Notas

EL MEJOR DINERO POSIBLE: UN COMENTARIO

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I
INTRODUCCIÓN

Sánchez Martínez, L.C. (2009) acierta en varios argumentos de su artículo sobre el mejor dinero posible. Estamos de acuerdo que el dinero debería ser el resultado del acuerdo voluntario de los individuos, no debería ser impuesto por los gobiernos y que los ciudadanos deberían poder elegir la moneda más eficaz.

El autor entiende por dinero fiduciario un dinero «sin respaldo en bien tangible alguno» (p. 173). No estamos de acuerdo, en primer lugar, cuando se refiere a la aparición del dinero, en concreto el hecho de que el dinero fiduciario podría surgir sin la ayuda del estado porque sería más eficiente. En segundo lugar, tampoco estamos de acuerdo con que el «dinero fiduciario pueda existir sin ningún tipo de respaldo estatal y ser el mejor dinero posible.» (p. 174).

Para justificar nuestro desacuerdo vamos primero a analizar como surge el dinero en el mercado libre. Después discutiremos cómo surgió el dinero fiduciario, cómo compite con el dinero mercancía y discutiremos los ejemplos que el autor considera como pruebas de la aparición de un dinero fiduciario. Finalmente hablaremos sobre la banca con reserva fraccionario que para Sánchez Martínez no implica ningún problema económico ni jurídico.

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II
EL SURGIMIENTO DEL DINERO

En una economía de trueque existe el problema de la doble coincidencia de necesidades. El señor A tiene que valorar más lo que tiene el señor B y de lo que él carece y viceversa. Supongamos que A quiere un queso y tiene zapatos. Encuentra al señor B que tiene un queso pero lo que quiere son huevos. No habrá intercambio directo. Así las posibilidades de intercambio en una economía de trueque son muy reducidas, lo que restringe la división del trabajo y así la productividad y el nivel de vida. Los medios de intercambio aparecen en una economía de trueque cuando unos individuos se dan cuenta de que unas mercancías son más frecuentemente intercambiadas que otras. Se venden más fácilmente. Ciertos empresarios demandan estas mercancías, no para usarlas como bien de consumo o factor de producción, sino para intercambiarlas a cambio de lo que necesitan de veras; es decir, las usan como medio de intercambio. Supongamos que A se da cuenta de que unas piezas de metal (plata) se intercambian más frecuentemente que otras. De esta manera cuando A vende su producto, en nuestro caso zapatos, no demanda lo que necesita directamente, queso, sino que demanda lo que se intercambia más frecuentemente: piezas de plata. Compra plata y la usa como medio de intercambio para comprar lo que necesita. El medio de intercambio tiene entonces dos demandas solapadas. Por una parte para usarlo como bien de consumo o factor de producción (joyería) y por otra como medio de intercambio. En la medida en que el empresario tiene éxito con su estrategia del cambio indirecto, se refuerza el proceso. El señor A puede repetir su acción y otros individuos le imitan. Entonces cada vez más personas usan el medio de intercambio hasta que uno de ellos se convierte en el medio de intercambio común y generalmente aceptado. Surge así el dinero en un proceso cumulativo (Menger, 1871, 1892).

En este proceso competitivo de la aparición del dinero suelen prevalecer unas mercancías con unas características específicas. De las encontradas por Carl Menger, Sánchez Martínez menciona las siguientes: escasez, buena distribución geográfica, divisibilidad, bajo coste de transporte y atesoramiento y durabilidad ilimitada.

Admite Sánchez Martínez que el oro y la plata cumplían perfectamente estos requisitos pero añade que el dinero fiduciario emitido en billetes y monedas los cumplirían aún mejor. Este argumento podría implicar que esta es la razón por la que aparece el dinero fiduciario, porque cumple mejor estas exigencias. Encontramos sin embargo varios problemas con esta tesis.

En primer lugar, el autor se confunde con el antes y el después. Menger (1892) menciona las características que una mercancía tuvo que tener antes de convertirse en dinero, es decir, las que debería tener una mercancía antes de tener una amplia demanda solapada como medio de intercambio, no después de que haya surgido como dinero.

Solo una vez que el dinero sea fiduciario a través de procesos, que comentaremos en breve, puede cumplir estos requisitos. Pero ¿puede un dinero fiduciario como el papel moneda cumplirlos antes de que sea ya dinero?, ¿puede prevalecer el papel sobre otras mercancías como el oro en el proceso competitivo a través del cual surge el dinero?

El papel no puede competir con una mercancía como el oro por varias razones. El papel como mercancía tiene un coste de atesoramiento más alto que el oro. Hay que almacenar una cantidad enorme de papel en comparación con el oro porque éste tiene mucho más valor que aquél. El equivalente de un coche en papel, son toneladas de papel, cuyo coste de almacenamiento es altísimo en comparación con el coste de almacenamiento de unas pocas onzas de oro que compran un coche.

Luego los costes de transporte del papel son también mucho más altos. Es más barato transportar unas onzas de oro que unas toneladas de papel. Además el papel era y es menos escaso que el oro. El oro tenía mucho más valor por peso en una economía de trueque que el papel. Es cierto, que una vez que tengamos dinero fiduciario, el papel moneda puede tener mucho valor. Pero se trata de explicar como podría llegar a eso en un proceso de mercado.

En segundo lugar, Sánchez Martínez no menciona otras características que incrementan la negociabilidad. En relación con esto Menger comenta que la resistencia de una mercancía la hace más negociable y útil como medio de intercambio. El oro es más resistente y durable que el papel. Más importante aún es que para la

mercancía existan muchos deseos insatisfechos y que la intensidad de los deseos sea alta y permanente (Menger 1892). Esta demanda constante de la mercancía incrementa su negociabilidad, algo esencial para la aparición del dinero. Hace que la mercancía sea un gran depósito de valor, funciona como un «seguro» que mantiene el valor del bien incluso cuando de desmonetiza (Bagus 2009, 50). El oro tiene una gran demanda industrial y de consumo lo que mantiene su valor aunque se desmonetice, mientras la diferencia entre el valor monetario y el valor desmonetizado del papel moneda es mucho mayor.

Ya hemos visto que el dinero surge en un proceso competitivo en el que una demanda monetaria se solapa con la demanda industrial de una mercancía muy negociable. No puede ser de otra manera. El origen siempre está en una mercancía (Rothbard 2008, 15). Nadie puede declarar que un material sin valor se convierta en dinero, ni una comunidad puede decidir que algo sin valor se convierta en dinero. Esto es imposible porque no hay conocimiento del valor que pueda servir de base de la demanda monetaria. La demanda de dinero se basa en el conocimiento del poder adquisitivo del dinero en el pasado[1] ya que necesita unos precios del pasado. Más concretamente la demanda de dinero de hoy es función de las expectativas del precio del dinero el día de mañana que, a su vez, están basadas en el precio del dinero ayer.[2] Y la demanda de dinero de ayer era función de las expectativas del precio del dinero de hoy, que a su vez están basadas en la experiencia del precio del dinero de anteayer. Y así sucesivamente hacia atrás en el tiempo hasta el día en que una determinada mercancía empieza a tener una demanda solapada como medio de intercambio. Es decir, el proceso siempre empieza en una mercancía con una demanda como bien de consumo o factor de producción a la que se añade la demanda monetaria.

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[1] Ese es el teorema regresivo del dinero de Ludwig von Mises (1912).

[2] Sánchez Martínez considera que todo el dinero tiene una demanda fiduciaria; también el oro porque «se basaba en la fe de que el oro iba a ser aceptado para el intercambio comercial.» La verdad es que la demanda monetaria del oro se basaba en las expectativas de su poder adquisitivo en el futuro. De hecho cualquier factor de producción es comprado por los empresarios en función de sus expectativas del precio que va a tener el producto de consumo a que contribuye en el futuro.

Nadie puede crear dinero a partir de un material sin valor. Si yo emito un dinero fiduciario nuevo llamado «Bagus» no existe un conocimiento de precios pasados. Si intento comprar un coche con un billete que pone «100 Bagus» lo más probable es que no pueda comprar el coche. El vendedor no tiene experiencia de precios del pasado. No sabe lo que compraban «100 Bagus» ayer. Puedo intentar engañarle y decirle que «100 Bagus» ayer compraban un coche o un kilo de oro y seguro que mañana también lo harán. Pero no hay altas probabilidades de convencer al vendedor ni mucho menos al resto de la población. Sin embargo Sánchez Martínez piensa que se puede introducir un dinero fiduciario sin respaldo en bien tangible alguno basándose única y exclusivamente en la confianza (184).[3] Lo contrario es cierto, el dinero siempre surge en un proceso de mercado a partir de la demanda de una mercancía que se intercambia con más facilidad.

El dinero libremente elegido siempre es una mercancía. Otra cuestión es que el Estado pueda introducir el dinero fiduciario con su monopolio de violencia corrompiendo el dinero mercancía. Puede suspender el pago en metálico de certificados de depósito y declararlos como dinero de curso legal. Este cambio en la historia no fue radical pero tampoco provisional. Fue en el 1971 cuando desapareció el último vínculo con el oro.

De esta manera se tiene un conocimiento de los precios del dinero del pasado. El día de la suspensión del pago en metálico se conocen los precios del día anterior y éstos pueden servir de base para las expectativas y demanda del dinero fiduciario. Esta violación de la ley, la suspensión del pago en metálico, y la introducción de una ley de curso forzoso sólo lo puede efectuar el Estado. Así se resuelve el problema del conocimiento de precios pasados. En cambio los empresarios privados sólo podrían introducir dinero fiduciario si la gente lo vinculara con un dinero

[3] Añade que el dinero fiduciario tendría la ventaja de una producción barata. Si se usa oro como dinero hay que abrir una mina que es mucho más costoso que imprimir dinero o introducir unos apuntes contables en un ordenador. El misterio que Sánchez Martínez no explica es cómo algo que antes no tenía valor (un billete de papel o un apunte informatico) de repente puede llegar a tenerlo. Además es una ventaja del oro que su producción sea muy cara porque da seguridad ya que su cantidad no se puede expandir facilmente.

mercancía surgido antes. Si digo que «100 Bagus» valen por 1 kilo de oro, siendo el oro un medio de intercambio generalmente aceptado, se pueden calcular los precios en términos de «Bagus» de ayer. Pero es muy dudoso que alguien me lo vaya a aceptar por lo que le digo, aunque asegure que no voy a incrementar la masa monetaria. Estaría encantado si el autor aceptara mi billete por 1 kilo de oro.

III
DINERO FIDUCIARIO EN LA COMPETENCIA

Ya vimos que un medio de intercambio generalmente aceptado de carácter fiduciario sólo puede surgir por una violación contractual y con el apoyo del Estado. Sánchez Martínez mantiene también que existiendo el dinero fiduciario puede sobrevivir en competencia con el dinero mercancía. Pero ¿podrían mantenerse el euro o el dólar si privatizamos su emisión y abolimos los leyes de curso forzoso?

El gran inconveniente de estas monedas es que su valor se basa práctica y exclusivamente en la demanda monetaria. La demanda no monetaria prácticamente no existe, lo que supone una ventaja competitiva importante. Cuando se desmonetizan pierden prácticamente todo su valor, lo que incrementa el riesgo de mantenerlas porque al día siguiente pueden no valer nada. Sólo dependen de la confianza.

Si se desmonetizara otro medio de intercambio, como el oro, sólo perdería una parte de su valor porque la demanda no monetaria lo soportaría. La demanda no monetaria es como un «seguro» contra la desmonetización. Además le confiere estabilidad. Cambios en la demanda monetaria son matizados por la continua demanda industrial. El dinero mercancía suele fluctuar menos en valor que el valor de un dinero fiduciario que sólo se basa en la confianza que, evidentemente, puede fluctuar mucho. De esta manera a largo plazo es probable que gane el oro en la competencia con el dinero fiduciario.

Además es posible que el dinero fiduciario se desmonetice inmediatamente si el estado deja de soportarlo. Sánchez Martínez

argumenta que eso no pasaría y da tres argumentos. Escribe que las leyes de curso forzoso no son necesarias para que circule el dinero fiduciario dado que dólares y euros circulan en países dónde no tienen esta consideración. Es verdad que los dólares circulan en países dónde no son de curso forzoso, pero eso no significa que sigan circulando sin el privilegio de ser moneda legal en los EE.UU. La demanda de dólares fuera de los EE.UU. se basa en el hecho de que sean dinero de curso forzoso en este país.

También escribe que las reservas o activos de los bancos centrales no hacen circular el dinero fiduciario. Esto implica que el dinero fiduciario no necesita las reservas de los bancos centrales para circular. Sin embargo, éstas son importantes para el valor de una moneda, dado que aumentan la confianza en ella y pueden ser usadas para defender su valor comprando la moneda, rescatar el sistema bancario, reformar el sistema etc. (Bagus y Schiml 2009). Sin el respaldo de las reservas de la Reserva Federal el dólar podría perder mucho de su valor e incluso desaparecer.

