

**DEBATING LIBERALISM AND POLITICAL ECONOMY IN THE CHANGING
GLOBAL ORDER**

by

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Abstract

In the first chapter, this thesis examines the legal, political and economic foundations of the liberal state. Drawing upon the works of Hobbes, Locke, Hume and Rousseau the first chapter focuses upon how the idea of natural “good” was replaced by a political “right” manifested through the law. In chapter one, the thesis criticises neo-liberalism and corporate theory in their attempts to strip nature of all intrinsic values except self-preservation. In the context of neo-liberal domination, the first chapter further argues that the legal and political foundations of the liberal state have been miscast. It defends reform liberalism against criticisms and attacks the assumption common to such criticisms that the landscape of liberalism is barren ethically.

From this perspective, the second chapter injects competing neo-liberal and reform-liberal ideas into debates about the role of the state and systems of governance in, what is claimed to be, the globalized world. Troubled as the years of nationhood have been, the thesis suggests that it is misleading to summarize contemporary transformations in legal, political and economic systems under the term “globalization”. The changes in the global order do not imply the withering away of the nation-state, but rather suggest a re-interpretation and transformation of its role. Besides the nation-state, macro-regional and local entities are emerging as the new sources of political, legal and economic identity.

In the third chapter, the thesis explores the nature, content and legal aspects of privatization as the dominant and hugely misused tool of liberal policy. The thesis

discusses the analytical framework of the term “privatization” and suggests that privatization may not be regarded exclusively as an economic process but rather should be seen as a policy tool with political, legal, economic and ethical repercussions. In chapter three, the thesis further suggests an elusive line between public and private ownership and argues that the state has direct or indirect rights in practically every economic activity under its jurisdiction, whether undertaken by individuals or public authorities. Our demand for democratization and “liberalization” of liberalism should not be devoted only to the improvement of economic efficiency and the empowerment of private ownership, but rather to the affirmation of the public sphere and changes in the structures of power. The thesis approaches ideology, government and ownership from a theoretical perspective that sees law as a constitutive part of the political, social and economic field.

TABLE OF CONTENTS

| | |
|-------------------------------|------------|
| Abstract..... | ii |
| Table of Contents..... | iv |
| Acknowledgements..... | vi |
| Prologue..... | vii |

| | |
|--------------------------|----------|
| INTRODUCTION..... | 1 |
|--------------------------|----------|

| | | |
|--------------------|---|----------|
| Chapter One | The Political and Economic Foundations of Liberalism..... | 8 |
| | Introduction..... | 8 |
| | Political Liberalism: "the Pople versus the State" | 12 |
| | (A) Thomas Hobbes..... | 12 |
| | (B) John Locke..... | 15 |
| | (C) David Hume..... | 19 |
| | (D) Jean-Jacques Rousseau..... | 24 |
| | Political Liberalism: Final Thoughts..... | 30 |
| | Economic Liberalism: Classical and Neo-liberal Thought..... | 31 |
| | (A) Adam Smith..... | 33 |
| | (B) John Stuart Mill..... | 42 |
| | From Classical Liberalism to Neo-liberalism..... | 46 |
| | (C) Friedrich Hayek..... | 49 |
| | (D) Milton Friedman..... | 55 |
| | Reform Liberalism: A "Liberal" Critique of Economic Liberalism..... | 63 |
| | (A) John Maynard Keynes..... | 63 |
| | (B) John Kenneth Galbraith..... | 69 |
| | Reform Liberalism: Final Thoughts..... | 78 |
| | Liberalism Today and Why I Call Myself a Liberal..... | 79 |
| | Conclusion..... | 90 |

| | | |
|------------------------------|---|----------------|
| Chapter Two | Globalization and Systems of Governance..... | 93 |
| | Introduction..... | 93 |
| | Systems of Governance..... | 95 |
| | (A) Local Governance..... | 97 |
| | (B) National Governance..... | 102 |
| | (C) Macro-Regional Governance..... | 110 |
| | (D) Global Governance..... | 115 |
| | The European Union - A Combination of Local, National and Macro-Regional patterns..... | 119 |
| | (A) Political Institutions and question of Citizenship..... | 121 |
| | (a) Institutional Powers of the EU..... | 121 |
| | (b) Citizenship..... | 128 |
| | (B) The future of the EU: thought and anticipations..... | 134 |
| | Conclusion..... | 136 |
| Chapter Three | Privatization: Options and Challenges..... | 140 |
| | Introduction..... | 140 |
| | Privatization: An Analytical Framework..... | 142 |
| | (A) Defining the term..... | 142 |
| | (B) Privatization: Methods and Techniques... | 152 |
| | Privatization in the European context: no single ontology can be applied..... | 163 |
| | (A) Motivation..... | 163 |
| | (B) Political and Economic framework..... | 166 |
| | (C) Methodology..... | 171 |
| | Privatization in the European Context: Final Thoughts..... | 176 |
| | Privatization and Democracy..... | 177 |
| | Conclusion..... | 189 |
| Chapter Four | Conclusion..... | 191 |
| Bibliography..... | | 195 |

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When I start to think about the philosophical foundations of life, the complexities I perceive are often painful. I almost feel that life has robbed me of the possibility of elegance and the "lightness of being". In the academic year behind me, however, I was privileged to catch the moment, to discover other universes and to meet wonderful people who changed my life forever.

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Prologue

Every concept, the simplest and the most technical, is framed in its own irony as the geometrically cut diamond is held in its setting of gold. The concept tells us quite seriously: "This thing is A, that thing is B." But the seriousness is that of the man who is playing a joke on you, the unstable seriousness of one who is swallowing a laugh, which will burst out if he does not keep his lips tight-closed. It knows very well that this thing is not just merely A, or that thing just merely B. What the concept really thinks is a little bit different from what it says, and herein the irony lies. What it really thinks is this: I know that, strictly speaking, this thing is not A, nor that thing B; but by taking them as A and B, I come to an understanding with myself for the purposes of my practical attitude towards both of these things. This theory of rational knowledge would have displeased a Greek. For the Greek believed that he had discovered in the reason, in the concept, reality itself. We, on the contrary, believe that the concept is one of man's household utensils, which he needs and uses in order to make clear his own position in the midst of the infinite and very problematic reality which is his life. Life is a struggle with things to maintain itself among them.

J.O. y Gasset, *"The Revolt of the Masses"*.

Introduction

Ideas are important. Like cartographic signs and useful starting points, they help us in the everyday search for imagination, ideals and the better world. The impression is that almost every contemporary ideology advocates a high level of material and cultural welfare; peace and order; freedom and democracy; ecological balance and environmental protection; the mastering of technology; decolonization; healthy population and educated youth.¹ We all know where to go, it seems, but we have different concepts, beliefs and tools for achieving a given end.²

After the apocalyptic twentieth century, I am not convinced that we know where to go or how to get there. Different cultures and religions, discrepancies in political and economic systems, falsifications of historical facts and underestimations of philosophy, imply that theory, caught in the existing hegemony of materialism, cannot offer the “universal truths” or lessons that will make this world a more liveable and just place. The world is, indeed, “composed of a field of problems, questions and responses determined by the continuity or discontinuity, clarity or obscurity of the administered ensemble of relations which constitute the partition between present and past, ‘new’ and ‘old’.”³

¹ T. Szentes, *The Transformation of the World Economy. New Directions and New Interests* (Tokyo: The United Nations University, 1988) at 2.

² G.J. Stigler, *The Citizen and the State. Essays on Regulation* (Chicago: University of Chicago Press, 1975) at 24.

³ C. Gordon, *Afterword*, in C. Gordon, ed., *Power/Knowledge* (New York: Pantheon, 1980) 229 at 242.

History has taught me that almost every period of political and economic transition inevitably provokes moral, emotional, intellectual and economic crisis. Since divine truth or tragic destiny made me a part of Eastern European post-communist societies, I am interested in exploring liberal ideas that presently dominate the political and economic scene of Eastern European countries. When I think about my life everything seems to be almost like a film. Up to the 1989, the director was a member of the communist party. In order to get a major role in the film, it was necessary to belong to the communist establishment. Those of us who ideologically rejected communist manifesto were allowed to visit the movie set (because it was owned by the state) and, only occasionally, participate as truck drivers or waiters. Film themes were limited to the glorifications of communism and totalitarian heroes. After the fall of Berlin Wall, new directors came on the set. They brought new cameras and film equipment. They promised us better costumes, better pay checks, maybe even some main and supporting roles in films. Communist themes and heroes were replaced by the Hollywood and Disney World. Unfortunately, only few of us have become film stars. The majority of people are not even allowed to visit the film sets because, now, they belong to shareholders. Film production is better and more attractive but people do not have knowledge of that because the theatre tickets are too expensive.

By using this metaphor I wanted to suggest my reluctance regarding both communist and neo-liberal ideas. I see myself as a liberal. While I ultimately subscribe to liberalism, I disagree with attempts to suppress competing discourses within and outside of liberalism. By providing historical overview of liberal ideas, I will reveal

those competing discourses and argue that liberalism is capable of viewing human beings beyond mathematical equations and understanding of the world as “monolithic” place. I am aware of the possibility that in demonstrating that liberalism does not lead to the evaporation of civic values, I might be challenged to replace one whole intellectual system with another. However, for me, this risk is inspiring momentum in academic work. Assume in order to explore, explore in order to know. The results are always indefinite.

This is a thesis about political economy and the changing global order. Why political economy and the changing global order? Because we need to eat and we need to talk. As Przeworski argued, “these elementary values animate a world-wide quest for political democracy and economic rationality.”⁴ I will examine contemporary conflicts in society by introducing the following issues: (1) the politico-economic foundations of liberalism, as the most influential and controversial ideology of modernity; (2) the process of globalization as the form of liberal conduct and a multi-dimensional process that changes the way we produce, consume, live and interact with each-other; and (3) privatization, the dominant liberal policy tool that is often pursued for political as well as economic reasons.

Chapter One of the thesis, The Political and Economic Foundations of Liberalism, will introduce the theoretical concepts of political and economic liberalism. In this chapter I trace the development of liberal economic theory and

⁴ A. Przeworski, *Democracy and the market. Political and economic reforms in Eastern Europe and Latin America* (Cambridge: Cambridge University Press, 1991).

explore some of the competing strains of liberalism in order to reveal the ethics propounded by various theorists of this school.

The scope of master thesis does not allowed for all relevant scholars to be included. In the first part of the chapter I briefly examine the foundations upon which a liberal state was built, drawing upon the works of Hobbes, Locke, Hume and Rousseau. The specific focus will be upon how the idea of natural “good” was replaced by a political “right” manifested through the law.

Second, I will introduce classical liberalism. Classical liberal economists, such as Adam Smith and John Stuart Mill were less concerned with hamstringing the state than they were with fostering the economic opportunities of the individual. Only for Smith and Mill, the individual loses its identification as being “subsistence of a rational nature”⁵ and becomes *homo economicus*. I will develop the notion that classical liberalism constituted a firm belief that economic freedom is the condition of prosperity and growth; that being poor is a reflection of an individual’s moral character (therefore, it is not the responsibility of the state); and that poverty is an inevitable condition of human life (thereby justifying utilitarian methodology).

Third, I will discuss neo-liberalism as the successor of classical liberal philosophy. Twentieth century neo-liberalism has continued to build upon classical liberal ideas. I will argue that the neo-liberal state has been further minimized to the point of withering away. Friedrich Hayek and Milton Friedman continue to profess the separation of law and morality and have mistakenly argued that the explanation for human behaviour lies

⁵ L.C. Webb, ed., *Legal Personality and Political Pluralism* (Melbourne: Melbourne Univ., 1958) at xx.

in scientific economics and economics only. I want to disturb this neo-liberal faith in monetarism, its neglect of social equilibrium, its crude positivism, its overdosed rationality and its arrogance that prevent us from looking beyond numbers.

Fourth, through the work of reform liberals such as John Maynard Keynes and John Kenneth Galbraith I will outline the origins of reform liberals' response to the classical and neo-liberal theory of rational economic knowledge and "its general regardlessness of social detail."⁶ I will try to defend a reform liberal theory as a "politico-economic... ideology, concerned with context, concrete societies, and infusing basic values into public policy,"⁷ Finally, I will discuss how neo-liberal and reform liberal ideas have been used and updated by contemporary neo-liberals (for example Fukuyama) and reform-liberals (for example Reich and Rawls). In this context, I will suggest the terms of my engagement with liberalism.

In sum, liberalism cannot be understood as a homogeneous political and economic ideology. It starts with political liberalism which claims that individuals are born free but give up their freedom for peace, security and the protection of private property. Then comes classical liberalism which keeps the individual but rejects his or her moral dimensions. Individuals are purely economic beings and subject to strictly limited state intervention in fields of legislation and security. Neo-liberals will keep the classical liberal theory but further minimize the role of the state. They will argue that by employing monetarism and fiscal policy one can solve the problems of human nature.

⁶ D. Moggridge, ed., *The Collected Writings of John Maynard Keynes. Essays in Persuasion*, vol. 9 (London: Macmillan, 1972) at 224.

⁷ C.P. Waligorski, *Liberal Economics and Democracy. Keynes, Galbraith, Thurow, and Reich* (Kansas: University Press of Kansas, 1997) at xii.

Finally comes reform liberalism whose individual is part of a community and extensive government intervention necessary for achieving economic and political goals. As earlier stated, this chapter aims to present a brief historical overview of political and economic liberal ideas with an ambition to re-inject them into the contemporary debate about the liberal movement and the role of the state.

In **Chapter II, Globalization and System of Governance**, I will seek to unpack what has been packaged as “globalization”. I will examine the consequences of acknowledging that nation-states have become too small for the big problems of a post-modern society and too big for the small problems.⁸ This is not to imply the withering away of the nation-state, but rather to suggest a transformation of its role. I argue for more emphasis on diverse models of governance and co-operation among those models. I want to consider local, national and macro-regional entities as the new sources of political and economic identity.

To support my argument in favour of a fragmentation of political and economic sovereignty I offer a case study of the European Union (EU). The EU will be used to illustrate how nation-states are facing a shift downward in political and economic power towards local entities, and a shift upwards towards macro-regional blocks. However, I will argue that the nation-state has retained a substantial number of functions that can be described as the exclusive prerogative of national parliaments. In the context of my argument for diverse models of governance, it will be shown that fragmentation of political sovereignty is not necessarily a destructive process.

⁸ S. Lash & J. Urry, *Economies of Signs and Space* (London: SAGE Publications, 1994) at 279.

Chapter III, Privatization: Options and Challenges, explores the nature and the content of the privatization as the dominant liberal policy tool. I discuss the analytical framework of the term “privatization” and suggest that privatization may not be regarded exclusively as an economic process but rather as a policy tool with political, economic and ethical repercussions. I will also try to elaborate on the motivation behind privatization and the methods and techniques which have been used to achieve political and economic goals.

In the second part I will set out those features that suggest that no single ontology can be applied when the government decides to reorganize its political and economic framework. By analysing differences in motivation, political and economic framework and applied methodologies in the privatization programmes of the United Kingdom and Poland, I will attempt to show the importance of taking into consideration differences in the political, economic, legal, cultural, and historical backgrounds of countries that are engaged in institutional changes and ownership transfers.

In the third part I discuss privatization in the context of democracy. I urge a move towards a “silent partnership” between the corporate world and the political institutions of civil society. Often theory implies either a glorification of private ownership or a nostalgic desire for socialist utopia where economic well-being can only be promoted through forms of collectivism. I will suggest an elusive line between public and private ownership and offer a methodological framework for its conceptualisation.

Chapter One: The Political and Economic Foundations of Liberalism

Truth is a power. But one can see that only in rare instances, because it is suffering and must be defeated as long as it is truth. When it has become victorious others will join it. Why? Because it is truth? No, if it had been for that reason they would have joined it also when it was suffering. Therefore they do not join it because it has power. They join it after it has become a power because other had joined it.

S. Kierkegaard, in "Dostoevsky, Kierkegaard, Nietzsche & Kafka".

Introduction

The mystery of liberalism. Questions which we ask, answers which make us question even more. What is liberalism? What is the discourse and the promise of the dominant political and economic ideology of modernity? Is there only one discourse? Is there only one interpretation?

In this chapter I wish to trace the historical development of liberal economic theory and explore some of the competing strains of liberal economic discourse in order to reveal the ethics propounded by various theorists of this school. My exploration of this ethics is driven by the desire to defend reform liberal economic theory against critics of liberalism and the assumption common to such attacks that the landscape of liberalism is ethically barren.

Most of us have an intuitive sense of what we believe it means⁹ but, nevertheless, feel reluctant to capture liberal philosophy using one definition, one theoretical framework, one narrative. Some authors define it as a "belief in the possibility of a neutral state (neutral, that is, between competing conceptions of "the good") and its commitment to the autonomous nature of the individual (as opposed to defining the individual partly in terms of her social attachments or "constitutive ends")".¹⁰ Others see liberalism as an opposition to all forms of political absolutism: monarchist, feudal, military, clerical or communitarian.¹¹ Classical and neo-liberal ideology focuses on self-interest, individualism, economic freedom and private property.¹² Reform liberals challenge the idea of liberalism as a pure economic theory and assert that "the market does not consist of simple one-to-one personal transactions with generally beneficial or at least innocuous impact on others."¹³ In other words, economic activity is not isolated from community and the world as such. Waligorski suggests that "both liberals and their critics often focus on superficialities, ignoring principles, goals, and values, and offering no criteria by which a person or policy is called liberal or conservative."¹⁴

⁹ M. Mills & F. King, eds., *The Promise of Liberalism. A Comparative Analysis of Consensus Politics* (Aldershot: Dartmouth, 1995) at 2.

¹⁰ *Ibid.*

¹¹ G. Marshall, ed., *The Concise Oxford Dictionary of Sociology* (Oxford: Oxford University Press, 1994) at 290.

¹² C.P. Waligorski, *The Political Theory of Conservative Economists* (Kansas: University Press of Kansas, 1990) at 6-7.

¹³ Waligorski, *supra* note 7 at 16.

¹⁴ *Ibid.*, at xi.

The “liberal world” is firstly the world and only afterwards may it be “liberal”. Consequently, interpretations of our everyday realities, our beliefs and hopes can by no means be defined exclusively with economic theory or political theory, but involve and demand interdisciplinarity in terms of philosophical, psychological, sociological, linguistic and epistemological approach.¹⁵

In the first part of this chapter I will examine the political and philosophical foundations of liberal ideas. Inspired by MacIntyre’s argument that “all nontrivial activity presupposes some philosophical point of view”¹⁶. As MacIntyre suggests, “not to recognize this is to make oneself the ready victim of bad or at the very least inadequate philosophy.”¹⁷ I will attempt to explore “the people versus the State” in the work of the fathers of political liberalism: Hobbes, Locke, Hume and Rousseau.

In the second part I discuss the classical conception of classical economic liberalism and its laissez-faire vision of market-self regulation, individualism and self-interest.¹⁸ By providing a theoretical overview of some ideas in work of Adam Smith and John Stuart Mill, I will attempt to reveal it as a historical moment of disassociation of the private realm from moral and religious conscience. Further, I will try to explain the conditions under which free competition, trade and the concept of utility have become the most influential economic and moral ideology today.

¹⁵ G. Myrdal, *Implicit values in economics*, in D.M. Hausman, ed., *The Philosophy of Economics. An anthology* (London: Cambridge University Press, 1984) at 253.

¹⁶ A. MacIntyre, *Utilitarianism and Cost-Benefit Analysis: An Essay on the Relevance of Moral Philosophy to Bureaucratic Theory*, in K. Sayre, ed., *Values in the Electric Power Industry* (London: University of Notre Dame Press, 1977) at 217.

¹⁷ *Ibid.*

¹⁸ D. Walsh, *The Growth of the Liberal Soul* (London: University of Missouri Press, 1997) at 8.

In comparison with classical political and economic liberalism, I will try to argue how both the neo-liberals, Hayek and Friedman take, an even more minimal view of the freedoms necessary for liberalism to work. Neo-liberal movements have been addressing issues involving the role of the government and individual rights and freedoms dominantly by employing statistics and quantitative analysis. Neo-liberalism further emphasizes the separation of economic and political power and sees economic activity as a necessary condition for and the foundation of political freedom.¹⁹ Ironically, by arguing that liberalism implies only economic discourse, rather than a combination of political, economic and moral discourses, the advocates of neo-liberalism are creating a political discourse and a view of morality.²⁰

In the third part of this chapter I introduce the re-interpretation of liberalism, or what Waligorski calls "reform liberalism".²¹ I attempt to epitomize reform liberal reaction to neo-liberal economic hegemony through a brief elaboration of Keynes' and Galbraith's theories and proposals. Inside a liberal framework, Keynes and Galbraith have reaffirmed ideas that the "public rejects and politicians are afraid to discuss - active government, economic intervention, and paying taxes to support popular public services."²²

¹⁹ M. Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1971) at 4.

²⁰ Lipietz explains that neo-liberal discourse constructed a societal and moral paradigm that can be describe in terms of the following characteristics: a) greater emphasis on the productivist techno-economic imperative; b) fragmentation of social existence, with companies performing functions many of which were previously enforced by the nation-state; c) diminishment of "collective individuality"; d) an overall reduction of administrative-type solidarity; e) marginalization of the unions. See A. Lipietz, *Towards a New Economic Order. Postfordism, Ecology and Democracy*, trans. M. Slater (Cambridge: Polity Press, 1992) at 33.

²¹ Waligorski, *supra* note 7, at ix.

²² *Ibid.*, at x.

Finally, I engage in the contemporary debate between neo-liberals and reform liberals and try to analyse how political and classical liberal ideas had been used and updated in work of scholars like Reich or Fukuyama.

Political Liberalism: "the People versus the State"

In what follows I will attempt to introduce the politico-philosophical foundations of the "contract of society" (*pacte d'association*) out of which the representative government and "liberalization" of the modern state have developed. I will focus on Hobbes', Locke's, Hume's and Rousseau's "judgments" in the case of "the people versus the State".

(A) Thomas Hobbes

The political foundations of liberalism and representative government can be traced to the work of the English philosopher Thomas Hobbes (1588-1679). For Hobbes, "it is the people themselves - not as part of the body politic distinct from the elite, but as all those wishing to live free from fear - who are going to take the political initiative."²³ Hobbes' argument is that *the fear of death* is the foundation upon which a state is built. It is impossible to go further without considering what Hobbes really meant by "the fear of death".

²³ P. Manent, *An Intellectual History of Liberalism*, trans. R. Balinski (Princeton, N.J.: Princeton University Press, 1995) chapter III (*Hobbes and the New Political Art*) at 20.

For Hobbes, despite the fact that nature gives to some people quicker minds than others, people are equal because the weakest has strength enough to kill the strongest:

Nature hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself.²⁴

Hobbes argues that the nature of people is evil. Even if we acknowledge that somebody is “more witty, or more eloquent, or more learned”, yet individuals “will hardly believe there be many so wise as themselves.”²⁵ Therefore, the war of all against all is our state of nature, it is “the natural condition of mankind”.²⁶ This is precisely why the state of nature (the state of war) is unbearable and why, in the state of nature our life is “solitary, poor, nasty, brutish and short.”²⁷

How do the people living in the state of war as “the natural condition of mankind” proceed towards the beginnings of a liberal state? Hobbes suggested that the only way to transcend the shortness and brutality of life is through reason and education. For Hobbes, reason has a goal, lasting self-preservation, and it seeks the way to this goal.²⁸

²⁴ E. Curley, ed., *Thomas Hobbes. Leviathan with selected variants from the Latin edition of 1668* (Indianapolis: Hacket Publishing Company, 1994) at 74.

²⁵ *Ibid.*, at 75.

²⁶ Manent, *supra* note 23 at 25.

²⁷ Curley, *supra* note 24 at 76.

²⁸ R. Audi, *The Cambridge Dictionary of Philosophy* (Cambridge: Cambridge University Press, 1995) at 333.

Reason suggests that it is necessary to limit *jus in omnia*. In other words, Hobbes has declared the end to the state of nature where each person could do anything that he or she deemed useful for defending themselves. As Manent interpreted, “only by renouncing this right can each person dry up war’s source.”²⁹

*Leviathan called a Commonwealth, or State (in Latin Civitas), which is but an artificial man, though of greater stature and strength than the natural, for whose protection and defence it was intended.*³⁰

People renounce their *jus in omnia* and transfer it to somebody who can promulgate the laws necessary for civil peace, who can guarantee the threat of punishment and a sanction against all violation. As Hobbes explains “covenants without the Sword, are but words.”³¹ In this way the sovereign is born. Hobbes’ Leviathan is constituted and liberalism has begun its journey.

Hobbes conceived of absolute power which was no longer held by God’s representative, but by a representative of “mankind”³² The power of the sovereign is founded upon the consent of individual to give up the rights they held in the state of nature. And this is why Hobbes is the founder of liberalism. Political sovereignty emanates from individuals who are capable of obeying a law because they are the ones who imposed the law on themselves (because of the fear of death). Hobbesian doctrine,

²⁹ Manent, *supra* note 23 at 25.

³⁰ Curley, *supra* note 24 at 3.

³¹ *Ibid.*

³² Manent, *supra* note 23 at 30.

therefore, is that civil society, composed of individuals, constituted the state as its instrument. The rationale? People wanted to live longer, free from fear, and in peace.³³

The natural “good” is replaced by political “right” and the law.

Hobbes can be called the founder of liberalism because he elaborated the liberal interpretation of the law, a pure human device, rigorously external to everybody. Such a law does not transform or inform the individual atoms whose peaceful coexistence it is limited to guaranteeing.

*It founds democratic idea because it develops the notion of sovereign established on each subject's consent. It founds the liberal idea because it develops the notion of the law as a device external to individuals.*³⁴

Absolute law and the idea of unlimited sovereignty, which replaced natural good or a *jus in omnia*, will go through its further “liberalization” in the work of Montesquieu and his revolutionary theory of the separation of powers.

(B) John Locke

The English philosopher, John Locke (1632-1704), starts from a position similar to that of Hobbes. He agrees that the fundamental right of the people is to preserve their lives. What threatens one's life, however, is not another individual's desire for power but rather hunger.³⁵ Locke argues that the reason people enter into society is the

³³ Curley, *supra* note 24 at 26.

³⁴ *Ibid.*, at 32.

³⁵ Manent, *supra* note 23 chapter IV (*Locke, Labour and Property*) at 40-41.

preservation of their property by rules set “as guards and fences to the properties of all members.”³⁶ In contradiction to Hobbes, man is not seen any more as a political animal but rather as an owning and labouring animal, owning because he is labouring, labouring in order to own.³⁷

*Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property.*³⁸

Initially, Locke limited the right to appropriate to the law of nature. The argument made was that nobody has the right to appropriate more than he or she consumes, since that would be wasteful. This is the argument often used to associate Locke with philosophers from the school of Natural law, Plato, Aristotle and Aquinas. Mutuality is founded upon the Natural law argument that a “morally justified specific form of ownership is the one which gives an opportunity for its citizens to lead a virtuous life.”³⁹

³⁶ J. Locke, *Of Property and Governmnet*, in D. Boaz, ed., *The Libertarian Reader. Classic and contemporary writings from Lao-tzu to Milton Friedman* (New York: The Free Press, 1998) at 132.

³⁷ Manent, *supra* note 23 at 42.

³⁸ J. Locke, *An Essay Concerning the True Original, Extent and End of Civil Government*, in E. Barker, ed., *Social Contract. Essays by Locke, Hume, and Rousseau* (Oxford: Oxford University Press, 1971) at 17.

³⁹ J.O. Grunebaum, *Private Ownership* (London: Routledge & Keagan Paul, 1987) at 25.

*The same law of nature that does by this means gives us property, does also bound that property too. God has given us all things richly, I Tim. vi 12. Is the voice of reason confirmed by inspiration? But how far has he given it us, to enjoy? As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy.*⁴⁰

Once property, which enters the world through labour, becomes a value represented by money, however, it becomes impossible to restrict the level of appropriation to the individual. When money made it possible to represent and preserve quantities of labour, the legitimate owner was no longer necessarily the labourer. It had become sufficient to buy and sell in order to own.

*Again, if he would give his nuts for a piece of metal, pleased with its colour, or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others; he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it. And thus came in the use of money, some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life. And as different degrees of industry were apt to give men possession in different proportions, so this invention of money gave them the opportunity to continue to enlarge them.*⁴¹

It is important to emphasize how Locke insisted that it is human labour, and not nature, that gives things their value. The right to property, founded on the argument

⁴⁰ Locke, *supra* note 38 at 19.

⁴¹ *Ibid.*, at 28-29.

that the individual has a natural right to a property which has no natural limits (and there are no limits because money allows us to prevent the goods from perishing), has become the cornerstone of liberalism.

Locke, nevertheless, acknowledged the fact that the economy alone is never sufficient authority. It needs political institutions for its proper functioning, for existence. This can be characterized as a “Hobbesian” momentum in Locke’s writings. To leave the state of nature and enter “civil society” and the idea of “modern state”, is essentially to constitute a legislative assembly. Locke echoes Hobbes’ Leviathan, arguing when the legislation fails, dissolution and death follows.⁴²

*It is one thing to persuade, another to command; one thing to press with arguments, another with penalties. This the civil power alone has a right to do; to the other, good-will is authority enough. Every man has commission to admonish, exhort, convince another of error, and by reasoning to draw him into truth: but to give laws, receive obedience, and compel with the sword, belongs to none but the magistrate....
...the business of laws is not to provide for the truth of opinions but for the safety and security of the commonwealth, and of every particular man’s goods and person.⁴³*

In other words, Locke sees legislative power as the direct extension of the “natural legislative power”.⁴⁴ Its purpose is primarily to protect ownership of the individuals based on labour and the exchange and “safety and security of the commonwealth”.

⁴² *Ibid.*, at 123.

⁴³ J. Locke, *A Letter Concerning Toleration*, in Boaz, *supra* note 36 at 54, 56.

⁴⁴ Manent, *supra* note 23 at 48.

Again, echoing Hobbes, Locke has affirmed the idea of representative government:

*And thus every man, by consenting with other to make one body politic under one government, puts himself under an obligation to everyone of that society to submit to the determination of the majority;*⁴⁵

To summarize, Locke introduced the concept of private property through human labour and, afterwards, through a value represented by money. He conceptualized the “federative powers”⁴⁶ of the sovereign, that is the privileges of government, as preserving private property, the state of peace and foreign relations. Interestingly, Locke discusses only issues of assigning rights to individuals. What might be an explanation for this? He was seventeenth century philosopher. It was virtually impossible to anticipate industrial capitalism founded upon private ownership of land, resources and the means of production. However, with Locke, liberalism came to show increasingly visible contours of economic ideology to come.

(C) David Hume

David Hume (1711-1776) was a Scottish philosopher and historian who differs from Locke and Rousseau in his scepticism towards the idea of the social contract between the government and the people. Hume believed that, even if at some

⁴⁵ Locke, *supra* note 38 at 57.

⁴⁶ Manent, *supra* note 23 at 49.

point in time, people have given their original consent to government, it is beyond doubt that eighteenth century sovereign does not exist by people's consent. On the contrary, it is based on the power of authority, force and violence.

*The face of the earth is continually changing, by the increase of small kingdoms into great empires, by the dissolutions of great kingdoms into smaller kingdoms, by the planting of colonies, by the migration of tribes. Is there any thing discoverable in all these events but force and violence? Where is the mutual agreement or voluntary association so much talked of?*⁴⁷

Hume argued that the consent of the people was just one of several foundations of government. In spite of his criticisms of the consensual legitimacy of government, Hume belongs to the category of "fathers of liberalism" in his explanation of why it is necessary to surrender a promise of "native liberty"⁴⁸ and the unlimited powers we possess in a state of natural law. It is because of peace, and security. It is because of commerce and civilized society. In other words, even if our primary instincts lead us either to indulge ourselves in unlimited freedom or to seek dominion over others, it is in the interests of peace and public order to limit *jus in omnia*.⁴⁹

*But why are we bound to observe our promise? It must here be asserted that the commerce and intercourse of mankind, which are of such mighty advantage, can have no security where men pay no regard to their engagements. In like manner, may it be said that men could not live at all in society, at least in a civilized society, without laws, and magistrates, and judges, to prevent the encroachments of the strong upon the weak, of the violent upon the just and equitable.*⁵⁰

⁴⁷ D. Hume, *Of the Original Contract*, in Barker, *supra* note 38 at 152.

⁴⁸ *Ibid.*, at 149.

⁴⁹ *Ibid.*, at 160.

⁵⁰ *Ibid.*, at 161.

