ECONOMICS AND REGULATION

For centuries authorities have gradually degraded the common law social order of the people through misuse of positive or statute law. The Roman Empire passed less than a hundred statutory acts in its more than 5 centuries of existence. It was not until after the Norman Invasion of 1066 that British kings systematically integrated criminal law into national jurisprudence, and that was to have fines for offenses between subjects payable to the Crown as a new source of revenue. What had been traditionally civil offences were one by one gradually converted to criminal.[1]

The Free Market

Some prefer to characterize our economy as capitalist. But only the disingenuous could go so far as to describe it as free-market capitalism. Many see government as the good that staves off greed, and capitalism as the bad that corrupts government.

But what is the means of social organization compatible with social harmony? If capitalism means making use of capital, i.e. the use of produced means of production such as tools, clearly every modern economy is capitalist. So the question becomes deciding on the optimal use of government under capitalism.

The more involved case to make brings more clarity. Freedom produces order, not the other way around. That the most effective control of greed occurs under free interactions and exchanges among consenting adult participants in the market is, of course, not self-evident. Neither is it self-evident that government cannot live up to the hopes bestowed on it by well-meaning people.

It can more rapidly and easily intervene to produce desired results in particular instances than can strictly voluntary association. But government suffers from those varying degrees of failure that, in an age of information, is endemic to hierarchical systems in social settings. Nobel Prize winner F.A. Hayek (1988) termed the naïve belief in the efficacy of this kind of management applied to complex economic affaires a *fatal conceit.*

Markets only exist because transactions are mutually advantageous--only entered into if providing an expected benefit for each party. Markets are of the people. Unless there is physical compulsion, even if circumstances leave no choice; neither party to a trade can be said to be the cause of the other's entering into the arrangement. And this is distinct from either the state or the thug that enlists force, or the threat of force.

From the standpoint of this discussion a *free market* system is not to be confused with a system of mis-regulation and crony capitalism. It is defined by socially peaceable interactions absent dominant control from imposed politically organized policing.[2] This is far removed from the economic system we live under.

Individuals and groups of individuals, in a real market system, are constrained by undiminished, even unrelenting discipline produced by markets, absent advantages gained through political or juridical favors

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[1] For a balanced analysis on the matter of restitution vs. retribution under criminal law see Peter j. Ferrara, **Retribution and Restitution: A Synthesis**, *The Journal of Libertarian Studies,* Vol. VI, No. 2 (Spring 1982).

[2] Given that participants would be assumed to share in rights to use the earth, air etc. and not constrained by a feudal arrangement that predisposes an oligarchy of inequality.

or bias. Individuals and firms would be governed by cooperative and protective non-governmental social conventions. These have arisen out of association based on mutual advantage.

Social order emerges outside of the purview of, and in the absence of, political compulsion. Contractual agreements, controlled by reputation and threat of black listing, produced the Law Merchant that successfully regulated commerce between participants of diverse allegiances and nationalities in the middle ages.

Regulatory hierarchies already closely circumscribe behavior in numerous organizations, in churches of faith and sporting associations. Much of legislated law and case law has acted to codify long accepted common law, much of which evolved out of long periods of commercial experience and social interaction.

Voluntary and market institutions function by utilizing extensive contractual agreements, reputation, and credit ratings, as well as insurance, unions, charities, and protection agencies, to name a few. Most of all custom and tradition generates the mutual trust and courtesy that we all live under every day.

When it comes to the need for over-coming possible excesses in the behavior of private economic activity, one can see government as a tool, or one can see it as an originator or contributor to some of those excesses and a barrier to constraints.

Some object that "the honor system" just won't substitute for government. But what is government when it overrides innate protections that would have, for instance, inhibited the nuclear power industry from operating without insurance save for its granted exemption afforded by the Price Anderson Act? How does it ensure that pharmaceutical companies provide safe vaccines when they too are exempt from liability by legislative favor?

In standard questions of policy, whichever side one takes, it should be helpful to be aware of short and long run ramifications of policy choices. Sometimes non-hegemonic solutions take longer to emerge than, or are not as certain as, governmental; but governmental solutions, by definition, always come with the price of working outside of full ex-ante agreement by all parties, and also outside of a context of being limited to one case or issue once power is surrendered.

Economic theory reveals how some outcomes arise unexpectedly from various changes in conditions. Moral (normative) choices require more than application of logic, and may be of greater importance, but the difficulty in making choices should at least be able to take advantage of discernable outcomes supplied by analysis.

In general, violations of justice would be relegated to actions arising outside of voluntary interactions among adults. Internally consistent conceptions of justice are not about equality of material circumstance, but ultimately about human interactions that are either violent or are peaceful.

Finally, economic outcomes can be evaluated differently by different moral standards. Analysis need not be normative, nor compel moral action for or against a determined outcome of a given policy; it can be neutral. It provides conclusions that the reasoning mind is forced to accept: information only available by following extended lines of reasoning about cause and effect. What one does with these conclusions is normative. Wisdom dictates that even with seemingly flawless argument mistakes can be made, so that perceived truths should be held with a mindset open to challenges.

Notwithstanding, a system indistinct from organized counterfeiting henceforth transpired, unsupported by any authority from this document, and was fully instituted by 1933. It usurped confines of enumeration without a due process constitutional amendment. The removal of the dollar's gold convertibility was no mere policy matter. It deprived the people of their ownership of gold. It was what happened when titles to gold represented by bank deposits and currency were transferred to the Treasury from the people and their accounts at the banks.

The nature of federal agencies needs to be revealed starting with how the off-budget unaccountable Fed spends its funds not returned to the Treasury out of the money it creates out of thin air.