

# Roots of Property Law: From the Moral Contract - and the Doctrine of Economic Justice - to the Social Contract.

## Is the Legal Contract Next?

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### Abstract

Property law is rooted in many institutions. The assumption of this paper is that the rules of property laws are determined by deep cultural structures. The thesis is that, in ancient times, property laws were ultimately determined by the moral contract; and that contemporary property laws are determined by the social contract. The paper then asks, Will property laws in the future be determined by the legal contract? The distinguishing features of the three contracts are these: In the moral contract the rules of property laws are determined by *stewardship* over land, labor, and money; in the social contract they are determined by *privilege*, namely power and might; and in the legal contract they are determined by *economic rights*, which stem from *economic responsibilities*.

**Keywords:** Stewardship, property rights, privilege, entitlements, economic rights, economic responsibilities, moral contract, social contract, legal contract

The economic history of the world in relation to property law can be divided into two parts, an ancient and a modern era. The ancient era can be assumed to go from Moses to Adam Smith and can be studied from the perspective of the moral contract, an integral economic framework that eventually merged with the Aristotelian/Scholastic doctrine of economic justice in its two planks of distributive justice and commutative justice; the modern era, on the other hand, can be assumed to go from Adam Smith to the present and can be studied from the perspective of the social contract. The paper points out that, in the western world at least, firm economic policies of the moral contract relating to property laws were guided by an integrated system of economic thought that, improbable as it might appear at first sight, can be identified as the economics of Moses and the economics of Jesus. Since one is the restatement and a continuation of the other, they can both be treated as one tradition of economic thought.

Focusing on three events that occurred in 1776, the paper clarifies how this tradition was dissolved and replaced by a social contract that has been guided, not by firm economic theory, but by a steady succession of ideological provisions proposed by well-known, differing schools of economic thought. Hence the social contract has exacerbated, rather than resolved, hard problems inherited from previous ages. We will focus on problems stemming from harsh economic practices involving land, capital, and labor.

Since we are experiencing the end of the modern age (see, *e.g.*, Lukacs, 2002), the paper suggests that we give serious consideration to the possibility of entering the next stage of human history with the assistance of a set of coordinated economic rights and economic responsibilities that might eventually shape our rules concerning property laws in accordance with a legal contract. This is an economic perspective that combines firm rules, as in the moral contract, with economic liberty, as in the social contract—but liberty extended to all.

## **The Moral Contract**

The evidence is scanty but strong that economic relations among our ancestral ancestors took the shape of a moral contract. There were no outside forces—no government police force—to compel respect for the dictates of the moral contract except the force of the moral law, a law whose source was internal to each human being or, as some writers suggest, whose source was in the natural law, the law of human nature. The evidence for the existence of the moral contract can be gathered from two resources: sacred scripture that exists not only in the Judeo-Christian tradition but also in the great religious traditions of Islam and the East. Additional evidence can be gathered from what is known about the life of many indigenous people, especially North American Indians before and after the arrival of the white man on the plains.

We will see that the moral contract in the West was rooted in the economics of Moses and the economics of Jesus: a delicate balance of rights and responsibilities that resulted from respecting the economic requirements of each the three factors of production—land, capital, and labor—as they were identified by classical economists. Independently, Aristotle reached compatible policy conclusions on the basis of his doctrine of economic justice, in which the relation with morality is direct and immediate.

Specifically, the Israelites were the creators of an integrated set of institutions whose immense importance in economic relations is so ingrained in Western culture that it is largely well-known and will become more clearly manifest as we proceed. These innovations form the structure of a comprehensive, seamless economic theory and policy. They are outlined below under the headings of Economics of Moses and Economics of Jesus; they are combined as the Economics of Jubilation in Gorga (2009 [2006]).

### **The Economics of Moses**

The economics of Moses is contained in two fundamental doctrines: *Observe Jubilee* (including Sabbath and Sabbatical year) and *Do Not Steal*. The first is enunciated in Ex 20:8-

11; 34:21; Lev 23:3; 25:2-16, 23-28; and Deut 5:12-15; 15:1; the second in Ex 20:15 and Deut 5:19. These two doctrines embrace a full system of economic thought. The theory composing this system has been reconstructed in Gorga (2009 [2006]) and its details do not need to be repeated here. This work is published in Columbus (2010) and it has received consistently extremely high marks from a wide spectrum of readers: for evaluations so far, see <http://www.carmin-gorga.us/id49.htm>. The policy that stems from this theory is well known and can be summarized as follows:

Land. As a gift to the farmer, the land of Israel was divided among the eleven tribes of Israel—with the twelfth tribe, that of the Levites, receiving income from tithes so they could devote all their lives to the study and administration of religious and public affairs. Even though the management and possession of the land—its stewardship and usufruct—was given to individual entrepreneurs, the ownership of the land remained with God: “The land is mine,” said Yahweh (Lev 25:23). It was this peculiar legal institution, stewardship as distinguished from private or public ownership, which gave rise to the conception of the jubilee. If for any reason a farmer fell on hard times and sold his plot of land at any time, at the end of a forty-nine year interval, the 50<sup>th</sup> year, the year of the jubilee, the land reverted back to the original possessor. No money paid; no questions asked. The land, in other words, was considered a common good: it could never be accumulated for the exclusive benefit of any individual person; it had to be constantly shared among all the Israelites. And so was money.

Money (Capital). Money was also conceived as a common good. It was considered to be a pool of common wealth, from which one could draw and which one had to replenish—in a peculiar way, not by adding to the pool, but by subtracting from one’s accumulations. Monetary debts among the Israelites were canceled at the end of the seventh year. Hence, the size of the pool remained rather constant over time, but was elastic between the first and the

seventh year period. Needless to say, lending at interest, especially usurious interest, was consistently frowned upon throughout the ancient times.

Technically, as end result of the jubilee, neither land nor money could be hoarded. (Technically, wealth hoarded is only wealth that is used neither as a consumer good nor as a capital good; see Gorga [2002 and 2010, pp. 105-118]. Hence, the land ordered back to the original possessor and money not given back to the original possessor might not have all been hoarded. Yet, most of it was—as the existence of much unused land and hoards of coins visibly indicated.)

Labor. There is no specific separate treatment of labor in the Hebrew Bible. The reason is evident. People were the stewards of land and capital; whatever profit or loss they incurred was exclusively their own. They worked for themselves. People were owners of merchandise they created; they were not merchandise themselves.

### **A Bit of Theory of Economic Justice**

Fully to appreciate the enormous theoretical importance of these policies, one has not only to imagine their practical consequences in relation to daily life. Suffice it to say that Israel must have soon become such an economically rich country as to be constantly the target of pillage, conquest, and plunder from its neighbors. The theory of economic justice also helps to appreciate the value of these policies (see, Gorga, 1991, 1994, 1999, 2007, and 2009). They satisfied fully the requirements of *participative justice*, because workers who had open access to land and money were free to participate in the process of creating wealth (this plank did not exist in the Aristotelian/Scholastic tradition, which is therefore identified as the doctrine of economic justice); they satisfied fully the requirements of *distributive justice*, because workers were owners of the fruits of their labor; they satisfied fully the requirements of *commutative justice*, because workers who received economic justice from their neighbors

could be expected to apply the same rules of fairness and justice in the exchange of their wealth with their neighbors. Do not steal was a commandment.

### **Two Silly Questions**

How intensively and for how long were the requirements of the economics of Moses practiced? Even if they were applied only once, one can say that the world fully respected the principles of economic justice once. And if they were never applied, one can still say that the Israelites had the moral integrity to imagine and to fashion the intellectual conditions of economic justice.

Second question. Are historical conditions ripe to have a full application of the economics of Moses today or any time in the foreseeable future? The answer is clearly negative. And yet, as we shall see, even in the complexities of the modern world, it is fully possible to apply, not the letter, but the spirit of this system of thought.

