation of policies. This is hardly correct. According to the classical Appleby analysis from 1949, policy and implementation are inextricably woven together, just like politics and administration ([Appleby, 1949](#)). But the principal agent framework shifts the structural focus from department / bureau to agency. Let us quote from Verhurst ([2017](#)):

In the past decennia many governments have put policy implementation tasks at arms-length, by creating – and later on, restructuring – a periphery of semi-autonomous organizations, denoted as ‘agencies’ or ‘quangos’ (cf. [Pollitt](#)

and Talbot, 2004). This disaggregation through ‘agencification’ is the result of a process of vertical and horizontal specialization, based on geography as well as different types of purposes, tasks, customer groups or processes (Christensen, 2007). In this process of agencification and autonomization, the responsibilities and autonomy of public organizations are redefined (structural aspect). Moreover, the way that they are controlled by government, including the mechanisms of accountability, are redesigned, mostly from ex ante to ex post, and from input to result based rationales (functional aspect). However, in the last decade, this trend of ‘agencification’ has provoked a counter-reaction, aiming to rationalize the agency landscape in order to (re-)enhance transparency, political control and government-wide efficiency.

Moreover, use of principal agent models may also transform a standard perspective on policy rationality in public administration, denoted “incrementalism” or “marginalism”. As is well-known, Lindblom (Lindblom, 1959) and Wildavsky (1964) made the bounded rationality hypothesis the key to understanding decision making processes - muddling through - and budgeting - the increment - in all of public administration, and Olsen (2011) suggested the garbage can possibility. Yet, from a principal agent perspective, it is difficult to relinquish the idea of policy success. The principal and the set of agents may compensate for the exaggerated demands by the process of updating. This new idea in the economics of information allows for a more dynamic view of policy rationality based on learning and eager search for new data. Thus, cognitive limitations will decrease over time and standard operating procedures may actually hinder innovated progress.

Public resource allocation

The state supplies the population with a number of goods and services, some of them free of charge. The concept of a well-ordered state implies that Government offers internal and external security to citizens and respects the principles of rule of law. Besides law and order, Government also provides various forms of infrastructure and transportation. In a welfare state, the public supply of goods and services is vastly increased, often comprising free education, subsidized health care and social benefits. Public administration as a discipline analyzed this public resource allocation, searching for supply mechanisms that were conducive to successful policy making. The principal agent model adds a crucial element to the public administration concerns about efficiency in the public sector. The idea that the state as principal may freely choose the set of agents who deliver these goods and services. We arrive at the policy – implementation, innovation – of *public principal / private agent*. The principal agent approach thus favors the expansion of public administration as a discipline into general public management, based on contracting with alternative agents. Public administration becomes a process of tendering (bidding) besides its traditional base in the exercise of authority, law and order.

The principal agent framework emphasizes the employment of competition in public resource allocation by separating production by any agent (public or private) from other public functions like financing, planning, or executive decision making. The opening up of the public sector to compatibility to any kind of agent meant a crucial change in the structure of public administration, with lots of tendering / bidding replacing *standard operating procedures*. Theoretically, the principal can select between several agents if indeed competition is forthcoming. More of choice of suppliers would strengthen the principal if tendering is performed correctly.

One part of the public sector is the set of *trading departments* or public enterprises. They charge fully in principle for their costs of supplying the servicing question. Some of these public corporations had huge turnover and were responsible for massive investments as well as many employees: energy, transportation and communication etc. In public administration, the public companies were run as bureaus in the respective department until the idea of incorporation arrived with tremendous consequences (Thynne, 1994). By transforming traditional public enterprises into joint stock corporations with complete or partial state ownership, these entities were to be operated according to private regulations. The state was no longer able to intervene in their day to day leadership, but it would retain a decisive role in appointing the executive branch of the company. Public enterprises had a mixed reputation with regards to profits and losses, but incorporation forced them to become transparent about their financial status as private companies are not allowed to operate for longer periods of time with losses. Interestingly, incorporation as a public reform strategy had a contradictory impact on principal agent interaction. On the one hand, the principal improved his/her position by giving final approval of all results of the public joint stock corporation, but the process also entailed that the set of agents became more autonomous and eager to raise salaries to a level corresponding to a private stock enterprise on the *bourse*. These two reforms of public resource organization (tendering/bidding and incorporation) changed the overall structure of the public sector in many countries. The welfare states in Europe also adopted them. The reforms called for changes in economic legislation, and in Europe this was accomplished by the European Union and its many directives for free movement and competition between nations.

Regional and local governments in unitary political systems in states in federal systems adopted these strategies

as well, in an effort to strengthen the position of the principal, thus enhancing policy efficiency. The traditional critique of public administration had long been a concern for governments as they found no response to the tendency for more agent power typical of bureaucracy. Instead, there was much talk about bureaucratic growth in the form of the so called Parkinson's Law (Parkinson). Departments and bureaus were described in a Kafka-like manner, which is why agencification, tendering/bidding or incorporation would clarify the unmistakable principal agent nature of public resource allocation.

Transfer payments

Many well-ordered societies have some or all forms of welfare state programs, including huge transfer expenditures such as pensions, unemployment benefits, social protection, disability support and child allowances. As a matter of fact, we must regard the state here as the principal and the citizens as the set of agents, because the behavior of people has a large impact on the correctness and honesty of the entire transfer system.

In countries where the welfare state is fully developed, the cost of social security is larger than for public resource allocation, but transfer problems are vulnerable to misuse by cheating. In the principal agent language, fraud with cash payments from the state is a form of shirking. Many stories have been relayed about unemployed working in the hidden economy, e.g. retired who had been dead many years or people who received cash support without even residing in the nation. Embarrassing revelations in combination with principal agent thinking convinced several governments to reform their transfer programs, putting more pressure on the agent. In particular unemployment benefits were restructured as the principal demanded a countereffort on the part of the agent to either find job or engage in meaningful activities.

Thus the *workfare state* was born, benefitting the principal of course.

We come to ex ante opportunism that, of course, can be combined with ex post opportunism. Pretending is a well known set of phenomena that figure much in the theory and the practice of public administration. So much effort is invested in hiring the right person for the right job but hiring practices are often criticised for lack of transparency and favouritism. Formal education certificates may not be sufficient for the principal to separate the low effort agent from the high effort agent. Thus the principal when recruiting agents relies upon years of experience, reputation, and interview. Yet, pretending to be a high effort agent is tempting due to the consequences of salary, perks and pension. In well-ordered countries recruitment to higher level jobs in departments has of tradition been heavily institutionalised, for instance in the judicial branch of government. However, in other countries public administration jobs may be used for patronage.

It is recognised within the principal agent framework that pretending poses a serious problem to quality of public service as well as to the efficiency in public joint-stock companies. One may assume that agency incompetence is met with dismissal, but firing a public official often requires court decision. In the Weberian ideal-type, the emphasis is definitely upon that set of agent protecting them against various abuses including arbitrary dismissal. Thus, Weber recommended that higher officials be tried by the judiciary in cases of malpractice. Yet, this would result in transactions costs. The same has been found in the public sector reforms by New Public Management concerning agencification.

Pretending can be minimised by negotiating and writing as complete as possible contracts. If the principal wishes to the right of dismissal like in NPM, the agent will demand a hefty parachute. In traditional public administration agents could

only be fired on evidence of gross negligence. However, the NPM reforms have led to a more flexible regime, especially in the public enterprises or joint stock companies to the advantage of the principal.

Adverse selection in bureaus or agencies becomes extremely negative or costly for a country where the principal displays opportunistic performance with guile. For example public enterprises or joint stock companies can be used on a large scale for political favouritism and even embezzlement by either agents or even principal - prebendalization of public administration

To counteract the occurrence of various corrupt practices in tendering / bidding, hopefully reducing adverse selection as much as possible, the government almost always implements a competition regime, regulating outsourcing at every level of Government. This is very important because a flawed process could potentially end up in litigation with heavy damages as a result. These rules of competition force the awarding of the contract to the bidder with the best bid, taking into account both price and quality. Yet outsourcing is a complicated process, especially when internal organizations are requested to compete against external bidders. As it is impossible to produce an entire contract covering all aspects of the goods or services to be supplied, tendering sometimes end up in court, raising transactional costs for the principal.

Public procurement has become international, involving large-scale projects such as infrastructure, power generation and communications. Governments have emphasized the relevance of common rules in tendering / bidding in order to create a *level playing field*, that the EU and the WTO mention so frequently. The rules guiding public procurement has entered public law both nationally and internationally, and they are considered as essential as the rules protecting the application process for public service positions against favoritism. However, theory and practice are not always in

agreement in tendering. The European Union Common Market underlines that competition for any activity with economic consequences must be open and fair. One may claim that the New Public Management adherents hardly foresaw the judicial consequences of their reform program (agencification, outsourcing and tendering/bidding), especially litigation costs concerning the quality of the deliverable.

The NPM realm inspired public sector reforms suggest out house production of goods and services. One mechanism is the tournament where lowest bid wins all other things equal. This procedure of separation of providing and producing is much employees in both public resource allocation and enterprises or joint stock companies. However, the risks of pretending may have serious repercussions.

Asymmetric information and public administration

The principal-agent models of the public sector emphasize that agents tend to have an advantage over their principal due to access and possession of better knowledge required for the provision of public goods and services. The agents will seek some form of reward for disclosing this advantage during the actual provision. Some would call this an economic rent or a bonus, but the reward does not have to be monetized.

As a matter of fact, we identify the source of criticisms of public administration, in particular standard bureaucracy, e.g. in Washington, WhiteHall or Brussels. Highly educated bureaucrats or professionals in education and healthcare are very much aware of their skills and superior knowledge, demanding that the principal offers them not only a decent rate of compensation but also quite a few perks including large premises, many assistants and secretaries, traveling, conferences, national or international colleague reunions, highly advanced equipment et.c.. There is a wealth of

literature in the discipline of public administration on the inside of bureaucracy, mentioning battle for turfs, symbols of prestige and secrecy of operations. Some public services expand substantially over time and so do the bureaucracies overseeing their operation. Prestige is a highly valued commodity in the practice of public administration.

The public sector and adjoining public administration has grown phenomenally since German economist Adolf Wagner underlined that a well-ordered society required not only a vibrant market but also a safe set of public goods and services (Wagner, 1871). The early Public Choice school proposed that this expansion of the public sector had resulted in Big Government. The recommendation of public sector downsizing against government overload was most sharply formulated by Niskanen (1971). Anticipating principal agent modeling, Niskanen argued that the bureau rent or the inefficiency of public enterprises was largely the result of rent seeking. The bureaucracies extracted their bonuses in the form of supplying too much, arguably making the supply of public goods and services twice as large as economically efficient. Opportunistic agents dominated the principal in the budgetary process as well as in financing to such an extent that they could use the formula:

$$(1) \text{ Total Benefits} = \text{Total Cost}$$

The allocation formula (1) involves sizeable costs of inefficiency, as Pareto optimality requires a completely different equation:

$$(2) \text{ Marginal Benefit} = \text{Marginal Cost}$$

However, the public agents never disclose marginal benefits, focusing on the total benefits of their entire units, e.g. universities, hospitals and bureaus. Certainly Niskanen recommended the typical NPM reforms of agencification and

tendering in order to force the agents to reveal their marginal quantities, although he did not anticipate increasing transaction costs from contracting, outsourcing and agent interaction. Niskanen exaggerated, especially when suggesting that the Pentagon could be outsourced, including the usage of mercenaries.

Principal agent modelling of the extra rent in the practice of public administration was also anticipated in Stiegler's criticism of public regulation of public enterprises (Stiegler, 1980). Economist Stiegler played a major role in the Chicago School of public regulation, calling for deregulation and incorporation. Public enterprises support public regulation not because they strive to avoid private monopolies in markets, but because they want the principal (Government) to guarantee them the very same status. Bluntly speaking, public regulation of sectors of economic activity such as water, sewage, power, trains, trams and buses et. c., although licenses are counterproductive, creating public monopolies (Stiegler, 1980). Only deregulation would create a level playing field with open entry and exit points. The Chicago School's adversity towards regulation initiated the global deregulation taking place in the 1980s, strengthening the call for incorporation and competition in public procurement, in particular within the EU.

Principal agent theory would target a problematic aspect in the new theory of public enterprises in a level playing field, viz. decreasing control of the set of agents. In every country there were a few public enterprises with a very high turnover. When deregulated, the corresponding joint stock companies under public ownership had become unfettered and could start exercising their autonomy over the market. Prices for consumers rarely decreased as Stiegler and associates had predicted (Stiegler, 1980). Some of these new public joint stock corporations have become global players, like in power generation and electricity distribution. Another outcome of

public regulation from a principal agent perspective is that it has become increasingly difficult for Government to plan certain vital sectors of the economy. If Government wants to change the power generation system, closing down coal fired or nuclear power stations, then it can't simply order its own enterprise, as was the case with the traditional trading department. The CEOs of these large public firms will demand not only legislation but also compensation. The internationalization of huge public stock companies present problems of a similar kind in water allocation as well as the construction of dams in Africa.

Outsourcing or incourcing: Contracting in or out

Outsourcing is appropriate for goods or services where market allocation is safe and standard, I.I. e. general items that are available in quantity and lower price than for inhouse production. If for instance market allocation of hospital items for operations is not predictable, then inhouse production may be preferable, although more expensive. Positions that involve asset specific knowledge should be kept for long term employment within the bureau or agency ([Williamson, 1973](#)).

In public sector reforms one sometimes encounters in sourcing together with the typical NPM reforms such as agencification and outsourcing or outhouse production. Again there is a reliance upon contracting that principal-agent theory does not fully support due to asymmetric information.

In the standard employment the principal has the right to give directions and supervise the work within legal limits. Under a contract the rights of rigorous governance are much restricted or abolished.

Any conflict between the buyer and the provider/producer now runs the risk of ending up in court, meaning possibly transaction costs for the principal. What may be won in tendering/bidding could be lost at court.

Contracting out or in is vulnerable to pretending. In addition, the principal loses control over the work situation. In contracting out the principal disposes himself or herself of competence and capacity to innovate. E. Suleiman (2002) suggested that Pollitt's unbundled government (Pollitt & Talbot, 2004) weakens democratic policy making. O. Williamson (1973) would argue that job requiring asset specific knowledge should be kept in house government.

Conclusion

Although the principal-agent approach did not originate in the analysis of government and the use of public authority, its findings concerning private management and employment contracting illuminate a few persistent features of public administration or public management; like:

- bureaucratic expansion
- inefficiency of seniority for rewards
- public enterprise inefficiency
- rent seeking in public regulatory schemes
- skewed tendering - bidding processes
- prebendalization of public offices
- favouritism in recruitment.

Several relevant and interesting models of phenomena in public administration may be put forward in the language of principal-agent interactions, such as:

- asymmetric information
- incentives in contracts
- ex ante and ex post opportunism.

Principal-agent models of a variety of phenomena in the public sector must not be mistaken for NPM or neo-liberalism. They look at public sector programs from the stand-point of a democratic government administration.

The seminal developments in the practice of public administration in recent decades concern both public resource allocation and social security. They have an unmistakable

contractual emphasis. The advantage of principal agent theory is that it offers to the theory of public administration a coherent framework for the analysis of contractual arrangements in the wider public sector. It gives new light on old themes like bureaucratization, Big Government, outsourcing as well as insourcing, public regulation and incorporation. Its two key concepts, moral hazard and adverse selection, fit well for the theory and practice of administration. Moreover, the principal agent model opens up new challenging queries:

(a) Is democracy the best political regime from a principal agent perspective?

This question can only be answered when the population (*demos*) is regarded as the ultimate principal of the political system, and government is analyzed as a set of agents of the people. Moreover, one can also analyze the judicial branch from a principal agent perspective:

(b) Is a constitutional court or an Ombudsman or an oversight agent? One could analyze constitutions or specific constitutional arrangements from the principal agent perspective, e.g. the Ombudsman is a most important oversight agency for Parliament to enhance administrative integrity and efficiency, not only in the Nordic nations but in the UK and India as well. Oversight agents can be seen as a tool for the principal to reduce the gap of information asymmetry otherwise ubiquitous in the practice of public administration. In countries with legal review, a constitutional court or Supreme Court becomes the legal principal of the entity.

