

Jan-Erik Lane

# Critical Essays on Politics

Vol.2



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**Jan-Erik Lane**

Professor emeritus with Geneva University, Switzerland

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# Preface

**T**his Book consists of 6 chapters on Social Theory. It is possible to briefly summarize the content of these chapters.

The neo-institutionalist theory on the management of common pool resources by states in terms of international regimes is based on dubious assumptions about states as players. If one starts from alternative assumptions about interaction between asymmetrical players and the advantages of opportunistic behaviour, then it is easier to account for the collective action difficulties in a regime such as the Helsinki Commission (HELCOM), which handles the environmental problems in the Baltic Sea region.

What drives a politician? The standard answer in political philosophy is Hobbes' power, strongly supported by Max Weber. However, the emergence of the Putin regime in Russia forces us to theorize the role of economic motivation as looting. We find it in all dictatorships, e.g., Burma. The giant financial economy enhances the private prospects of looting, especially in closed societies.

The Ukraine war makes the philosophy of warfare highly relevant. But the philosophers of war are few in numbers despite the numerous war mankind has experienced. The Ukraine warfare is not rational in terms of Clausewitz' concepts of strategy and tactics.

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

Today there is a set of well-ordered countries to which many people would like to move. What is their advantage? Reply: they are well-ordered in the public and private sectors adhering to the Keynesian model of a mixed economy.

The wars in the Ukraine and Gaza have resulted in such enormous costs that the war approach to conflicts must be rejected. Theories of war are based on rational assumptions like with Sun Tsu and Clausewitz. Only Thucydides told the truth: cruelty, destruction and suffering. Given the destruction in Ukraine and Gaza as well as Israel, one may look into the peace literature for guidance (Balissa 2020).

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Genova

2024

# 1

## States and Common Pool Resources

### Introduction

In the neo-institutionalist literature it is argued that the collective action problems involved in managing common pool resources can be successfully handled by voluntary agreements (Ostrom, 1990; Keohane & Ostrom, 1994). We wish to State our reservations to this argument in relation to states as players with the tragedy of the Baltic Sea as a concrete example. The neoinstitutionalist approach claims that states overcome the so-called tragedy of the commons by creating and implementing an international regime preventing the rational overexploitation, depletion and possibly destruction of the pool resources (Young, 1982, 1989).

The neo-institutionalist theory about states and the management of common pool resources entails that the voluntary introduction and enforcement of institutions resolves the problem of dissipation of rents. The theory is based upon a few assumptions about state actors and their preferences that need to be examined at length (Wildavsky, 1987). If alternative assumptions about states and state preferences are chosen, then the prediction about the

possibility of resolving the collective actions problems involved will be entirely different. States can overcome the failure of collective action by finding and implementing an institutional regime that counteracts the free rider problem in the management of common-pool resources only under special conditions.

Below we examine the theoretical assumptions of the neo-institutionalist model of common-pool management in relation to the interaction between states as well as enquiring into an empirical case in order to highlight which alternative set of assumptions about state players is more plausible for the real world. First, we look briefly at the case, i.e. predicament of the Baltic Sea.

## The common pool of the Baltic Sea

The Baltic Sea, a semi-closed area of about 415,000 km<sup>2</sup>, is the largest body of brackish (low salinity) water in the world and is distinguished by its division into a series of basins of varying depths. Traditionally, there has been much fishing in various parts. Its ecologic importance is without doubt immense for the nine countries that share its coastline, harbouring some 80 million people. In addition, the catchment area of the Baltic Sea is much larger, as some of the rivers of Belorussia, the Ukraine and the Czech and Slovak Republics end in the Baltic Sea. The major rivers that are connected with the Baltic Sea include: the Neva (Russia), the Vistula (Poland), the Kemi and Kymi (Finland), the Daugava (Belorussia, Latvia), the Neman (Ukraine, Belorussia, Lithuania, Russia) and the Oder (Czech Republic, Poland, Germany). These seven rivers deliver about half of all the fresh water that runs into the Baltic Sea. In addition, there are some 37 other rivers that flow into the Baltic Sea. These rivers flow through a land area four times the size of the Baltic Sea itself. In combination with the stagnation of the deeper water, the pollution of the Baltic Sea may now be described as a threat to its living resources ([Helsinki Commission, 1992, 5/3](#)).

The parts of the Sea affected by pollution have increased, particularly along the coasts of the industrialized countries. Moreover, the types of pollutant have changed considerably,

as industrial and agricultural wastes came to contain more toxic substances. Most coastal areas are now as seriously affected as some heavily polluted inland waters. The various airborne pollutants creating background contamination in most of the oceans of the world have seriously affected the Baltic Sea (Hanson & Rudstam, 1990; Hjorth, 1991, 1992).

The main threats to the Baltic Sea are the high concentrations of nutrients, the decline of oxygen, the bad inflow of fresh salinity water from the North Sea and the emission of harmful substances to the sea. The marine environment has changed dramatically during recent decades, and at the end of the 1980s the extent of the bottom area which was defined as "biologically dead" was as great as 100,000 km<sup>2</sup>. Pollution from land transported by the rivers is greater than the atmospheric input. Thus, for 1987 the input in tons from land included: degradable organic matter (BOD equivalent) 1,640,000, phosphorus 48,500, nitrogen 530,000, cadmium 59, copper 4,200 and zinc 8,900.

**Table 1.** Total p into the Baltic Sea in 1990 (Ton/Year).

Subarea	Rivers	Urban Areas	Industries	Total
Bothnian Bay	2,134	49	162	2,345
Bothnian Sea	1, KSI	56	356	2,263
Archipelago Sea	664	31	140	835
Gulf of Finland	7,642	4,078	70	11,790
Gulf of Riga	2,705	649	34	3,389
Baltic Proper	14,158	2,902	747	17,807
Belt Sea and Western Bays	1,699	964	124	2,787
Sound	234	1,559	100	1,882
Kattegat	1,281	328	118	1,727
Total	32,358	10,616	1,851	44,825

**Source:** HELCOM (1993, 6).

The atmospheric input in 1986 included nitrogen 270,000—630,000, cadmium 35, copper 470, lead 1,560 and zinc 3,400 tons (HELCOM, 1990, 8).

The main negative changes in the marine environment concern trends toward increasing nutrient concentrations which cause a higher biological productivity. The organic material produced in this process consumes oxygen during its microbial destruction, thus contributing to the more frequent oxygen depletion and occurrence and spread of hydrogen sulphide in the bottom water layer Of the Baltic Proper, the Belt Sea and Kattegat under stagnant conditions (Table 1).

In the 1980s, the concentration of nutrients was stabilized at a high level (Table 2). The situation for the concentration of nutrients in the southeastern Gotland Sea is more or less the same as the overall trend for the Baltic Sea.

Untreated waste waters from industry, both municipal and agricultural, are responsible for the high concentrations of nutrients in the Baltic Sea.

**Table 2.** *Total N into the Baltic Sea in 1990 (Ton,year).*

Subarea	Rivers	Urban Arcas	Industries	Total
Bothnian Bay	35,034	1,630	1,567	38,231
Bothnian Sea	42,985	1,399	3,097	47,481
Archipelago Sea	7,870	940	1,101	9,911
Gulf Of Finland	109,530	30,045	868	140,443
Gulf of Riga	11,730	5,061	281	17,072
Baltic Proper	159,176	24,660	2,463	186,299
Belt Sea and Western Bays	38,821	7,072	1,583	47,476
Sound	7,591	6,815		14,717
Kattegat	41,340	4,374	852	46,565
<b>Total</b>	<b>454,077</b>	<b>81,994</b>	<b>12,122</b>	<b>548,195</b>

**Source:** "El.COM (1993, 6).

The problems with untreated waste water are of major dimensions in the eastern Baltic area, where very often there is no treatment equipment whatsoever. In the region of St Petersburg, for example, the untreated sewage from more than two million inhabitants flows into the Gulf of Finland. In addition to direct outflow of nutrients into the Baltic,



airborne pollution is responsible for 50 percent of the nitrogen load in the Baltic Sea.

**Table 3.** *BOD<sub>7</sub> (Organic Matters) into the Baltic Sea in 1990 (Ton/Year).*

Subarca	Rivers	Urban Areas	Industries	Total
Bothnian Bay	79,793	2,731	18,457	100,981
Bothnian Sea	88,336	1,055	58,298	147,889
Archipelago Sea	7,780	742	202	8,274
Gulf of Finland	201,935	70,027	14,324	286,286
Gulf of Riga	101,807	38,923	863	141
Baltic proper	529,862	60,003	19,336	609,201
Belt Sea and Western Bays	4,528	20,804	24,142	49,475
Sound	489	8,148	8,022	16,658
Kattegat	8,227	4,843	10,935	24,005
Total	1,002,957	207,276	154,578	

The depletion of oxygen, as an effect of the nutrient concentrations, has seriously affected all living resources in the sea. The decreasing level of oxygen is significant in the deep waters, the reason being mainly the lack of inflow of fresh water from the North Sea and the Skagerrak. Hydrogen sulphide is destructive for the ecological system of the sea and the main reason why more than 100,000 km<sup>2</sup> of the bottom of the Baltic Sea had in the late 1980s been declared biologically dead.

Table 3 contains information about the total load of organic materials into the Baltic Sea. The figures are high enough to warrant the question: Is the ecological system of the Baltic Sea out of balance, and to what extent is this imbalance a result of state activities or lack of state activity?

The marine environment of the Baltic Sea has been monitored by the Helsinki Commission (HELCOM). Since 1979 the Commission has been collecting data within the frame Of the Baltic Monitoring Programme (BMP). The monitoring data provided by all Baltic Sea States are stored and processed in the HELCOM Database, established by the

Commission on a consultant basis. What else has this international regime accomplished?

## The international regime

The first steps towards creating some kind of international regime for the handling of the environmental protection of the Baltic Sea were taken in the early 1970s. Finland initiated the negotiations between the so-called coastal States of the Baltic Sea in 1972 that were held after the United Nation's environmental conference in Stockholm the same year. The goal was to arrive at a coordinated effort to counteract the rising pollution and depletion of the Baltic Sea.

In 1974 all the Baltic states signed the so-called Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, where Article 3 states that all states will "prevent and reduce the release of polluting materials and protect and improve the marine environment of the Baltic Sea Area" (Fitzmaurice, 1992, 233). This regime went into Operation in 1980, and a coordinating body was created, HELCOM (The Baltic Marine Environment Protection Commission), in order to collect information about the environmental predicament of the Baltic Sea and function as an administrative body coordinating the environmental collaboration between these states.

Further Concrete Steps have been recommended in two declarations from 1988 and 1990 at the ministerial level. In 1992 the 1974 international regime was replaced by a new one, also signed by such states in the periphery of the Baltic Sea as Norway, the Ukraine, Czechoslovakia and the EC Commission. In "The Baltic Sea Environment Declaration" the multilateral financing Of programmes to reduce the amount of pollution entering the Baltic Sea was outlined as a method with which to make a start on improving the environmental condition of the Sea. However, even though the plans of the 1990s are much more substantive than the 1974 agreement, it is questionable whether the situation has improved (Fitzmaurice, 1992; Hjorth, 1992).

