

Notas

THE SLOW AND HIDDEN ROAD TO SERFDOM

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It is seldom that liberty of any kind is lost all at once.

DAVID HUME

I FREEDOM AND THE RULE OF LAW

Without the rule of law limiting the discretionary powers of government agencies, but also of other organizations and individuals no individual freedom is possible. If government representatives or private persons can order at their discretion individuals to behave in certain ways, no individual liberty is guaranteed. As Immanuel Kant expressed it «man is free if he needs to obey no person but solely the law.» And even if individuals are only obliged to follow the law, their freedom is always threatened if these laws can be changed arbitrarily by any individuals or government authorities. This is even true for democracies in which duly elected parliamentary majorities (that is minorities) are allowed to introduce new laws or change old ones relating to any sphere of human activities. The problem has been clearly stated by Alexis de Tocqueville (1945, vol. I, p. 270):

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When I see that the right and the means of absolute command are conferred on any power whatever, be it called a people or a king, an aristocracy or a democracy, a monarchy or a republic, I say there is the germ of tyranny, and I seek to live elsewhere, under other laws.

Similar ideas are expressed by Friedrich v. Hayek (1944, p. 62):

The Rule of Law thus implies limits to the scope of legislation: it restricts it to the kind of general rules known as formal law, and excludes legislation either directly aimed at particular people, or at enabling anybody to use the coercive power of the state for the purpose of such discrimination.

Nobody is allowed to be punished except on the basis of a law which existed before the time of his action. All individual activities which are not forbidden are allowed. In such a system of a free society individuals can calculate the consequences of their decisions in advance and conclude agreements with others which are not in contradiction to the legal framework.

But as pointed out by de Tocqueville, this is not sufficient. The majority even in a democracy (including majorities in referendums and popular initiatives) should not be permitted to pass general laws forbidding everybody to become fat or to smoke, as long as he does not damage others by doing so. And nobody should be forced to take up sporting activities to preserve her health.

But though such regulations by patriarchal states are dangerous they look trivial compared to problems in other countries. Many in the West hoped that the so-called Arabian revolutions in Tunisia, Egypt and Libya in the first decade of the 21st century would lead to democracies with the rule of law. But they overlooked that majority decisions can be an existential danger for minorities suppressed by them. And it was obvious from the beginning that more or less radical Muslims constituted a majority of the population in these countries. So the Muslim Brotherhood won a majority in the Egyptian parliamentary elections and Tunisia saw a similar outcome. But now the secular and Christian minorities are rightly concerned that they may be subjected to general laws

following the commands of the Sharia, and new protesting demonstrations are raging in the streets of Cairo and Tunis.

It is important not to confuse the rule of law with legality. Even an order which is only directed to an individual or specific group of persons can be put into a legal form.

But why is freedom so important? Are there not other aims like justice, equality and safety of people which are as or even more important? And how can freedom and the rule of law be secured, when at the same time an institutional framework has to be provided by the state? Let us first shortly discuss the last of these questions. As stressed by Thomas Hobbes in his *Leviathan* it is impossible to fully remove the problem of unlimited discretionary rule whenever there exists a sovereign or state with a monopoly of power in the form of an army or police. And anarchy is usually even worse than despotism. But since the publication of Hobbes' book several institutional inventions and proposals have been made by John Locke and others of how at least partly to solve this problem. As an important example let me quote James Madison (*The Federalist* N.^o 47):

The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. (*The Federalist*, p. 313).

Thus Madison proposes a separation of powers into the legislative, the executive and the judicial branches of government, a proposal which found its application in the constitution of the United States. The executive branch has only the right to implement the laws passed by the legislative branch. The judiciary has to check whether the laws are executed according to their meaning and consistent with the constitutional rules. It has to do so even at the request of any citizen, group or member state. Besides the separation of powers federalism and direct democracy have been important measures to limit the abuse of government power.

But even all these institutional innovations are admittedly still limited in their effectiveness to secure individual freedom

and to check the power of rulers. Thus the Supreme Court of the USA has even itself been instrumental in extending the domain of the central government beyond the limits foreseen in the American Constitution. And when the Swiss largely accepted the American example for their own constitution in 1848 they did not want to grant their highest court the right to check whether the Swiss Federal Constitution were violated by federal laws, referenda or initiatives. For they thought it unacceptable that the court might decide against a popular majority. But this «solution» had also its disadvantages as shown by several cases in which a clear violation of the federal constitution by the government occurred.