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25

A classification of regimes: Foam theory to praxis

Introduction

The 5th of Marx' *theses on Feuerbach* reads:

Feuerbach, not satisfied with abstract thinking, appeals to sensuous intuition, but he does not conceive sensuousness as practicing human sensuous activity. (V)

This Marxist confrontation between theory or model on the one hand and practice or performance on the other hand is worthwhile applying onto the governments in the world. Asking for the model behind a regime is to ask what is the meaning of an institutional setup. Just as one may ask for the sense of an action ("Sinn") (Weber, 1978), so one may search for the modeling of institutional meaning, or theory guiding the institutional set-up.

I will talk about the problematics of regime reason in relation to two kinds of political systems: dictatorship and democracy.

Lenin: Dictatorship of the proletariat

Here we have a few examples in the world: namely China, Vietnam, Laos and North Korea. The latter includes a huge role for kinship relations, looking like a bizarre kind of hereditary monarchy.

The dictatorship of the proletariat made its historical appearance in the new state organized by Lenin. Due to the civil wars the USSR became much bigger than Russia of today. The USSR included all areas where the Red Army won, from the Black Sea to Vladivostok.

Lenin constructed a dictatorship based on the principles of debate *ex ante* and absolute obedience *ex post*, together with a spy network and surveillance agency to eliminate opposition. He had to improvise as Marx wrote little about this type of dictatorship other than it being “necessary”.

The Bolsheviks secured complete power by the mechanism of *parallelism* between state and party. To every state power there corresponded a party power with decisiveness. Thus Stalin was general secretary of the party and Politburo. Formally the USSR was a federation of Republics with state competences and individual rights. In reality, it was a totalitarian state that Stalin transformed into autocracy.

After Stalin’s death in 1953 collective power was tried involving state and party, an experiment lasting until the USSR was dissolved. The totalitarian nature of the state was abandoned in a search of liberal presidentialism where state-party parallelism had been severed. However, presidentialism was soon replaced by autocracy by Putin, reinstating totalitarian forms of ruling.

Lenin’s Soviet Union led to a series of regimes, where a few elderly men controlled everything and did not hesitate to use force against fellow countrymen questioning their embezzling.

In China the Communist party hegemony type of Marxist dictatorship of the proletariat has been upheld. Xi Jinping is

the head of both state and party. The dictatorship of the proletariat is still a viable myth in China, although Han nationalism is very relevant.

Yet, in the former USSR autocracy is combined with corruption to result in the omnipotence of so-called oligarchs favoured by the state. We could hardly be further away from the Lenin regime type: all over former USSR bunches of elderly men *looting* for their families amidst propagating myths.

The link between China and Russia is no longer based upon Marxism-Leninism. Putin plays on the Russian destiny and religious orthodoxy.

Pareto and Mosca: Elite versus people

With the exception of Cuba and Venezuela Latin America has experienced several right wing dictatorships since independence. The role of military elites had been nefarious for democratic stability. Remember that elites are heterogeneous. One may at least distinguish between military, party politicians, economic and religious or cultural elites. Latin American politics in the 20th century was often a matter of which of these elites would prevail besides Marxist guerrillas.

The meaning of a Latin American elite regime is often to control society to their own benefits. If necessary, physical force will be exerted against opponents. A *caudillo* may emerge on the Mussolini model like in Mexico, the Caribbean or Brazil. However, the Latin American elite regime was less nationalist and violent than the European examples. Massive repression occurred in Chile and Argentina, alongside omnipresent racism against aboriginal people. This type of elitist regime is basically a *status quo* system. Several of the regimes could not contain crime or drug syndicates. The repression of political opposition and civil society was severe at times.

Real monarchy

Elitism is constituted *inter alia* by the real monarchies in the world. *Emir* or *sultan* is not within the rule of law regimes, as such regimes are legitimated by religion or the *Koran*. Indonesia and Malaysia are promising exceptions. Countries with Muslim majorities are prone to democratic instability, as the *Koran* is at odds with rule of law notions.

Nietzsche: External and internal enemies

A political regime amounts to a state, if it can exercise monopoly upon legitimate physical force continuously over a territorial space. In a second kind of elitist regime, the meaning is to emphasize physical strength and force both nationally and individually. Thus, it faces both external and internal enemies in Schmitt's sense (1922). The sense of the political systems in Germany and Italy during the 30's and 40's was to eliminate these enemies by force.

The core of German Nazism and Italian fascism was the cult of violence or fighting as well as the belief in the myth of racism. These regimes not only practiced cruelty but also made it into a duty. The philosopher who turned all values upside down was Friedrich Nietzsche. Philosophy since Ancient times praised rationality and modesty, although disagreeing about theology. Sympathy and duty were emphasized by even the philosophers who started from the axiom of egoism, like for example Adam Smith. However, Nietzsche made mockery of all forms of hypocrisy, underlining the will to power.

Postmodernists see Nietzsche as a philosopher of liberation from the Jewish and Christian straightjacket, but his admiration for "Great Men" e.g., Napoleon, reveals a cult of cruelty: so many battles, so many dead youngsters.

The meaning of the German and Italian regimes was to put this cruelty into systematic practice, resulting in horrendous costs.

Ad hoc dictotarship

In Africa and Asia one encounters the *ad hoc* dictatorship that presents a short term solution to crisis or chaos. Conceivably, dictatorship is introduced as a temporary solution to be replaced by democratic reforms later on. The problem is *WHEN*? It often times happens that such temporary dictatorships find ways to survive as one party states or military dictatorship with *looting*. *Cui bono*?

Some countries are in a rollercoaster ride between democracy and dictatorship. Only rule of law would help them reach democratic stability.

Tos um up

Why is dictatorship despicable? Because it entails a wrong solution to the ever present *principal-agent* problem in government. Sooner or later the agent will serve his own agenda, even against the principal. The dictator and his entourage starts embezzling the nation or its people, and even sacrificing citizen lives in meaningless warfare.

Democracy = Participator + Rule of Law

From Herbert Tingsten (the greatest political scientist in Sweden) I take the idea that democracy is a political regime. Two key requirements on such regimes include: (a) rule of law; (b) popular participation in government. A few models suggest how the two outcomes can be provided by institutions.

There is no neat and tidy definition of the expression “rule of law”. The Oxford English Dictionary offers the following entry:

“[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes”.

Now, this sounds rather complicated as well as somewhat legalistic: how to measure it in order to compare states?

One may deconstruct this concept with other concepts or criteria like:

- 1) Strong legal formalism promoting equality under the laws;
- 2) Individual rights covering contract, free labour and property;
- 3) Checks and balances, i.e., institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

A political regime characterized by limited government and countervailing competences may satisfy a few different models.

Westminster: B-model

The classic model of democracy was outlined by Englishman Walter Bagehot (1867). He claimed that the American civil war showed the superiority of British parliamentarism over American presidentialism and federalism. Politics could change rapidly in the former with less risk for deep seated animosity. The *ultra vires* principle hindered blocking by minority. The majoritarian election in Great Britain secured better “*Regierungsfähigkeit*”. Bagehot wrote his essays shortly after the American bloody war. The meaning of the B-model is policy responsiveness to the majority opinions in the people.

Polyarchy: D-model

To some political theorists democracy has been seen as impossible. The idea that the people could decide all issues wisely was not feasible, given the associated transaction costs. Dahl sided with this opinion reserving the word “polyarchy” for a regime that was only second best (1956; 1971).

The second best nature of polyarchy derives from elitism. Actually, Dahl argued like Pareto and Mosca. Thus, the US political system was characterized by a deep tension between the rich ruling classes and the less affluent “people”. One may observe that the theme of *polyarchy* is close to American elitist theory heavily criticized by Dahl (Mills, 1956). Polyarchy would be a form of representative democracy with competition among elite groupings (Schumpeter, 1943), like the US.

Participatory democracy may be combined with direct representation like in Switzerland, but too many referendums is conducive to transaction costs and voter indifference.

Democracy is a regime with rule of law and popular anchors. Democracy as only participation or deliberation is merely a myth, but too little participation entails a crisis for democracy.

Consociationalism: L-model

The wave of democratization after WWI lead to a host of new democracies. With PR election techniques, they deviated from the Anglo-Saxon model above. It was up to Arend Lijphart to theorize them.

Lijphart started from a small set of democracies: the Netherlands, Belgium, Austria and Switzerland. Looking at their 20th century history, Lijphart identified another aspect of democracy, namely peaceful conflict resolution through elite accommodation. At crucial points in time the PR election technique provided policy influence to all major political elites in order to bargain a peaceful solution to otherwise lethal conflict. The meaning of a democratic polity is to

overcome deep seated conflicts in plural societies by means of mechanisms of cooperation or “consociational” *devices* and institutions (Lijphart, 1999).

Lijphart stated a democracy model based upon PR and oversized coalitions—to bring all major parties on board. He called it *power sharing*, i.e., the very opposite to Westminster.

Democracy may need an oversized government to stabilise the regime. This theme could be generalised in two ways that Lijphart tried himself. Firstly, he searched (in vain) for other high conflict societies where consociationalism may work: Lebanon, Rwanda-Burundi, Sri Lanka and South Africa. Secondly, he suggested a more general model covering both Westminster and consociational democracy.

If we take the majoritarian election technique and centralization from the model B as well as PR and decentralization or federalism from the model L, we arrive at Diagram 1.

Diagram 1. *The L-model – election system (majoritarian-PR) against power concentration-decentralisation).*

A	B
C	D

Lijphart no doubt would hold that of these four types of democratic regimes, D is preferable. He overstated his novelty by calling India consociation democracy despite its majoritarian election system.

Equality: R-model

In the theory of social democracy it is not enough that the regime satisfies rule of law and people participation. Social Democrats or social liberals add a third goal in order for democracy to make sense, i.e., equality as real social justice.

Public policy should favour by different means the least affluent half of the population, until such policy becomes

counterproductive—see Rawls' *Theory of justice* from 1971 (Rawls, 1971).

The Swedish or Scandinavian regime implemented this context for a long time before neoliberalism prevailed. Redistribution comprised both money and services in Sweden and it worked. The Swedish model is still intact but it has lost its meaning of reducing social and economic inequality. Thus, schools and health care have been partly privatised to some extent and transfer payments are subjected to incentive compatibility. Progressive taxation has been scaled back, but the unique Swedish integration of elderly care with health care remains a policy success.

Of course, the mainstream Anglo-Saxon concept of democracy today is not Rawlsian. But the affluent EU states have several welfare programs type R-model like for instance free higher education. Left intellectuals (Piketty, Stieglitz, Krugman) are all for the R-model but vain. Inequality of wealth and income is rising everywhere.

Participation

In democracy today the ideal of participation has been subjected to that of representation. There is only one referendum democracy in the world (Switzerland). Countries like Austria, Denmark, Italy, Sweden and the United Kingdom also employ the referendum although sparsely.

As a matter of fact, election participation is not impressive in modern democracies. Civil society displays more vitality. The ideal of participatory democracy still attracts intellectuals. Yet, high levels of electoral participation are hard to come by. In Switzerland only 40 % vote in many referendums.

Decline of rule of law

Representative democracy and not participative is the realistic alternative. Transaction costs and principal-agent

deliberations give this conclusion. How then are representatives as agents to be controlled in order that they work for the principal? Reply: rule of law.

Spreading democracy around the globe is tantamount to inserting rule of law. The World Justice Project (WJP) measures the existence of rule of law, unpacking a rule of law regime as follows:

- a) Constraints on Government Powers
- b) Absence of Corruption
- c) Open Government
- d) Fundamental Rights
- e) Order and Security
- f) Regulatory Enforcement
- g) Civil Justice
- h) Criminal Justice.

The WJP underlines accountability, judicial independence, legal formalism and balance of power between executive and legislature. It is worth pointing out that democracy is not mentioned. Rule of law was conceptualized before the advent of democracy after the Great War. Rule of law as legality, rights and countervailing rule may be combined with democracy as popular rule, but it has not always been so.

Table 1 presents the results of the most recent survey of the RL Index for 137 countries around the world, presenting the mean value by region.

Table 1. *Average RL Index by World Region by 2021* Source: (WJP, 2021)

Region	Min	Average	Max
East Asia & Pacific	0,32	0,60	0,83
Eastern Europe & Central Asia	0,42	0,50	0,61
EU + EFTA + North America	0,52	0,74	0,90
Latin America & Caribbean	0,27	0,52	0,71
Middle East & North Africa	0,35	0,49	0,64
South Asia	0,35	0,44	0,52
Sub-Saharan Africa	0,35	0,46	0,62

Not merely Western countries score above 0.6 on this scale. Rule of law countries include: Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, United Arab Emirates, Mauritius and Namibia as well as Rwanda. Hong Kong is also given a high grade by the WJP, but that must be in the past now. Compared with 2020 the index has decreased, for the US substantially ÷ a crisis of democracy.

Conclusion

Dictatorships remain more numerous than democracies. It is feasible—Weber denied—to subjugate a whole people by means of naked power. It depends upon the solution to the *agency* question: Sed quis custodiet ipsos custodes? The response to Roman Juvenal's question is: rule of law and citizen or people responsiveness. When Madison wrote the American constitution, he targeted rule of law but missed out on people participation—an omission never fully undone. When low voter turnout is combined with rule of law violations, then we arrive at the “crisis of democracy” theme. As a matter of fact US democracy is close to the D-model. In WJP 2021 the US has fallen to 27th rank.

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Democracy crisis: Decline of rule of law

Introduction

Rules and humans constitute the social reality besides the physical and biological reality. Rules are enabling or restraining humans in their efforts. According to humans simply have rights – Locke's natural law belief.

As a matter of fact, the norms governing human communities vary much from one country to another. The evolution of rules into institutions is path dependent.

Originating in Scandinavian customs and English common law, the idea of restraining the exercise of power was upheld in the English and French revolutions. The rule of law doctrine was universally accepted in the UN charter of human rights 1948. The problem is though which countries respect the UN charter in their own country, i.e. implementing the rules. We find enabling rules in the private sector, for example concerning property.

Role of law

There is no neat and tidy definition of the expression “rule of law”. The Oxford English Dictionary offers the following entry:

“[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”

Now, this sounds rather complicated as well as somewhat legalistic: how to measure it in order to compare states?

One may deconstruct this concept with other concepts or criteria like:

- 4) Strong legal formalism promoting equality under the laws;
- 5) Individual rights covering contract, free labour and property;
- 6) Checks and balances, i.e. institutionalized mixed government with countervailing competences between the executive, legislature and judiciary.

A political regime characterized by limited government and countervailing competences may satisfy different institutional models of democracy.

State and rule of law

Let us follow Hobbes and his argument for the necessity of the state. If it is true: *homo hominem lupus est*, then the state must possess a monopoly on legitimate physical force. When much power is vested in the state in order to guarantee order and peace in society, then when runs into the *JUVENAL* problem:

Sed quis custodiet ipsos custodes?

In the Roman Republic there was a reply: laws and constitution that divided power onto offices. But during the *Principate* rule of law was lost.

One may surmise that humans in general prefer rule of law to dictatorship. Human rights constitute the trump if rule of law regimes. And the *habeas corpus* rights are especially important to humans.

Democracy

In a democracy there is besides rule of law also a system of popular participation. To accomplish this there must be voting in various elections.

To followers of Rousseau people participation is a *sine qua non*. I am doubtful towards participatory democracy as it cannot replace rule of law. The people can send signals to the political elite using various electoral systems and institutions. But it does not reduce the implications of rule of law. A complete referendum democracy falters on transaction costs. The real rate of participation is just over 50% of the electorate in several countries.

Democracy has two principle components:

- A) Electorate contestation
- B) Rule of law.

They are jointly necessary and sufficient conditions for “democracy”. I would be inclined to say that B is most important.

Let us look the rule of law globally.

Global Picture 2021

Spreading democracy around the globe is tantamount to inserting rule of law. The world justice project (WJP) maps the existence of rule of law unpacking a rule of law regime as follows:

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Source: (WJP 2021, p.16)

Not merely Western countries score above 0.6 on this scale. Rule of law countries

include: Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, United Arab Emirates, Mauritius and Namibia as well as Rwanda.