Tampoco cree Sánchez Martínez que el apoyo oficial del gobierno juegue un papel importante en el valor de una moneda. Sin embargo un gobierno puede subvencionar su moneda con impuestos. Por ejemplo, puede entregar activos al banco central o al sistema bancario y así reforzar la confianza en ellos (Bagus 2009). Durante la Guerra Civil Americana los monedas de los Estados del Norte y del Sur fluctuaban en función de sus victorias y derrotas como señala Carver (1934, 203). Hazlitt (1978, 76) comenta el caso de un «peso» emitido por el gobierno japonés durante la segunda guerra mundial en Filipinas. En cuanto el gobierno japonés, que respaldaba este dinero fiduciario, fue expulsado por el ejercito americano el «peso japonés» perdió todo su valor:

> One of the most striking illustrations of the importance of the quality of the currency occurred in the Philippines late in World War II. The forces under General Douglas MacArthur had effected a landing at Leyte in the last week of October 1944. From then on, they achieved an almost uninterrupted series of successes. Wild spending broke out in the capital of Manila. In November and December 1944, prices in Manila rose to dizzy heights. Why? There was no increase in the money stock. But the inhabitants knew that

> as soon as the American forces were completely successful their Japanese-issued pesos would be worthless. So they hastened to get rid of them for whatever real goods they could get.

En resumen, el prestigio del gobierno, su capacidad de imponer impuestos, sus activos y las leyes de curso forzoso, aceptando para pagar impuestos sólo la moneda legal, soportan las monedas fiduciarias. Sin este soporte perderían en la competencia con el dinero mercancía.

IV
¿ES TODO EL DINERO FIDUCIARIO?

Sánchez Martínez mantiene que todo dinero sea fiduciario porque su valor depende de la fe con que se aceptará como dinero en el futuro. Aquí parece que existe una confusión semántica. La demanda monetaria de un bien depende de la expectativa de su poder adquisitivo en el futuro. El autor parece querer sustituir el uso de la palabra «expectativa», muy importante en economía por el uso de la palabra «fe». Se oscurece la diferencia esencial entre el dinero fiduciario y el dinero mercancía. El valor del dinero fiduciario, casi exclusivamente, se basa en la confianza de su aceptación en el futuro y el dinero mercancía se basa en una demanda monetaria y una demanda industrial. El oro tenía una gran demanda industrial antes de que se convirtiera en oro. El dinero fiduciario no tiene ninguna demanda industrial antes de que se impusiera a la fuerza como dinero.

V
DOS SUPUESTOS EJEMPLOS DE DINERO FIDUCIARIO PRIVADO

Sánchez Martínez da dos ejemplos para demostrar que un dinero fiduciario sin respaldo del Estado puede sobrevivir en competencia con dinero mercancía. El primer ejemplo es el Dolár Linden. El Dolár Línden es una moneda que se usa en un juego de internet

(Second Life). Los creadores del programa vendieron 300 Dólares Linden por 1 US dólar. Así había un conocimiento de los precios del pasado igual a cuando se sustituyó la Peseta por el Euro. Luego se dejó fluctuar el tipo de cambio y los creadores siguieron vendiendo Dólares Linden aumentando la masa monetaria en el juego, concediendo el derecho a reconvertirlos en dólares reales, lo que soportaba su demanda.

La existencia del Linden Dólar no demuestra que pueda sobrevivir un dinero fiduciario en la competencia del mundo real y convertirse en un medio de intercambio comúnmente aceptado. También el juego «Monopoly» tiene su propia moneda y los jugadores la aceptan para pagos en el juego. También los chips de los Casinos se usan como medio de intercambio en ellos. El Linden Dólar se puede usar para pagar, por ejemplo, en una cuenta premium en «Second Life». Su tipo de cambio fluctúa dentro de este juego. Existe una expectativa de canjear el Linden Dólar por la moneda de curso legal dentro de un margen de intercambio. Así el Linden Dólar es soportado por el US dólar. La existencia de la moneda de juego no muestra que podría sobrevivir en competencia con dinero mercancía en la vida real. Una moneda de juego no es un medio de intercambio común y generalmente aceptado.

El otro ejemplo de Sánchez Martínez es el Swiss Dinhar. Después de la Primera Guerra del Golfo el gobierno de Sadam Hussein no pudo importar los Dinhars antiguos producidos con tecnología suiza por el bloqueo económico. Empezó a imprimir nuevos Dinhars, los Sadam Dinhars. Mandó canjear los antiguos Dinhars por los nuevos. Sin embargo, en la región norte de los Kurdos la gente no le hizo caso. Sánchez Martínez cree que eso muestra que un dinero fiduciario (Swiss Dinhars) puede sobrevivir sin el apoyo de un gobierno. Sin embargo, el uso del Swiss Dinhars en el norte de Iraq se puede explicar perfectamente por el apoyo estatal esperado. Como señala Hal Varian:

> In fall 2002, as it became more and more likely that the United States would invade, the Swiss dinar became more and more valuable. This appreciation was driven by expectations. If the Kurds had expected that they would once again fall under

> Saddam's sway, the Swiss dinar would have quickly become worthless. As this became less likely, and the belief that future governments would accept the Swiss dinar became more widespread, the local currency became more valuable. Of course, every exchange rate movement can be interpreted in two ways: in the north, the Kurdish regional government initially interpreted the rise in the Swiss dinar against the dollar as a fall in the value of the dollar. The government soon realized, however, that since the dollar was stable against other currencies, the correct explanation was that recounted above: the increasing belief that the Swiss dinars would, in fact, be honored by future governments. The government was right. On July 7, 2003, the American occupation administrator, L. Paul Bremer III, announced the creation of a new Iraqi dinar that would be exchanged for the two existing currencies at a rate that implied that one Swiss dinar would be worth 150 Saddam dinars. (2004)

Las expectativas de un respaldo estatal de la moneda soportaba el valor de los Dinhars. Al final el autor menciona unas monedas locales como prueba de la posibilidad de un dinero fiduciario sin respaldo estatal. Es el caso de la localidad austriaca de Wörgl que emitía «Schwundgeld» en los años 30 del siglo pasado. Aquí se equivoca el autor porque el «Schwundgeld» era respaldado por la moneda de curso legal, el Schilling (Taghizadegan 2008, 40).

La existencia de unas monedas locales y comunidades de trueque se explica por tres razones (Taghizadegan 2008). Primero, muchas comunidades de trueque sirven para evadir impuestos. Es una forma de trueque la ayuda entre vecinos que realizan intercambios sin tener que pagar impuestos. Dentro de comunidades pequeñas estos sistemas de trueque tienen éxito porque disminuyen la carga fiscal. No convierte estos medios en medios de intercambio comúnmente aceptados. Segundo, como consecuencia de la existencia de muchas monedas locales su carácter es estrictamente regional. La gente usa este medio de intercambio para identificarse con su región y conoce personalmente a gran parte de los usuarios de la moneda. Tercero, se impiden los efectos nefastos de la inflación de la moneda estatal. Las monedas

locales actuales son medios de intercambio complementarios que existen al lado del dinero generalmente aceptado y su valor tiene una referencia con el dinero de curso forzoso.

VI
LA BANCA CON RESERVA FRACCIONARIA

Sánchez Martínez mantiene que la banca con reserva fraccionaria sería factible porque los individuos podrían pactar lo que quisieran. Cree que toda entrega de dinero a un banco es un préstamo hasta que el cliente pide el dinero (190). Como señala Huerta de Soto (1998) existen grandes diferencia entre un préstamo y un depósito. En los préstamos existen necesariamente plazos. En los depósitos no hay plazos dado que hay una disponibilidad completa y continua a favor del depositante. El elemento esencial de los préstamos es el traslado de la disponibilidad de bienes presentes a favor del prestatario. El elemento esencial de los depósitos es la guarda o custodia del tantundem. Por lo tanto, la obligación en un contrato de depósito es mantener siempre el tantundem a disposición del depositante. La obligación en un contrato de préstamo es devolver el tantundem transcurrido el plazo con los intereses.

En el sistema actual los depositantes entregan su dinero como un depósito y el banco lo usa como un préstamo. Hay un error *in negotio*. En una sociedad libre cada uno puede ofrecer los bienes y servicios que quiera, pero eso no significa que todos los contratos voluntariamente pactados sean válidos. Puede haber error *in negotio*, las causas del contrato pueden ser incompatibles o el cumplimiento del contrato puede ser imposible. Por lo tanto Sánchez Martínez ignora los argumentos jurídicos en contra del depósito bancario con reserva fraccionaria.

Luego plantea la siguiente posibilidad:

> Si los bancos incrementan los créditos que conceden a cargo de disminuir sus reservas lo que estarán haciendo es provocando una reducción del valor de sus depósitos y por tanto un incremento del precio de los bienes que se pueden adquirir con esos depósitos.

> Lo que reduce el poder adquisitivo de los poseedores de depósitos bancarios pero no el de los poseedores de dinero efectivo (192).

Este autor piensa que los depósitos tendrían un descuento en relación con el dinero en efectivo. Es cierto que instrumentos financieros y medios de pago como pagarés, acciones, préstamos o bonos varían en su precio conforme a la solvencia del deudor. Pero esto no es cierto para los depósitos. La esencia del dinero como institución es que reduce la incertidumbre. Con un saldo de tesorería la gente se puede enfrentar mejor a la incertidumbre del futuro. En un depósito el elemento esencial es la guarda y custodia, causa o motivo del contrato, lo que implica la disponibilidad completa. Incluso el depositante incrementa la disponibilidad cuando cree que el dinero está más seguro en el banco que en su bolsillo. Con la disponibilidad completa y continua no hay descuento en relación con el dinero en efectivo. Los depositantes creen que sus depósitos están completamente disponibles, lo que se manifestó por ejemplo en la indignación de los depositantes en Argentina cuando los bancos no se los devolvieron. Como los depositantes, conforme a la causa del contrato, creen su dinero disponible no existen descuentos de depósitos frente al pago en efectivo hasta el momento en que como en Argentina se suspenden los pagos o se pone en evidencia que un impago pueda ocurrir. De esta manera la expansión de créditos es inflacionista en la medida en que los depositantes consideren sus depósitos a su disposición.

VII
UNA ANALOGÍA INVÁLIDA

Termina Martínez Sánchez con la misma confusión que su artículo ha mostrado antes escribiendo: «Pero defender a las monedas con respaldo de materias primas o metales preciosos como alternativa a las monedas estatales fiduciarias es como defender la desnacionalización del ferrocarril postulando la vuelta de las diligencias de caballos.» Muchas veces las analogías fallan porque no se

parece un ejemplo al otro en un aspecto clave. Desafortunadamente las analogias pueden causar gran confusión a primera vista. Analicemos la analogia en detalle. Primero, es cierto que se puede pedir la desnacionalización de la moneda y del oro nacionalizado. Luego el mercado podría elegir la moneda que sea más adecuado y hemos analizado las razones por las que a largo plazo los metales preciosos probablemente ganarían a sus competidores y hemos discutido también los problemas de introducir dinero fiduciario en un mercado libre. No se pide volver a un patrón oro intervenido como existía antes sino la completa provatización. Defender la abolición del dinero publico y volver a un dinero privado que por las razones expuestas no puede ser fiduciario es más parecido a defender la abolición de la esclavitud y la vuelta a un mercado libre de trabajo.

Segundo, la frase del autor parece implicar que todo lo que ha sucedido después es automaticamente mejor. El ferrocarril es mejor que los caballos que son un medio de transporte anticuado e ineficiente. Aunque en las tecnólogias parece que siempre hay avance en muchas areas de la sociedad no es así. No todo lo que ha sucedido después es mejor. En la época de los caballos, los impuestos eran más bajos que hoy que tenemos unos ferrocarriles públicos. Sería mejor volver atrás a impuestos más bajos. Sería también mejor volver atrás a un mundo más libre con menos regulaciones y menos estado y menos contaminado en algunas áreas. Igualmente, sería mejor volver a un dinero más privado como un patrón oro. Es decir, no todo lo del pasado es inferior a lo que tenemos hoy. Y no todo lo del futuro será mejor a lo que tenemos hoy. Probablemente tendremos avances técnológicos, pero también es posible que haya menos libertad. Además, en unos 100 años la mayoría de nosotros habremos muerto. ¿Es esto mejor porque es más tarde? Desde el punto de vista individual no es bueno introducir esta faceta del futuro ya hoy. En suma, la analogia de Martínez Sánchez con referencias al mundo técnológico no funciona con el dinero. Un patrón oro no es un regreso sino un gigantesco paso adelante hacía un sistema monetario más estable, justo y libre.