It follows that even the best institutions presently available cannot prevent the loss of individual freedom in the long run. As a consequence people have to be made aware again and again of dangerous developments in the hope to bring about a turnaround. In subsequent chapters we are going to describe developments that have steadily eroded individual freedom over the last decades. Hayek warned in his *Road to Serfdom* against the dangers threatening liberty mainly because of the vain hopes set at that time into government planning of the economy. Meanwhile the so-called planned economies have clearly demonstrated their inferiority not only in supplying goods and services but also because of their despotic suppression of freedom and human dignity. The collapse of the communist system in 1989 has not come about without grave reasons. Systems with mostly free markets, rather safe private property rights, relatively stable money and freedom of contract between individuals, business firms and organizations have proved far superior to any attempt of collective planning and property. But other, more subtle obnoxious developments are again threatening freedom, human dignity and well-being. To them we propose to draw attention on the following pages.

II THE SHRINKING SHARE OF DISPOSABLE PRIVATE INCOME

What has always made the state a hell on earth has been precisely that man has tried to make it his heaven.

FRIEDRICH HÖLDERLIN (1946, 1. Buch, 7. Brief)

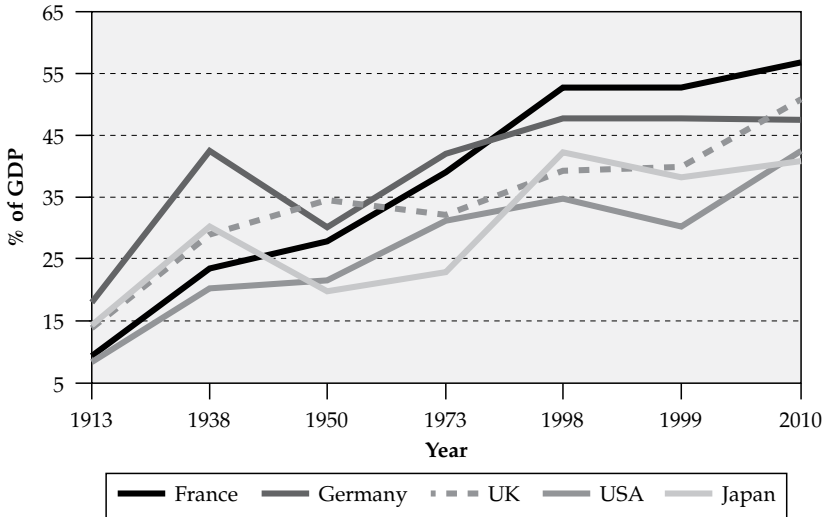
One of the least felt developments during the last decades has been the shrinking share of the income earned by private individuals which they are able to spend at their own discretion. This means that an increasing part of their gross incomes has to be paid in the form of taxes or other obligatory contributions, imposed by government law or decree. The latter comprise so-called social security premiums, like those financing unemployment contributions and old age pension systems. In all these cases not the earners but collective bodies decide on the use of the collected part of their incomes.

Concerning these developments two questions pose themselves: First, why have they be accepted without much resistance even in democracies? And even in those allowing popular referendums and initiatives like Switzerland? Second, are they and why are they dangerous for individual freedom? To answer these questions we have first to look at the facts.

As shown for five countries in Figure 1 the share of government in Gross Domestic Product (GDP), that is in the values of all goods and services produced, has risen inexorably over the last century (see also Tanzi and Schuknecht, 2000). And this is true for about all developed countries, even for Switzerland in spite of its traits of direct democracy. Why has this been tolerated by the population? True, Germany and Japan were no democracies for part of the period considered. And it is thus not surprising that the graph is showing a first maximum around 1938 because of the rearmament for World War II. But the increase of the share taken by governments resumes during the 60 years after 1950. No end of this development can be expected presently.