Dictatorship

Dictatorships are more numerous than democracies. Why?

Because it is feasible to subjugate a whole people by means of naked power. It all depends upon the solution to the political agency question. Sed quis custodiet ipsos custodes? The response to Roman Juvenal's question is: rule of law and citizen or people responsiveness. When Madison wrote the American constitution, he targeted rule of law but missed out on people participation – an omission never fully undone. For Trump, rule of law was very much negotiable.

Cui bono?

Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like luxury lifestyle and the accumulation of wealth and properties. Nowhere is this motivation more apparent than in the former USSR and the Gulf monarchies.

Let me call this human drive "*looting*". It is closely connected with the orientation of dictators and their entourage towards the family and kin.

Max Weber writes in his famous article "Politics as a vocation" that politics is all about power. No, I would say. In dictatorships economic benefits is the end and policy the means, whereas in political life economic policies are the means and power the end.

The Weber focus is power, as ends and means. Nowhere does he talk about economic motives. Instead he opposes the ethics of *righteousness* with that of *realism*.

In a democracy politicians and bureaucrats are openly paid a fixed salary in combination with strict rules about the public and private. In looting dictatorships things are entirely different. Even in ad hoc dictatorship established by coup d'état the political elite engages in embezzlement. In stable dictatorship the private control of the dictator and his

entourage or kin may include banks and firms, resources and finance as well as foreign trade and finance.

Basic of looting

Government is basically the management of the public sector. The principal is the nation or the people/citizens. They hire managers to handle state affairs by sending signals like voting, laws, constitution and opinion polls. In a dictatorship these restraints are few and not taken seriously. Instead the dictator employs them with myths about the will and needs of the state or the ordinary man and woman. In the end the agents become the principal.

Conclusion

The remuneration of politicians may get out of hand. This is very much the case when looting occurs. It is feasible in any dictatorship - actually its main reason.

Weber stated that a regime based upon *naked* power was instable. And Lenin argued that the revolution need an agency - the party *vanguard*. Both were wrong. The agents can sit for a long time embezzling the principal. Only rule of law and competitive politics can stop looting.

When a country displays disrespect for rule of law, democracy falters.

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Aleppo I: Double rule of law

Introduction

As the 21st century has been labeled by biologists and physicists the “last” for the Cro Magnons, we could ponder upon a Kantian solution for mankind, so troubled and disturbed by comprehensive violence and vicious conflict. In his lesser known publications, where his peculiar metaphysics is absent—the foreign relations piece *Perpetual Peace* (1797) and the insightful analysis of domestic politics in *Idea for a Universal History with a Cosmopolitan Intent* (1784), I. Kant hit upon the greatest idea in the history of mankind, namely the rule of law (Kant, 1991). And he developed it for internal and external affairs in a way that was more relevant than ever today with globalisation and its terrible threat of global warming. These short pieces are eminently readable, lacking all the abstruseness of his theory of science and its untenable epistemology and ontology of the subjective nature of knowledge and the Universe. The possibility of subjectivist epistemology and ontology (das

Ding an sich) like religious belief has been completely undone by the truly remarkable discoveries of the size (trillions of planets and stars) and inevitable end (dark energy) of the Universe, in the beginnings of the 21st century. True knowledge is always objective, Popper (1934) argued convincingly in 1934.

The Uppsala genius Haegerstroem reminds us of Kant, as he also wrote abstrusely flawed philosophy of science, but launched brilliant insights into the subjective nature of values, launching his practical philosophy about human valuations, heavily influenced by Marxist insights about the social context of human interests (1953). Normative is always subjective. The values of the jihadists for which they kill innocents, women and children as well as their Shia kin are merely valuations. Haegerstroem would have argued correctly, their personal sacrifices will never be compensated due to their evilness by their God Allah. What really exists is only the set of religion founders: Zarathustra (probably), Moses (perhaps), Paul, Mohamed and Confucius. The man from Nazareth as well as the giant from Bodh Gaya may be inventions only. Religious belief is fairy tales, argued the greatest philosopher in the West, Baruch Spinoza—together with Paul the two most important Jews in human history.

Now, the governments of the states of world have decided upon the COP21 process of decarbonisation together with IGO:s and NGO:s. The objectives involved will require all the attention by governments, international organisations and ordinary people. This entails that domestic and international conflicts must be put at bay. It can only be done by endorsing double rule of law.

Human Coordination: Rule of Law (RL)

Kantian philosophy of the domestic Rechtsstaat and international Rule of Law provides now the ONLY basis for

launching a credible and forceful response to climate change in international global governance, uniting the governments of the world against a major threat to life on the Planet Earth. Let us look at what rule of law—the most precious idea in political thought—entails for domestic affairs as well as for international affairs.

The co-ordination of governments and states would be facilitated if there were a common ground for interactions, like a coherent conception of justice. The liberal-egalitarians have dominated the global justice discourse in academic for a few decades, trying to convince us that freedom and equality of outcomes can somehow be both achieved, if not maximised. However, the practical results are nil, as inequalities just grow and grow. A more realistic but very attractive global justice regime would be the globalisation of Kant's two rules of law regimes, one domestic and the other international. The liberal-egalitarian philosophy is a kind of democratic socialism or social democracy that suits only advanced capitalist countries, if at all. But rule of law trumps both democracy and socialism or social democracy. The ideas of an internal Rechtsstaat and of an external rule of law model set for internal governance could constitute the basic global agreement from which states could develop climate change policies that work. The conflict between freedom and equality is only partially resolvable. And we must find a global regime that can be attractive to other civilisations than the Protestant-Catholic one. A global rule of law ideology seems all the more urgent with the growth of nationalism, the explosion of Koranic terrorism and the new brinkmanship by Russia and China, threatening war.

a) Domestic Rule of Law and Its Enemies

Rule of law is not the same as democracy. A country like Switzerland can practice plebiscite democracy with constant referenda, while Germany has none of that. Yet, rule of law is stronger protected in Germany today. Turkey has had

democracy for some decades, but hardly rule of law. Singapore is not a democracy but harbours some elements of rule law. Russia has never known the rule of law regime during its entire 1000 years history. When democracy is married with rule of law, we speak of constitutional democracies. Kant despised democracy but hailed the rule of law. Rousseau took that opposite position. Koranic countries like former Communist ones as well as Buddhist nations do not respect the rule of law requirements, though both may flirt with democracy at times.

The rule of law approach to politics and the state was elaborated much earlier than democracy and its institutions and political theory. In the world of politics today, we have basically three sets for domestic political affairs:

- Strong rule of law countries: a few Common Law nations, some Civil Law countries;
- Weak rule of law countries: Asia except Israel and India, Latin America except Chile and Costa Rica, all of Africa besides South Africa;
- Hobbesian societies where “life is brutal, nasty, poor and short”: Middle East, Turkestan, central and eastern Africa, the Caribbean. They are at a pre-rule of law stage.

Thus, the majority of states that signed the COP21 Agreement are not in respect of rule of law. How, then, can they be convinced to respect their signed obligations? The COP21 promises a super fund with enormous yearly transfers to Third World countries without mentioning the systematic corruption in several of these countries. It is as if asymmetric information and opportunistic behaviour never occurred to these global meetings and declaration, which are truly transaction cost heavy.

Rule of law is of such urgent importance, because the Western exigencies about democracy and capitalism will never be accepted by two major civilisations, namely the Koranic one and the Buddhist one. Together they are much

larger than the Protestant-Catholic civilisation, especially when Islam covers both Sunnis and Shias as well as the Buddhist civilisation is correctly covering East Asia and South East Asia. The Orthodox civilisation, emerging from the Russian tragedy of Leninism-Stalinism, is definitely not worshipping rule of law. Yet, rule of law is globally relevant from the point of view of justice. And it is practically feasible also in Islam and Buddhism.

b) Where Koranic Terrorism Comes From

When searching for the roots of radical Islam, one cannot bypass Moslem thought in greater India under British rule—Deobandi school. Several scholars had a profound influence on Islam in Arabia, such as for instance Mawdudi, theorising not only islamisation but also Islamic finance before the Egyptians Qutb and Faraj. These three men staked a Koranic Revolution, changing the mind set of Sunnis. Without this ideological reformation of Islam, no fundamentalist jihadism.

The message of radical Islamic fundamentalism (Mawdudi, Qutb, Faraj) conflicts not only with the main values in the other global civilisations. It also harbours conflicts within the Koranic civilisation, as the Sunni-Shia civil war, which can only lead to one thing: misery for not only religious or ethnic minorities in the Middle East but for all Moslems themselves, whether Sunnis or Shias.

This phrase—“religion of warriors”—is the overall characterization by sociology giant Max Weber of Islam in his comparative studies of religion and the modern economy in the early 20th century. However, the solution to the problem of accommodating Islam to modernity is not so much found in the resistance of Islam to the market economy—capitalism, which Weber theorised. The problem is not to be found in capitalism, as with Weber, but in the opposition between on the one hand a radical fundamentalist interpretation of Islam,

with the new Salafists, and on the other hand the universal recognition of human rights as well as rule of law.

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 woman 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 countries targeted but also upon the Muslim countries themselves, setting in motion millions fleeing. As we have seen, Weber put the concept of jihad at the centre of Islam in his short historical analysis of the fate of this religion with the Prophet and after him. Several Muslim scholars would 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; Robinson, 1999; Rodinson, 1993; Metcalf, 1999).

The world religions have often in history been conducive to the occurrence of large scale political conflict. And all of them have developed some form or other of fundamentalism that are violent in the twentieth century (Juergensmeyer, 2000).

Yet, two things should be underlined when speaking about the concept of jihad in the Muslim civilisation: first, Jihad as a core element in Islam is a concept that was launched in the twentieth century; second, legitimate Jihad within Islamic

fundamentalism presents mainly two different aspects: 1) violence against foreign intrusion into the Muslim civilisation; and 2) violence towards internal sources of secularisation within the Muslim societies.

The new or reinterpreted concept of jihad together with the old notion of a caliphate, based upon the basic notion of “pagan ignorance” (jahiliyyah) constitute the core of the radical transformation of Islam in the 20th century by three men. They are of world importance ([Abadie, 2004](#); [Abu-Rabi', 1996](#); [Ali, 2002](#); [Al-Najjar Fatiha Dazi-Héni, 2006](#); [Ashmawy, 1994](#); [Ayubi, 2003](#); [Azme, 1996](#); [Babès & Oubrou, 2002](#); [Bachar, Bar, Machtiger, & Minzili, 2006](#); [Badawi, 1968](#); [Badawi, 1972](#); [Baderin, 2003](#); [Badie, 1986](#)).

Mawdudi

Mawdudi, Abul “Ala” (1903-1979) was the greatest architect of the contemporary Islamic revival, considered by many to be the most outstanding Islamic thinker and writer of our time. Mawdudi was influenced by Hasan al-Banna and the Egyptian Muslim Brotherhood (MB). 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 ([Rahbar, 1956](#)).

However, the Aligarh movement would serve Moslems better than the Deobandi School. Aligarh became famous as a centre for various movements that shaped India with the start of the Mohammedan Anglo Oriental College by Sir Syed Ahmed Khan in 1875. This College became Aligarh Muslim University—a hub for bridging the gulf between Islamic and Western cultures. Mawdudi opposed to the secularist nationalist Muslim League led by Jinnah, but on 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.

This much venerated theologian and cleric today conceived of true Islam as a total comprehensive system and ideology, incorporating society, politics and the state—the caliphate idea. 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.

Qutb

Radical Islamic societies (jama'at) emerged out of the Muslim Brotherhood founded 1928, drawing on the thought of its main ideologue, Sayyid Qutb, who endorsed a violent takeover of power. Qutb (2000) 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, whether Arabs or not, Muslims or not, active or passive supporters of ignorance Sivan (1995).

Sayyid Qutb (1906-1966) was an Egyptian and as a member of the Muslim Brotherhood, a prominent Islamist figure whose career spanned the middle decades of the century. His thought, deeply influenced by Mawdudi’s revolutionary radicalism, falls into two distinct periods: that which occurred before President Nasser detained him in a concentration camp for political enemies (he was eventually executed). The first excerpt comes from an early work, *Social Justice in Islam*, which he wrote in 1949, translated by John B. Hardie (1970). Qutb builds on the old Sunni Islamic idea of tawheed (the singularity of God and, therefore, of the universe):

“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.”

With the crackdown on the Muslim Brotherhood following the 1954 assassination attempt on Nasser, Qutb was arrested and spent 10 years in prison. He was freed in 1964, but re-arrested in 1965, tortured and executed in 1966. While in

prison he wrote his greatest work, an eight-volume tafsir of the Koran, *Fi Zilal al-Quran*. Towards the end of his imprisonment he wrote *Milestones (Ma'alim fil-Tariq)*—the key manifesto of radical Islamic groups, providing radical fundamentalism in Islam with its foundation and key propaganda pamphlet:

“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.”

Faraj

“Holy terror” is a term for “holy assassination” in the Middle East, applicable to the assassinations of Sadat and Rabin and what came after. The assassins of Sadat were guided by Muhammad Abd al Salam Faraj (1954-1982) and his booklet, *The Neglected Duty*, to violent behaviour. 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.

Thus, the main ideologue of jihad was Faraj, a former Muslim Brotherhood member, who was disillusioned by its passivity. But al-Jihad did not restrict itself to theory alone. It quickly became involved in sectarian conflicts and disturbances in Upper Egypt and Cairo. After the assassination of Sadat at a military parade, al-Jihad supporters fought a three-day revolt in Asyut, seeking to spark a revolution, before being defeated. In contrast to Takfir, al-Jihad was not led by one charismatic leader but by a collective leadership. It built up a sophisticated organisation run by a leadership apparatus in charge of overall strategy, as well as a 10-member consultation committee headed by Sheikh Umar' Abd al-Rahman. Faraj recruited for al-Jihad in private mosques in poor neighbourhoods where he delivered Friday sermons.

In contrast to the traditional religious scholars, who proclaimed the necessity of submission to any ruler claiming to be a Muslim, they insisted that acceptance of a government was only possible when the Islamic legal system is fully implemented. Implementation of Sharia becomes the criterion of the legitimacy of regimes. Traditional scholars viewed the concept of the "age of ignorance" or paganism (jahiliyyah) as an historic condition in pre-Islamic Arabia. However, "ignorance" (jahiliyyah) is a present condition of a society which is not properly Islamic because it does not implement the full Sharia and hence is rebelling against God's sovereignty. All the regimes currently in power in Muslim countries are thus not acceptably Islamic and it is both right and necessary to rebel against them.

Faraj argued that active, immediate jihad would be the only strategy for achieving an Islamic state. Instead of seeing Jews and Christians as protected communities (dhimmis) and "People of the Book", the two groups viewed them as infidels

both because they had deliberately rejected the truth and because of their connections to colonialism and Zionism. They were accused of serving as a “fifth column” for external enemies; Takfir stressed an international Jewish conspiracy and the need to fight it, whilst al-Jihad viewed Christians as the first enemy to confront and was heavily involved in anti-Coptic activities. Consequently, Sheikh Abd al-Rahman issued a religious legal edict (fatwa) legitimising the killing and robbing of Christians who were said to be anti-Muslim. Both groups saw the Christian West, Jewish Zionism and atheist communism as planning to corrupt, divide and destroy Islam, the rulers in Muslim states being puppets of these forces, leading their countries into dependence and secularisation (Moaddel & Talattof, 2000; Moghadem, 2007; Mussallam, 2005; Qureshi, 1980; Qutb, 1990; Qutb, 2005).

c) Is Deobandi Theology Really Islam?

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 Islamic fundamentalism, created by the three: Mawdudi, Qutb and Faraj (Burgat, 2008; Choudhury, 2003; Corbin, 2002).