VIII
CONCLUSIÓN

Acordamos con Martínez Sánchez que el Estado no debería intervenir en temas monetarios y que en una sociedad libre se pueda ofrecer lo que se quiera. La tesis general de Martínez Sánchez no es cierta. El mejor dinero posible no es el dinero fiduciario. El dinero fiduciario no puede surgir en un mercado libre porque no hay conocimiento de precios anteriores para basar la demanda monetaria. La existencia del dinero fiduciario se debe a las intervenciones del Estado que nacionalizó la moneda. Además, el dinero fiduciario no puede sobrevivir en competencia libre con el dinero mercancía porque ese activo sin el apoyo del Estado es muy arriesgado ya que no tiene el seguro de una amplia demanda industrial. Los ejemplos históricos de Martínez Sánchez sólo demuestran la posibilidad de medios de intercambio en ámbitos restringidos como comunidades de trueque o juegos, manteniendo en todo caso sus vínculos con un medio de intercambio generalmente aceptado y la importancia de las expectativas acerca de las intervenciones estatales. En relación con la reserva fraccionaria hay que subrayar que no todos los contratos voluntarios tienen que ser válidos en una sociedad libre por incompatibilidades jurídicas, error *in negotio*, causas incompatibles, cumplimiento imposible etc. Existe una clara separación jurídica y económica entre un depósito y un préstamo. El elemento esencial del préstamo es el traslado de la disponibilidad de los bienes presentes a favor del prestatario. La causa principal del depósito es la guarda y custodia y así se mantiene la completa disponibilidad y no hay descuento en relación con el dinero en efectivo.

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ALGUNAS REFLEXIONES COMPLEMENTARIAS SOBRE LA CRISIS ECONÓMICA Y LA TEORÍA DEL CICLO

JESÚS HUERTA DE SOTO*

Los tres años transcurridos desde el comienzo de la crisis financiera mundial y posterior recesión económica han supuesto la gran oportunidad de la Escuela Austriaca para popularizar su teoría del ciclo económico y su enfoque de análisis dinámico de la realidad social. En mi caso concreto, nunca pude imaginar a principios de 1998, cuando se publicó la primera edición de mi libro *Dinero, crédito bancario y ciclos económicos*, que doce años después, y gracias, sin duda alguna, a una crisis financiera y recesión económica sin parangón en el mundo desde la Gran Depresión de 1929, y que ningún otro paradigma de nuestra Ciencia pudo predecir y explicar satisfactoriamente, que mi libro sería traducido a catorce idiomas y publicado (hasta ahora) en nueve países, en varias ediciones (dos en Estados Unidos, cuatro en España). Además, durante estos últimos años he sido invitado y he participado en múltiples encuentros, seminarios y conferencias dedicados a presentar mi libro y discutir su contenido y tesis más importantes. En estas ocasiones se han planteado de forma recurrente algunas cuestiones que, si bien ya están en su mayoría cumplidamente discutidas en mi libro, quizás requieran ahora de un cierto tratamiento adicional a la vez sintético y recapitulatorio. Entre ellas mencionaremos en estas «Reflexiones» los siguientes temas:

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1.º La relación que existe entre la expansión crediticia y el daño medioambiental

Los teóricos de la denominada «ecología de mercado» (Anderson y Leal, 1993) han demostrado que la mejor manera de preservar el medio ambiente es extendiendo la creatividad empresarial y los principios del mercado libre a todos los recursos naturales, lo que exige su completa privatización y eficaz definición y defensa de sus correspondientes derechos de propiedad. En ausencia de éstos se hace imposible el cálculo económico, impidiéndose la adecuada asignación de los recursos hacia los usos más valorados, y fomentándose todo tipo de comportamientos irresponsables así como el indebido consumo y destrucción de muchos recursos naturales.

Sin embargo, los teóricos de la «ecología de mercado» han pasado por alto otra causa relevante que motiva el mal uso de los recursos naturales: la expansión crediticia que orquestan los bancos centrales e inyectan cíclicamente en el proceso económico a través del sistema de banca privada que actúa privilegiadamente con reserva fraccionaria. En efecto, la expansión artificial de medios fiduciarios genera una fase de burbuja especulativa y euforia financiera («exuberancia irracional») que termina afectando a la economía real, tensionándola indebidamente al aparecer como rentables múltiples proyectos que en realidad no lo son (Huerta de Soto, 2009). Todo ello somete a un stress innecesario todo el entorno natural: se talan árboles que no deberían cortarse, se poluciona la atmósfera, en ensucian ríos, se horadan montes, se fabrica cemento y se extraen minerales, gas y petróleo, etc. para tratar de culminar proyectos demasiado ambiciosos que en realidad los consumidores no están dispuestos a demandar, etc. Al final el mercado terminará imponiendo los criterios de los consumidores y múltiples bienes de capital quedarán ociosos poniéndose de manifiesto que se han producido por error (es decir, con una distribución geográfica y temporal equivocada), pues los empresarios se dejaron engañar por las facilidades crediticias y bajos tipos de interés decretados por las autoridades monetarias. El resultado es un daño ocasionado al entorno natural totalmente innecesario pues no se ha plasmado

en mejora alguna en el nivel de vida de los consumidores. Por el contrario, éstos se ven empobrecidos al haberse mal invertido el escaso ahorro real de la sociedad en proyectos inviables, demasiado ambiciosos (por ejemplo, un millón de viviendas en España que no encuentran comprador). Por tanto, la expansión crediticia obstaculiza el desarrollo económico sostenible y daña innecesariamente el entorno natural.

La conclusión de este somero análisis es obvia: los amantes de la naturaleza deberían defender un sistema monetario libre, sin banco central y en el que los banqueros privados operaran con un coeficiente de caja del 100 por cien para los depósitos a la vista y equivalentes, utilizando como base monetaria un patrón oro puro. Sólo de esta manera se erradicarían las etapas recurrentes de auge artificial, crisis financiera y recesión económica que tanto daño hacen al entorno económico, al género humano y al proceso de cooperación social.

2.º ¿Es, pues, realmente necesaria la expansión crediticia para impulsar el crecimiento económico?

Un argumento popular (mantenido y alimentado por no pocos economistas de prestigio como Schumpeter) es el de que la expansión crediticia y los bajos tipos de interés facilitan la introducción de innovaciones tecnológicas y empresariales que impulsan el desarrollo económico. El argumento es deleznable. En una economía de mercado tan importante es proporcionar financiación a un proyecto empresarial solvente y viable, como negárselo a los proyectos alocados e inviables: muchos «empresarios» son como caballos desbocados a los que es preciso restringir sus posibilidades de dilapidar los recursos escasos de la sociedad. El problema es que sólo el mercado es capaz de discriminar unos de otros proyectos, a lo largo de un proceso social en el que, precisamente, es clave el indicador de la cuantía real de los recursos ahorrados y la tasa social de preferencia temporal que ayuda a separar los proyectos que deben financiarse de aquellos a los que aún no ha llegado su momento y, por tanto, deben permanecer «en cartera». Es cierto que toda expansión artificial del crédito y de los medios fiduciarios que lo respaldan produce

una redistribución de la renta a favor de aquellos que primero reciben las nuevas disponibilidades monetarias y que ello no permite teorizar sobre los efectos netos que el proceso tendrá sobre el ahorro real de la sociedad (dependerá de cómo se compara la preferencia temporal de aquellos que salen ganando con la de aquellos que salen perdiendo). Pero existen indicios más que suficientes para pensar que la inflación desincentiva el ahorro real, aunque sólo sea porque genera un efecto de ilusión de riqueza que impulsa el gasto en bienes de consumo y el consumo de capital. Además, a la larga («ex post») es evidente que sólo puede invertirse lo previamente ahorrado. Pero lo previamente ahorrado puede invertirse bien o mal. La expansión crediticia promueve el despilfarro y la mala inversión de los escasos factores de producción en proyectos de inversión insostenibles y no rentables. Significa ello que el modelo de desarrollo económico basado en la expansión artificial del crédito destruye cíclicamente un elevado volumen de bienes de capital que empobrece significativamente a la sociedad (en comparación con el nivel que podría alcanzarse a largo plazo con un crecimiento sostenible, no forzado por la expansión crediticia y más acorde con los verdaderos deseos de los consumidores en cuanto a sus valoraciones de preferencia temporal).

Y que no se diga que la inflación fiduciaria al menos sirve para dar empleo a lo recursos ociosos, pues el mismo efecto puede lograrse sin mala inversión y despilfarro, flexibilizando los correspondientes mercados laborales y de factores de producción. A la larga, la expansión crediticia genera empleos insostenibles, inversiones equivocadas y, por tanto, un menor crecimiento económico.

3.º ¿Es cierto que los bancos causaron la crisis por asumir riesgos desproporcionados en relación con su capital?

Achacar la crisis al mal proceder de los bancos es confundir los síntomas con las causas. En efecto, los banqueros, durante la etapa de euforia especulativa se limitaron a responder a los incentivos (de tipos de interés reales nulos o negativos y expansión artificial del crédito) creados por los Bancos Centrales. Ahora,

estas instituciones, en un alarde de hipocresía y manipulación ciudadana, se rasgan las vestiduras, achacan a otros las consecuencias de sus propias políticas erróneas y se esfuerzan en aparecer como «salvadores de la patria» a los que debemos agradecer no haber caído en una depresión aún más profunda. Y ello sin que sea preciso repetir que precisamente durante la etapa del boom la inflación de precios de los activos financieros fue tan elevada que permitió que los banqueros lucieran cuantiosos capitales propios en sus balances que, al menos en apariencia, permitían un elevado apalancamiento y asunción de riesgos sin mayores problemas. Todo ello en un entorno de tipos de interés reales nulos o incluso negativos y de extraordinaria abundancia de liquidez deliberadamente impulsada por los bancos centrales. En estas circunstancias, a nadie debiera sorprender que marginalmente y de manera creciente se financiaran proyectos de inversión de rentabilidad cada vez más reducida y dudosa y de riesgo cada vez más elevado.

4.º ¿Entonces el problema de la banca consiste en no haber sabido casar adecuadamente los plazos de las operaciones activas —préstamos— y pasivas —depósitos recibidos—?

No, el problema es que han operado con reserva fraccionaria, es decir, no han mantenido un coeficiente de caja del 100 por cien en relación con los depósitos a la vista y sus equivalentes. Es decir, el coeficiente de caja del 100 por cien para los depósitos a la vista evita la expansión crediticia y los problemas de liquidez de la banca, pues sólo permite invertir lo previamente ahorrado; y si los inversores se equivocan en el plazo de maduración y sus proyectos son viables pueden pedir nuevos préstamos (basados en ahorro previo y real) para devolver los que van venciendo. Por el contrario, la expansión crediticia que se deriva de la banca con reserva fraccionaria induce una generalizada mala inversión de los recursos que muchos equivocadamente confunden con un erróneo casamiento de plazos, cuando el problema es mucho más profundo: inversiones insostenibles por falta de ahorro real. El problema económico fundamental no lo genera el error en el casamiento de plazos sino la ausencia de

un coeficiente de caja del 100 por cien, es decir, la banca con reserva fraccionaria.

5.º ¿Puede un banco aislado «salvarse de la quema» en caso de expansión crediticia generalizada?

Un banco individual puede hacerse la ilusión de salir indemne de un proceso de expansión crediticia si (a) piensa que es capaz de prestar marginalmente a los proyectos más rentables y seguros (aquellos que cuando llegue la crisis se vean menos afectados); y (b) cree que al iniciar su expansión crediticia materializada en esos proyectos los demás bancos seguirán la misma política expansiva al menos al mismo ritmo, con lo que no se quedará solo ni perderá reservas.

En la práctica lo indicado en (b) suele acontecer (expansión crediticia generalizada orquestada además por el banco central); pero (a) es muy difícil que suceda y no deja de ser más que una simple ilusión: los nuevos medios fiduciarios (depósitos creados) sólo pueden prestarse a tipos de interés relativamente reducidos y tan sólo pueden colocarse en forma de préstamo en proyectos cada vez más prolongados (es decir, que maduran en un futuro más lejano) y «arriesgados» (inciertos), proyectos que sólo son aparentemente rentables a tipos reducidos, pero que en cuanto éstos suben dejan inmediatamente de ser viables por falta de suficiente ahorro real.

Además, si algún banco tenazmente decide no implicarse en el proceso de expansión crediticia, pierde una creciente cuota de mercado y corre el peligro de convertirse en una exótica irrelevancia, por lo que el efecto corruptor de la banca con reserva fraccionaria sobre todo el sistema bancario es obvio (este argumento ya fue expuesto por Longfield en el siglo XIX). Por otro lado, la práctica bancaria continuamente ha confirmado este fenómeno (por ejemplo diversos presidentes de bancos españoles me han indicado que en la etapa del boom sabían que gran parte de los préstamos inmobiliarios que concedían eran difícilmente viables a largo plazo y muy arriesgados, pero que se vieron «forzados» a participar en múltiples préstamos sindicados y operaciones dudosas por las presiones de los analistas, los

agentes del mercado y la necesidad de crecer o al menos mantener su cuota de mercado).

6.º El ahorro como magnitud «flujo» frente a los saldos de tesorería en forma de depósitos como magnitud «fondo» o «stock»

El dinero no es un bien de consumo (salvo para el avaro «tío Gilito») ni un factor de producción. Es un tercer tipo de bien: un medio de intercambio comúnmente aceptado. El dinero, además, sólo cumple su función de medio de intercambio como bien presente. Sin embargo, puede ser prestado, en cuyo caso se convierte en un activo financiero para el prestamista al que deja de producir servicios como medio de intercambio.