### **The Economics of Jesus**

Jesus said (Mt. 5:17): “Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them.” And in fact the economics of Jesus is only a more explicit and forceful restatement of the economics of Moses: Two complementary doctrines are derived from the Parable of the Talents in Mt 25:14-30. The first doctrine states: *Invest Your Talents*; the second states: *Do Not Hoard Your Talents*. The third doctrine, enunciated in Mt 22:21, is *Give to Caesar What Is Caesar's*. Again, the theory has been reconstructed in Gorga (2009 [2006]) and will not be repeated here. The functionality of the theory remained the same: if the end result of Moses' jubilee was to avoid hoarding of money, land, and natural resources, then in the economics of Jesus this purpose was elevated to the level of a doctrinal injunction: Do not hoard.

And yet, the objective historical conditions between the time of Moses and Jesus had

changed. With the Roman conquest, the Israelites lost control of their land; they lost control of their money; their land was acquired by Roman senators and their friends. At Rome as elsewhere, Roman law gave birth to that peculiar institution that is still with us today: the latifundia. With the amount of wealth being finite at any particular moment, when the few have too much, the many have too little. With the latifundia, the inordinate accumulation of land in a few hands, came poverty—as well as less economic growth than possible and more inflation than desirable (see, Gorga, 2002 and 2010, pp. 235-302, and 329-353). Some of the issues that result from accumulation of stocks of real as well as monetary wealth are linked together and their effects analyzed over the long run in Gorga (2008a and 2009).

The system of economic theory that stood behind the moral contract could no longer be seamlessly carried out into policy. Everything changed in politics and economics from independence to dependence. Christians and Israelites, who by now were forced to live among the Gentiles, had to adopt new social and economic relations.

## **The Doctrine of Economic Justice**

Indeed, specific social and economic relations had already been invented five hundred or so years earlier in Greece—a land in which slavery was accepted as a matter of fact—and are well known. Codified by Aristotle and later ratified by St. Thomas Aquinas, these new institutions controlled economic relations in just about the entire Western world up until the time of Adam Smith. They were centered on two forms of justice: political justice and economic justice. In turn economic justice was divided into distributive justice, a field that was concerned with societal rules for the just distribution of wealth once it was created, and commutative justice, a field concerned with societal rules for the transfer of wealth among buyers and sellers. (Please, notice the absence of participative justice.) While the Doctors of the Church left much room for discretion to the parties involved in the process of discovery of distributive justice, they reached a firm and revolutionary conclusion in their economic

analysis of commutative justice. The commutation of wealth, namely the exchange, occurs in accordance with principles of justice, they discovered, only if it reflects a free market price: a price determined in a market that is not dominated by either governmental or private monopolistic forces (see, *e.g.*, Schumpeter 1954, pp. 98-99).

While these rules appear simple on their surface, they embrace great complexities. With them, the Doctors of the Church unified the requirements of freedom with those of morality in the field of commutative justice. As the Psalmist (119: 31-32) well knew:

I bind myself to do your will;  
Lord...  
you give freedom to my heart.

The Doctors of the Church firmly believed that *the exercise of morality yields freedom*.

Perhaps this statement deserves to be restated. Freedom comes, not from the government, but from the exercise of one's responsibilities. Without entering into its theology, the application of this formula created the essential conditions for the enterprise system to be as free as it could possibly be at the time. And the limits of the time, of course, were considerable: the world was riddled with small and large public and private monopolies; there was no social ladder through which one could change to one's advantage the shares—let alone the rules—of distributive justice; there was no conception of the third major pillar of economic justice, namely participative justice. Yet, that discovery is so foundational as to be the basis on which anti-trust policy, with Louis D. Brandeis (*esp.* 1932 [1913]) one of its staunchest defenders, is still practiced today.

The enforcement of moral rules of economic justice was entrusted to the overall culture of the age, a culture that, as Psalm 119:27 indicates, drank deeply of this belief:

Make me grasp the way of your precepts  
(Lord)  
and I will muse on your wonders.

The most amazing wonder for people of this temper undoubtedly was the conception that human beings are created “in the image of God.” From this fundamental belief to the

discovery and the utter respect for the dignity of every human being there was but a small step. A few specifics will clarify the point. If the essential purpose of economic theory is, not to make the rich richer, but to create conditions whereby everyone can work and live in dignity, then the following characteristics were some of the essential conditions for an inner balance to the existence of the moral contract. As a vague memory of the splendor of Moses' jubilee concerning land, the poor had free access to the commons. Access to the commons preserved the dignity of the poor and set an automatic restraint to the desire for accumulation of wealth by the few.

This balancing act between the needs and desires of the people was most important because it was an indication of a deeper belief. Men and women of this temper had deep faith in this observation by Jesus (Mt 6:26, 28-29): "Look at the birds of the air, for they neither sow nor reap nor gather into barns; yet your heavenly Father feeds them.... Consider the lilies of the field...." Amartya Sen's work has proved that famines occur, not because of natural shortages, but because of hoarding, poor distribution of income, and overpricing—hence the essential importance of economic justice in action.

Men and women of this temper also had a deep appreciation of the distinction between charity and economic justice, hence for them the surplus wealth of the rich *legally* belonged to the poor (see Tierney, 1959, esp. pp. 22-44); and the entire output of monasteries—something like a nonprofit enterprise of today—was available to the poor: no questions asked, urged St. Chrysostom (*ibid*, p. 55). The moral contract, it has been noticed, yielded relative poverty. Yet, if wealth is a social construct, then levels of relative poverty become such a faulty measurement of wealth that, in turn, leads to the misguided transformation of wealth from a means to live to an end in itself.

As indicated earlier, many economic expressions of the moral contract were not exclusive to the Judeo/Christian tradition but in ancient times were rather common throughout

the world. The *locus classicus* is Aristotle's *Politics*. For the existence of ethical rules applied to the economic life in ancient Chinese life, see, *e.g.*, Schumpeter (1954, esp. p. 53). For the demands of statecraft in ancient India, Amartya Sen (1998) cites Kautilya's *Economics* (!). The Prophet Mohammed put the desirable relation between people and land most simply and clearly: "Let him who owns land cultivate it himself, and if he does not do so let him have his brother cultivate it" (Chapra, 1985, p. 85). The Arapaho Indians put this commandment this way: "Take only what you need and leave the land as you found it" (Zona, 1994, p. 88). Interestingly, this policy was still advocated by Locke (1689, Bk. II, Ch. v, paras 25-27). The last stronghold of the millennial struggle against usury is still very vibrant in the modern Muslim world today.

Over time, the ordered set of priorities that reigned in the ancient world among charity, morality, and freedom was turned upside down and its power dissolved. Through insistence on unfettered economic freedom, the unity of freedom and morality was eventually shattered, the doctrine of economic justice was lost in the fog of time, and charity became compulsory.

As noted, the inherent unity of economics and morality guided economic relations just about until 1776. Then the moral contract was formally broken and a new type of contract, the social contract, took over. Let us see how.

### **The Social Contract**

As with the moral contract, so there are many facets to the social contract. This is a political as well as cultural mega-construct that inevitably, with its comprehensive worldview, was destined to systemically invest an entire era. The role of culture (as an integrated set of values, especially values imbedded in institutions), long shunted aside by technical economists, is gradually being discovered as a decisive factor in economic growth; see, *e.g.*, Harrison (2006). If you want to penetrate the hidden reasons for the difference in

development between Haiti with its dismal levels of poverty and Barbados, a country with similar roots but most advanced levels of wealth, you have to look at differences in their cultures. Indeed, the capillary influence of the cultural conception that is at the center of our attention now can be appreciated only by realizing that, at its core, the social contract is united by the ever so gradual rebellion against, and systematic dissolution of, the strictures that existed in the previous ages of the moral contract. Rather than around virtue, all constructs of the social contract pivot around freedom.