Al-Zawahiri (1991) wrote several books on Islamic movements, the best known of which is *Knights under the prophet's banner* (2001), which outlines the new strategy of Sunni fundamentalism. He refers to Qutb to justify murder and terrorism, but also to Pakistani Jamaat-i-Islami founder and scholar Mawdudi on the global mission of jihad. Osama Bin Laden had the money, some connections and perhaps the charisma to function as the leader of the al-Qaeda global jihad, but when Zawahiri's al-Jihad 1998 joined forces with Bin Laden, the global Islamist terrorist threat emerged. Now, the ISIS employs the ruthless tactics of AMZ or az-Zarqāwī, killed in Iraq.

As fundamentalism with this new doctrine of Islamic terrorism becomes more wide spread in not only the Muslim civilisation but also Europe, North America and Africa in the early twenty-first century (Roy, 1994, 2000, 2004, 2007, 2008; Kepel, 2000, 2004, 2005, 2008), Weber's classic perspective—Islam as a religion of warriors—is more relevant than it was hundred years ago (Weber, 1978; Crone, 1999). It is more vindicated by the new Salafists than he ever imagined

himself. His concept of Islam as a religion of warriors is verified with a terrible vengeance by the combination of salafism and jihad in the new Islam of the gang of three (Metcalf, 1982; Metcalf, 1999; Huff & Schluchter, 1999; Miller & Kenedi, 2002; Milton-Edwards & Hinchcliffe, 2001).

The new theory of jihad entails, according to Maududi:

“Islam is a revolutionary doctrine and system that overturns governments. It seeks to overturn the whole universal social order ... and establish its structure a new ... Islam seeks the world. It is not satisfied by a piece of land but demands the whole universe ... Islamic Jihad is at the same time offensive and defensive ... The Islamic party does not hesitate to utilize the means of war to implement its goal.”

The religious community of Moslems (umma) has always been heterogeneous and the fusion of secular and religious power has proved non-viable for Muslim countries (caliphate, immature). A Muslim state can only be stable and prosperous, if these two fundamental facts are acknowledged by all religious groups, the ulema or muftis. The Islamic civilisation must accept the secular nature of a modern state, where the respect for Rule of law would stop the infernal civil wars in the Muslim civilisation. And only the majority Sunnis can reject the dire Deobandi teachings in various institutions: mosques, madrasas, universities, schools and in Western communities, which would stop the supply of “martyrs” (Schluchter, 1987; Schluchter, 1989; Sivan, 1985, 1997; Baderin, 2003). The gang of three has most severely heightened the tension between Sunnis and Shias, of course regarding Shiism as flawed version of the message of the prophet, to be ultimately out routed.

Global rule of law

It is an undeniable fact that foreign affairs have become more regulated than ever before—normativity, speaking

generally about the global market and the interactions among states, international as well as regional organisations like the EU and ASEAN. However, how this seemingly inexorable march towards normativity to be theorized in relation to the classical paradigms: realism versus idealism or liberalism? On the one hand, a new realist interpretation has been launched by Eric Posner ([Goldsmith & Posner, 1995](#)). On the other hand, the new cosmopolitanism envisages foreign affairs on the model of domestic affairs in so-called well-ordered countries.

The international system is no longer in a state of anarchy where the principle of self-help applies. Not only have the IGOs grown more influential than ever before, but there has also emerged a global community comprising energetic NGOs. Key principles in public international law, viz state sovereignty and self-help, now has to co-exist with other principles, such as e.g. humanitarian intervention, national self-determination and human development. Numerous central features of the anarchy system have been transformed, resulting in a slow but unstoppable growth in normativity.

Rule of law in global governance

The call for normative in relation to the international system, modeled as anarchy and self-help, has a more solid foundation than idealist blue-prints for an international community in eternal peace, as with Kantianism for instance. It starts from the body of principles laid down in public international law (PIL), comprising not only treaties but also custom and self-evident reasons. PIL has existed for centuries, constituting the set of norms guiding diplomacy. After the Second World War, PIL has been codified in numerous standard textbooks of ever increasing size.

Controversy has much dominated the theorizing on PIL, linking up this debate on the nature of PIL with the opposition between idealists and realists. PIL would be:

- 1) Morality and not law;

- 2) Recommendations that are not self-enforceable;
- 3) Norms without enforcement;
- 4) Pacifist notions that are unrealistic;
- 5) Global regulation that would be biased or dangerous.

One finds reminiscences of these antimonies in the now surging debate on PIL, as it has evolved after the Great War (Besson & Tasioaulas, 2010; Dunoff & Trachtman, 2009; Klabbers, Peters, & Ulfstein, 2011; Posner, 2009).

International Rule of Law = Convenient Recommendations?

The rebuttal of normativity with PIL from Goldsmith and Posner is entirely different from naive geopolitics. They present a most elaborate theory of PIL, combining jurisprudence with international relations, interpreted with a few basic game theory models.

Posner (2009) is highly sceptical about Voelkerrecht, its foundations and its claim to normativity, meaning that its key principles bind sovereign states. However, Goldsmith and Posner do not reiterate Schmitt's position from 1928 towards PIL (Schmitt, 2002). They confirm that PIL is LAW, and not merely the morals of victorious governments. Yet, they completely deny normativity. How could a system of norms that constitute LAW lack entirely normativity?

According to this theory of PIL, PIL is often complied with but not because of any binding force of its norms. Compliance can be best explained by the operation of state interests and their coordination in the games that are played out underneath PIL. Moreover, governments have no obligation whatsoever to comply with PIL. Thus, the enforcement is entirely up to the states in the international system that may or may not comply alternative may or may not retaliate against reneging by other governments, all based upon consideration of self-interests.

Posner's rejection of any obligation with PIL may appear drastic, but it may be related to the perennial debate about

what is law. Law, all agree, is a huge ordered set of couples of norms and their enforcement:

Law = .

What is contested is whether the binding nature (validity) of the first element—norms—is the same or different from the efficacious nature of the second element—compliance or punishment. Kelsen's legal positivism took the view that law's validity is conditioned by its effective enforcement, whereas Swedish philosopher Axel Haegerstroem developed the legal realist approach that legitimacy of norms is nothing but the same as their probability of compliance (Eliasson, Mindus, & Turner, 2012). Normativity and legal validity is never objective in the sense of the objective existence of the Universe (Raz, 2009). Legal pragmatists like for instance Richard Posner (1993) shares the Haegerstroem view: "law is a prediction about what the judges will do". Since states sometimes comply with and sometimes renege with PIL on the basis of self-interests, Posner draws the conclusion that PIL has no normativity or binding validity, neither Treaty Law ("pacta sunt servanda") or Customary Law ("opinio juris").

It is true that PIL differs from domestic law as far as the probability of compliance or enforcement is concerned, at least in well-ordered countries. But this was always the standard objection towards PIL. And how can it lead so far that it is claimed that it has no binding force whatsoever, at the same time as the probability of enforcement is increasing? PIL may be deficient as LAW, but how can it be LAW and have no normativity?

PIL is grounded only upon state interests, guiding them to various forms of coordination at best, as well as to renege at worst. States would have behaved in the same way without treaties or customary international law, in accordance with various equilibria in non-cooperative game theory. This position bypasses entirely the transaction cost saving nature

of LAW. States could not handle all the transaction costs from solving a myriad of alternative interaction games, day in and day out. Better to rely upon the binding nature of valid norms with a general scope, guiding action in similar circumstances.

One may wish to contrast the new realist argument by Posner with the new cosmopolitanism, which dreams of a development of PIL towards morals and natural law, i.e. more of legitimacy but little or none of efficacy ([Manners, 2002](#)).

Global Rule of law = Radical Cosmopolitanism?

Has PIL and its normativity evolved so much recently that it can be considered as a global rule of law regime, comparable to the Rechtsstaat within a country. Teitel's argument consists of three parts theorizing what she calls humanity's law ([Teitel, 2011](#)):

a) Humanity's law comprises essentially the following parts of the PIL: the Geneva and Hague conventions about the conduct of inter-state war: just war as well as justice in war, the Treaty of ICC (International Criminal Court) and the Security Council decisions concerning the ad hoc courts for Former Yugoslavia and Rwanda: personal security in intra-state civil war and anarchy;

b) Humanity's law offers person protection in several ways similar to rule of law regimes within a country;

c) Humanity's law has a structure similar to that of domestic rule of law.

I would not hesitate to suggest that the suggested strong linking of the PIL with cosmopolitan moralism would weaken the emerging normativity in international relations. What Teitel calls "humanity's law" is hardly comparable to rule of law in so-called well-ordered societies.

Firstly, the Geneva Conventions are hardly new, as they began to be laid down around 1900. Second, together with the Hague Conventions they offer a number of norms about the conduct of war and use of violence in conflicts, but these norms have had almost nil impact upon reality. Whereas the

so-called efficiency of rule of law tends to be high in the capitalist democracies or well-ordered countries, the opposite is true of humanity's law. In addition, the ICC has not met with universal acceptance and the capacity of the ad hoc tribunals to punish perpetrators has been rather meager. Thus, also with regard to legitimacy the framework of humanity's law is hardly to be compared with the rule of law regime when solidly implemented as within the OECD countries. Thirdly, whereas Humanity's law targets the protection of civilians against physical violence from either interstate or intrastate conflicts, the rule of law regime has a much broader scope than merely the Habeas Corpus rights. Thus, rule of law today entails constitutionalism, which is lacking in Humanity's law.

Rule of law only exists when there is a high probability that its norms are complied with, either directly or indirectly through enforcement against deviations from observing these rules. Teitel speaks of humanity's law "providing protection", "offering protection" etc. But the respect for these norms is often so low that this is only a manner of talking about LAW.

When theorizing globalization, cosmopolitanism and law, one cannot bypass the insights from the philosophy of law, distinguishing between norms on the one hand (validity) and their implementation on the other hand (efficacy). Just because the new cosmopolitanism speaks much about universal rights, it does not turn these moral rights into substantive law.

The new theory of cosmopolitanism, launched by so-called liberal egalitarians, purports to be a global political theory for the globalisation age. It is based upon various theories of justice in recent political philosophy, resulting in Utopian conclusions. A key text is that of Caney (2006), who presents the following ethical principles or recommendations:

- People in Kuwait are not entitled to its oil reserves;

- People should be taxed for using the resources in their territory, and the proceeds spent on improving the poor throughout the world;
- There should be a system of multi-level government in which the power is removed from states to both supra-state and sub-state authorities.

New cosmopolitanism is much broader than old cosmopolitanism according to the Kantian framework. Whereas the latter concentrated upon peace and the regulation of violent conflicts, new cosmopolitanism underlines global distributive justice besides launching civil and political rights. It goes far beyond public international law. Are we then to say that it gives directions for the future improvements of the law of the international community—"Voelkerrecht"? I much doubt that, as the new cosmopolitanism with for instance the three proposals above is Utopian, whereas the PIL framework is practical.

The call for global democracy is a cornerstone in the new cosmopolitanism (Held, 1995). Scholars calling for more of democracy envisage either small reforms of global institutions in an egalitarian direction or they suggest that pressure should be exercised upon countries that are illiberal. PIL endorses state sovereignty together with non-interference on the one hand as well as human rights as well as humanitarian intervention on the other hand. Thus, PIL as a whole is hardly a consistent normative framework. But it holds true that in any case PIL does not entail global democracy, which call today would amount to a culture blind "exigency" (Rawls, 2001).

International Rule of Law = Spontaneous Order

The augmentation of normativity along with the process of globalisation has led to a debate about the pros and cons of global constitutionalism (Krisch, 2011 ; Dobner & Loughlin, 2012). One should separate between the expansion of PIL on the one hand and various efforts at regional or global

constitutionalism. As the failure of EU constitutionalism shows, constitutions make much sense at the level of nation-states. Globally, the PIL framework advances slowly but inexorably by means of the principle of “muddling through”. The PIL is not planned or designed as a whole set of rules. Instead it has expanded in scope and range in an incremental fashion. It builds upon the accumulated wisdom of a variety of efforts over a few centuries to codify a set of reasonable rules for the interaction of states as well as the protection of persons (Young, 1989; Keohane, 2005; Krasner, 1983, 1999).

Objective and subjective validity

In the philosophy of right and legal theory, it is emphasized that ethics and justice have to do with rules, whether the approach is a deontological or one of consequentiality. Legal norms fulfill this requirement of generalisability of universalisability, inherent in morality (Hare, 1972). In various domains of activity—economics, environment, state interactions, humanitarian efforts, there has occurred a seminal trend towards normativity since 1945 and especially 1990. It blurs the traditional separation between realism and idealism that has dominated IR. The inexorable drive towards more of normativity has accompanied the major changes in the international system or foreign relations:

- The strengthening of the IGOs (Pogge, 2002);
- The creation of regional organizations;
- The evolution of a global civil society: NGOs and CSOs;
- The creation of new global courts, ad hoc or permanent besides the ICJ;
- The expansion of domestic courts into international affairs.

However, growing normativity or the institutionalisation of rule of law does neither entail global constitutionalism, nor even that the basic problem of public international

law—implementation or enforcement—has been resolved adequately. Idealism, especially in the form of Utopian cosmopolitanism remains unrealistic, but realism has been tempered by normativity and must be so increasingly in the 21st century. If rule of law entails justice for mankind, domestically and in foreign affairs, then maybe social justice implies real equality, or a new form of socialism?

Irrelevance of socialism

“What is wrong with socialism?” ask Barry rhetorically, quoting Harold Pinter. Barry, launching the idea that justice is impartiality as well as that impartiality is equality, intends the question as rhetorical device for replying NOTHING. There are in fact many errors with socialism that explains its failure, from Owen’s village in the 19th century to Cuba and Venezuela over the disastrous Soviet experiment. Thus, one can claim evidence to the effect that a socialist economy:

- does not make people happy;
- cannot produce much output;
- favours its leadership in reversed inequality;
- tends towards dictatorship sooner or later;
- it could not be introduced by means of a majoritarian referendum.

People have made so bad experiences from socialist projects and the behaviour of Communist parties that they prefer market capitalism, where they at least receive goods and a small salary, accepting with anger the incredible remunerations of CEO:s in capitalist enterprises—a huge market failure in fact. The principal-agent problematic of adequately rewarding CEO:s has not been resolved in modern economic and management theories, but it occurs to the same extent in public enterprises (one worst example: Swedish energy giant Vattenfall).

The liberal egalitarians dream about retaining liberty fully while increasing real equality, either ex ante as Dworkin

(1986, 2000) or ex post as Rawls (1971). They refer to Social Democracy generally and Sweden in particular. But liberal-egalitarianism did not work out in Sweden. The CEO:s, privately or in public enterprises, take home enormous payments plus bonuses. And the number of scandals from corruption in both sectors has increased sharply. Academic professors, one well-paid, and sometimes supportive of the Arbeiterbewegung, are remunerated with the salaries of clerks in companies like Erickson, SHB and Elux. Bonuses and perquisites have skyrocketed after the death of Olof Palme. Prominent social democrats are sometimes active in capitalist endeavours, also together with public office.

Interestingly, the socialist economy and the market economy suffer from one major common problematic, viz. the principal agent difficulties. While socialism fails completely to resolve it, opening up for the mismanagement typical of public enterprises and firm, capitalism struggles with it without success. That is why CEO:s who fail often demand even more remuneration. Only the shareholders can resolve the principal-agent games, but they face coordination problems and collusion between the CEO:s and a few dominant owners on the company board.

Barry's proof of justice (Barry, 1995) as real equality is merely a huge circular argument:

- 1) Justice is impartiality (assumption in Law);
- 2) Impartiality is formal equality (assumption in Law);
- 3) Real equality is more reasonable than formal equality (assumption unproven);
- 4) Justice is real equality.

A thing or argument is reasonable when it cannot possibly be rejected. What, then cannot be reasonably rejected? Barry answers that income and wealth inequalities can—reasonably—be rejected by the poor man or woman. No reward for effort, capacity, merit? No recognition of inheritance? Not reasonable because it implies partiality? Real

equality is reasonable, and reasonable is impartiality, which is justice. QED. The Barry argument relying upon the ambiguous notion of reasonableness does not hold. As Weber emphasized, moral argument and ethics cannot rely purely upon reason—the so-called Hume's position. Practical syllogisms, if correct at all, must have at least one moral principle (OUGHT), the validity of which comes from emotion, will or decision, and not reason. Why is real equality of socialism more reasonable than liberty and the market economy?