Although it would be inappropriate to label him utilitarian, Hume was clearly arguing that human beings are nothing more than self-interested creatures whose societies can be justified only to further their own ends. To illustrate this point, let me briefly introduce Hume's division of moral duties. In the first group he writes about "natural instinctive moral duties" such as love of children, gratitude to benefactors, pity to the unfortunate.⁵¹ This is why Hume is not a pure utilitarian. There is at least, in his analysis, something beyond self-interest and a cost-benefit analysis. However, "the second kind of moral duties are such as are not supported by any original contract of nature, but are performed entirely from a sense of obligation."⁵²

*It is thus justice, or a regard to the property of others, fidelity, or the observance of promises, become obligatory and acquire an authority over mankind.*⁵³

In other words, we need artificial remedies, we need "additional force, ability and security", because "individual force is too small to execute any considerable work;" and he or she can never attain a perfection in any particular art.⁵⁴

Justice for Hume is a part of an "artificial morality". It is distinct from Morality. It has nothing to do with fairness or equity. Rather, it is the vehicle for our desire to own and live in peace and security.

⁵¹ *Ibid.*, at 159.

⁵² *Ibid.*, at 160.

⁵³ *Ibid.*

⁵⁴ D. Hume, *Justice and Property*, in Boaz, *supra* note 36 at 136.

*'tis only from the selfishness and confin'd generosity of men,
along with the scanty provision nature has made for his wants,
that justice derives its origin.*⁵⁵

Hume's idea of the separation of morals and justice is an inspirational source for contemporary neo-liberalism. There is no metaphysical purpose, Hume would argue. Except "moral duties to which men are impelled by a natural instinct", everything fits into a scheme of an empirical rhetoric and the hyperrational madness of self-interest and economic growth. This "empirical measurement of man" has been influential to the extent that some advocates of neo-liberalism argue that even questions of love, or emotional pain should be analysed through mathematical equations. As Becker suggests, "all human behaviour can be viewed as involving participants who maximize their utility from a stable set of preferences."⁵⁶ The trap of modernity, and classical and neo-liberalism, however, is that in trying so hard to distinguish morality from justice, or morality from the economy, liberal theorists are caught within a particular sort of morality. Wexler calls it the "morality of business"⁵⁷ and Derrida explains that every thought or ideology is always a form of "moral" righting because its purpose is to put right either a mistaken opinion or a lack of knowledge.⁵⁸ By doing so, those who profess a particular ideology, in this case classical and neo-liberalism, inevitably create a particular sort of morality.

⁵⁵ D. Hume, *A Treatise of Human Nature* (London: Penguin Classics, 1969) at 547.

⁵⁶ G. Becker, *The Economic Approach to Human Behaviour* (Chicago: University of Chicago Press, 1976) at 14, 205.

⁵⁷ S. Wexler, *The Moral Confusions in Positivism, Utilitarianism and Liberalism* (1985) 30 *American Journal of Jurisprudence* 121.

⁵⁸ N. Lucy, *Debating Derrida* (Melbourne: Melbourne University Press, 1995) at 19.

At the end of this brief conceptualization of Hume's thoughts and ideas on the government and justice, it seems that Hume remains controversial. Although he was a proponent of "secular scientific modernity", certain of his writings indicate that, on some level, he was aware of the defeatisms which empirical analysis of human behaviour necessarily imply. For instance, Hume knew that justice is contrary to public interest in a sense that legislative bodies lack people's consent and inevitably reflect the interests of the elite supported by the means of legitimate coercion. He even explicitly suggested that "a single act of justice" has to be accompanied by other acts which may prevent justice's prejudicial tendencies towards society.

*A single act of justice is frequently contrary to public interest;
and were it to stand alone, without being follow'd by other acts,
may, in itself, be very prejudicial to society.⁵⁹*

However, Hume was convinced that society is "absolutely necessary for the well-being of men."⁶⁰ Therefore, despite the fact that the social contract really does not exist, that governments build their legitimacy often on violence and on the violation of human rights, that justice is prejudicial to society, society necessary to affirm "the stability of possession, of its transference by consent, and of the performance of promises. 'Tis on the strict observance of those three laws, that the peace and security of human society entirely depend."⁶¹

⁵⁹ Hume, *supra* note 47 at 138.

⁶⁰ *Ibid.*, at 139.

⁶¹ *Ibid.*

(D) Jean-Jacques Rousseau

Jean-Jacques Rousseau (1712-1778) was a Swiss born French philosopher best known for his theories on social freedom and the government. Rousseau believed that people are born free but that they give up their freedom because “an individual may conquer half of the world, but he is still only an individual.”⁶²

*Some form of association must be found as a result of which the whole strength of the community will be enlisted for the protection of the person and property of each constituent member, in such a way that each, when united to his fellows, renders obedience to his own will...The public person thus formed by the union of individuals was known in the old days as a City, but now as the Republic or Body Politic.*⁶³

In Rousseau's view, an individual loses his or her natural liberty, but gains civil liberty and the ownership of what belongs to an individual. Rousseau does not conceive that the individual can exist apart from the community, but believes that the community has to secure not only a peaceful environment, but moral freedom and liberty as well.⁶⁴ In other words, representative government for Rousseau has to be both a moral and political community.

⁶² J.J. Rousseau, *The Social Contract*, in Barker, *supra* note 38 at 178.

⁶³ *Ibid.*, at 180-81.

⁶⁴ A. Cobban, *Rousseau and the Modern State* (London: George Allen & Unwin, 1934) at 7.

This is the argument that confronts Rousseau and liberalism. When restating liberal ideology, it is apparent that the liberal political corollary is the priority of individual rights over the common good. Liberal conceptions of justice do not derive from any particular conception of the "good". "Right" is understood to be prior to the "good". Rousseau believed that political order, deprived of a moral dimension, is not an appropriate framework in which to determinate profound questions of human beings.⁶⁵ This argument is expanded upon by MacIntyre in *After Virtue*. He argues:

*In any society where government does not express or represent the moral community of the citizens but instead a set of institutional arrangements for imposing a bureaucratized unity on a society which lacks genuine moral consensus, the nature of political obligation becomes systematically unclear.*⁶⁶

Rousseau rejected Locke's idea that labour is the origin of the ownership and suggested "the right of first occupancy" as a criterion for appropriation. This view is reflected in our common law understanding of property. In his own interpretation

*In order that the right of "first occupancy" may be legalized, the following conditions must be present. (1) There must be no one already living on the land in question. (2) A man must occupy only so much of it as is necessary for his subsistence. (3) He must take possession of it, not by empty ceremony, but by virtue of his intention to work and cultivate it...*⁶⁷

⁶⁵ D.E. Cullen, *Freedom in Rousseau's Political Philosophy* (DeKalb: Northern Illinois University Press, 1993) at 139-40.

⁶⁶ A. MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: Notre Dame University Press, 1984) at 254.

⁶⁷ Rousseau, *supra* note 62 at 187.

In other words, Rousseau argues that the right of first occupancy replaced the right of the strongest. All people have a natural right to own but they must confine themselves to limits established by the community and their actual needs. Why? Because "each individual member of the Community gives himself to it at the moment of its formation."⁶⁸ Rousseau's criteria for appropriation and explicit critique of colonialism can be compelling in contemporary debates regarding aboriginal title and their struggle for self-determination.

*Just because he is strong enough, at one particular moment, to keep others off, can he demand that they shall never return? How can a man or a People take possession of vast territories, thereby excluding the rest of the world from their enjoyment, save by an act of criminal usurpation, since, as the result of such an act, the rest of humanity is deprived of the amenities of dwelling and subsistence which nature has provided for their common enjoyment?*⁶⁹

If individuals transfer their natural rights to the community and if they must confine themselves to community's rules, how people end up being alienated from the community as such? The first Rousseau's explanation is based on the right of private property. Private property, in Rousseau's view follows from the division of labour, and people find themselves alienated from each other by the class divisions engendered by private property. This is the moment when an individual who was born free, finds him or herself in chains.⁷⁰

⁶⁸ *Ibid.*, at 186

⁶⁹ *Ibid.*, at 187.

⁷⁰ Audi, *supra* note 28 at 698.

*Man is born free, and everywhere he is in chains. Many a man believes himself to be the master of others who is, no less than they, a slave.*⁷¹

The second reason is a bad government. Rousseau elaborated that if government does not reflect general will of people "it serves only to keep the poor man confined within the limits of his poverty, and to maintain the rich in their usurpation."⁷²

For Rousseau, the only way morally to justify the existence of the state is to constitute a superior form of moral/political action that he calls the general will. The individual citizen substitutes "I must" for "I will" or "I want".

*For either the will is general or it is not. Either it is the will of the whole body of the People, or it is the will merely of one section. In the first case this declared will is an act of sovereignty, and has the force of law. In the second, it is partial only, or, in other words, an act imposed by Government; and then, the most that can be said of it is that it is a decree.*⁷³

In other words, the problem of safeguarding the liberty of the individual (since he or she gives up individual will and "natural rights") can be solved only if the sovereign acts for the benefit of the community which is at the same time for the benefit of the individual. This is when individual will becomes general will.⁷⁴

⁷¹ Rousseau, *supra* note 62 at 169.

⁷² *Ibid.*, at 189.

⁷³ *Ibid.*, at 191.

⁷⁴ Cobban, *supra* note 64 at 120-133.

Rousseau criticized inequality and the modern society, arguing that the modern individual has become a *bourgeois* instead of being citizen.⁷⁵ In this sense it is not easy label him a liberal. However, it was not socialism that Rousseau proposed, but rather socialization of the individual, the care of community. The state of the community is never more than a means to an end. It never became an end in itself. Rousseau is a moralist who begins and ends with the individual and his or her liberty. If reform liberals look for their origins they can certainly be found in the astonishing work of Rousseau.

Rousseau was explicit in his argument that individuals can be held together only by a power that is external to and sovereign over them, because of their proud and rebellious nature. In spite of the fact that he believed in the social contract, Rousseau was convinced that modern society makes people odious and unhappy. According to Manent, Rousseau implied that it is unnatural for people to be odious and unhappy, and therefore the true nature of man has yet to be discovered.

Generally, Rousseau was against large governments. "A small State is relatively stronger than a large one" he said,⁷⁶ alluding to the costs of administration and co-operation among different state authorities. Further, he was ready to suggest that "in every case it is the poor People who pay".⁷⁷ Besides being against large governments, Rousseau suggested that the greatest good of all, the ideal toward which every system of legislation ought to aim, is liberty and equality: "liberty because when a subject is in

⁷⁵ Manent, *supra* note 23, chapter VI (Rousseau, Critic of Liberalism), at 67.

⁷⁶ Rousseau, *supra* note 62 at 211.

⁷⁷ *Ibid.*, at 212.

a condition of dependence, by so much is the State cheated of part of his (*individual*) strength; equality, because without it there can be no liberty.”⁷⁸

Manent argues that Rousseau is not a liberal but that Rousseau’s individual is free.

Furthermore, he suggests that

*Rousseau’s made modern man aware that he does not live essentially in a body politic or a state, or in an economic system, but above all in society. In his eyes, modern man lives primarily in the element of society insofar as he adopts the point of view of inequality in his relations with his fellow men. This is not particular inequality, economic or political, but simply inequality at large, an abstract and therefore omnipresent determination of social life.*⁷⁹

It is hard to integrate all of Rousseau’s arguments. He is a prominent advocate of the moral state and social justice on the one hand, on the other one of the most remarkable prophets of the individual liberty and freedom. As Cobban suggests, “he would never bring himself wholly to sacrifice the one ideal to the other.”⁸⁰ The connection of liberty and justice with Hobbes, Locke and Hume is obvious enough. As it does not seem desirable to recognize it, without Rousseau, political liberalism would lack a segment of equality. That is why he is essential for liberal philosophy and its inherent ideals of freedom, justice and equality.

⁷⁸ *Ibid.*, at 217.

⁷⁹ Manent, *supra* note 23 at 78-79.

⁸⁰ Cobban, *supra* note 64 at 6.

Political Liberalism: Final Thoughts

The theory of the social contract may be seen as too juristic, or even wrong, but it transparently introduced three fundamental values of liberal political and economic thought: those of liberty, equality and justice. Hobbes sees the government as a result of the individual's fear of death and insecurity. The only way to overcome a nasty, brutish and short life is by delegating our natural rights to an artificial sovereign. For Locke, the government is almost a "fiduciary" that protects private property, punishes for breaches of contracts and facilitates changes introduced by the monetary revolution. Hume empirically distinguishes morality from society and government policies. They are imperfect, they may be prejudicial and unjust, but they are the only way to keep us away from natural law and therefore, in a state of relative peace and order. Rousseau's politics is poetic. He cares, he believes, he wants to compromise. We will give up our "individual will" but only if the government gives us back our individual will in the form of a "general will" and community that cares for our social needs and peaceful life. For Rousseau, this is the only way to succeed with representative government and the democratic dream.

The social contract is composed of the contract of government and the contract of society.⁸¹ It seems to me that Hobbes, Locke and Hume believed in the contract between government and people because people transferred their natural rights to the sovereign and legitimized the institutionalization of government powers. In this sense,

⁸¹ Barker, *supra* note 38 at xii.

“the contract of government” marked a beginning of individual liberty and justice. Rousseau, however, added additional contract, “the contract of society”, which gradually evolved in a concept of “public sphere” which I will refer to in the third chapter.

The brilliant minds of these four thinkers made a distinction among the individual, the government and civil society. They have offered us inspiring ideas and thoughts, but, nevertheless, they have showed us that there is an essential ambivalence in political liberal theory between freedom and justice on the one side and equality on the other. We can surely confirm that questions of freedom, social justice and the scope of government remain inadequately answered and controversial.

Economic Liberalism: Classical and Neo-liberal Thought

Although I have concluded the first part of this chapter with Rousseau, unfortunately, the “moralness” of his philosophy went unheard during the industrial revolution. Since then, men have become the centre of the universe, and moral philosophy has developed a secular branch, political economy, which dominated political, economic and moral ideology ever since. At the end of the nineteenth century, political economy was formally divorced from the moral sciences and become simply economics - a mathematical measurement of the people.⁸²

⁸² I. Marshall, *Principles of Economics* (New York: MacMillan, 1961).

Classical liberalism has been seen as an ideology that is concerned with hamstringing the state. The way it does this is by dividing the problems of society into moral problems, which the state is not supposed to deal with, and the economic problems which are under the state's authority. In other words, classical economy treated social problems as purely moral ones, and the state was not supposed to deal with social issues since social (moral) was separate from political or economic. The end of the eighteenth and nineteenth centuries was characterized by a firm belief that poverty is an inevitable condition of human life; that being poor is a reflection of an individual's moral character (consequently, it is not the economic responsibility of the state); and finally, private voluntary charity is the proper source of help for the needs of the poor.⁸³ Poverty, for instance, was treated as the moral failure of the poor not as something the state had to deal with. If poverty were not treated as part of the moral domain, then social catastrophe would be the result of amoral economic failure and the state would have to respond to it.

I will argue that this approach represents a simplification of Smith's and Mill's ideas.⁸⁴ It seems to me that they were not so much concerned with limiting the state as they were with increasing the economic opportunities of the individual. I will argue that a more radical distinction between economy and morality characterized neo-liberal movement which emerged at the beginning of the twentieth century.

⁸³ C. Woodard, *Reality and Social Reform: The Transition from Laissez-Faire to the Welfare State* (1962) 72 Yale L.J. at 293.

⁸⁴ Fitzgibbons, A., *Adam Smith's System of Liberty, Wealth, and Virtue. The Moral and Political Foundations of The Wealth of Nations* (Oxford: Clarendon Press, 1995) at 4-22.

(A) Adam Smith

Adam Smith (1723-1790) provided economic justification for Locke's theory which was still associated with moral and religious conscience. In Smith, links between the private realm and morality disappeared. Smith assigned the central role to individuals and attempted to explain the nature of the relationship between the individual and the state.⁸⁵ Three fundamental principles of Smith's economic theory are: free competition makes production and exchange most advantageous for everyone; economic freedom is the pre-condition of prosperity and growth; and intervention by the state generally produces effects opposite to those which the state claims to pursue.⁸⁶

Smith argued strongly for the disassociation of morality from economics. However, it is important to acknowledge that he never suggested the diminution of the state. The scope of government was not very far from Locke's vision of sovereignty. In Smith's view, the government should protect society from violence and invasion, protect individuals from the injustice and oppression of other individuals, encourage education and facilitate commerce.⁸⁷

⁸⁵ R.P. Malloy, *Adam Smith and the Modern Discourse of Law and Economics*, in R.P. Malloy & J. Evensky, eds., *Adam Smith and the Philosophy of Law and Economics* (Boston: Kluwer Academic Publishers, 1994) at 114.

⁸⁶ M. Allais, *The General Theory of Surpluses as a Formulation of the underlying theoretical thought of Adam Smith, his predecessors and his contemporaries*, in M. Fry, ed., *Adam Smith's Legacy. His place in the development of modern economics* (London: Routledge, 1992) at 34-35.

⁸⁷ R. Stone, *Public Economic Policy: Adam Smith on What the State and other Public Institutions should and should not do*, in Fry, *supra* note 86 at 64-65.

*The duty of the sovereign is the erection and maintenance of those public works and institutions which are useful but not capable of bringing in a profit to individuals. These are chiefly institutions for facilitating commerce and promoting instruction.*⁸⁸

Fitzgibbons argues that Smith believed that theorists of the natural law school did not realize that moral excellence can enhance public life.⁸⁹ Additionally, in my view Fitzgibbons correctly reads in Smith's theory a conviction that private ownership and the free market could contribute to better life. The role of the state is to secure peace and to ensure that all participants follow the same laws or "the rules of the game". The new rules of the game, of course, ought to be reached by a scientific approach to law and economics, which stands in contradiction to the morality of natural law.⁹⁰

Smith actually spoke of the state as a particular structure, well established but strictly limited. His most celebrated work, *The Wealth of Nations*, was a reaction to mercantilism in which government power was used by a minority to create an economic and social environment which favoured its own interests.⁹¹ However, Smith never realized that a human being is much more than an *homo economicus*. Max Weber rightly pointed out that economically conditioned power is not identical to power as such, because people do not strive for power only in order to enrich themselves

⁸⁸ A. Smith, *An Inquiry into the Nature and Causes of The Wealth of Nations* (New York: The Modern Library, 1994) at 778-779.

⁸⁹ A. Fitzgibbons, *supra* note 84 at 26.

⁹⁰ *Ibid.*, at 76.

⁹¹ D.P. O'Brian, *The Classical Economists* (Oxford: Clarendon Press, 1978) at 273-274.

economically.⁹² Smith could not overcome the one-dimensional error in his theory but more tragically, his contemporary followers replicate the same error.

Smith's optimistic view of international trade was based on the theory that budget surplus can be created only through export and through such surplus the government will have the funds for existing judicial and public needs.

*The principal benefit of foreign trade is not the importation of gold and silver, but the carrying out of surplus produce for which there is no demand and bringing back something for which there is.*⁹³

Smith rejects restraints on the importation of competing commodities on the basis that such policy sacrifices the interests of the consumer to those of the producer.⁹⁴ This has been the principle on which the International Monetary Fund (IMF) and the World Bank have based their conditionality in contemporary reform programs in Central and Latin America, South East Asia, Eastern Europe and Africa.

The role of the government can be captured through two, mutually connected, dimensions: *the dimension of government's power* - what and how much any government should control; and *the dimension of government's size, organization and bureaucratic establishment* - should the power of any particular government be

⁹² G. Roth & C. Wittich, eds., *Max Weber: Economy and Society; an outline of interpretative sociology*, vol. 1 (New York: Bedminster Press, 1968) at 63.

⁹³ Smith, *supra* note 88 at 475.

⁹⁴ *Ibid.*, at 715.

decentralized, with the stronger emphasis on the “local”? In this context, decentralization was not an unacceptable idea for Smith. Indeed, he favoured concepts of localization and regionalization, hoping that such programs would contribute to free trade and economic growth.

*Public works of a local nature should be maintained by local revenue. The abuses of local administration are small compared with those of the administration of the general revenue.*⁹⁵

The most influential concept from Smith’s intellectual opus is the division of labour. He argued that certain processes within the corporation are subject to increasing returns. Based on his theorem, companies contracted particular services on the market, instead of producing them all from within the company. I would suggest that Smith’s labour theory was eventually played out as one of the base for post-fordist flexible specialization. In support of such an assertion I evoke Smith’s observation that the division of labour is limited by the extent of the power of exchanging.⁹⁶ In other words it is only the market who regulates the level of employment. Consequently, “no person can have any encouragement to dedicate himself entirely to one employment,”⁹⁷ because market conditions might change. This seems to be analogous with contemporary post-fordist labour programs characterized by insecurity , low wages and

⁹⁵ *Ibid.*, at 788.

⁹⁶ *Ibid.*, at 19.

⁹⁷ *Ibid.*

temporary working contracts.⁹⁸ It can be argued that advocates of post-fordism, drawing upon Smith and his theorem that the division of labour is limited by the extent of the market, suggest that workers should be flexible and “shop” for their jobs according to the rules of the market and the invisible hand only.⁹⁹ As I stated earlier, Smith’s labour theory might be seen as one of the base for post-fordist flexible specialization. This is so because Smith could hardly have anticipated industrial and high-tech revolution which led workers towards multi-tasking, on the job learning, further insecurity, and micro-electronics and communications technologies as its crucial hardware.¹⁰⁰ What Smith anticipated well, however, was the establishment of the market as the major regulator of labour, “the difference between the wages of skilled labour and those of common labour,”¹⁰¹ and his awareness that “wages vary with constancy of employment.”¹⁰² Not only that workers cannot expect permanent job tenures, but wages will not be fixed or guaranteed. For example, Smith suggested that workers in Great Britain cannot expect same wages in the winter time and the summer time.¹⁰³

Smith argued that the division of labour is limited by the extent of the market. It is seen as the major reason for increased production; Finally, individual talent is the product of education and the environment and not of nature.¹⁰⁴ Since Smith, the whole

⁹⁸ B. Jessop, *Post-fordism and the State*, in A. Amin, ed., *Post-Fordism: A Reader* (Oxford: Blackwell, 1994) at 253.

⁹⁹ See The World Bank, *World Development Report 1995: Workers in an Integrating World*.

¹⁰⁰ Jessop, *supra* note 98.

¹⁰¹ Smith, *supra* note 88 at 117.

¹⁰² *Ibid.*, at 119.

¹⁰³ *Ibid.*, at 85.

¹⁰⁴ E.G. West, *Adam Smith and Modern Economics. From Market Behaviour to Public Choice* (Aldershot: Edward Elgar Publishing, 1990) at 34-35.

conception of productivity and the complexity of production, distribution and financial markets is based on specialization. The non-specialist worker has less incentive to invest in each of his or her several skills than the specialist because of the smaller average return.¹⁰⁵ This is why Smith summarizes that “there are two sorts of labour, productive and unproductive.”¹⁰⁶

Analysing this notion from today’s perspective, Smith was right when he suggested that the specialization of the workforce is more a result of education and socially acceptable habits and customs than natural talent. Rwanda’s neighbourhoods, for instance, torn by war, may well hide talented musicians, poets or scientists, but the struggle for survival and making provision for basic needs prevents them from being “productive” in the Smithian sense.

*The difference of natural talents in different men is, in reality, much less than we are aware of; and the very different genius that appears to distinguish men of different professions, when grown up to maturity, is not upon many occasions so much the cause, as the effect of the division of labour. The difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise not so much from nature, as from habit, custom, and education.*¹⁰⁷

Professor McCloskey suggests that even if Smith’s ethical engagement existed, it remained in the sphere of *bourgeois* virtue.¹⁰⁸ McCloskey’s argument calls for further

¹⁰⁵ *Ibid.*, at 37.

¹⁰⁶ Smith, *supra* note 88 at 360.

¹⁰⁷ West, *supra* note 104 at 37.

¹⁰⁸ D. McCloskey, *Prudence Among the Virtues: Can Economics Get Over Bentham?* Feminism and Legal Theory Workshop “Feminist Economic Theory and the Difference it Makes” (New York: Columbia University, 1997) at 3 [unpublished].

elaboration. Adam Smith was a moral philosopher. For Smith, virtue was a general term which could have been expressed in many fields of thought and action. In his own words, "virtue is excellence, something uncommonly great and beautiful, which rises far above what is vulgar and ordinary."¹⁰⁹ However, Smith's virtue is *bourgeois* because of two reasons: firstly, he argued that the only way to protect virtue is through the "decision of judges and arbiters."¹¹⁰ Smith did not recognize that this "systematical idea of the perfection of policy and law" always facilitates ideas of interest groups and corporations, and not people. Secondly, not the least of the problems was that a society that aimed at the universal inculcation of a high virtue would necessarily be indifferent to economic growth. Smith did not recognize non-scientific knowledge and the fact that morality should not develop from law and economics, but rather vice versa. Virtue built on economics, therefore, is always *bourgeois* virtue because it reflects (a)morality of those with the power and the money. Consequently, it reflects business morality, not virtuous life and altruism. In the context of *The Wealth of Nations* this is surely correct. A high level of ethics and a sense of social justice can be found in only one sentence: "...corporation laws sometimes reduce wages much below the natural rate for a certain period..."¹¹¹ Even this is very pale and reveals that Smith's "invisible hand" was a mechanism in which he truly believed. It is more reliable than government, especially in the context of picking winners and losers.

¹⁰⁹ Raphael, D.D. & Macfie, A.L., *The Theory of Moral Sentiments* (Oxford: Oxford University Press, 1976) at 25.

¹¹⁰ *Ibid.*, at 330.

¹¹¹ Smith, *supra* note 88 at 70.

*...he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it.*¹¹²

Smith was the first scholar who theoretically conceptualized the benefits of free trade. Often cited in support of free trade in Smith's work is the "wool and wine" analogy. Smith argued that it is more efficient overall for a country to make what it makes most cheaply and export the rest, than to produce a diversity of products for domestic consumption.¹¹³ In this context, Smith does not see the need for England, for instance, to develop a wine industry when it is cheaper to buy wines from Italy or France.¹¹⁴ On the other hand, the wool of England can find a market in foreign countries. What Smith is really saying is that the surplus of the produce of particular branches of national industry must be sent abroad and exchanged for something for which there is a demand at home.¹¹⁵ Smith argued that every prohibition of foreign trade or attempts to artificially regulate foreign trade result in "degradation both in the real and nominal value" of products.¹¹⁶

¹¹² *Ibid.*, at 485.

¹¹³ *Ibid.*, at 186.

¹¹⁴ *Ibid.*, at 535.

¹¹⁵ *Ibid.*, at 403.

¹¹⁶ *Ibid.*, at 265.

It seems apparent that Smith emphasized domestic production of products which can produce the surplus and strengthen foreign trade. However, what made the production of certain products cheaper in national economies was the relative immobility of factors of production (for example, technology, raw materials, people). Post-fordist high-technological revolution and dramatic changes in communication and transportation industries have gradually diminished advantage of national products in Smithian sense. Today, factors of production are mobile, in search for cheap labour, lower environmental and safety standards, and “tax havens”.

However, it would be imprecise to claim that Smith did not have ideas and visions for a globally and financially connected world. He argued that domestic production and foreign trade are dependent on “the value of the surplus produced of all the different countries in the world.”¹¹⁷ His “merchant” is not only a citizen of the nation state but also a citizen of the world.

*A merchant, it has been said very properly, is not necessarily the citizen of any particular country. It is in a great measure indifferent to him from what place he carries on his trade; and a very trifling disgust will make him remove his capital, and together with it all the industry which it supports, from one country to another.*¹¹⁸

Above all, Smith was a true liberal in the most classical sense. Smith’s individual, as long as he or she does not violate the laws of justice, should be left to pursue his or her own interests in his or her own way and by so doing will bring his or her capital

¹¹⁷ *Ibid.*, at 405.

¹¹⁸ *Ibid.*, at 452.

and work into competition with others. This idea represents the core of today's neo-liberal political and economic campaign for free-trade, global financial markets, flexible labour and the divide between rich and poor.

(B) John Stuart Mill

John Stuart Mill (1806-1873) was a British empiricist philosopher and utilitarian reformer. Mill is a liberal because he believes that individuals should be free. He claims that no persons conduct may be regulated unless it causes harm to others. In other words, we are free up to the point at which our freedom causes more harm than good.

*The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.*¹¹⁹

Mill is not just a liberal however, he is also a utilitarian. Conduct which harms others may be regulated but it should only be regulated if it causes more harm than good. Even when government interferes with personal conduct, Mill argues, the odds are that it interferes wrongly.¹²⁰

¹¹⁹ J.S. Mill, *On Liberty and Utilitarianism* (New York: Bantam Books, 1993) at vii.

¹²⁰ *Ibid.*, at 96.

For Mill, poverty was also a moral problem because it involved the moral character of the poor.

*It is most true that the rich have much to answer for in their conduct to the poor. But in the matter of their poverty, there is no way the rich could have helped them, but by inducing them to help themselves...*¹²¹

Building upon Smith, Mill recognized the importance of free international trade and the exchange of goods.

*It is established that the advantage which two countries derive from trading with each other, results from the more advantageous employment which thence arises...
The circumstances are such, that if each country confines itself to the production of one commodity, there is a greater total return to the labour of both together; and this increase of produce forms the whole of what the two countries taken together gain by the trade.*¹²²

Mill's fascination with the idea of liberty occasionally took him outside the sphere of pure economics. For instance, he was an early defender of women's rights. Mill wrote that nothing more is needed for the complete removal of evil than that wives should have the same rights, and should receive the protection of laws in the same manner as others (men).¹²³

¹²¹ J.S. Mill, *Disertations and Discussions* (London: J.S. Parker, 1857).

¹²² J.S. Mill, *Essays on Some Unsettled Questions of Political Economy*, 2nd ed. (New York: Augustus M. Kelley Publishers, 1968) at 5.

¹²³ Mill, *supra* note 119 at viii.

Roberts suggests that Mill's conception of government differs in scope from that of Adam Smith. He suggests that Mill urged the central authority *inter alia* to improve and promote education, provide good drainage and pure water, control over railway fares and transportation, and the creation and enforcement of welfare legislation.¹²⁴ Also, Mill argued that not all ends are selfish, and that pleasures are not only quantitatively but qualitatively distinct as well.¹²⁵

This allows us, if only momentarily, to begin to think that Mill departed from a hedonistic perception of pleasure and introduced a value distinction which was not based on pleasure at all (for example, intellectual activity is superior to a wrestling match). My interpretation of this departure is that Mill realized that people do not simply calculate the costs and benefits of every single action they take, rationally, especially when benefits may be hypothetical or have potential results in the long term. However, as MacIntyre rightly observed, Mill's awareness that there are parts of life that cannot be captured by a utilitarian cost-benefit analysis (for example poetry, music, family life) was not sufficient to convince Mill that there is a not a "greater" part of life which may be so captured and therefore, rendered calculable.¹²⁶

Certain theorists have argued that Mill was the first one who "effected a gentle shift in the emphasis of political economy from production as it had been under Smith and

¹²⁴ D. Roberts, *Victorian Origins of the British Welfare State* (New Haven: Yale University Press, 1960) at 80.

¹²⁵ Audi, *supra* note 28 at 494.

¹²⁶ MacIntyre, *supra* note 16 at 219.

Ricardo to distribution.”¹²⁷ However, Mill failed to observe something that Smith could hardly have anticipated: because of the industrial revolution, the demand for human labour was very substantially reduced and thus the worker’s value as a producer had been permanently lowered. Looking back from the perspective of the end of the twentieth century, it seems obvious that moral character could not have been responsible for the workers’ economic condition.

Consequently, we should not get carried away in affirming equality in Mill’s theory. Mill was the first empiricist philosopher which means that he *knew* what was right and what was wrong. How did he implement this principle? By using Bentham’s utilitarian principle:

*Sum up all the values of all the pleasures on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the good tendency of the act... if on the side of pain, the bad tendency.*¹²⁸

By including *all* the pleasures and *all* the pain, Mill, like Bentham, rejected the morality of feudalism which counted only the pleasures and the pains of the privileged few.¹²⁹ However, if the balance was on the side of pleasure, Mill did not care for the numerical minority left on the side of the pain, probably because he saw them as an “inevitable evil”, something that has to happen in every society. This is why

¹²⁷ Woodard, *supra* note 83 at 315.

¹²⁸ W. Harrison, ed., J. Bentham: *A Fragment on Government and An Introduction to the Principles of Morals and Legislation* (Oxford: Basil Blackwell, 1948) at 152-53.

¹²⁹ S. Wexler, *supra* note 57.

utilitarianism and economic liberalism set limits upon the range of alternatives to be considered. This is why they believed that there was only one concept of pleasure and happiness.¹³⁰

In spite of his acknowledgement of “qualitative” and “quantitative” values, Mill conceived that there is no action of the people in which they are under the influence of any impulse but the mere desire of wealth.¹³¹ Mill’s principle that it is not the proper function of government to compel conduct solely in order to improve the life of an adult who does not necessarily want his or her life so improved,¹³² his affirmative views of individualism, and of the benefits from free trade and exchange, have been guiding ideas and intellectual sources of economic liberalism and the laissez-faire state ever since.