Es por tanto absurdo decir que el dinero depositado que forma parte de los saldos de tesorería del actor ha sido «ahorrado». El depósito es un saldo de tesorería y, por tanto, una magnitud stock o fondo. El flujo de renta no consumida da lugar al flujo de ahorro que se invierte en activos financieros o directamente en bienes de capital, salvo que alguien decida incrementar indefinidamente sus saldos de tesorería (aumento de la demanda de dinero). Los saldos de tesorería, además, pueden incrementarse no sólo reduciendo el flujo de consumo sino también reduciendo el flujo de inversión (o ambos).

El problema es que con un flujo de ahorro estable y determinado, si alguien decide colocar sus saldos de tesorería en forma de depósitos a la vista en un banco con reserva fraccionaria crece el flujo de préstamos y de inversión sin que haya aumentado el flujo de ahorro real lo cual, precisamente, desencadena el ciclo económico.

Sólo la banca libre con coeficiente de caja del 100 por cien impide la anterior anomalía al hacer imposible para los bancos el asiento

préstamos a depósitos
---------- x ----------

en el que actualmente fundamentan su principal actividad, pues todo depósito, en consonancia con los principios generales

del derecho estaría siempre respaldado en caja por el correspondiente saldo de tesorería

caja a depósitos
--------- x ---------

7.º ¿Es cierto el argumento de Leland Yeager de que es imposible distinguir los depósitos a la vista de los préstamos a muy corto plazo?

Estando los principios y la teoría claros (que los depósitos a la vista y equivalentes han de estar respaldados en todo momento por un coeficiente de caja del 100 por cien) el mercado encuentra las soluciones más operativas y prácticas en cada momento.

En un sistema bancario ideal, con un coeficiente de caja del 100 por cien, desde luego que los préstamos a corto plazo (1 a 3 meses) serían fácilmente distinguibles de los depósitos a la vista, emprendiendo los agentes implicados las habituales operaciones de casamiento de flujos que tan eficientemente son implementadas en el mercado libre en base a bien probados y ya casi inveterados principios de prudencia.

Los «falsos» préstamos que oculten depósitos serán fácilmente identificables sobre todo teniendo en cuenta que en la frontera del muy corto plazo (de una semana a un mes) la demanda de verdaderos préstamos es muy reducida (si el matching o casamiento de flujos está bien efectuado y salvo en circunstancias muy excepcionales).

En suma, lo importante es si subjetivamente un actor considera que un depósito «a plazo» o un (falso) «préstamo» forma o no parte de sus saldos de tesorería con disponibilidad inmediata. Si es así, nos encontramos ante verdaderos depósitos «a la vista» que exigen un coeficiente de caja del 100 por cien.

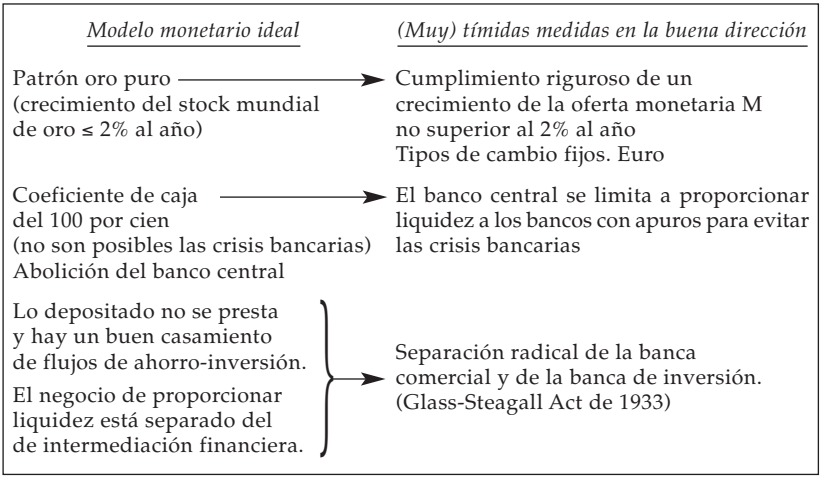
8.º ¿Cuáles son los escenarios posibles cuando se desencadena una crisis como la actual?

Básicamente cuatro:

1.º El reinicio de la burbuja, ante dosis masivas de nueva expansión (es casi el peor de los escenarios, pues sólo se logra posponer la depresión a costa de hacerla luego mucho más grave: es lo que sucedió en 2001-2002, cuando se alargó la fase expansiva seis años más pero a costa de una crisis financiera y recesión económica como no se experimentaban en el mundo desde 1929).
2.º El extremo opuesto: la caída en cadena de todos los bancos con reserva fraccionaria y la desaparición del sistema financiero (tragedia que se ha evitado «in extremis» con el salvamento —bail out— de la banca en todo el mundo).
3.º «Japonización» de la economía: la intervención gubernamental (fiscal y crediticia) es tan intensa que se bloquean los procesos espontáneos del mercado que tienden a sanear y reestructurar los errores de inversión cometidos en la etapa de la burbuja, con lo cual la economía se mantiene indefinidamente en recesión.
4.º Lo más probable: que a «trancas y barrancas» el mercado que es dinámicamente muy eficiente, termine saneando los errores de inversión: las empresas y economías domésticas sanean sus balances reduciendo costes (sobre todo laborales) y devolviendo préstamos. Las empresas que quedan son ya «sanas» y el creciente ahorro permite financiar nuevos proyectos de inversión que sí son sostenibles a largo plazo. El crecimiento del desempleo alcanza su zenit cuando el saneamiento se ha completado, siendo en esa situación prioritario liberalizar al máximo el mercado laboral (contratación, salarios, despidos y negociación colectiva) para reintroducir de nuevo en el circuito productivo (ya sano) a los parados y que éstos se empleen en proyectos viables. Además se precisa la máxima austeridad presupuestaria en el sector público, evitar subir los impuestos y reducir la burocracia y las intervenciones administrativas en la economía.

9.º Actualmente ¿qué medidas podrían tomarse que fueran en la buena dirección y se aproximaran siquiera muy tímidamente al sistema financiero ideal de una verdadera economía de mercado libre?

El siguiente cuadro permite dar respuesta a esta pregunta:



En muchos ámbitos del mercado intervenido que hay que reformar (privatización de calles, inmigración liberal, etc.) es un grave error pensar que hay que eliminar toda regulación mientras no se efectúe la reforma ideal. Todo lo contrario: mientras no se reforme hay que mantener una regulación mínima que simule, en la medida de lo posible, los resultados que tendría el sistema ideal: en el ámbito monetario, patrón oro puro con coeficiente de caja del 100 por cien y sin banco central. No obstante, es preciso repetir una y otra vez que, en vez de intentar torpemente replicar lo que haría el mercado, con parches y paños calientes de muy dudosa efectividad, lo mejor e ineludible es, sin duda alguna, efectuar la reforma definitiva y radical que exige el modelo monetario ideal.

10º Conclusión: el desconcierto de teóricos y ciudadanos

La sociedad está confusa y desconcertada ante la crisis. Su desconexión con los políticos es casi total. La ignorancia y desconcierto de éstos es también espectacular. Pero lo más grave es el vacío teórico de la mayor parte de los propios teóricos de la economía que no aciertan a entender lo que sucede, por qué ha sucedido y lo que puede llegar a suceder. El desprestigio de la economía neoclásica (hipótesis de eficiencia de los mercados, teoría de las

expectativas racionales, fe en la «autorregulación», principio de racionalidad de los agentes, etc.) es total y se interpreta erróneamente como un fracaso del mercado que justifica más intervención estatal (los keynesianos achacan la crisis al súbito «pánico» financiero y a la falta de demanda agregada que el estado debe completar). Unos y otros fracasan en su comprensión del mercado y por tanto en sus análisis y prescripciones. El vacío teórico en pleno siglo XXI es enorme. Afortunadamente la teoría austriaca del ciclo en general y mi libro *Dinero, crédito bancario y ciclos económicos* en particular están ahí para llenar ese vacío y acabar con el actual desconcierto.

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DESTRUCTION AND RECONSTRUCTION OF THE CAPITAL STRUCTURE

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One of the entrepreneurial strategies that, according to Schumpeter, is responsible for the capitalistic process of Creative Destruction is the introduction of a new method of production (Schumpeter 2003, 83).

Austrian economics characterizes a «method of production» as a set of capital goods and original factors of production inserted into an entrepreneurial plan, which is directed to satisfy consumer needs. Therefore, we could say that capital goods do not work in isolation, but as parts of two structures: they develop a role in the individual plan of the entrepreneur and also in the spontaneous social order that unintentionally results from the coordination of the different entrepreneurial plans.

In this context, the introduction of a new method of production implies that at least one entrepreneur tries to modify his plan either by rearranging his combination of capital goods and original factors of production (due to a change in consumer preferences or due to the appearance of some new technology) or by using new capital goods or new original factors of production (due to the discovery of a new technology or due to an increase in savings). Thus, both cases require the entrepreneur to disrupt not only his previous plan, but also the existing links with other plans in the incumbent capital structure.

This obviously raises the question of whether these disruptions lead to a progressive and sustained capital accumulation or if, on the contrary, they cause a necessary destruction of some capital goods.

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At least since Cantillon and Turgot economists have taught that progress and growth depend partially on the quantity of capital, which tends to increase gradually with the level of savings. However, Schumpeter's claim —that the introduction of a new method of production implies a Creative Destruction process— seems to suggest that some capital will be lost with the new investments. We would have, on the one hand, more capital by means of the creation of new plans but, on the other, less capital because of the disruption of the existing plans.

Although this approach may be initially shocking, only by departing from the erroneous idea that all capital goods are homogeneous one could consistently claim that new methods of production do not destroy any capital at all, i.e., only supposing that capital goods combinations and structures are irrelevant in relation to their final output, the view of a non-disturbable capital accumulation could be held. Once heterogeneity of capital goods comes into the picture, it is no longer possible to believe in such a hypothesis.

Capital goods are heterogeneous as long as they perform different functions and are neither interchangeable nor perfectly convertible (Lachmann 1977; 1978). Heterogeneity also implies the existence of complementarities and substitutabilities among capital goods; i.e., some capital goods will work together in the creation of value and other capital goods will replicate the task or take the place of previous ones. These relations of complementarity and substitutability can appear both inside a given entrepreneurial plan and among entrepreneurial plans (in other words, inside the structure of production): a tractor may be a complement of land but tractor industry is in general a substitute for horse farm industry; radio may be a substitutive capital good of television for journalists but radio industry is a complement of car industry.

Complementary capital goods can thus exhibit increasing returns to scale while substitute capital goods will always imply decreasing returns to scale for those capital goods which are displaced.

Thus, it does not follow whatsoever that the introduction of a new method of production entails in any case an absolute

increase in the value of capital goods: as Schumpeter thought, a new method of production, that is, a change in the capital structure, could perfectly involve the destruction and consumption of some capital, turning economic progress from a linear evolution of progressive accumulation into a complex process with many fluctuations in the value and specially in the composition of capital.

But as we have already stated, capital goods can be substitutes or complements inside a given method of production or outside of it. And therefore entrepreneurial investments may focus on complementing or destroying his own capital or in complementing or destroying someone else's capital.

Obviously, the modification of an entrepreneurial plan is generally commanded by looking for the complementarities among capital goods, as long as no entrepreneur wishes to depreciate part of them. However, this increasing complementarity among capital goods usually requires the constitution of some reserves of substitutive capital goods that allow the entrepreneur to rapidly replace a capital good in case it fails. Entrepreneurial plans that involve many complementary capital goods become so increasingly complex and interdependent, that the failure of one of its pieces could mean the paralysation of the whole structure. In order to avoid that contingency, substitutive capital goods are needed to act as spare parts. Usually these «reserve assets» will not take the form of already produced capital goods, but of a general power to acquire in the least possible time the required capital goods: we are referring to the cash holdings of the firm and other short-term assets that will turn rapidly into money.

In this sense, the higher the liquidity of an agent, the higher the ability to adapt himself to internal and external changes. Holding cash, an entrepreneur can go to the market and purchase the specific capital good which he is lacking; or, if it doesn't exist yet, he may pay for its production.

However, sometimes the entrepreneur may decide to invest in substitutive capital goods not in order to replace his complementary goods, but to alter his incumbent plan. This will usually be the case of great innovations that promise huge returns even after

taking into account value losses of the capital goods whose functions are displaced. For example, the introduction of the PC inside the administrative unit of a company made typewriters useless, but nonetheless it was implemented because the expected productivity gains compensated the associated depreciation of capital.

This depreciation does not mean that replaced capital goods cannot perform any function in the economic system. In the worst case, they still have a scrap value derived from the marginal utility of their components. Usually, however, replaced capital goods are only displaced from their higher-value function, becoming then available for satisfying the satisfaction of lower-ranked ends. Entrepreneurial plans need to be readapted at the macro-level, i.e., at the level of the structure of production of the economy, seeking the second most valuable destinations for the displaced capital goods.