Yet, more concrete steps were planned at the Rönncby Conference in 1990. At the ministerial level it was decided

that the Helsinki Commission should start working on further concrete steps designed to save the marine environment of the Baltic Sea. This marked the beginning of a process which led to "The Baltic Sea Joint Comprehensive Environmental Action Programme". The political changes in the post-Communist countries made it possible for the Commission to recommend concrete action for cleaning up the polluting industry of every country in the region. In the philosophy of "cost efficient abatements", the work of the Commission ended up in an action plan, which was signed in April 1992. In addition to the coastal states in the Baltic Area, Norway, the Czech and Slovak Federal Republics, the Ukraine and the European Economic Community signed "The Baltic Sea Joint Comprehensive Environmental Action Programme". The Action Programme consists of 132 "hot spots", which are the most critical sources of pollution to the Baltic Sea. The implementation of the programme by the year 2012 carries a price tag of some 18,000 million European Currency Units (ECU).

The main question today is who is going to pay the bill. There has been no agreement on this between the Baltic States. The Commission has suggested a plan for financing the Action Programme, in which financial institutions such as the European Bank for Reconstruction and Development (ERBD), the European Investment Bank (EIB), the Nordic Investment Bank and the World Bank play a major role. The situation in the post-Communist countries is in many ways critical, and there is disagreement between them and the Western countries about who should pay the abatements of the Eastern countries. Some kind of agreement has to be reached on the financial aspect, otherwise very little will be done about the 105 (out of a total of 132) "hot spots" which are located in the post-Communist countries.

Why, then, has so little been accomplished in protecting the Baltic Sea as a common pool of many states? The international regime is in place, but it is inefficient. It is now time to examine the neo-institutionalist model, especially its assumptions about state behaviour in relation to collective action problems. In the neo-institutionalist theory of

common-pool goods the role of the state is based on three assumptions.

## Institutional teleology

First, the state will come into the theatre *ex post*. The state takes action in relation to so-called market failures within its own territory, either by employing state legislation counteracting externalities in the employment of common-pool resources or by placing such resources in the public domain. The state preserves the resources of *terra nullius* by negotiating international regimes that regulate the use of common-pool resources outside its territory (Young, 1989).

Second, when the tragedy of the commons is modelled on the basis of the Prisoners' Dilemma expressing the logic of over-utilization of common-pool resources (Hardin, 1968, 1982), then implicitly there is the assumption of symmetry. This means that all the state players involved can and will operate as a rational actor maximizing the public interest, provided they can overcome the collective action difficulties. But do all states face the same set of feasible strategies in relation to the management of common-pool resources?

Third, there is a basic teleological assumption about state behaviour in the sense that the states wish to implement desirable solutions to the problem of managing common-pool resources. This is not an innocuous one, because it is in its turn based on assumptions about the preferences schedules of the leaders in the state that may not be universally true. Why would the state always act functionally in relation to common-pool resources? What are the implications of the alternative assumption about opportunistic behaviour between asymmetrical state players, "opportunism" meaning guileful selfinterest seeking (Williamson, 1986)?

Any functionalist theory of state activities in relation to the common pool bypasses the *ex ante* role of the state as well as the occurrence of asymmetrical interaction between, for example, rich and poor states. What will the outcome be, if one assumes instead asymmetric relationships between states involved in ecology reciprocities where some of these states also played a major role *ex ante* in the search for an

international regime that could handle the management of common-pool resources. What if the state is not part of the solution to the tragedy of the commons but instead part of the problem?

Theoretically, the tragedy of the commons problem like, for instance, that of the Baltic Sea is modelled as a Prisoners' Dilemma game. Whereas the classical statements about the difficulties in arriving at first-best solutions in relation to common-pool resources were pessimistic (Hardin & Baden, 1977), the new institutionalism has brought an optimistic tone into the debate (Ostrom, 1992a). It is claimed that the collective action difficulties in protecting common-pool resources may be overcome by the establishment by means of voluntary exchange mechanisms of institutional principles that guard against the depletion or destruction of the common pool (Ostrom, 1992b). However, such a claim is based upon assumptions about the set of feasible and desirable state strategies which may not hold in reality.

The model of the Prisoners' Dilemma for the analysis of the tragedy of the commons starts from the assumption that symmetrical states confronting collective action problems may develop meta-strategies in order to reach coordination landing on the cooperative strategy. As long as there is a likelihood that the interaction between the participants will be reiterated, the reciprocal choice of a fit-for-tat strategy will result in the choice of the Pareto-optimal solution, i.e. cooperation for environment protection (Axelrod, 1984). Slowly, the common-pool resources problem will become manageable by means of a voluntary exchange mechanism, leading to agreements that are self-enforceable among the participant actors (Ostrom *et al.* 1993), if tit-for-tat really works as participants grow in number.

States employ a special institution to make the collective action problem of common-pool resources manageable, viz. the identification and implementation of a so-called international regime. International regimes offer "social institutions governing the members of the international society" (Young, 1989, 6). If such an international regime is extensive, comprises a number of rules, and is backed by

organizational resources, then it could constrain its members towards first-best solutions (Krasner, 1982).

International negotiations leading to institutional regime choice would thus be instrumental in overcoming the collective action difficulties in protecting common-pool resources. In general, neo-institutionalism predicts that institutions will be forthcoming when rational actors choose between alternative institutional frameworks which enhance equilibrium outcomes — so-called equilibrium institutions (Sheple, 1986, 1989). Or putting it more strongly, in the Coase tradition, small groups will establish institutions or rules that guarantee optimal outcomes, as long as transaction costs are not staggering (Coase, 1988).

Yet, the neo-institutionalist analysis of the selection of institutions is driven by an implicit functionalist notion of the state that is not warranted. The crux of the matter is that the real preferences and behaviour of some states may not fit with the presuppositions of the Prisoners' Dilemma model of the tragedy of the commons. The neo-institutionalist argument involves two steps:

(1) The management of common-pool resources involves collective action problems. Assuming individual rationality, will protecting the commons as a public good be forthcoming on the basis of voluntary exchange only? No single actor has the incentive to allocate this public goods because of the N-1 and I/N problems. As long as a group of size N members protects the commons by not using the commons, the N-1 actor would always benefit from exploiting the commons. If one actor allocates the public goods, i.e. does not exploit the commons, then s/he could at best only hope for I/N share of the benefits from her/his contribution.

The existence of N-1 and I/N collective action problems in relation to the allocation of a good implies that that there will an undersupply of the good (Olsen, 1965). However, if the preferences of the actors have a specific shape and there is reiterative interaction, then institutional solutions could be introduced. Modelling the common-pool resources problem as a Prisoners' Dilemma implies precisely such a choice opportunity for the participants to introduce rules that

enhance the arrival at and implementation of first-best solutions, e.g. mechanism design (Rasmussen, 1994).

(2) Despite the pessimistic tone in the tragedy of the commons literature, there is hope in relation to the tragedy of the commons when it is modelled as a Prisoners' Dilemma predicament. The dominant strategy in terms of individual rationality results in destroying the commons which would be the irrational or Pareto-inefficient solution. There is a first-best solution — cooperation, cooperation — that could be forthcoming by the establishment of a proper institutional mechanism enforcing the Pareto-optimal solution. State players could offer an institutional mechanism for the prevention of the tragedy of the commons. Whether the state will take such action to attempt to protect the common-pool resources around its borders depends, though, on both its capacity to act (feasibility) and its preferences when international regimes are to be set up (desirability).

Yet, there may exist no first-best solution to the management of the common-pool resources when states interact as sovereign actors in dealing with the tragedy of the commons. The Prisoners' Dilemma picture of the collective action problem in relation to common pool resources is not overly pessimistic but too optimistic. The Prisoners' Dilemma models the repetitive interaction between states over common-pool resources as having a Paretosanctioned solution that is socially acceptable. A number of reasons may be adduced to the effect that this is not the correct interpretation, i.e. step (2) in the argument is wrong.

## State actors: Capacity and interests

First, a state may not be able to cooperate in the management of the common-pool resources, as it may simply lack the resources necessary to take action to protect the commons. If first-best solutions are not achievable, then the tragedy of the commons is unavoidable. Second, a state may not wish to cooperate in the management of common-pool resources. The Prisoners' Dilemma game builds upon the following symmetric preferences with regard to the two

fundamental alternatives of action: cooperation vs. defection from among two interacting states, A and B:

(1) A's preferences: Defection by A and cooperation by B, cooperation by A and cooperation by B, defection by A and defection by B, cooperation by A and defection by B.

(2) B's preferences: Defection by B and cooperation by A, cooperation by A and cooperation by B, defection by A and defection by B, cooperation by B and defection by A.

The paradox of the Prisoners' Dilemma arises from the preference profiles. If both states unilaterally seek their first option, then they will end up in their third option, which is not Pareto-optimal. But the tragedy of the commons may result from a more cruel preference profile. Suppose that state B lacks both the capacity and the will to take the cooperation option. Then, there will only exist two outcomes: defection by B with cooperation by state A, or defection by B with defection of also state A.

Actually, the Prisoners' Dilemma is much too optimistic a model. Take the case of the tragedy of the Baltic Sea. The former Communist states will not for a long time be capable of nor wish to cooperate by undertaking largescale and costly measures in order to protect the Baltic Sea. Thus, the predicament is not that of the Prisoners' Dilemma, i.e. the preference profile. (P1) DC, CC, DI), CD, but that of the deadlock game, i.e. preference profile: (P2) CD, DD, CC, DC. The Prisoners' Dilemma model implies symmetry between the players. However, whether this assumption applies or not is an empirical question. The tragedy of the commons may result even when there is a symmetrical predicament between actors, but it is bound to be the outcome from an asymmetrical predicament among state players.

The first and most conspicuous aspect of certain common-pool problems is that the players at the state level take action from different circumstances and with different preferences. This is not to deny that frequently the management of common-pool resources involves the kind of paradox modelled in the Prisoners' Dilemma game or the Chicken game (DC, CC, CD, DD). But this is not necessarily so. The management of common-pool resources may involve



collective action problems at the same time as the players look upon the situation differently and defend asymmetric interests.

States that take part in the creation of an international regime may make very different deliberations about what the pros and cons of alternative schemes are. With regard to ecology and environmental issues, groups within the same state may differ considerably on how they estimate risk, hazard and opportunity, not to say costs (Wildavsky, 1988). The variety of orientations among states to the outcomes of the tragedy of the commons will reflect such countries' opinions, particularly among those people who have a decisive influence on policy-making in the field of ecology. There may exist wide distances between state standpoints corresponding to the gulf between internal groups in terms of environmental assessment and demand for action. Policy-making in relation to common-pool protection is a function of two factors:

(1) Feasibility: Are there options that the state may realistically pursue that have a probable impact upon the amelioration of the tragedy of the commons? The information function reflects the technology available in society

(2) Desirability: Are some of the feasible programmes worth undertaking? The evaluation of the expected value of alternative policies reflects not only the objective costs involved in each programme but also the subjective marginal willingness to pay.