From Classical Liberalism to Neo-liberalism

Toward the end of the nineteenth century, classical liberalism began to give way to new forms of collectivism and state power.¹³³ The great transforming event was the industrial revolution.¹³⁴ Technological innovations made possible unprecedented gains in productivity but also brought large factories, expanded mines and overcrowded, dirty cities. The substitution of machines for human skills, new raw materials and the

¹³⁰ MacIntyre, *supra* note 16 at 221.

¹³¹ J.S. Mill, *On the definition of political economy*, in Hausman, *supra* note 15 at 53-54.

¹³² Mill, *supra* note 117 at x.

¹³³ D. Boaz, *Libertarianism. A Primer* (New York: The Free Press, 1997) at 49.

¹³⁴ D.S. Landes, ed., *The Rise of Capitalism* (New York: The Macmillan Company, 1966) at 12-29.

organization of work in compact units under supervision¹³⁵ created wealth but also made poverty and misery inevitable.¹³⁶ As Roberts explained, “there were too many hands, too few jobs.”¹³⁷ This marked the beginning or renewal of the idea of state intervention. Under government intervention, production and distribution were not categories controlled by the market but rather by the government. The emergence of the welfare state, however, is beyond the scope of this thesis. What I am interested in is when did liberalism responded to this new form of collectivism? Well, not for a while. At least not for another fifty years.

What has become known as the Great Depression, which started in 1873, was broken by burst of recovery at the beginning of twentieth century. The advances in chemical manufacture, the introduction of electric power and the invention of the automobile gave new impetus to the development of capitalism. This new era of *Taylorism* can be seen as “the rationalization of production, based on an increasing separation of the ‘ideas people’ and organizers of production (engineers, and organization and maintenance staff), from the ‘operatives’ carrying out production - semi skilled manual workers performing repetitive tasks.”¹³⁸ Increased productivity gains based on Taylorist regime of accumulation led towards a massive crisis of overproduction since there was no corresponding response on the demand side. It was 1930s Great Depression when two competing liberal discourses were created.

¹³⁵ *Ibid.*, at 13-14.

¹³⁶ Roberts, *supra* note 124 at 101.

¹³⁷ *Ibid.*, at 3.

¹³⁸ Lipietz, *supra* note 20 at 4.

One group of thinkers inside the liberal movement, particularly the Keynesians, have argued that the trouble arose and persisted in large part because there was not enough intervention of the right kind. This new, reformed liberalism argued that the only solution can be found in “vigorous program of government spending, financed by loans rather than taxes,” which “could have made up the gap between national product and consumption and set the economy back on a path of growth.”¹³⁹ Neo-liberals on the other hand, argued that the contraction and its severity were the result of excessive interference with the working of the free market: limitations on international trade and exchange, interference with normal price adjustments and the like.¹⁴⁰ I will first talk about the neo-liberal idea.

Neo-liberals such as Hayek and latter Friedman, continued to build on classical liberal ideas. They further developed the laissez-faire state by introducing new monetary theories, a critique of social justice and presenting the economic system as a perfect co-ordinating mechanism. Neo-liberals see the discussion of values as an evasion. Disagreements are always the product of conflict over scientific economics, not preferences or assumptions.¹⁴¹ The neo-liberal state is minimized to the level of withering away, and no one seems much concerned because the argument is that there is a technical solution to every disagreement.

¹³⁹ *Ibid.*

¹⁴⁰ Landes, *supra* note 134 at 23.

¹⁴¹ Waligorski, *supra* note 12 at 19.

(A) Friedrich Hayek

Hayek comes from Ludwig von Mises's *Austrian School* best known for its attempt to deconstruct and show the impracticability of true socialism. Mises argued that the fruit of an individual's labour is his or her to enjoy, that an individual's income depends upon the output of his or her labour, and that socialism represents a destructive force built upon the laziness of the people.

*In a capitalist society, every individual knows that the fruit of his labour is his own to enjoy, that his income increases or decreases according as the output of his labour is greater or smaller. In a socialist society, every individual will think that less depends on the efficiency of his own labour, since a fixed portion of the total output is due him in any case and the amount of the latter cannot be appreciably diminished by the loss resulting from the laziness of any one man.*¹⁴²

Hayek's philosophy of economic freedom is grounded in the science of economics as an indispensable discipline that encompasses all of humanity and therefore provides the basis for judging other institutions.¹⁴³ What Hayek meant is that every problem is a matter of science and pure logic. Our emotions, questions of love, passion and hate, for instance, were not of particular interest in Hayek's "scientific analysis".

*On certain familiar assumptions the answer is simple enough. If we possess all the relevant information, if we can start out from a given system of preferences, and if we command complete knowledge of available means, the problem which remains is purely one of logic.*¹⁴⁴

¹⁴² L. von Mises, *Socialism and Intervention*, in Boaz, *supra* note 36 at 275.

¹⁴³ F. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, vol. 2 (Chicago: University of Chicago Press, 1976) at 113.

¹⁴⁴ F. Hayek, *The use of knowledge in Society*, in Boaz, *supra* note 36 at 216.

Reducing the scope of government and the decentralization of power are seen as the framework for the future role of the public sphere. Nothing can be more welcome than depriving government of its power over money; government should not claim a monopoly and new methods of rendering services through the market should not be prevented; taxation is not used as an instrument for the redistribution of income.¹⁴⁵ It is true that Hayek urged people to ensure that the wants satisfied are the collective wants of the community as a whole, and not merely the collective wants of particular groups. However, like the neo-liberal movement as a whole, he omits to tell us how to recognize that the wants satisfied are the collective wants of the community, and who will establish the criteria for determining “common values”. In my view, Hayek would assume that this role would be fulfilled by the market. Consequently, the “common values” would be those of with purchasing power (e.g., the rich), not of those in need.

Like all economic liberals, Hayek assigned a legislative role to the government, and believed that the government should have a very limited role in public life:

*Legislation does have a purpose: it is to direct and control that limited range of activities (the supply of public goods) that is essential in the modern state... I am the last person to deny that increased wealth and the increased density of population have enlarged the number of collective needs which government can and should satisfy.*¹⁴⁶

¹⁴⁵ F. Hayek, *Economic Freedom* (Cambridge, Mass.: Basil Blackwell, 1991) at 389.

¹⁴⁶ *Ibid.*, at ix.

However, Hayek was determined that governments cannot direct individuals in what they must do. The free market, trade and the idea of a price mechanism is supposed to show individuals whether what they have been doing, or can do, is in greater or lesser demand for some reason external to themselves. In his most influential work, *The Road to Serfdom*, Hayek argues that it is impossible to control an individual's life, and that economic freedom is the prerequisite of every other freedom, either political or individual.¹⁴⁷ The role of government, for Hayek, is "like that of a maintenance squad of a factory, its object being not to produce any particular services or products to be consumed by the citizens, but rather to see that the mechanism....is kept in working order."¹⁴⁸ This notion is Hayek's "spontaneous order" in which the only real sovereign is the law of economics.

Hayek was critical of Keynes' work. In Hayek's view the only way to create stable economic conditions and high employment is to match the distribution of labour to the expenditure of non-inflationary money. Further, the labour force must be mobile because if industry is in decline and the work force does not adequately respond, the general level of wages in that industry will fall and cause workers to be laid off.¹⁴⁹ It is apparent that Hayek considers labour a commodity and does not take into consideration the sociological and psychological circumstances which surround workers and their families. While Hume's *Moral and Political Essays* was first published in 1748 and

¹⁴⁷ F.A. Hayek, *The Road to Serfdom* (Chicago: The University of Chicago Press, 1971) at 2.

¹⁴⁸ F.A. Hayek, *Made Orders and Spontaneous Orders*, in Boaz, *supra* note 36 at 239.

¹⁴⁹ Hayek, *supra* note 145 at 45.

reflects a gendered conception of labour it is now, in the contemporary era of labour crisis, more relevant than ever:

*Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires?"*¹⁵⁰

In other words, with exception of a small number of highly skilled people whose work is truly global, labour often lacks economic and intellectual conditions in order to easily move to another job in/or the another state.¹⁵¹ Furthermore, drawing upon Durkheim's observation that people are social beings, it seems to me that Hayek's belief (that economics is the most complete and satisfactory framework in which to explain and situate human nature) fails to respond to the fact that people (workers) are in fact embedded in local communities and cultures. Their social life, therefore life in general, is determined by local/national culture, customs and values. I would suggest that the "mobility" of labour forces and their treatment as a commodity inevitably causes social and emotional crisis of workers and their families, and contributes to human alienation. However, this observation invites another paper beyond the scope of this discussion

¹⁵⁰ Hume, *supra* note 47 at 156.

¹⁵¹ D. Drache, *From Keynes to K-mart: Competitiveness in a Corporate Age*, in R. Boyer & D. Drache, eds., *States Against Markets: the limits of globalization* (London: Routledge, 1996) at 40.

The role of unions in Hayek's neo-liberal world view is non-existent. It runs counter to Hayek's theory to establish a framework in which union-determined wage rates are treated as the standard to which all other economic values must conform. Therefore, it is unnecessary to have a unionized labour force:

It is unwarranted to identify the interests of union members with the interests of the working class as a whole, since unions are able to obtain higher wage rates for their members only by limiting the supply of unionised labour and thus increasing the supply of non-union labour, i.e. by reducing the wage rates of non-union workers. Secondly, the separate attempts of each union to raise real wages by raising the money wages of its members would produce unemployment, unless the monetary authorities inflated the flow of money incomes to compensate for this discoordination; but such an inflation in turn leads to even graver consequences.¹⁵²

By employing predominantly monetary methods, Hayek argued for the “minimized state”, deregulation and privatization. One of the few of his ideas which I find particularly interesting, because it adds an attention to social context, is his argument for a stronger emphasis on local communities and local governance:

If we can agree that the economic problem of society is mainly one of rapid adaptation to changes in the particular circumstances of time and place, it would seem to follow that the ultimate decisions must be left to the people who are familiar with these circumstances, who know directly of the relevant changes and of the resources immediately available to meet them.¹⁵³

¹⁵² *Ibid.*, at 52.

¹⁵³ Hayek, *supra* note 144 at 220.

This seems inconsistent with the rest of his arguments. However, it seems to me that Hayek's use of the terms "communal" and "local" bear different meanings than in the work of contemporary reform liberals such as Rawls or Reich. When Hayek argues that ultimate decisions must be left to the local people he really means local individuals and only when the market decides that it is time for changes. Local communities for Hayek do not represent institutional forms of governance and a framework for the creation of a public sphere, but rather a medium through which the market and the invisible hand operate more efficiently.

Hayek's ideas of economics as a scientific discipline that comprehends all of humanity, his minimalization of government activities and interventions in public life, his suppression of unions and arguments which promoted flexible and mobile labour force and strict control of inflation are further expanded in the work of Milton Friedman. Although Friedman draws more heavily on classical economists than Hayek, he is more focused on monetarism and quantitative analysis as major mechanisms for solving the mystery of human nature, wealth and justice. As a "cold-war" American scholar, Friedman further emphasizes criticisms of forms of socialism and socialist governance.

(B) Milton Friedman

Friedman is among the most influential of North American neo-liberal thinkers. Although he relies heavily on the economic ideas of the theorists discussed above, Friedman is more oriented toward statistics and quantitative analysis. For Friedman, any conception of freedom other than economic freedom is unacceptable and represents a delusion. Friedman acknowledges the mutual connectivity between political and economic factors. However, he is hostile to socialist's attempts to provide a permanent and institutionalized co-operation between politics and economy.

*It is widely believed that politics and economics are separate and largely unconnected; that individual freedom is a political problem and material welfare an economic problem; and that any kind of political arrangements can be combined with any kind of economic arrangements. The chief contemporary manifestation of this idea is the advocacy of "democratic socialism"...The thesis...is that such a view is a delusion, that there is an intimate connection between economics and politics.*¹⁵⁴

What Friedman is essentially advocating in the above extract is a marginalization of government in providing policies and programs for the economically disadvantaged. Furthermore, his argument that economics and politics are mutually connected does not imply co-ordination between them, but rather economic supremacy and the trivialization of *homo politicus*. For Friedman, being political is like being a king

¹⁵⁴ M. Friedman, *The Relation between Economic Freedom and Political Freedom*, in Boaz, *supra* note 36 at 292-93.

without a kingdom who occasionally holds a reception and gathers donations from entrepreneurs who do not fear him any more.

The role and power of Friedman's sovereign, however, should be explained more precisely and less metaphorically:

*Government's major function must be to protect our freedom both from the enemies outside our gates and from our fellow-citizens: to preserve law and order, to enforce private contracts, to foster competitive markets. Beyond this major function, government may enable us at times to accomplish jointly what we would find it more difficult or expensive to accomplish severally.*¹⁵⁵

Friedman accepts Smith's idea of government as a forum for the determination of the "rules of the game". The range of issues which must be decided through political means is reduced, and direct government participation in "the game" is excluded.

A laissez-faire market is a vital part of his economic theory. Where freedom of exchange exists, consumers are protected from wrongs done by the seller because they always have a choice to choose a different seller. The seller, as Friedman further suggests, is protected from coercion by consumers because of diversity and the wide range of consumers to whom he or she can sell. Finally, Friedman is convinced that the employee is protected from coercion by the employer because of the existence of other employers for whom the employee can work.¹⁵⁶ Friedman's theory lacks elaboration of

¹⁵⁵ M. Friedman, *supra* note 19 at 2.

¹⁵⁶ *Ibid.*, at 14-15.

the “flexibility” in terms of wages, full-time working positions and safety standards which occur under this process.

To Friedman, the essence of the free market lies in its impersonal character, in the fact that one individual cannot determine the terms on which another shall have access to goods, jobs or services. Ironically, for Friedman, this is the reason why markets are not the cause of poverty but instead encourage political freedoms, economic efficiency and equality.¹⁵⁷ As I have previously suggested, Friedman argues that economic power should be kept separate from political (governmental) power and serve as a check and a counter to political power. Friedman does not explicitly explain to whom those with economic power are responsible if they have the ability to check government power. Implicitly, however, it seems to me that Friedman suggests that economic power must not be under supervision because economic power are *we* (consumers). To deepen this point, *we* are economic power only because *we* are the market. Since the market (*we*) is invisible it cannot be held responsible.

Friedman is a monetarist to a greater extent than Hayek. Budgetary and monetary policies are seen as the major arenas in which his conception of “negative” governmental power is to be enforced and therefore, he wants to define them in legal terms: a legislated rule instructing the monetary authority to achieve a limited rate of growth in the stock of money; and the elimination of governmental intervention in lending and investment activities. In making this proposal, Friedman seeks to maintain economic growth regardless of circumstance, because a decline in national income

¹⁵⁷ M. Friedman, *Essays in Positive Economics* (Chicago: University of Chicago Press, 1953) at 134.

exponentially reduces the tax revenue and leads the budget towards an increased deficit. In sum, government is dangerous because it has the power to inflate the value of money and, consequently, cause recession.

Friedman is opposed to unions. His criticisms are based on the fact that only a quarter of the working population in the US are members of unions, which makes them ineffective. As stated earlier, labour issues are beyond the scope of this thesis. However, it seems important to note that Friedman sometimes underestimates historical and geographical differences among labour markets. Structural differences between European and American labour markets, for instance, illustrate the inappropriateness of a single ontology in approaching the crisis of labour.¹⁵⁸

Not surprisingly, Friedman is also critical about minimum wage laws based on the logic that if the state legislate for a minimum wage, employers will simply employ less people because it is in their self-interest to do so. Consequently, such policy leads to higher unemployment.¹⁵⁹ Again, Friedman does not address questions such as: who will protect workers from breaches of occupational safety and environmental standards?

¹⁵⁸ T. G. Ash, *Europe's Endangered Liberal Order* (1998) 77 Foreign Affairs at 58-59. This has been insightfully captured by Ash:

The United States has high labour mobility, price and wage flexibility, provisions for automatic, large-scale budgetary transfers to states adversely affected by so-called asymmetric shocks, and, not least, the common language, culture, and shared history in a single country that make such transfers acceptable as a matter of course to citizens and taxpayers.

Europe has low labour mobility and high unemployment. It has relatively little wage flexibility. The EU redistributes a maximum of 1.27 percent of the GDP of its member states, and most of this is already committed to schemes such as the Common Agricultural Policy and the so-called structural funds for assisting poorer regions. It has no common language and certainly no common state.

¹⁵⁹ Friedman, *supra* note 19 at 180.

Who will protect them from exploitation due to low wages and labour competition from the less developed world? Who will ensure that they have social benefits provided by the employer? Who will secure for them permanent tenures and training programs? None of these questions accord with the employer's self-interest nor with the interest of the free market.

To illustrate my dilemma better, it is instructive to analyse Friedman's argument for the privatization of the entire social security system and its noncompulsory character. Friedman's argument is confusing. It seems to me that he is not opposed to government being the only supplier of social security but rather to the compulsory character of social security. In this context, Friedman's example of automobile liability insurance is more transparent. He argues that state laws require the compulsory purchase of automobile liability insurance but leaves the owners the choice of purchasing their insurance policy from different agencies.¹⁶⁰ Friedman really wants to say that the decision as to whether one will save for his or her old age is not the same as the decision as to whether to insure one's automobile against automobile accidents. Social security protects yourself and, therefore, should not be compulsory. Automobile insurance protects others and, therefore, should be compulsory. Friedman's argument is built upon the classical liberal argument that government should not regulate personal affairs (social security). Only when there is a potential danger for harm to others (automobile accidents), is government welcome to intervene. An often cited criticism of noncompulsory social security schemes is that people would not contribute

¹⁶⁰ *Ibid.*, at 185.

voluntarily on a monthly basis to social security funds. The reasons are primarily psychological. When you have a sum of money that government does not take away for your social security, you would probably rather spend it on something other than your retirement (there is always something urgent in day to day life).¹⁶¹ The second reason is that unemployed and economically disadvantaged people would not contribute at all because they would not have any money which to contribute.

At the end of this brief survey of Friedman's ideas, it is important to note that the core of his writings was produced during the period of the cold war and in the context of seemingly unbridgeable differences between East and West. This contributes some transparency to Friedman's claim that "a society which is socialist cannot also be democratic."¹⁶² To a limited extent I tend to agree with Friedman's observation. At heart I am supportive of the premise that democracy and socialism, as applied around the world, are separate starting places. However, what Friedman does is glorify capitalism and, therefore, he miscasts liberalism. Friedman starts with democracy and, because he was writing in the cold war era, disassociates his ideology from socialism as much as he can. Liberalism, on the contrary, is about democracy but it is not an ideological servant of capitalism. The liberal task, it seems to me, is to start from

¹⁶¹ This argument was presented by Bill Press at CNN's CROSSFIRE, "*Should We Privatize Social Security*" (Atlanta: March 17, 1997 [unpublished]).

¹⁶² Friedman, *supra* note 19 at 8.

democracy and come as far as possible toward socialism. This is maybe a reason why contemporary reform liberalism is often identified with social democracy.¹⁶³

It seems to me that the essence of Friedman's philosophy is captured in the following passage:

*The liberal objective is to preserve the maximum degree of freedom for each individual separately that is compatible with one man's freedom not interfering with other men's freedom. He [a liberal] believes that this objective requires that power be dispersed. He is suspicious of assigning to government any functions that can be performed through the market, both because this substitutes coercion for voluntary co-operation in the area in question and because, by giving government an increased role, it threatens freedom in other areas.*¹⁶⁴

*A government which maintained law and order, defined property rights, enforced contracts, promoted competition, provided monetary framework, engaged in activities to counter technical monopolies - such a government would clearly have important functions to perform. The consistent liberal is not an anarchist.*¹⁶⁵

Classical and neo-liberal economists, often identified as conservatives,¹⁶⁶ revolutionized the way business has been done and human happiness conceived. Individuals, as long as they do not violate the laws of the state, should be left to pursue their own interests. They believe that the role of government should be strictly limited to the protection of the society from the violence and oppression of other individuals and foreign nations.

¹⁶³ See R.B. Reich, ed., *The Power of Public Ideas* (Cambridge, Mass.: Ballinger Publishing Company, 1988).

¹⁶⁴ Friedman, *supra* note 19 at 39.

¹⁶⁵ *Ibid.*, at 34.

¹⁶⁶ See Waligorski, *supra* note 12.

As I have attempted to show, for conservatives, poverty is a moral problem. Therefore, there is no way the rich could or would have helped those in need, because morality and economy are distinct paradigms. Furthermore, this brief analysis of conservative ideology, I believe, shows conservative belief that for every question there is an empirical answer. They do not believe in preferences or assumptions since assumptions gain relevance only when they are empirically supported.

“Conservative” labour is flexible and un-unionized. Both Hayek and Friedman argued that politics cannot have a positive impact on wage policy. In other words, mutuality of economics and politics is founded on one-way beneficial relation - from market economics to politics. Economic power cannot be controlled, directed or restricted by politics because economic power is embedded in the market, driven by the invisible hand. As King describes, “neo-liberalism thus defines the individual in a minimalist way” and “abstracts the person from all his or her contingent and external relations with other people and nature and...as an essentially self contained and solitary being.”¹⁶⁷

In spite of the apparent dominance of conservative economic discourse, the conservatives’ neglect for social equilibrium, their crude positivism, overdosed rationality and an arrogance that wants to prevent us from looking beyond the numbers, have produced a response from within the liberal movement itself. In what follows, a glance at the “reform liberal” movement’s ideas offers a different insight about politics, economics and social justice. John Maynard Keynes and John Kenneth

¹⁶⁷ F. King, *Neo-Liberalism: Theoretical Problems and Practical Inconsistencies*, in Mills & King, eds., *supra* note 9 at 19.

Galbraith are among those liberals who did not believe that there is an objective order existing separately from human will or volition.

Reform Liberalism: A “Liberal” Critique of Economic Liberalism

(A) John Maynard Keynes

Keynes is the most prominent advocate of “reform liberalism” or “welfare liberalism”. As Waligorski writes, the core of reform liberal thought is an interpretation of liberalism as a “politico-economic theory and ideology, concerned with context, concrete societies, and infusing basic values into public policy.”¹⁶⁸ It seems appropriate to introduce Keynes by quoting his own critique of conservative economics. He criticized conservative economics for “its general regardlessness of social detail.”¹⁶⁹ Keynes developed plausible arguments for interventionism and against economic inequality. Consequently, he rejected laissez-faire philosophy and its corollary what I would call economic natural law - the assumption that the market naturally tends toward equilibrium and toward the greatest possible justice.

For a better understanding of Keynes’ ideas, it is important to note that his work (and the “reform liberal” manifesto in general) emerged during the 1930s when the Great Depression provided an indication of some of the imperfections of unrestrained capitalism. A political proponent of Keynes’ program was U.S. President Roosevelt

¹⁶⁸ Waligorski, *supra* note 12 at xii.

¹⁶⁹ Keynes, *supra* note 6 at 224.

who claimed that “in many instances the victory of the central Government was a haven of refuge to the individual” from a “new industrial dictatorship.”¹⁷⁰

Keynes had no doubt that conservative economists misunderstood the relationship between politics and economics. According to Keynes, every economic question has its beginning and end in politics but the biggest political question, however, is the economic one:

*In the future, more than ever, questions about the economic framework of society will be far and away the most important of political issues...The largest of all political questions...the economic questions.*¹⁷¹

Keynes never rejected the framework of the capitalist economy. However, he was hostile towards laissez-faire individualism and a diminution of the role of government in economic life. For Keynes “the decadent international but individualistic capitalism, in the hands of which we found ourselves after the war, is not a success. It is not intelligent, it is not beautiful, it is not just, it is not virtuous - and it doesn’t deliver the goods.”¹⁷² In his *General Theory of Employment, Interest and Money*, it seems that Keynes anticipated the crisis of production and the rise of financial speculations.

*When the capital development of a country become a by-product of the activities of a casino, the job is likely to be ill-done. The measure of success attained by Wall Street...cannot be claimed as one of the outstanding triumphs of laissez-faire capitalism.*¹⁷³

¹⁷⁰ Reich, *The Resurgent Liberal* (New York: Times Book, 1989) at 249, 229-30.

¹⁷¹ Keynes, *supra* note 6 at 295, 303, 332.

¹⁷² J.M.Keynes, *National Self-Sufficiency* (1933) 22 Yale Review at 760-761.

¹⁷³ D. Moggridge, ed., *The Collected Writings of John Maynard Keynes. The General Theory of Employment Interest and Money*, vol. 7 (London: Macmillan, 1973).

Since reform liberalism does not view economics as an end in itself, the role of government in Keynes' writings is more than institutional protection from violence and illegitimate contract repudiation. Unlike classical liberals, Keynes argues that the moral and ethical problems of our society are economic problems and that the government must respond with its policy proposals.¹⁷⁴ Keynes proposed the involvement of government on a variety of issues such as socialisation of investment, partial redistribution of wealth, creation of public works, low interest rates and progressive taxes, membership in international organizations for monetary and trade stability. In other words, Keynes wanted to create an economic environment in which an individual could pursue his or her own interests. He wanted to identify the "general problems" of society and leave them in the domain of government intervention. "Particular problems" such as production and business planning are supposed to remain free of the involvement of government.¹⁷⁵ This is in accordance with his latter argument that the people and society in general face two kinds of needs: first, those necessary for everyday economic existence and second, needs that are morally more significant.¹⁷⁶ If the government helps in implementing social justice and economic equilibrium, Keynes suggests, we will have more time, energy and desire to think about those issues which may not involve financial considerations but which shape and influence our social existence.¹⁷⁷

¹⁷⁴ J. Robinson, *Economic Philosophy* (Harmondsworth: Penguin Books, 1962) at 72.

¹⁷⁵ D. Moggridge, *The Collected Writings of John Maynard Keynes. Activities 1931-1939. World Crisis and Policies in Britain and America*, vol. 21 (London: Macmillan, 1982) at 87-88, 90-91.

¹⁷⁶ *Ibid.*, at 326.

¹⁷⁷ E. Johnson & G. Johnson, *The Shadow of Keynes: Understanding Keynes, Cambridge and Keynesian Economics* (Chicago: University of Chicago Press, 1978) at 217.

Keynes criticized the conservative economic approach that full employment is achievable through market self regulation. He suggested "that unemployment is not to be discovered as a temporary phenomenon ascribable to fractions or imperfections: it is a structural attribute of capitalism."¹⁷⁸ In his theory, it was unacceptable to assume that investment automatically adopts to the level of savings necessary for full employment.¹⁷⁹ Unemployment for Keynes is a result of demand, insufficient to maintain production and, therefore, employment. Consequently, Keynes saw consumption rather than savings as the key to economic recovery and higher employment. Without demand there is no incentive to invest and if there is no investment, savings are lost. Therefore, wage reduction is seen as negative since it decreases total economic demand and contributes eventually to depression. Consequently, Keynes thought that inflation was not necessarily an "evil" process. Hayek summarized Keynes' theory arguing that Keynes presumed that aggregate real output automatically changes in the same direction as total monetary expenditure. In other words, if government increases money incomes by inflation, it automatically calls forth a corresponding supply of consumer goods and consequently, full employment.¹⁸⁰

As I have pointed out earlier, Hayek rejected this argument on the basis that the only way to create stable conditions and high employment is to match the distribution of labour with the expenditure of non-inflationary money. But, in Keynes' view, not only can unemployment not be "spontaneously" solved by the free-market, but it is the

¹⁷⁸ F. Vicarelli, *Keynes. The Instability of Capitalism* (Philadelphia: University of Pennsylvania Press, 1984) at 155.

¹⁷⁹ *Ibid.*, at 156.

¹⁸⁰ Hayek, *supra* note 145 at 17.

government's responsibility to create a public sphere and educate public opinion about choices, possibilities, alternatives.¹⁸¹ For Keynes, the public sphere, created by the government, should be the arena where problems between individuals and community are solved, freedoms enhanced and women's oppression eradicated.¹⁸²

Keynes was against unlimited free trade and financial globalization based on adjustable exchange rates. A proposal to create a fixed exchange rate system, the Clearing Union, later evolved into the International Monetary Fund (IMF), and the International Bank for Reconstruction and Development, known today as the World Bank, was based on a Keynesian framework designed to regulate and restrict currency flows between nations and prevent international disequilibrium. In July 1944 representatives of forty-four nations met in Bretton Woods, New Hampshire and agreed on a fixed exchange rate system.¹⁸³ The original purpose of the agreement was to establish the parity of national currencies in terms of gold and maintain exchange rates within one percent of parity.¹⁸⁴ As stated earlier, the IMF and the International Bank for Reconstruction and Development were set up to mediate between international adjustment needs and domestic political and economic requirements (e.g., to reduce national budget deficit, inflation rate, or to reduce the deficit in its balance of payments). Keynes was convinced that the IMF, the World Bank and international

¹⁸¹ Keynes, *supra* note 6 at 225.

¹⁸² J. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper & Row, 1976) at 270-73, 295. See also Keynes, *supra* note 175 at 493.

¹⁸³ J.E. Spero & J.A. Hart, *The Politics of International Economic Relations*, 5th ed. (New York: St. Martin's Press, 1997) at 8.

¹⁸⁴ *Ibid.*, at 10.

consensus on fixed exchange rates would encourage expansion, prevent unemployment and ensure that the pressure of balanced payments did not burden weaker countries and existing debtors.¹⁸⁵ The Bretton Woods agreement, however, was never implemented as originally conceived. The main reason for this failure was the modest credit facilities of newly established institutions and the need for "European recovery" after the second world war.¹⁸⁶ The modification of the Bretton Woods agreement was achieved by the establishment of the US as the major creditor and economic leader of the post-war era. The US dollar became the key international currency and was held as a reserve by national central banks.

Since gold production was insufficient to meet the demands of growing international trade and investment, and the British pound lost its credibility to serve as the primary world currency,¹⁸⁷ the actually implemented Bretton Woods agreement tied the world's economic development to US fiscal and monetary policy. From that moment, the international monetary and payment system was not regulated by the Bretton Woods agreement but instead by the American Treasury and the Federal Reserve. Therefore, the US agreed to convert unlimited amounts of dollars to gold on demand at the fixed price of 35 dollars an ounce.¹⁸⁸

¹⁸⁵ D. Moggridge, ed., *The Collected Writings of John Maynard Keynes. Activities 1940-1944. Shaping the Post-War World: The Clearing Union*, vol. 25 (London: Macmillan, 1980) at 207-8.

¹⁸⁶ Spero & Hart, *supra* note 183 at 12. For example, the Truman plan for aid to Greece and Turkey, and most importantly, the Marshall Plan which was \$17 billion in outright grants for Western European countries.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*, at 21. Recovery of European and Japanese economies accompanied by trade protection and discrimination against the US dollar gradually led in 1971 towards the first US trade deficit. As Spero and Hart noted "on August 15, 1971 President Nixon announced that the dollar would no longer be convertible into gold and the United States would impose a surcharge of ten percent on dutiable imports in an effort to force West Germany and Japan to revalue their currencies." As such, August 15, 1971 can be considered the end of the already modified Bretton Woods agreement.

Keynes reformed and re-interpreted the meaning of liberalism. He believed in the impossibility of understanding human nature exclusively through scientific methods and empirical study. For him, private and public should work together, economics and politics should combine techniques and lucidity to achieve the same end: a peaceful and just society. Morality is an essential part of economics because the whole purpose of being “economical” is to reduce poverty and make us healthier and more secure. I have no doubt that Keynes was a liberal because he cherished the notions and beauty of freedom and life. He wanted us to strike a compromise between our greed and our humanity. Keynesian government was not a set of totalitarian and undemocratic institutions. Rather, Keynes argued that “those who have been entrusted by the country with the last word and with the power” should be active in the protection of the public sphere and “a necessary ingredient” in political and economic life of the state.¹⁸⁹ A successful future for capitalism was possible only with a new, permanent government role in the economy.

(B) John Kenneth Galbraith

Galbraith, more politically than Keynes, continued to question the claims of conservative economic theory. For Galbraith “conservatives accumulate unsolved problems. The task of liberals is to keep pace with the solutions”¹⁹⁰ For Galbraith,

¹⁸⁹ *Ibid.*, at 131.

¹⁹⁰ Waligorski, *supra* note 7 at 67.

liberalism is “the only practical politico-economic faith.”¹⁹¹ Although he draws heavily upon Keynes, Galbraith went a step further away from conservative economic theory and a step closer toward social democracy. He argued that Keynes’ program had only “limited effects on larger economic policy”¹⁹² because Keynes remained “too economical”. An additional emphasis on the power of authority, equality, distribution and social contextualization were the foundations of Galbraith’s politico-economic program.