Therefore, the Schumpeterian Creative Destruction not only entails a *destruction* of entrepreneurial plans by the *creation* of new methods of production, but also the *subsequent creation* of new entrepreneurial plans that, on the one hand, incorporate the replaced capital goods and, on the other, perform a coordinative task among all of these modified plans. Consequently, it would be more properly labelled as Creative Destruction and Reconstruction.[1]

However, this process of reconstruction of the capital structure is in no way an automatic one due to the particular features of capital goods, which make them mostly specific and highly inconvertible. Every capital good has been created to perform a given and predetermined function within an entrepreneurial plan. After its substitution, it becomes idle and available for being employed within other entrepreneurial plans. But this replacement process could be blocked because of the difficulties to adapt all

[1] Spanish economist Jesús Huerta de Soto has labelled this process as coordinated social Big Bang: «As the entrepreneurial act coordinates, it creates new information which in turn modifies within the market the involved actors' general perception of ends and means. New maladjustments ensue, and entrepreneurs begin to discover and resolve them, and in doing so produce coordination in an ongoing process of creativity and ever-expanding knowledge and resources». (Huerta de Soto 2009, 10).

the specificities of the displaced capital good into any profitable entrepreneurial plan.

Economic profitability, as the ultimate regulator of feasible entrepreneurial plans, conditions the degree of capital consumption after the introduction of a substitutive capital good inside a plan or inside the capital structure. If no profitable plans that encompass the substituted capital good can be designed, it will remain idle, maximizing the consumption of capital; if, otherwise, some entrepreneur finds a profitable employment for it, it will be relocated inside the structure of production, avoiding part of the capital consumption.

Therefore, it is essential that the price of a capital good is flexible enough after it has been substituted for another capital good. If its price can move downward rapidly enough, many entrepreneurial plans which were not profitable at its higher prices will become feasible at the new lower prices, minimizing capital losses. If, however, prices are sticky, substituted capital goods may not be relocated for a long period —until economic growth makes profitable their use at those higher prices—, eroding the potential for wealth creation.

Under conditions of free market competition, capital goods prices tend to fall quite fast, because if their owners are not aware of any better use, they will try to sell them at the higher bid prices, which will be determined by the entrepreneur who expects a higher discounted marginal productivity for those capital goods.

Obviously, there could be some speculative ties-up of the substituted capital good, as long as its owner asks for a higher price that the one offered by the other entrepreneurs. However, an idle capital good represents an opportunity cost to its owner —the non-earned interest rate— which will force him to sell it sooner than later to the highest bidder. This is especially true in the case of highly leveraged entrepreneurs who do not have the option of waiting for better prices as the repayment of the debt pressures them to liquidate their assets.

I
IMPLICATIONS FOR THE BUSINESS CYCLE

The previous analytical framework has many applications in several fields of the economic science: firm organization,[2] economic development, capital structure and also the business cycle. We will focus on the latter topic of regular processes of boom and bust.

An economic boom is a period during which economic agents are increasingly borrowing short in order to lend long (Fekete 1984). Families, firms and especially financial companies finance the acquisition of long-term maturity assets by issuing short-term maturity claims. Doing this, they depress the long-term interest rates and push up short-term rates, i.e., they flatten the yield curve.

One typical example of this process is the banking business of maturity transformation, consisting on, for example, lending long-term loans such as mortgages with the creation of very short-term obligations such as demand deposits (Huerta de Soto 2006). Other cases that have become quite widespread during the so-called «subprime crisis» are the purchase of assets-backed securities by investment banks such as Bear Stearns, Lehman Brothers or Goldman Sachs with the funds obtained from daily repo operations, or the acquisition of long-term mortgage-backed securities by the government sponsored enterprises with the issuance of agency debt with much shorter maturities.

In all these cases, short-term savings are removed from short-term capital investments and delivered to finance long-term projects, with the well-known effect of lengthening the different stages of the structure of production for more time than that which consumers are willing to wait to consume. In other words, the artificially lowered long-term interest rates encourage entrepreneurs to start plans that are not sustainable with the real level of savings.

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[2] 2009 Nobel Prize Oliver Williamson has been a pioneer in exploring this field: «Williamson emphasizes asset specificity —the degree to which resources are specialized to particular trading partners— as the key determinant of the firm's boundaries, defined as the set of transactions that are internal to the firm (or, put differently, the set of assets owned by the entrepreneur)» (Klein 2009).

These malinvestments consist of the continuous addition of new capital goods to the incumbent structure of production, some of which *substitute* close to consumption capital goods for far from consumption capital goods, while the others *complement* these last ones (Hayek 1967). In both cases, the relative prices of the new capital goods are fostered up due to the lower interest rates and due to the larger amounts of fiduciary credit which they are able to attract, hence increasing their profitability in relation to the profitability of the old capital goods that get replaced. At the end, the structure of production becomes more illiquid and leveraged than before: it takes much more time to transform all the inputs into all the desired outputs. There has been a destruction of one structure of production compatible with agents' time preference with the creation of a different one one incompatible with their rate of impatience.

But this second capital structure, characterized by its longer maturity period and by its higher degree of complementarity, is not only incompatible with agents' real preferences, but it is also more sensitive to any change. Higher short-term indebtedness and higher investment in long maturity assets mean lower free cash holdings available to rapidly readapt the entrepreneurial plans. Any shift in expectations —which will finally come about because of the divergence between the plans of the savers and the plans of the consumers— will tend to destroy huge amounts of capital initiating an economic crisis.

Crises are periods when previous malinvestments are revealed and when entrepreneurs realize that they had destroyed capital in the process of producing capital goods which were expected to have a higher value than that which they really have. That is the consequence of both having discounted their future cash flows at a weighted average cost (wac) artificially lowered by the maturity mismatching process and by having erroneously forecast cash flow receipts which could never exist due to the unsustainable nature of the structure of production induced by the fiduciary credit.

The role of entrepreneurs during a crisis is thus to reconstruct this unsustainable capital structure, trying to minimize capital losses by reassigning malinvestments to their most highly valued

use in the new context of no fiduciary credit expansion and by creating new complementary capital goods that perform the task of linking the blossoming projects. Hence, almost paradoxically, during an artificial economic boom capital is being destroyed while during an economic crisis capital is being subsequently recreated to ease the reorientation of erroneously produced capital goods.[3]

The question is then how to achieve a rapid readjustment that allows us to accelerate recovery. Attending to our previous exposition, there are two main conditions to fulfil. First, it seems clear that if we have to reallocate capital goods by creating new structures in which they could fit, it is necessary to increase savings. The more savings, the more new plans can be implemented and the more old plans can be maintained. With savings, it is possible to refinance the term of the debts and to speed up the maturity of the previous investments, thus reducing the maturity mismatch. Less consumption goods are demanded and more can be produced, which tends to coordinate consumers' and savers' intertemporal plans.

Secondly, it is also essential that relative prices, and specially capital goods prices, adapt flexibly to the new conditions of the economy. Malinvestments can only be reallocated fast enough if capital goods prices do not remain higher than their discounted marginal productivity at their new higher-valued uses. Rigid prices will cause capital goods to remain idle until the appearance of new complementary capital goods that foster up their discounted marginal productivity. But idleness has a high opportunity cost which the owners of malinvestments will only accept to suffer while they expect the productivity downturn of the unsustainable plans to reverse soon. So, in the absence of some kind of guaranteed prices, prices tend to fall sooner than later in a crisis.

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[3] «The boom squanders through malinvestment scarce factors of production and reduces the stock available through overconsumption; its alleged blessings are paid for by impoverishment. The depression, on the other hand, is the way back to a state of affairs in which all factors of production are employed for the best possible satisfaction of the most urgent needs of the consumers» (Mises 1998, 573).

Therefore, everything the government does against these two principles —savings and flexible prices— will tend to prolong the economic crisis and everything the government does in order to ease them will favour the recovery: governmental deficits, price controls and blind bail-outs will deepen the crisis, while tax reductions based on budget surpluses and curtailing income endowment programs to owners of capital goods will tend to shorten it.

II
CONCLUSION

The introduction of a new method of production, i.e. the rearrangement of an already existing entrepreneurial plan or the creation of new entrepreneurial plans, entails not only a destruction of capital by its substitution for other capital, but also the subsequent creation of other capital goods which complement the new ones and which coordinates the disrupted plans within the new structure of production.

Although it is not possible to predict apodictically whether Creative Destruction will successfully expand our wealth in the long run, we can be certain that production plans are only modified after a methodical judgment and analysis of their profitability has been made by the entrepreneur. He is the agent who, with his local and particular knowledge, selects those projects that offer the highest expected value.

However, we can be sure about the negative effects of one specific process of Creative Destruction: the one caused by the fiduciary credit expansion engendered by the financial strategy of borrowing short and lending long. Its unavoidable distortions in the form of uncoordinated plans among savers, consumers and investors guarantee that part of the new methods of production that replace the old methods of production will lose their functionality inside the system before they have become profitable. In other words, capital will be destroyed in net terms during an inflationary boom.

This partially destroyed structure of production can and eventually will be reconstructed during the crisis, a readjustment

process which may be accelerated with more savings and price flexibility. Therefore, governments should refrain from incurring in budget deficits and bailing out enterprises in order to avoid their total or partial liquidation and thus the bargain prices of their assets. Otherwise, more of the old capital will be destroyed and the new one will be prevented from appearing.

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THE ECONOMICS AND ETHICS OF CELTIC IRELAND

BRIAN GERARD CANNY*

> The laws which the Irish use are detestable to God and so contrary to all laws that they ought not be called laws...[1]
>
> King Edward I of England (1277)

For thousands of years the Gaelic speaking territories of north-western Europe were home to a polycentric legal order that has been of great interest to Austro-libertarian theorists in the field of free-market legal reform (Rothbard, *For a New Liberty*, 1970). This ancient legal system, known as «Brehon law» after the caste of professional judges called Brehons who wrote and upheld the laws, was best preserved on the island of Ireland where it remained in place from pre-history up until the 17th century.

To understand the economics and ethics of this early Irish legal system one must first detach oneself from the modern setting of ultra-individualistic liberal-socialist Europe. It is impossible to explain Brehon law without simultaneously introducing the reader to the social, political and cultural set-up within which the system of Brehon law existed or what Prof von Mises would have called its thymology.[2] For example, there were multiple competing legal schools co-existing in ancient Ireland, a point that might instantly confuse many readers unless one explains how such institutions were radically different in both

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[1] Peden (1977).

[2] Mises (1957, p. 266), «While naturalistic psychology does not deal at all with the content of human thoughts, judgments, desires, and actions, the field of thymology is precisely the study of these phenomena.»

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theory and practice from their modern counterparts. The Brehon legal system also advanced a scholarly oral tradition and a unique legal language of its own which took over seven years to master. As a result there are few surviving legal texts so I shall be drawing heavily upon manuscripts from the 14th-16th centuries detailing the period from the 7th-8th centuries. These texts include wisdom texts, sagas, praise-poetry, saints' lives, and monastic rules which were recorded and preserved by a class of professional poets who held the most powerful position in Irish society at the time.

Let me first introduce the political setting of the period in question. The basic territorial area in ancient Ireland was the *túath* which may best be understood as the tribal lands of an extended family. There was on average approximately 150 kings or chieftains who ruled their respective túatha. Some kings were the subjects of other kings in a system of over-lordship but many kingdoms formed trade and, as we shall see, rights granting treaties with each other. Although there were at times powerful kings who held whole provinces under their authority, no king ever became the *Ard Rí* or «high king» of all Ireland. During this time the Irish population hovered around 400,000 inhabitants and the size of each kingdom was typically 3,000 people. Ireland was densely forested until after the English conquest of Ireland and the on-set of the industrial revolution and the population during the reign of Brehon law was largely rural with exceptions for the many monasteries and the occasional Viking settlements in later periods.

The cultural-legal institutions of ancient Ireland have been summed up under the following headings: tribal, rural, hierarchical, in-egalitarian, family-orientated, Christian and honourable (in the sense that the society was obsessed with honour, oaths, reputations and hospitality). This is in complete contrast to the unitary, urbanised, egalitarian and individualist society of our time (Binchy, *Early Irish Society*, 1953). For Austro-libertarians, the most fascinating feature has been the intense private-property centred focus which lay at the heart of the entire political-legal institutional set up.[3]

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[3] «Thus ownership of property in all its forms was the basis of a man's legal status and marked the extent of his participation in and protection within the legal system» (Peden 1977, p. 87).

To be clear to those who may confuse legal polycentrism and the institutional implementation of the anarcho-capitalism advocated by Murray Rothbard, I wish to pause first to clarify. Even though there was a polycentric legal order in ancient Ireland, there were still forms of taxation within the túatha and private property was not held as an absolute. With ownership of property came responsibilities and obligations that go beyond what Rothbardian libertarians would usually deem ethical. The meaning of legal polycentrism is simply that the law itself is not handed down by the king, not that there necessarily be no king. The law was formulated by a class of poets who were members of various competing legal schools. Even though the king could not make the laws, the polycentric legal order found agreement that the natural organisation of society was monarchy. The king of each túath could legally expect the direct loyalty of his servants, particularly in times of war, and a special tax to fund these endeavours. The king's responsibilities included *Slógad* (War), *Cairde* (Treaties- rights extensions) and *Óenach* (Assemblies). To explain how these functions formed the structure of ancient Irish society I shall begin by introducing the reader to an overview of how the polycentric legal system operated.