States differ considerably on both (1) and (2). The boundaries of the set of feasible policies are drawn by, on the one hand, the access to advanced information, and on the other hand by the possession of economic resources to be employed at the implementation stage. The set of desirable policies may be either large or small depending upon the values at stake. Finally, the joint set of feasible and desirable policies may as a matter of fact be empty, because the desirable programmes are not feasible or the feasible policies are not considered worth their costs. Policy feasibility being determined by available technological knowledge and policy desirability expressing the variety of preferences among

leaders, it is small wonder that there will be sharp differences both between states and over time in the capacity and willingness of states to take part in international regimes.

It may be predicted that the level of affluence matters a great deal in the capacity and willingness of states to act in relation to the tragedy of the commons. The joint set of feasible and desirable policies with regard to common-pool resources increases with the rise in living standards. The implication must be that collective action problems involving rich and poor states result in asymmetric relationships.

Protecting the Baltic Sea is a concern for a few rich countries — the Nordic states and Germany — and some poor countries — the post-Communist states. But they are very differently concerned about the tragedy of the Baltic Sea. It is not the case that any of the coastal states are less affected by the slow destruction of the common pool, but the basic situation involves asymmetry between the joint set of feasible and desirable environmental policies of these states.

## The exploitation of the rich by the poor

The reciprocities between the rich and poor states in this part of the world are formidable, because the rich states cannot exclude themselves from the pollution of and depletion by the poor countries. Non-excludability is combined with subtractability, because when the poor countries use the common-pool resources in various ways, they also decrease the size of the pool also the rich countries. Thus, the losses for the rich countries from the predicament of non-excludability and subtractability may be enormous.

At the same time the poor States have all the advantages of free riding upon the efforts of the rich states to decrease their consumption of the pool. Since it is impossible to internalize the benefits of public goods to the group that allocates it, the poor countries will get something for nothing. Allocating environmental protection, the rich states cannot exclude the poor from benefiting even if they contribute nothing. If a rich state considers saving the Baltic Sea as having the highest priority, then it may accept that it can only reap  $1/n$  of the benefits from its contribution.

The collective action problem involving asymmetry between states is much worse than a simple Prisoners' Dilemma where the calculation of meta-strategies implies the choice of the first-best solution. Where asymmetry holds, there is no strategy available for state A which would force state B to cooperate. The commitment of the rich states to environmental protection in their own countries implies that the tit-for-tat strategy option is simply not there. And ending up in the worst outcome for the entire collectivity of actors may for the poor states be better than reaching the cooperative outcome, because it is either non-feasible, given the resources the state commands, or there is little interest in the desirability of protecting the common pool? What, then, should state A do? A has to accept that the poor state exploits the rich one, i.e. it has to pay part of the bill for the poor states when they cooperate, i.e. one part takes on the allocation of the public good by itself while the other part free rides.

When the state enters an international regime that has been established in order to counteract collective action problems such as in our case the pollution as well as the depletion of the Baltic Sea, it in no way enters ex post as an independent actor with no commitments. Instead, it is characteristic of the state as an actor in international ecology regimes that its role ex ante has a profound impact upon the problem, i.e. it is responsible for a number of actions that have had an immense impact upon the problem. Again, the state is not only part of the solution but also involved in the evolution of the tragedy of the commons. The ex ante role of the State may be a different one with regard to the rich state and the poor state.

The Communist state displayed a negligence towards ecological matters that is on such a scale that it is difficult to account for. The term 'ecocide' has been coined in order to conceptualize the state's impact upon the environmental predicament in Eastern Europe. As a collectivist movement it is strange that Communism should pay such little respect to ecological interests. In any case, the Communist state is poor, meaning that its set of feasible activities in terms of ecology

policies is small. But its set of desirable policies has been even smaller.

The tragedy of the Baltic Sea is to a large extent a result of the pollution coming from the former Communist states (Table 4).

**Table 4.** *Country Source of Pollution/Ton in 1990*

Country	Total Nitrogen (tons/year)	Total Phosphorus (tons/year)
Denmark	8,655	1,994
Sweden	25,900	565
Finland	30,200	900
Russia	108,824	7,934
Estonia	39,800	2,174
Latvia	6,775	1,028
Lithuania	25,830	2,850
Poland	246,185	21,495
Germany	28,860	2,337

**Source:** HELCOM (1990, 64)

Although ecological awareness is growing in the new governments of Eastern Europe, there is the *ex ante* predicament that the former governments in these countries are very much responsible for the pollution and depletion of the Baltic Sea. As long as these new states do not take action themselves in order to improve upon what their predecessors neglected, they come to the international regime more as a part of the problem than a part of the solution. If they can do little by themselves, why should they enter a Prisoners' Dilemma game in order to reach the cooperative solution, when on their own they worsen the predicament even more year by year?

The only strategy when facing the negligence of the poorer countries is to redefine the terms of the interaction. The rich state cannot play reiterated Prisoners' Dilemma games with the poor state, because it cannot force the latter from the defection alternative to cooperation. Thus, the rich state must offer the poor state incentives to cooperate by taking on part of the costs of reducing the harmful activities in the poor country that bring about pollution and depletion of the

common-pool resources. This is not to say that the rich state should not continue its own programmes to reduce the damage done by the rich country. However, it may in reality be more effective to allocate part of the resources for ecology programmes from the rich country to the poor country.

The arrival of the rich and poor states at a cooperative strategy is based not only upon the activities that the rich States undertake themselves to combat pollution and depletion, but also upon the contribution of the rich states to the initiation and implementation of activities by the poor states that would reduce pollution and depletion. The poor states would choose the cooperative solution, because they receive a sort of side-payment, although targeted toward environmental policies.

Since the collective action problems have been overcome not through a reiterated Prisoners' Dilemma game but by means of recognition by the rich states of their own vulnerability due to the different evaluation of the tragedy of the common pool, the problem now becomes a technical one of finding the most efficient policies in terms of a cost/benefit analysis.

The allocation of resources to activities that protect common-pool resources may be looked upon as an optimization problem, where firstbest solutions may be stated with regard to alternative inputs of ecology programmes from the rich and the poor states. Alas, things are far from simple due to the fact that the players are states in an asymmetrical interaction where the poor states *ex ante* are very much part of the problem themselves.

States do not simply engage in rationally instrumental activities. States express a number of values, among which autonomy, sovereignty and choice are very important and very visible. Participating in the management of common-pool resources is a means-end rational activity, where costs in relation to benefits can be carefully calibrated. Expressing state sovereignty is a value rational activity, where a lot of prestige is at stake. When rich states invite poor states to cooperate in international regimes orientated towards instrumentally rational activity in order to manage common-

pool resources, then value rational action expressing state prestige may threaten the implementation of first-best solutions.

Combining ecological activities from both state A and state B, the pollution and depletion of the Baltic Sea may be counteracted: the more activities or the more the efficient measures, the more the common-pool resources are protected. The costs of such activities may be expected to differ widely between the rich and the poor States, as very elementary policies are needed in the poor State whereas the addition of new policies to an already existing set-up would be at considerable cost to the rich state.

Optimal environmental policies may not work, because they require humiliating intervention into the poor states or demand too many resource transfers from the rich state to the poor state. There is the danger in an international regime orientated towards, e.g., the tragedy of the Baltic Sea that it would involve too much influence of the rich capitalist states over the poor post-Communist states, or that the technology superiority could lead to the humiliation of the poor by the rich.

First-best solutions in instrumental international regimes set up to the management of common-pool resources may be non-implementable, because the distance between the states is too large. Once the poor states accept transfer payments from the rich states targeted to specific ecology programmes, then there is the accompanying exchange-power problem (Blau 1964). The rich states would never pay for the clean-up activities of the poor states if they were not granted substantial power in the international regime to outline the means and ends of environmental measures.

Thus, there arises a different kind of collective action problem. In an asymmetric interaction where the stronger part gives advice to the weaker part, power relations are bound to rise that are difficult to accommodate within the framework of sovereign states.

## Conclusion

From being initially pessimistic about handling the tragedy of the common problem there is now a more optimistic tone coming from neo-institutionalist analysis of the sources of the origin and preservation of negotiated rules that offer first-best solutions to the problem of managing common-pool resources. The tragedy of the commons is described by means of the Prisoners' Dilemma model, and the Pareto-efficient solution is achievable by the resort to institutions that may be backed by mutual consent and interests.

We argue that this new analysis is much too optimistic. The establishment of international ecology regimes to attack the tragedy of the common problem is beset with difficulties that are not recognized in the simple Prisoners' Dilemma model. Besides the elements of ex ante state commitments, asymmetric interaction between different kinds of states and functionalist state roles, there are the opportunistic aspects of state action which make states diverge from first-best solutions simply for reasons of state prestige.

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# 2

## Looting as Vocation

### Introduction

Political regimes come in mainly two forms today: representative democracies on the one hand and many forms of dictatorships on the other hand. In a democracy, there is a set of constraints upon politicians as well as bureaucrats against private utility maximization in the rules of the political game. We call these institutions “rule of law”, and we can employ the measurement of the rule of law to characterize a regime as a democracy or dictatorship..

### Concept of rule of law

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

“The 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

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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 labor and property;
- 3) Legal system based on notions of justice and economic market rights like the joint stock company;
- 4) 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.

## Measurement of *Rechtsstaat*

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

- 1) Constraints on Government Powers;
- 2) Absence of Corruption;
- 3) Open Government;
- 4) Fundamental Rights;
- 5) Order and Security;
- 6) Regulatory Enforcement;
- 7) Civil Justice; 8) 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 here. The rule of law was conceptualized before the advent of democracy after the Great War. The rule of law as legality, rights and countervailing powers may be combined with democracy as a popular rule, but it has not always been so.

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The WJP employs expert opinions in each country to derive an ordinal scale from 0 to 1 for each of the dimensions above. The aggregate scores for the latest years are stated in Table 1 for a specific number of countries with available information.

**Table 1.** *Aggregated scores for the rule of law dimensions 2018-2021.*

Dimension	2018	2019	2020	2021
Constraints on Government	0.57	0.55	0.55	0.56
Absence of Corruption	0.53	0.52	0.52	0.52
Open Government	0.54	0.52	0.52	0.53
Fundamental Rights	0.59	0.58	0.57	0.57
Order and Security	0.72	0.72	0.72	0.72
Regulatory Enforcement	0.54	0.54	0.54	0.54
Civil Justice	0.56	0.55	0.55	0.55
Criminal Justice	0.49	0.48	0.47	0.47
Overall	0.57	0.56	0.56	0.56

The trend is slightly downward. This finding comes as a surprise to those who favor an open society and competitive politics (Table 2).

Not merely Western countries score above 0.6 on this scale. The rule of law countries includes Japan, South Korea, Singapore, Chile, Costa Rica, Uruguay, Mauritius and Namibia, as well as Rwanda.

## Economic incentives in government

People play democratic games with expectations of moderate rewards. Those who succeed are paid salaries and pensions. Various democracies have different rules for the public and the private to minimize corrupt practices. Some have introduced state financing of political parties. We have here a gray zone where illegal influence is difficult to police. Yet, politicians who want the Big Bucks should operate in dictatorships.

## Looting at the top

In a dictatorship, there are fewer restrictions on public money. We thus expect to find a variety of phenomena:

- 1) Bribery;
- 2) Embezzlement;
- 3) Patronage;
- 4) Favouritism;
- 5) Kickbacks;
- 6) Flawed tender;
- 7) Racketeering.