For Galbraith, questioning the ideology of changing the political and economic context is essential. Not only does he question the market’s ability to provide an adequate answer to public needs, but he doubts the whole conservative concept of searching for empirical truths. Instead of empirical truths, the possibilities of reaching a better and socially improved society lies in the government’s ability to adjust to an “insistent process of change.”¹⁹³ Even if conservative theory was an appropriate ideological framework for the society in the past,

*economic tasks, and related politico-social possibilities, concerns and government responsibilities are very different in an advanced society. Adherence to the policies of the past, even if attractive to powerful interests, induces great error and perhaps disaster.*¹⁹⁴

¹⁹¹ *Ibid.*

¹⁹² J.K. Galbraith, *Economics, Peace and Laughter* (New York: Signet, 1971) at xi.

¹⁹³ J.K. Galbraith, *Time and the New Industrial State* (1988) 78 *American Economic Review: Papers and Proceedings*, at 373.

¹⁹⁴ J.K. Galbraith, *The Culture of Contentment* (Boston: Houghton Mifflin, 1992) at 1.

Galbraith rejected the ideological limitations set up by classical and neo-liberal concepts which are not appropriate to contemporary societies. He argued for solutions based on the pragmatism of everyday life, changing social circumstances and the way people actually live. In what follows I try to briefly introduce Galbraith's proposals and solutions, summarized under nine points.

1.) Galbraith argued that technological innovation and the economic optimum originates in the large corporations.¹⁹⁵ He was convinced that the large corporations can plan and control its markets and provide desirable equilibrium. However, it seems important to note that in the time when Galbraith developed his theory of large corporations much capital was inflexible and sector-specific.

2.) In his second proposal Galbraith advocated a stronger emphasis on corporate planning.¹⁹⁶ Galbraith's corporation must plan ahead the quantities of the various products which it will produce and the prices at which it will sell them. Unlike laissez-faire economists, Galbraith believed that consumers' demands could be matched with planned quantities. In the context of contemporary economic systems, Galbraith's concept was renounced by neo-liberalism. Instead of matching consumers' demands with planned quantities, in the market economy the prices of goods and services are determined by the market, e.g., by the forces of supply and demand, and consumers determine supply by "voting" for goods and services with their money. In general, neo-liberals argue, a rise in demand will cause both supply and price to increase, while

¹⁹⁵ D. Reisman, *Galbraith and Market Capitalism* (London: The Macmillan Press, 1980) at 40.

¹⁹⁶ *Ibid.*, at 42-43.

a rise in supply will cause both a fall in price and a drop in demand. This process, neo-liberals suggest, should be influenced and controlled only by the market forces.

3.) By introducing a concept of “countervailing power”¹⁹⁷ Galbraith attempted to show how the state can protect an individual in the context of the capitalist economy. Using the example of the small farmer, Galbraith argued that the small farmer buys from and sells to firms with market power, but his or her own individual power is nil. Galbraith explained that the farmer’s good luck is “to have acquired countervailing power. In the USA in 1929 the Federal Farm Board was established and it undertook to sponsor and capitalise a system of national agricultural co-operatives for the marketing of output and purchase of input. Again, subsidies were offered, as were quotas, loans, and price and sales guarantees.”¹⁹⁸

4.) Consumers preferences, in Galbraith’s view, are independent of individuals; they are imposed on them from outside.¹⁹⁹ In other words it is unreasonable to defend production as satisfying wants if that production creates the wants. A question that Galbraith suggests is: Does anybody need eighty types of breakfast cereal or is its production a consequence of the advertising industry?

5.) Galbraith is also concerned with evaluation process regarding the cost of commodities.²⁰⁰ The costs should not be estimated in terms of money only, but in terms

¹⁹⁷ *Ibid.*, at 50.

¹⁹⁸ *Ibid.*, at 56.

¹⁹⁹ *Ibid.*, at 81.

²⁰⁰ *Ibid.*, at 85.

of “human life-forces, and that the real price of the garlic-press might turn out to be ulcers, exhaustion and thrombosis brought on by a meaningless rat-race.”²⁰¹

6.) Government intervention was seen as an inevitable condition for the successful production, distribution and exchange of goods and services. Not only did Galbraith argue for the redistribution of the power to decide from individuals towards the State, but he pointed out that the power has to be redistributed within the State - away from bureaucrats and in favour of politicians.²⁰² He was aware of defeatism resulting from “bureaucratic symbiosis” of technocracy and civil service. He argued “if power is to be exercised in the public interest, then it must be exercised principally by the legislative branch of government.”²⁰³

7.) For Galbraith, the role of the public had political flavour. He saw public opinion as a powerful weapon which would lead public planning to reflect the public purpose.²⁰⁴

8.) Not suprisingly, Galbraith advocated nationalization of industries where “the presence of natural monopoly is matched by the absence of opportunity to develop countervailing power (e.g., the railways) or where private-sector response is demonstrably unrelated to social need (e.g., the provision of low-cost housing).”²⁰⁵

9.) Galbraith believed in direct government support in areas such as the creative arts, the planning system, the market system and the welfare state.²⁰⁶ He wanted to

²⁰¹ *Ibid.*

²⁰² *Ibid.*, at 101.

²⁰³ *Ibid.*, at 108.

²⁰⁴ *Ibid.*, at 111.

²⁰⁵ *Ibid.*, at 113.

²⁰⁶ *Ibid.*, at 115-16.

maintain a balance between our private wealth and our public services. In Galbraith's view, public opinion and public needs are variables, not constants. Therefore the state response to public needs represents a dynamic process which has to combine historical and social elements.

Maybe because of his active political life and affection for institutionalized powers (advisor to presidents Kennedy and Johnson and the US ambassador to India), Galbraith truly believes that economic power has to be co-ordinated by the central authority. Furthermore, the central authority for Galbraith is the transforming force, the common purpose, an organization that has to take economic power away from the market and moderate its direction towards those who produce.²⁰⁷

Galbraith is sceptical about the conservative concept of citizen's and the consumer's sovereignty and independence.²⁰⁸

*In a world of manipulation and persuasion by means of advertising and salesmanship, the myth of consumer sovereignty must be abandoned and the underlying reality accepted that the citizen today demands an increasing quantity of goods and services primarily because it suits the objectives of large organizations for him to do so.*²⁰⁹

He suggests that reality implies monopolization of power in large-scale organizations. Therefore, the real sovereigns are huge political and economic organizations which are able to impose their values on society and the state because of

²⁰⁷ J.K. Galbraith, *The Voice of the Poor: Essays in Economic and Political Persuasion* (Cambridge, Mass.: Harvard University Press, 1983) at 65-67.

²⁰⁸ J.K. Galbraith, *The New Industrial State*, 4th ed. (Boston: Houghton Mifflin, 1985) at 226.

²⁰⁹ Reisman, *supra* note 195 at 4.

their financial and monopolistic powers. By the artificial marriage of public bureaucracies to private bureaucracies, Galbraith claims that private corporations manage to “sell” their private interests, purposes and needs as broad and indispensable needs of the public.²¹⁰ He reversed, therefore, the conservative argument and claimed that the laissez-faire state did not foster fundamental freedoms such as the freedom to choose. Public monopolies are replaced by private monopolies. Who is the loser? All of us.

In the world today, in other words, large organizations have considerable power to bend the community to their will; and it might even be asserted that “people increasingly served the convenience of these organizations which were meant to serve them”.²¹¹

Galbraith analysed the conservative economy as the rich combination of consumables which contributed to modern society being poor in providing public services such as support to social welfare, education or low-cost housing.²¹² For Galbraith, there is no alternative to public management. He sees politics and public management as “the rider”, and economy as “the horse”:

²¹⁰ J.K. Galbraith, *A Life in our Times: Memoirs* (New York: Ballantine Books, 1981) at 528.

²¹¹ Reisman, *supra* note 195.

²¹² *Ibid.*, at 5.

If the modern State is to provide more services and fulfil more functions, then the administration of the State itself must be reformed. Specifically, power must be transferred from organizationally imprisoned bureaucrats to socially accountable politicians, and among politicians from conservative (committed to obsolete ideological relics and the intellectual artifacts of the past) to radicals (aware that the horse has become the rider in temporary defiance of the momentum inherent in matter); and this in turn presupposes the ideological emancipation of the electorate, a service to be performed not by the guild of economists (whose minds are unfortunately so befuddled by the outdated theology of market capitalism that they are no longer competent to reveal truth or uncover reality) but most significantly by the educational and specific estate (whose minds are fresh and open and who see clearly what is happening in the world around them).²¹³

Galbraith wants to see a stronger government capable of balancing the disequilibrium between private production and public investment in welfare and social services.²¹⁴ Poverty circumscribes freedom and therefore, the State has a responsibility to advance ideals of liberal freedom and equality based on a fusion of economics, politics, morality and ethics. The only way to achieve the desired goal is to suppress the power of corporate bureaucracy and organization by an equally strong and organizationally established government force. Galbraith's romanticism towards the notion of strong government and its role in public life is apparent in his claim and hope that the sovereign (the state) can indeed serve its citizens, not just the interests of the powerful. Conservative arguments that citizens gain power and control through their participation in economic life as shareholders is demolished. Galbraith explains:

²¹³ *Ibid.*

²¹⁴ J.K. Galbraith, *The Good Society: The Human Agenda* (Boston: Houghton Mifflin, 1996).

*Most shareholders in any case are not only powerless and faceless but also remote from and uninterested in their corporation. They vote their proxies, collect their dividends, and (being totally lacking in a sense of loyalty to or identification with the firm) prefer to sell out rather than (probably ineffectually) challenge the decision-makers.*²¹⁵

Galbraith, like Keynes, expanded the economic limits of political possibility, justifying more active government.²¹⁶ He was a reform liberal or a welfare liberal, but still a liberal. For Galbraith, “liberalism is cover for convenient belief, liberalism is not wrong.”²¹⁷ It seems to me that Galbraith criticizes neo-liberal misinterpretations of liberalism because, as I argued earlier, liberalism should endeavour its socialization rather than further economic (laissez-faire) liberalization. Contrary to conservative economic theory, Galbraith was convinced that freedom, equality, opportunity and choice can come only through government intervention and increased public space. Galbraith’s “cost-benefit analysis” respects economic parameters but pays close attention to political costs and social justice. Galbraith is fascinated by people rather than things, with social interaction rather than de-contextualized, and too often, insufficient allocation of resources.

²¹⁵ Reisman, *supra* note 195 at 15.

²¹⁶ Waligorski, *supra* note 7 at 92.

²¹⁷ J.K. Galbraith, *Economics and the Public Purpose* (Harmondsworth: Penguin Books, 1975) at 247-248.

Reform Liberalism: Final Thoughts

The ideas of the prominent reform-liberal scholars, Keynes and Galbraith, offer a re-interpretation of classical and laissez faire liberalism. The liberal portrait still shows an individual, but the colours, frame and gallery are different from that in Hayek's or Friedman's world of art. Reform liberals justified government intervention and re-emphasized Rousseau's notion of community. They believed that economics is the science of macro and micro-economics, but of politics, morality and ethics as well. For Keynes and Galbraith, it is unacceptable to divide these issues because people are not mechanical toys and the social interactions of human beings is not a scientific laboratory.

The role of the state is to preserve the peace, but also, the state is responsible for the creation of the public sphere and the protection of those who are economically disadvantaged. Health insurance, cheap housing and retirement programs cannot be obtained from sources other than government.

Keynes supports international control of money and exchange rates. Inflation is not necessarily bad, because the only way towards full employment is an increase in demand and consumption. Galbraith is critical of conservative advertising hegemony and the private bureaucracy that manages to "buy-off" public officials. For Galbraith, it is important to re-discover the public interest, because corporations have been promoting their politico-economic agenda, under the veil of "public cause".

Liberalism Today and Why I Call Myself a Liberal

By discussing the political and economic origins of liberalism I attempted to remind a reader of the sources of neo-liberal and welfare liberal rhetorics. However, it seems to me important to explain how the influence of these thinkers persist today.

As I argued in the introduction, I have a general sense that western civilization is in a moral and economic crisis. However, contemporary advocates of neo-liberalism reject this view arguing that neo-liberalism represents the optimal system, “the end point of mankind’s ideological evolution.” and as such constitutes the “end of history.”²¹⁸ What Fukuyama is actually suggesting is that the historical antagonism among different ideologies (in particular between neo-liberalism and Marxism) has been settled in favour of the neo-liberal paradigms. Further, Fukuyama draws upon Hayek and Friedman to argue that “neo-classical economics...has uncovered important truths about the nature of money and markets” because its fundamental model is the rational and self-interested individual.²¹⁹ The theoretical underpinning to the neo-liberal case has been that the market as a “spontaneous order” does not produce intentional injustices. Contemporary neo-liberals claim that injustices that have been done are inevitable under any ideological framework because human beings are inherently unequal.²²⁰ This is one of the places when Adam Smith’s ideas are entirely miscast by neo-liberals. As I pointed out earlier, Smith argued that people are not

²¹⁸ F. Fukuyama, *The End of History and the Last man* (New York: Avon Books, 1992) at xi.

²¹⁹ F. Fukuyama, *Trust. The Social Virtues and the Creation of Prosperity* (New York: The Free Press, 1995) at 13.

²²⁰ Fukuyama, *supra* note 218 at 289.

inherently unequal but their difference and inequality results from education and social life.

For contemporary neo-liberals, individuals are autonomous, rational, self interested utility maximisers. Therefore, individuals can be described as self contained beings, abstracted from society, and immune to social and historical transformations. It is further argued not only that individuals are indifferent towards external relations with other people, but in order to achieve optimal economic growth and happiness, it is necessary to incorporate the “values” of economic liberalism into all “indigenous cultural systems.”²²¹ In Fukuyama’s words, “capitalism remains the essential, indeed the only, framework for the political and economic organization of modern societies.”²²² Under Fukuyama’s capitalism, human beings are selfish individuals whose social side can be summarized under the desire that their economic success be acknowledged by other human beings.²²³ For Fukuyama, capitalism and liberalism are identical political and economic concepts and represent the only possible paradigm of social organization.

The contemporary neo-liberal world remains a separation of politics and economy. By limiting state intervention, neo-liberals argue, people avoid a coercive political society. Limitation of state intervention includes the diminshment of government participation in the distribution of society’s resources and the entire privatization and deregulation of the public sector. What underpins this argument is the belief that there

²²¹ Fukuyama, *supra* note 219 at 350.

²²² *Ibid.*, at 353.

²²³ *Ibid.*, at 355.

are no moral rules for the distribution of benefits. Consequently, neo-liberals argue that the laissez-faire market is the only pattern which can enhance equality or increase opportunity.

Contemporary neo-liberals have been hostile towards any conception of the human good in favour of a conception of individual rights. Not only do they reject any conception of human good, but it seems to me, neo-liberalism misunderstood the notion of democracy as such. Neo-liberal democracy is needed in the amount which is necessary to preserve laissez-faire and capitalism. Democracy, therefore, is not conceived as the end of liberty itself. Consequently, issues of human rights and political freedoms remained unaddressed.

As seems apparent, the ideas of Hayek and Friedman have remained at the core of the contemporary neo-liberal thought. However, the forms and directions of its implementation have slightly changed. The rise of multinational corporations, the high-tech revolution and a general shift towards the empowerment of corporations and private capital contributed to the neo-liberal understanding of the world as global monolith. The neo-liberal ideology has established the new economic order characterized, as Harvey notes, "by the emergence of entirely new sectors of production, new ways of providing financial services, new markets, and above all, greatly intensified rates of commercial, technological, and organizational innovation."²²⁴ By creating the new economic order, contemporary neo-liberalism contributed to higher R&D costs, shorter product life cycles, higher risk of market

²²⁴ D. Harvey, *The Condition of Postmodernity. An Enquiry into the Origins of Cultural Change* (Cambridge: Blackwell, 1994) at 136-137.

failure and further marginalization of the role of the unions. As Reich described, the whole system of production and economy in general represents a shift from high volume to high value production and puts stronger emphasis on financial markets.²²⁵ By saying this, however, it is important to clarify that neo-liberalism is an ideology not an empirical reality. Neo-liberal ideology envisions a social organization in which the market represents the principal mechanism by which economic activity is co-ordinated and controlled, thereby creating the new economic order in which people face social, legal, political and economic challenges. In this orthodox economic horror, called the new economic order, the self-regarding and calculating actions of individual citizens, when processed through the information network of the competitive market, are seen as providing sufficient controls for economic activity. The scale and complexity of late modern economics, however, has rendered the myths of the market and has showed us that problems of our society should be approached in the social, political and cultural context of human existence.

Since neo-liberal ideology claims to understand the world as a global monolith, it is clear that such arguments have a profound effect on structures of power and systems of governance. Although systems of governance in the global world will be discussed in the second Chapter, I will briefly refer here to guiding neo-liberal ideas in the context of the nation state and global economy.

²²⁵ R.B. Reich, *The Work of Nations. Preparing Ourselves for 21st - Century Capitalism* (New York: Vintage Books, 1992) at 82.

The foundational argument of contemporary neo-liberalism is that globalization is an inescapable and inevitable condition of our lives.²²⁶ It is argued that through globalization corporations will enhance the well-being of individuals and institutions, help corporations provide stable and well paid jobs, and induce developing countries to participate in the global economy.²²⁷ Scholars like Ohmae for instance, further argue that “we need to throw out...nation based models with which we interpret the world’s events.”²²⁸ In Ohmae’s view not only are national governments destructive to the advance of economic globalization but any institutional form of governance for Ohmae represents “the major obstacle for people to have the best and the cheapest from anywhere in the world.”²²⁹ For me, this makes Ohmae a “neo-liberal anarchist” and reveals how neo-liberalism ultimately rejects democracy, turning not just morality, but all government into economies.

In the neo-liberal conceptualization of the global world, people are global because they have become consumers with access to information about goods and services from around the world.²³⁰ Furthermore, factors of production are not static any more as they were in the Smithian age. Financial services are completed through computer networks, bank accounts are transferred in low tax regions, the cost of production is reduced because technology can be transferred to areas where labour is cheap and environmental and safety standards low. Glorification of global financial markets and neo-liberal

²²⁶ K. Ohmae, *The Borderless World. Power and Strategy in the Interlinked Economy* (New York: Harper Business, 1990) at 117.

²²⁷ *Ibid.*, at 216-17.

²²⁸ *Ibid.*, at 213.

²²⁹ *Ibid.*, at 11.

²³⁰ *Ibid.*, at xiii.

technocracy is further based on the argument that “management” equals “doing”, in the sense that “doing” equals “making”.²³¹

In sum, contemporary neo-liberals use fragments from classical liberalism and core arguments of Hayek and Friedman, and offer a more radical vision of society. Since classical liberalism, the market is seen as the only regulator and criterion for picking winners and losers. The competitiveness of economies, neo-liberals argue, should be realized through currency exchange rates and (un)employment. Neo-liberal government is minimized up to the level of withering away and the affirmation of the public sphere, morality and ethics is seen as unnecessary since all human problems are considered to be problems of economics. Reich summarized the neo-liberal core in the following passage:

*[in contemporary neo-liberalism] people are essentially self-interested rather than altruistic and behave much the same way whether they are choosing a new washing machine or voting on a new board of education. These personal preferences are not significantly affected by politics, social norms, or previous policy decisions. The public good, or “public interest” is thus best understood as the sum of these individual preferences.*²³²

To conclude my discussion at this point would seriously miscast liberalism. Therefore, in what follows I offer my critique of contemporary neo-liberal thought, supported by thinking of reform liberals such as Rawls and Reich.

Contemporary reform liberalism, that is the ideology that I accept, has essentially the same political origins as neo-liberal thought. It seems to me that both strains of

²³¹ J.R. Saul, *The Unconscious Civilization* (Ontario: Anansi, 1995) at 7.

²³² Reich, *supra* note 163 at 1-2.

liberalism believe in the historical liberal proclamations of freedom, justice and equality. However, contemporary reform liberalism and neo-liberalism differ on how to achieve a free, just and equal society, and on what those precious values really mean. Starting from democracy, neo-liberalism has developed towards corporatism, an ideology which claims rationality and empiricism as its central quality.²³³ On the contrary, I argue that liberalism has to move from democratic foundations towards socialization of people, not towards neo-corporatism.

I suggest that neo-liberalism does not take seriously the distinction between individuals.²³⁴ This is another point where neo-liberalism miscasts the teaching of classical economists. As earlier discussed, Locke argued that nothing was made by God for man to spoil, Rousseau developed a notion of community, Smith rejected the idea that people are inherently unequal and J.S. Mill recognized the distinction between qualitative and quantitative values. It seems to me that the classical economists wanted more economic freedom but economic freedom which was realized through its embeddness in legal, political and military framework - the state. In the hands of neo-liberals, however, the power of the state to legislate has been shifting upwards (macro-regional) and downwards (local and regional), and politics has become a medium through which corporate lobbyists and investors facilitate their interests. In other words, instead of serving democracy and people, economy has become an alternative to democracy and that is wrong.

²³³ *Ibid.*, at 2.

²³⁴ J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971) at 27.

I find my self in agreement with Rawls' critique of contemporary political economy. Drawing upon Rawls, I would suggest that a doctrine of political economy should include an interpretation of the public good "which is based on a conception of justice."²³⁵ On the contrary, neo-liberalism promotes the legitimacy of interest groups over that of citizens and, therefore, community. Therefore, neo-liberal justice loses Hobbes' or Hume's conception of justice and representative government. Instead of giving something ("something" in the contemporary context may be understood as protection of the public sphere and the welfare state) to people which deprived themselves of *jus in omnia*, neo-liberalism affirms a managerial elite and offers wealth and prosperity to that "sophisticated elite". As Saul insightfully explains, "they [the sophisticated elite] set about building a wall between themselves and reality by creating an artificial sense of well-being on the inside."²³⁶ In explaining why political economy has to incorporate justice in its portfolio, Reich argues that political economy cannot be understood as a hard science with a precise formulation of problems and a clinical application of solutions.²³⁷

I reject the separation of politics and economics. The neo-liberal argument for the entire separation of those two, again, miscasts classical liberalism. Smith's invisible hand represents the idea that government should not control economic activity, but it is never suggested in Smith's work that government should be deprived of its function in terms of education or infrastructure construction, for instance. What neo-liberal

²³⁵ *Ibid.*, at 259.

²³⁶ Saul, *supra* note 231 at 9.

²³⁷ Waligorski, *supra* note 7 at 121.

hegemony really does is divorce economy from any kind of public control. Reich explains, "since broad and dispersed interests find it hard to organize for political action, the likelihood is that narrow-interest groups will engineer a redistribution of benefits toward themselves and away from everyone else."²³⁸ In other words, the means by which special-interest groups redistribute national wealth to themselves reduce a society's overall efficiency, it does not improve it.²³⁹

Further, I argue that Rousseau's notions of community and equality are essential to liberalism as such. Reform liberals support this view. Reich writes that community "is the reality on which our national life has been founded"²⁴⁰ and Rawls reminds us that community was inherent to "the liberty of ancients" and it should remain a basic principle for the realization of liberty and equality.²⁴¹ Community in the contemporary context, I suggest, means that the responsibility of government leaders is not only to respond to public wants but to engage the public in dialogue over what problems should be addressed.²⁴² Neo-liberalism fails to acknowledge that much depends on the extent to which people consider themselves as individuals with different visions and dreams, but "whose fates are linked."²⁴³ Consequently, instead of searching for the common good and a response to a community's needs, the new rhetoric searches for "tradeoffs", a "balancing of interests" and "policy choices".

²³⁸ Reich, *supra* note 164 at 215-216.

²³⁹ *Ibid.*

²⁴⁰ Reich, *supra* note 225 at 277.

²⁴¹ J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) at 5.

²⁴² Reich, *supra* note 163 at 6.

²⁴³ R.B. Reich, *Tales of a New America: The Anxious Liberal's Guide to the Future* (New York: Vintage Books, 1987) at 114-15.

As previously pointed out, neo-liberalism advocates a “borderless world”, free trade and unconditional globalization. Of course, there has always been another view. Not only in socialist theory, but inside the liberal framework itself. Classical economists such as Adam Smith never advocated global capitalism and unrestricted free trade. Reich correctly argued that Smith wrote about universal economic principles, yet framed economic activity in the national context.²⁴⁴ Furthermore, Reich interpreted Smith as a scholar who in principle did not object to government intervention when the nation’s interest required it.²⁴⁵ Reform liberals do not reject the notion of increased mutuality and financial connectivity. They want to affirm a “positive economic nationalism in which each nation’s citizens take primary responsibility for enhancing the capacities of their countrymen for full and productive lives, but who also work with other nations to ensure that these improvements do not come at others’ expense.”²⁴⁶ What they reject, therefore, is a neo-liberal rhetoric which attempts to marginalize the role of the nation state and suggest only one way of understanding global change: as a monolith shaped by deregulated financial markets, the IMF and the World Bank. In this context, reform liberalism is critical of the neo-liberal argument that financial speculations equals “doing” (producing). Drawing upon Keynes, reform liberals distinguish between the paper entrepreneurs and the product entrepreneurs, arguing that for an economy to maintain its health, entrepreneurial rewards should flow primarily to product, not paper. Reich further explains, “paper entrepreneurs do not directly enlarge

²⁴⁴ Reich, *supra* note 225 at 18.

²⁴⁵ *Ibid.*, at 19.

²⁴⁶ Reich, *supra* note 225 at 311-12.

the economic pie; they only arrange and define the slices.”²⁴⁷ It seems to me that the nation state has an economic role which is not to increase or decrease the profitability of technocrats and corporations but rather to improve its citizens’ standard of living.²⁴⁸ Systems of governance and the changing role of the nation state are further discussed in the second Chapter.

I argue that a contemporary liberal ought to accept a plurality of conceptions of the good. I certainly do. In other words there is nothing wrong if ideology has diverse visions of the good. What seems to be wrong, however, is that the neo-liberal “good” neglects to incorporate the appropriate principles of justice, democracy and equality as an inevitable ingredient of any liberal good. Society organized around fear and greed cannot develop desirable social co-operation where social activity is efficiently organized, the public sphere preserved and civic virtue affirmed.

History offers ample warning of how neo-liberal attempts to explain human nature can endanger public values, social justice, even democracy. I reject the neo-liberal argument that democracy was born of economics.²⁴⁹ In trying so hard to present the argument that spheres of morality and economics are separate, neo-liberalism failed to acknowledge that liberalism, which is based on freedom, equality and justice, necessarily implies territorial embeddness in social and cultural relations. Any kind of economic activity certainly depends on different forms of rationality, but also on culture (different forms of shared understanding or collective consciousness), social

²⁴⁷ Reich, *supra* note 164 at 7-8.

²⁴⁸ Also see Reich, *supra* note 225 at 301.

²⁴⁹ Saul, *supra* note 231 at 3.

structure and politics (the way in which institutions are shaped by the state and class forces).²⁵⁰ Reform liberalism aims to establish such a society, a society which will indeed be based on social contract and democratic values. A contemporary liberal wants to rediscover liberal ethics, and a mutuality of morality and economy. Reform liberals, therefore, have something powerful to say and achieve. They, as Reich captured,

*will adopt different set of organizing principles. Avarice will be discouraged (there will be no shame, for example, in enacting a very high marginal tax rate on princely incomes). The pain and fear of economic dislocation will be eased (through extended unemployment insurance, job training coupled with day care, health insurance for the unemployed and working poor, and similar programs)....enterprises will become owned and controlled by all their employees (rather than solely by their overleveraged executives...). And neither military jingoism nor economic mercantilism will any longer be the measure of patriotism. True patriotism will be founded instead on a common concern for...the well-being of our future citizens.*²⁵¹

Conclusion

In the first part, I have attempted to explore some of the complexities and ideological diversity to be found in the history of liberal political and economic thought. There is a little doubt that some form of the institutional framework of the state is inevitable for every discourse inside the paradigm of liberal philosophy. We need the state because we want to live in peace, we want to protect our property, we

²⁵⁰ For further discussion see A. Amin & N. Thrift, eds., *Globalization, Institutions, and Regional Development in Europe* (New York: Oxford University Press, 1994) at 16-17.

²⁵¹ Reich, *supra* note 164 at xiii.

want to live as a community. How far should the state go beyond these motivations set out by Hobbes, Locke, Hume and Rousseau?

Economic liberals want to minimize the role of the state and empower the market and promote free trade. They believe that the only way to protect individuality and freedom is to affirm a laissez-faire economic environment where the government watches but does not participate. The argument is that it will help many of us, but it will also cause harm to a few of us, since economic liberals believe that this is inescapable under any theory or ideology. Poverty is seen as merely a moral problem of individuals, and since individual morality is not part of the *homo economicus*, again, it is not dealt with. Further, it is possible to measure and empirically study every act of a human being. Economic liberals believe that people are like numbers entered into a computer which runs the system without interference from the outside. The argument is that the only inspiration for our existence is self-interest. Therefore, economic liberalism demands full privatization, deregulation and decentralization. This is the world of the rich, the successful and the “responsible”. If somebody missed the train... there is no help. It is too late. Maybe in some other life, under some new mathematical equation.

Reform liberals also believed in individualism but emphasize a sense of the community, social welfare and the public sphere. They do not hesitate to rely on government to achieve the desired economic and social goals. *Homo economicus* is also *homo politicus*. Furthermore, besides being both political and economic, people are social beings. They want to interact, they want to love and be loved, they want to care.

It is impossible for poetry, family, children, the struggles of women and minorities, environmental crises and the decadence of war to be scientifically described and explained.

For reform liberals there is no dichotomy between economy and politics. Therefore, there is no withering away of government. The idea of reform liberals is more than just that both people and the world is going through the political and economic change. In a strong sense, we can speak of the pursuit of a better life and social justice, the public sphere and government leadership. Reform liberals fear that privatization and deregulation will limit the space of social interaction, diminishing the true interest of the public and offering us the corrupt power of private bureaucracies and the entrepreneurs in the place of citizens.

Chapter Two: Globalization and Systems of Governance

It seems to me that the real political task in a society such as ours is to criticise the working of institutions which appear to be both neutral and independent; to criticise them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them.

M. Foucault, in "The Foucault. Reader".

Introduction

In the first chapter I developed my overview of the historical and ideological underpinnings of liberalism, so as to remind the reader of the historical foundations of the liberal movement and recover competing discourses that have tended to be misinterpreted or suppressed by the dominance of neo-liberalism. In this chapter I want to inject competing neo-liberal and reform-liberal ideas into debates about the role of the state and systems of governance in, what is claimed to be, the globalized world. The aim of the second chapter is to argue for my long standing belief that history never progresses on the principle of all or nothing.²⁵² More specifically, although the traditional conceptions of the sovereign state have shifted through transformations in territorial organization of political power, production, distribution and financial services, I will be suggesting that it is misleading to summarize emerging political and

²⁵² Lipietz, *supra* note 20 at 69.

economic realities exclusively under the term “globalization”. Globalization is inadequate because it implies overarching and onedirectioned process. It seems to me that society and its complexities are more layered and complex than that. In this chapter I argue that the changes in the global order could be better appreciated as a series of overlaps and sometimes conflicting layers of governance.

I will examine the consequences of acknowledging that nation-states have become too small for the big problems of late modern society and too big for the small problems.²⁵³ My analysis does not imply the withering away of the nation-state, but rather suggests a re-interpretation and transformation of its role. I argue for an emphasis on diverse models of governance and co-operation among those models. Besides the nation-state, macro-regional and local entities are emerging as the new sources of political and economic identity.

In the second section I offer a case study of the EU as the most institutionally advanced macro-regional block. I will be using the EU as support for the argument that the nation-state has indeed been facing a shift downward in political and economic power, towards local entities, and upwards towards macro-regional blocks. I will also argue that the nation-state has retained a substantial number of functions that can be described as an exclusive prerogative of national parliaments. Furthermore, it seems to me that Europe’s specific historical, cultural and religious ties to the nation-state necessitate addressing questions of citizenship, political stability, nationalism and

²⁵³ Lash & Urry, *supra* note 8 at 279.

democracy which have arisen in the context of changed realities and inevitable interdependence.

Systems of Governance

Drawing upon economic liberalism, some scholars define globalization as an economic process that represents a major transformation in the territorial organization of economic activity.²⁵⁴ However, others see it, not as a technological or historical necessity, but rather as a politically driven process protected by new international rules and regulations.²⁵⁵ Professor Lubbers writes about technological globalization implying globalization of and by means of information technology.²⁵⁶ The changing global order is also considered as a “new model of capitalist development based on polarised growth, selective accumulation, productive diffusion, hierarchy and functional interconnectedness.”²⁵⁷ In spite of the fact that we live in what Lash and Urry call “disorganized capitalism”,²⁵⁸ I suggested in the first chapter that the ideology of economic liberalism is in fact territorially embedded in social and cultural relations.

²⁵⁴ S. Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1995) at 1.

²⁵⁵ M. Bienefeld, *Is a Strong National Economy a Utopian Goal at the End of the Twentieth Century?*, in Boyer & Drache, eds., *supra* note 151 at 422.