Moreover, it is most disturbing that the rising government expenditures is not only financed by an increasing burden of

FIGURE 1
DEVELOPMENT OF SHARE OF GOVERNMENT
EXPENDITURES IN GDP, 1913-2010

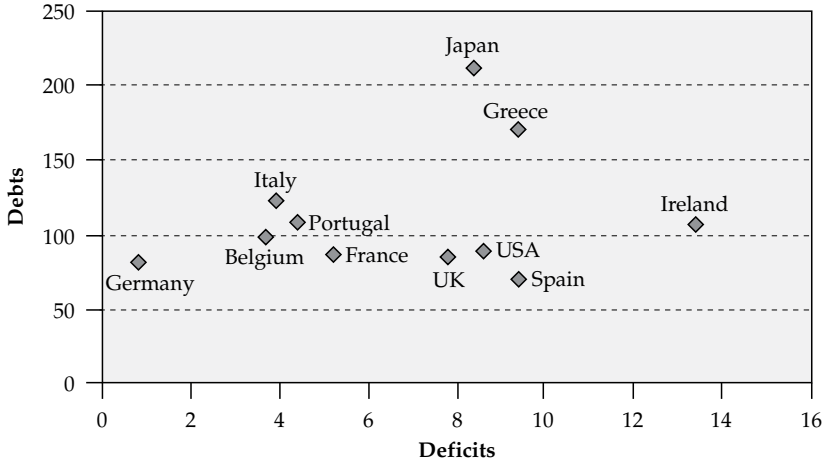


Sources: For dates until 1999: Maddison, Angus (2001): *The World Economy*. Paris: OECD: Development Centre Studies. Table 3-9, p. 135; OECD Economic Outlook, Paris: Several numbers until May 2012.

taxes and other obligatory contributions of the population, but also by financing government deficits by borrowing (Figure 2). In fact, the official figures given are only the explicit debts of governments. If their promises relating for instance to future pensions in an age of a population with ever rising life expectancies and low birth rates are taken into account, the implied government debts are much higher. Presently, except for massive further tax increases or a substantial reduction of outlays these debts can only be reduced either by government bankruptcies, inflation or both.

Given that the growing share of government expenditures in GDP has been steadily extending the power of rulers and diminishing the relative freedom of individuals, we have to ask ourselves why such a development is accepted by the population in democracies, in which voters have still the power to remove the rulers. Here several explanations come to mind. First, voters

FIGURE 2
 DEFICITS AND DEBTS OF DEVELOPED COUNTRIES 2011
 (IN % OF GDP)

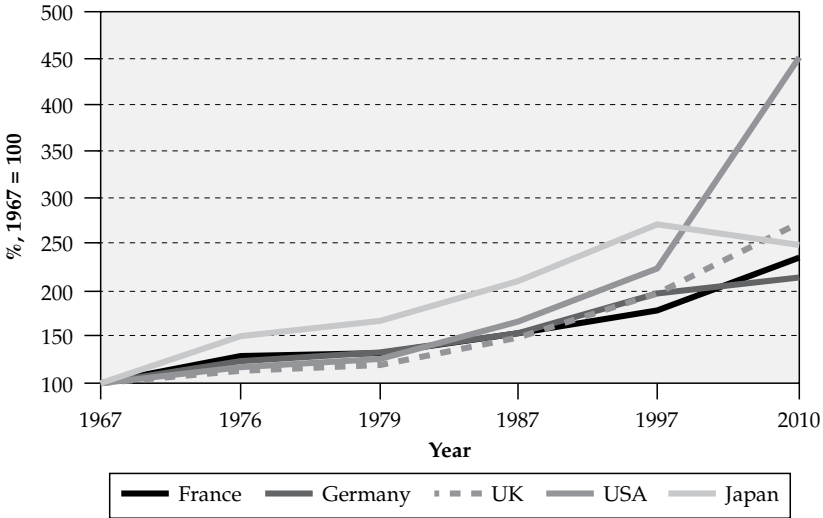


Source: European Central Bank: Monthly Reports, January 2013.

are uninformed for rational reasons. Since their vote is only one among millions, it would be irrational for them to inform themselves about matters which are not of immediate concern to themselves, namely their disposable incomes, their job security and some major expenditures like those on housing and cars. They may also feel some sympathy for the similar situation of near relatives and friends. Second, the government is distributing the tax burden in a way that only a minority of the population has to carry most of it. Third, to let the situation look better the governments prefer to incur debts instead of raising taxes further, and also to make uncovered promises for the future. Finally, and most importantly, the economy which is still mainly organized along the lines of free markets, has been able until now to increase GDP per capita in a way still allowing a growth of real private consumption in spite of an ever higher share of government expenditures (Figure 3).