Our attention will be focused on the economic content of this construct, but some of its other aspects cannot be passed totally under silence. From its remote beginnings, the era of the social contract was heralded with fanfares of great expectations. Individual economic freedom was supposed to eradicate poverty from the face of the earth (see esp. Nelson, 1993), all the while we were enlightening ourselves in such a way as to become free creators of our own destiny (see esp. Mirandola, 1486). What an exhilarating project! In time, it was the Enlightenment that assumed the responsibility to carry this project to fruition under the banner of Liberty, Fraternity, and Equality. All the social and political freedoms that we now enjoy are indeed the legacy of the Enlightenment. What was the economic content of this program of action?

Three portentous events occurred in 1776. First, as an unintended consequence, Jefferson, by literally erasing the Lockean formula of “Life, Liberty, and Property” from the Declaration of Independence and substituting “Life, Liberty, and the Pursuit of Happiness,” detached the world of politics from the culture of property and launched economic policy into the never-never land of entitlements in which rights are separated from responsibilities. This is a structural dysfunction of such gargantuan proportions that it is kept hidden away from examination by rational analysis. The explicit chain is this: The oxymoronic *right to* entitlements is assigned to individuals, while—worse—the responsibility to provide the

concrete means for the satisfaction of entitlements is apportioned to the community. The approach is unsustainable, we shall see, because by shifting the burden of delivery from economic justice to charity not only are the requirements of economic justice neglected, but charity is made compulsory and ultimately impotent.

Second, Adam Smith, by inveighing against the morality “of the (drunken) monks” (see esp. 1776, B. V. Ch. 1, par. 158), decoupled economics from morality and substituted it with his own *Theory of Moral Sentiments* (1759) in which morality was dictated by the conscience of the individual human being, a conscience no longer led by Tradition and the Magisterium of the Catholic Church, but by an “impartial spectator.” And who might that spectator be? Lui-même, of course! As faithful disciple of Luther and Calvin, Adam Smith, and more so his followers, of course, separated economics from morality. The freedom of individuals became absolute and paramount—no questions asked, no conditions imposed by the community. This fracture was achieved on the assumption that internal restraint and self-interest were sufficient to let humans operate morally in the economic sphere. Alan Greenspan believed in this fairy tale up to the cusp of the last financial debacle.

The third event is this. Adam Smith did something else for the history of economic thought. He conflated two words, two irreconcilable economic phenomena—hoarding and investment (capital)—into one: accumulation (see esp. 1776, B. II, Ch. 3, par. 35), and by equating saving with investment (1776, Bk. II., Ch. 3, pars. 14-18), he made *hoarding* magically disappear from the economic discourse (1776, Bk. V., Ch. 3, pars. 1, 2, 9). Gone were the Mosaic injunctions against hoarding. Gone was the power of the Parable of the Talents. The operation was so successful that mainstream economists have the hardest time in seeing hoarding any longer (see, *e.g.*, Broski, 2003); no matter how many times they encounter it in reality or read the word or even write the word in the daily newspaper or, worse, in loose economic treatises, they still cannot see hoarding. Formally, or

mathematically, in their framework of analysis, everything that is not a consumer good must be a saving, and saving in that theory is equal to investment.

Therefore, hoarding does not exist.

These three interlocked events converged to destroy the core of the moral contract. What Jefferson, Adam Smith, and many members of the Enlightenment were unable to imagine is that in economics, as in all other fields, the separation of human beings from morality and the consequent separation of rights from responsibilities does not yield freedom but havoc. Human beings become separate automatons. Entitlements eventually disenfranchise everyone. Property rights are gradually emptied of content. And, by expunging hoarding from economic theory, economists prevented themselves from seeing that the decision to hoard or not to hoard is a free—hence moral—decision. Morality is inside the economic decision. Morality does not and cannot and should not be imposed from the outside. Society cannot and should not prevent hoarding directly. That is indeed moralizing and a losing proposition; society can only prevent the legalization, normalization, and justification of those institutions that foster hoarding.

Once the moral contract was destroyed, society could not be left without rules. A new form of contract had to take its place. While one half of Aristotle's Justice Project, the half concerned with political freedom was hammered into our consciousness on the tall assumption that all we need is to throw the rascals out and to vote the good guys in, the other half that concerned itself with the old rules of distributive and commutative justice was gradually watered down into a set of gentlemen's agreements to be broken at the drop of a hat. Significantly, this half eventually even changed its name from economic justice to social justice, an Italian and Catholic invention of the 19<sup>th</sup> century. Hence, the contract itself assumed the name of social contract. Some specifics follow.

### **Economic Theory and the Social Contract**

As widely acknowledged, economic theory is in a state of crisis. While the current roots of this crisis are analyzed and conceptually resolved in Brady and Gorga (2009), its ancient roots can be brought back all the way to Adam Smith (see, Gorga, 2002, pp. 67-158). Hence, the crisis can be resolved only by undoing what Adam Smith did; the crisis can be resolved by reintroducing hoarding into economic theory. This is a feat that can be achieved by inserting the following equation into mainstream economic theory: Investment is Income minus Hoarding. This is an equation that was formulated by this writer in 1965, after a summer of intense intellectual struggle with Keynes' *General Theory* (1936), in order to make sense of that great work. To his continuing amazement, as this writer discovered in 2006, this is an equation that results from the transformation of the Parable of the Talents into a mathematical expression. This is an equation that immediately yields the Revised Keynes' Model (Gorga, 1982) and gradually blossoms into Concordian Economics (Gorga, 2002, 2009, and 2010) as well as the Economics of Jubilation (Gorga, 2009, [2006]). The essence of the ongoing crisis in economic theory is that, without the bedrock understanding of hoarding, ever since 1776 economic theory has been dominated by an inexorable succession of well-known revolutionary schools of thought, each vying to overthrow the previous one. In the presence of such a steady flow of radical changes, economic theory has no longer been able to guide economic policy. Consequently, in the absence of firm direction from economic theory, economic policy has been controlled by the political ideology of the moment—be it the ideology of the right, the center, or the left.

Enveloped by this variable intellectual atmosphere, the outward shell of the social contract has never been static, and its inward economic content has ever bounced between two extreme poles: either the market or the government is supposed to take care of the economic needs of the people. Since one extreme leads to a Dickensian world of poverty and the other extreme leads to the horrors of the Gulag, most of the time the world has been

sensible enough to search for accommodations between the two extremes. Accommodations form the rhetorical core of the social contract. The “mixed economy” is its perfect metaphor. In one of its best known formulations, the underlying structure of the social contract was based on the promise that people would be taken care of “from the cradle to the grave.” The government was to assure conditions for “full employment”; corporations were supposed to provide jobs; and the unions were supposed to provide “countervailing power” to possible abuses by the corporations.

Now that we are witnessing the dissolution of the social contract, we can clearly see that even these bland requirements have proved to be temporary and partial phantasmagoric apparitions: the government has never been able to secure the conditions for full employment; corporations shirk responsibilities and lately have outsourced jobs; labor unions go the merry way of securing benefits for their members full speed ahead.

Underneath the rhetoric of the social contract, which has been much discussed, there is a bare-knuckled economic reality that has been held constant from the collapse of the moral contract to the present day, and yet it still manages to remain hidden from view. All the clauses in this economic reality were unilaterally written by the few for the benefit of the people of power. These people made the rules and the rules were enforced through the power of the state. The rules, of course, covered land, capital, and labor.