²⁵⁶ R. Lubbers, *Trends in Economic and Social Globalization: Challenges and Obstacles* (J.F. Kennedy School of Government, Harvard University, 1997 [unpublished]).

²⁵⁷ N. Komninos, *From National to Local: The Janus Face of Crisis*, in Gottdiener & N. Komninos, eds., *Capitalist Development and Crisis Theory: Accumulation, Regulation and Spatial Restructuring* (New York: St. Martin's Press, 1989) at 354.

²⁵⁸ S. Lash & J. Urry, *The End of Organized Capitalism* (Cambridge: Polity Press, 1987) at 16.

Disorganized capital symbolizes development of global economy, international division of labour, and the widespread growth of capitalism in most countries. It also stands for a society in which the nation-state is losing its political and economic significance and electronically transmitted information connects people and increases the powers of surveillance.

Therefore, I would assert that globalization is a multi-dimensional process driven by political, economic, cultural, historical and communicative-informational forces, characterized by increased interdependence between local, national and macro-regional entities.

Globalization always "takes place".²⁵⁹ For instance, financial networks have their beginning and the end in "global cities";²⁶⁰ advertising corporations send their messages out, not to the "imaginary" space and "imaginary" people, but rather to the people, settled in nation-states; multi-national corporations search for cheap labour and lower taxes in particular micro-regions of the world, not in some elusive "global space". Even off-shore centres have spatial identification (e.g., exotic islands, Swiss mountain resorts, yacht-marinas, maybe even coral reefs).

I argue that globalization is inaccurately understood as a "monolith". Furthermore, it seems to me that globalization could be better appreciated as a series of overlaps and sometimes conflicting layers of governance. In what follows I will examine issues of governance in relation to four systems; namely a) local, b) national, c) macro-regional and d) global.

²⁵⁹ R. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization* (1995) 10 American University Journal of International Law and Policy at 798.

²⁶⁰ S. Sassen, *The Global City. New York, London, Tokyo* (Princeton, N.J.: Princeton University Press, 1991) at 33.

(A) Local Governance

I suggest that *local* responses to global tendencies are organized at two levels: global cities, and regions or provinces. Amin and Thrift take a similar approach by deploying the term "local" to mean localities such as cities and regions rather than nations, and the term "global" to mean world-wide processes.²⁶¹ Local patterns of development have their roots in colonialism. Colonialism brings to our attention political, economic, social and cultural dominance and exploitation of politically and militarily inferior regions.²⁶² Development of distinct regional economies organized around growing urban cities has continued in the 1950s and 1960s.²⁶³

Fifty years ago, a core industrial regions grew at the expense of less developed peripheral regions. Today, production is organized in three ways:²⁶⁴ first, high technology industry, where a company's headquarters and financial institutions tend to locate close to or within inner city areas; second, craft-based, design-intensive industries such as textiles, furniture, automobile industry, jewellery or food production which may be found in developed regions such as Orange County, Baden-Wurttemberg in Germany, the Third Italy, parts of France, Greece, Scandinavia and Spain; third, low-design industries and unfinished products which are largely produced in areas with cheap labour and low environmental standards, primarily south-east Asia, and Central

²⁶¹ Amin & Thrift, *supra* note 250 at 6.

²⁶² G.J. Telkamp, *Urban History and European Expansion* (Leiden: Leiden Centre for the history of European Expansion, 1978) at 1. See also Lash & Urry, *supra* note 258.

²⁶³ H. Ernste & V. Meier, eds., *Regional Development and Contemporary Industrial Response. Extending Flexible Specialisation*. (London and New York: Belhaven Press, 1992) at 12.

²⁶⁴ *Ibid.*, at 13.

and Latin America. These examples make it apparent that flexible specialization is local and industry specific.

Due to the development of high technology, information services, and communications, the advanced financial services are now spatially centred around global cities²⁶⁵ such as New York, London or Tokyo. This implies that management and control over dispersed production premises owned by large companies and investment funds are centred in a limited number of cities and then extended by telematics to the rest of the world. This has resulted in the tendency whereby global cities have become the meeting places of financial analysts and investment fund managers, where negotiations proceed, listings on stock-exchanges are announced and mergers and acquisitions are signed.

Sassen summarises that the spatial dispersion of economic activity has contributed to the centralization of decision making in multi-national corporations and financial institutions.²⁶⁶ The nation-state's ability to intervene in the financial activities being conducted in such global cities is limited, in that much of what financial centres have moved on to electronic networks which are not the subject of national legislation. The decreased importance of the national legislature means that global cities, like "the City" in London for instance, are therefore often described as a "state within a state".²⁶⁷

²⁶⁵ Lash & Urry, *supra* note 8 at 17.

²⁶⁶ Sassen, *supra* note 260 at 33.

²⁶⁷ N. Thrift, "A Phantom State?" *International Money, Electronic Networks and Global Cities in Spatial formations* (London: SAGE Publications, 1996).

Regional governments, on the other hand, are the public articulation of industrial districts composed of small and medium companies.²⁶⁸ This observation, however, is limited when analysed in the broader context. For instance, regions in the developed countries of the Western hemisphere which have a historical and political tradition of federalism (e.g., Germany) are well developed and forging ahead in terms of economic growth, the creation of social policy and political power. At the same time, many peripheral regions in the less developed world, e.g., Africa, Latin America and Eastern Europe, are "more deeply caught in prolonged and stubborn crisis."²⁶⁹ The shift towards regional governance is a result of the contemporary ineffectiveness of national regulation.²⁷⁰ The synergy among local communities, investors and consumers in the fields of research and development, electronics, telecommunications and less bureaucratized administrative procedures allows predominantly medium sized companies to be competitive. In that way such companies can make up for advantages that large companies gain on the exploitation of cheap labour, low environmental standards and economies of scale through mergers. Certain countries have a long tradition of regional governance. For example, the German "Lander" (region) have always had responsibility for forestry policy, agriculture, tourism, energy or education.²⁷¹ In the local elections of June 1994 it was noticeable that the German people were more interested in debating local problems such as bicycle lanes on urban

²⁶⁸ P. Hirst and G. Thompson, *Globalization in Question* (Cambridge: Polity Press, 1996) at 188.

²⁶⁹ Ernste & Meier, *supra* note 263 at 4.

²⁷⁰ Komninos, *supra* note 257 at 357.

²⁷¹ J. Lambert, *Solidarity and Survival: A Vision for Europe* (Aldershot: Avebury, 1994) at 90.

roads, protection of the local environment or alternative training programs for workers, rather than federal issues or the future of Europe.²⁷²

People benefit from local political and economic sites being part of networks that promptly and accurately provide information for labour, alternative training programs and new business projects. It is faster and easier to gain financial support and secure common objectives through local government than through national bureaucracies. Local management leads towards the "strategic alliance"²⁷³ of corporations from different, and sometimes even competing, cities and regions.²⁷⁴

It can be argued that an emphasis on the local can be made up of co-operative rather than competitive relationships, networks of small and medium-sized firms, local environmental and labour movements. Although in smaller places competition can be ruthless, because the market is smaller, local sites can develop a new set of social relations and a local industrial culture, governed by long-term interdependent relationships. This can be contrasted to centralized hierarchical organizations, which fail to provide the flexibility needed to respond to international and global challenges. Such local sites make the business environment less uncertain and more stable. The concept of "local" does not operate so as to hinder those involved on a wider scale. On

²⁷² K. Neunreither, *Citizens and the Exercise of Power in the European Union: Towards a New Social Contract?* in E. Antola & A. Rosas, eds., *A Citizens' Europe. In Search of a New Order* (London: SAGE Publications, 1995) at 14.

²⁷³ Spero & Hart, *supra* note 183 at 102.

²⁷⁴ Lambert, *supra* note 271 at 86. For example, consider the alliance that runs from South-east of England, via Benelux, the Rhine, the Rhone, and northern Italy, (known in the jargon as the "blue banana"), and then branching out to southern France and into Catalonia. This alliance has been referred to as the European concept of regional economic co-operation.

the contrary, it is an acceptance of places as increasingly heterogeneous in their respective arenas of social existence.²⁷⁵

*The invitation, here, is to see the local as a real territorial arena of social interaction composed of difference and conflict, of related and unrelated connections, of social and economic heterogeneity, of parochial universal aspirations, and of local and global determinations.*²⁷⁶

Briefly examining systems of local governance, I have attempted to show that the contemporary transformation in the territorial organization of political and economic activity can not be understood as the monolithic process often called "globalization". Rather, global tendencies have provoked local responses in terms of emerging "global cities" and further emphasis on regional or provincial governments. An emphasis on local systems of governance does not imply a denial of a technological and informational revolution. On the contrary, it is an acceptance of the fact that although people live in the "one world" they do not live globally. They live in cities and regions and benefit from local political and economic sites which have the ability to respond to their needs promptly and accurately.

²⁷⁵ Amin & Thrift, *supra* note 250 at 9.

²⁷⁶ *Ibid.*

(B) National Governance

The *nation-state* is often defined as a set of administrative, policing and military organizations headed and co-ordinated by an executive authority.²⁷⁷ It seems to me that competing discourses of liberalism, both neo-liberalism and reform liberalism, still believe in Rousseau's paradigm that all people are born free and that they give up their freedom to the sovereign only to achieve desirable goals.²⁷⁸ What has been changing, however, is the perception of who is the sovereign to which people give up *jus in omnia* and therefore, what is the direction and destination of the citizens' consent. I would suggest that sovereignty has now become more an affirmation of cultural identity and has lost its meaning as simply the power over the economy. It is located in a multiplicity of institutional arenas above and below the nation state. These emerging local and macro-regional models of governance became the politico-economic frameworks for capital accumulation, organization of labour and environmental protection. Although the nation-state has significantly lost its power, as I pointed out in part one, even classical liberal theory argues that there are no markets apart from some form of regulation and institutional context.²⁷⁹ Consequently, market activities are always embedded in some institutional context, and the important is who defines the conditions under which market transactions occur.

²⁷⁷ R. Stubbs & G. Underhill, eds., *Political Economy and the Changing Global Order* (Toronto: McClelland&Stewart Inc., 1994) at 422.

²⁷⁸ Rousseau, *supra* note 62 at 169.

²⁷⁹ Smith, *supra* note 88. Adam Smith, for instance, conceptualizes the theory of the general principles of law and government under the four great objectives of Law: justice, police, revenue and arms.

The power of the nation-state over its territory and population is going through a process of transformation. Ohmae argues that the nation-state has become "unnatural, even impossible."²⁸⁰ Ohmae's concern is focused on achieving economic objectives. He argues that the state is not capable of providing an adequate level of competence and flexibility in the environment of economic liberalism.²⁸¹ As argued in the first chapter, Ohmae employs the "logic of global economics"²⁸² in dealing with issues such as political sovereignty, citizenship and democracy. For Ohmae, the nation state model of the world no longer holds. His 21st century is characterized by the four "I's" - industry, investment, individuals, and information - and none of these needs the nation-state for proper functioning and economic growth.²⁸³ To restate my earlier argument, Ohmae challenges the fundamental integrity and coherence of the nation state itself. Guehenno, on the other hand questions the political necessity for the existence of the nation state, arguing that the nation-state is an irrelevant modern idea which was pertinent only due to decolonization and struggles for self-determination.²⁸⁴ It seems to me that Guehenno believes in Fukuyama's argument of "the end of the history".²⁸⁵ The criticism of Guehenno's argument, however, is that the contemporary world could be legitimately characterized in terms of economic colonialism from one side, and continuous struggle for self-determination from the other.

²⁸⁰ K. Ohmae, *The End of the Nation State. The Rise of Regional Economies* (New York: The Free Press, 1995) at 5.

²⁸¹ *Ibid.*, at 101. For further discussion see Ohmae, *supra* note 226 at 3.

²⁸² Ohmae, *supra* note 280 at viii.

²⁸³ *Ibid.*

²⁸⁴ J-M. Guehenno, *The End of the Nation State*, trans. V. Elliot (Minneapolis: University of Minnesota Press, 1995) at 1.

²⁸⁵ Fukuyama, *supra* note 218.

Therefore, although in decline, it would be imprecise to claim that the nation-state has entirely lost its role and legitimacy. Contemporary nation-states can more accurately be described as “national firms”²⁸⁶ that influence parts of the domestic market through laws and regulations, and the international market through treaties and agreements. Governments must now bargain not only with other governments but also with corporations.²⁸⁷ The driving force behind such a process is increased competition and the ambition to locate operations of foreign corporations inside a particular state, as well as to encourage domestic business entities to refrain from entirely leaving national borders. Therefore, the creation of new paradigms of understanding which limit the activities of the nation-state in budgetary terms are part of the re-interpreted role of national governments.

Consequently, I argue that the distribution of powers upwards to the macro-regional level and downwards to local sites would give those new systems of governance necessary support in creating alternative and more efficient responses on issues such as labour, environment, forms of production and the net of social services.²⁸⁸ The question that logically emerges is what should be left in the nation-state spheres of activity? I would suggest five areas: firstly, monetary power and therefore the existence of national central banks; secondly, the reality of possessing a monopoly over the means of legitimate coercion within a given territory (the police and army forces)²⁸⁹;

²⁸⁶ Stubbs & Underhill, *supra* note 277 at 423.

²⁸⁷ S. Strange, *Rethinking Structural Change in the International Political Economy: States, Firms and Diplomacy*, in Stubbs & Underhill, eds., *supra* note 277 at 103.

²⁸⁸ Hirst & Thompson, *supra* note 268 at 184 (e.g., health insurance and social security).

²⁸⁹ *Ibid.*, at 171.

thirdly, guaranteeing property rights and contracts by means of national legislation²⁹⁰; fourthly, the role of arbitrating between preserving local cultural identity and integration into the world community; and finally, the "politics of morality"²⁹¹ which include issues like abortion, gay rights, animal rights and partially the protection of the environment.

1.) Monetary policy has always been a tool by which governments try to affect macroeconomic conditions by increasing or decreasing the supply of money. Keynes went a step further by actively pursuing monetary policy to sustain full employment in the post-war years. I would argue that attempts to macro-regionalize monetary policy, e.g. the European Union, will not be successful because national governments will not be able to harmonize rates of inflation and budget deficits, and make the necessary transfer payments through a realignment of currency values. An example of the necessity of preserving a monetary system inside the nation state has been shown in the period between 1980 and 1987 when the US Federal Reserve, while fulfilling its responsibilities as a "lender of last resort" intervened at least five times, not to protect individual banks (Chase, Continental Illinois), but to insure that the market worked.²⁹²

²⁹⁰ Sassen, *supra* note 254 at 14.

²⁹¹ Hirst & Thompson, *supra* note 268 at 177.

²⁹² H.P. Minsky, *Financial Crises and the Evolution of Capitalism: The Crash of '87 - What Does it Mean?* in Gottdiener & Komninos, eds., *supra* note 257 at 399.

2.) Monopolization over the means of legitimate coercion has remained one of the most significant powers of nation-states. Different cultures, histories, languages and economic structures, under the pressure of artificial homogenization, contributed to the re-discovery of nationalism which in turn has taken the form of resistance to macro-regional and global associations. The surfacing of nationalism is often conceived as a part of a "counter-movement" of society against the "self-regulating market".²⁹³ The war in the former Yugoslavia, disputes between Greece and Turkey, separatist tendencies in Spain, differences between the Czech Republic and the Slovak Republic, unsolved political problems in Northern Ireland, disputes between Israelis and Palestinians, Chinese occupancy of Tibet, and the crisis in Rwanda and Somalia are only a few of many examples that indicate why national governments will not give up exclusive control over national militaries. Such control is a prerequisite in order to guarantee a measure of security to citizens from external enemies and internal conflicts. Furthermore, demilitarization of nations would raise the possibilities of internal and international conflicts capable of raising issues of regional and global insecurity.²⁹⁴

3.) Hirst and Thompson note that " we are moving into a more complex and pluralistic social and political system where the rule of law will become more important rather than less."²⁹⁵ The foreign investor demands a stable and legally secure business environment. Therefore, nation-states will have to play the role of constitutional

²⁹³ W. Streeck, *Public Power Beyond the Nation-State. The case of the European Community*, in Boyer & Drache, eds., *supra* note 151 at 303.

²⁹⁴ R. Howse & M. Trebilcock, *The Fair Trade-Free Debate: Trade, Labour and the Environment* (1996) 16 *International Review of Law and Economics* at 64.

²⁹⁵ Hirst & Thompson, *supra* note 268 at 193.

arbitrators and law-makers, as well as provide co-operation with local and macro-regional bodies responsible for the enforcement of delivered decisions. For better understanding, however, my argument does not support contemporary trends under which developed countries like the US, due to their economic domination, can impose intellectual property laws, for instance, on other weaker nations (e.g., Mexico). This would only continue the existing practice summarised in the formula: the assertion of the sovereignty by one nation inevitably results in the diminution of sovereignty of another.

4.) One way of understanding culture is by defining it as "the central concept of humanity which denotes all the knowledge, technologies, values, beliefs, customs, and behaviours common to people."²⁹⁶ For me, therefore, culture is always local or national because only locally or nationally recognized and established sets of customs, rules and beliefs can assist different ethnic groups in self-justifying their identity and sense of superiority. Although I would prefer to suggest that there is not a global culture, in the context of a post-modern world we have been witnessing a number of processes aiming to produce a globalized culture and the marginalization of locally and nationally based sets of customs and traditions. This tendency should be contested.

On which merits does global (corporate) culturalism aim to succeed? It would seem, mostly through the emergence of large multinational media companies with their immense capacity for persuasion and representative offices in numerous countries;²⁹⁷ a

²⁹⁶ Marshal, *supra* note 11 at 403.

²⁹⁷ A. Appadurai, *Disjuncture and difference in the global cultural economy* (1990) 7 Theory, Society and Culture at 295-310. (This is essentially Galbraith's argument, as discussed in Chapter one.)

small number of languages of communications, most notably English;²⁹⁸ infiltration of the Hollywood film industry and American popular music; food chains such as McDonalds; and the building of urban-type vacation resorts in what were previously culturally unique places. Corporate culture tends to marginalize the importance of ethnic cultures based on local music, poetry, traditional dance, storytelling, and high art, cultures which are always inspired by very specific local contexts. The implicit claim is that cultures as described serve and are appreciated only by a relatively small number of educated people.

The argument for the affirmation of local cultures does not imply claustrophobia and regressive actions against neighbouring ethnic groups: "too" much openness to global flows, and the nation state is threatened by revolt, as in the China syndrome; too little, and the state exits the international stage, as Burma, Albania and North Korea in various ways have done."²⁹⁹ I argue that national governments and local institutions should become the arbitrator between these, socially unacceptable, extremes. Samuel Huntington similarly suggested that if we do not act against the increasing silence of national and local cultures in the global order, cultural differences will continue to be the source of conflict (for example, bloody confrontations in Northern Ireland, the Middle East and the former Yugoslavia).³⁰⁰ Huntington went a step further, arguing

²⁹⁸ Lash & Urry, *supra* note 8 at 305-306.

²⁹⁹ A. Appadurai, *Modernity at Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996) at 42.

³⁰⁰ S. Huntington, *The Clash of Civilizations?* (1994) 72 *Foreign Affairs* 22-49.

that the next century will be characterized by cultural rather than ideological identification of people.³⁰¹

There is the ambiguous possibility for the nation-state to be both “in and against”³⁰² the global order. Our cultural distinctness should reveal the beauty and complexity of the world, and expose us in a democratic and tolerant way to others’ perceptions of life, others’ visions and dreams. There are tens of thousands communal groups in the world.³⁰³ Therefore, there cannot be a central theory, a pragmatic policy or a single interpretation that could be taken and applied to all ethnic groups. There are as many interpretations of culture as there are communities.

In sum, the nation-state has not destroyed but taken apart. Decisions that govern the every-day life of human society must still be based in an institution,³⁰⁴ with the only difference being that the nation-state has lost its exclusiveness in representation in the current era. Decision making is now dispersed among local agencies, nations, macro-regional blocks, supra-national organizations and private financial investment agencies which dominate financial markets. Instead of nostalgia for the traditional functions of modern states or blind acceptance of the discourse of globalization, the nation-state has the capacity to develop a set of creative policies which will involve delegation of powers to local authorities and grouping with other nations to form macro-regional

³⁰¹ *Ibid.*

³⁰² K. Robins & J. Cornford, *Local and Regional Broadcasting in the New Media Order*, in Stubbs & Underhill, eds., *supra* note 277 at 217.

³⁰³ E. Boulding, *Ethnicity and New Constitutive Orders*, in J. Brecher, B. Childs & J. Cutler, eds., *Global Visions. Beyond the New World Order* (Boston: South End Press, 1993) at 218-19.

³⁰⁴ J. Habermas, *The Philosophical Discourse of Modernity* (Cambridge, Mass.: MIT Press, 1987).

economic blocks. Such blocks will have sufficient power to resist cultural and economic colonization. I have sought to show that in the areas of monetary power, control over the means of legitimate coercion and the ability to legislate in certain areas, the nation-state is, and should remain more than relevant.³⁰⁵ The nation-state remains a significant political and economic force in the post-modern world, not as a privileged authority but rather as partner and player in the distribution of political and economic power. Moreover, the re-interpretation of the role of the nation-state echoes Durkheim's vision that the nation state is not an aggregate of individuals, but rather a set of collective representations which create a common bond.³⁰⁶ As quoted in Reich's *Work of Nations*, "it is right to prefer our own country to all others, because we are children and citizens before we can be travellers and philosophers."³⁰⁷

(C) Macro-Regional Governance

Institutional governance above the nation-state is organized at the level of *macro-regional blocks*. Macro-regionalism is defined as an institutional aggregation of micro-economic policies designed by local entities and national legislative practices with the

³⁰⁵ T. Tiilikainen, *The Problem of Democracy in the European Union*, in Antola & Rosas, eds., *supra* note 272 at 30. It is important to note that the nation-state is also still responsible for the conceptualization of democracy and political freedoms either through parliamentary control or their openness to international conventions and a commitment to human rights. This analysis, however, is beyond the scope of this paper. For better understanding, the term "political freedom" in the context of this paper stands for freedom of expression, assembly, and association. In relation to that see E. Lundberg, *Political Freedoms in the European Union*, in Antola & Rosas, eds., *supra* note 272 at 115.

³⁰⁶ E. Durkheim, *Moral Education* (New York: The Free Press, 1973) at 65. "A society cannot be reduced to a simple collection of individuals."

³⁰⁷ Reich, *Work of nations*, *supra* note 225 at 301.

goal of producing overall regional co-ordination and adequate macro-economic policy.³⁰⁸ The following are some examples. The EU, the largest macro-regional trading block, is made up of fifteen member states and continues to attempt to expand by taking in the former European Free Trade Association (EFTA) countries and reaching agreements with central and eastern European countries. Since 1992, the North American Agreement on Free Trade (NAFTA) includes United States, Canada and Mexico. Japan leads the Asian-Pacific macro-region. Additionally, in 1992, the six members of the Association of South East Asian Nations (ASEAN), Brunei, Indonesia, Malaysia, Singapore, the Philippines, and Thailand committed themselves to create a free trade area by 2003.³⁰⁹ Argentina, Brazil, Paraguay, and Uruguay formed a customs union known as MERCOSUR.³¹⁰

These macro-regions present a contemporary politico-economic framework for capital accumulation and for organizing inter macro-regional competition. They also have the potential to become law making bodies.³¹¹ Macro-regionalization is well illustrated in the World Trade Organization Annual Report where data for 1994 shows that North American, Western European and Asian participation in world exports amounted to 4552 billion dollars out of 5240 billion.³¹² Macro-regional domination is evident even in "global" or supra-national organizations whose goal is supposed to be

³⁰⁸ Ernste & Meier, *supra* note 263 at 5.

³⁰⁹ Spero & Hart, *supra* note 183 at 79-80.

³¹⁰ *Ibid.*

³¹¹ I acknowledge that the EU, as the most developed macro-regional block, already has the power to legislate.

³¹² *World Trade Organization, Annual Report 1996*. (Geneva: Publication Services World Trade Organization, 1996) at 6.

the universal maintenance of world's peace, political and economic co-operation, and the promotion of human rights. Yet, the Security Council of the United Nations has only five permanent members (China, France, Russia, the UK, and the US), and although its resolutions are binding on all members states, each permanent member has the right to veto a resolution. The General Assembly, on the other hand, where all the members participate, is the debating forum of the UN and its resolutions are not legally binding.³¹³

The rationale behind shifting upwards, towards macro-regions, is characterized by two parallel processes: an economic and political. The economic shift is an attempt to liberalize capital markets and financial services inside a particular macro-regional block. It attempts to harmonize tax rates, safety and environmental standards, standardization of certification and testing, and compatibility in company law and industrial property.³¹⁴ By doing so, a macro-regional block gives its member states opportunities for wider markets, competitive production and higher growth. Since trade, investment and financial flows are concentrated in the Triad of North America, Western Europe and Asia-Pacific,³¹⁵ national governments are too small to compete in the new world order. Not only does macro-regionalism make a member states' production more competitive in comparison with other nations, but non-tariff barriers and harmonized tax legislation inside the macro-region enhances trade among nation-

³¹³ E. Martin, ed., *A Dictionary of Law*, 3rd ed. (Oxford: Oxford University Press, 1994) at 413-14.

³¹⁴ P. Fontaine, *Europe in Ten Points*, 2nd ed. (Brussels: Office For Official Publications of the European Communities, 1995) at 15.

³¹⁵ Hirst & Thompson, *supra* note 268 at 2.

states and therefore contributes to overall growth. Macro-regional blocks have the capacity to co-ordinate policy, to exert pressure over financial markets and to reach compromises among the divergent interests of its member states.

Economic strength and the rate of growth is a strong motivation behind shifting upwards. The EU, however, transparently shows that economic means are used to achieve political ends. The political institutions of the EU, direct elections for European Parliament, the introduction, at the Union level, of rules on immigration applicable to nationals of non-member states, attempts to diminish fiscal sovereignty of nation-states via the formation of the European Monetary Union and the European Central Bank, all indicate the tendency of macro-regions to absorb the already decreased and infirm political functions of national governments.

Fragmentation of political sovereignty is influenced by economic and political transformations. If it is accepted that politics and economics are caught in an inescapable web of mutuality, then the political dimensions of macro-regional institutions should be understood through a definition of macro-regionalism as a political arena in which national governments, local political sites and non-governmental agencies try to manage conflict and seek co-operative outcomes. Using the transformation of the nation-state to search for new ways to manage interdependence is one thing, using it as an excuse to deprive nations of monetary and legislative power is something else.

It is important to recognize that macro-regions differ among themselves based on different relations among the state, capital and labour, as well as the modes of

production, management and the development of political institutions.³¹⁶ Furthermore, they are diverse in terms of beliefs, traditions, interests and the ways of life found within them.³¹⁷ While they have certain similarities in macro-economic policies, the Asian-Pacific macro-region hugely differs when compared to North American or European economic blocks. The Asian-Pacific macro-region is part of patriarchal society, with a tendency towards political decision-making at the national-centralized level, relatively free of religious revivalism, imbued with human rights violations and totalitarian regimes. Parts of Asia-Pacific are characterized by the simultaneous growth of the market economy and non-democracy, e.g., China and Indonesia. Whereas North American and the EU on the other hand, are captured in the neo-liberal concept for global change where individual freedoms and human rights are greater, but life becomes a commodity. The approach I take assumes that useful comparisons can be made but because of historical, political and cultural differences, no single ontology can be developed to explain different macro-regional, the social and economic realities.³¹⁸

³¹⁶ Stubbs & Underhill, *supra* note 277 at 334.

³¹⁷ Lash & Urry, *supra* note 8 at 281.

³¹⁸ S. Gill, *Knowledge, Politics, and Neo-Liberal Political Economy*, in Stubbs & Underhill, eds., *supra* note 277 at 77.

(D) Global Governance

There has been a world economy for centuries.³¹⁹ The concept of a world economy, however, never included the entire planet. The Mediterranean age (up to the year 950) was followed by a European age, running roughly from 950 to 1950, and then succeeded by contemporary Atlantic and Pacific domination.³²⁰ The end of the cold war marked the beginning of political globalization and gave strong incentive for further liberalization of markets.

Globalization is not a system entirely built on imaginary properties, but at the same time it fails to expand beyond the boundaries of NAFTA, the EU, and the Asian-Pacific macro-region. This is the reason why “global” can only be understood in terms of “local” or “macro-regional”. It symbolizes a shift in capitalist regimes of accumulation from large-scale industrial production to more flexible production strategies, and the necessity for all sorts of companies (that were, until recently, comfortably ensconced in their home markets) to seek additional opportunities in other nations and macro-regions, thus gaining the profits necessary to justify their investment and technological improvement. Globalization is a tendency to transfer political power primarily upwards from the nation state, but (with the exception of the EU) it fails to

³¹⁹ S. Sassen, *Economic Globalization. A New Geography, Composition, and Institutional Framework*, in Brecher, Childs & Cutler, eds., *supra* note 303 at 61.

³²⁰ Ash, *supra* note 158 at 52-53

provide an efficient mechanism for individuals and groups to delegate their rights and responsibilities vis-à-vis such institutions.

It is important to distinguish the global from the international. The international concept of a new world order represents an argument for nationally located processes, in which most companies trade from their bases in distinct national economies.³²¹ National-level policies and actors remain essential for internationalization. Globalization subsumes and subordinates national-level processes through macro-regionalization of the world. Political consensus and economic growth is reached through local interactions and political and economic agreements among macro-regions. Therefore, unlike a bilateral international world, globalization implies multilateralism and local interdependence.

Beyond the idea of globalization there is a false assumption that humanity itself is being discovered as universally the same. However, our cultural, historical, religious, and political differences, our senses of superiority and self-importance, still contribute to the existence and spread of nuclear and other weapons, to the affliction of hunger and to the absolute poverty of some twenty percent of the human race (not to mention the environmental pollution, ecosystem and species destruction, the intensified human repression that results from the increasing denial by some governments of the most

³²¹ Hirst & Thompson, *supra* note 268 at 185.

fundamental human rights).³²² One way of understanding ambiguities and complexities of globalization and its competing discourses is by distinguishing globalization from below,³²³ from globalization from above. I would like to briefly elaborate upon these two models.

It has been argued that "globalization from above transfers power and resources from the natural world to human domination, from communities to elites, and from local societies to national and transnational power centres."³²⁴ Thus, globalization from above views the world as an "homogenizing supermarket for those with the purchasing power while those without it are excluded and, to the extent required, suppressed by police, paramilitary, and military means."³²⁵ It is a one-dimensional vision of society which influences those spheres responsible for socialization, cultural identification and the formation of personal identity and treats them as a commodity. Globalization from above has almost become a fundamental principle which is so deeply embedded in our consciousness that we act upon it without reflection and-or moral evaluation.

I argue for globalization from below because, in contrast to globalization from above, it aims to "restore to communities the power to nurture their environments; to enhance the access of ordinary people to the resources they need; to democratize local, national, and macro-regional political institutions; and to impose pacification on

³²² P. Ekins, *A New World Order. Grassroots movement for global change* (London: Routledge, 1992) at 1.

³²³ I owe the use of this term to professor Fred Dallmyre (University of Notre Dame) who used it to elaborate against a "globalization from above" in his lecture "Globalization - a curse or promise", delivered at The University of British Columbia, Green College, on March 12, 1998 [unpublished].

³²⁴ Brecher, Childs & Cutler, *supra* note 303 at xi.

³²⁵ *Ibid.*

conflicting centres.”³²⁶ Globalization from below does not reject the idea of the free market, but wants to enrich economic liberalism with: the values of community, decentralization, the democratic transfer of power both above and below, considerations of human rights, and the prevention of oppression, poverty and collective violence.

*It is an expression of the spirit of democracy without frontiers, mounting a challenge to the homogenizing tendencies of globalization from above. It is based in a global civil society which seeks to extend ideas of moral, legal, and environmental accountability to those now acting on behalf of the state, market, and media.*³²⁷

In this part I have suggested that globalization should be understood as a series of overlaps and conflicting layers of governance. Despite the rising popularity of globalization, I have argued that it is a process which still does not have institutional foundations. Rather than being a major political and economic force in boundless world, global "flows"³²⁸ are still predominantly embedded in local, national and macro-regional systems of governance. I have criticised a neo-liberal concept of "globalization from above" in its attempt to transfer power and resources from the natural world to uncontrolled human domination and from people to elites. On the other hand, I see "globalization from below" as grassroots movement reconcilable with reform liberalism. Globalization from below seems as something more than "democracy" as a

³²⁶ *Ibid.* at xv.

³²⁷ *Ibid.* at ix.