As can be seen, private people have been able to increase their real expenditures in developed countries all the time since 1967 in spite of growing tax burdens. The surge in US figures after 1997

FIGURE 3
DEVELOPMENT OF REAL PRIVATE EXPENDITURES, 1967-2010



Source: OECD Economic Outlook. Paris: Several numbers until May 2012.

is due to ever higher private indebtedness, one of the main reasons for the bursting of the bubble in property prices in 2007. This growth rate was obviously not maintainable. In the decades before 1967 a similar growth of real private expenditures has occurred, except during the two World Wars and the Great Depression. Only Japan has seen a fall of real private expenditures since 1997. This is, of course, a warning. Indeed, there exist many empirical studies showing that the rate of growth of GDP diminishes with a growing share of government expenditures as well as debts at least beyond a certain threshold (Bergh and Karlsson, 2010; Bernholz, 1986; Romer and Romer, 2010; Weede 1991) and its debts rising beyond certain levels. Concerning the latter Reinhart and Rogoff (2011, p. 33; see also Baum, Westphal and Rother, 2012) conclude after having studied the experience of 44 countries over two centuries:

Our main finding is that across both advanced countries and emerging markets, high debt/GDP levels (90 percent and above) are associated with notably lower growth outcomes. Much lower

levels of external debt/GDP (60 percent) are associated with adverse outcomes for emerging- market growth.

A final reason for the complacency of the population in democracies with the rising share of government in GDP has to do with the way additional revenues are spent. The greater part of the growth of the tax burden and expenditures has been used for transfers or redistribution. In Germany the upper 40 % of the population paid 89,3 % of income taxes in 2011, and the up-most 10 % 54,6%, whereas the majority was bearing only a negligible part (IW 2012, p. 67). Also, the greatest part of the redistribution is brought about by progressive income taxes, though there exists empirical evidence that just these taxes together with those on firms are most detrimental to economic growth (Arnold , 2008). Moreover, the redistribution of burdens is also pronounced in the old age pension systems, for unemployment benefits and support for health expenditures of the poorer segments of the population. Even in the USA, which are lagging the European welfare states, the share of the richest 1% in paying US federal taxes has risen from 14,2 to 27,7 % from 1980 to 2005 (Lipford and Yandle 2012, p. 522). Now, since the wealthy persons bearing the burden of this redistribution form only a minority, they can easily be outvoted. Also, there exists a bias in voting outcomes because employees of the government will always vote against any reduction of government outlays because they are afraid to receive lower incomes or to be fired.

Moreover, many may argue that it is only an act of «social justice» that the rich are forced, if they are not willing, to help the poorer part of their compatriots to afford a decent life, to have access to adequate health services and to enjoy their old age without suffering from poverty. Is it not a great progress that all citizens are secured against unemployment and bad health? And consequently, is it not a blessing, that government expenditures are growing more strongly than GDP to provide all these benefits? And do not even wealthy people wholeheartedly agree with this handling of public affairs?

Unfortunately the just sketched picture is grossly misleading, not only concerning individual freedom but also for the long-term

economic outlook. As already mentioned, growing tax burdens and government debts beyond certain levels, levels which have long been reached in welfare states, stifle in time the efficiency and the innovative capacity of the relatively shrinking free market economy, so that the real economy will no longer be able to allow a better life for most citizens in the future. Too extended welfare benefits also attract immigrants with lower capabilities and motivation to work, a fact which is also detrimental to economic development (Sinn, 2004, p. 423).

The same negative influences are exerted if the growth of welfare expenditures leads to a relative shrinking of those for the educational system.