### **Land and the Social Contract**

As noted, with the Roman conquest of Palestine, the legal institution of stewardship of land disappeared from sight—it disappeared especially from the sight of scholars who studied economics; and it was subsumed under the institution of private property. With the disappearance of the practice of the Jubilee, the ownership of the land became concentrated into a few hands: the latifundia were born, and they still affect the legal, social, and economic panorama of the world. Indeed, with its ideal of absolute liberty the doctrine of the social

contract gradually made a bad situation worse. Traditionally, as we have seen, two institutions mitigated the negative effects of the latifundia: the commons and the monasteries. (It is interesting to notice that the land tenure extended by the monasteries to the tenant farmer involved long-term contracts and fixed shares in the division of the product that were a near equivalent of private land ownership.) Both were destroyed by Henry VIII and gradually by every other potentate in the Western world that, having overspent its resources and being under severe debt stress, made the run for an easy power grab; the Eastern world does not seem to have escaped such a fate either. The lands owned by monasteries were confiscated; and the commons were enclosed: under the ideology of privatization, the last remaining commons, the oceans, are being enclosed under our very eyes these days for the benefit of the few—and without any guidance from economists who, restricted to their knowledge of private goods and public goods, do not see common goods as a third category deserving, as explored by Elinor Ostrom, of its own set of rules and regulations. For various issues involved in the current wave of enclosures of the ocean commons, please check <http://www.gloucestertimes.com/archivesearch>. And what has been the ultimate result of the confiscation of monasteries' lands and the enclosure of the commons? The weakest members of society have suffered the brunt of the crude effects of these policies. Ever since these two events have occurred and been accepted by the intellectual and political powers-that-be, the world of the many has plunged into an abysmal poverty whose depths had never been experienced before. Ever since they were herded toward overcrowded cities, the poor have been left prey to all sorts of shortages: food, water, municipal services, space, green, even air. The abysmal void has too often been filled with all sorts of vices and exploitation, often administered by the sharpies among the poor themselves.

These are well known facts. Indeed, the private enclosure of public lands—the commons—is often listed as a key factor in the rise of capitalism (Appleby, 2010). But these

are partisan views that cover unpleasant facts. Hence the facts are shunted aside. What takes the place of objective observation is the fixation on the many splendid products of industrialization and urbanization. (Who would ever deny their existence; who would ever decry their usefulness?) In the revolving door of poverty, the numbers of people going out, which at times can indeed be spectacular given the technological advances of the age, are carefully tallied and heralded to the world; the numbers of people going in are decorously passed under silence. In the meantime, the fixed point of hunger and malnutrition persisting in a country as rich as the United States—not at the bottom, but at the top of the business cycle—is often overlooked.

The “issue” of “land reform” persists, of course, at the fringe of economic analysis. It has been appropriated mainly by the political left. But its tenets are fallacious; and the left never seems to learn from history. When succeeding totally, as under communism, it has failed totally by granting the monopoly on land to the government (which, as Public Choice Theory has unearthed, unavoidably serves interests of “friends and relatives”); and when succeeding partially, after enormous effort and even bloodshed, succumbing to its predilection for redistribution of wealth—rather than fair distribution at creation—the effort has earned for the people only marginal lands of marginal value and productivity.

Land Policy does not exist in polite mainstream political and economic discourse. Thus, if we were to unearth the hard hidden economic rules of the social contract in relation to land, we might say that we have found Rule # 1: Latifundia are untouchable. The disappearance of stocks—and concentration on flows of wealth—in the framework of mainstream economic theory has caused latifundia to become invisible. Yet, once they reappear into view, it becomes evident that latifundia were not created by the social contract. They are practices inherited by the collapse of the moral contract. But the social contract has yet to look harder at the economic practices that occur under its very eyes.

## Capital and the Social Contract

Rule # 2: Ownership of capital is acquired via ownership of financial savings. But—apart from those who inherit wealth—who can save, when wages are kept at subsistence levels? Surely, the clever and the martyrs do accumulate some savings; but the cost is so high, and the insecurity so rampant, that the practice invites retribution against the largest majority of the population. This is the road that leads to such excesses as those observed in the last few years, when a few hedge fund managers obtained billions—billions—of dollars in compensation for their labors and the majority of the people, if employed at all, had to have two or three jobs to eke out a living.

If the practice of the acquisition of capital is so dismal in the social contract, a possibly worse condition endures at the level of the theoretical understanding of capital. The accumulation of financial capital has been treated in theory to such an extent like land that the two factors of production are often treated as one. The classic case for this conflation is Kelso's *Two-Factor Theory* (1967); land disappears from sight, and the two factors of production are capital and labor. Land is taken to be one form of capital. Ineffably, in mainstream economics both land and capital disappear from sight, because in mainstream economics there are only flows of money and no stocks. Hence, stocks of wealth are not measured. And capital is defined in a hundred different ways, which means that there is no scientific, universally accepted definition of capital.

In the absence of a robust treatment of capital in economic theory, the field is left to ideologues who see only the benefits of “capitalism.” In the ensuing pervasive atmosphere of intimidation and fear that ideologues instill in their interlocutors, the idea of the Jubilee about controlled cancellation of financial debts is spoken hat in hand, very softly and without much conviction. More. As is well known, the countervailing forces that for untold ages preserved the moral character of social arrangements were not only the institution of the commons but

also the prohibition of usury: the incestuous daughter of capital. The necessity of battling usury, the extortion of excessive interest as the major tool for the fast accumulation of financial wealth, has been gradually emasculated (Wood, 2002). Limits to the charge of interest were finally abolished in 1971 in the United States: Interestingly, at the same time convertibility of paper money into gold was also terminated. It is only Islam that still fights a rear-guard battle against usury—and fights it intelligently through such practices as microfinancing, thanks to Muhammad Yamus, and traditional forms of equity-financing.

Ever since the end of the Civil War in the United States, the same pattern of absolute freedom that exists for the few in their accumulation of financial capital, *combined with exclusion of the majority of the people from access to financial capital*, has been evolving concerning the accumulation of capital in its physical aspects. Not only stocks and bonds that represent the ownership of physical capital have been subjected to the tendency of being concentrated into a few hands, but even the ownership of individual physical plants and individual multi-plant firms have been allowed to be concentrated into fewer and fewer hands. Again, when the political left takes over, it concentrates the ownership of the entire financial and industrial structure of a nation into the hands of the government.

Under the cover of the social contract, we hear much of capitalism in mainstream economics, but nigh not a whisper about Capital Policy or lately even Industrial Policy.

### **Labor and the Social Contract**

The stronghold of the moral contract was that human beings are stewards of land and money; hence, they were owners of their own labor. In the era of the social contract such robust propositions of economic morality have disappeared from sight. Another hard hidden economic rule of the social contract can then be stated as follows. Rule # 3: Through the payment of wages, labor is bought and sold as any other commodity.

The ideology of communism, of course, justifies any action as a response to the needs

of “labor”—even the Gulag. Since the ideology of capitalism is dominated by the idea of freedom, the relationship between labor and capital is enveloped in a Catch-22 of colossal proportions: “Save money, invest it wisely, and you too can become a capitalist,” one has the effrontery to say to the worker. The reality is that both the communist state and the capitalist enterprise pay the worker as little as they can get away with. The dacha on the Black Sea is the economic equivalent of the McMansion on the Back Shore.

Caught in the vise of the struggle between communism and capitalism, cast away from the moorings of the factors of production, the social contract has nothing to say about land, it is unable to distinguish the physical from the financial aspects of capital, and assumes that “labor” and daily life under the wage contract are the only conceivable legal conditions for men and women.

The shortcomings of the social contract would be better understood through a detailed observation of the interactions among the factors of production over time. Barring this opportunity, we will concentrate on three key moments of that dynamic: We will observe first the ultimate outcome of the social contract, then its central strategic mistake, and then the blindness that exists at the very core of the social contract. Before that we have to touch upon the absence of monetary and fiscal policies from these pages.