³²⁸ Lash and Urry, *supra* note 8 at 320

from of state. It is “democracy on the spot”, a community-based democracy through which the people build power over the things that matter in their lives.³²⁹

The European Union - A Combination of Local, National and Macro-Regional patterns

After I have suggested understanding of globalization through the diverse models of governance, in what follows I offer a case study of the EU to further discuss (and pragmatically approach) the argument that the nation-state has been facing a shift downward in politico-economic power, towards local entities, and upwards towards macro-regional blocks. Also, I will discuss how the transformation in Europe in the territorial organization of political and economic activity and the creation of diverse systems of governance affect issues of citizenship, political stability and the future of the European people.

The EU is by far the most advanced attempt at macro-regional political and economic governance. It has its own Parliament, territory, anthem, flag, partial citizenship, elections, political and economic institutions. What makes the process of European integration unique is the fact that it is not exclusively driven by a logic of “spill-over”³³⁰ from the recent macro-regional economic integration of the world. On the contrary, it is almost a half-century old process of multisectoral integration that

³²⁹ M. Ichiyo, *For an Alliance of Hope*, in Brecher, Brown & Childs, eds., *supra* note 303 at 150.

³³⁰ Streeck, *supra* note 293 at 300.

involved: the Treaty of Paris (1951) establishing the European Coal and Steel Community (ECSC); The Treaties of Rome (1957) establishing the European Economic Community (EEC); the European Atomic Energy Community (Euroatom); the Single European Act (1986) and finally the Maastricht Treaty (1992) establishing the European Union.³³¹ Initially the Community's activities were confined to the creation of a common market in coal and steel between the six founding members (Belgium, France, Germany, Italy, Luxembourg and the Netherlands). At the end of the century, the EU is much more than an organization for engaging in economic competition with the United States and Japan for a share of the world economy. It has expanded its membership to fifteen of the most advanced European countries and tried to enforce ambitious and controversial programmes including European citizenship, monetary union, a common foreign and security policy, internal security, the creation of common social policies and regional co-operation.

What seems clearly beyond doubt is that European integration is an irreversible process. It is questionable, however, which politico-institutional concepts should comprise the long-term goal of the Member States and therefore the EU. I argue for a federalist approach which promotes the idea that local, regional, national and European authorities should cooperate and complement each other. It is a concept where "regional and national authorities need to be matched by independent, democratic European institutions with responsibility for areas in which joint action is more

³³¹ Fontaine, *supra* note 314 at 5. Member of the European Union are: Austria, Belgium, Denmark, the Federal Republic of Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Sweden, Norway, the United Kingdom.

effective than action by individual states.”³³² The functionalist approach, on the other hand, favours a gradual transfer of sovereignty from the national to the EU level.³³³ I will now briefly explore the present politico-institutional and economic framework of the EU.

(A) Political Institutions and the question of Citizenship

a) Institutional powers of the EU

The EU is a union of democratic States.³³⁴ Article F of the Treaty on the European Union (the EU Treaty) emphasizes that the Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.³³⁵ Despite declaring support for political and cultural diversities of its people, the EU developed powerful political institutions which contributed to the present situation of integrated economies and fragmented political sovereignties.

The European Parliament³³⁶ is the largest multinational parliament in the world. Legislative power inside the EU lies with the Commission and Council of Ministers.

³³² *Ibid.*

³³³ *Ibid.*

³³⁴ European Commission, *Questions and Answers About the European Union* (Office of Official Publications of the European Communities: Brussels, 1994) at 5.

³³⁵ Treaty on European Union [hereinafter the EU Treaty], Encyclopedia of European Community Law, vol. B I, art. F.

³³⁶ In the following paragraphs I draw upon the Treaty establishing the European Economic Community [hereinafter the EEC Treaty], 25 March 1957, Encyclopedia of European Community Law, vol. B II, art. 137-144. See also European Commission, *Serving The European Union. A Citizen's Guide to the*

The *consultation* procedure, however, requires an opinion from the Parliament before a legislative proposal from the Commission can be adopted by the Council. *Co-decision* procedures allow the Parliament to improve proposed legislation by amending the initial proposal. *Parliament's assent* is required for important international and multinational agreements, such as the accession of new Member States, association agreements with third countries, and definition of the tasks and powers of the European Central Bank.

The European Parliament has the right to approve the Union's budget each year, however, it is fair to assume that the European Parliament plays only a consultative role with the ability to amend.³³⁷

The Council of the EU, usually known as the Council of Ministers³³⁷ is truly the legislative body for the EU. Ministers of the fifteen member states legislate for the Union, set its political objectives, and co-ordinate national policies.

The Council can deliver *regulations* which are directly applied without the need for national measures to implement them; *directives* which bind Member States as to the objectives to be achieved while leaving the national authorities the power to choose the form and the means to be used; *decisions* which are binding in all their aspects upon those to whom they are addressed. A decision may be addressed to any or all Member States, to undertakings or to individuals; *recommendations and opinions* are not

Institutions of the European Union (Brussels: Office for Official Publications of the European Communities, 1996) at 5-8.

³³⁷ In the following paragraphs I draw upon the Treaty establishing the EEC Treaty, *supra* note 336 art 145-154. Also see European Commission, *supra* note 336 at 9-12.

binding. Although it seems that the EU, through the Council, has extensive legislative power, it is important to recognize that the Council is nothing more than an association of national governments.

I see the Council as intergovernmental rather than a supra-national body where national ministers try to lobby for the best and the most progressive alternatives for their nations based on political and economic compromises, solidarity and future expectations. Areas of governance and law that go to the heart of the national parliamentary prerogative either remain exclusively controlled by national legislation (e.g., parts of civil law, criminal law, provisions regarding obligatory army service), or require unanimous decision by the Council of Ministers (e.g., harmonization of laws concerning turnover taxation, or immigration policies).

The European Commission³³⁸ initiates proposals for legislation, and manages and executes Union policies and international trade relationships. It also serves as a supervisor for the enforcement of Treaties. The Commission has three constant objectives: *to identify* the European interest, *to consult* with national governments, industry, trade unions, special interest groups and technical experts before completing a proposal, and *to respect a principle of subsidiarity* which clearly emphasizes that the Commission takes action only when it will be more effective than if it were left to individual Member States.

³³⁸ In the following paragraphs I draw upon the EEC Treaty, *supra* note 336, art. 155-163. See also European Commission, *supra* note 336 at 13-16.

The Court of Justice³³⁹ of the EU may contribute to better understanding of the argument that European nations still play a significant role in exercising, in this case, legislative powers. The Court of Justice is made up of fifteen judges (from member states) and nine advocates general appointed by common accord of the Member States for a renewable term of six years. The Court of First Instance has jurisdiction to deal with all actions brought by individuals and companies against decisions of the Community institutions and agencies, not national courts. Its judgement may be subject to an appeal brought before the Court of Justice but only on a point of Community law.

Co-operation between national courts and the Court of Justice only happens when courts or tribunals in the Member States ask for preliminary rulings. After a request is submitted, national courts need a decision of the Court of Justice, but only on questions of Community law, in order to be able to give a judgement. It is important to emphasize that the Court of Justice is not a court of appeal from the decisions of national courts and can only rule on matters of Community law. The marginal importance of the Court of Justice in comparison to national courts is best illustrated by the fact that only 4000 judgements have been delivered since 1954. I would assert that at the heart of the Court of Justice is an ambition not to penalize but simply to ensure even application of Union law. This is so because the enforcement of decisions on nation states is hardly possible due to the powerful role of the national Ministers in the Council.

³³⁹ In the following paragraphs I draw upon the EEC Treaty, *supra* note 336, art. 164-175. See also European Commission, *supra* note 336 at 17-18.

The European Court of Auditors³⁴⁰ is responsible for checking that the EU spends its money according to its budgetary rules and regulations and for the purposes for which it is intended. An expansion in the Union's activities is apparent through a budget perspective analysis. In 1992, the Edinburgh European Council adopted the financial perspective for 1993-99. It increased the Union budget from ECU 69 billion in 1993 to 84 billion in 1999.³⁴¹ In 1995, however, the Union's budgetary operations already reached ECU 100 billion³⁴² which can be contributed to the broader political and economic activities of the Union.

The Economic and Social Committee.³⁴³ Although it lacks executive power, the Committee has an opportunity to play a creative role in the improvement of the Union's social policies. The Committee is very useful in a federalist conception of the Union where it can be a great support for co-operation among local, regional, national and European Union's authorities. One of the most significant functions of the Committee is to co-ordinate an enforcement of the Community Charter of the Fundamental Social Rights of Workers adopted by the Heads of Member States with the exception of the UK in 1989.³⁴⁴

³⁴⁰ In the following paragraphs I draw upon the EEC Treaty, *supra* note 336 art. 188a-198. See also the EU Treaty, *supra* note 335, art. 45a, 160b, 160c.

See also European Commission, *supra* note 336 at 19-20.

³⁴¹ P. Fontaine, *supra* note 314 at 19.

³⁴² European Commission, *supra* note 336 at 19.

³⁴³ In the following paragraphs I draw upon *Ibid.*, at 24-25.

³⁴⁴ European Commission, *Promoting A Social Europe* (Brussels: Office for Official Publications of the European Communities, 1996) at 4.

The EU's social policy was enlarged, through the European social policy action programme for the period 1995-1997, with more intensive co-operation with NGOs, regulations on compatibility between working and family life and on part-time work, and most importantly more effective use of the Social Fund to promote employment.³⁴⁵

There are currently eighteen million unemployed Europeans, an average unemployment rate of 10.6 percent with nearly six million people having been out of work for more than two years.³⁴⁶ This suggests that the Committee so far has had limited ability to create effective policies, but it could certainly take an active part in co-ordinating the most recent EU employment plan which provides ECU 300 million over five years to improve the chances of people within three specific groups to find jobs: women, young people with no qualifications, and the "socially disadvantaged".³⁴⁷

I want to suggest that in the circumstances of the free labour movement inside the Union, while Member states may try to create independent social programs, it will be virtually impossible to succeed without co-operation among Member states and the EU's authorities. In comparison with NAFTA, which is close to a no-regulation, no social policy regime (with exploitation of child labour and collective bargaining entirely off the agenda), the EU represents a more advanced supra-national entity in terms of promoting social rights and freedoms.

³⁴⁵ *Ibid.*, at 7.

³⁴⁶ The Economist (October 4th-11th 1997). "European employment. Fiddling", at 54.

³⁴⁷ European Commission, *Creating Jobs* (Brussels: Office For Official Publications of the European Communities, 1995) at 6.

The Committee of the Regions³⁴⁸ is an institution that reflects my belief that regional and local identities have to be involved in the process of governance and co-operation, as well as in the development and implementation of the EU's policies. The committee has to be consulted on matters relating to trans-European networks, public health, education, youth, culture and economic and social cohesion. The Committee of the Regions is the paradigm for co-operation among local, regional, national and Union authorities. It works through eight Commissions and four Sub-Commissions which deal with areas of essential importance and interest for the citizens of Europe.³⁴⁹

The EU does not have a single centre of authority (Council, Commission, European Parliament). As a result the policies that come out of Brussels are still substantially influenced by national interests and conflicting pressure groups. The lack of a powerful central authority, however, should not be a reason for concern. Fragmented political sovereignty based on intensive and effective co-operation is a more appropriate model for the current period of reforming traditional political institutions and changing the world economy. I argue against a vision of the EU as the supra-national state with strong central authority, because that would imply a transfer of monetary, legislative (property law and contracts in particular), and defensive powers from the nation-state, and obviously its withering away.

³⁴⁸ In the following paragraphs I draw upon the EEC Treaty *supra* note 336, art. 198a-198c, as amended.

See also European Commission, *supra* note 336 at 26-27.

³⁴⁹ *Ibid.*, at 27.

If that happens, I see no indication that European diversity will unify peacefully. Although article B of the EU Treaty³⁵⁰ suggests the "framing of common defence policy", it seems to me that supra-national military alliance is not achievable. In spite of German pressures, European nations would never sacrifice their exclusive control over the military and police forces. As well, it would be impossible to reach a consensus on the conceptual framework for such a supra-national military entity. Already, the British, Dutch and Portuguese argue that the Community should develop as a European pillar of NATO, and the French, backed by the Spanish and Germans, want to affirm a European identity in the defence field. In the meantime, some of the former communist countries, e.g. Poland, Hungary and the Czech Republic, are very close to joining NATO.

b) Citizenship

The transformation of the nation-state and new concepts of political and economic governance brought about changes in the political basis, meaning and importance of citizenship. The Hague Summit of December 1969³⁵¹ and the establishment of direct elections to the European Parliament marked the beginning of the search for the EU's political citizenship. The idea reached its maturity in the preamble of the EU Treaty where it is resolved by the fifteen Member countries "to establish a citizenship

³⁵⁰ The EU Treaty, *supra* note 335 art. B

³⁵¹ Ash, *supra* note 158 at 55.

common to nationals of their countries.”³⁵² Furthermore, article 8 (1)³⁵³ of the Treaty explicitly establishes the citizenship of the Union. What has been achieved since the EU Treaty was signed?

European citizens are not given their political rights by any kind of constituent act. Rather, it seems that the new concept of EU citizenship is introduced through citizenship of one of the Member States. I argue that the core of Union citizenship is a combination between “political citizenship” and “economic citizenship”. The citizenship is “economic” because it is based upon the free movement of people and their ability to work in Member States. In other words, article 8A (1)³⁵⁴ of the EU Treaty, which says that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty, significantly expanded the mobility of people inside the Union and increased the importance of fundamental rights for all persons when they move from one Member state to another.

After guaranteeing the right to move, work and reside freely inside the Union, the EU Treaty in article 8b introduces the first provision which has a political flavour. Article 8b(1)³⁵⁵ gives the right to every citizen of the Union, residing in a Member State of which he or she is not a national, to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides, under the same

³⁵² The EU Treaty, *supra* note 335, Preamble.

³⁵³ *Ibid.*, art. 8 (1).

³⁵⁴ *Ibid.*, art. 8A (1)

³⁵⁵ *Ibid.*, art. 8b(1)

conditions as nationals of that State. Article 8b(2)³⁵⁶ expands the previously described right by giving the citizen of the Union, residing in a Member State of which he or she is not a national, the right to vote and to stand as a candidate in elections to the European Parliament, under the same conditions as nationals of that State. The citizen of the Union residing in a Member State is not privileged to participate in national elections of the Member State where he or she resides, or regional elections in autonomous areas or states composing federal states, or referendums and plebiscites.³⁵⁷

The EU Treaty in Article 8c³⁵⁸ adds a second political right to Union citizenship; that every citizen in the territory of a third country, in which the Member State of which he or she is a national, is not represented is entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as a national of that State. Despite the promising tone of this provision it is important to notice that diplomatic and consular protection is provided only if the citizen's Member State does not have any relevant authority in the third country. This is a clear subordination of Union citizenship in comparison to citizenship in a Member State. Finally, in article 8d the right is given to citizens to petition the European Parliament and to apply to an Ombudsman to investigate allegations of maladministration.

The concept of nation and national citizenship, remains important. It is *sine qua non* for participation in elections for national parliament, a particular regional election,

³⁵⁶ *Ibid.*, art. 8b (2)

³⁵⁷ The EEC Treaty, *supra* note 336 art 8-8e.

³⁵⁸ The EU Treaty, *supra* note 335 art. 8c.

or referendums and plebiscites. The Act concerning the elections of the representatives of the European Parliament, with its Article 7(2) states that "the electoral procedure shall be governed in each Member State by its national provisions."³⁵⁹ Countries like Denmark, Greece, Germany and The Netherlands restricted the right to nominate candidates to political parties or equivalent organizations.³⁶⁰ Finally, the Declaration concerning nationality of a Member State, annexed to the Treaty, declares that whenever the Treaty establishing the European Economic Community (the EEC Treaty) refers to nationals of Member States, the question of whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. The nations of the EU among themselves still insist on requiring that a citizen of one Member State must reside several years (five to fifteen) in another Member State in order to obtain citizenship in that Member State.

What is the relationship between citizenship and freedom of expression? Most member states grant freedom of expression at the constitutional level to all people, regardless of citizenship. Three interesting points seem worth mention here: first, some countries include only citizens in freedom of expression(Ireland and Spain); the UK does not have a written constitution at all; and the German Aliens Act states that all political activities of aliens may be limited or prohibited in order to protect public

³⁵⁹ *Annexed to Council Decision of Sept. 20, 1976, O.J. 1976, L 278.*

³⁶⁰ Lundberg, *supra* note 305 at 121.

security and public order.³⁶¹ These provisions could easily be misinterpreted and serve as potential justifications for oppressive action against people without citizenship.

The idea of a European Constitution is not a forbidden topic of conversation anymore. I would suggest, however, a high level of scepticism about a unified Constitution will emerge in the decade ahead of us. Allow me to name three reasons: a) a Union constitution would definitely indicate the end of the "political nation" that has been a symbol of European political and cultural power for centuries, b) the political factions inside the Union would not be able to reach a consensus on the final text and re-shaped inter-governmental relations, c) the EU still has to solve the problem of Eastern Europe and its integration. A Constitution would demand defining the status of post-communist countries whose future within the Union is still uncertain.

The EU Treaty significantly extends the powers of the Union in the fields of refugee, alien and immigration policy. It is clear that nation-states, under conditions of the free movement of people and goods inside the Union, are not in a position to independently create immigration policies. Article 100c of the EC Treaty, as amended by the EU Treaty,³⁶² empowers the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States. From January 1, 1996 such decisions have to be adopted by a qualified majority [art. 100c(3)]. However, according to article 100c(7) the

³⁶¹ *Ibid.*, at 119.

³⁶² The EU Treaty, *supra* note 335, art. 100c (1)-(7).

requirement of unanimous voting will remain in force until the content of the decision has been replaced by directives or measures adopted by the Union. Article K.3(1)³⁶³ of the EU Treaty also says that before the Union starts to act in these areas pursuant to article 100c of the EC Treaty, Member States shall inform and consult one another within the Council with a goal to co-ordinate their action.

Despite the fact that the influence of the Council increased tremendously after the Treaty on European Union, national governments are still crucial in the creation of immigration policies not only because of their vote in the Council, but simply because the national laws of Member States still differ in provisions covering naturalization and requirements for citizenship. According to 1994 data, 9.1 million third-country nationals are legally resident in EU Member States.³⁶⁴ The largest part of the foreign population comes from non-EU European countries (4.1 million), followed by Africa (2.7 million), Asia (1.5 million) and America (0.8 million).³⁶⁵ Due to the slow transition and recovery process of Eastern Europe, and the continuing poverty in Africa, the EU will continue imposing strict immigration rules, especially towards Africa, with the aim of keeping the poor outside its borders. It seems that a "curtain of separation" still exists. The only difference is that it opens from time to time to those who are willing to pay the entrance fee or put their ingeniousness at the service of the developed world. This is derived from a reading between the lines of the European Court of Justice judgement:

³⁶³ *Ibid.*, art. K.3(1).

³⁶⁴ *The European Affairs* (December 11th-18th, 1996) at 4.

³⁶⁵ *Ibid.*

*...the employment situation and, more generally, the improvement of living and working conditions within the Community are liable to be affected by the policy pursued by the Member States with regard to workers from non-member countries...the Commission rightly considers that it is important to ensure that the migration policies of Member States in relation to non-member countries take into account both common policies and the actions taken at Community level, in particular within the framework of Community labour market policy, in order not to jeopardize the results.*³⁶⁶

(B) The Future of the European Union - Thoughts and Anticipations

The shifting of political and economic power upwards and downwards from the nation state is a gradual process imbued with complex political struggles and compromises. The state of contemporary European society and a search for acceptable alternatives do not offer simple answers. Partly, this is because the EU is much more than economic integration simply conceived. The EU has to react simultaneously to three kinds of challenges. Firstly, it has to create a unified and resolute set of policies regarding economic recovery and the political stability of Central and Eastern Europe. Without the Union's gradual expansion to post-communist countries, it will be nothing more than an ironic story about the privileged "fifteen", frightened by the bomb of poverty and insecurity from the East. Secondly, it has to stay competitive and technologically innovative in the economic battle with the macro-regional blocks lead by the United States and Japan. Finally, it has to position itself on issues such as the indebtedness of the less developed world and pending ecological problems.

³⁶⁶ *Federal Republic of Germany and Others v. Commission of the European Communities*, [1987] ECR, joined cases 281, 283-285/85 and 287/85, para. 16.

When trade and financial investment with the rest of the world are in question, European nation states have no option but to act as a Union. The nation state does not have the scientific and economic infrastructure to independently respond to improvements in communication and information technologies. However, in achieving the appropriate balance between looking inward toward creating an internal market and outward toward defending the macro-regional trading system, it is important that local, regional, national and European authorities co-operate and complement each other. Otherwise, the "Europe of regions"³⁶⁷ will emerge not as the result of an equitable balance of power and economic co-operation between local, regional, national and Union authorities, but rather as the "Europe of poor and rich regions." As I have argued, the "federalization" of the EU could take place, despite the fact that some countries, e.g., France and Britain, historically lack the historical practice of federalism.

So far the unification of Europe is entirely comprised of the integration of sovereign nations and not of ethnic groups. The scope of this thesis does not allow me to deal with the implications of recognizing ethnic identities, but all the arguments I have made so far suggest that if the EU is to develop more towards "Europe of regions", it is necessary to develop a concept for "ethnic participation" in the Union. This would allow Basques, Welsh or Scots for instance, to be able to develop their own specific membership in the union. Furthermore, this would emphasize our ethnic particularities,

³⁶⁷ Hirst & Thompson, *supra* note 268 at 168-69.

but contribute to a better understanding and further promotion of our mutuality in achieving economic growth, political stability and a better environment. The cultural particularities of European nations are our richness not our poverty. The attempts to unify a large number of European ethnic groups and diversities by force, ideology or through the media has historically resulted in bloody wars and tragic consequences.³⁶⁸ My vision, therefore, is a Europe of regions, comprised of cultural specificities, and with mutual co-operation at different levels of governance based on the comparative advantages of European regions and nations.

*Europe can be the location of a new compromise between autonomy and solidarity. That is the new internal frontier - the alternative, democratic and ecological project.*³⁶⁹

Conclusion

The aim of this chapter has been to argue that the fashionable term “globalization” can best be understood through the systematic analysis of the local, the national and the macro-regional. We are experiencing macro-regionalization, rather than “globalization”. The world is being divided into successful and rich macro-regions and those that are less developed and poor.

The nation-state as the highest possible conception of the spirit and the goal of individual citizens is no longer pertinent concept. However, the present stage is far

³⁶⁸ Saul, *supra* note 231 at 10-11.

³⁶⁹ Lipietz, *supra* note 20 at 143.

from Fukuyama's "end of history". Distribution of powers upwards to the macro-regional level should include the creation of macro-economic policies, development of information and communications systems, funding for research and development centres, harmonization of tax laws, immigration policies, creation of environmental and social policies and regional co-operation.

Monetary power, the control over the means of legitimate coercion, legislation (primarily criminal law, property law and contracts), and the task balancing the preservation of local cultural identity and integration with the world community, should remain in the domain of the nation-state.

Shifting downwards to local entities should allow the growth of egalitarian co-operation rather than domineering forms of world order inequality. Local communities are capable of disturbing hierarchical, elite-dominated command systems and developing synergy in the fields such as training programs for labour and communication because the strength of local groups flows both from their autonomy and from their ability to know about and work with similar groups. In the industrial context, the strategic alliance between small and medium sized corporations from different localities would then be able to make up for the advantages that large companies gain on the exploitation of cheap labour, low environmental standards and economies of scale. Furthermore, local sites are more efficient in dealing with local environmental issues.

Also, it is faster and easier to gain financial support and secure common objectives through local government than through national bureaucracies. Affirmation of local

sites would establish a new set of social relations and a local industrial culture, governed by long-term interdependent relationships, rather than centralized hierarchical organizations. This would provide the flexibility to respond to international and global challenges, and make the business environment less uncertain and more stable.

Fragmentation of political sovereignty is not necessarily a destructive process. Since the changing global order is far from being a radical and rigid overnight change, it is *sine qua non* to allow a transition period for political institutions to search for optimal solutions. The almost half a century old process of European multisectoral integration illustrates the importance of a gradual approach. When unpacked, the changing global order shows inconsistencies and dilemmas. Instead of a fascination with the global illusion based on financial speculation, our priority should be an equilibrium among local, national and macro-regional systems of governance. Economic growth should be based on production rather than financial speculations, and must include better care of the environment and respect for different cultures, religions and customs.

Contemporary sociologists and anthropologists are concerned with mass migrations and the use of global media companies for identity formation. Economists and business analysts have been keen to explore the transnational corporation and new business strategies. Politicians and academics have been increasingly discussing shifting political and economic power upwards and downwards from the nation-state.³⁷⁰ Our goal should be to bring together these diverse concerns. Only then can we achieve a more peaceful

³⁷⁰ Amin & Thrift, *supra* note 250 at 1.

and just society. A society from which we may enjoy the global picture through local lenses.

Chapter Three: Privatization: Options and Challenges

The story of the boy who looked up at the sky and asked, "Daddy, what is the moon supposed to advertise?" is an allegory of what has happened to the relation between man and nature in the era of formalized reason. On the one hand, nature has been stripped of all intrinsic value or meaning. On the other, man has been stripped of all aims except self-preservation; he tries to transform everything within reach into a means to that end

M. Horkheimer, in "Eclipse of Reason".

Introduction

In recent years, privatization has been one of the most explored and controversial policy tools. Relying on the theory of economic liberalism, globalization optimists see privatization policies and the empowerment of corporations as processes which will lead society towards higher economic growth, will result in closer attention being paid to the wishes of consumers, make improvements in technological and innovation processes, and will produce greater efficiency by lowering costs of production.³⁷¹ Further, it is argued that the state should not be concerned with activities that individuals, groups, and organizations can best provide for themselves.

Those in favour of the "public sphere" and the concept of the Welfare State argue that privatization necessarily implies the diminishment of the State, replacement of

³⁷¹ R. Rees, *Economic aspects of privatization in Britain*, in V. Wright, ed., *Privatization in Western Europe. Pressures, Problems and Paradoxes* (London: Pinter Publishers, 1994) at 46-47.

public monopolies with private corporate monopolies, and erosion of constitutional freedoms and democracy. Furthermore, they argue that it is not the case that all economically backward countries will develop under conditions of privatization and deregulation, and that in fact, only a few have.³⁷²

In the context of the third chapter I will provide an overview of the theoretical background to the privatization debate. Further, I will briefly narrate methodological concepts of privatization and examine how privatization processes affect democratic societies. Democracy and privatization will be discussed with specific reference to the partnership between the state and private ownership. While analysing differences in motivation, political and economic framework, and applied methodologies in the privatization programmes of the United Kingdom and Poland, I will be suggesting the importance of taking into consideration differences in political, economic, legal, cultural and historical backgrounds of countries that are engaged in institutional changes and ownership transfers. For example, successfully employed privatization methods in the UK would probably fail to produce similar effects in post-communist countries. Reasons for potential failures in post-communist countries could be attributed to different motives, an unstable political environment, corruption, and undeveloped legal system and financial institutions upon which the process depends.

³⁷² B. Levine, *Watching Eastern Europe, Thinking about Latin America*, in J.M. Kovacs, ed., *Transition to Capitalism? The Communist Legacy in Eastern Europe* (New Brunswick and London: Transaction Publishers, 1994) at 300. See also M.B. Athreya, *Alternative Models for Privatization of People-isation*, in S.R. Mohnot, ed., *Privatization. Options and Challenges. In the context of Comparative advantage of Public & Private Enterprise Models* (New York: Centre For Industrial & Economic Research, 1991) at 11. An opposition to privatization goes back to *Proudhon* (property is theft), followed by *Marx* (value is created only by labour) and *social-democracy* (profit is exploitation and inherently anti-social. National monopolies should be collectivised.).

Drawing upon reform liberalism I will argue against neo-liberal attempts to establish a clear distinction between private and public sectors. I acknowledge that there are collective needs which cannot be satisfied so long as the decision-making process remains centralized.³⁷³ But I will argue if “unconditional privatization” is allowed to minimize the fundamental socio-institutional space called the public sphere, Rousseau’s notions of a social contract, ethics and democracy would become merely utopian declarations of modernity. If not regarded as a social, ethical, and political process, as well as an economic one, privatization will re-enforce either anarchic communist tendencies or “neo-fascist corporatism.”³⁷⁴

Privatization: An Analytical Framework

(A) Defining the term

The structural and organizational differences of national political systems and economies make the search for a universal definition of the privatization process impossible. Some authors define it strictly in economic terms as the re-distribution of economic power where people can freely participate in purchasing shares of the newly privatized state-owned enterprise.³⁷⁵ Others argue that privatization is in origin a political rather than an economic process since the decision to privatize is made by

³⁷³ P. Dews, ed., *Jurgen Habermas. Autonomy and Solidarity. Interviews* (London: Verso, 1986) at 67.

³⁷⁴ *Ibid.*, at 62.

³⁷⁵ J.V. Dinavo, *Privatization in Developing Countries. Its Impact on Economic Development and Democracy* (Westport, Conn.: Praeger, 1995) at 33.

politicians not by financiers.³⁷⁶ The political dimension of globalization is further emphasized in the fact that government, when it engages in an activity such as privatization, influences not only the financial and business community but workers, the taxpaying public, political parties, non-governmental organizations (NGO's), educational systems and the distribution of social services. Even media commentators, who often observe whether a process was a success or a failure, are interested. Further, a privatization policy may be used to the political advantage of the political party in power, providing the party with an additional source of revenue and an opportunity to attract potential voters by granting them financial benefits resulting from privatization.

I suggest that privatization can be conceived as a process concerned with the pursuit of political and economic goals, but should also be regarded in ethical terms, concerned with the pursuit of moral objectives.³⁷⁷ This is so because any privatization necessarily implies radical changes in the way people live, work and obtain services decisive for existence (e.g., health insurance, retirement plans, police and environmental protection).

My criticism that privatization marginalizes ethical and moral objectives takes two forms: first, the ethical dimension challenges the success of privatization in achieving its objectives and second, it challenges the worth of these objectives themselves. In other words, the major concern is that after nationalized industries have become

³⁷⁶ O. Letwin, *Privatizing the world: a study of international privatization in theory and practice* (London: Cassell, 1988) at 29.

³⁷⁷ N. Buttle, *Privatization and Ethics*, in D. Braddon & D. Foster, eds., *Privatization: Social Science Themes and Perspectives* (Aldershot: Dartmouth, 1996) at 17-18.

privately owned, public monopolies will be replaced by private monopolies with the only difference being that labour has become flexible, job tenures unsecured and temporary, accompanied by low wages and social insecurity.³⁷⁸ Furthermore, if the method, speed, target and legal environment of privatization are not supported by the community it is likely that privatization will go against democratic values because it will remove important issues from public determination and undermine the notion and the function of representative government.

Despite different interpretations of privatization, it seems that privatization aims to reduce the scope, limit the functions and generally weaken the influence of the public sector.³⁷⁹ Theory distinguishes two particular types of privatization; firstly there is industrial privatization which involves the sale of public industrial assets to private individuals or groups.³⁸⁰ Those in favour of industrial privatization argue that privatization brings opportunities to ordinary people, speeds up economic growth, cuts the costs of government and turns losses into tax revenues.³⁸¹ Secondly, there is privatization of social policy, meaning that issues of income security (for example, financial help for unemployed or public retirement plans), health care and education do not require collective solutions, but rather regulation via market mechanisms.³⁸²

³⁷⁸ *Ibid.*, at 29-30.

³⁷⁹ J. Vickers & V. Wright, *The Politics of Industrial Privatization in Western Europe: An Overview*, in Vickers & Wright, eds., *The Politics of Privatization in Western Europe* (London: Frank Cass, 1991) at 3.

³⁸⁰ *Ibid.*

³⁸¹ M. Pirie, *Principles of Privatization*, in M.A. Walker, ed., *Privatization: Tactics and Techniques* (Vancouver: The Fraser Institute, 1988) at 14.

³⁸² M. Shalev, ed., *The Privatization of Social Policy? Occupational Welfare and the Welfare State in America, Scandinavia and Japan* (London: MacMillan Press, 1996).

Proponents of private and voluntary social policy argue that offering a service for a price gives important information about what consumers will pay for, and that equality would increase because the beneficiaries of public services tend to live in urban areas and "to be relatively well-off while the costs of these programs fall disproportionately on the rural poor."³⁸³ Critics of both industrial and social policy privatization argue that privatization increases unemployment and exacerbate inequality due to the inability of the poor to participate. Furthermore, it is argued that advocates of privatization disregard the social context and the wishes of people who, at the end, endure the consequences. As Davies explains:

*Social services are not merely utilitarian instruments of welfare but also agents of altruistic opportunities. Social policy provides and extends opportunities for altruism in opposition to the possessive egoism of the market place.*³⁸⁴

Under neo-liberalism, privatization is portrayed as a solution to government mismanagement and inefficiency. Ironically, however, privatization is not self-implementing. Any privatization requires government's decision to privatize, adequate public resources for oversight, skilled public managers and new management techniques and structures. Therefore, in attempts to define the process, privatization necessitates the development of new types of public-private co-operation, and suggests

³⁸³ R. K. Godwin, *Using Market-Based Incentives to Empower the Poor*, in H. Ingram & S. R. Smith, eds., *Public Policy for Democracy* (Washington: The Brookings Institutions, 1993) at 167.