Wrong and excessive welfare policies have already ruined more than one state in history. A prominent example is Argentina, the fourth richest country in the world in 1930, which was led by wrong policies to become an under-developing country culminating in hyperinflation in the early 1990s. Another example is Uruguay which took a similar path (without hyperinflation, but civil war instead). President Chavez has seemingly led Venezuela into the same direction until his death in 2013. A counter-example is provided by Sweden, which was able to return to higher economic growth by reducing the share of government in GDP from 67 % in 1993 to 49 % in 2012. At the same time it succeeded to reduce through the corresponding drastic reforms some tax rates and, moreover, the debts of the state from 70 to 37 % of GDP until 2012 (Economist 2013: 3).

It should also be a warning that in the nations of the former Communist Bloc, where the state dominated the whole so-called planned economy, economic progress was negligible and an incredible suffering and suppression of the population took place. Already in 1971 the well-known Hungarian economist Janos Kornai asked why about all revolutionary new products had been invented and introduced in Western market economies during the last fifty years (Kornai 1971, pp. 271 ff.).

And indeed, economic freedom of individuals competing in markets is a necessary condition for furthering invention, innovation and efficiency (Weede, 2012). Individuals in and out of firms or organizations are lured not only by their own curiosity,

but also by possible profits to invent, to introduce and to sell new products and services wanted in the market. Moreover, if business firms do not innovate, they will soon be driven into bankruptcy by their more successful competitors. And inventors can borrow money to develop their ideas if they can convince creditors of their value. Also, if they are not able or willing to become entrepreneurs themselves they are able to sell their inventions. All this presupposes, of course, free markets, safe property rights, relatively stable money and not too high taxes. But the motivation to take corresponding efforts and let children enjoy an adequate education is weakened the more, the less of the fruits of their work people can expect to keep. «Economic freedom» besides a stable and rational institutional framework is thus a prerequisite for efficient and innovative developments. It is not by chance that all countries introducing free market institutions like many Asian countries including China are now well on a path of economic development. Indeed, the success of market economies requiring at least economic freedom are the best allies of individual liberty, though the latter may not yet extend to political freedom with safe human rights. And one should never forget that a consequence of economic growth has also been longer education, lower child mortality and rising life-expectancy.

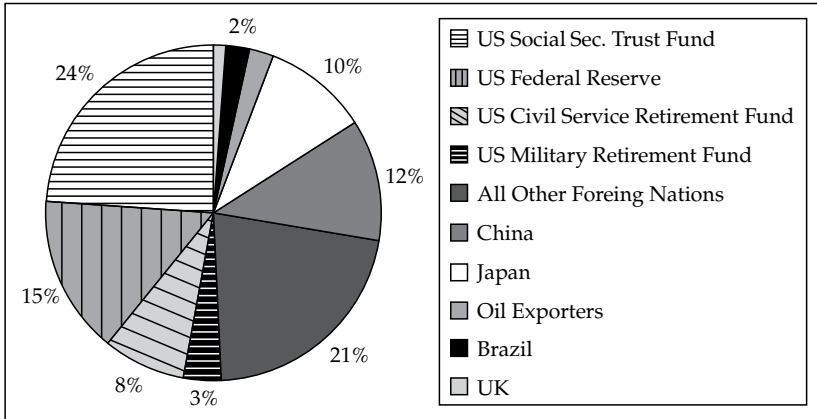
But what are the consequences of the rising share of the state sketched above for our «free» societies? Even the «patriarchal caring» of the government for our health, old age pensions and unemployment benefits increases our dependency on the state. How far are citizens prepared to vote against the plans of a government to ever extend its domain and power, who are dependent for the payment of their health expenses, their unemployment and old age retirement incomes on the state? But even here differences caused by the institutional settings remain. For the dependence on government is certainly higher, if all these payments flow from a central state like for instance in France than if they are obligatory but provided by different private and decentralized public agencies, like the cantons in Switzerland. Anyhow, it is important to recall that the major part of the increase in government expenditures during the last decades has been caused by the extension of such patriarchal «insurance» systems.

Note also that these systems, though they are often called «insurances», are not really proper insurances, since they are usually combined with substantive redistribution. In Germany this is the case because part of the expenses are financed out of the progressive income tax; in Switzerland the basic old age pension system AHV (a pay-as-you-go system) is managed by the central government, and the higher incomes have to pay the highest contributions, though the pensions after retirement are capped to a maximal amount for everybody. In spite of these facts Social Democrats in Switzerland are vehemently fighting any increase of the retirement age (for instance for women to 65 years), and have instead started a popular initiative for a national inheritance tax of 20% on all fortunes of two million Swiss francs or more to finance the AHV for some time; and this though some cantons have already heavy wealth and a few inheritance taxes. In Britain health expenses are fully covered out of ordinary tax revenues.