### **On the Role of Monetary and Fiscal Policies**

Discussions of monetary and fiscal policies nearly are the beginning and the end of all economics today. They are not treated here for two major reasons. First, since they are construed mostly as transfers of wealth from one segment of the population to the other, they are both only indirectly related to the creation of wealth: For confirmation, it might suffice to note that the government does not create wealth. Second, with little or no exaggeration, the field can be disposed of on the basis of this observation: While fiscal policy has been delegated to the politicians, monetary policy has been delegated to the bankers. Is it not sad

but true that economists are welcomed among politicians and bankers only as long as they give assent to their preordained policies?

### **The Ultimate Outcome of the Social contract**

The ultimate outcome of the social contract is the existence of a fact that is utterly contrary to its inner ideology. The ideology of the social contract is based on the strongest possible belief in the value of freedom. And yet, any dispassionate observer—if not today, then at some distant future—will have no trouble spotting that the ultimate consequence of the social contract is this: Prevailing economic policies have generated such levels of economic insecurity that have reduced everyone, world-wide, to the condition of a beggar. The rich beg for lower taxes (and subsidies!); the middle classes beg for jobs; and the poor beg for entitlements. Why have we gotten ourselves into this sorry state? There are two answers. One concerns a fundamental strategic mistake made by the ideology of the social contract; the other is the blindness that exists at its core about the process of accumulation of wealth.

### **A Fundamental Strategic Mistake**

To redress social imbalances, the ideology of the social contract has relied on charity rather than justice. Since Jesus said that “the poor will always be with you” and “whatever you do for the least of my brothers, you do for me,” the social contract has imposed an impossible burden on the shoulders of charity. Not only has the call to charity become the line of first resort against poverty, rather than last resort; charity has even become a compulsory activity. In the United States, you will go to jail if you do not oblige the requests of the Internal Revenue Service (IRS) and most of the requests of the IRS are justified in the name of compulsory charity. Thus the task of charity has become so huge as to become impossible of fulfillment; and this impotence has in turn destroyed the very meaning and function of charity. We have become a nation—indeed, world-wide nations—of beggars. This

fundamental strategic mistake has been compounded by the blindness that exists at the very core of the social contract about the mechanisms of accumulation of wealth. Can any general ever win a war—recall the war on poverty—whose target has not been defined? Or, indeed, whose target does not exist?

### **The Blindness at the Core of the Social Contract**

There is blindness in the social contract about the mechanisms of accumulation of wealth. While the mechanism involves a set of purely economic relationships, the mutuality of such relationships appears to be the major concern, not of economics, but of a companion framework of analysis. It concerns justice—justice defined as the agreement between two parties about what is fair to give and to receive; namely, an agreement based on the search for an equivalence of values that can be ascertained and ratified by a third party acting in the role of judge. This blindness is brought forward following the ancient Mosaic commandment: *do not steal*.

Let us leave petty larceny well alone. To see how this doctrine affects the very core of the economic process, let us, first, realize that when people do not pay the full share of the taxes they owe, especially their full share of taxes on land and natural resources, they steal from fellow citizens who are burdened with the total cost of running a country. (The issue of the amounts of taxes owed to the government can be treated only in the context of a discussion on the necessary functions of government.) Second, when the central bank sells national credit to preferred customers (the prime dealers), the central bank sells for a mess of pottage a national treasure that belongs to the entire population. Private appropriation of common goods—such as land and money—without compensation is expropriation and plunder. Third, when stockholders cash in their stocks and bonds, they rob the workers who have originally contributed to the creation of that value—and are excluded from the bounty of capital appreciation by the transparently faulty fig leaf of the “wage contract.” Fourth, when

one purchases a whole corporation, and uses other people's money to concentrate the wealth of the nation into fewer and fewer hands, one robs at least the workers, if not also previous as well as future potential stockholders, of the ensuing capital appreciation of the corporation.

The evidence is strong that this is the road to inordinate accumulation of wealth. The consequence is undeniable: The inordinate accumulation of wealth by the few is the cause of poverty of the many. No, the few are not necessarily the rich but the wicked (*cf.* Gorga, 1998). No, this is absolutely not a condemnation of the entrepreneur—and even less a condemnation of the inventor. No, this is not a condemnation of economic growth either. This is a condemnation of tolerance for the wrong type of economic growth, the type of growth that leaves the wicked free to steal the wealth of others and leads to outward dazzling statistics accompanied by inward substantive emptiness: When the numbers were tallied, the spectacular spikes in growth levels during the last decade amounted to a fat zero effect. We were back at the levels of wealth that existed at the beginning of the decade. Yet, zero-sum game speculative markets are not innocuous practices; they leave havoc in their wake. Besides, there is a profound philosophical question involved here. If wealth is a social construct, what counts are the relative levels of wealth or poverty.

So, set these four mechanisms aright, and you will *Give to Caesar What Is Caesar's*. You will do justice and receive justice. With a just distribution of wealth, there is no need for its redistribution; and the task of charity becomes feasible again. It is only on the basis of curing these four blind spots in the economic system that we can ever hope to build a new contract, a contract in which the spirit of morality is tied to economic freedom for all. The parameters of this contract will have to be firm. Let us call it the legal contract. This is a systemic change that combines the best aspects of the moral contract—its moral rectitude—with the best aspects of the social contract: the idea and practice of economic freedom, now extended to all, rich and poor alike. We will thus attain the deepest goal of the Enlightenment,

not only the substitution of relative poverty with relative affluence, but the presence of freedom for all. Indeed, the question is not whether these four marginal changes will ever be implemented; or even whether it would be possible to have one change without the others; the question is whether there are other tools to achieve the wanted levels of relative affluence and freedom for all.

## The Legal Contract

If there is a litmus test in the separation of the social from the legal contract, it is this: The legal contract abhors privileges in general and in particular the privilege to use such an unthinking expression as “right to an entitlement.” The legal contract is put on solid ground by seeing through the many fallacies encompassed by this expression. Clarity in the field is acquired by wading through cascading reams of obfuscating philosophy and political ideology. One can then say (Gorga, 1999):

To clarify issues concerning the definition of economic rights, it might be useful to begin with an overview of three factual distinctions between economic rights, property rights, and entitlements. . . . First, the content of these three entities is different. The object of property rights are marketable things, tangible or intangible things such as material goods and services. The object of entitlements are human needs, from food to shelter to health. The object of economic rights are economic needs. Second, the legal form of these three entities is different. Property rights are concrete legal titles over existing wealth; economic rights are abstract legal claims over future wealth; and entitlements are moral claims on wealth that legally belong to others. Finally, the quantity that they measure is variable. While both property rights and entitlements relate to existing wealth, and therefore a necessarily finite quantity, economic rights relate to future wealth, an unknown and elastic—if not a potentially infinite—quantity.

Economic rights are rights of access to such resources as land, labor, physical, and financial capital that are essential for the creation of new wealth. Thus, economic rights are the fathers and the mothers of property rights (Gorga, 2009). One of the fundamental reasons why the economic world is in a shambles today is that this set of relationships is upside down. We proceed under the legal *and* economic fiction that property rights produce wealth. Property rights are pieces of paper, and pieces of paper do not produce wealth. It is the use of

real wealth that produces wealth; to use real wealth is to exercise an economic right. For all intents and purposes, economic rights today are exercised as privileges by the few possessors of property rights; since privileges divide, while rights unite (Gorga 1994), the economic world can be put aright only if ways are found to exercise economic rights, as rights, and not as privileges. To set the world of economics aright, we have to find ways to extend the exercise of economic rights to all human beings. There is no other way, if we want to respect the dignity of every human being.