³⁸⁴ B. Davies, *Policy Options for Charges and Means Tests*, in K. Judge, ed., *Pricing the Social Services* (London: Macmillan, 1980) at 133.

an elusive line between the concepts of private and public which will be discussed in the second and third part of this chapter.

Although the affirmation of private ownership and individual freedom goes back at least to classical liberalism and John Locke, the promotion of privatization, as a major ideological tool in transforming the role of the State and globalization, dates from the election of the Conservative government of Margaret Thatcher in May 1979.³⁸⁵ What had been a sporadic and limited phenomenon of the 1960s has become a widespread and frequent force for the promotion of the private sector and notions of efficiency. The transition of totalitarian communist regimes to neo-liberal market economies contributed to the indisputable power and popularity of privatization. Moreover, it is difficult to identify any government of the Central and Eastern European economies in transition and the less developed world which does not place privatization at the centre of the process of economic reform. One of the reasons for the expansion of privatization can be found in the IMF and the World Bank programs which provide financial assistance only to those who commit themselves to de-regulated and de-centralized, market-based economic systems.³⁸⁶ It has been calculated that between

³⁸⁵ D. Heald, *The United Kingdom: Privatization and its Political Context*, in Vickers & Wright, eds., *supra* note 379 at 31.

³⁸⁶ See Dinavo, *supra* note 375 at 11. "Many international institutions and organizations such as the International Bank for Reconstruction and Development (The World Bank), the International Monetary Fund (IMF) as well as the most industrialized nations such as the United States, have opted for privatization as a urgent policy, in particular for the developing countries."

1985 and 1993 governments in one hundred countries raised some \$328 billion by selling state-owned enterprises to private investors.³⁸⁷

What has been the motivation behind the privatization? Vickers and Wright examine five sets of motives: ideological, economic, managerial, party political and financial.³⁸⁸

Ideological - privatization is often conceived as the general strategy for neo-liberal governments. Advocates of privatization view public industries and services as a limitation on the consumers right to choose and a constraint of individual freedom. Vickers and Wright emphasize how privatization facilitates the adoption of "flexible" labour policies and diminishes the power of unions. Ideological support for privatization includes re-structuring of the bureaucratic state, which traditionally has a large percentage of public ownership in its portfolio, because, it is argued, the state as such erodes personal responsibility and undermines individual initiative.

Economic - many of the state monopolies are not natural monopolies and once broken up, neo-liberals argue, there would be greater scope for competition. Furthermore, the public sector has been perceived as less efficient than the private sector because it faces no threat of bankruptcy or take-over, and it has no private shareholders to satisfy. Neo-liberals also argue that deprived of the possibility of direct personal financial gain, managers will wastefully pursue their own non-pecuniary goals.

³⁸⁷ V. Wright, *Industrial Privatization in Western Europe: Pressures, Problems and Paradoxes*, in Wright, ed., *supra* note 371 at 1.

³⁸⁸ In the following paragraphs I draw upon J. Vickers & V. Wright, *The Politics of Industrial Privatization in Western Europe: An Overview*, in Vickers & Wright, eds., *supra* note 379 at 4-9.

Managerial - it has been argued the state is not capable of good management. After privatization, neo-liberals suggest, Ministers would finally be able to extricate themselves from their time-consuming and debilitating relationship to public sector corporations. This is good, it is argued, because Ministers either interfere too much or are completely indifferent.

Party political - as shown in Thatcher's era, privatization can be a efficient political tool. It has been alleged that privatization of the industrial public sector in some European countries is part of a strategy to increase the number of conservative voters and, therefore, to undermine the unions and deprive the left of one of its traditional bastions of support.

Financial - neo-liberals argue that the sale of State assets raises money for public sector managers, reduces budget deficits, cuts personal and corporate taxes and finances public expenditure. Consequently, an increase in private ownership fosters the growth of stock-exchanges, widens capital markets and reduces commercial risk for government by diminishing the State's exposure to recession and business instability.

Given these motives for privatization, it seems apparent that the propositions of privatization include: a belief that the form of ownership affects economic performance; that it is possible to make a clear distinction between public ownership and private ownership; that voluntary and private welfare will successfully replace bankrupt social services; that economic growth is inevitable because private owners will be more likely than the state to display profit maximizing behaviour; and finally, that

private ownership will encourage greater competition which means cheaper goods and the ability to choose.³⁸⁹ /

Despite the prevalence of privatization as a major neo-liberal policy tool, I argue that substantial criticisms can be made regarding the implementation and consequences of the process. Firstly, it can be suggested that industrial privatization results in short-term revenues for the state but deprives it of long term cash flows generated through dividends and other financial benefits.³⁹⁰ In that way profits are not used to finance social services but end up in banks and private corporate accounts.

Secondly, it is correctly argued that privatization has a positive impact only on highly skilled labour (e.g., managers and executives) whilst ordinary employees have been held static or have even become socially insecure (e.g., layoffs, low wages, temporary jobs).³⁹¹ Further, Sunstein observes that study after study has shown that privatization and the introduction of the free market inevitably devalues the products and enterprises of both blacks and women.³⁹²

Thirdly, my critique of privatization policies, as currently employed, is based on a belief that the benefits and the costs of privatization are distributed unfairly. Buttle, for instance, uses the example of bus service: "whilst deregulation, privatization and competition may have resulted in lower fares on profitable city routes, on unprofitable routes in inner city areas or rural areas, costs have increased and services been

³⁸⁹ J. Bradley, *Privatization in Central and Eastern Europe: Models and Ideologies*, in Braddon & Foster, eds., *supra* note 377 at 264-265.

³⁹⁰ Buttle, *supra* note 377 at 31.

³⁹¹ *Ibid.*

³⁹² C.R. Sunstein, *Free Market and Social Justice* (Oxford: Oxford University Press, 1997) at 152.

withdrawn.”³⁹³ Privatization of social services and its voluntary basis leads toward individual management and arrangement of health care, social security, pension funds and education. However, those responsible for implementation of privatizations have been casual about contributing to the lowering of unemployment and the raising of wages so that individuals can create or substantially increase their private social portfolios. The proclamation of a private and voluntary social policy and an increase of the unemployment rate at the same time are unsustainable. They represent *contradictio in adiecto*.

Privatization in the context of democracy, ethics and the public sphere is more extensively discussed in the third part of this chapter. However, as an introductory note, a fourth set of arguments against privatization is based on the claim that privatization has been a moral failure because people have lost a sense of community, feel increasingly insecure due to the fading away of the public sphere, and have been witnessing undemocratic tendencies, since, as some argue, deregulation and discrimination always accompany one another.³⁹⁴

*What privatization has achieved is a sort of Hobbesian world where isolated individuals confront other isolated individuals with opposing and hostile interests. What privatization has achieved is a society in which individuals are concerned only with the pursuit of their own interests, a society in which individuals retreat into themselves, a society of metaphysical stockades behind which we crouch and view others nervously and suspiciously. The moral vision underpinning privatization, therefore, is a poor and impoverished vision, a vision which results in a state of nature characterized by the war of all [against all] in which, for many, life is nasty, brutish and short.*³⁹⁵

³⁹³ Buttle, *supra* note 377 at 31.

³⁹⁴ Sunstein, *supra* note 392.

³⁹⁵ Buttle, *supra* note 377 at 32.

In this part I have introduced some of the approaches employed in order to define privatization. Further, I emphasized five motives for privatization and suggested that what is often ignored while privatizing is the social milieu in which ventures function and people live. Judging by the motives for privatization, it seems that privatization often contributes to the creation of private monopolies and deprives the state and people of financial and social benefits. In other words the neo-liberal motivation to privatize empowers corporations and corporate management at the expense of individual shareholders or the general public. In spite of neo-liberal attempts to argue that by increasing the number of shareholders privatization empowers individuals and therefore the people, it seems to me that the position of individual shareholders is not strengthened by privatization. Most of the time individual shareholders are not interested nor in a position to influence corporate policy. What matters for them is the value of their shares and dividends at the end of the financial year. Also, this analysis has to be geographically contextualized. People in the less developed countries, where financial markets are not as influential and developed as in North America, the EU or Japan for instance, generally do not invest in the market. Part of the explanation can be found in the fact that Latin American, African or Central and Eastern European countries do not have a tradition of private investments, and part of it has to do with the fact that workers still do not have funds to participate in corporate ownership. Working people in the less developed world are more concerned with providing for the daily needs of

their families such as food, clothing, social security and health care.³⁹⁶ Consequently, I suggested that the benefits and the costs of privatization are distributed unfairly.

In what follows, I examine methods of privatization and ask whether is it possible to employ a methodology which is socially contextualized and gives workers and people in general the possibility to actively participate in ownership transformations.

(B) Privatization: Methods and Techniques

I have suggested that the motivation for entering the privatization process can have an ideological, economic, managerial, party political or financial background. Since different motives imply different ends, there is no universal method or technique implicit in the process of privatization. Furthermore, the difference in the structure of economies, and the development of financial institutions, political and legal systems, and the various experiences and perceptions of economic liberalism and the free market suggest that, with respect to privatizing, no single ontology can be applied. In industrial contexts, large scale privatizations differ from small and medium-sized privatizations due to discrepancies in the number of employees, book values, strategic importance and technological support.³⁹⁷ A diversity in approach is also inevitable while privatizing social policy, since health care, social security, education or garbage collection, for instance, imply differences in organizational structure and final goals. In

³⁹⁶ See Saul, *supra* note 231 at 13-16.

³⁹⁷ R. Frydman & A. Rapaczynski, *Privatization in Eastern Europe: Is the State Withering Away?* (Budapest: Central European University Press, 1994) at 149-154.

what follows I will examine contemporary methods and techniques used in the privatization process.

Privatization methods and techniques comprise the following: sale by public offering of shares; sale by private treaty (closed or limited tender); sale by public auction; leasing assets or firms; management and/or worker buyout; free (or almost free) distribution of shares/vouchers to the population; free or subsidized distribution of shares to the work force/management; free distribution of shares to social institutions; restitution of property to former owners; privatization via liquidation or bankruptcy;³⁹⁸ and government contracting out.³⁹⁹

1.) Sale by public offering of shares⁴⁰⁰ - this is a frequently used method for raising a significant amount of new capital for medium and large companies. Most of public offerings occur in Western countries. In order to have public offerings it is necessary to have a net of developed financial institutions and markets that can provide an adequate support for public-private transactions. An enterprise target for public offering must first be converted into a joint-stock company, since limited-liability companies usually cannot be publicly traded. After a company has been converted into a joint-stock

³⁹⁸ P. Hare, *Privatization in comparative perspective: an overview of the emerging issues*, in S. Estrin, ed., *Key Issues in the Realignment of Central and Eastern Europe. Privatization in Central and Eastern Europe* (London: Longman, 1994) at 34-35.

³⁹⁹ J.F. Handler, *Down from bureaucracy: the ambiguity of privatization and empowerment* (Princeton, N.J.: Princeton University Press, 1996) at 80.

⁴⁰⁰ See P. Walton, *International Stock Exchange Listings. Taking full advantage of the opportunities* (London: Pearson Professional Ltd., 1996). For further discussion see R. Cheung & K. Perez, *A Guide to American Depositary Receipts 1997* (New York: Union Bank of Switzerland, 1997).

company, its shares, previously owned by the government, are offered in domestic and international financial markets. Due to financial interconnectivity and the flow of information in the changing global order, an international offering of shares, in comparison to a purely domestic offering, has been often employed because of the increased number of potential purchasers of shares.

2.) Sale by private treaty (closed or limited tender) - sometimes governments use the discretionary power deriving from the absolute ownership to privatize state-owned enterprises without public offerings. In other words, when the sale is by private treaty, small investors and first-time investors do not have the chance to participate in the privatization of a particular enterprise. The entire number of shares, or a significant percentage of an offering, is sold directly to another business entity or an individual, usually from a compatible industry. Therefore, tender is usually closed, or limited to corporations from a particular industry which meet requirements prescribed by the government.

3.) Sale by public auction⁴⁰¹ - this is a method which envisages the sale of whole enterprises through the use of auctions. The only criteria that determines who will be the purchaser is the price, unlike the "tender" method, where the purchaser usually must comply with a number of other conditions.

⁴⁰¹ Frydman & Rapaczynski, *supra* note 397 at 166-67.

4.) Leasing assets of corporations⁴⁰² - this method of privatization creates a leasing contract between the state and the lessee. The state remains the owner of the corporate assets and the lessee is entitled to exercise all business rights except the right to sell or transfer corporate assets. This method is often used when the state wants to restructure a particular corporation without losing its ownership position. The option to lease is usually given to individuals rather than corporations, and the lessee has an obligation to maintain the value of the assets with restrictions on the declaration of dividends.

Frydman explains that the usual terms of leasing contracts are five to ten years and can include one of the following options: lease and sale, tenancy with an option to purchase and tenancy without the option to purchase.⁴⁰³

5.) Management and/or workers buyout⁴⁰⁴ - when there has been strong opposition from management and workers to privatization of a particular corporation, the government may create the possibility for management and/or workers to acquire controlling shares in their company. Unfortunately this model has been of limited use in the less developed countries and post-communist nations of Central and Eastern Europe due to the lack of personal funds of workers and the inability of financial institutions to support such programmes. Consequently, the initial idea of a combination of workers and management participation in corporate ownership often turns out to be a one sided management buy-out. The exclusion of workers from

⁴⁰² *Ibid.*, at 165-66. See also A. Canning & P. Hare, *The privatization process - economic and political aspects of the Hungarian approach*, in Estrin, *supra* note 398 at 208.

⁴⁰³ Frydman & Rapaczynski, *supra* note 397 at 189.

⁴⁰⁴ *Ibid.*, at 165.

ownership structure has been showing political consequences for conservative and liberal political parties in some of the post-communist countries. For instance, in Central and Eastern Europe⁴⁰⁵ communist and social-democratic candidates have been winning Parliamentary and Presidential elections. The stronger public support for political parties of social-democratic ideological proliferation is often explained by the marginalization of labour and unions in the privatization process, and the creation of wage policies and labour standards.⁴⁰⁶

6.) Free (or almost free) distribution of shares/vouchers to the public⁴⁰⁷ - the unique political and economic environment of Central and Eastern Europe initiated the creation of a previously unexplored privatization method. The core of the "voucher" method is the creation of the broadest possible base of domestic shareholders coming from workers and middle class citizens. Canning & Hare explain that the voucher scheme allows any citizen to purchase vouchers up to a certain value determined by the government in return for a down-payment of, for instance, one per cent of the total value of vouchers or even completely free of charge.⁴⁰⁸ When this method is applied, Canning & Hare argue, one third of the population is expected to gain the status of shareholders. Furthermore, Dinavo argues that the voucher scheme increases the

⁴⁰⁵ For example, in the 1995 Polish Presidential elections Polish citizens elected the communist candidate for the President.

⁴⁰⁶ See R. Frydman, A. Rapaczynski & J.S. Earle, *The Privatization Process in Central Europe* (Budapest: Central European University Press, 1993).

⁴⁰⁷ Canning & Hare, *supra* note 402 at 208-10.

⁴⁰⁸ *Ibid.*, at 209.

individual's ability to participate in the market as a consumer and, unless accompanied by some form of voucher system, privatization should be characterized as unfair.⁴⁰⁹

Governments often dislike free distribution because it does not generate any revenues for the state. Neo-liberals argue, the state is deprived of the possibility to transfer funds for improvements in social policy to the remaining public sector. In addition, laissez-faire economists are concerned that the possibility for individuals to trade vouchers on the market raises the problem of inflation since the increased financial power is not based on the economic growth but rather on the government's will to "artificially" improve the standard of living and social justice. Finally, Frydman and Rapaczynski warn that the main problem with free distribution to the public at large is ensuring that the new owners exercise sufficient control over the management of the privatized enterprise.⁴¹⁰

7.) Free or subsidized distribution of shares to the workforce/management⁴¹¹ - the idea behind this method is similar to the voucher privatization scheme. However, this concept includes only the workers and management of a particular company, unlike in the above described voucher scheme where every citizen is entitled to obtain a prescribed amount of shares.

It is argued that workers would be motivated to increase productivity and management would be motivated to create a corporate strategy which would contribute

⁴⁰⁹ Dinavo, *supra* note 375 at 15.

⁴¹⁰ Frydman & Rapaczynski, *supra* note 397 at 27.

⁴¹¹ Canning & Hare, *supra* note 402 at 207-208.

to the increase in the share value and deliver dividends at the end of the fiscal year. In other words, instead of distributing shares freely, workers would be offered participation in privatization under preferential terms (Employee Share Ownership Programmes - ESOP). Both methods give some benefits to workers and provide them with a stake in the whole process of privatization and restructuring. Neo-liberals, however, argue that in the less developed countries, previously state-owned corporations are not able to compete in the free market economy without an appropriate transfer of technology and "know-how". With a free distribution of shares or a distribution under preferential terms, it has been argued, it is likely that the state will not have adequate funds to invest in the corporate assets. It seems to me, however, that financial assistance from foreign financial markets and supra-national organizations (the IMF and the World Bank) could help such a scheme to reach social and economic success.

My argument is based upon the never implemented Bretton Woods concept of the IMF and the World Bank. The reform liberal idea from Bretton Woods was that the IMF and the International Bank for Reconstruction and Development, known today as the World Bank, should mediate between international adjustment needs and domestic political and economic requirements.⁴¹² For example, to help nations to reduce the deficit in their balance of payments, to reduce national budget deficits and to strengthen financial institutions so that they can assist citizens in their programs and needs. Unfortunately, as pointed out before, the IMF and the World Bank have become

⁴¹² Spero & Hart, *supra* note 183 at 8.

political and economic agencies for the implementation of the neo-liberal economic colonization based on the exploitation of child labour, low environmental and safety standards, discrimination and low wages.

8.) Free distribution of shares to social institutions - by applying this method, governments tend to transfer corporate shares into the portfolios of social institutions such as pension funds, health care funds or educational funds. Social institutions do not interfere with corporate policy, thus, the management of corporations is left to professional executives and investment managers. The motivation for the application of this method is that by transferring solvent and promising shares to social institutions, the cash flow from dividends and potential trading through stock exchanges would strengthen the problematic financial portfolios of social institutions. Social institutions in possession of such shares co-operate with financial analysts and fund managers which assists government officials in the running of the securities departments of welfare institutions. The formulation of social programmes and social policy in general, remain the responsibility of the state.

9.) Restitution of property to former owners⁴¹³ - restitution is probably the most political of all privatization methods. It has been the subject of significant discussion in post-communist countries since most of the post-communist governments accepted responsibility for the nationalization that took place between 1948 and 1989. In order to

⁴¹³ J. Batt, *Political dimensions of privatization in Eastern Europe*, in Estrin, *supra* note 398 at 89-90.

maintain and affirm their credibility and authority to their own citizens and international institutions, governments want to demonstrate "their commitment to righting the wrongs of the past as far as they are able."⁴¹⁴ However, it is not possible to resolve this issue by rigid enforcement of the "absolute return policy". I will suggest two reasons in support of this argument: firstly, restitution in areas such as housing, would create unmeasurable social problems and legal insecurity. People who live in nationalized apartments would have to buy them from the original owners which would be impossible due to the lack of funds and high unemployment rate in post-communist countries. Secondly, some nationalized sites, especially corporate sites, represent an attractive source of revenues for national governments and they are not willing to give them away for free. Thirdly, because of Nazism and colonialism for instance, in some countries the legitimacy of ownership prior to nationalization is questionable and hard to determine.⁴¹⁵

10.) Privatization via liquidation or bankruptcy⁴¹⁶ - when applied, a state-owned enterprise is wound up. Former employees set up a new company, often supported by outside investors, which then takes control of all or some of the assets of the liquidated corporation. If the body authorized for liquidation does not want to include former employees in the future ownership structure, assets will be privatized either through

⁴¹⁴ *Ibid.*, at 89.

⁴¹⁵ An Interview with Samuel Jacobowitz held on March 14, 1998 in San Francisco. Samuel Jacobowitz is a Jewish novelist from Poland whose family's property was taken away by the Nazi regime in 1941 and afterwards nationalized by the 1946 Communist government.

⁴¹⁶ S. Gomulka & P. Jasinski, *Privatization in Poland 1989-1993: policies, methods, and results*, in Estrin, *supra* note 398 at 229-30.

sale by public offering of shares of the new corporation, sale by private treaty, sale by public auction, or lease agreement.

11.) Government contracting-out⁴¹⁷ - Handler suggests that "privatization, looked through the method of contracting, is a system in which governments continues to provide the funding for services but contracts the implementation or delivery to the private sector, either to non-profit or for-profit firms."⁴¹⁸ When the contracting-out method is applied, the role of the government remains significant in two ways: firstly, in the contracting process, the government requests bids, compares and selects corporations, and drafts, negotiates and processes the contracts;⁴¹⁹ secondly, the government provides a systematic monitoring procedure in terms of performance evaluation, filing of monthly or quarterly reports, summaries of training and technical assistance, etc.⁴²⁰

By this brief analysis of privatization methods and techniques I wanted to suggest that the resort to privatization in recent years should not be understood through a "one methodology" analysis. Eleven methods, as discussed above, reveal that privatization can be undertaken in a way that includes only financial institutions, corporations and corporate riders. Further, privatization can be designed and conducted to include only corporate management. At the same time, however, there are methodological

⁴¹⁷ Handler, *supra* note 399 at 80.

⁴¹⁸ *Ibid.*, at 78.

⁴¹⁹ *Ibid.*, at 90.

⁴²⁰ *Ibid.*, at 92.

frameworks for privatization which can give an opportunity to welfare funds, workers and first time investors to participate in privatization programs.

Under the pressures of the IMF, the World Bank and private financial institutions, governments tend to employ methods such as sale by public offering of shares, sale by private treaty or sale by public auction.⁴²¹ These are the methods that attract other corporations, investment funds, banks and speculators. Considering recent examples of workforce reduction as a result of privatizations and corporate mergers, none of these methods provide an adequate framework for the social stability of labour and its active participation in privatization processes.⁴²² As shown, however, privatization can also be understood and conceived through methods such as free or almost free distribution of shares/vouchers to the population, subsidized distribution of shares to the workforce or the management and workers' buyout. These methods may increase the workers ability to become a shareholder. They may also contribute to the strength of workers financial portfolio and social stability, and keep unemployment rates low. It seems to me that neo-liberalism should support the inclusion of workers in privatization processes because presumably unemployed people are bad customers.

In what follows I argue for a diversity of approaches to privatization. While neo-liberal methodology is currently being pursued vigorously, a European case study suggests that new methods and techniques should to be developed.

⁴²¹ For the IMF and the World Bank privatization programs and general demands for liberalization of economy in the less developed world see J. Weiss, *Economic Policy in Developing Countries. The reform agenda* (London: Prentice Hall/Harvester Wheatsheaf, 1995) at 255, 263.

⁴²² S. Edgell, S. Walkate & G. Williams, eds., *Debating the future of the public sphere: transforming the public and private domains in free market societies* (Aldershot: Aubery, 1995) at 67. Recent examples of workforce reduction include IBM (125,000 jobs since 1986), British Telecom (25,000 jobs), Barclay's Bank (18,000 jobs), Apple Computer (1800 jobs).

Privatization in the European context: no single ontology can be applied

As already argued, privatization is a complex process that depends upon political, economic, cultural and historical circumstances. In this part I examine the motivation, the political and economic framework and the methodology of privatization in two European regions: Western Europe, represented by the United Kingdom, and Central and Eastern Europe, represented by Poland.

(A) Motivation

In the *United Kingdom*, privatization was the primary ideological tool of Thatcher's conservative government which was used to dismantle the post-war Welfare State and introduce a neo-liberal political and economic agenda.⁴²³ The privatization which has been carried out in the UK is restricted to a limited number of public utilities and nationalized industries.⁴²⁴ Furthermore, at the beginning of the UK privatization, the public sector accounted for only 10.5 percent of GDP, 8 percent of the labour force, 17 percent of the industrial capital stock and 15 percent of gross investment.⁴²⁵

Since the Labour Party has a commitment to public ownership incorporated in its constitution, the Conservative government was driven by the motivation to increase the

⁴²³ Braddon & Foster, *supra* note 377 at 1.

⁴²⁴ G. Yarrow, *Privatization in the UK*, in V.V. Ramanadham, ed., *Constraints and Impacts of Privatization* (London: Routledge, 1993) at 64.

⁴²⁵ *Ibid.*

number of shareholders, thereby reducing the number of union members and eroding the Labour Party's electoral base.

Experts on the UK privatization argue that if the Conservatives had lost the 1983 election, the campaign for drastic privatization would have been of some importance but not nearly historic as it seems today.⁴²⁶ Since 1983, the ideological motivation of the UK privatization has been accompanied by an economic rationale. Between 1984 and 1991, the UK accounted for nearly a third of the total assets privatized in the world.⁴²⁷ The socialist policy of nationalization championed by the Labour party was replaced by neo-liberal rhetorics of privatization as a source of additional state revenue and new shareholders as an electoral support for the Conservative government.

In contrast to the UK, before 1989, *Poland* was a completely socialized planned economy. It was characterized by traditional elements of centralized economic systems such as the distribution of real goods on the basis of planned rationed needs; the production of goods according to a plan of production; the disappearance of dividend category since business profits of enterprises were not directly turned into the income of economically acting individuals.⁴²⁸ The economic legacy of communism left post-communist states bankrupt, lacking resources to sustain even the social minimum.⁴²⁹

⁴²⁶ D. Heald, *The United Kingdom: Privatization and its Political Context*, in Vickers & Wright, eds., *supra* note 379 at 31-46.

⁴²⁷ Wright, *supra* note 371 at 10.

⁴²⁸ For description of socialized planned economy see Roth & Wittich, eds., *supra* note 92.

⁴²⁹ J. Batt, *Political dimensions of privatization in Eastern Europe*, in Estrin, *supra* note 398 at 83-90.

Compared to the UK data on state owned enterprises, in Central and Eastern Europe the public corporate sector accounted for 80-90 percent of business.⁴³⁰ Consequently, the leading objective of privatization in the former communist countries of Central and Eastern Europe, and therefore in Poland, was an economic one. In theory, it is conceptualized through several forms: the necessity of structural change, the promotion of efficiency, the fostering of innovation, an introduction of financial discipline and the improvement of workers' motivation.⁴³¹

Certainly, the privatization process in Poland was coupled with a political rationale such as the encouragement of a pluralist political system and the reduction of bureaucratic influence. However, economic frustration and the desire to live in a society where supermarkets would actually have food on the shelves, and workers would earn wages that would enable them to shop were the driving forces behind the privatization process. As captured in Judy Butt's work

*many economies in transition have embraced privatization as a highly visible way of travelling as quickly as possible away from where they do not wish to be; almost anywhere would be better than where they were, and yet where they are going is not certain. Most of the imagined destinations have been modelled on the USA or, to a lesser extent, one or more of the Western European states.*⁴³²

⁴³⁰ G. McMahon, ed., *Lessons in economic policy for Eastern Europe from Latin America* (Ottawa: Ottawa International Development Research Centre, 1996) at 90-91.

⁴³¹ Bradley, *supra* note 389 at 265.

⁴³² *Ibid.*, at 277-78.

The history of privatization in the UK suggests that the initial motivation for the privatization in the Western Europe was essentially political. Privatization was employed by the Conservative governments in order to reduce the number of union members and erode the social democratic electoral base. During last fifteen years, however, the political motivation to privatize in the UK and Western Europe has been accompanied by an economic rationale. In contrast to privatization in the UK, the communist legacy left Central and Eastern European countries bankrupt with almost entirely nationalized corporate sectors. Although privatization in Poland resulted from the ideological transition from communism to a laissez-faire economy, it can be argued that the motivation for privatization encompassed primarily economic goals, the promotion of efficiency and the desire of people to live better. In Poland, privatization, indeed, brought food to supermarket shelves and clothes to fashion stores. What remains the same, however, is the fact that majority of people still cannot afford them.

(B) Political and Economic framework

An analysis of the political and economic framework prior to and during privatization in Poland and UK shows significant discrepancies. In the *United Kingdom*, the nationalized industries were functioning as “semi-independent public corporations, rather than either as departments of state or as totally autonomous units.”⁴³³ In other words, a minister of the government, and through him or her

⁴³³ M. Sharp, *The State, the Enterprise and the Individual. An Introduction to Applied Microeconomics* (New York: Halsted Press, 1973) at 169.

Parliament, had certain monitoring and controlling powers, but the running of the enterprise rested with its Board whose employees were not civil servants. Employees could have been hired and fired on terms laid down by the organization itself.⁴³⁴ Furthermore, the finances of public corporations were separate from those of the public Exchequer. The shareholders were the general public and the enterprise was accountable to its shareholders, indirectly of course, through Parliament.

*For each public corporation a government minister, amongst his other duties, is vested with responsibilities vis-à-vis the industries and powers of oversight and control for which he is accountable to Parliament. Three of these deserve mention here; the responsibilities for the appointment of Board members, for the approval of the general investment programme and for the borrowing power of the industry.*⁴³⁵

Privatization in the UK has been an active government policy for close to twenty years. Public ownership has been transforming, supported by highly developed financial institutions, a secure legal environment and stable political democracy.⁴³⁶ Also, many privatizations have been accompanied by a carefully planned prior period during which public corporations improved their balance sheets and, therefore, provided an opportunity for the state to collect higher revenues. Discussed in a political and economic framework, this explains why the UK government was capable of

⁴³⁴ *Ibid.*, at 170.

⁴³⁵ *Ibid.*

⁴³⁶ V.V., Ramanadham, ed., *Constraints and Impacts of Privatization* (London: Routledge, 1993) at 1-23.

carrying out large privatization programmes such as British Telecom, Railtrack and British Energy.

The political and economic framework in *Poland* and Central and Eastern Europe in general, was not nearly as developed and as adequate as the one in Western Europe. The original nationalization process in Central and Eastern Europe created ambiguous legal title in the hands of the state. Certain important productive assets, such as land, were usually not valued at all; many state-owned corporations provided highly subsidized services to their workers (e.g., housing, child care, access to holiday homes) and it was not clear how to legally characterize those subsidized properties and services. There was competition and conflict between different levels of the state concerning the ownership of different state-owned assets.⁴³⁷

The management of State-owned enterprises was under the control of and heavily influenced by the communist political establishment. Corporate finances were not separate from the State treasury. Before the fall of the communism, Poland was a transparent manifestation of a politically driven planned economy.

Under pressure from the IMF, the World Bank, the European Union, and the EBRD, the Polish government aimed to move a high percentage of state assets into the private sector within three to five years. It was clear even then that such ambition was more a utopian vision of the reform process than reality. Financial markets did not exist, and after transformation of the political system, Poland was not a politically safe

⁴³⁷ Estrin, *supra* note 398 at 34.

and stable place for investment. In addition, it was necessary to reform the judicial system, in particular to create laws specifically dealing with privatization such as: "overall laws on privatization; laws on sectoral or specific-enterprise privatization; laws on specific techniques of privatization; laws on restitution and other issues connected with the claims of past owners; and laws governing the utilisation of divestiture proceeds."⁴³⁸

It is important to note that privatization in the Polish context does not simply imply a readjustment to the conditions of the liberal economy and the revitalization of a dysfunctional industrial sector, but rather the decline and retirement of a significant portion of industry and a higher unemployment rate.

*The deficiencies of Poland's economic structure are evident across the economy: an overgrown and inefficient heavy industrial sector completely protected from international competition; an underdeveloped light industrial sector; a neglected and undersized service and distribution sector; a particularly inefficient and underdeveloped financial sector; and a technologically backward agricultural sector, in which millions of poor farmers households work tiny plots of land.*⁴³⁹

Not only was there no habit or culture of investing in ordinary shares and financial markets in general, but majority of people did not have anything to invest. The private business sector was much too small to be able to raise the resources required for

⁴³⁸ Ramanadham, *supra* note 436 at 6.

⁴³⁹ J. Sachs, *The Economic Transformation of Eastern Europe: The Case of Poland*, in K.Z. Poznanski, ed., *Stabilization and Privatization in Poland. An Economic Evaluation of the Shock Therapy Program* (Boston: Kluwer Academic Publishers, 1993) at 197-98.

purchasing substantial assets and workers were struggling to survive on a monthly basis rather than thinking about investing in the market. The described circumstances had a tremendous influence on the methodology applied in Poland and other post-communist countries in transition.