They are all often subsumed under the label “corruption”. Here we have the sources of the Russian billionaires or oligarchs as well as the Moslem billionaires. It has been argued following Barry (1995) in the literature on corruption that the above is a manifestation of one and same—called “partiality”. I disagree. Friendship and kinship imply partially but not the above, which are different aspects of state looting.

**Table 2.** *Regional scores for the rule of law 2021, mean, min and max scores.*

Region	Min	Average	Max	Number of countries
East Asia & Pacific	0.33	0.60	0.83	15
Eastern Europe & Central Asia	0.43	0.51	0.60	14
EU + EFTA + North America	0.53	0.74	0.90	24
Latin America & Caribbean	0.27	0.53	0.71	30
Middle East & North Africa	0.36	0.50	0.65	8
South Asia	0.36	0.45	0.53	6
Sub-Saharan Africa	0.34	0.47	0.63	31

**Source:** WJP, 2021: p. 16.

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 the rule of law and citizen or people responsiveness by means-end of electoral competition. When Madison wrote the American

constitution, he targeted the rule of law but missed out on people's participation—an omission never fully undone or overcome.

## Cui Bono in government?

Modern dictatorships have a conspicuous economic face. It is driven by the search for material advantages like a 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 ([Belton, 2021](#)).

## Weber on political motivation

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 are the end and policy the means, whereas in open polities economic policies are the means and power the end ([Weber, 2007](#)).

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, things are entirely different. Even in ad hoc dictatorship established by coup d'état the political elite engages in embezzlement. In a 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. Huge yatch figures prominently in Russian looting ([Fachy & Blas, 2022](#)).

I would argue that looting is typical of dictatorships. In Argentina, loot included children of Leftists. Military coups occur when salaries fail. Looting has been taken to a new level in Russia, although it is the nomenclature acting as in China. Political power is the means of looting, like in Pakistan and Burma. In North Korea, looting is based on worship.

## Root of looting: Agent dominance

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.

It was of great significance when the book on a new class by Djilas (1957) came to attention in 1957. The principal-agent theory would predict Djilas' finding. The agents of the people—the communist nomenclature—would only put in the great effort if they could capture a rent somehow. With asymmetrical information (propaganda, control), the rent becomes a burden on society. Looting at the top is never disclosed.

## 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 unstable. And Lenin (1917) argued that the revolution needed an agency—the party vanguard. Both were wrong. The agents can sit for a long looting the principal.

Only the rule of law and competitive politics can stop looting. Politicians may give themselves favors only when they collude. In one party state, the collusion tends to all-encompassing.

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# 3

## Philosophy of War the Ukraine

### Introduction

**T**he war that Russia began against the Ukraine was and remains inexplicable. Drawing upon the philosophy of war may help. What would for instance Clausewitz have said? Russian Invasion

Russia is now conducting an attrition war against the Ukraine aiming at the destruction of its physical capital. It makes little sense from the perspective of Clausewitz who saw war as fighting—a collision of wills. At first Russia wanted Blixtkrieg but failed. Now revenge is desperate destruction. Will Russia rebuild?

### The theory of war

The layman observes that war has attracted a small number of theoreticians, despite that human written history is replete with warfare. On War is the most famous treatise. When comparing Putin's war with Clausewitz' concepts there is no match: "Tactics teaches the use of armed forces in

engagement; strategy, the use of engagements for the object of the war.”

Clausewitz’ definitions are still valid but Putin’s war appear to lack both, preferring instead to bomb everything, military or not. Look further at Clausewitz’ arguments below.

## Definition of war

C1. War and politics. “War is just the continuation of politics with other means” is Clausewitz famous for. He looked upon the world as zero sum, but this excludes cooperation or coordination. Surely both countries would have gained from peace, striking a bargain instead of all casualties and destruction.

C2. War has only one aim: to impose your will upon the other. This amounts to a mentalist approach: will against will. Clausewitz wrote about crushing the enemy’ will—like Poland 1939.

C3. Recourse to physical violence until the opponent does as he is told. Clausewitz drew his lessons much from the Napoleonic wars. They were not total wars. But Clausewitz is said to have endorsed the idea of total war. This is probably wrong. When Hitler started the invasion of the USSR, he lifted all international rules prohibited total war. The outcome was incredible suffering in e.g the Ukraine. Already Putin is accused of war crimes.

C4. Enmity, hatred and primordial violence. Here we have an essential difference from Clausewitz. The Ukraine and Russia are not related like France and Germany or Prussia and Austria before WWII in the 19th century. Ukrainian history is replete with wars with neighbours, but it is not a matter of people hatred between Russians and Ukrainians. These people adhere to the Slavic civilization, yet heterogeneous.

Even by accessing the present government in Kiev, Russia would have been better off than today’s pariah predicament.

Clausewitz has of course a large number of ideas on strategy and tactics, but they are often old fashion, focusing on die Schlact (decisive battle). He states as a conclusion that

a golden opportunity to conquer must not be missed. Perhaps exactly this admonition misled the Russians?

Clausewitz presents a time bound analysis of the decisive battles between armies. He interlined uncertainty, devotion and genius. Now things are more brutal with nukes and endless bombing of whatever.

## Outcomes of Putin's war

This war has lasted two months. We see only destruction, people fleeing and deaths. War is meaningless today, since it becomes total and takes the form of attrition. War is uncertainty, Clausewitz argued. So why the risks and do large scale gambling?

War is mental, governed by ex ante beliefs. Ex post Putin is wrong. The Ukraine will be entirely destroyed—was not neutrality a better option?

Outcomes are worse now than in the Napoleonic ones where Clausewitz participated. Napoleon marched 100,000 men in straight columns against adversaries. The casualties were horrendous. Now they shoot rockets and missiles day and night at housing complexes.

## The winner is NATO

Thus far, the NATO countries have helped Ukraine in various ways, not least with state of the art weaponry. The group has been united as never before and Sweden and Finland are prepared to join. Geopolitically, Germany has decided to arm forcefully—all three setting new courses compared with the experience of 1945. The US pays the Ukraine and the Russians fight each other. The Loser Is Putin

It is clear that Putin planned this war poorly. He overestimated the forces of Russia and underestimated the help for Ukraine. The institutions of Russia do not cope with Putin's autocracy. What must done is to implement the 1993 Constitution, giving Russia rule of law for the first time in its 1,000 years history.

## Conclusion

Slowly but consistently Putin and his entourage have made the liberal 1993 dispensation obsolete. It would given Russia the following:

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 would suit Russia. Lenin introduced the dictatorship of the proletariat, which has now degenerated to looting by elderly men all over former USSR.

The war is a mistake, a failure of Rubinstein rationality in bargaining. The Nash cooperative solution is Ukraine neutrality and EU association. Russia would accept this, especially if Sweden and Finland stay neutral. Thus: Peace in the North of Europe. Kant's political idea was rule of law domestically and *opinio juris* internationally.

## Appendix

**Table 1.** *Rule of Law Globally WJP*

Region	Min	Average	Max	Number of countries
East Asia & Pacific	0.33	0.60	0.83	15
Eastern Europe & Central Asia	0.43	0.51	0.60	14
EU + EFTA + North America	0.53	0.74	0.90	24
Latin America & Caribbean	0.27	0.53	0.71	30
Middle East & North Africa	0.36	0.50	0.65	8
South Asia	0.36	0.45	0.53	6
	0.34	0.47	0.63	31

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# 4

## A Theory Of Good Governance Or Good Government

### Introduction

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

- i) Legality: government is exercised by means of laws, enforced ultimately by an independent judiciary;
- ii) Lex superior: there is a higher law – the constitution – that guarantees certain rights for the citizens, like e.g. equality under the law, due process of law and habeas corpus;
- iii) Trias politica: executive, legislative and judicial powers are to be separated;
- iv) Accountability: Governments can be held responsible for their actions and non-actions through various established procedures of criticism and complaint, enquiry and removal from office as well as redress;

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

Rule of law I, whether combined with any form of democracy – referendum type, parliamentary type, presidential dispensation – or not, as in semi-democratic countries that are one party states, comprises: *Predictability*: Public law when properly implemented makes it possible for people to increase the rationality of behaviour. They know what rules apply, how they read as well as how they are applied consistently. This is very important for the making of strategies over a set of alternatives of action. *Transparency*: Societies operate on the basis of norms prohibiting, obligating or permitting certain actions in specific situations. Rule of law entails that these norms are common knowledge as well as that they are not sidestepped by other implicit or tacit norms, known only to certain actors. *Due Process of Law*: When conflicts occur either between individuals or between persons and the state, then certain procedures are to be followed concerning the prosecution, litigation and sentencing/incarceration. Thus, the police forces and the army are strictly regulated under the supervision of courts with rules about investigations, seizure, detainment and prison sentencing. No one person or agency can take the law into their own hands. *Fairness*: Rule of law establishes a number of mechanisms that promote not only the legal order, or the law, but also justice, or the right. For ordinary citizens, the principle of complaint and redress is vital, providing them with an avenue to test each and every decision by government, in both high and low politics. Here one may emphasize the existence of the Ombudsman, as the access to fairness for simple people. People have certain minimum rights against the state, meaning that government respects obligations concerning the protection of life and personal integrity. Thus, when there is due process of law – procedural or substantive – one finds e.g. the habeas corpus rights (Raz, 2009).

Some 50 per cent of the world cherish rule of law in the strong or thick meaning, i.e. *rule of law I combined with popular democracy – rule of law II*. Its spread is partially linked



with the level of human development, which is a function of economic output to a considerable extent. However, countries that implement rule of law II also establish rule of law I, i.e. legality and rights. It is the opposite that does not hold, meaning that several countries honour rule of law I but not rule of law II. In countries where neither rule of law I nor rule of law II exists, political agents face almost no restrictions upon what they may wish to do.

## The two concepts of “Rule of Law”

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

### **RI: Legality and Judicial Independence**

According to the narrow conception of rule of law, it is merely the principle of legality that matters. Government is in accordance with rule of law when it is conducted by means of law, enforced by independent courts. The law does not need to contain all the institutional paraphernalia of the democratic regime like separation of powers and a bill of rights. The legal order may simply express the authority of the state to engage in legislation, as expounded by legal positivists like e.g. Kelsen (2009) in his pure theory of law. The basic norm implies legislation that in turn entails regulations that implies instructions and commands. However, whatever the nature of the legal order may be, the principle of legality restricts governments and forces it to accept the verdicts of

autonomous judges. 2 Countries that lack the narrow conception of rule of law tend to have judges who adjudicate on the basis of short-term political considerations, twisting the letter of the law to please the rulers. Thus, law does not restrain the political agents of the country, employing the principal-agent perspective upon politics (Besley, 2006).

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

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

autonomous legal machinery in a country, then also politicians or rulers may be held accountable for their actions or non-actions – under the law. This is of vital importance for restricting corrupt practices of various kinds.