The efficient and just socialist economy is a figment of imagination. Macro speaking, socialist planning replacing market capitalism sooner or later degenerates into oppression, like in the USSR, Yugoslavia, Hungary, Cuba and now Venezuela. The economic rise of East and South Asia started when the market economy was endorsed by government. Micro speaking, socialism is not incentive compatible, as its altruism is Utopian.

I have nothing against social democracy and its redistribution zest as long as it respects the market foundations of an efficient economy. The unresolved problem, however, is how much redistribution is DUE to everyone.

What is Justice?

There has been an intensive discussion about social justice for some hundred years in the social sciences, jurisprudence and economic theory. Up to about the 1950s, the main approach was the non-cognitivist one with Weber (1978), Haegerstroem (1953) and Kelsen (1911), stating that social justice harbours ultimate valuations that cannot be derived from reasonable ideas or principles. This so-called Humean principle that justice involves inextricably an element of feelings or will (non-cognition), has been completely pushed aside in political theory during the recent 50 years, with a number of cognitivist frameworks, like for

instance Barry's (Barry, 2005). Not all cognitivists are liberal-egalitarians, as its main competitor, neo-liberalism, has also been rendered a cognitivist backing, at least sometimes.

The problem can be formulated thus: The great Roman lawyers identified the concept of justice as follows:

Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere, translated as: Such are the [basic] principles of the Law: live honestly, do not offend others, give to each person what is due. Corpus Juris Civilis, Pandects.

It contains an elliptic phrase: "suum cuique tribuere", give each man his or each woman her due. But what is due to anybody? Capitalism, socialism, social democracy, social liberalism, no-liberalism, decent nationalism?

Conclusion: Towards double rule of law

The recent surge in domestic political violence and the increased resort to brinkmanship in interstate relationships do not bode well at a time when countries ought to start concentrating upon their COP21 Agreement and what national government, IGO:s and NGO:s have committed their countries to do during this century, viz. save Planet Earth by massive decarbonisation. Russia has taken Crimea but will never be able to hold on to Eastern Ukraine. China is testing the resolve of ASEAN and Pacific Powers by militarizing tiny islands that will drown with ocean rise (very easy to bomb) and North Korea continues its stupidities that may release nuclear confrontation. Domestically, Islam has been revolutionised theologically or philosophically, turning the single largest civilisation in the world into a recruitment base for Koranic terrorism with a scope and range that overshadows ancient terrorist practices with Robespierre, Napoleon and Lenin. Maududi, Qutb and Faraj will become as famous as Hayek, von Mises and Freedman in setting the

political tone of a century, the latter in the 20th century demolishing socialist planing, and the former in globalising radical Islam.

There is one remedy only: rule of law. It is not a capitalist notion, but suits both domestic and international institutionalisation of universal rights, procedures, and limitations on state power. Turkey has never had a rule of law legacy, which explains Erdogan's (MB) repression of Kemalist secularism. By not respecting the most institutionalised form of international rule of law, the US (read Bush, Rumsfeld and Wolfowitz) throws the Middle East into a calamity with few precedents in human history. The sufferings in the destruction of the Syrian nation are beyond empathy, resulting from the breaking and neglecting a spontaneous order. Peace is only possible in the 21st century on the basis of global rule of law, i.e. respect for public international law, like for instance the Haag decision of South China Sea. Of course, rule of law or normativity is to be taken seriously, even if it is only man made institutions with subjective validity. The push for global democracy is not the basis for civilisation co-ordination whose task only double rule of law can accomplish.

The slow but seemingly unstoppable reintroduction of authoritarian practices in China and Russia, the universal spread of "capitalisme sauvage" (bonus culture in advanced countries, embezzlement and patronage in Third World countries) at the expense of institutionalised capitalism (Mises' market economy), the return of nationalism in Europe and all phenomena detract mankind from the lethal threat of climate change—Human history has only an "end", if it is an evolutionary outcome, like climate change. What could bring the world together is not Western values, but universal ones like first and foremost rule of law, in its double Kantian meanings. Countries need to concentrate their efforts upon climate change policy-making and environmental

management, both domestically and internationally. Russia and China play brinkmanship games that could derail the entire COP21 process. For the third time, Russia is deeply involved in Moslem conflicts with the attending costs, economically and in human lives. Had Russia developed into a stable rule of law country after 1917, Russian people would have been spared much suffering, not only yesterday but also now. As a matter of fact, Nobel's brother imagined another future for Russia in his capitalist endeavours in Baku.

The new Islam, based upon complete islamisation, a new caliphate and total jihad, refuses the rule of law for Moslems. It breaks their civilisation, spreading terrible political violence (Gabriel, 2002 ; Gambetta & Hertog, 2007; Gold, 2003; Hafez, 2003 ; Balta, 1991; Bani Sadr, 1989 ; Baram, 2005; Barber, 1996 ; Bergen, 2002; Bergensen, 2007, Rahman, 1982; Rahman, 1987; Miller & Kenedi, 2002). Actually, global rule of law everywhere—domestically and externally—also in the Koranic world—would trump democracy, which is culture bound (Scholte, 2011; Held, 1995; Crawford & Koskeniemi, 2012). Rule of law is universally applicable—also in Syria, Iraq and elsewhere. It is the greatest idea in political thought (Bickerton, Cunliffe, & Gourevitch, 2006).

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28

Aleppo II: Not bringing the state back in

Introduction

The battle for Aleppo ranges on, displaying all the monstrous horrors of modern warfare. This city in the centre of war torn Middle East will go down in memory as another Babi Yar. One must attempt to theorize the rationale of what is going on a daily basis with the slaughtering of innocents and the massive destruction of capital assets. Where are people to stay when their houses and apartments are systematically demolished by inter alia Russian bombings from its Sokhoi aircrafts? The Syrian nation is being completely destroyed with thousands deaths and millions in refugee camps in many countries, not to speak of those drowned in the Mediterranean Sea.

Why is all this occurring before our eyes? Turning to the international relations literature, one finds no attractive explanation. International relations theory is replete with unscientific notions about the state as actor, driven by the flawed notion of state reasons or interests. This kind of

concept set violates the principle of methodological individualism, which entails that only persons can be actors and that the motivation of people is made up of their intensions. The mind entities of values, beliefs, preferences and subjective probability estimates are central in theorizing the Syrian wars and the Aleppo atrocities-what Max Weber called “sinnzusammenhaenge”.

Rejection of the state perspective on warfare

Under the banner “bringing the state back in”, T. Skocpol (1985) launched a renewal interest in state theory, but it cannot work in scientific theorizing. The “state” is merely a legal fiction, employed for institutional and organizational purposes, like taxation, budgeting and the requirement of public responsibility. Actions meaning intended behavior can only be attributed to human beings, either in solitary or collective activity. It is the set of actions that make the social sciences differ from the natural sciences. And the key to understanding action lies with mind concepts like preferences, beliefs and subjective probability.

An elaborate position stating methodological individualism is to be found in Weber’s methodological writings (Weber, 1922, 1984), badly underestimated in the philosophy of the social sciences in particular and the philosophy of science in general. He stated:

(WQ) Every thoughtful reflection on the ultimate elements of meaningful human action is immediately tied to the categories of means and purposes. (Weber, 1949: p.52).

Starting from Weber’s basic methodological principle, we must say that when the US declares war on Japan in 1941, the actors are made up the President and the Congress. As they declare war on Japan in the name of the state, the decision has to be understood in terms of their min sets: beliefs, preferences and subjective probabilities. The same applies to

the Russian tactics and strategy in the Syrian war, depending not upon the Russian state and its purported reasons, but upon the mindset of the circle around President Putin.

Weber spoke of elaborate mind sets—*sinnzusammenhaenge*—with key actors, collapsing them in the concepts of ends and means. He also included action that is fanatically oriented towards merely an objective without causal beliefs about the instruments that promote goals: end action against means end action. To him, only means end activity could be reasonable, as it involved calculation, i.e. causal beliefs.

The Weber emphasis upon the “inner” dimension of action is not accepted fully in American behaviorism or behaviouralism that speaks of human activity as sets of behavior, and not action as intended behavior. For the social sciences, it is essential to approach human activity and social systems with mind categories, rejecting physicalism, as with logical positivists, or mind-body reductionist paradigms, as in some philosophy of science.

In his translation of texts by Weber, Parsons (Weber, 1947) employed the word “orientation” to denote this mind focused nature of human action. Behaviour is orientated in terms of ends and means, i.e. preferences, beliefs and subjective probability estimates. Parsons, as it well-known, underlined the role of value orientations in the “*sinn*” of an action. To speak of a rationale is to target the motivation of an actor or group of actors, the “*sinnzusammenhaenge*”. Modern rationality, argued Weber (1978), is based upon means-end rationality, but today we observe lots of end rationality with people in terrorism or extreme religious activity with a political purpose.

Rejection of objective state interests

It is now argued that Putin is advancing the interests of Russia in the Middle East by involving Russian military forces

in the Syrian civil war. It is even commented that he is skillfully pursuing Russian state reason while the US appears weak and indecisive, reluctant to regard more military involvement in this region as state reason. However, this is merely journalistic talk.

The classic theory of state reason, according to historian F. Meinecke (1907, 1957) claimed that states have objective interests that may go beyond the preferences or values of its inhabitants. Such reasons may be discovered not through preference revelation mechanisms like voting or the referendum but through neutral and impartial enquiry in to situation of the country: borders, economy and needs. The discipline of geopolitics was constructed on the basis of this idea of objective state interests, just waiting to be discovered before acted upon as a duty of rulers.

To make the point in a short manner: Russia as a nation has no interests at stake in Syria, as the country's citizens long for economic affluence and peace. Putin believes that Russia does have reasons to be in Syria, but it is only a belief a wrong one too, as key actors often make mistakes. The values at stake in Syria concern various interests of religious groups, especially the minority Alawites with a somewhat special Shia creed, and they fall outside of the main values of Orthodox Russia with a Communist legacy.

This is the third time Russia gets itself involved in a Muslim conflict. The first was the Israel wars that were very costly in terms of resources and war materials for Soviet Union. Afghanistan was the second, which ended in total Russian defeat with terrible human losses. Now Putin wastes Russian resources on a Muslim civil war, destroying the reputation of Russia as a civilized nation.

One may remind of the disastrous foreign policy of Nazi Germany when one wishes to demolish the notion of geopolitics harbouring state reasons. Instead one must speak of the reasons of Hitler, his own speculation in military

grandeur and his attribution to Germany of social values the promotion of which brought the country to extinction in 1945. Objective state interests?

Now, why this unending vicious civil war in Syria, an old country from the dawn of human civilization?

Types of conflicts

The Aleppo battle is an example of a political conflict, because it is orientated in the motivations of the players towards the exercise of power in government and the making of public policies. Political conflicts need not be violent, as there exist peaceful conflict resolution mechanisms. There will a long debate over why the players in the Syrian civil war walked away from negotiating a peaceful solution, because there are no winners here, only losers, dead or alive with enormous capital destruction.

Other kinds of conflicts comprise personal ones, mental inner conflicts within one person, religious disputes, academic conflicts, game struggles, etc. Here, we model political conflicts of a violent nature with Syria as our prime example.

The logic of the attack

When a government or a rebel group takes up arms starting warfare, they engage in instrumentally rational action, orientated in terms of means and ends. What the chief objective may be varies from one conflict to another, but the orientation towards the use of force as a means entails that the actors involved have beliefs, values and subjective probabilities. The first attack is of course only a step in a sequence where attack and defense, counterattack and defense follow upon each other. A war is a sequence of plays with iterated choices until the final round of play. Sequential play may comprise a series of wins and losses, but the final round is of course decisive for the outcome. In each stage in

the sequential play, the players have a mindset involving their intentions or motivations.

Of course, the orientations of the players change all the running of the sequence, as they update their beliefs changing their subjective probabilities and revising their values. It is this dynamic interaction between the players, their orientation and the outcomes experienced that must be modeled in a warfare model.

The government or rebel group who orders an attack on some other persons or groups or governments must satisfy individual rationality, which is the same condition in all kinds of human behavior, namely:

1) $B_i > C_i$, for any actor i ,

or the benefits must be larger than the costs for the actor i .

During a war, situations may arise where this inequality does not hold, but at the start of war it seems a reasonable assumption. Now, the equation is amorphous and elliptical, because what matters are the expectations of the actor(s) about benefits and costs. Thus, we must add beliefs and subjective probabilities to the Equation (1).

A simple way to emphasize the subjective nature of benefits and costs in the equation (1) is to employ a sign for expectations $*$. Thus, a requirement of rationality in warfare is as follows:

2) $*Benefit_i > *cost_i$.

A key element in these expectations of gains and losses is made up of subjective probability estimates of how likely various future scenarios are. Basically, these are beliefs about what the enemy will do, given what the initiator of an attack does, as well as the successfulness of the attack.

These subjective probabilities must be sharply distinguished from the objective probabilities that hold for a neutral and impartial observer of the conflict, the “true” situation as it were. Typical of warfare is that

3) $*benefit_i$ and $*cost_i$ differ from λ benefits and λ costs,

where λ = true probabilities or objective likelihood.

The inherently subjective nature of violent conflicts

By distinguishing sharply between expectations about benefits and costs on the one hand, and the likelihood of advantages and disadvantages on the other hand, one arrives at the crucial role in violent conflicts of the mistake(s). Actors in political conflicts tend to be badly informed, display opportunism with guile about gains and losses, underestimate costs and exaggerate benefits. When the role errors in calculation and mistakes in evaluations are taken into account, one arrives at the unavoidable conclusion that politically violent conflicts are most of the time foolish.

One need not refer to spectacular mistakes like Alcibiades' eccentric campaign on Syracuse, Napoleon's great gamble in marching towards Moscow and Hitler's ill-equipped Barbarossa Operation. It is enough to refer to the Syrian conflict that has lasted an incredible 5 years with no decisive outcome whatsoever.

All the participants in this conflict know that Aleppo will go down in human history as extremely ferocious, with terrible consequences for the Syria population, on par almost with names like Srebrenica and Nanking. The participants have completely false expectations about benefits and costs, but they keep fighting every day because their support from others is far from dwindling. Thus, one cannot hope that one side gives up due to the exhaustion of outside supporters.

The participants are:

- Assad and his Alawite group;
- Putin and Russian air force;
- The rebels from the Sunni majority, in several factions;
- The ISIS or ISIL-Sunni terrorists;
- Hezbollah and Iranian volunteers-Shia fundamentalists.
- Rest of the Syrian people in a multicultural setting.

Speaking of λ benefits and λ costs, we have for the key active players in this warfare:

- Assad's clan—the Kalbiyya: stay in power at whatever cost to the Syrian people;
- Alawites: support Assad's clan as long as they can guarantee the safety of this religious minority;
- Putin and his "entourage" in the Kremlin: support an old ally, be loyal to an old cause, display Russian military force without risk of Western involvement—all camouflaged by talk of "Russian Interests" in the Middle East;
- Sunni Rebels: to end the long dictatorship of the Assad clan, which brought so much economic advantages to the Alawites and so much oppression to dissidents whatever comes after;
- ISIS: to kill the Alawites and other Shias, Christians and non-Muslims in Syria in order to integrate the country in the new caliphate in the Middle East;
- Hezbollah and Iran: to make sure that the Assad regime does not fall to any Sunnis;
- Syrian people: peace, rule of law and prosperity.

However, the players in the conflict adduce other things as their *benefits and *costs, like:

- Assad: protect the integrity of the Syrian state;
- Putin: geopolitical needs of Russia or Russian state reasons;
- The Sunni Rebels: democracy;
- ISIS: "true" Islam: complete islamisation, re-introduction of the caliphate and total jihad.

The rhetoric of Assad and Putin fits well with the classic theory of state reasons and likewise with the geopolitical approach to international relations and foreign policy, both of which violate the principle of methodological individualism.