So to begin, who had rights in the túath and how were they earned? Well, not everyone had rights, a horrifying thought in today's hyper-egalitarian world. Foreigners or outsiders did not necessarily have rights for example. There were three types of foreigners who were essentially outcasts, namely *Ambue, Cú glas* and *Murchoirthe* who were all different classifications of outlaws whether debtors or men without honour or exiles from foreign lands. Rights were based on a complex code of honour. If one had honour, one had rights and if one lost one's honour one could be expelled from society. How one acquired honour is quite complex and we will discuss that later on.

Ancient Ireland is unique in that the legal system provided for a financial compensation for nearly all infringements of rights. The penalties varied and were determined by a variety of factors such as the rank or honour-price of the victim within the community. A person's status or honour price, known as the *log n-enech* or «price of his face», was determined largely by his wealth. Provincial kings

for example were given an honour price of 42 milking cows. A compensatory honour price could be paid for murder, satire, serious injury, the refusal of hospitality, theft, violation of his protection, animal trespass, and minor damage to property.

This legal system operated on a basis of oath and testimony. The inegalitarian nature is now in open relief in how this system worked. High ranking members of society commanded an oath that weighed more than the lower ranking members.[4] The native Irish never subscribed to the Roman principle of all citizens being equal before the law (Kelly, 2009, p. 7). Thus, in a situation where it was «my word against your word» the higher ranking person won.

Class could be divided roughly into two groups: the *nemed* and the non-*nemed*. *Nemed* is a word that has a connotation of «sacredness» or «holiness». It was thought that the more honourable you were the more «holy» and closer to God you were. In a proto-Christian understanding of existence, the ancient Irish embraced a hierarchical structure of society or what later Christians described as the hierarchy of being, the «*scala naturae*». This is the scholastic concept of an ascending order of beings in the universe, comprising inanimate matter, plants, animals, and rational human beings; above them are the immaterial created spirits or angels; and finally God, whose essence is immeasurably more sublime than that of any creature.[5] Each level in this hierarchy is complete in its own perfection, while each preceding level depends on the beings above it; and all levels totally depend upon God. As Saint Augustine wrote, «*non essent omnia, si essent aequalia*»[6] or «if all things were equal, all things would not be.» It is this inequality that the ancient Irish embraced which, after all, makes the division of labour possible and thus allows civilisation to exist. The introduction to one legal text entitled *Senchas Már* even proclaimed that the world had numerous problems before the creation of that text. Among those problems

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[4] Three law texts dealing mainly with rank in early Irish society have survived: *Críth Gablach, Uraicecht Becc and Míadlechta*.

[5] Fr. John Hardon, *Modern Catholic Dictionary* (Hardon).

[6] Saint Augustine, *The Confessions of Saint Augustine* (Augustine).

was that everyone was in a state of equality and this was a problem the text sought to resolve!

The *nemed* class held certain privileges which allowed it to retain its honour when confronted with the law. Once a claim was made against an individual there were various ways of getting the offender to court to atone for his offence. One way was the institution of distraint where the person's cattle was essentially kidnapped and herded off his land until he agreed to appear in court. For the *nemed* class however, such an intrusion brought great dishonour and would affect their status and thus, since they were generally the wealthy end of society, they would use violence against the distrainers to protect their honour. To over-come this problem the plaintiff could fast against him, for example, whence he would wait outside his home and fast and pray till the offender submitted to see the case in a court of law.[7] This in turn weakened the honour of the *nemed*, particularly if he did not submit to the courts to have the case heard as he would be seen to be unjust and acting in a manner inappropriate to his status.

Upon this honour system was built the system of surety-giving, or insurance, which laid the foundation upon which the entire contract-rights based structure of ancient Irish society was built. Later I will go into details of how it worked, but for the time being it can be said that one may enter into a contract only with regards how much weight, or perhaps one should say how much value, your honour is worth. One cannot enter a contract that is higher than one's honour-price. For large purchases one must seek other individuals to throw the weight of their honour in behind yours so that the chance of default was spread more evenly across the community in accordance with your honour. Your honour could be considered the ancient equivalent of have a credit rating! In the case of a king, however, the Wisdom Texts advise against going surety, or insuring with your honour, a contract made by a king for if he defaults it will be difficult for you to drag him to court because of his high rank and his resistance to the distraint of his cattle. Various methods were devised to

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[7] The institution of fasting for justice existed in other ancient cultures such as India too.

circumvent this awkward situation such as a «whipping boy» could be chosen to take the brunt of a king's default. The whipping boy's cattle could be distrained instead of that of the king, the shame of distraint would be avoided on the king but he would still be under social pressure to attend court to ensure that he did not lose his honour price.

There are many circumstances in which a person's ranking may be changed. If a *nemed* behaves in a manner unbefitting to his status or fails to carry out his obligations, his rank is reduced. In the case of a king, for example, his rank is reduced, or in other words, he is stripped of his honour-price if he displays cowardice in battle. The same holds true for a stumbling (sexually immoral) bishop, a fraudulent poet and a dishonest lord. When one loses one's honour-price, one is degraded to what is called a «small person» i.e. a commoner. Most interestingly is the individualisation of honour-price reduction. The reduction of a man's rank incredibly does not involve his family despite the intense emphasis on familial ties.

In contrast to the Patricians of early Rome or the Brahams of India, the early Irish *nemeds* were not a closed caste. It was possible to become a *nemed*. According to the text *Uraicecht Becc*, elevation in rank may result from man's art (*dán)* or husbandry or God-given talent. He then quotes the important legal maxims «*a man is better than his birth*» *(ferr fer a chiniud)*[8] and «*an art is better than an inheritance of land*» *(ferr dán orbu)*.[9] Even in modern Gaelic, there exists a phrase which was used to describe the class system. «*Ní bhíonn uasal ná íseal ach thuas seal thíos seal*» translated literally as «there are not nobles nor commoners, but only those who are up for a while, and those who are down for a while», demonstrating the transient nature of the actual content of the strata of society in ancient Ireland.

To understand ancient Irish law one must first understand the kin-group, or *derbfine*, whose members are all descendants through the male line of the same great-grandfather. A kin-group possesses very considerable legal powers over its members. Each kin-group

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[8] Binchy, *Corpus Iuris Hibernici*, 1978.
[9] *Revue Celtique*, Paris 1870-1934.

has its own kin-land *(fintiu)* for which every legally competent adult male in the group has some degree of responsibility. A man may own land independent of his kin, and is free to dispose of it as he sees fit, but no-one can sell his share of the kin-land against the wishes of the rest of the kin.

So how exactly did the kin insurance-surety system work? The kin-group may have to pay for the crimes and debts of its members. So if an offender absconds —and he has no son or father from whom reparation can be extracted— his kin becomes liable. If payment is not forthcoming voluntarily, the plaintiff can distrain cattle from a kinsman of the offender, using a special form of distraint. An offender who has involved a kinsman in liabilities must subsequently make good the loss incurred. If he fails to do so he may be ejected by the kin, thereby losing his legal rights in society. One who evades his obligations to his kin cannot be given protection, even by a person of nemed rank. Although it may sound overly punitive, such rules generate tremendous social and legal pressure to conform to the rules of society under the penalty of social expulsion and ostracism. This principle of kin-liability was one of the many rules unfamiliar to the Anglo-Normans, and there were frequent references in English documents of the 13th-17th centuries to the Irish custom of «*kincogish*» meaning «liability for the crimes of a kinsman».[10]

When a member of a kin-group is illegally killed, his or her kinsmen get a share of the *éraic* or «body-fine.» If the culprit fails to pay, the kinsmen are expected to prosecute a blood-feud against him. The crime of *finfal* «killing a kinsman» breaches the solidarity of the kin-group, and is therefore particularly abhorred. The kin-slayer forfeits his share of the kin-land, but is still under obligation to pay for the crimes or debts of other kin-members.

The head of the kin is known as the *ágae fine or cenn (or conn) fine*. He is chosen by election among the kin-members on the basis of his superior wealth, rank, and good sense. It is notable that the Irish kings were in general not strictly hereditary kings like elsewhere in Europe, but that the king was chosen from the broad

[10] Kelly, (2009), p. 13.

circle of family members in the kin-group. The king spoke for his kin at public occasions, such as an assembly or court of law. He gave pledges on behalf of his kin to ensure the fulfilment of any responsibility which kin-members may have towards the king, Church or poets.[11] As public representative of his kin, he is open to satire if a kinsman fails to discharge his obligations. For example, a poetess may legally satirise him if one of his kinsmen allows her pledge to become forfeit. He may also take on responsibility for an unmarried kinswoman on the death of her father. He pays any fines which she may incur, and receives half of her *coibche* «bride-price» if she marries.[12]

Unlike many other legal systems, the king himself does not live above the law. The king's position within the *derbfine* (kin-group) is dependent upon him being «honourable» which is strictly determined by custom. If he loses his honour he loses his position and becomes a commoner. Ways he may lose his honour include him being unjust, being defeated in battle, showing cowardice in battle, extortion, kin-slaying, if he tolerates satire, if he defaults on his oath, if he does not maintain a retinue and if he has an imperfect body.[13]

Many early law-codes were put together at the instigation of powerful kings. For example, the Anglo-Saxon law was codified at the direction of Kings Alfred and Ine. The Emperor Justinian did the same for Roman law, King Hammurabi for the Assyrian law, Kings Rothari and Liutprand for Lombardic law. By contrast there is little evidence of royal involvement in the composition of the Old Irish law-texts. In general, the formulation of the law seems to have been in the hands of a legal class (with strong clerical links) which had some degree of national organisation and was not under the control of any particular king. As Professor Gerard Casey mentions, it was of great benefit that the political

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[11] Binchy, *Corpus Iuris Hibernici*, 1978. In this text he is described as *aire coisring* «lord of obligation» (lit. «of drawing together») on account of his duties on behalf of his kin.

[12] Note that men paid a woman's family for her hand in marriage, the opposite of the dowry system operated in other ancient cultures.

[13] According to the Wisdom Texts, the necessity for the king to be beautiful was very important in ancient Ireland.

fragmentation of this small country was so radically decentralised since it provided a setting of legal polycentrism to flourish.[14]

The law-texts of the various Saints and scholars that I have been referencing thus far are the remnants of the codes of theory and practice that were originally written to instruct judges. There were a number of centres of legal knowledge at which such instruction could be obtained, but there is no longer any firm evidence of their location at the period of the composition of the law-texts (7-8th centuries). In the 9th century *Triads of Ireland*, however, there are references to the monasteries of Cloyne, Cork and Slane as legal centres. The law-text *Senchas Már* that I have repeatedly mentioned, which translates literally as «Great Tradition», was a text put together in the Northern midlands of the island. Prof. Binchy has suggested that some other law-texts emerged from a «poetico-legal» school (Binchy, *Early Irish Society*, 1953). He refers to this group as the *Nemed* collection of texts, and points to their pre-occupation with the rights and duties of «men of art», especially poets. Other law-texts appear to have been members of other competing schools with differing emphasis on Ecclesiastical law. After the Norman invasion, clerical involvement in the formation of the law decreased as the law came to be propagated by an elite group of families who maintained a high standard of ancient Gaelic and Latin.

The law was enforced through a complex system of suretyship, pledging and distraint rather than by a king and his officials. The

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[14] As Prof. Casey notes (Casey, 2010):

> Kelly attributes this low- or non-involvement of the kings in the law-making process to what he terms the «political fragmentation» of the country at the time of their composition/redaction, clearly seeing this as a negative point and assuming without grounds for so doing, a prior state of non-fragmentation. Kings could, however, issue emergency legislation (after defeat in battle or in the presence of a plague). If the king was not involved in law-making, neither was he involved in law-implementation. This was done via a tort-like process involving suretyship, pledging and distraint.
>
> Irish society in the historic period up to the seventeenth century constitutes one of the best examples of a functioning anarchic society. Irish law was the product of a body of private and professional jurists (called *brithim* or *brehons*) and was flexible and capable of development to response to evolving social conditions (Peden 1977, p. 82).

king may enforce «emergency» ordinances which bind his túath after defeat in battle or after a plague. These are ordinances voiced at an assembly (óenach) which are confirmed by a king who takes pledges for their observance. The king also enforces ordinances of traditional law and of ecclesiastical law by taking pledges from his subjects, which are forfeit in the event of non-compliance. The wisdom texts have a vision for the role of the king such that a king should enforce the law in a general way by suppressing robbers, crushing criminals and preventing lawlessness (McNeill, 1935).