## **RII: Constitutional Democracy**

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

There is a positive relationship between socio-economic development and the constitutional state, albeit not as strong as in the classical studies on democracy and affluence (Diamond, 1999). There is a set of countries that deviate from this pattern. On the one hand, a number of countries have reached a high level of socio-economic development without institutionalising the mechanisms of the constitutional state: the Gulf monarchies and the Asian tigers. On the other hand, a set of countries with the constitutional state are to be found at a low level of socio-economic development, mainly India, Botswana and Mauritius. In some Latin American countries there is a medium level of socio-economic development and a medium degree of rule of law institutionalisation. This association between affluence on the one hand and democracy on the other hand has been much researched and various explanations have been adduced about what is cause and what is effect. Here, we note that there are quite a few countries that have reached a rather high level of human development due to economic advances in GDP but they have not established a full rule of law regime, comprising of both rule of law I and rule of law II. Finally, one may enquire into the empirical association between rule of law I

and rule of law II. It holds generally that countries that institutionalise the constitutional state also respects judicial independence, but the converse does not hold. Some countries only honour one form of rule of law, namely legality. Numerous countries have neither rule of law I nor rule of law II.

## Good governance with the World Bank project

The concept of good governance has no standard definition in the dictionaries. Instead, I will rely upon the approach of the World Bank Project to governance. The World Bank (WB) states: "Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them." [Retrieved from].

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

In the World Bank Governance project, one encounters the following definition of "rule of law":

Rule of Law (RL) = capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence (Kaufmann, Kraay, & Mastruzzi, 2010: 4).

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

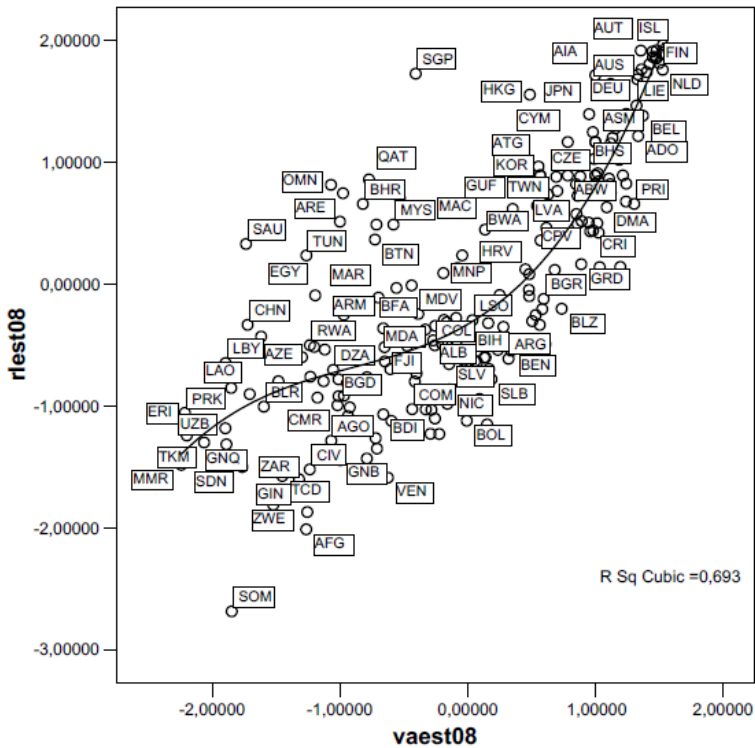
Voice and Accountability (VA) = capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of

expression, freedom of association, and a free media (Kaufmann, Kraay, & Mastruzzi, 2010: 4).

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

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

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



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

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

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

## Principle-agent modelling

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

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

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

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

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

- o What is the quid pro quo between the principal and the agent?
- o How can the principal check the agent with regard to their agreement?
- o Who benefits the most from the interaction between principal and agent?

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

### **Agents and demos**

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

The strength of the principal-agent model is that it bridges rational choice and neoinstitutionalism, as its model takes into account three basic elements in interaction, namely rules, incentives and information besides underlining reciprocity.

The model is open to the occurrence of opportunistic behaviour, even with guile. When a player has information advantage, then this will be transformed into some form of cash premium. The principal may diminish the information advantage of the agent as specialists by framing the rules of the game such that he/she may have the option of counter-play or replay as well as complaint and judicial redress.

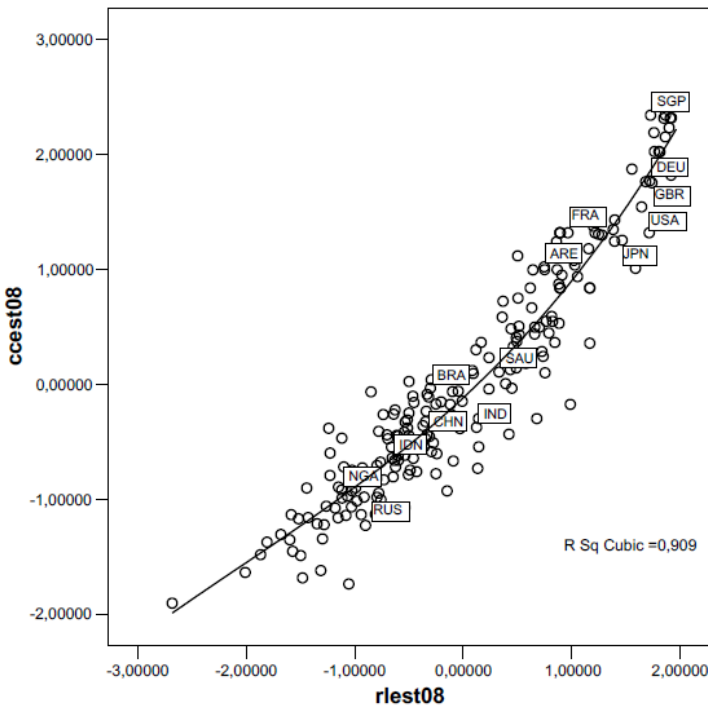
### **Constitutional government**

Constitutional government embodies institutions or rules that constrain those active in domestic or international politics today. Thus, the meaning of “constitution” is a set of



principles or rules that constrain rulers, politicians, governments or states. But there can be constitutional government without Western democracy, based upon competitive elections among political parties.

The spread of rule of law II (democracy) seems to be culture bound, as countries with an Islamic (The Koran as constitution) or Buddhist tradition (Asian values) hesitate to adopt fully Western democracy as competitive party government. However, the introduction and enforcement of rule of law I is an entirely different matter. Due process of law is relevant for all states in the world. Where it is lacking, we find arbitrary government, embezzlement of public money and the unpredictable seizure and violent treatment of persons. Consider Figure 2, constructed with the WB Governance Project data.



**Figure 2.** Rule of Law I and Tranparency

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

It links the control of corruption on the y-axis – state transparency – with the rule of law I on the x-axis of law I can be promoted by institutional policy-making by the political elites in a country. A key institution is the Ombudsman, checking the legality of public administration. Rule of law I is highly relevant for the state, also the countries that are non-democracies: military government, charismatic rule, kingdoms, sultanates, failed states, one-party states. It is the best antidote against much long-lived presidents (Burkina Faso, Malawi), arbitrary court rulings (Egypt, China), kleptocracy (Mobutu, Ben Ali), torture (Idi Amin), terrorist attacks (Kenya, Pakistan), civil war (Iraq, Syria), violent civil protests (Bangladesh, Thailand), patronage or favouritism (Saud family, Jacob Suma) and religious judicialisation (Iran, Afghanistan).

## Why rule of law: What is the basic rationale?

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

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

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

### **Opportunism of Politicians and Bureaucrats**

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

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

Strategy is a pervasive trait of human interaction, both in the micro setting and in the macro setting. Taking strategic

considerations into account goes well in hand with opportunism and asymmetric information. The same applies to tactics. What, then, is the basic issue of contention in the principal-agent interaction? Answer: the division of advantages, given a certain size of the mutual gains to be had.

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

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

Two things are of great concern to the principal:

1. The maximisation of V: If the political agents act in such a manner as to reduce V, then this is not in the interest of the principal.
2. Reasonable agent remuneration R: If the agents manage to capture a considerable portion of V for themselves, then that would be counterproductive to the principal.

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

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

ones? R includes all things that are valuable: goods, premises, services, assets, perks, prestige, esteem, etc.

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

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

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

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

## **Political Monopoly**

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

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

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

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

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

Sophisticated forms of looting may occur in constitutional democracy, as when the executive allows itself to be surrounded by vast staff of advisors, experts and the like. Or political agents in the legislature manage to provide themselves with excessive budgets and perks. The fact that corruption allegation is an almost constant theme in public

debate indicates how sensitive the principal is to the risk of looting. One form of political looting is of course nepotism or favouritism with regard to family members or cliques of friends when conducted by a president or premier for instance. Petty forms of looting involve negligence about the line of separation between private and public expenditures.

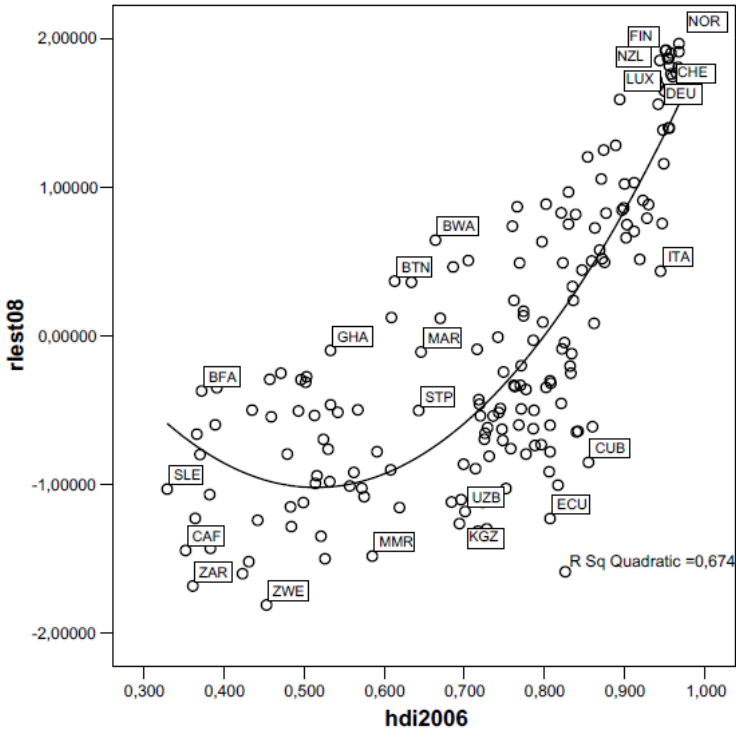
The rule of law regime is highly aware of the risk of looting, offering restraining rules about taxation, budgeting and financial accountability. It also aims at counteracting the dissipation of social value through representation, election and re-election. The dissipation of value is a problem of aggregation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

### **Value Dissipation**

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

There is the possibility of a dramatic effect from the combination of looting and dissipation of value, like for instance as matters now stand in countries like Myanmar, Zimbabwe and North Korea. One should not, however, assume that the risk of value dissipation is unique to Third World countries. On the contrary, value dissipation occurs also in First World countries, where the 2003 American led invasion of Iraq offers a telling example, resulting in so huge costs –human and economic – and so little. And even a country like the UK with its rule of law tradition does not appear to be immune from various looting strategies on the part of parliamentarians, definitely immoral but not always

illegal. Consider Figure 3 depicting the relationship between rule of law I and the level of human development.