It should be pointed out strongly that the Syrian social structure is much heterogeneous with several ethnic groups and religious sects. It is even difficult to tell what the Alawites

stand for: Are they really Twelvers like the Iranian majority or some mix of “Nusayris”? Besides, there are other kinds of Shias or Shites in addition to different types of Christians like Armenians or “old” Christians. For Assad, the real interests are power and economic advantages, for Putin his personal prestige and for the Sunni rebels and ISIS to finish with the Shia regime.

To display the hollowness of the terms “state interests”, “state reason” and “geopolitical strategy”, I will discuss two recent books by George Friedman that have aroused much attention. Of course, Assad does not take Syrian interests into account and Russia needs no colonial position in the Muslim civilization, neither now nor in the 1970s or 1980s.

The unscientificness of geopolitical inquiry

Friedman conducts geopolitical enquiry, eliciting state interests from geographical factors, always with a specific view, namely that of the US. A close reading gives the following remarks:

1) Contradictory: In his first book (2009), Friedman argues that Russia will go down under during the 21st century, invaded by China, the EU and Turkey, which is nonsense in itself; but in his second book (2012), Friedman states that a great danger to the US position in the world is a likely alliance between Germany and Russia to dominate Euro Asia. Both propositions cannot be true. And why would Kant attempt to marry Dostoevsky?

2) Speculative: Friedman argues that Brazil may challenge US hegemony in the Atlantic by lining up with Angola, economically and militarily. Again nonsense, as both countries are fundamentally instable ones.

3) Opportunistic: Friedman states that the US should not hesitate to play double games in order to fool both Japan and

China, if it suits its interests. Such games would be immediately seen through for what they are: dishonesty.

4) Historicism: Both books promise and analysis of future scenarios and their probabilities, but they are full of historical narratives, some of which are truly superficial. For instance, the German disaster in the 20th century is analysed with the old model of two states on the flanks, but Friedman does not mention Bismarck's land grab in 1871 of vital French territories (Alsace-Lorraine), not does he describe the fatal choice of Hitler to continue aggression after the Munich triumph. Had Hitler restored the Weimar Republic in 1938 and respected its Rechtsstaat (also for Jews), then his reputation among Germans would have been much different. War results from choices, not geography.

5) Platitudes: Africa is described as of no interest to the US, as if human rights and rule of law in Sub-Saharan Africa were of no concern to America.

6) Disregard of relevant values: Friedman states that "...all nations..." are "brutally egoistic" (Friedman, 2012: p. 222), reminding us of Morgenthau's perspective on international relations (see below). But game theory has proved that egoism in interactions lead to "rational foolishness" or coordination failures. Thus, even if Friedman's hypothesis about the motivation of "nations" would be true, game theory entails the need for norms, like Public International Law. Friedman has nothing to say about the PIL or regional organisations that restrain state egoism-compare (Keohane, 2005).

Difference between *benefits or *costs and λ benefits or λ costs

Making a sharp conceptual separation between starred *demands or *costs on the one hand, and λ demands or λ costs on the other hand, allows us to emphasize the immense role that human mistakes play in warfare or violent political

conflicts. Whichever famous war or battle you examine, one is bound to observe errors and mistakes concerning:

- Benefits (overexaggerated),
- Costs (underestimated),
- Subjective probabilities (wrong beliefs about means-end),
- Mean-end relationships, i.e. instrumental rationality.

This distinction between the starred * elements and the λ elements goes a long way in helping to understand the tragedy of politically violent conflict as well as warfare. Often the real benefits for the attacker are minimal while the costs become astronomical, due to faulty means-end beliefs. Theorizing these discrepancies between imagined benefits and costs on the one hand and real outcomes on the other hand, we introduce two new concepts: updating as well as the Zermelo point.

Updating

True information is extremely essential in zero sum games. Thus, the players engage all the time in updating to minimize the distance between *benefits or *costs and λ benefits or λ costs. What is crucial to the end is to have adequate causal knowledge, i.e. more information about the mean-end relationships involved.

One method to increase relevant knowledge is to take past lessons into account. They are very negative for Putin's engagement in Syria. The Soviet Union paid a fortune to Egypt and Syria in the 1950s, 1960s and 1970s, receiving nothing back for all its technical assistance and massive arms material transfers. Likewise, the invasion of Moslem Afghanistan resulted in lots of deaths and most heavy casualties for young Russian soldiers. For Syrian interventions holds that innocent Russian have been killed already. If Assad steps down or falls, Russia is a sucker again. The alliance with the Shiite civilization is not congenial to an

Orthodox country, as it is merely Putin's figment of imagination of *benefits and *costs. Perhaps the losses of Napoleon were due to increased incapacity or willingness to updating efforts?

Zermelo point

As a result of the intense Russian bombardments against all kinds of people linked somehow with opposition to the Assad regime, the civil war in Syria has become more amorphous than ever. It has no end in sight, as the warring factions are far from exhausted, supported as they are by foreign powers. The Syrian people pay an incredible price for Assad's unwillingness to negotiate a regime transition.

Zermelo, mathematician at Freiburg University, delivered the first major theory early in the 20th about zero sum games with his hypothesis about a decisive point of the game when played in sequence, like in warfare. There has been a long debate about what the Zermelo point entails, but his application to chess reveals his intent. It is not a speculation about whether chess is determined from the beginning (win or remis), as some scholars have argued wrongly.

Every skilled chess player knows that as the game unfolds one arrives at a stage in this sequence that is decisive, which entails that the outcome is strictly determined (win, remis). From this node, the rational player can FORCE the outcome—i.e. the Zermelo point or a kind of sub game Nash equilibrium for a sequence of zero sum gaming.

The Russian intervention in Syria has made this terrible game completely open, meaning that many more civilians will die.

Evilness, war and political conflict

Morgenthau (1978) derived the proposition of Friedman "all nations... are brutally egoistic" from human nature, war being the prolongation of people's fighting instincts. Thus,

political conflict is unavoidable and the Hobbes' recommendation follows: Arm yourself if you want to live in peace. Interestingly, Morgenthau was not only under the influence of Carl Schmitt, but he also received much stimuli from Kelsen (2006, 2009) during his Geneva period in the 1930s (Frei, 2001). Thus, Morgenthau recognized that unlimited selfishness must be restrained by norms. We find this opposition or antimony between egoism and normativity in the entire history of political thought, from the post-Socrates to the intense debate about the validity of public international law today.

This discussion on human nature has involved wide differences of opinion among the epicureans, cynics, stoicists, scholasticism, Hobbes, Spinoza, Locke and Rousseau among the great historical personalities as well as Lorenz (1980) and modern biology today. I side with Spinoza in his remarkably original and truly underestimated *Tractatus Politicus* (2005), where he launched a defense for the democratic regime, starting from Hobbes' description of the state of nature (2008), without any Lockean assumption about altruism and its human rights catalogue. In the debate today, it seems to me that egoism as the starting assumption for a social contract is more fertile than the Rawls- Dworkin (Rawls, 1999; Dworkin, 1977) natural law assumption (Gautier, 1999). But naked selfishness defeats itself.

It is amazing how Putin has changed towards an aggressive set of policies, both domestically and internationally, almost as if he believes he lives in a Hobbesian jungle. Is Russian never going to experience the λ benefits of the well-ordered society with a rule of law regime? Putin employs too much political violence that is out of touch with the needs of Russian people just like the Tsars and the Communist leaders. Why no rule of law in Russia?

ASSAD and his Kalbiyya, the Alewites and Shura

The cruelty of the Assad-Putin war in Syria in general and Aleppo in particular can only be understood as a strategy or tactics suitable for the natural state of Spinoza, where no legitimate state or set of norms restrain egoism. Assad put himself and his tribe or religious sect in this anarchy by refusing to engage in regime negotiations for a peaceful transfer of power. The mutual gains for all warring players except the ISIS would have been simply enormous. The Assad regime practices a policy of house destruction, meaning anywhere opponents can be spotted, their houses or apartments will be leveled to the ground. And Putin assists willingly in this capital demolition that now must be astronomical.

The conflict in Syria dates back to the coup d'état by the Hafez al-Assad and its clan in 1971. It cannot count upon ruling Syria forever. In a negotiated regime transition, all stood to gain, but Pareto optimality did not suit Assad or the ISIS. The Syrian civil war is tragic foolishness.

A series of closely monitored referenda with international observers from the EU, the US and Russia could have paid the way for peaceful transition and the introduction of rule of law. This is Islamic SHURA at its best potential. With guarantees for the Alawites against massacres, all Syrian groups would have been better off with a comprehensive deal, except the ISIS.

Conclusion

The development of events in and around Aleppo takes us into the theory of the state of nature, where “brutal egoism” reigns. Assad and his clan Kalbiyya reject any settlement, despite that his main minority group, the Alawites, suffer enormously like the other groups in war torn Syria. The

Russian intervention with heavy bombardment against civilians brings nations into the Hobbesian predicament. As there is no Zermelo point, this conflict just rages on and the Syrian people is crushed. Why no SHURA to reach a Pareto optimal deal, even today after so many deaths and much destruction?

The political conflict in Syria is as violent as war becomes, but it is not about state interests or reasons. The causes are to be found in the preferences and beliefs of the key participants, and their views about benefits, costs and subjective probabilities. As a matter of fact, the same holds for activities in international relations generally.

Friedman and Morgenthau would agree on “brutally egoistic nations” and that international relations are still played out in a Hobbesian jungle. Yet, normativity has been growing for a long time, offering norms that restrain selfishness. Had French foreign minister de Villepan been respected in the UN Security Council 2003, the Middle East would be a very different place today. Public international law is like a spontaneous order that has emerged slowly. It should always be respected, as it restrains opportunism and misconceived egoism. At the end of another bloody day, Assad-Putin must negotiate a peaceful settlement including a regime shift.

The extreme violence in the Syrian civil wars cannot simply be explained by the sharp cleavages in the history of the country, dominated by foreign intrusion, colonialism and the struggle among sects (McHugo, 2015). In addition to a history of domination and foreign intervention, the Syrian civil wars strongly corroborates the hypothesis that wars are basically meaningless and often express human aggression, if not evilness.

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29

The crisis in the Islamic civilisation

Introduction

A great crisis of belief in the world's large civilisation, viz Islam has resulted in the spreading of anarchy in the Middle East as well as in Northern Africa, setting in motions thousands of people eager to avoid the horrific nature of civil war. The crisis of Islam has had enormously negative consequences for many of the Muslim countries in terms of both human casualties as well as the destruction of physical assets. Unprecedented is the scope and ferocity of the civil war within the Muslim civilisation, as entire countries have become ungovernable, terrorised by rebels or militias supported by foreign intervention. The loss in human life and suffering of the Muslims is on an entirely new scale, resulting in a huge number of deaths from domestic violence as well as an unprecedented flow of emigrants towards Europe. Yet, there is no coherent response from the Koranic civilisation to quell this disorder and political violence.

Since the Muslim civilisation is together with the Christian one the largest in the world, the crisis in Islam has implications not only for Muslim countries but also for the West, harbouring more and more Muslims. It is not just only a simple matter of a youth bulk, young people without employment opportunity or having easy access to ever more lethal weapons furnished from abroad. It is not only the result of military intervention from Western powers, first Soviet Union in Afghanistan, then the Allied attack on Iraq and finally the Western support for the overthrow of Kaddafi. These violent military actions against countries in the Koranic civilisation resulted in dismal consequences and the collapse of the state in several Muslim countries. Yet, it is at the *core of Islam* that a *confrontation of beliefs* takes place between not only Sunnis and Shias but also between two Islams, one moderate and one fundamentalist.

Old and new conflicts

The *old* conflict in the Muslim civilisation, namely Sunni against Shia, originating 632 after Christ with the prophet's death, has been immensely sharpened by the *new* conflict between moderates and fundamentalists. This simplification excludes several other conflicts that all have an ethnic element involved, such as the Kurdish struggles on various fronts, the clashes in North-western China, the conflicts between Jews or Christians and Moslems, etc. The century old struggle between Sunni and Shia has now worsened in several Muslim countries: Why is it seemingly unresolvable, resulting in so much political violence still today? The rise of the radical fundamentalism aggravates this religious cleavage in Islam.

One may employ a simple 2X2 Table to illustrate the distinctions made by means of a few illustrative examples:

Table1. *Groupings in Islam* Moderates

		Fundamentalists
Sunnis	Majority	Talibans, ISIS, Boko Haram, Al Qaeda, Al-Shabaab, Wahhabism
Shias	Alevis, Ismailis, Zaydis	Khomeini, Twelvers

The Sunni-Shia tension is to be found in the Syrian civil war, the struggle in Iraq and in Bahrain, in the tension between the Gulf monarchies and Iran in Yemen. The emergence of radical fundamentalism as a major political force has occurred in Algeria, Tunisia, Egypt, Palestine, Syria, Iraq and Afghanistan. For instance, one of the radical groups, the Muslim Brotherhood (MB) is a branch of Sunni, opposed to both Shias and moderate Sunnis. The strong support for new Islamic fundamentalism is based upon a new interpretation of The Koran, which entail that there is somehow one and only one “correct” or “original” interpretation that must be institutionalised in state and society – *islamisation*.

“Islamisation”

The major fundamental change in Muslim civilisation, its beliefs and values, in the 20th century is the emergence of the idea that there is somehow *ONE* Islam that can practiced one hundred per cent in all aspects of life. When combined with the old Salafist approach to The Koran, the chief approach of radical fundamentalism appears.

The old Salafism of Ibn Taymiyya (dead 1328) glorified the past of Islam – the age of the prophet. However, the golden period of the Islamic civilisation did not take place in early Arabia with its tribal practices. Instead, Islam flourished in the High medieval period and up to the Renaissance in all areas of social life: medicine, astronomy, mathematics, philosophy, trade, art, etc. The blossoming of Islamic civilisation was based upon openness to other cultures, free enquiry and sharp argumentative confrontation about basic beliefs.

The old Salafist view of the evolution of Islamic civilisation is to look backward, which is of course practically unfeasible in the period of globalisation when all the civilisations are interacting daily in various forms.

The new radical fundamentalism adds control, violence and force to the Salafist ideals. The people of Islam – *Umma* – is to be kept in a state and society, completely dominated by the ideals of ancient Islam, as if there really existed ONE Islam. The concept of *jihad* receives with a new interpretation as legitimate violence for defending a true Muslim society. “Political Islam” turns old Salafism into a totalitarian political philosophy with terrorism implications. It has been said about the founder of the MB, al-Banna that he wanted to restore the caliphate that had fallen in 1924 in Istanbul. However, the MB in Egypt soon developed a much more radical and comprehensive call for change of state procedures and social practices: Islamisation writ large.

The three new major theoreticians

The chief theoreticians of modern Islamic Sunni fundamentalism – Mawdudi, Qutb and Faraj outlined a coherent utopia for a future Islamic state controlling a society structured in accordance with a very strict form of Islamic Law. Radical fundamentalism harbours differences, like e.g. several in the MB does not accept Wahhabism, as no one can come between the prophet and his community, neither Ali (Shia) or Muhammed bin Abd al-Wahhab (Saudi Arabia). Yet, these three scholars outlined a consistent new interpretation of the Koranic message: islamisation (Mawdudi), caliphate (Qutb) and offensive instead of defensive Jihad (Faraj). It has brought untold misery not only to people from other religious creeds, Shias, ethnic minorities but also the Sunnis themselves.

The new radical doctrine is based on *one* possible interpretation of the Koran as well as *one* selection of customs

from the Hadith of the Sunna. Yet. In the history of Islam, there have been many interpretations of the Koran. Why would any interpretation be the “correct” one? There exists no criterion for selecting the “correct” practices in the Hadith, comprising an enormous amount of doings and sayings of the prophet.

“Islamisation” of state and society involves:

- ⊙ One unique set of customs is valid in society, according to Sharia;

The state must be an Islamic state, oriented towards the enforcement of the Sharia;

- ⊙ Religious leadership of government in the form of charismatic personalities, the caliphate;

- ⊙ The use of violent means – *jihad* – to protect the Islam and to further Islamic objectives abroad, also with terror against Moslems.

The endorsement of physical violence has led massively to renewed forms of terrorism in the Islamic civilisation, practised by rebels, called jihadists. As a result, some of the Moslem countries are drowned in lethal rebel attacks on the state as well as on innocent civilians, often Shias but also other groups.