When a conflict arose between túatha, for example if a member of one túath was killed by a member of another, there was a system of legislative alliances that allowed for the peaceful resolution of the conflict. If the kings in the respective túatha were each subordinate to the same over-king, then the injured party could appeal to the court of the over-king for there to be justice. This would normally involve the payment of the body-fine (cró) to the injured party from the aggressor. The subordinate king goes to the court of the over-king and takes a hostage representing the culprit. To release this hostage, the culprit must pay the body-fine. One seventh of this goes to the hostage. Of the remainder, one third stays with the over-king, one third goes to the victim's kin, and one third goes to the victim's lords (*flaithi*). The subordinate king is responsible for dispensing the payment to the kin and the lords, and he himself receives one third of the lords' third. A subordinate king and the over-king both receive payment for their part in the enforcing of the law. Using this incentive system, crimes were eagerly pursued.

The king's role may be summarised in his three main functions. He acted as president of the assembly, he was commander of the armed forces in times of war and he was charged with promulgating the law.[15] Prof. Casey notes that while the Irish had kings who had a role in enforcing compliance to the law, it is important to realize that they were not lawmakers. Moreover, they could, in fact, be

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[15] McNeill, Eoin, *Early Irish Laws and Institutions*, «the chief function of a king of a túath were three: he was president of the assembly, commander of the forces in war, and judge in the public court.» D.A. Binchy has however, argued that the evidence of the law-texts does not substantiate MacNeill's view of the king as a public judge.

sued, just as any other freeman albeit with difficulty (Casey, 2010). With regards the legal system he has some role in relation to judgement in important cases. He —along with the bishop and chief poet— is described as «the cliff which is behind the courts for judgement and for promulgation». So it seems that the judgement (although it is formulated by a judge or judges) is promulgated by the king, or other dignitary.[16]

So, what sort of economic system arose from the application of Brehon law to the day-to-day life of the ancient Irish? Well, for the average small farming peasant, he was advanced a fief of stock or land by a big landowner or a lord in return for food-rent. If a client pays the rent fully for at least seven years, the fief becomes his property on the lord's death. Here we see an early example of homesteading, or perhaps more accurately squatters rights being legally enforced in ancient Ireland. This base client is required to perform a fixed amount of manual labour (*drécht gíallnae)* for his lord. He must join the reaping party (meithel) in his lord's cornfields, and must help in the construction of the rampart about his lord's *dún (fortified dwelling).* The possession of clients provided the lord with status, as well as food-rent and services. With this grant, the lord could expect winter hospitality at the peasant's homestead. *Cáin Lánamna*[17] describes the relationship between a lord and his base clients as that between a husband and wife or the Church and its monks. A lord may lose his honour price if he refuses hospitality, shelters a fugitive from the law, tolerates satire, eats food known to be stolen, betrays his honour in some way or if he fails to fulfil an obligation to his clients.

The early Irish Church was not merely an organisation of pious and learned men and women: it also owned a great deal of land and other wealth. Between 7-8th centuries, organised paganism was gradually relegated to obscurity by the influence of Christianity. Over time, high-ranking clergy came to be treated as superior to kings. A religious legal jury emerged. There were churchmen whose evidence could not be overturned, even by a king. The Churchmen in question were called *suí*, a bishop and a hermit

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[16] Kelly, Fergus, *Peritia 5 (1986), 74-106.*

[17] *Cáin Lánamna*, The law of Lanam.

(*deorad Dé*- exile of God). The latter is especially revered for his ability to perform miracles and is obliged to act as an enforcing surety (*naidm)* in cases where a contract has been bound by the gospel of Christ or by the heavenly host. The *Penitential of Finnian*[18] lays down spiritual, financial and practical atonements to be undertaken by a cleric who murders a layman. He must go into exile for ten years, of which seven are spent in penance and abstinence. He must then return, compensate the bereaved kinsmen, and offer himself to the parents of his victim, saying «Behold, I am in place of your son, I will do for you whatever you tell me.»

As with the *nemed-persons*, the cleric's status depends on his possessing the necessary qualifications and behaving in a proper manner. The relationship between the Church and the rest of society was seen in terms of a contract according.[19] If a Church building is allowed to become a den of thieves or a place of sin it can be destroyed without penalty. A sexually stumbling bishop loses his *nemed*-status «because purity is required of a bishop». A cleric who has impregnated a woman may become laicised and take on responsibility for the child. Triad gives the three ruins of a Túath as being a «dishonest lord, an unjust judge, a lustful priest» (has society changed much since then?). Offences committed by a cleric against a layman are paid in the usual manner.

The only lay professional who has full *nemed* status is the poet. All other professionals are counted as *dóernemed or «sacred but unfree»*. The poet's most important functions are to satirise and to praise. His high status reflects early Irish society's deep preoccupation with honour: it is damaged through satire and increased through praise. In many ways, the honour system for this deeply spiritual people acted much like as if there was a higher power adjudicating in disputes. The Gaelic obsession with honour can be summed up with the words of a 16th century English historian who described the Irish as «greedy of praise and fearful of dishonour».[20]

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[18] Saint Finnian.

[19] Kelly, Fergus, *A Guide to early Irish Law*, p. 41. In particular, Prof. Kelly references the ancient text *Bretha Nemed toísech* for this.

[20] Stanihurst, quoted E. Knott, *Irish Classical Poetry (Dublin 1960) 73.*

According to the ancient texts, the effects of poetry could be devastating. It could cause facial blemishes and poets are said to be able to «rhyme to death» both men and animals. They also hold the power of prophesy. According to the ancient texts, poets derive their skill from «encompassing knowledge which illuminates, breaking of marrow and chanting from heads» (Watkins, 1963). There were two strata of poets, the *Filí* and the *Bairds*. The *Baird* were inferior in status and accomplishment in comparison with the *Filí*. The essential difference between the *Filí* and the *Baird* is that the latter lacks professional training.

The degree to which the *Filí* was involved in the theory and practice of the law in the early Irish period is difficult to assess. Possibly the jurists, *(brithemain)* originated as an offshoot from the parent order of *filid*. It appears that a separation of law and poetry had not taken place in some law schools since the pen of the poet was so decisive in ensuring compliance. The poet is entitled to use his power of satire in law enforcement across boundaries. Enforcing the claims for members of a túath is among the three prerogatives of a chief poet.

Verbals assaults on a person are regarded with the utmost seriousness. To satirise, in Gaelic, is the word «*áerad*» *or* «*rindad*», both of which have the basic meaning «to strike» or «to cut», which indicates the destructive power satire is seen to hold. It is said to cause blisters or even death (Robinson, 1912). There are two types of satire: justified and unjustified. The honour of a satirised king may be restored by either a praise poem, *moladh donigh coir* meaning «praise which washes away satire», or through addressing the cause upon which the satire was made. The poem is normally directed at the head of a kin for if he tolerates unjust satire he loses his honour price. If justified he must pay whatever fine (*éraic*) he owes or give a «pledge to save his honour». The pledge indicates his willingness to discharge his liabilities or to submit the case to arbitration. The list of types of satire which require payment of the victim's honour-price include the following; mocking a person's appearance, publicising a physical blemish, coining a nickname which sticks, composing a satire, repeating a satire composed by a poet in a distant place, taunting, wrongfully accusing another of theft, publicising an untrue story which

causes shame and even satirising a dead person. A poet is not entitled to payment for a false praise-poem on the grounds that false praise is equivalent to satire.

Satire can legally be used by a *filí* to exert pressure on a wrongdoer to get him to obey the law. However, to satirise anyone without just cause is a serious offence, requiring the payment of the victim's honour-price. Authors of law-texts seek to punish this misuse of the magic power of satire by reducing or even cancelling the poet's status. The illegal satirist is treated with deep hostility in religious material: the satirist or «*cáinte*» is doomed to spend all eternity up to his waist in the black mires of hell, along with sorceresses, brigands, preachers of heresy, and other miscreants. The *cáinte* is the embodiment of shamelessness in ancient Ireland.

Much stress is placed on the duty of hospitality in the laws, wisdom-texts and sagas. To refuse food and shelter where it is due is to be guilty of the offence of *esáin (lit. Driving away)* and requires compensation appropriate to the injured party's rank. A monastery from which guests are turned away loses its legal status. Its buildings can be damaged or destroyed without compensation.

An important principle of Irish law is the right of a freeman to provide legal protection for a certain period of time to another person of equal or lower rank. This fitted in well with the Catholic Church's tradition of *asylum* in and around a monastery.[21] Hence, the Old Irish word *termonn* (from Latin *terminus* «limit», extent [of the monastic lands]) developed into its modern meaning of «sanctuary, refuge or monastery.» To kill or injure a person under protection is to commit the crime of *díguin* «violation of protection». This entails payment of the protector's honour-price, as well as the appropriate payment to the victim or his kin. A freeman is also felt to exercise permanent protection over his own house and its environs. If a person is killed or injured within this area the culprit is guilty of *díguin* against the householder. It was illegal- even for a cleric or layman of *nemed* rank- to give protection to various categories of absconder however, e.g. a runaway wife or slave, a

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[21] *Die irische Kanonensammlung*, Wasserschleben, Leibzig 1885, bk 28, *De Civitatibus refugii*, «on cities of refuge».

fugitive killer, an absconder from his kindred and even a son who fails to look after his father.

With regards theft, the early Irish adhered to a very complex compensatory system. Some of it was lifted straight out of the Bible. For example, «if a man steals a sheep he must give back four sheep» stems directly from Canon law, Exodus 22: 1. There were several important factors in determining the severity of a crime. These include questions like where the theft took place, the value of the stolen objects, the rank of the owner of the stolen object and the rank of owner of the land where theft took place. The habitual thief loses his rights in society. A woman who steals is not entitled to receive payment (*díre*) or honour-price (*lóg n-enech*) for any offence committed against her. A man who steals loses his entitlement to sick-maintenance (*othrus*) or fines for injury (*féich*). A house which has been turned into a den of thieves can be destroyed without compensation.

Of interest to many libertarian theorists is the ancient Irish view of who owns stolen goods. The sale of stolen goods is included in the list of contracts that are invalid, even if bound by sureties. A man who receives stolen goods is referred to as *fer medóngaite* or «a man of middle theft». In true libertarian fashion, he is guilty of a crime only if he is aware that the goods were stolen which must be subsequently returned to the rightful owner (Rothbard, *The Ethics of Liberty*, 1982). If a thief brings stolen goods into another's house, he must pay half the householder's honour-price (as well as the usual fine to the owner of the good (Kelly, 2009, p. 148)). An Old Irish quotation from an otherwise lost portion of text refers to stolen property found in a tree. The accompanying commentary states that it becomes the finder's property if he does not know who the owner is; if he does know he himself is guilty of theft. Here we see classical Lockean property rights theory being implemented centuries before Locke put pen to paper.

The Celtic honour system gave rise to essentially a form of virtue legislation. A person who witnesses an offence without attempting to prevent it may be guilty of a crime, what the ancient texts call a «crime of the eye» or «*cin súlo*». Such an offence is one of four things that debase a lord and his family. The law is taken

to its ultimate conclusion that «everyone who looks on at an offence consents to it».[22] Ecclesiastical legislation was particularly harsh on this matter. According to *Cáin Adomnáin,* translated as the holy laws of the ancient Irish Saint Adomnán, the onlooker who witnesses the slaying of an innocent child and who does not attempt to save him «with all his might» is deemed as guilty as the perpetrator of the crime.[23] If a man intervenes, but fails to stop the crime there is no penalty and clergy, women, children and the insane are exempt from this obligation

Most treaties are made in the form of «*Cor bél*», which literally means «treaty of mouth». Commercial undertakings, agreements to marry, agreements to foster children, agreements to engage in co-operative farming and agreements to enter clientship are all taken in the form of a verbal treaty. The law requires that a contract must be formally witnessed and bound by sureties. A person cannot contract independently for a contract greater than his honour price. If he wishes to enter such a contract he must get permission from his kin.

There were various grades of judges competent in different areas. These included Óes dána, otherwise known as the judges for craftsmen and *Brithem bérla Féine* looked after traditional law & poetry. *Brithem trí mbérla* were the best judges as they had knowledge of «three languages»: Canon law, Poetry and Traditional law. The Brehons of Ireland were divided into several tribes and families such as the McKiegans, O'Deorans, O'Brisleans McTholies. Every king had his peculiar brehon dwelling within his túath. Each túath had its own official judge, Brithem túaithe, who presumably was appointed by the king. The judge was in constant attendance of the king. The brehon derived the greatest part of his income from the king.

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[22] *Aititnech gach aircsinach, CIH 1315.15-8*. One can see that with this custom of «crime of the eye», the Irish were already well prepared for the Christian interpretation of virtue, epitomised by Christ's call to men for chastity: «*But I say to you, that whosoever shall look on a woman to lust after her, hath already committed adultery with her in his heart*.» Mathew 5: 28, Douay-Rheims Bible.

[23] *Cáin Adomnáin*. The Rothbardian libertarian may see such a law as being grossly unjust, but do not forget that Hoppe's polycentric sociology permits for such laws (Hoppe, 2001).