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

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



## **Constraining politics and administration**

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

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

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

The principal would, one may imagine, support the recruiting of agents in the regional and international bodies, as they offer further restrictions upon the governments of states. Public international law offers some important protections for the country population against abuse of power by their own governments.

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

First, one may distinguish between executive, legislative and judicial agents – the classical doctrine of tripartite political institutionalism. The interaction between executive and

legislative agents may be structured alternatively, like in parliamentarism or presidentialism. What is crucial with the judiciary, whether structured as in the Common Law tradition or as in the Civil Law tradition, is the political independence of the judges from the executive and legislative agents.

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

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

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

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

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

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

## Thin or thick constitutionalism

A constitutional state affords two kinds of mechanisms that enhance stability in political decision-making, one creating so-called immunities or rights that cannot be changed and the other introducing inertia in the decision-making processes. Immunities and so-called veto players would reduce the consequences of cycling, strategic voting and log-rolling. The critical question in relation to the constitutional state is not whether immunities and veto players per se are acceptable, but how much of these two entities are recommendable? Given the extent to which a state entrenches immunities and veto players, one may distinguish between thin *constitutionalism versus thick constitutionalism*. In a strong constitutional state there would be several immunities, surrounding in particular private property. In addition, there would be a constitution institutionalized as a Lex Superior, which would be difficult to change and which would be protected by strong judicial review either by a supreme court or a special constitutional court. Would not such a strong constitutional state set up too many barriers for political decision-making? In a thin constitutional state, there would be less of immunities and not much of constitutional inertia in combination with only weak judicial review. Such a weak constitutional state would safeguard the classical negative

liberties by designating them freedom of thought, religion and association with the possible exception of private property, which would only be regulated by ordinary statute law. There would be constitutional inertia, but not in the form of qualified majority rules and the legal control of public administration would be important but judicial review would not take the form of a power of a court to invalidate legislation. The problem with a thick constitutional state is that it may bolster the status quo to such an extent that democracy is hurt. These mechanisms that thick constitutionalism involve - immunities, qualified majorities, judicial review - all come into conflict with desirable properties identified above in relation to the making of social decisions: neutrality, anonymity and monotonicity or positive responsiveness. Ultimately, strong constitutionalism runs into conflict with the egalitarian stand in the concept of democracy, viz that any alternative should be relevant for social decision, that each and every person should have the same say. A thick constitutional state may enhance political stability but be difficult to bring into agreement with the notion of populist democracy (Tsebelis, 2002). There would simply be too many immunities and too much of inertia for democracy to be able to allow the people to rule. However, it is difficult to see how a thin constitutional state could present a threat to democratic institutions. On the contrary, the institutions of a thin constitutional state could complement the institutions of a democratic state by making social decisions more stable. A constitutional state may be erected by means of a minimum set of institutions or a maximum set. In the minimum set up there would have to be institutions that safeguard the following: (1) legality; (2) representation; (3) separation of powers; (4) control of the use of public competencies and the possibility of remedies. It is difficult to understand that such a minimum set of institutions would threaten democracy. When there is a maximum set of institutions in a constitutional state involving numerous checks and balances, then there is a potential collision no doubt.

## **Institutional set-ups**

One of the key issues in neo-institutionalist research is the comparison between two basic executive models: parliamentarism with the Premier and presidentialism with the President. Which executive model is to be preferred or performs the best? Examining data on the advantages or disadvantages of alternative structuring of the executive, one is confronted by the problematic of the presidential regime. It comes in several forms: pure presidentialism, mixed presidentialism and formal presidentialism. In the empirical enquiry below, pure and mixed presidentialism is displayed against rule of law I and rule of law II, with the following scoring: 0= parliamentarism, 1 = mixed presidentialism, and 2 = pure presidentialism. Formal presidentialism as in some parliamentary regimes or as in the Communist dictatorships will not be included in this enquiry. Also in this somewhat different classification of executives, one receives the finding that pure and strong presidentialism tends to be a negative for rule of law I or II.

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

It seems that the excellent performance of the institutions of the Washington model is more of an American exception

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

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

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

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

### **Ombudsman**

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

### **Principal-agent interaction**

The principal-agent model is especially valuable when understanding interaction that takes some time to evolve from ex ante to ex post, involving moves and countermoves on the part of both parties. Politicians and bureaucrats versus the population (demos) is an example of such interaction that

has a longer time span, as the principal will evaluate whether the agents perform well or not at distinct points in time

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

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

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

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

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

- (1) What is the proper remuneration of the agents, both salary and perks -  $R$ ?
- (2) Do agents really deliver, i.e. how can agent performance be evaluated systematically in terms of outcome data -  $V$ ?

The remuneration of political agents, whether in legal or illegal forms, has not been much researched, not even in democracies where information is in principle available. For



countries where the state controls such information not much is known, for instance about China or the Gulf monarchies. And political agents may destroy much value  $V$  in society - see Meredith on Africa (1997).

## Entry and exit in politics

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

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

Given that government or the state can be modelled as a political club, government or the state is a collective endeavour by its club members. Political clubs can be small like islands states in the Pacific or Caribbean, and they can include a million or more of people, like India and China. Political clubs are defined by their membership rules that organise persons to participate in the pursuit of collective

goals. Persons do not need government for their own individual objectives that they can pursue in markets. Collective goals are lumpy goods and services that require human collaboration to secure on a large scale: infrastructure, education and health care, defence and crime. To allocate these bulky things, the political club amasses resources. Thus, the following question of governance arises: Who is going to decide over the employment of these collective resources? Political club have members as well as leaders.

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

## Clubs

According to Rasmusen (2006), the principal-agent model includes a principal searching to maximise the value  $V$  of some output(s) by means of contracting with a set of agents, remunerating them,  $R$  for their efforts in producing the output. The payments of the agents derive from the value of the output of the agents, meaning that the principal-agent contract must involve considerations covering the ex ante to the ex post stages.

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

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

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

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

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

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

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

These questions concerning principal-agent interacting arise whenever there is a long-term contract between two groups of people, involving the delivery of an output against remuneration as well as a time span between the making of the contract and the ending of the relationship with the delivery of the output. One finds this type of interaction in the clientlawyer relationship in the legal context, in the

owner-tenant interaction in sharecropping as well as in the asset holder-broker relation in financial markets.

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

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

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

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

## Entry

Entry can be open or closed. Openness of political entry as against closed leadership access is a most determining aspect of a political club in the sense that it is linked with many characteristics of a political club. What counts is de facto open entry, but de jure openness is not merely legal

formalism. Constitutional regulation of entry is often a first step towards real openness, but it may also be a façade.

### *Closed Entry*

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

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

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

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

The closure of political entry always involves violence, or the threat thereof. Political violence is the use of violence against persons for political reasons, i.e. relating to the goals and means of the political club. In a closed political club, political violence may be employed to back up the sitting

leaders. Or it may be resorted to by revolutionary new elite, attempting to crush the established one.

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

Political clubs operating with closed entry are fundamentally instable. The only exception to this generalisation is the set of Gulf monarchies, where tradition, religion, wealth and naked power combine to buttress the ruling elite, although infighting has not been absent, including assassinations.

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

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

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

### *Open Entry*

The central question about political clubs with open entry concerns how much openness there is. It has often been the case that open entry was restricted to some groups of club members but denied other groups, who sometimes were not even regarded as “members” although living within the borders of the club. Various exclusion criteria have been employed: race, income and wealth, age, religion, social strata. Open entry entices fierce competition, focussing upon the electoral mechanism. Elections in closed political clubs have entirely different functions than channelling competition into peaceful channels. It no doubt requires a structure of institutions.

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

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

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

Not even a charismatic person can in open entry alone. Some form of political party is necessary. To distinguish one group of political from another, these coalitions we can “parties” employ a variety of tools: ideology, slogans, labels,

logos, etc. The coherence of a party is never 100 per cent, as infighting and factions often occur. Politicians interpret the vocabulary of the party differently.

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

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

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

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



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

### *Exit*

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

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

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

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

The unpredictability of exit appears starkly when leaders attempt to stay on longer than agreed upon from the start of their rule. In the grey zone between a closed club or an open club, leaders often fall for the temptation to prolong their period in power, stopping the expected exit from the scene. Many leaders in Africa have secured long time power holdings simply by changing the constitution to allow for unlimited re-election, or having no elections at all (Meredith, 1997). Open entry can be undone by several means of the coup d'état, which leads to a shorter or longer closed political club when successful. It may of course fail, sometimes resulting in anarchy.

## Asymmetric information

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

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

- Nazi-Germany: Hitler made himself the “Fuehrer” of the German people, with the promises of a thousand years Reich, but assembled a great personal fortune by various tricks, only to leave the country with almost no value left at his suicide;
- Sierra Leon became independent from the British with flourishing public and private sectors. The political runs down all value in their chase for “blood diamonds”, in order to augment their personal remuneration.

This conflict between R and V often occurs in closed political clubs. In Africa after independence, one leader after the other fell for the temptation to increase remuneration R at the cost of the value of output, through embezzlement, patronage and conspicuous consumption in the entourage of the political elite. As R went up, V stagnated or declined. The tension between R and V are certainly not absent in open political clubs. The full range of R for political leaders is hardly known even in competitive political clubs, where sometimes leadership creates disastrous outcomes with value losses. One example is the Operation Cobra II (Iraqi Freedom), masterminded with little transparency by president Bush, vice-president Cheney and defence secretary Rumsfeld, resulting in enormous costs for the US, both personnel and resources, while this leader trio somehow ended up as millionaires or billionaires, partly due to relationships with the defence industry.

Yet, open clubs do try to reduce the amount of asymmetric information between leaders and members, partly through competing elites (counter-veiling agents) and partly through the institutions of constitutionalism (Furubotn & Richter, 1991, 2005; McIlwain, 1958; Neumann, 1986; Vile, 1967; Weingast, 1989).

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

the leadership accomplishes. The parameter R targets the motivation of leaders, whereas the parameter V examines their performance.

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

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

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

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

The principal would wish to maximise the contribution of the agents to total value and its fair distribution in society, subject to the restriction that the agents need to be

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

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

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

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

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

## Enemies of good governance: Islamic fundamentalism

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

When searching for the roots of radical Islam, one cannot bypass Moslem thought in greater India under British rule. Several non-Arab scholars had a profound influence on Islam in Arabia, such as for instance Mawdudi, theorising not only islamisation but also the relevance of the now blossoming Islamic finance. More research is needed to uncover the influence of Muslim thought in India before partition on the Koranic civilisation, especially the Deobandi School.

### **The Koranic Civilisation**

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

Global radical Islamic terrorism has a disastrous impact not only upon the groups targeted but also upon the Muslim

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

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

### “Islamisation”

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

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

Mawdudi opposed to the secularist nationalist Muslim League led by Jinnah, but on the formation of independent Pakistan he emigrated there, hoping to influence a change

from being merely a state for Muslims to an Islamic state. His political involvement and criticism of government policies, as well as his anti-Ahmadiya agitation, led to his imprisonment in 1953, but the death sentence passed was never carried out. Mawdudi saw Islam as threatened by a wave of Westernisation. He criticised the West and the Westernised Muslim elites as degenerate, and he called for a renewal and purification of Islam. He conceived of true Islam as a total comprehensive system and ideology, incorporating society, politics and the state.