Economic rights are not arbitrarily granted by society; rather, they spring from the exercise of economic responsibilities in the very person who wants to exercise a given economic right. The intellectual structure of the legal contract outlined in these pages is better understood if it is placed in the context of the theory of economic justice: the composite result of participative justice, distributive justice, and commutative justice. Only people who exercise their economic rights share fully of the blessings of participative justice; and only people who participate in the process of creation of wealth as a right are empowered to share fully of the blessings of distributive justice; these two conditions then create the prerequisites for the enjoyment of the blessings of commutative justice. One note of importance at this stage: The fishing industry is the only industry worldwide in which percentages of shares of the catch are set in advance of the catch—very wisely so, because percentages are abstract, while the value of each trip is concrete; and the shares are set not for each trip but for all trips—very wisely because arguing about these rules forever is a divisive and inefficient enterprise. As pointed out in Gorga (2008b, p. 368), the method of economic organization of the fishing industry is called the “lay”:

Fishermen do not work for a wage; they work for a share of the profits. It is this economic independence that generates independence from other people's opinions, and thus forms the source of Gloucester's great tolerance.

There is no haggling as in a bazaar. There is no jockeying for position. George got a \$1.0 million wage; I'm better than George; I need and deserve at least \$1.2 million! The shares of the lay have

been set since time immemorial. They represent commonly agreed upon societal rules of just compensation. The shares have been set forever (which does not mean that one cannot work two shifts and get double pay and eventually buy a boat of one's own. This is not the static world of the Middle Ages). The men and the women can go to work concentrating on how best to perform their self-assigned tasks. The competition is not with the other; the competition is with oneself. That is the challenge that never ends.

The practical structure of the legal contract is better understood if it is placed in a Schumpeterian, or more generally still, an Austrian and libertarian world of economics. And yet, some additional qualifications must be kept in mind. Libertarians especially seem to believe that humans are innately moral and that they can easily distinguish between their short and long term self-interest, hence they limit their view to injustices committed by the state in the name of an abstract “general will” (of the social contract) and suffered by the individual person. While it happily piggy-backs on the insights of the libertarians, the legal contract is concerned also about the injustices committed by man against man—injustices that are aided and abetted by the ignorance and complicity of the culture of the age more than the complicity of the government. The injustices that matter most are those listed above in the discussion concerning the blindness in the social contract about the mechanisms of accumulation of wealth. Those injustices must be done away with.

Upon the naked structure of the factors of production we shall place the mantle of economic rights and economic responsibilities. Instrumentally, economic rights and economic responsibilities perform functions outlined in the conception of “general abstract rules” by Hayek (1960, p. 153), the “original position” by Rawls (1971 pp. 12, 72, 136, 538), the “reverse theory” by Nozick (1974 p. 238), and the “Principle of Generic Consistency” by Gewirth (1985, p. 19). Practically, they will function as Gladwell’s (2000) “tipping points”. Ultimately, it was a poet, Vincent Ferrini (2002, p. A6), who caught the essence of economic rights and economic responsibilities by identifying their ability to provide “the answers to universal poverty and the anxieties of the affluent.”

## Land and the Legal Contract

*We all have the right of access to land and natural resources.* This is a natural right. It belongs to us just in virtue of our humanness. Land and natural resources are our original commons. They belong to all. This is an essential right, because without the possibility of exercising it, we are deprived of the possibility of participating in the economic process. And without this participation, we are marginalized; we are made dependent on the good will of others. The most direct way of securing this right in the complexity of the modern world is through the exercise of **the responsibility to pay taxes** for the exclusive use of those resources that are under our command (cf. Kelly, 2004)—with a corresponding reduction of taxes on buildings and man-made improvements on the land. Land that sits idle does not produce income, yet in today's world it produces capital appreciation over time.

By imposing taxes on land, the back is broken of the first mechanism of unjust accumulation of wealth. Land taxation reduces the incentive to hoard, namely the incentive to accumulate idle land. A synergistic cascade of economic effects takes place once a fair system of land taxation is properly and gradually instituted. Paying taxes on the value of land and natural resources encourages dishoarding. This tax burden alone is not transferable onto other shoulders, because there are no other shoulders beside the landowner. In addition, since land taxes are the only taxes that lower the price of the item taxed, land taxes lower the price of the land and, correspondingly, open up natural resources for all those who need them and can make use of them. They grant to others who are willing to pay taxes the right of access to that land with its natural resources.

Nor are these the only benefits of land value taxation. Worrisome hoarding is especially that which occurs both downtown and in the belt surrounding major cities and towns: it is to leapfrog over this belt that people go to the suburbs in search for affordable land, thus creating overstretched lines of communication and protection and overlong

commuting lines—with consequent waste of fuel that overtaxes nonrenewable resources, the ozone layer, and the pocketbook. Paying taxes on land values is a most fair form of taxation, because it implies returning to the community some of the value that is created, not by the individual owner, but by the community. A plot of land in Manhattan is worth gazillions because of its proximity to the Metropolitan Museum and similar community endowments; the same amount of land in Arizona barely makes the notice of the tax assessor. And then there is no compulsion in this policy: Pay more taxes and keep control over more land. Finally, it must be remembered that if one avoids paying taxes, the total tax burden is not going to be distributed fairly; then one obtains something—i.e., private control over a quantity of natural resources—without offering fair compensation to the rest of the community whose participation is essential to the increase in land value.

In brief, it can be said that this mechanism—by returning to the community part of the value created by the community—is an equivalent of the original Jubilee concerning land. When fully explored in its dynamic elements, it will be seen that, thanks especially to Henry George, the eventual implementation of this first set of economic rights and responsibilities leads to the creation of a just and sustainable national economic policy concerning the utilization of land and natural resources. In shorthand, just think of how much the many financial crises we have experienced so far would have been abated if people had paid fair taxes on the land and natural resources they bought and held—they hoarded—for speculative purposes. Symptomatically, a comprehensive and up-to-date study of eight centuries of financial folly does not distinguish land from buildings, does not include land in the index, and leaves “real estate crises for future research” (Reinhart and Rogoff, 2009, p. 8).

### **Financial Capital and the Legal Contract**

*We all have the right of access to national credit.* Thanks to Benjamin Franklin, national credit can be defined as the power of a nation to create money. And since the value

of money is given by the value of wealth left over by past generations and the creativity of every person in a nation, national credit is the last frontier, the last commons. It belongs to all the people within a nation.

Without access to credit today one is made economically impotent. Worse, since this access is automatically granted to the privileged few, it is automatically denied to the majority of the population who are henceforth condemned to a double jeopardy: They pay a higher rate of interest, if they obtain credit at all.

Of course, access to national credit should be extended only on the basis of **the responsibility to repay the loan**. And these loans, not grants, once made available to the entire population, will have a high chance of being repaid because they ought to be issued at cost and issued exclusively to individually owned enterprises, Employee Stock Ownership Plans (ESOPs), and cooperatives (as well as states and municipalities) and issued exclusively for capital formation, namely for the creation of new wealth—not to buy financial paper, consumer goods, or goods to be hoarded. Capital credit liberates us, while consumer credit enslaves us. (One reader expected a negative response to this proposition from the mainstream economics profession! Perhaps, additional help might be provided by the clarification that only under these conditions would monetary policy be directly related mainly to the creation of wealth. Also, many other aspects of national monetary policy, such as setting of reserve requirements and other regulatory functions, are necessarily skipped here.)

By borrowing money from the community and returning it to the community, amidst the complexities of the modern world this policy would implement the spirit of the Jubilee regarding money. When fully explored in its dynamic elements, it will be seen that the eventual implementation of this second set of economic rights and economic responsibilities leads to the creation of a just and sustainable national economic policy concerning the utilization of our financial resources. In shorthand, just think of how much the many financial

crises we have experienced so far would have been abated if people had not had access to national credit to buy and to hold all sorts of financial paper, including mortgages and derivatives as well as homes they bought and held for speculative purposes. Again, for lack of data to run this type of disaggregated analysis, see Reinhart and Rogoff (2009).