A second disadvantage for a free society of these patriarchal welfare systems are that individuals are not allowed to opt out and to care for themselves, and to manage the savings according to their own discretion, an option which might in many cases lead to better results than those reached by the obligatory pension funds. And though it has to be admitted that many people have not the strength and the capability to built up adequate savings and to manage them, it still remains true that they are even less urged to learn these skills because of patriarchal care. The good shepherd is looking after his sheep who are kept in ignorance. As the British sociologist Herbert Spencer expressed it drastically (1891, p. 354): *The ultimate result of shielding men from the effects of folly, is to fill the world with fools.*

Moreover, it remains a question whether the shepherd is really fulfilling his task. It is revealing that in the USA the Federal Government is presently covering part of its budget deficit by «borrowing» from the social security funds (Figure 4). As can be seen, nearly 25 % of the Federal debt is held as a claim by federal pension funds. How safe are these «assets»? And in countries like Germany the old age pensions are «covered» mostly by a pay-as-you-go system in which current pensions are paid out of present contributions of the working population. This system is threatened

FIGURE 4
 CREDITORS OF THE US FEDERAL DEBT OF \$ 16,027 BILLION
 (2012)



Source: Congressional Bureau of the Budget.

by the low birth rate nowadays leading to a shrinking population and working force. This means that the promises for future pensions are not covered by the present rates of contributions and thus imply an implicit debt of the government not contained in the official debt figures. Though it has to be admitted that some governments like Germany have taken several reform steps like raising the pension age, reducing the promised public payments to retired people and asking still employed people to save privately for their old age, these measures are still not sufficient and are absent in several other nations (Börsch-Supan, 2012).

Let me sum up. The creeping expansion of government expenditures as a share of GDP has been decreasing relative freedom of individuals over decades without being noticed by the majority. The reason has been the still possible rise of private real expenditures, putting most of the burden on a minority of tax payers and the forced care and redistribution by the welfare state by providing unemployment benefits, health payments and old age pension systems.

This has led to a rising dependency of the broad majority of the population on the government which is probably eroding the

independence of citizens in their voting decisions. Moreover, paradoxically they are asked to decide as voters questions which they are deemed to be unable to decide for themselves privately. Individuals are no longer educated to save and to invest for their own future. They are cared for by the good will of their shepherds. Moreover, the bureaucracy handling the welfare state is costly and swallows a sizable part of resources available for this purpose. Also, politicians are tempted to hide the costs of the system by incurring debts and making uncovered promises for the future. Finally, empirical studies and the facts presented above suggest that a further development of the welfare state will bring about a crisis because the relatively shrinking market economy and the vanishing motivation of individuals to work efficiently, to invent and to innovate will no longer be able to carry the rising burden of government «care».