The rise of nationalism which filled the political and moral vacuum left by communism, coupled with the inevitable social crisis that occurs in every period of political and economic transition, eroded unanimous support for the global economy and foreign participation in Polish companies. To illustrate this argument it seems to me sufficient to note that public support for privatization had been at its strongest before the process of systemic transformation started. For instance, between January 1991 and December 1992, the proportion of people who thought that privatization was good for the Poland diminished from 47 percent to 32 percent, respectively.⁴⁴⁰

In sum, besides differences in motivation, the UK and Poland differ in the political and economic frameworks necessary to support privatization. The UK has developed financial markets, a relatively small public sector and public corporations that are managed according to the rules of the market. Furthermore, privatization in the UK has been an active government policy for close to twenty years. Poland on the other hand faced a different political and economic environment. Polish financial institutions did not have the capacity to provide financial support for privatization. Due to communist

⁴⁴⁰ Gomulka & Jasinski, *supra* note 416 at 240.

nationalization Poland was characterized by ambiguous legal titles and legal insecurity. A significant percentage of Polish industry could not be adjusted to the conditions of market economy because of its dysfunctionality. Therefore, the unemployment rate and social problems were higher than those in Western Europe. Finally, the transformation from communism to liberal democracy implied radical changes in the judicial system. Laws governing privatization were not stable because of domestic and international lobbyists, pressures from interest groups and corruption. Consequently, Poland was legally and politically more unstable than Western European democracies.

(C) Methodology

In an environment like the *UK* where financial institutions are well developed, legal and political systems are characterized by long term stability, and 22 percent of the adult population participates in financial market activities,⁴⁴¹ privatization usually takes the form of public offerings, auctions or tenders, as previously described.⁴⁴² In addition, as has been suggested, in recent years the “contracting-out” method (the establishment of agencies which perform functions on behalf of the public sector) played a significant role during privatization.⁴⁴³ Furthermore, Pirie suggests that management/work-force buy-outs may play a more significant role in future

⁴⁴¹ P.M. Jackson, *The Privatization of the British Public Sector: An Assessment of a Policy Innovation*, in M. Baldassari, A. Macchiati & D. Piacentino, eds., *The Privation of Public Utilities. The Case of Italy* (New York: St. Martin's Press, 1997) at 80.

⁴⁴² Estrin, *supra* note 398 at 3.

⁴⁴³ Jackson, *supra* note 441 at 77.

privatizations.⁴⁴⁴ Frydman and Rapaczynski explain why privatization methods such as public offerings, auctions or tenders are dominant in the context of the UK and Western Europe:

Already prior to their privatization, state enterprises in, say Great Britain had to operate in competition with other private companies...the sale itself was also rather easy: in a full market economy, in which most of the industry is in private hands, in which there exists a developed stock market, and in which all enterprises use modern accounting methods, the sale of a state enterprise does not differ very much from the process by which a private closely held corporation "goes public" by issuing shares to investors at large. It is enough for the state to hire the services of an investment firm... which underwrites the issue and sells the shares to the public.⁴⁴⁵

Privatizations in Western Europe are gradual. Most programmes involve large scale privatizations due to the fact that small scale enterprises are already private but they do not all occur at once. Participation in privatization is mostly organized through well developed financial funds and other financial institutions.

The deficiencies of the *Polish* economic, legal, and political structure, on the other hand, do not allow automatic application of the methods employed in the UK. In order for privatization to be successful, it is necessary to gather popular support through widespread asset ownership, or what has become known as "popular capitalism."⁴⁴⁶ Individual participation in the transformation of public ownership can not be secured

⁴⁴⁴ Pirie, *supra* note 381 at 11.

⁴⁴⁵ Frydman & Rapaczynski, *supra* note 397 at 21.

⁴⁴⁶ The term "popular capitalism" was initially used in Latin America's privatizations. For further discussion see McMahon, *supra* note 372 at 65.

exclusively through a Western European methodological framework due to a lack of individual savings, a high unemployment rate and financial institutions not capable of financing individual citizens. The methods used in highly developed Western European countries and the UK in particular, served to achieve relatively different objectives. There, the task was not a restructuring of the national economy and the involvement of a large percentage of the working population, but merely the sale of a few state-owned enterprises that operate in a free market environment, dominated by private property. Therefore, Poland introduced several previously unexplored methods such as: free distribution to the general public,⁴⁴⁷ and the "voucher scheme". The goal was to create the widest possible range of domestic owners and to allow for the possibility of participating in the privatization process without cash and without risk to the personal assets of the public.

The necessity of a fresh capital injection into enterprises, however, forced government to combine "western" methods, e.g., public offerings, auctions and tenders, and contracting-out, with free or relatively free distribution of shares to the domestic workforce and buyouts by worker-management groups. Under the Polish Privatization Act enacted in 1996, employees are entitled to 15 percent of the shares in state-owned enterprises, pension funds receive 10 percent of the shares, 5 percent is left

⁴⁴⁷ Frydman & Rapaczynski, *supra* note 397 at 26.

for the original owners whose property was nationalized during communism, and 70 percent goes on a public sale.⁴⁴⁸

Unlike the gradual privatization in the UK, Poland undertook the whole of the industrial sector at once. Perotti, however, rightly pointed out that rapid sales would transfer control over most assets to foreigners or to a minority of questionable domestic investors, depriving most citizens of assets whose accumulation they had contributed to.⁴⁴⁹

It seems to me that gradual privatization is more suitable for post-communist countries. Using Perotti's argument again, gradual privatization "may enhance government credibility and therefore sale revenues, offer an opportunity to introduce proper regulation and demerge overly integrated companies, and grant the time to reform the banking sector."⁴⁵⁰

In sum, because of a stable legal and political environment and well developed financial institutions, the sale of a state enterprise in the UK does not differ much from the process by which a private corporation issues shares to investors at large. Most corporations from the public sector are sold to investment funds, banks and other corporations. Privatizations in Western Europe are gradual and involve mostly large corporations due to the fact that small enterprises are already private. Poland and

⁴⁴⁸ A. Furtek, I. Palinka, K. Zelinski, *Privatization Act 1996: Investment opportunities* (Warsaw: Furtek, Palinka, Zelinski, Ltd., 1997).

⁴⁴⁹ E. Perotti, *Corporate governance in mass privatization programmes*, in Estrin, *supra* note 398 at 54-67.

⁴⁵⁰ *Ibid.*, at 55.

Central and Eastern Europe in general is a different political, legal, social and economic environment. Until 1990 the majority of the industrial sector was nationalized. From 1945 to 1990 workers built local industries and when privatization was announced they expected to be awarded for their participation in national economies. Poland, therefore, is not in the process of selling only a few corporations from the public sector, but rather in the process of restructuring the whole national economy and the involvement of labour in the ownership structure. Consequently, post-communist governments are trying to combine the "Western" methods with new techniques such as the free or subsidized distribution of shares, known as voucher schemes, to workers and people in general. The aim of voucher privatization is to gather popular support through widespread asset ownership. However, governments tend to use methods that give an opportunity for workers to participate in privatizations only when the political elite finds it necessary to create an artificial atmosphere of political success in order to justify and explain layoffs of workers and other forms of social injustice.⁴⁵¹ Also, the costs of economic and political transition in the post-communist countries often force governments to transfer control over industries and social funds to foreigners or corrupt domestic investors, depriving most citizens of shares to the accumulation of which they had contributed to.

⁴⁵¹ See Letwin, *supra* note 376 at 72.

Privatization in the European Context: Final Thoughts

To sum up, I have attempted to show that while the pace of privatization and deregulation appears to be accelerating, there is a visible diversity among privatization programmes; not only in motivation and political and economic environment but also in the procedures adopted and the use of the proceeds. As Bradley suggested:

*Privatization needs to be widely construed to have useful meaning in an economies in transition context, and has to take account of unique circumstances. Many of the theoretical and practical preconditions for the implementation of privatization in Britain or France were found... to be lacking in economies in transitions. This does not invalidate the attempt to privatize in economies in transition but it does require that any attempted measures should be well suited to local conditions and it calls for a touch of humility on the part of those outsiders offering prescriptions.*⁴⁵²

As privatization spreads, and as each country applies the lessons learned from others in its own way, new methods and techniques are bound to be developed and to come into prominence. Different motives, aims and political and economic backgrounds require locally embedded policies. Privatization should not be seen as an indispensable ideological concept. Rather, it is a policy tool that can be employed when comparative advantage, measured in terms of commercial and social returns, suggests desired trade-off between the two.

⁴⁵² Bradley, *supra* note 389 at 282.

Privatization and Democracy

Today, democracy has become an exclusive claimant to setting standards for legitimate political authority. Democracy was a type of political regime first durably established in the Greek city-state of Athens by the aristocrat Kleisthenes in 508-507 BC.⁴⁵³ The compound word "democracy" is made of the two Greek terms: *demos* = people, and *kratei* = to rule. It is implied, therefore, that a democratic society is one where the people rule. For at least a century, some argue, it was true that the citizens of Athens indeed ruled themselves.⁴⁵⁴

For ancient societies, democracy was the collective solidarity in public agency of the citizenry as a body.⁴⁵⁵ Modernity and the liberal state re-interpreted the meaning of democracy and introduced the concept of freedom which rests principally on securing institutional guarantees of individual rights.⁴⁵⁶ The Athenian *demos*, therefore, as an effective political agent, has been replaced by the modern and secular representative democracy. The modern state, as structured between the mid-sixteenth and mid-seventeenth centuries by Jean Bodin and Thomas Hobbes, denies that people have the capacity or the right to act together for themselves, either independently of or against their sovereign.⁴⁵⁷ As discussed in the first chapter, a necessary alienation of coercive

⁴⁵³ J. Dunn, ed., *Democracy. The Unfinished Journey. 508 BC to AD 1993* (Oxford: Oxford University Press, 1992) at 240.

⁴⁵⁴ *Ibid.*, at 241.

⁴⁵⁵ B. Fontana, ed., *B. Constant. Political Writings* (Cambridge, Cambridge University Press, 1988) at 313-328.

⁴⁵⁶ Dunn, *supra* note 453 at 243.

⁴⁵⁷ See I. Hont & M. Ignatieff, eds., *Wealth and Virtue* (Cambridge: Cambridge University Press, 1983).

power and entitlement to judge from each of its individual subjects was the core of the modern state idea.

In the era of privatization and deregulation, the question that surfaces is how the continuous allocation of political and economic authority from the public sphere to private corporations and individuals affects morality and values of democracy and freedom?

Those who favour privatization argue that a shift from public ownership to private ownership is an improvement because democracy is concerned with the interests of people as individuals, rather than with collective interests.⁴⁵⁸ To be more specific, advocates of privatization follow the classical liberal idea of restraining democratic politics to those areas which are "the legitimate concern for the exercise of political power" (e.g., parts of legislation, means of legitimate coercion), and the empowerment of individuals as consumers and shareholders in pursuing their interests.⁴⁵⁹

Furthermore, they argue that

*privatization is a policy for all seasons and for many reasons. It can bring many benefits to the government undertaking it. It can bring a bigger and more sophisticated stock market, which in its turn can expedite the financing of private industry. It can bring better company results and more enterprise in areas of the economy that have been ossified by public monopoly ownership. It can bring a better spirit between managers and employees and can produce a unifying political theme under the banner of wider ownership. It can, above all, produce money for the government to spend on other desired social programmes or begin to cut the horrendous level of borrowing that so many governments burdened themselves with in the 60's 70's and 80's.*⁴⁶⁰

⁴⁵⁸ D. Foster, *Competitive Tendering in Local Government: Trade Unions and Organizational Change*, in Braddon & Foster, eds., *supra* note 377 at 25.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ Letwin, *supra* note 376 at xi.

Critics of privatization on the other hand argue that privatization of the public sphere will distort issues of free speech and democracy in general. Deregulation and privatization are seen as processes that inevitably narrow the scope of democratic authority.⁴⁶¹

*Legislative regulation and state ownership are tools for promoting a measure of democratic control over social and economic life and some insurance against property rights being used in ways that cause harm to people and the environment. Lifting legislative restrictions on the activities of private actors is tantamount to immunizing their actions from the exercise of popular sovereignty; similarly, privatization transfers control of an enterprise from the democratic state to private actors who are accountable only to shareholders. The evisceration of democratic authority inherent in deregulation and privatization programs is seldom acknowledged or considered by those advocating radical withdrawal of legislatures and governments from economic life.*⁴⁶²

It is argued that privatization has achieved a world where isolated individuals confront other isolated individuals with opposing and hostile interests and the state is minimized as a mediating force. Strange explains that the role and the importance of the state has sometimes been underplayed.⁴⁶³ She recognizes the importance of the “global production structure”, but reveals the necessity of preserving the public sphere since economic growth is “the combined result of state policies and of market trends.”⁴⁶⁴

⁴⁶¹ J. Bakan, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1996).

⁴⁶² *Ibid.*

⁴⁶³ S. Strange, *States and Markets* (London: Pinter Publishers, 1988) at 77.

⁴⁶⁴ *Ibid.*, at 78.

Becker argued that "there is relatively little to choose between an ideal free enterprise system and an ideal political democracy."⁴⁶⁵ In Becker's view, the "free market society" is far from ideal because private monopolies replace public monopolies, accompanied by other imperfections. On the other hand, however, Becker weakly argued, that a vision of the state as "society's brain"⁴⁶⁶ fails to recognize that a centralized political system is even further from the ideal.⁴⁶⁷

It seems to me that democracy is needed precisely because we cannot agree.⁴⁶⁸ The strategic problem of the transition period at the end of the century is to improve or to keep democracy "without being either killed by those who have arms or starved by those who control productive resources."⁴⁶⁹ However, it seems that democracy remains the most complex problem for liberalism. Apparent conflicts between protecting individualism and the laissez-faire economy on the one hand, and the protection of the public sphere, an active public role in the economy and more equality on the other have provoked debates among academics, government officials, economists and ordinary people. What has to be clarified is that every ideology, including liberalism, uses the label of democracy to legitimize every kind of political power arrangement. Liberalism rejected the ancient Greek model of democracy but it is famous for its discovery of *representative democracy* which has become the standard for our perception of justice and the "right". Contemporary democracies are based on the power to elect politicians

⁴⁶⁵ Becker, *supra* note 56 at 36. Becker defines "an ideal political democracy" as an institutional arrangement for arriving at political decisions in which people compete for political office through free competition for the votes of a broadly based electorate. See *Ibid.*, at 34.

⁴⁶⁶ See E. Durkheim, *Professional Ethics and Civic Morals* (London: Routledge & Paul, 1957).

⁴⁶⁷ Becker, *supra* note 56.

⁴⁶⁸ Przeworski, *supra* note 4 at 94.

⁴⁶⁹ *Ibid.*, at 51.

who promise to represent the interests of those citizens who voted for them. Elected politicians then work in some central national forum such as a parliament or congress. Thus, ideally, the parliament becomes the people.

Privatization challenges representative democracy. Under neo-liberal pressures, the necessary gap between corporations and government has become smaller than ever. Instead of being a central national forum which promotes equality, socially contextualized economic activity and freedom, government has become a reflection of private corporations and powerful interest groups. Reform liberals want to change that. Reich for instance, criticizes neo-liberal efforts to limit the scope of democracy in order to protect economic theories and suggests that such programs may destroy democracy.⁴⁷⁰ Reich insists that politics is a legitimate method for determining policy, not secondary to spontaneous markets. In other words, he explains the idea of liberal democracy. For him, democracy is a forum where people interact and debate. It is not only a means for making decisions under the influence of the market.⁴⁷¹ This is a “richer notion of democracy”, it is the “strongest bulwark against demagoguery.”⁴⁷²

Privatization of the public sector undermines democracy. More precisely, it undermines the liberal foundation of democracy: representative government. And it is representative government, independent of corporate pressures and interests groups, which, presumably, should give people more control, make them more trusting and give them deeper insight into their problems and common interests. Reform liberalism

⁴⁷⁰ Reich, *supra* note 164 at 262.

⁴⁷¹ *Ibid.*, at 219.

⁴⁷² *Ibid.*, at 267.

wants to compromise between corporate greed and the public interest. The only way to achieve compromise between the private and the public is through government and the public sphere because "government is the only organized mechanism that makes possible that level of shared disinterest known as the public good."⁴⁷³ The importance of the public sphere in opposing corporate hegemony is emphasized by Habermas. Although Habermas is not considered as an advocate of reform liberalism, it seems to me that through his work the line between reform liberalism and social democracy has become almost invisible. He argued for changes in the current structures of power and described the complexities of contemporary privatization and decentralization tendencies as ambivalent and dangerous.

*The unravelling of the controls of central leaderships and central bureaucracies in the party system is a very ambivalent process. It can develop towards a neo-fascist corporativism, or it can re-inforce anarchic tendencies to a point where they provoke reactions which no one could seek or want. It is necessary to insist that this is not a process without dangers, that can be supported blindly. But there can be no doubt that there is a real problem here, to which the parties of the Left must address themselves rationally. How they should do so is not a simple thing to say. I have no ready-made answer.*⁴⁷⁴

Consequently, democracy is

*consolidated when most conflicts are processed through democratic institutions, when nobody can control the outcomes ex post and the results are not predetermined ex ante, they matter within some predictable limits, and they evoke the compliance of the relevant political forces.*⁴⁷⁵

⁴⁷³ Saul, *supra* note 231 at 73

⁴⁷⁴ Dews, *supra* note 373 at 62.

⁴⁷⁵ *Ibid.*

As Habermas suggested, it is hard to have a “ready-made” answer. Privatization, if socially and methodologically contextualized, can improve productivity and economic growth. As I have argued earlier, “socially and methodologically contextualized” privatization is one which rejects a single ontology approach, gives an opportunity for labour to participate in ownership transformations, and is gradual in speed. In spite of the fact that privatization can be useful economic tool, it is an essential to protect the “public sphere” from “corporatization” because it is the public sphere where political participation is enacted through the medium of talk.⁴⁷⁶ We need a space in which to deliberate about our common affairs, because people are not a commodity and life is not only about buying and selling. Therefore, I would suggest that we must preserve the distinction among the state, economic markets and democratic associations.⁴⁷⁷ This distinction does not imply the separation of politics, economy and democracy, but rather suggests that it is not possible to start from economy and search for democracy, human rights and political freedom. It seems to me that we have to start from democracy and search for a re-interpretation of the dominant assumption that human beings can only be understood as a *homo economicus*.

*I am convinced that we want democratization not so much in order to improve the efficiency of the economy as to change the structures of power: and in the second place to set in motion ways of defining collective goals that merely administrative power oriented decisions would lead astray or cripple. It can be shown that there are collective needs which cannot be satisfied so long as the decision-making process remains administrative or power-oriented. This is the real reason for demanding their democratization.*⁴⁷⁸

⁴⁷⁶ *Ibid.*, at 226.

⁴⁷⁷ Edgell, *supra* note 422 at 259.

⁴⁷⁸ Dews, *supra* note 373 at 67.

The questions that emerge, however, are how to democratize economic power and how to reach a compromise between the "private" and the "public"? Often, it is either a glorification of private ownership conceptualized in the statement that democracy and economic growth could not possibly be achieved without the privatization of the public sector;⁴⁷⁹ or it is a nostalgic desire for a socialist utopia where economic well-being can only be promoted through forms of collectivism.⁴⁸⁰

In order to stay consistent with my previously stated argument that history never progresses on the principle of all or nothing, I would suggest that the line between public and private ownership is elusive, rather than firmly established. This argument is based on Reich's thesis that no clear distinction exists between the private and the public sectors within any industrialized country.⁴⁸¹ Drawing upon Reich I further suggest the necessity of a "partnership" between the state authorities and the "corporate hunger" for unconditional economic growth.

The public/private dichotomy is based on the assumption that the "private" exclusively belongs to a person, a group of individuals or a privately owned corporation. All private goods and services are supposed to be of a kind that can be allocated through market mechanisms regardless of government's role in the process.⁴⁸² Private ownership, as such, endows the holder with the right to transfer title, through

⁴⁷⁹ J.M. van Brabant, *Privatizing Eastern Europe. The Role of Markets and Ownership in the Transition* (Dordrecht and Boston: Kluwer Academic Publishers, 1992) at 10-12.

⁴⁸⁰ W. Lazonick, *Business organization and the myth of the market economy* (Cambridge: Cambridge University Press, 1991) at 345.

⁴⁸¹ Reich, *supra* note 164 at 288.

⁴⁸² M. Sharp, *supra* note 433 at 19.

sale or other means, as well as the right to exclusively consume the object or whatever revenue it may generate.

The theory of public goods⁴⁸³ and services, on the other hand, claims that goods and services can be exclusively financed through the government. This theory, advocating public ownership and governance, further suggests that since public goods are indivisible and collectively consumed,⁴⁸⁴ it is not possible to eliminate the government from the financing and providing such goods. Often, public goods and services are understood in terms of traditional descriptions of the welfare state, which include social security, health insurance, retirement plans, education and housing.⁴⁸⁵

I argue that there is no such thing as purely private ownership or purely public ownership. Rights to the enjoyment of the object, whether it is public or private, are shared to varying degrees by multiple actors. The fact that the right of ownership is not absolute but rather limited by other claims of the state and society can be illustrated by the following examples: despite the fact that a farmer in the United States owns his or her farm, he or she is not free to sell its products to Cuba. Furthermore, the profit margin depends on the legislative power of the state to impose personal and corporate tax. In addition, state power over the means of legitimate coercion is the only guarantee

⁴⁸³ R. Millward & D.M. Parker, *Public and private enterprise: comparative behaviour and relative efficiency*, in R. Millward, ed., *Public sector economics* (London: Longman, 1983) at 201.

⁴⁸⁴ N. Topham, *Local government economics*, in Millward, *supra* note 483 at 137.

⁴⁸⁵ For further discussion see R.M. Titmuss, *Essays on "The Welfare State"*, 2nd ed. (London: Unwin University Books, 1963).

that private owners will be able to keep properties and businesses safe from violence and enjoy the fruits of the private ownership.

The state's usage rights in state-owned enterprises and social services, on the other hand, is restricted by the rights of workers, the degree of which varies from the state to state. It is also limited by government's need of private domestic and international capital, in order to restructure the financial burden of the state debt. Furthermore, it is limited by the right of people to a reliable and fairly priced product. Finally, high domestic needs for certain types of products may limit the state's ability to export because particular items are strongly demanded domestically.

It seems to me that support for my argument about the elusive line between the private and the public, can be provided in Foster's and Braddon's view that it is no longer sufficient to restrict public services to the traditional role of the welfare state.⁴⁸⁶ The new concept can accommodate less traditional areas such as the environment, water, gas and telecommunications. Foster and Braddon emphasize that the fact that water, electricity, gas and telecommunications now predominantly reside outside the public sector, does not automatically mean they are no longer essential public services.

Having suggested how entangled the concepts of the "private" and the "public" might be, I now suggest a second definition of the privatization process. Privatization can be seen as the re-arrangement of title claims to the usage of property rights, production facilities, and the right to offer services, whereby the state gives up some of those rights to other parties but never strips itself of all of them. Consequently, it seems

⁴⁸⁶ Braddon & Foster, *supra* note 377 at 300.

that privatization should not imply diminishment of the state due to economic liberalization and the free market, since it has direct or indirect rights in practically every economic activity under its jurisdiction whether undertaken by individuals or public authorities.

Arguments that call for co-operation between the state and corporations are also employed by scholars such as Musolf, Trebilcock and Daniels. Musolf anticipates the end of private sector domination and argues that mixed public-private corporations will play an increasingly important role in the future.⁴⁸⁷ Trebilcock and Daniels argue that public-private partnerships should prevail over traditional models of financing the welfare state. Both authors suggest that the private rate of return on the project should not be the only relevant criteria for participation in political and economic life.⁴⁸⁸ In their view, the principal benefit of the public-private partnership is integration of finance, design, construction, operating functions and public interest.⁴⁸⁹ In Trebilcock's and Daniel's view, the nature of public-private partnerships involves public ownership with private operation through lease contracts, concessions, or management contracts, while others involve non-profit operation through local community organizations.⁴⁹⁰ The first reform liberals also suggested the linkage between private and public ownership. Among many, Galbraith for instance, argued for a partnership between the

⁴⁸⁷ L.D. Musolf, *The Government-Corporation Tool: Permutations and Possibilities*, in L.M. Salamon, ed., *Beyond Privatization: The Tools of Government Action* (Washington, D.C.: The Urban Institute Press, 1989) at 231.

⁴⁸⁸ R. Daniels & M. Trebilcock, *Law and Economics working paper series: Private provision of Public Infrastructure: The next privatization frontier?* (Toronto: The Canadian Law & Economics Association, 1994) at 12.

⁴⁸⁹ *Ibid.*, at 85.

⁴⁹⁰ *Ibid.*, at 7-8.

“public” and the “private”,⁴⁹¹ in particular in strategic sectors such as aeronautics, atomic energy, electronics and telecommunications.⁴⁹²

To sum up, we are more than one. We are more than a family. We are more than several families. We are many tens of millions. We exist, therefore, in societies.⁴⁹³ Neo-liberalism argues that the liberal notion of representative government means that elected representatives should represent the interests of private corporations and financial institutions.⁴⁹⁴ This is wrong. Liberal democracy is based on the ideal of securing institutional guarantees of people’s rights. Consequently, representative government must be more than a reflection of corporate interests. It is a reminder that we give up our natural rights in order to live in a society, rather than being trapped by the ideology of reason and materialism. One way to search for a compromise between the private and the public, as suggested in this chapter, is to reject the sharp dichotomy between those two. As Reich explained:

*It is the interaction between our public and private selves that shapes the nature of our politics and the character of our economies and determines our capacity to adapt to the changing conditions we confront as a nation. It is in the balance between the two that we simultaneously preserve our individuality and cultivate our social membership.*⁴⁹⁵

⁴⁹¹ Wright, *supra* note 371 at 39.

⁴⁹² *Ibid.*

⁴⁹³ Saul, *supra* note 231 at 73.

⁴⁹⁴ *Ibid.*, at 93.

⁴⁹⁵ Waligorski, *supra* note 7 at 133.

Conclusion

In the euphoria of any radical political and economic change citizens tend to be left in the vacuum of undefined terms, misleading interpretations and hopes that never materialize.

In the context of privatization, I have attempted to suggest that the structural and organizational differences of national political, legal and economic systems make the search for a universal definition of the privatization process impossible. Privatization is more than economic change simple conceived. It is a process concerned with the pursuit of political and economic goals, but should also be regarded in ethical terms, concerned with the pursuit of moral objectives.

I have suggested that there are a diversity of motives for privatization: ideological, economic, managerial, party political and finally variety of financial reasons. Consequently, it has been argued that there can be no universal method or technique when privatizing. In the context of Europe, no single privatization ontology can be applied. Furthermore, as privatization spreads, and each country applies the lessons from others in its own way, new methods and techniques are bound to be developed and to come into prominence.

I have criticised radical approaches often advocated in the business world or academia. Often, they consist either in a glorification of private ownership or in a nostalgic desire for socialist utopia where economic well-being can only be promoted through forms of collectivism. I suggested that there is an elusive line between public

and private ownership and argued for a stronger emphasis on private-public partnerships. Consequently, privatization could also be conceptualized as a re-arrangement of title claims to the usage of property rights and the rights to offering services, whereby the state gives up some of those rights to other parties but never strips itself of all of them. Privatization should not imply diminishment of the state due to economic liberalization and the free market, since the state has direct or indirect rights in practically every economic activity under its jurisdiction, whether undertaken by individuals or public authorities.

It is essential to protect the "public sphere" from "corporatization" because we need a space to deliberate about our common affairs. Drawing upon Habermas, I conclude that our demand for democratization should not be devoted only to the improvement of economic efficiency and the empowerment of private ownership, but rather to changes in the structures of power.

Chapter Four: Conclusion

When I first began assessing liberalism, globalization and privatization, I was keen to find the underlying truth. However, I later discovered that the possibilities are almost unlimited. As Ortega y Gasset suggests “we are unable to have directly complete knowledge of reality”; “there is nothing for us but arbitrarily to construct a reality, to suppose that things are happening after a certain fashion.”⁴⁹⁶

The more I reread Ortega y Gasset’s thesis the more I became convinced that we should “liberate” liberalism. To “liberate” liberalism, would mean to detach the precious ideas of freedom, equality, social justice and democracy from the chains of existing neo-liberal hegemony not just through theory but also through the methods and techniques associated with liberalism.

Being *economical* is good. Being *only* economical is catastrophic. “My liberalism” supports individualism but emphasizes a sense of community, welfare and the public sphere. A critique seems transparent: the form of public life in which the economic capabilities should develop themselves is altogether inadequate to the magnitude of the neo-liberal economic hegemony.⁴⁹⁷ Therefore, I do not hesitate to employ the government to achieve desired political, economic and social goals. As Dallmayr suggests, the neo-liberal “reason or spirit could be ‘more than nature’ only by concretely realizing ‘its own naturalness,’ that is, its own ‘trend to domination, the

⁴⁹⁶ J.O. y Gasset, *The Revolt of the Masses* (New York: W.W. Norton & Company, 1993) at 130.

⁴⁹⁷ *Ibid.*, at 146.

same trend that paradoxically alienates it from nature. In this manner, reason could become 'an instrument of reconciliation,' and indeed 'more than an instrument.'"⁴⁹⁸

The discourse of globalization is a further attempt to sell the hegemonic project of economic universality. When unpacked, the changing global order leads towards inconsistencies and dilemmas, rather than homogenous world. The term "globalization", can only be understood through systematic analysis of the local, the national and the macro-regional.

The nation-state has lost its privileged status as the highest possible conception of our political and economic life. Nevertheless, it has retained powerful prerogatives such as control over the means of legitimate coercion, parts of legislation, and monetary power. I have suggested that, instead of the fascination with a global illusion based on financial speculations and the advertising industry, our priority should be equilibrium among local, national and macro-regional systems of governance and economic growth based on production, better care of the environment and respect for different cultures, religions and customs.

The fragmentation of political sovereignty is not necessarily a destructive process. Since the changing global order does not suggests a radical and rigid overnight change, it is *sine qua non* to allow a transition period for political institutions in the search for optimal solutions.

⁴⁹⁸ F. Dallmayr, *Critical Theory and Reconciliation*, in D.S. Browning & F.S. Schussler, eds., *Habermas, Modernity and Public Theology* (New York: Crossroad, 1992) at 125.

With respect to privatization, I have suggested that the structural and organization differences of national political systems and economies make the search for a universal definition of the privatization process impossible. Privatization is more than economic change simply conceived. It is a process concerned with the pursuit of political and economic goals. However, it should also be regarded in ethical terms, as concerned with the pursuit of moral objectives.

Throughout the third chapter I have suggested that since there are a diversity of motives for privatization, there can be no universal method or technique when privatizing. I have criticized radical approaches that either glorify private ownership or affirm a nostalgic desire for a socialist utopia where economic well-being can only be promoted through forms of collectivism. I argued that privatization, if socially and methodologically contextualized, could improve productivity and economic growth. However, privatization should not imply diminishment of the state due to economic liberalization and the free market. The state has direct or indirect rights in practically every economic activity under its jurisdiction, whether undertaken by individuals or public authorities. It is essential, then, to protect the public sphere from corporatization because we need a space in which to deliberate on our common affairs. Furthermore, we need the public sphere so that people without opinion can create opinions. As Gasset suggests, "without these, the common life of humanity would be chaos, a historic void, lacking in any organic structure."⁴⁹⁹ People are not a commodity; life is not only about buying and selling. Drawing upon Habermas, I conclude that our

⁴⁹⁹ *Ibid.*, at 129.

demand for democratization should not be devoted only to the improvement of economic efficiency and the empowerment of private ownership, but rather to changes in the structures of power.

Today's world has come to be dominated by the various discourses of liberalism, globalization and privatization. This domination has occurred because civil society and our humanity (regardless of how imperfect or "evil" it may be) have been suppressed by radical political and economic choices and ideological simplifications. This thesis has been a modest attempt to emphasize some of the political and economic complexities and differences that exist in the contemporary world. In the pursuit of a better life, instead of choosing between "black" (that is, tragedy and pain) or artificial "white" (that is, utopian happiness and joy), this is a call to discover imperfect humanity in the grey portraits of our lives. "Writing as mapping: the cartography of the imagination."⁵⁰⁰

The problem is not changing people's consciousness - or what's in their heads - but the political, economic, institutional regime of the production of truth. It's not a matter of emancipating truth from every system of power (which would already be a chimera, for truth is already power), but of detaching truth from the forms of hegemony, social, economic and cultural, within which it operates at the present time⁵⁰¹

⁵⁰⁰ S. Rushdie, *Notes on Writing and the Nation* (1997) September, Harper's Magazine at 22.

⁵⁰¹ M. Foucault, *Truth and Power*, in Gordon, *supra* note 3 at 133.

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