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

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

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

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

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

Thus, Mawdudi sought to purge Islam of what he looked upon as alien elements. Moreover, the social and political ties with



Hindus must be severed. Non-Muslims, for Mawdudi, constituted a threat to Muslims and to Islam and must be contained by restricting their rights. Mawdudi and others founded the Jama'at al-Islami Party in Lahore, Pakistan in 1941. Mawdudi based his call to arms against those who reject Islam on Sura 2: 190–193 from the Koran and on the Hadith, “I have been ordered to fight people (al-nas) until they say ‘There is no God but God’. If they say it, they have protected their blood, their wealth from me. Their recompense is with God”.

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

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

The idea of islamisation wreaks havoc in Muslim countries. Since he included the Shias in the set of non-believers, he

bears responsibility for the tragic civil war in the Koranic civilisation:

(Q6) Mawdudi wrote regarding the Imami Ja'fari Shia, "despite their moderate views (relative to other Shia sects), they are swimming in disbelief like white blood cells in blood or like fish in water."

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

### **"Re-inventing the Caliphate"**

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

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

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

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

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

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

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

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

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

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

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

### **"Offensive Jihad"**

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

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

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

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

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

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

(Q4) “And what if the scholars of the Salaf saw our scholars of today - except those upon whom Allah has shown Mercy - who have inclined to these tyrants, beautified their actions to them, made fair their murders of the Muslims, the mujahedeen (upholders of Tawheed - Oneness of Allah), weakening their honour by issuing fatwa (legal verdicts) after fatwa to make their thrones firm, and safeguard their kingdoms, by labelling everyone opposed to them as a rebel or khaariji (one of the extreme deviant sect of the khawaarij)?.” (p. 108).

“Holy terror” is a term for “holy assassination” and was propagated by Muhammad Abd al Salam Faraj (1954-1982) in his booklet, *The Neglected or Absent Duty*. Faraj arrived at

this jihad (holy war) duty by considering and rejecting non-violent options: participation in benevolent societies; obedience to God, education, abundance of acts of devotion, and occupation with the quest of knowledge; exerting oneself in order to obtain an important position; and democratic options such as engaging in civil liberties such as freedom of speech, the founding of a political party to compete freely with other parties in elections, and the creation of a broad base of support resulting in majority rule. Faraj believed that none of these would lead to the messianic goal of establishing of an Islamic state and ultimately reintroducing the caliphate.

Despite the imprisonment and execution of al-Jihad's leaders following Sadat's assassination, offshoots managed to regroup, declaring jihad against Mubarak's regime. Al-Jihad has continued to be linked to terrorist incidents and outbreaks of communal violence ever since.

One wing seems to be loyal to Abbud al-Zammur, one of the original founders, now imprisoned in Egypt. Another wing is called Vanguard of the Conquest or The New Jihad Group led by al-Qaeda's Ayman al-Zawahiri.

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

### **ISIS replacing Al-Qaeda**

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

main ideas inspired the creation of ISIS. These are the basic ideas of the man called “AMZ”:

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

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

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

Thus, AMZ or az-Zarqāwī is much more to be seen as the forerunner of ISIS than al-Zawahiri. But his ideology or religion is the radical Sunni fundamentalism, created by the three: Mawdudi, Qutb and Faraj. Al-Zawahiri wrote several books on Islamic movements, the best known of which is *The Bitter Harvest* (1991/1992), a critical assessment of the failings of the Muslim Brotherhood. In it, he draws not only on the writings of Qutb to justify murder and terrorism, but prominently references Pakistani Jamaat-i-Islami founder and ideologue Mawdudi on the global mission of Islamic jihad. Global jihad as Mawdudi had prescribed became al-Zawahiri’s obsession, However, the ISIS is now calling the shots and they employ the ruthless tactics of AMZ or az-Zarqāwī.

Sunni fanaticism acts like the scourge of Islam for the Middle East, leaving behind immense human and capital destruction. How can ecological policy-making be feasible in so-called “failed states”? The Muslim countries and

communities are confronted with handling major environmental resources, like water, forest, sewage, waste, oil and gas, etc. What can a government do if confronted by the “religion of warriors” (Weber). Global ecological coordination will also be hampered by the lack of rule of law in many African and Asian countries – no doubt a legacy of oriental despotism, colonialism and widespread corruption.

## Asia: China, South East Asia and the “Stans”

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

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

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

There is also Rousseau's notion of freedom as participation; that is, people are free when they together decide on the laws that restrain their lives. Following these concepts of freedom, it is necessary to focus on the scope and range of rule of law I



and II in a country, with human rights as well as voice and accountability being considered. Countries may experience tremendous economic growth without experiencing similar advances in freedom as human rights or freedom as participation in collective choice. As stated above, Sen (2000) maintains that economic progress results in increasing freedom. From a normative point of view, this is a highly acceptable or desirable standpoint. But is it really true in the world we live in? In the ASEAN region, rapid economic development in several countries has not yet resulted in the rule of law. Stunning economic advances in several of the East and South East Asian countries have been accomplished, without resulting in either economic freedom or political freedom. Singapore and Hong Kong are interesting exceptions as these two entrepot entities score high on rule of law I. Only Japan, Taiwan and South Korea come out at a reasonable level on both types of rule of law: rule of law I as judicial autonomy and legal integrity, and rule of law II as voice and political accountability. The typical global association between economic advances and the rule of law is weaker in the ASEAN region than in other regions of the world. This is worthy of more detailed research along the lines indicated in this discussion.

## Conclusion

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

of the agent. All kinds of solutions to this game are conceivable, depending upon contingencies such as the availability of agents as well as the existence of asymmetric information. In politics, it is the agents who know the most.

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

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

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

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

In politics, transaction costs are minimised by handing over the responsibility for the tasks of the state to a set of

people, called the leaders and their public servants. I will employ the word: “agents”. The agents provide the members of the state – the citizenry or the principal – with the chief goods and services of this type of community, when they are successful that is.

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# 5

## Well Orderedness in State and Society

### Introduction

In chiliastic theory like Marxism and Anarchism or anarcho-syndicalism is the idea of an endstate of human history where liberty and equality would be both realizable. The state as regulator would cease to exist and society flourish unoppressed by institutions that constrain freedom.

The principal-agent model from the economics of information entails that egoism and asymmetrical knowledge make such an end state impossible. Only a country with institutions that restrain opportunistic behaviour can be a happy country.

### Rawls: TTE WSL-ordered country

In A Theory of Justice Rawls pictured the necessary background to the implementation of his principles of justice, namely the well-ordered society. Here there was actually a tautology, as Rawls used his 3 rules of justice to construct this well-ordered society. To be more precise, a well-ordered

society fulfills two of his justice notions: freedom and impartiality.

What caused much attention was Rawls' third principle: maximin derived from a veil of ignorance. As a matter of fact, this is socialist equality involving considerable transfer payments and free public services. No country has ever tried the maximin strategy for social justice – to maximize the share of the least favoured. This amounts to feasible equality, given losses from taxing the more favoured.

In his later writings, Rawls never returned to socialist equality but emphasized political liberalism.

Freedom, impartiality and equality are focused upon in theories of justice. In the well-ordered countries around the world it is freedom and impartiality that counts.

Barry claims that justice is impartiality but this seems to hold for legal justice much more than for social justice. For instance, how about progressive taxation, central to social justice? Sen argues that Rawls' notion of a state of the veil of ignorance entails transcendentalism, but it merely posits a game where a player does not know whether he happens to be or become rich or poor.

Now, how then to tell whether a country is well-ordered or not? Can one speak about degrees of well-ordered countries? Yes, by linking it up with the concept of rule of law.

## Rule 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.”

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

Well Orderedness in State and Society

1. Strong legal formalism promoting equality under the laws
2. Individual rights covering contract, free labour and private property as well as the joint stock company with bourses.
3. Checks and balances, i.e. institutionalized mixed government with countervailing competences between executive, legislature and judiciary.

The World Justice project (WJP) maps 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.

Table 1 presents results of the most recent survey of the RL Index for 138 countries around the world, presenting the mean value by region.

**Table 1.** Average RL index by world region by 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	0,49	0,62

**Source:** WJP 2021.

The scores above are the results of numerous computations. For each aspect of rule of law a country is



scored between 0 and 1, allowing a conclusion about more or less, which scores are then aggregated.

## Most well-ordered

Here we find countries scoring between 0.9 and .75. The top well-ordered countries are all Nordic countries and the US comes lower at .69. Why? It may be pointed out that Western Europe, Australia, Canada and Uruguay come in between the Nordics and USA. What is the secret behind Scandinavian well-orderedness?

Perhaps the comparison of the US with small Nordic countries is misplaced. All the large countries of the world perform worse than USA. The large West-European countries score above the US except Italy.

The WJP index mentions a large number of countries that score below .5. They are deficient in terms of:

- I) Accountability
- II) Just law
- III) Open government
- IV) Accessibility and impartiality.

One observes that the majority<sup>1</sup> of mankind lives in ill-ordered countries like Uzbekistan at .5, China at 0.47, and Venezuela at very low 0.27.

Many of the countries that are ill-ordered are Hobbesian, i.e. they are plagued by chaos or tribal conflicts. On the other hand, we also find firm dictatorships.

In the set of ill-ordered countries we have dictatorships of all kinds. Today it is actually difficult to distinguish between right-wing and left-wing authoritarian regimes. Take the case of Burma!

The ill-ordered countries are to be found in Latin America, Africa, Middle East and Asia as well as the Caribbean and the Pacific. However, there are clear exceptions: Costa Rica and Chile, Botswana and Namibia, Japan and South Korea for example.

## Dictatorship

The road to ill-orderliness in sub-Saharan Africa has been the making of coups. Once a country is the victim of a coup, this often happens repeatedly. There is no counterweighing force in African countries, except in a few well-ordered ones.

Military coups is one plague, and the other one is long-term mismanagement by a too long sitting president, like in Congo, Zimbabwe and Sudan. 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.

## Latin American *Violenza*

Few countries in Meso America or South America score as well-ordered. On the contrary, they mostly come in at around .5 or lower. In fact, LA political history is much characterized by instability and outright violence, between countries or within them. Chile ranks high although the memory of Pinochet is still fresh.

LA countries have a form of instability and disorder at the basic social level among the interactions of people. A few are drowning in gangster or mob violence, often related to drug battles. It should be pointed out that the Caribbean has both well-ordered and ill-ordered countries. The slaughter of the rain forest and indigenous cultures is heart-breaking.

## Kadi-justiz

None of the Muslim countries score as well-ordered; except the UAE? It is the quality of the legal system in Dubai that renders such a high evaluation. Yet; the WJP puts open government at UAE to .65 – hardly correct. That Muslim countries are ranked often as ill-ordered reflects the strong position of Sharia Law or Shia legal institutions. Law is what the Kadi and the Mufti arrive at in court, even when deviating from just law and impartiality.

Muslim countries are mostly either dictatorships or in Hobbesian strife between Sunnis and Shias. Several regimes are patrimonial and resources belong to a ruling dynasty. A few Muslim states use the Koran as the Basic Law that is outside of principal-agent modelling of politics and administration. Malaysia and Indonesia are promisingly innovative.