Radical fundamentalism

New Islamic fundamentalism has several roots, where one does not preach exactly the same message, but these beliefs and values have come to the forefront as never before:

- ⊙ Classic salafism;
- ⊙ Saudi Wahabbism;
- ⊙ Indian Deobandi.

What unites these different schools or theologies is a set of beliefs and values that now have more adherents than ever before, taught over and over again in the Koranic schools, *madrasas*, and universities including:

- ⊙ Only Sunni Islam is true Islam;

◎ Shia Islam is faked Islam;

◎ Muslim societies can only thrive through “*islamisation*”, meaning the literal application of Sharia, subjugation of women, caliphate rule, and jihad against intruders of Muslim societies or their collaborators in Muslim societies and elsewhere.

To understand the new radical fundamentalist Islam, it is vital to point out that Islam has always been is a mosaic of different beliefs, often with people fighting each other. Over the centuries, one finds moderate Islam, rational Islam, Sufi Islam, Shia Islam (several schools), etc. Fanatical Islam is put together in the 20th century by three most important scholars, namely: Mawdudi, Qutb and Faraj. Their teachings in books or pamphlets have turned the civilisation of Islam into a terrible civil war, the ending of which is impossible to predict. Whole countries have been left completely destroyed: Syria, Libya, Iraq, Afghanistan, Somalia, Mali and Northern Nigeria as well as Yemen.

As several Muslim countries have fallen into the set of failed states, one would be interested in searching for an explanation of anarchy within the Islamic civilisation. Religious and ethnic cleavages together with rebel fighting has turned countries like Libya, Mail, Nigeria, Somalia, Gaza, Syria, Iraq, Afghanistan and Pakistan into anarchic societies without functioning government. The lack of law and order also plagues Egypt, Bahrain and Bangladesh. Why is there now so much political violence in the Moslem world? The sufferings of ordinary Muslims from government breakdown and sectarian clashes as well as rebel fighting are such that many people have to leave and live elsewhere. The rise of Islamic fanaticism focussing upon Jihad is a crucial piece in this puzzle.

Sunnis versus Shias, moderates against fanatics

The conflicts among Muslims are essentially of two types religiously, bypassing ethnic tensions:

- ◎ Sunnis versus Shias
- ◎ Jihadists versus moderate Sunnis and Shias.

The first conflict dates back to the origins of Islam, due to the complete lack of any political philosophy in The Koran. There is not a single word about the political future of the Islamic community – the *Umma*, when the prophet dies.

The Koran builds upon Jewish religion with the claim of being its ultimate culmination of the tradition from The Bible with its monotheism and the long series of prophets: Abraham, Moses, Jesus etc. It shares the Jewish opinion that Jesus could not have been the son of God, and it never mentions

the real creator of Christianity, namely Paul. The Koran is the re-instatement of the Old Testament writ large plus the claim that Mohammed is the last of the prophets stating the final revelation of God to the humans. Without the Old Testament, no the Koran. But it says nothing about the world to come when the Prophet is no longer alive.

Mohammed ruled on the basis of charismatic authority, breaking tribal leadership prevalent on the Arabian Peninsula. This unique combination of political and religious power goes under the name of the caliphate. It has two profound problems:

1. How is the caliph to be chosen?
2. What are the basic rules of the exercise of his power?

There exists still no solution to these two basic problems of any rulership, one thousand and almost four hundred year after the Prophet. The outcome is the political instability all over the Muslim civilisation.

Over the history of Islam, the Koran has received different interpretations. Actually, the text war put together long after

the death of the prophet and there exist competing collections of verses – the basic unit of the Koran. Whether the verses constitute the words of God has been a contentious issue with this religion, resulting in political violence in the 9th century. Although this position is generally regarded as blasphemy today, it is undeniable that the distance between the Salafist on the one hand and the rational interpretations on the other hand is large, to say the least.

This implies strictly the question of scepticism: How to identify the “correct” interpretation of the Koran? It leads to crucial questions about legal and political authority in the Muslim civilisation. One way out of the dilemma of widely different interpretations of a key religious text that attempts to establish the norms of society is to have some form of authority lay down the “correct” interpretation and then proceed to enforce it by all kinds of means.

The problem of interpretation received an early and, as it was thought, final solution with the *fiqh*: Islamic jurisprudence would codify what Islam stands for in a set of precepts that could not be denied nor neglected. However, this legalistic approach though highly influential upon later development after 800-900, did not success in arriving at consensus. Thus, there are 4 schools of jurisprudence within Sunni and another school within Shia. Their differences reflect the basic fact about a lack of underlying consensus in the Islamic civilisation, as Sunni schools differ from the Shia school and the Sunni schools differ among themselves as to doctrine and dogmas.

The close connection between religious dogma and political power became one of the hallmarks of Islam, as it never established an independent church, like Christianity. It was up to the successor of the prophet to maintain religious order and uphold its stated norms in society. Thus, the question of interpretation of the Koran became intimately

linked with the successor problem: Who is to be the *Caliph* (Sunni) or the *Imam* (Shia)?

Islam does not contain like Christianity or the religions of India a much elaborated theology. The core of Islam is the set of 5 duties, nothing more. When they are respected, the believer will receive the salvation. This minimalist approach leaves much open to disagreement. And diversity of opinion on religious matters has become typical of Islam. One may ask why this diversity today is conducive to so much political violence within this civilisation, as religious tensions have subsided in the other civilisations of the world. One only has to bear in mind the enormous fighting within Christianity between Catholics and Protestants or the struggles between sects in Hinduism to recognize that there is nothing especially prone to conflict about the Koran. It is the interpretations of the text and the social practices based upon these interpretations that count.

Religious issues

The Muslim civilisation holds a carpet of religious diversity where many groups are involved with a bewildering system of beliefs - just to mention a few:

- ⊙ There are at least four kinds of Shiism: twelvers in Iran and Syria, seveners in Lebanon, Syria and India, fivers in Oman as well as the many Shiites in Turkey, called Alevis;

- ⊙ Muslim brotherhood belongs under Sunni like ISIS and Al Qaeda;

- ⊙ Sunni harbours old Salafism, new fanaticism as well as Islamic rationality.

The main difference between Sunnis and Shias is the concept of *tawdid*, or oneness, which the Sunnis endorse but the Shias reject in favour of adding Ali to Mohammed as prophet.

In addition, it is true that there exist sharp differences between the moderates and fanatics. They range over a

number of aspects of Islam besides the principal solution to the successor question, such as:

- ⊙ Division of public and private;
- ⊙ Division of mundane and sacred;
- ⊙ Acceptance of modernisation.

It holds generally that average Sunnis tend to be more pragmatic than the average Shias in Iran. Thus, modernisation, secularism, the market economy and democracy is more supported in Sunni majority countries than in Iran, although this may only be a result of the Shia theocracy in Tehran that does not allow free and fair elections. Yet, this stylised picture of the Sunni countries as more moderate than the Shia ones is nothing but a simplification that hides complexity of religious opinions.

Religious beliefs are conducive to violence when they concern the distribution of valuable assets in scarce supply. The control of these real assets – money, power, taxes, premises, land – is what human beings ultimately fight about, when the conflicts are not solvable through negotiation. Religious creed is a tool for exercising power over human beings, which is why people with different creeds collide when they happen to share the same territory and the same community. It is true that religious emotions may give the conflict between religious groups a special fervour and intransigence, but what is decisive is the access to the control over human beings.

However, issues in religious theology can only be resolved by argument, if ever. The most difficult questions that religious groups pose and answer differently concern matters that are metaphysical, such as:

- ⊙ Is God one or three?
- ⊙ Could Jesus be the son of both Joseph and God?
- ⊙ Whom did Mohammed leave power to: a believer, his entourage? Or just his gender Ali?
- ⊙ Is jihad a religious duty for all Moslems?

- ◎ Is Buddha a God or the God?
- ◎ Is Krishna really the incarnation of Vishnu?
- ◎ Can people receive luck by means of *bhakti*?

The list above about the mysteries in religion could be made much, much longer. It is all a matter about creed, or religious belief, not reason, or deductive or inductive argument. When people disagree about the answer to such metaphysical questions, they can employ the sword to find a speedy but always temporary solution, like Alexander at Gordon. But conflict cannot settle the matter, only offering a most short lived “solution”. However, resort to the sword gives access to the real assets that people collide about: power, prestige, money, land, etc.

Religious purity is no doubt essential to some people with strong religious creed. However, it is one thing for these people to be able and have the right to practice this purity, and quite another matter to attempt to impose it upon other people with different minds.

Religious tolerances in Muslim civilisation

For an external observer, the tension between Sunnis and Shias appears like a relic from the past. Why can these two Muslim beliefs not co-exist? Since the ideas of the caliphate or the imam are long out of date, Muslim countries having some form of modern constitution, honouring religious tolerance, especially among its own Koranic communities.

During the so-called golden period of Islam during the medieval ages when there was great diversity of opinion, a solution to the question of reconciling faith with reason was formulated that could have befitted Islam much, if it has been widely endorsed, leading to religious tolerance.

The rise and growing strength of Muslim fundamentalism in an age of globalisation, modern economics and the triumph of the natural sciences is enigmatic. It is widely believed that

Islam is somehow responsible for this global paradox, but it would be a fatal mistake to equate the religion of Islam, one of the three great monotheistic traditions, with unreason.

All the world religions have had to take a stand on the relationship between reason and faith: How to handle any conflict between the two? And all the great religions of the world today have devised a *modus Vivendi* between reason and faith, except Islamic fundamentalism. This is all the more astonishing as Islam was the first of the major religions to work out a tenable solution of how to respect faith while fully employing the faculty of reason and observation. Before Christianity came up with various solutions to this fundamental problem – with Thomas Aquino, John Locke and Baruch Spinoza – there was the theory offered by Ibn Rushd or Averroes. It makes him the greatest of medieval philosophers.

The *Decisive Treatise* of Averroes sums up the entire debate about reason and faith in the Moslem civilisation with the emerging schools of philosophy and jurisprudence since the Koran was codified around 700 after Christ. Drawing upon the various contributions by inter alia Farabi, Avicenna and Ghazali as well as many other more like the Azelites, Averroes formulates his position in a few striking arguments about faith and reason. Muslims have to live with two meanings of the Book of God, the literal and the allegorical. So is the case with Jews and Christians, as stated much later by Spinoza. The only conclusion of the predicament of faith and reason is religious tolerance, as with Locke's *Letter on Tolerance* (1699).

The Koran like the “*Sainte Bible*” contains beautiful tales, which when not in accordance with scientific reason can only be told in their literal meaning as exactly that: stories, as first emphasized by Spinoza in *Tractatus Theologico Politicus* (1677). Yet, the first philosopher to realise the double truth – faith and reason – was none other than Averroes from Marrakech.

The Sunni-Shia clash is a zero-sum conflict with no predictable outcome. This makes it meaningless, as there could only be losers. The conflict between Sunnis and Shias has no victor or loser, but only human misery. It can go on for one hundred more years, but with no decisive outcome except human suffering. Why cannot Islam accept such a minimum of tolerance that Sunnis and Shias can live side by side, with their separate shrines?

The precepts of the Koran

What could be a better place to look for an answer than the Holy Book or the Book of God, viz The Koran. It states a few rules that are pertinent to the question:

- ⊙ No Muslim may kill another Muslim;
- ⊙ Muslims who are right guided will enter Paradise on judgement day;
- ⊙ Muslim who turn infidels will suffer the same fate as all infidels, namely to burn in Hell;
- ⊙ Muslims who have been misguided can repent their sins and perhaps receive God's mercy;
- ⊙ A right guided Muslim accepts fully the consequences of the five duties.

One finds several places in the Koran where these principles are expressed. How they are to be interpreted depends upon who is to be considered a Muslim, what it entails to be seen as an infidel and what a rightly guided behaviour stands in details. Islam harbours diversity of opinions in relation to the coherence among the 5 rules above, resulting in major schisms and the formation of several sects. Thus, the Sunnis divide themselves in four schools of jurisprudence as well as in modernists and fundamentalists. The Shias constitute a most diverse lot, from Iranian and Iraqi fundamentalists with their own school of jurisprudence to modernists in e.g. Turkey, Syria and India. In addition, there is the group of Sufis among the Sunnis and Shias.

Now, in relation to the crucial question above, one must ask whether the Sunni-Shia civil war or the jihadists' attacks on Muslims can be motivated by these 5 rules of Islam. Salafists claim that Shiism is a blasphemy, because it violates ONENESS (tawdid), regarding Ali and his descending family as somehow a saint besides Allah. Jihadists under the influence of MB sharpen this rejection of Shiism as magic, but jihadism also looks upon moderate Sunnis and Shias as targets of political violence, aimed at islamisation.

The expansion of the concept of infidel to cover not only adherents of other religions but also Muslims with a different faith than Salafism was re-innovated in the 20th century by Mawdudi, Qutb and Faraj – the ideological fathers of Islamisation and radical massive terrorism.

When a Moslem country adheres to the Islamic interpretation of these ideologues of fundamentalists, then peace and political stability is not feasible. They stand for an Islam that is as uncompromising with modernity and reason, as also Khomeini's Shia Iran. In Islam today, the French saying holds: *Les extremes se touchent*. And they extended to the scope of jihad fighting to include all kinds of infidels, Moslem or others, with deadly repercussions. Jihad as the hidden duty (Faraj) is allowed against anybody who opposes the islamisation of society (Mawdudi) or the state (Qutb). The political philosophy of radical fundamentalism is not derived from The Koran, but constitutes a 20th century dismal innovation in general Islamic philosophy.

In traditional Islamic philosophy with its great representatives during the medieval ages, the focus is upon the relationship between religious faith and reasonable belief. It covers a large range of issues about the origins of universe and life and the nature of human volition and destiny. Political Islam is a recent ideology with no basis in The Koran, emerging in the 20th century out of India (the Deobandi school), Pakistan and Egypt.

One is amazed to read about the number of Muslims volunteering to fight for the ISIS, as it offers a road map to death and humiliation. Young people may be attracted by the conception of a “martyr”, but it is all make belief. When people die, they do not exist anymore, neither as spirits waiting for the resurrection nor as travellers to some “Paradise” in the Cosmos.

Sharia law

In presentations of the main features of Islamic Law, it is never underlined sufficiently that Sharia is basically private law. Islamic Law developed outside of Western law – Roman Law and Common Law – as the tool for Islamic jurisprudence (*fiqh*) to create a minimum of order in the Muslim Empire, growing rapidly after the death of the Prophet, both westward and eastward.

The new societies adhering to Islamic faith needed a fundamental set of rules for the behaviour of the Umma, i.e. the private life of the faithful concerning family, marriage, daily activities, business and commerce. Sharia Law provided this institutionalisation with its four schools of jurisprudence. None of them considered public or constitutional law at any length. It was simply assumed that the caliph or the imam would be a man rightly guided. When the Arab heritage was mixed with other non-Muslim traditions, the assumption remained that the khan, sultan or king (emir) would be right guided. Like Roman Law, Sharia Law spells out the implications of various forms of private contracts, which had to be respected ultimately due to divine sanction (Haegerstroem, 1953).

One may draw a parallel to Roman Law, which was also basically about private law, including criminal law. *Corpus Juris Civilis* did not regulate public power, which rested in the hands of an Emperor, who made law through “constitutions”, meaning commands. The concept of constitutional law as

restrictions upon the state emerged in the 16th century in Calvinist Europe. Several Muslim countries imported foreign constitutional law in the 19th and 20th centuries, but public law in Moslem countries never succeeded to establish political order, i.e. rule of law.

Rule of law captures 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.” [Retrieved from].

When public law started to develop, covering both constitutional law and administrative law, it targeted much what is now called rule of law or the *Rechtsstaat* (Reiss, 1991). It did not call for democracy or the universal franchise, because its goal was law and order under the legal framework. The rule-of-law regime offers constraints upon political power, whether be it the power of political leaders or that of bureaucrats. It counteracts a number of vices that political power often succumbs to, including:

- ⊙ Arbitrariness;
- ⊙ Corruption and embezzlement;
- ⊙ Nationalisation of property;
- ⊙ False accusations and unreasonable search and seizure;
- ⊙ Detention without accusation;
- ⊙ Politicised court rulings.