The question may be asked, how did other trained products of the law-schools survive? Having no official position, such men earned a living by arbitrating between two (or more) parties who had previously agreed to abide by their decision. They charged a fee which they justified by calling for «the payment for legal language». Others taught in law-schools. No doubt, much like today, many came from wealthy families. According to the Wisdom texts, the three blemishes of a judge were said to be foolishness, ignorance and negligence.

The courts system itself was also quite intricate. To reduce the chance of error, many cases were decided by more than one judge. There is a saying in the Wisdom texts that «A free people (sáeraicme) should have two judges». Brehons had to themselves an obscure and unknown language which none could understand except those that studied in the special schools they had.[24] Seven main areas of legal knowledge were studied: rights of sons, rights of monks or monastic clients, rights of lordship, rights of marriage, rights of kinship and Cairde (Treaties between Túatha). The island was dotted with Brehon Law schools of learning.....

The ingenious polycentric nature of the ancient Irish legal system provided a clear incentive for good judgement since a judge had to give a pledge of at least five ounces of silver in support of his judgement. His judgement was not valid unless he swore on the Gospel that he would utter only the truth. If he refused to do so he was no longer regarded as a judge within the túath, and the particular case is referred to the king or the bishop. The legal maxim «*Cach brithemoin a báegul*»[25] sums this up nicely which means «to every judge his error.» If his judgement was challenged and he could show it to be correct, the judge himself was entitled to a cumul (female slave) from the complainant in

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[24] Conell Mageoghagan, *Anal Clon, s.a.* 1317. «This *fenechus* or brehon law is none other than the sivil (sic) law, which the brehons had to themselves in an obscure & unknown language, which none could understand except those that studied in the open schools they had, whereof some were judges and others were admitted to plead as barresters.» Conell, writing in 1317, is referring to the Irish lawyers of the preceeding century.

[25] Kelly (2009), p. 54: «Every judge must bear the responsibility for any mistake which he makes.»

addition to his normal fee. A mistake or oversight on the part of a judge can be remedied by his paying a fine, but for a more serious breach of duty, he was deprived of his office and his honour-price. This was his punishment, for example, if he passed judgement after hearing only one side of a case. To the ancient Irish, one of the three falsehoods that God avenged most on a túath was a false judgement secured by bribery.

In the Irish Saga Táin Bó Cúailnge, Queen Medb is the real leader of Connacht, and occasionally partakes in the fighting herself. In the Wisdom texts they praise the reticence, virtue and industry of women and say that the «Three steadiness of a good woman are: a steady tongue, a steady virtue and a steady housewifery» (Éigen, 9th Century). On the other hand, women are censured for sexual promiscuity, making spells, illegal satires and thieving.

The inertness and enduring strength of the ancient Gaelic law is demonstrated in the fact that despite the best efforts of powerful Christian clerics, divorce and bizarre marriage arrangements still remained in place. In total there existed nine forms of sexual union. These included a union of joint property, a union of a woman on man-property, a union of a man on a woman-property, a union of a man visiting (with kin consent), a union without kin consent with a woman running away with man, a union where a woman allows herself to be abducted, a union where a woman is secretly visited (without kin consent), a union of rape and finally a union of insane persons. Prof Kelly notes that polygamy was permitted and was probably practiced widely (Kelly, 2009, p. 70). The Church opposed polygamy but with limited success.

In the case of a child born of a union forbidden by a girl's father, the man alone was responsible for raising the child. In ancient Irish society, the husband was felt to purchase his bride from her father. Divorce was permitted, which again indicated the lack of penetration of Christianity into the legal schools in comparison to medieval Europe. In a divorce the share due to each depends on the status of the marriage, the amount of property brought into it by each partner, and the proportion of the household work (aurgnam) borne by each. A woman who leaves her husband without just cause is classed as an absconder. Such a woman has

no rights in society, and cannot be harboured or protected by anybody, of whatever rank.

There are seven grounds for men to divorce their wife. They include unfaithfulness, persistent thieving, a woman inducing an abortion on herself, a woman bringing shame on his honour, a woman smothering her child and finally, and puzzlingly, «if she brings without milk through sickness». Similarly, there are grounds for divorce for a woman. If she is repudiated for another woman, if her husband fails to support her, if he spreads a false story about her, if he circulates a satire about her and if he tricked her into marriage by sorcery. A husband may strike his wife to correct her, but she may divorce him if his blow causes a blemish. Sexual failings on behalf of the husband are also a cause for concern. If he is impotent or sterile, if he becomes so fat he is unable to have intercourse, if he is practicing homosexuality, «If he spurs the marriage bed and prefers to lie with little boys», if he has a lack of reticence about sexual relationship with his wife and if he receives holy orders (mutual obligations) the wife has the right to divorce her husband.

There is much mythology surrounding the allegedly high legal status of women in ancient Ireland. Women were in fact generally without independent legal status. They were debarred from acting as a witness in court. They were prohibited from making a valid judgement without the permission of her superior (usually her husband or father). Their status was largely in agreement with other early legal systems «her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never fit for independence».

If a crime is committed or debt incurred by an unmarried woman it is normally paid by her father (or kin if he is dead). The status of marriage determines who pays. There also existed bizarre and largely malicious traditions such as the right of a chief wife to inflict injury on her husband's second wife (non-fatal injury for a period of three days). Humorously, but what is also very disturbing, is that the second wife can only scratch, pull hair, speak abusively and inflict other minor injuries in her defence. A crime against a woman is regarded as a crime against her guardian (husband, father, son, or head of kin). A woman's honour and

purity is prized and the full honour-price of her guardian must be paid in compensation if a woman is kissed against her will.

Despite her lack of independence in many ways, there were also exceptions to the rule.

Under certain circumstances a woman may give evidence in court. This is the case when she is in danger of death at childbirth, as is the evidence of a sick man facing death, being unlikely to lie given the nearness of eternal retribution. Even in a marriage into which a woman has brought little or no property, she can «disturb» (i.e. Impugn) her husband's disadvantageous contract *(dochor)* provided she is a chief wife. One reform towards a more private-property orientated society that was brought about through Christianity was the gradual allowance of a woman to donate personal items to the Church, thus affirming her exclusive right over certain items. This, over-time, opened the gate for a gradual logical extension of her property rights into other areas.

At the bottom of society were the slaves. The male slave (Mug) and the female slave (Cumul) were typically prisoners of war, foreigners picked up by slave traders, debtors and the children of parents who sold their kids into slavery. Originally there was not any legal restriction against ill-treatment or even death at the hands of their master. However, the slave-owner also bore some risk. The master must pay for any crime which the slave commits. Reciprocally, the master is entitled to offences committed against him. A runaway slave «absconder» cannot be given protection even by a high-ranking *nemed*. If a freewoman allows herself to be impregnated by a slave, she alone is responsible for rearing the child.

The effect of Christianity on ancient Irish society can be seen in the effect it had on the law. Even though, as I have already explained, Brehon law was incredibly immune to change and heavily engrossed in tradition, Catholicism became a powerful instrument of change that successfully brought about reforms that libertarians would generally recognise as positive. Saint Patrick, the patron saint of Ireland, himself being originally a slave, sought to free the slaves and sex with slave women was quickly legislated against. Over time aspects from the laws that did not conform to Christianity were abolished. One immediately noticeable effect

was that it raised the status of women as the Church sought to make it a more serious offence to kill a woman than to kill a man, rather than the opposite. The penalty for such a crime was to have your hand and foot cut off before being then put to death.[26] Other reforms like the elevation of monastery abbots and bishops to a higher level than kings curbed the growth of regal power and the establishment of *tearmonn* or asylum on monastic grounds ensured for fairer trials.

The currency system revealed in the law texts and other documents is extremely complex. The value of an article or the amount of a fine may be given in terms of *cumals*,[27] *sets*, cattle or ounces of silver. Sometimes a combination of two or three currencies is used. For example, the honour-price of the lowest grade of king was seven female slaves. Originally this presumably meant that seven female slaves were actually handed over to the king for a breach of his honour-price. But it is clear that from the 7th century onwards some other currency may be substituted for female slaves. The unit of area also became known as the *cumal*. The value of a *cumal* of land ranges from 24 milch cows for best arable land down to 8 dry cows for bogland. From reading the ancient texts it is difficult to determine exactly how big an area it was. It is obvious that the area a *cumal* represented was originally equivalent to what one female slave would purchase.

In the local economy it is difficult to draw a dividing line between barter and sale as early Christian Ireland did not have a system of coinage. The first coins began to appear only about 1000AD in Dublin, one of the main trading ports. Cattle were undoubtedly the most common form of currency in the period of the law-texts. Even after the coinage was introduced by the Norsemen in the early 10th century, and re-introduced by the Anglo-Normans in the early 13th century, cattle continued to be the normal currency of the Irish. One can only imagine how complicated it must have been to determine the relative value

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[26] *Cáin Adomnáin*, the fines for mere injury to a woman are similarly heavy.

[27] Confusingly, *cumal* is occasionally used in the Old Irish law-texts (7th-9th centuries) as a general term meaning «value, price, payment» rather than a fixed unit of value.

of different currencies which must have been continually revised through-out the year with regards failed and successful harvests.[28] For this reason alone, the ancient Irish faced extreme uncertainty which made substantial capital accumulation a near impossibility. The annals record a nearly perpetual series of wars and famines where cattle were slaughtered on mass, thus annihilating the medium of exchange in the process.

It is of note that the ancient Irish appear to have developed a reasonably advanced system of financial instruments. Prof Fergus Kelly explains the different types of ancient financial instruments as follows: Ón (*úan)* corresponds to commodatum (a loan for use) of Roman law and *Airliciud* corresponds to the mutuum (a loan for consumption) although Airliciud is seen to conflict with the Church's ban on usury. Lending was discouraged in the Wisdon texts as it was seen as a high risk for the lender. Furthermore, the law of lending clearly distinguishes a loan for a fixed period *(fri airchenn)* and an open loan *(fri anairchenn)*.[29] The latter is compared with God's gift of life to man which can be called back at any time (Kelly, 2009, p. 118).

Most of the farmland in a túath was kin-land, otherwise known as *fintiu*. When kin-land was being divided, each heir got a share which he would work with the help of his wife (or wives), sons, daughters, and perhaps servants or slaves. Each heir farmed as an individual, but his fellow kinsmen had some control over what he did with the land. He could not sell his kin-land without the permission of the rest of the kin. If he became an *esert* (absentee) and neglected to fence his holding properly, a near kinsman (*fine comocuis*) could be distrained to do the job in his stead. The man who made a surplus through successful farming or the practice of a profession could acquire further land. Thus there was a strong financial incentive to be productive. A portion of the land in each túath was attached to the office of kingship and therefore became the property of each king as he succeeded

[28] The difficulties of determining relative prices were, in practice, simplified due to the Cumul's monetary role as the unit of account. Debts were denominated in Cumul's, and settled in any number of alternative exchange media (Howden, 2009).

[29] For a detailed description of how open loans can disrupt an economy see (Huerta de Soto, 2006).

to the throne. Some of this land may be assigned to the *Brithem* (judges), chief poet, and physician. Much of the land belonged to the Church and some of it was rented out to Church clients.

Frederick Engels thought that the land of the early Irish *derbfine* was held in common by the «tribe» (Engels, 1884) and used this erroneous fact to frame his theory of the anthropological evolution of property. He did not realise that it was not a tribe, but a kin-group that was in control. The 1865-1901 edition of the *Ancient Laws of Ireland* almost always translated *fine* as «tribe» rather than «kin-group». This misled Engels and other modern political thinkers into believing that land was held in common by all members of the *túath* in early Ireland. In fact, early Irish society clearly attached great importance to the principle of the private ownership of property, and even extended it to mines and fishing-rights areas that are not even recognised today. Just like the discredited works of Margret Mead glorifying «the noble savage», Engels theory of communism in ancient Ireland can be totally disregarded as erroneous.

As we have seen, the Early Irish Legal system was a polycentric property-based institution with a complex and detailed legal code. It is a testament to its coherence that it lasted thousands of years largely unchanged and that it managed to assimilate wave upon wave of invaders into its customs. Indeed the English Lord Chancellor Gerrard, in his 1577 Notes of his Report on Ireland, wrote denouncing the «English degenerates» who immigrated to Ireland and «*embraced the Irish Brehon law instead of the sweet English government of justice*.» The Irish culture was so attractive that the invaders (the Vikings, the Normans, the English and countless waves of other invaders going back into the obscure depths of ancient history) were famously described as becoming «More Irish than the Irish themselves». It may be argued that the Brehon legal system was so rigid and traditional that its inability to alter may have been its downfall however. The lack of clearly defined property-rights within the derbfine, for example, no doubt stunted economic development and hindered capital accumulation. The most glaring technological disadvantage of the Irish was their lack of a stable currency however. Cattle were the primary unit of exchange until the ultimate conquest of the last

northern chieftains in the 16th century. However, to those who cling to the Hobbesian view that without a legal monopoly of the law civilisation could not exist, the Brehon legal tradition of ancient Ireland challenges the reality of such a theory.

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