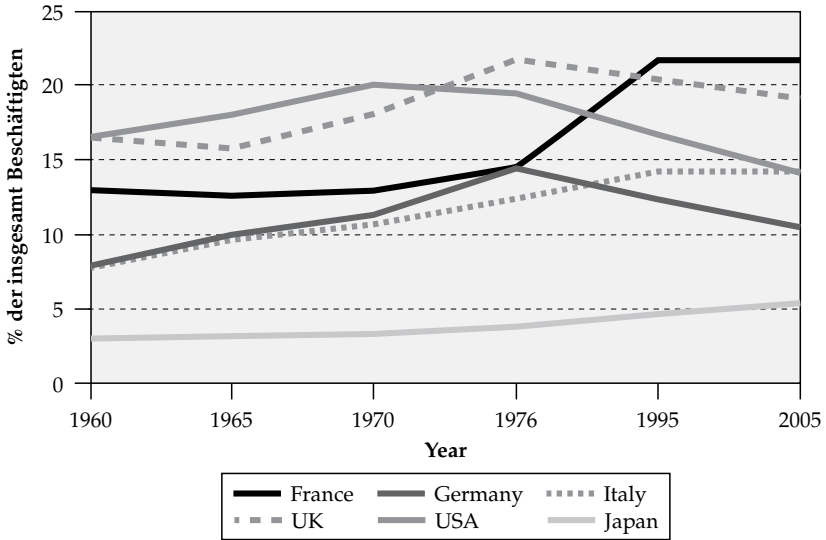
III

THE EVER-INCREASING BURDEN OF REGULATIONS DOMINATING INDIVIDUAL LIFE

It is more difficult to find meaningful measures for the growing flood of regulations limiting the freedom of individuals and the creative activities of business firms. As a first possible measure we may select the share of people employed by governments or government agencies in total employment (Figure 5). This share has been increasing steadily until the 1970s, but has since fallen or stabilized in three of the five countries considered. It had, however, already risen strongly before the 1960s. The German figures were, for instance, 3,45 and 5,53 % for 1933 and 1950. Thus the change since 1970 is probably the result of economic problems stemming from the rising share. That the share increased further in France since 1970 may be one of the reasons that this country is presently (2013) lagging economically behind Germany and suffering from a higher unemployment rate..

Other indicators of government regulations are more disturbing, especially the rising flood of new laws and executive orders. In an answer to an inquiry of Adriano Cavadini, member of the

FIGURE 5
 SHARE OF PEOPLE EMPLOYED BY GOVERNMENT
 AND GOVERNMENT AGENCIES IN TOTAL EMPLOYMENT,
 1960-2005



Source: OECD (2009): Government at a Glance; OECD (1978): Public Expenditure Trends.

lower house of the Swiss parliament (the Nationalrat) of March 21, 1997 the Swiss Federal Government (the Bundesrat) admitted on June 16, 1997:

The increasing production of legal norms, even if the underlying reasons may be understandable, is leading to a feeling of citizens and business firms that they have lost the control of the legal framework within which they have to move, and are facing unsurmountable obstacles. The ever increasing change of the law and its rising differentiation require such a capability to adapt and such expenditures which not all can afford. This can especially lead to problems for small and medium-sized firms and lower private initiative (my translation).

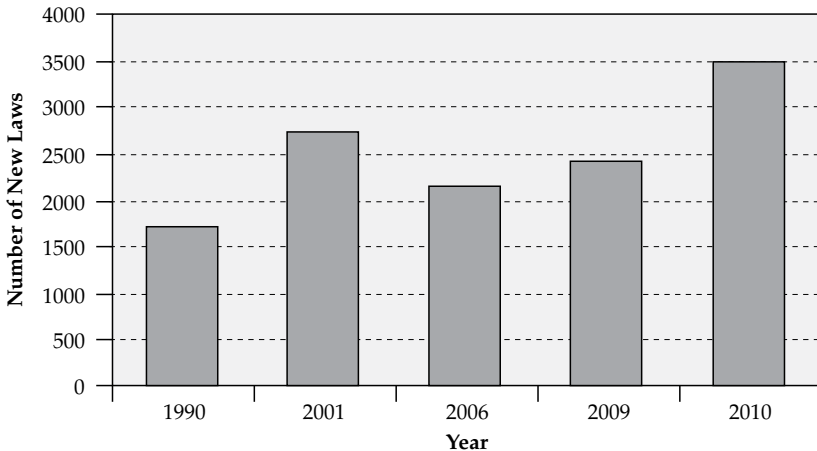
For the USA a prominent legal scholar (Epstein 1995, IX, 14) complained:

There is too much law and too many lawyers....We try to solve more and more problems through legal intervention, and fewer through voluntary accommodation and informal practices.

And indeed, the rising flood of new laws and executive orders is appalling, which can be demonstrated by just looking at a few other countries (Figures 6 and 7). According to Sweet & Maxwell's Westlaw UK and Lawtel online legal information the annual average legislation introduced amounted to 1724 laws under Margaret Thatcher, 2402 under John Major and 2663 under Tony Blair as Prime Ministers.