### **Labor and the Legal Contract**

*We all have the right to the fruits of our labor.* This right should not be limited to the right to obtain only a wage. It should be extended to cover the other major fruit of economic growth over time: capital appreciation—as well as being subject to capital loss, of course. Workers have to be transformed into stockholders, because outside the institution of ownership of the full fruits of one's labor there is no way of accounting what is just or unjust—or even logical. Franco Modigliani (1980, p. xiv) confirmed that there is "no rigorous analysis" of "the mechanism determining wages and prices.... Indeed, the modeling of wage behavior remains to this day the Achilles heel of macroeconomic analysis." The shortcut is, and will forever be, to treat labor as merchandise. That is why all attempts to establish a "living wage" and to "ameliorate" workers' conditions are destined to fail—no matter how well-intentioned, no matter how persistently pursued. The labor movement has only the choice to transform itself into the equity movement—with union dues attached, not to wages, but to ownership shares.

The only justification for reserving the right to capital appreciation to stockholders, the owners of a corporation, and excluding workers from it, can be found in the fact that loans are given only to owners of past wealth. Thanks to Louis O. Kelso, from now on this right can be extended to people who do not have prior wealth by legally transforming workers into owners through Employee Stock Ownership Plans (ESOPs).

Of course, this full right should be extended only in correspondence with **the responsibility to offer services** of value equivalent to projected compensation. And there will

be an outpouring of such services because, as evidenced in the vast literature on ESOPs, while in a command and control economy workers are requested to check their brain at the factory gate, in a moral economy workers/owners are legally and psychologically empowered to exercise their brain fully at their work post. Indeed, there is reason to believe that by linking costs of production with individual producers, namely the employees, current incentives to overextend business enterprises and to overexploit land, natural, and financial resources will be abated. If they realize that these excesses have been generated by the misguided short term interests in the accumulation of wealth by the few, there is every reason to believe that they will have an interest in not repeating these excesses that have always turned to the detriment of the many.

When fully explored in its dynamic elements, it will be seen that the eventual implementation of this third set of economic rights and responsibilities leads to the creation of a just and sustainable national economic policy concerning the utilization of our labor resources. In shorthand, just think of how much the many financial crises we have experienced so far would have been abated if every worker had received a fair compensation in wages and profits as well as stocks and bonds for the work performed—rather than allowing the few to exploit the many by taking out of the enterprise such disproportionate amounts as to represent “mad money” that can be invested only in riskier and riskier ventures. Again, there is not even a hint in mainstream economics literature of interest in this type of analysis.

### **Physical Capital and the Legal Contract**

*We all have the right to protect our wealth.* This right seems to be universally accepted, except in one case that matters most: in the case of the trustification process, the process used especially after the Civil War in the United States to create corporate trusts and repeated in a hundred subtle variations ever since. People felt free, not only to acquire shares

of the stock of one corporation, but free to use that stock to acquire another whole corporation by all forms of trusts, mergers, and acquisition. The very idea of the corporation, forever a public entity, was then privatized and monetized.

There are two ways in which corporations grow: One is through internal growth, and this approach ought to be protected in no uncertain terms; the other is growth by external purchase, and this manifestation ought to be prohibited in no uncertain terms. Why? Because this is the only prevention against the absolute freedom of corporations to grow-by-purchase into too-big-to fail institutions, a practice that is causing havoc in industrial and financial relations; conversely, this prohibition is the only certain way to protect the wealth of present owners. And if it is assumed that most stockholders of the modern corporation are happy to have their shares bought and sold on the market, it must be granted that growth-by-purchase takes wealth away from workers who have contributed to create that value—and many times, in the trustification process, lose their work site as well. All in the name of efficiency—a misnomer that stands for private financial gain generated at the expense of shifting costs onto the community. “Do not steal” has to remain a firm law of economics.

Of course, the right to the protection of one’s wealth ought to be purchased only at the cost of **the responsibility to respect the wealth of others**. These are two-way streets. We cannot even attempt to restrain the Pac-Man economy, while we use Pac-Man instruments.

When fully explored in its dynamic elements, it will be seen that, thanks to Louis D. Brandeis, the eventual implementation of this fourth set of economic rights and responsibilities leads to the creation of a just and sustainable national economic policy concerning the utilization of our physical capital resources. In shorthand, just think of how much the many financial crises we have experienced so far would have been abated if every corporation had used its surplus income to pay its workers fairly and to charge its customers fair prices—rather than spending its surplus income as “mad money” to purchase riskier and

riskier ventures. Ditto for the impossibility to run this type of analysis within the framework of mainstream economic theory.

One additional consequence. Institute such a prohibition, and include customers in the division of year-end profits, and you can safely dispose of ninety percent of current anti-trust policies. Indeed, you will then have—firmly and legally—implemented fully the spirit of the moral contract.

The inner relationships among these four suggested marginal changes become apparent as soon as one approaches issues of economic policy as an entrepreneur does.

### Conclusion

When the economic history of the world is displayed in front of our eyes, a clear conclusion comes forcefully forward. There is an indissoluble unity of freedom and morality. We are free to choose. But the choice is not trivial: The choice is not between Gucci and Pucci; the choice is between good and evil. The choice between Gucci and Pucci is an esthetic decision; the choice between good and evil is a moral decision. In this paper we have been concerned about good and evil choices in economics and property laws in relation to land, capital—both in its physical and financial aspects—and labor.

In the theological stage of human development, the choice between good and evil was suggested to individual human beings by the religious authority of a nation. That authority is epitomized by the economics of Moses and the economics of Jesus, a set of rules whose observation had not to be imposed from the outside but from inside one's own conscience. These impositions were largely accepted because they were so eminently reasonable. The set of economic obligations composing the moral contract commanded us to invest our talents; not to hoard; and to give everyone his due—all three commands to be voluntarily implemented. The proof that they were not such onerous conditions can be found in their millennial existence that spans from the dawn of civilization up until 1776.

Yet, the social contract arose as a revulsion against the impositions of the moral law. The strictures of the moral law were gradually seen, no longer as a voluntary acceptance of limitations over one's activity, but as external limitations imposed by an external God and/or an external moral authority represented by the religious and the politicians. The rebellion was born of a deep misunderstanding of the human condition. Freedom was no longer seen as the consequence of the moral struggle of choosing between good and evil. Morality was taken as an external limitation upon our freedom.

And freedom was assumed to be the fountainhead of wealth.

This canard was developed and diffused by the few for the benefit of the few. This twisted conception of reality was wrong at both ends. As the case of Haiti and Barbados epitomizes, freedom alone, even political freedom, does not yield economic growth. Haiti acquired political freedom one hundred and fifty years before Barbados. Freedom has become an empty word, used for ideological purposes. Freedom to work is the jewel! And freedom for all to work, namely economic freedom for all, comes from economic justice.

Freedom from morality, instead, is translated into arrogance to do as one wishes; hence, the strenuous resistance to any restraint upon activities that involve economic exploitation of people and lands. Too easily did the rebellion against the restraints of morality yield an extraordinary aggrandizement of the wealth of the few. The majority, ignorant of the mechanisms of accumulation of wealth, saw this consequence and attributed it to the absolute freedom of the few. Hence they reasoned along these lines: "If we could all be free, we would all be rich"; or, in a more convoluted and idealized way, "If we could all be rich, we would all be free."

Wealth became an abstraction. And human beings became isolated automatons who were supposed to respond to some rules of abstract rationality: They became individuals, a social construct that, as Alasdair MacIntyre points out, did not even exist five hundred years

ago. Taken away from its social context, wealth became absolute and came to be identified as the wealth of nations. This abstraction prevented the view of the reality that the wealth of the few was acquired at the expense of the poverty of the many. The wealth of the few was acquired at the expense of the poverty of the many, because the few were released from any obligation toward their fellow human beings.