Thus, a country which that honours rule of law upholds rules that restrain politicians and bureaucrats in an effort to promote the outcomes (a) – (f) that, which would be beneficial for both economic life and political liberty.

Where the rules of rule of law are observed, one would not always find democracy. In general it holds that democracy implies rule of law, but the opposite may not hold. Thus, the rule of law set of rules anticipated the democratic regime from a historical perspective, in both the UK and in Continental Europe (Lane, 2011). And on the contemporary scene, one

finds countries with considerable amount of rule of law, although they do not practise competitive democracy with free and fair elections that may be contested by any political party whatsoever.

A political regime that runs according to rule of law would satisfy a few conditions that constrain the exercise of political power. Rule of law entails that power is be exercised according to the following precepts concerning due legal process and judicial accountability:

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

The theory of good governance is based upon the hypothesis that a government adhering to these precepts will be more successful in enhancing socio-economic development than a government that fails to respect these principles.

Modern constitutions were basically imported from the West during the 19th and 20 centuries. But they most often were replaced by naked power or authoritarian constitutional documents. Even more important is the Islamic law lacks the fundamental notions of individual rights under the rule of law framework that became such a vital part of both English law (Common Law) and French-German-Swiss Law (Civil Law). The institutional deficit in Muslim countries goes back to the so-called Golden Age, as neither the Prophet nor the jurisprudence created anything like constitutionalism. Islamic law deals with private law matters, theft, property, inheritance, marriage, religious matters like the *wagf*, etc. The worldly matters are left to chance with the restriction that the caliph, sultan, emir, king, imam, etc, must never be an infidel.

Democracy and political instability in Muslim countries

One should make a clear distinction between political stability and democracy in relation the Arab Spring movement. Certainly, the groups involved strived for overthrowing authoritarian rule and military dictatorship, but hardly more than half of the people taking to the streets were democrats. A significant portion was made up of the Muslim Brotherhood, which searches for the re-creation of the caliphate. Thus, we have the following classification of Muslim countries:

Diagram1. *Political Stability versus Democracies: Countries today with large Moslem populations*

Political Stability Political Instability

Democracy Turkey, Bangladesh, Syria,

Lebanon, Pakistan,

Albania, Tunisia Iraq, Nigeria, Mali

Afghanistan, Libya,

Somalia, Kenya

Indonesia, Mindanao

Dictatorship Saudi Arabia, Qatar, Egypt, Bahrain, Iran,

Oman, Kuwait, UAE, Algeria, Central African

Jordan, Morocco, Republic, Malaysia

Brunei, Kazakhstan, Kyrgyzstan

Uzbekistan, Tajikistan

Turkmenistan

Diagram 1 shows that political instability and the lack of law and order characterizes much of the Muslim civilisation today. In the quest for political reforms in the Muslim civilisation, the focus has been exclusively upon the introduction of democracy, bypassing the horrors of political instability and neglecting the absence of law and order. The Arab Spring failed almost everywhere except Tunisia, simply unleashing political violence, anarchy and anomie. When an authoritarian regime falls in the Moslem World, then it is

replaced by anarchy or anomie, i.e. warring rebel groups and fighting clans. The crucial importance of “clanism” for Arab societies and other Moslem states has never been adequately theorised. The sufferings of Muslims in countries with anarchy or anomie have become so huge that one cannot bypass that democracy efforts may fail and result only in political instability at an enormous price in lives, casualties and possessions. The worst is the warring rebel and “clanque” society.

Political stability as law and order may be identified with the notion of rule of law in the World Bank Governance Project. Government would face the task of upholding a set of minimum rights to due process of law, personal integrity and material possessions Figure 1 displays how this minimum kind of rule of law, not comprising the democratic regime, varies around the globe, according to the WB, mentioning a few Muslim states.

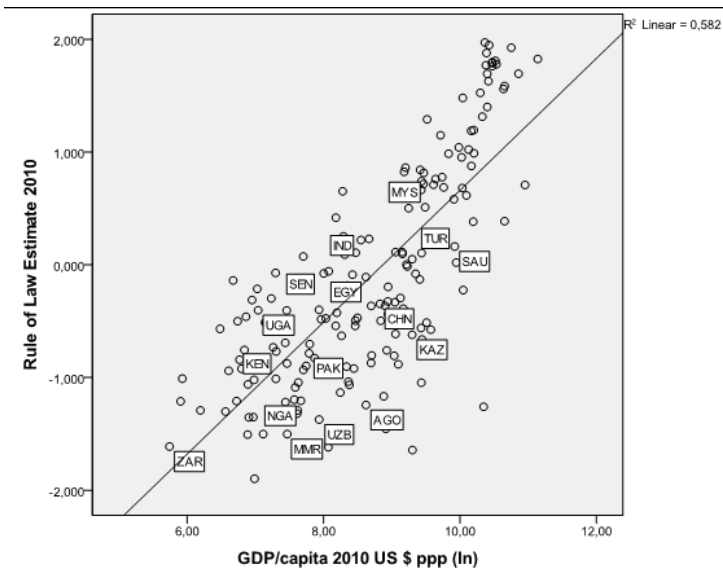


Figure 1. *Rule of Law: Political stability as law and order*

Source: Sources: Kaufmann, Kraay, & Mastruzzi (2012) Worldwide Governance Indicators; World Bank (2012) World Bank Databank.

Political instability in several Moslem countries mean today not only day-to-day turmoil and assassinations, police brutality, lack of legal integrity, arbitrary court decisions, unlawful detentions, torture etc. It also involves something even worse, namely the new feudal order of conflicting rebel groups, heavily armed and most brutal. They fight government but also each other, using terrorist methods. In so far as the new anarchy and political instability in the Islamic civilisation is religiously motivated, it only makes the life of Moslems miserable. Figure 2 shows that the framework of rule of law is not well established in the Koranic civilisation.

The Koran is constitution free, with no mentioning of the idea of rule of law. The Koran only outlines a set of rules of the private behaviour of his community, especially regarding marriage, heritage and sex, with somewhat special rules for the Prophet. When these rules were worked out in the Islamic jurisprudence (*Figh*) by adding rules from the sayings and doings of the Prophet (*Hadith*), In no schools of Islamic jurisprudence does one find public institutionalism, as they all whether Sunni or Shia concentrate upon private behaviour. As a matter of fact, The Koran launches no political philosophy at all, which could have outlined the rules of political rulership in the Muslim civilisation. The Koran is one hundred per cent religion, with little philosophy and no politics in the sense of institutionalism.

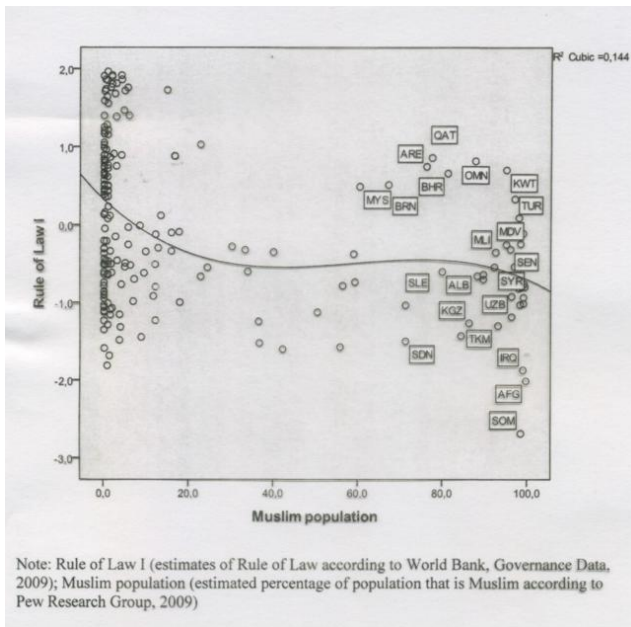


Figure 2. *Rule of Law in Muslim Countries*

Conclusion

The amount of political violence has reached a level and intensity in the Muslim civilisation that hurts ordinary people in a manner that has no similarity what so ever in other global civilisations. It gives rise to the question about the religious cleavages in Islam and their implications for political violence and state stability. *Jihadism* introduces a so-called war of attrition into country, a most lethal phenomenon that involves fighting over a long time period until one party is exhausted.

It seems as if the Muslim civilisation may implode from inside, leaving numerous countries in civil war, anarchy, anomie, rebellion, attacks against innocents, women and children, looting by rebel groups and destruction of valuable material assets. Three responses have been suggested to the Muslim civilisation decline:

© *Jahiliyyah*: the concept for "ignorance of divine guidance" or "the state of ignorance of the guidance from God" or "Days

of Ignorance. It would spell the demise of the Muslim civilisation and the end to all the hope among Moslems for a better life in human dignity.

© Western modernisation: democracy (Held, 1995). It has been tried in several Muslim countries, but only Tunisia seems to be successful. When coupled with the main religious cleavages it may even augment political violence and be *cul de sac*.

© Institutionalisation of legal-rational authority with government found upon rule of law.

Under a feasible rule of law regime with the recognition of The Koran, there is no need for so incredibly much political violence in the Muslim civilisation, leaving Muslims and other groups with peace, the hope of prosperity and religious co-existence of Sunnis, Shias and moderates as well as fundamentalists.

When the other civilisations in the world power ahead towards higher levels of well-being, parts of the Islamic civilisation destroys for itself, failing to protect the life and assets of its Islamic believers. The French would say: *Ca sert a Quoi?* Or The Romans would ask: *Cui bono?*

The search for the true Islam, as with the Salafists, or the Islamisation of state and society, as with the jihadists, is a meaningless effort. It has very negative consequences for the entire Muslim civilisation, resulting in endless political violence and the deaths of innocent civilians. The leadership in Moslem states and international organisation must start facing up to the task of making Moslems countries peaceful, tolerant and economically vibrant.

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20th century legal philosophy as reflected in Dane Alf Ross

Introduction

Danish legal scholar and political scientist, Alf Ross, has received his well deserved biography (Evald, 2014). Ross was a world class social scientist and legal philosopher. His life is simply fascinating. Ross tried to combine the basic ideas on the notion of the state by two dominant practical philosophers of the 20th century: Hägerström (Uppsala) and Kelsen (Vienna, Geneve, and Berkeley). Did Ross succeed?

Alf Ross made contributions to constitutional, administrative, and international law, but his main focus was legal philosophy. His most important book *Law and Justice* (Ross, 1959) is full of erudition, but it rejects all notions of justice, even rule of law, as “meaningless”. This is the legacy from his Vienna period, the logical empiricist arguing about “meaning” and “verification” in a manner that is now abandoned. He wrote a large number of books

and articles. He also ventured into “staatswissenschaft”, publishing the best-seller *Why Democracy?* (Ross, 1952). Like Kelsen and Hägerström, he was fascinated by the role of the state in law.

The problematics of legal philosophy

The classic problematic on legal philosophy is to explain what is law. Obviously, law offers norms for the conduct of behaviour, but what is the difference between legal norms and moral norms? Certainly, law can be written down and systematised into code books. Yet, how to know what it says before the judge decides? Obviously, law should benefit society. However, is jurisprudence utilitarian, maximizing “the greatest happiness of the greatest number”? If we start from Kirkegaards insight into human behaviour, “EITHER-OR”, one must ask on what grounds humans make their choices?

At the centre of legal philosophy is the fundamental relationship between IS and OUGHT. This distinction is also crucial in the Social Sciences. Famous Danish Law Professor Ross devoted his life to upholding this separation throughout his life 1899-1979, an ambition that he shared with several of the great legal scholars, like Hägerström, Kelsen, Weber, and Hart. Ross emphasised the division between valid law and justice. However, as of now, the separation between is and ought has once more become contested by Harvard philosophers, and legal philosophy has turned into nothing but moral philosophy with Rawles (1971) and Dworkin (1977). Alf Ross denied justice considerations in jurisprudence as “pointless”, and this was an early influence from the Vienna school during his first major visit abroad. Professor Evald manages to analyse Ross’ life against the background of international legal Philosophy, and a peculiar academic career characterised by many hindrances, not in the least from

Danish colleagues. The second major problematic in legal philosophy is to elucidate the distinction between on the one hand legal norms and moral rules on the other. Life is full of normativity, but which norms constitute valid law? Ross first came across Kelsen's emphasis on the validity and subsequently he endorsed Hägerström's focus on efficiency. He mixed ideas from Vienna and Uppsala seemingly without scruples, but he managed to be considered as a leading representative of the one of the major schools of legal philosophy: Scandinavian realism.

Validity

Kelsen made the concept of legal validity his most famous construction in jurisprudence. In 1934, he published *Reine Rechtslehre* where he offered his typical "stufenaufbau" of law as a system of norms. This is normativity writ large. The lowest level of norms was orders issued by superiors sanctioned by administrative law. In turn, administrative law was sanctioned by legislation which was sanctioned by the basic norm, the constitution. This systematic and logical legal expose became very controversial, but Kelsen's exclusion of Natural Law was shared by Ross. It can be mentioned that the English translation *A Pure Theory of Law* is flawed and does not translate the 1934 book properly. In fact, it includes numerous rather superficial sociological essays by Kelsen. Kelsen's books in *staatswissenschaft* still holds high quality, though.

Efficiency

Hägerström completely rejected the notion of law as legal validity, for him validity was a moral concept. He founded the school of legal realism in Scandinavia by equating law with the legal machinery, i.e., police, courts, and prisons. Jurisprudence could only be a science if it abstained from all forms of morals, and it could only be an empirical science if it

studied the behaviour of judges in particular. Law was a fact and not a norm.

Ross' metaphor

Ross continued the school of Scandinavian legal realism and upheld their teachings to his very end. At first, he met fierce resistance from the University of Copenhagen, but he overcame this animosity and went on to serve as human rights judge in Strasbourg. Ross suggested the following solution of validity and efficiency: "law in action and the norms of law are not two independent spheres of existence, but different sides of one and the same reality" (1959, p.6). He is consequently convinced that they can be described as "two viewpoints, each mutually presupposing the other" (1959, p.7). In addition, he considers that "doctrinal study of law can never be detached from the sociology of law. Although doctrinal study is interested in ideology, the latter is always an abstraction from social reality" (Dalberg-Larsen, 2005). Ross says that legal validity is the same as legal efficiency, but this is highly questionable. Law is conflictual, exhibiting contrary principles, and is often altered in response to social development, expressing new ideas of validity. Ross emphasized the reality of Law more than its normativity in his later writings, which opened him up for criticism from the rejuvenation of Natural Law.

Conclusions

Having been rejected by the University of Copenhagen, Ross was invited to Uppsala by none other than Hägerström. Alf Ross received his doctorate in Philosophy there, and wrote a book about the Kantian distinction: theoretical reason vs. practical reason. His results echoed Hägerström even if he did not point this out. Ross was always too eager to present new ideas first, writing all the time, but sometimes he "forgot" to cite and quote the relevant authors for his sources. The split

between validity and efficiency is still a topic of much debate. Is law merely the decisions of the judges and thus jurisprudence an empirical science studying the behaviour of the legal machinery? Ross suggests the following solution for how law and legal realities are related: In reality, the Ross solution amounts to confusion between is (efficiency) and ought (validity). Is and ought can never be different sides of the same thing. Validity is always normativity, subjective or objective, whereas efficiency implies existence. It may be emphasized that Kelsen had the same disdain for justice deliberations as the Vienna school. He argued that law freed from justice deliberations will be a strictly logical system of norms objectively valid. Hägerström argued that Kelsen was wrong, as law had no validity at all. The efforts of Ross to unite Hägerström and Kelsen into one legal philosophy was an interesting endeavor, but hardly successful. Interestingly, Ross' life tells us about academia where scholars tend to line up in different groups, sometimes as enemies versus friends. "Amitis" form integral parts of university existence, despite all talk about "excellence". The senior Copenhagen professor Vinding Cruse harassed young Ross, but he got revenge when Cruse foolishly did not clearly distance himself from the NAZI occupation of Denmark. Ross was much helped by Swedish scholars, like e.g. Gunnar Myrdal.

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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.

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