## Leninism

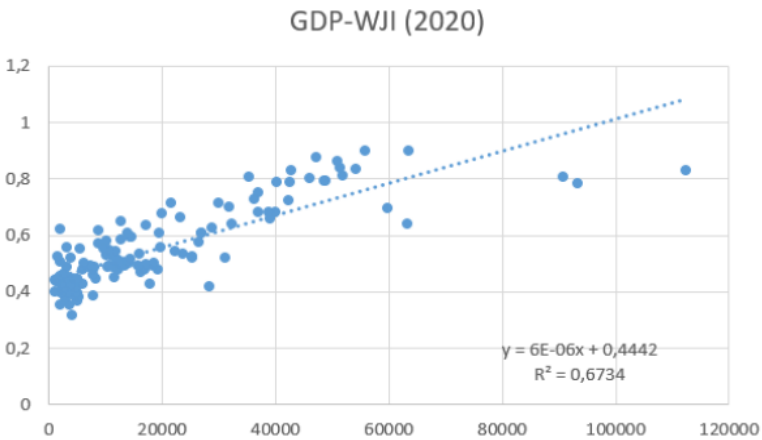
No political theorist has had a practical influence as Lenin. Writing dogmatic elaborations of Marx, he confronted the question of what could be done in a backward society to enhance socialism. Lenin focused on Marx' idea of the dictatorship of the proletariat that had not been spelled out in detail.

Lenin outlined the Leftist State with total control that would assist economic development in its path towards its end state- from each according to capacity, to each according to need. It was a one party state – dictatorships of the proletariat. This was the centralised Soviet Union, adopted in one form or another in the countries where the Communist Party took power. Millions of people live under Leninism as a polity which has no foundation in principal-agent theory.

The dictatorial state that Communism ushered in is ranked by the WJP as ill-ordered but because of its instability. The crux of the matter is the political control of the judiciary. Socialist law is not guided by considerations of justice like Common Law and Civil Law.

## Conclusion: Politics, economics and the law

Well-ordered countries are affluent meaning gdp per capita. But not all countries that are not part of the set of well-ordered countries are to be found in the Hobbesian condition of poverty and conflict. It is true that a few are in dire straits but several outside the set of well-ordered countries are neither poor nor instable. Diagram 1 shows the relationship between the WJP index and GDP per capita.

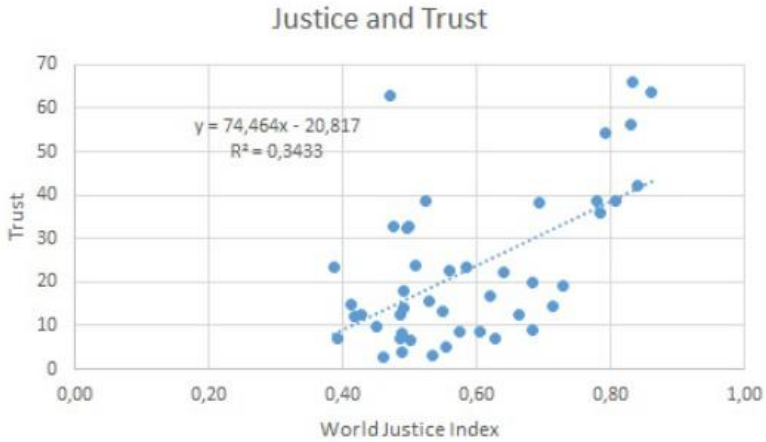


**Diagram 1.** GDP per capita and WJP index (World Bank 2022; WJP 2021)

Affluence seems to be a necessary but not sufficient condition for well-orderedness. Culture also matters: the legal system of the country must be either Common Law or Civil Law. Still; the most well-ordered countries in the world employ Scandinavian Law. It has not been exported except its *Ombudsman*.

Much of human suffering is due to a life under injustice or institutions which do not restrain opportunistic behaviour like e.g. looting. In the ill-ordered country without rule of law: accountability, just law, open government and impartiality people are oppressed. The Nordic model goes beyond Nozick's justice solution.

We may add that well-orderedness promotes trust – see Diagram 2.



**Diagram 2.** *Connection justice and trust (WJP 2021; Ortiz-Ospina & Troser, 2016)*

Well-ordered countries face abrupt climate change which requires cooperation with the illordered countries and it may not be forthcoming in time. The shape of Law shapes the country - both publicly and privately.

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# 6

## The Paradox of Warfare

### Introduction

**W**e find two kinds of approaches in the philosophy of War. The standard model is to understand state warfare as driven by state interests or geopolitical considerations. Opposed we have the attempts to outline how the occurrence of war could be minimised or abolished all together.

War is the prolongation of politics with other means, stated Clausewitz. But this famous proposition on the essence of warfare rests upon the assumption that war can deliver. In reality, warfare is meaningless. Look at the ong oing wars in the Ukraine and Gaza: endless suffering.

The outcomes of war tend to fall far from the goals of warfare. War, said Clausewitz, is basically the imposition of your will upon another with violence. But the following holds:

- (1) Costs of war > benefits of war.

When war is started, there is opportunism about opportunity and hubris about capacity. When war is ended if at all the commentaries will be built to honour those who are not. The Gulf between ends and means on the one hand and outcomes and causes on the other hand is huge in the wars of Ukraine and Gaza.

The way a war develops is basically unpredictable. Yet the standard model of warfare is committed to the rational choice model of behaviour.

## The estimates driving warfare

I will first attempt to extract an implicit way of modelling land warfare from the main literature and then state its flaws. The war plan is the key concept with the following properties:

E) Estimates of the strengths of the war parties, of own and of the other.

These estimations are subjective beliefs about one self and the other. They change over time, sometimes completely. Bias in estimation of own strength and that of the other tends to occur much *ex ante* the war, including help to be received from outside.

Thus, the Russian side was naively bullish about war *ex ante*. With mounting Russian losses came Ukrainian hubris. At the moment, it is an attrition war that Russia will win *ex post*, when the NATO supply of arms and money fade away. Stunning one may say even neutral Sweden has promised airplanes. The costs of the war are staggering and casualties enormous on both sides.

Also in Gaza economic costs are very high, for Israel mobilising 300 000 soldiers and bombing the area continuously almost. But civilian costs are on such a scale that history will not forget. The huge Israeli military effort is estimated to eliminate Hamas from Gaza and their tunnels. It has resulted so far in very high death numbers among the civilians, women and children. The final toll may be close to genocide.



## The paradox

We come now to the philosophical question:

(Q) Could somehow the immense costs for the parties at war be avoided?

What we are looking for is a method by which in these two examples Russia and Ukraine as well as Israel and Hamas Palestine could use the corresponding resources for constructive purpose.

Let us call the costs of war hitherto CW. Assume that the gains from war are zero as well as that no endings are in sight. Thus:

(CW) Ex ante to  $T = \text{now}$ , including all costs caused by the war, from human to material costs.

In both these two CW is already very high and the end is not in sight. Why incur WC? A comparison with status quo ante bellum would involve a rejection of the war alternative. Thus is the philosophical paradox of war: it is irrational.

## Either or

Neither Russia or Hamas needed to start the war with WC. Neither the Ukraine nor Israel needed to embark on a course of action leading to CW. So why not predict CW and prevent CW?

The reason of failure to predict is a combination of:

(a) Myopia

Shortsighted leaders do not take this possibility of an attrition way into account. The war will be over soon, they think

(b) Opportunism

Actually, both parties may overestimate their strength and underestimate the opponent.

(c) War hysteria

Ex ante, popular support for a war may be large. The dream of a quick and decisive victory loom considerably not only among decision-making but also with citizens. The ugly faces of war appear soon and ex post the losses count with despair.

The Russians had hubris ex ante, whereas the Ukraine overestimated their chances after Russian initial adverse. Now

Ukraine is said to loose, although Russia may still make strategic mistakes. However, the Ukraine can not support its CW without foreign aid. Levinsky managed great contributions from some NATO countries, being welcome to speak in several Parliaments. “As long as it may take” was promised by the US, now starting to hesitate. Both Russia and Ukraine spend hundreds of million dollars a day as CW. Waste!

American scholars Sachs and Mearsheimer lured Ukraine into the war by advising them to insist upon NATO membership. It is not known whether the war was really about democracy, EU membership or adhesion to NATO, but the CW have been catastrophic for Ukraine and zelenskij. If democracy and neutrality could be archived Ukraine would not have CW repenting costs, although Crimea could not be recaptured.

Even Israel runs colossal CW. And the CW for the people at Gaza is astronomical. Could these costs of war have been avoided and positive outcomes promoted?

The stunning relation is that between Hamas and the people of Gaza. No Matter what Hamás does to Israelis, the action is applauded. The atrocities of 7/11 could hardly have been wieved by Israel as but war. Now the people of Gaza has lost everything. But they hardly blame Hamas.

Hamas is a special type of Muslim organisation. It adheres to the most violent Muslim rethoric originating in the town of Deobandi during the Indian uproar against British rule. The Muslim lesson of the defeat in Sepoy was that jihad was the central concept in modern Islamic message. And even the death of Muslims at suicide bombing could be necessary for Islam to prevail.

## The Mechanism

Political theorists are by no means all so-called realists. The realists focusing on power and sovereignty are numerous but they are opposed by moral and legal theorists. Actually, alongside the development of theories of state sovereignty, there emerged proposals limiting that absolute power. Not

only was there the theme of a just war, but peace projects were launched to promote eternal peace. Two mechanisms were discussed at length:

- (I) Arbitration
- (II) World federation.

Today we have (ii) but not (i), although the UN framework is not strong to prevent war. Arbitration occurs but it is voluntary.

What is missing is not stronger institutions - the governments of the states of the globe would never accept this. Instead the interest in avoiding the huge costs of war (CW) should be recognised.

To make the belligerents focus on the costs of war, the (CB) for each of the belligerents should be monitored from ex ante to ex post. It would be more clear to the belligerents what their costs could amount to and help them search alternatives of action. This is relevant before, during and after the war. Such considerations, backed by science inquiry, could hacked strategies in both the Ukraine war and the Palestine warfare. Even for warriors who see war as an end and not a means, it would be interesting to know (CB) for various alternatives of strategy.

## Conclusion

Theories of deal with the best strategy or tactics, but they examine little the costs of war in the comprehensive sense. Under the auspices of the UN, a research centre would examine all kinds of war costs - total, per day etc. This information would be publicly accessible.

The mechanism could counteract the regret typical of the paradox of war. With hindsight Ukraine would not have played its cards as it did. Sachs has rightly called attention to the capricious play of the US, luring Zelenskij with the NATO card.

Regret is the paradox of war: "if only we had done differently". This hindsight also includes peace along the status quo. Actually, one party may be winning but still finds that:

The Paradox of Warfare

(1) Costs > benefits.

The Pyrrhus victory does not escape the paradox of war. Hamas attempts to avoid it by calling their losses “martyrs”, meaning they are on the oad to Paradise. Ghengis Kahn knew how to play with the paradox of war by demanding surrender with life or face elimination from Earth. He kept his word in both outcomes.



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