The internal contradictions of the social contract are more evident today when we are witnessing the death throes of this conception of life: Is not the financial structure of many countries depending on the intensive care of bounties from the taxpayer? Those contradictions are more evident today when we see that, under blinding measurements of growth in nominal per capita incomes, great range of movement, transportation, and communication, let alone the dazzling array of choice in consumer items, the ultimate consequence of the social contract has been to reduce nearly all of us to beggars: The rich beg for lower taxes, the middle classes beg for jobs, and the poor beg for entitlements.

What comes next? What ought to come next? It is suggested that we might next want to inscribe in our hearts and minds the obligations of the legal contract. Quite apart from the economic responsibilities pointed out above, which give birth to an assured set of economic rights, the legal contract is based on this pivotal realization, which can be simply stated. We are free to choose, but we are bound to choose right. It is not necessary to be a religious person to realize that if we choose what is good, many good consequences ensue for us and for our neighbor. If we choose evil, it might take some time for the results to become evident, yet we are going to attract evil consequences on our neighbors and ultimately on us.

To regain its footing, the Enlightenment has to pick up again the banner of liberty. And it has to focus on economic liberty. Economic liberty for all.

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## References

- Appleby, Joyce.** 2010. *The Relentless Revolution: A History of Capitalism*. NY: Norton.
- Brady, Michael E. and Gorga, Carmine.** 2009. Integrating the Formal, Technical, Mathematical Foundations of Keynes's D-Z Model of the Theory of Effective Demand Into Keynes's Decision Theory: Toward a New (and Final?) Interpretation of the General Theory. *International Journal of Applied Economics and Econometrics*, Volume 17, number 3, pp. 195-235 (July-September). Available at SSRN: <http://ssrn.com/abstract=1406842>.
- Brandeis, Louis D.** 1932 [1913]. *Other People's Money and How the Bankers Use It*. NY: Frederick A. Stokes Company.
- Broski, Mark.** 2003. "The Economic Process: An Instantaneous Non-Newtonian Picture. Carmine Gorga." *Journal of Markets and Morality* 6, no. 1: 297-98.
- Chapra, Umer M.** 1985. *Towards a Just Monetary System*. Leicester, UK: The Islamic Foundation.
- Ferrini, Vincent.** 2002. "Gorga worthy of note". *Gloucester Daily Times*, Dec. 11.
- Gewirth, Alan.** 1985. "Economic Justice: Concepts and Criteria" In *Economic Justice: Private Rights and Public Responsibilities*, Kenneth Kipnis and Diana T. Meyers, eds. Totowa, N.J.: Rowman & Allanheld.
- Gladwell, Malcolm.** 2000. *The Tipping Point: How Little Things Can Make a Big Difference*. NY: Little, Brown & Company.
- Gorga, Carmine.** 1982. "The Revised Keynes' Model" (an Abstract), *Atlantic Economic Journal*, Sept. 1982, 10 (3) 52. \*
- Gorga, Carmine.** 1991. "Bold New Directions in Politics and Economics", *The Human Economy Newsletter*, March 1991, 12 (1) 3-6, 12.\*
- Gorga, Carmine.** 1994. "Four Economic Rights: Social Renewal Through Economic Justice for All," *Social Justice Rev.* 85:1-2, pp. 3-6.\*
- Gorga, Carmine.** 1998. "The Creators of Poverty," *Gloucester Daily Times*, Symposium, Dec. 18, p. A10.\*
- Gorga, Carmine.** 1999. "Toward the Definition of Economic Rights," *J. Markets and Morality*, 2:1, pp. 88-101.\*
- Gorga, Carmine.** 2002. *The Economic Process: An Instantaneous Non-Newtonian Picture*. Lanham, MD and Oxford: University Press of America.
- Gorga, Carmine.** 2007. "Economic Justice." In *Encyclopedia of Catholic Social Thought, Social Science, and Social Policy* (Lanham, MD: Scarecrow Press), 335-337.\*
- Gorga, Carmine.** 2008a. "Economics for Physicists and Ecologists," *Transactions on Advanced Research January, vol. 4 (1) 6-9.*  
<http://internetjournals.net/journals/tar/IPSI%20TAR%20Jan%202008.pdf>
- Gorga, Carmine.** 2008b. *To My Polis, With Love: May Gloucester Show the World the Ways of Frugality*. Gloucester, MA: The Somist Institute.
- Gorga, Carmine.** 2009. "Concordian Economics: Tools to Return Relevance to Economics", *Forum for Social Economics*, vol. 38 (1) 53-69.\*
- Gorga, Carmine.** 2010 (Forthcoming). "The Economics of Jubilation – Blinking Adam's Fallacy Away," in Albert Tavidze, ed., *Progress in Economic Research*, Vol. 19. New York: Nova Science Publishers. Also available at <http://ssrn.com/abstract=1489570> (2009 [2006]).
- Gorga, Carmine.** 2010. *The Economic Process: An Instantaneous Non-Newtonian Picture*. Lanham, MD and Oxford: University Press of America. An expanded edition.
- Harrison, Lawrence.** 2006. *The Central Liberal Truth: How Politics Can Change a Culture and*

- Save it from Itself*. NY: Oxford University Press.
- Hayek, Friedrich A.** 1960. *The Constitution of Liberty*. Chicago, IL: The University of Chicago Press Chicago.
- Kelly, John L.** 2004. "The Tithe: Land Rent to God," *Acton Institute Religion & Liberty*, July and August.
- Kelso, Louis O. and P. Hetter.** 1967. *Two-Factor Theory: The Economics of Reality*. New York: Vintage Books.
- Keynes, J. Maynard.** 1936. *The General Theory of Employment, Interest, and Money*. NY: Harcourt.
- Locke, John.** 1689. *Two Treatises of Government*. London: Awnsham and John Churchill. Laslett P. ed. NY: A Mentor Book (1965).
- Lukacs, John.** 2002. *At the End of an Age*. New Haven and London: Yale University Press.
- Mirandola, Pico (della).** 1486. *Oration on the Dignity of Man*.  
[http://www.wsu.edu:8080/~wldciv/world\\_civ\\_reader/world\\_civ\\_reader\\_1/pico.html](http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_1/pico.html)
- Modigliani, Franco.** 1980. *The Collected Papers of Franco Modigliani. Vol. 1: Essays in Macroeconomics*. Abel, A. ed. Cambridge MA and London, UK: MIT Press.
- Nelson, Robert H.** 1993. *Reaching for Heaven on Earth: The Theological Meaning of Economics*. Lanham, MD: Rowman & Littlefield Publishers.
- Nozick, Robert.** 1974. *Anarchy, State, and Utopia*. New York, NY: Basic Books.
- Rawls, John.** 1971. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
- Reinhart, Carmen M. and Rogoff, Kenneth S.** 2009. *This Time Is Different: Eight Centuries of Financial Folly*. Princeton, NJ: Princeton University Press.
- Sen, Amartya K.** 1998. "The Possibility of Social Choice." From *Nobel Lectures, Economics 1996-2000*, Editor Torsten Persson, World Scientific Publishing Co., Singapore, 2003.
- Schumpeter, Joseph A.** 1954. *History of Economic Analysis*. NY: Oxford University Press.
- Smith, Adam.** 1776. *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Methuen and Co., Ltd., ed. Edwin Cannan, 1904. Fifth edition.
- Tierney, Brian.** 1959. *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England*. Berkeley: University of California Press.
- Wood, Diane.** 2002. *Medieval Economic Thought*. Cambridge, UK: Cambridge University Press.
- Zona, Guy A.** 1994. *The Soul Would Have No Rainbow if the Eyes had no Tears – and Other Native American Proverbs*. N.Y: Simon and Schuster.

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