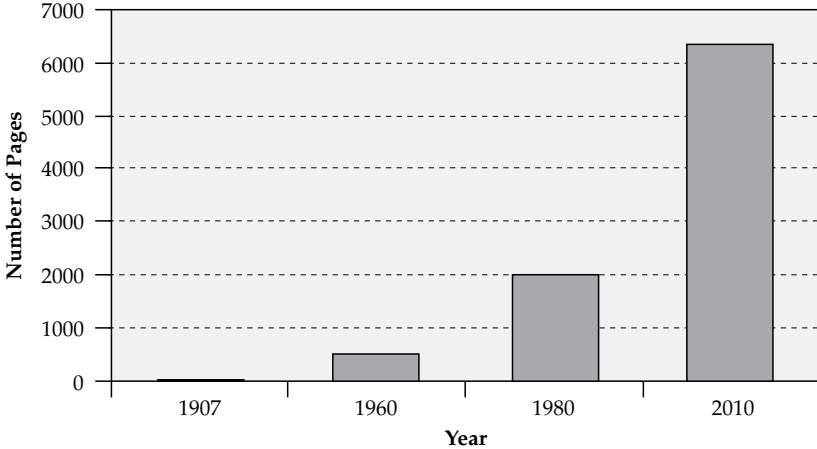
A similar picture could be shown for other developed nations. According to a report by the Mercatus Center (George Mason University, Fairfax, Virginia) of October 18, 2012, the number of instances of the words «may not», «must», «prohibited» and «required» and «shall» in US Federal Regulatory Restrictions rose steadily from 834949 in 1997 to 1001153 in 2010. This means an increase of 12808 per year, whereas the average annual growth of regulations had been only 4013 per year during the preceding

FIGURE 6
NUMBER OF NEW LAWS PASSED IN THE UK
BY THE PARLIAMENT IN CERTAIN YEARS, 1990-2010



Source: BBC News: UK Politics: Record number of new laws made in 2010. May 27, 2011.

FIGURE 7
 PAGES OF THE NEW LAWS PASSED BY THE AUSTRALIAN
 PARLIAMENT IN CERTAIN YEARS, 1907-2010



Source: Chris Berg; Micromanagement in the regulatory state. Drum Opinion. The Drum on ABC News 24, January 25, 2011.

208 years since 1789. And in a testimony of March 15, 2013, to a committee of the US House of Representatives James L. Gattuso (2013) explained:

During President Obama’s first four years in office, over 130 major rules increasing regulatory burdens (roughly defined as costing \$100 million or more each year) were adopted by agencies, ... By comparison, about 50 such rules ...were imposed during George W. Bush’s first term.

One can easily imagine what this means for over-burdened citizens and business firms. The rule of law is severely weakened, since individuals are no longer able to even know all the laws, orders and regulations through which their freedom of taking decisions is severely restricted. At the same time they are often in danger of committing «criminal» acts without even being aware of them. And even if small firms could shoulder the time spent and the rising expenses of complying to laws, orders and regulations, their resources have to be misdirected and are no longer

available for innovation. And ever fewer citizens will be prepared to found and to lead new enterprises.

Part of the increasing flood of laws and regulations is certainly caused by the increasing complexity caused by an increase of the population and by economic development. Whereas the former is probably too small in developed nations to be of great influence, the latter may be much more important. Economic growth is largely carried with the introduction of ever new products, the production, transportation and use of which may involve new risks for safety and health. The number of accidents increases with the number of cars used, new chemicals and pharmaceutical drugs may be dangerous to produce or to use, or may be connected with risky side-effects. The volume of waste-products has been increasing with industrial production as has air and water pollution. More and more plant and animal species are threatened by extinction. Thus new laws and regulations as well as market-imitating mechanisms may be required to limit or reduce these dangers and risks. Speed limits for driving and safety rules for producing chemicals may be necessary. Agencies have to be created to control the effects and side-effects of drugs before they are admitted for production and general application.

But how important are these factors in explaining the rising flood of laws and regulations? One possible but crude approach to measure this influence would be to analyze whether the growth of the number of laws and regulations has been smaller or greater than that of GDP. If we do this for the figures used in Figures 6 and 7 by dividing them by the respective development of real GDP we get the result that the new figures are still growing substantially. This means that the rising complexity of life explains only a part of the rising number of laws and regulations.

There exists also some direct evidence for an over-extension of the regulation for chemicals in the European Union (EU). The new REACH legislation (Regulation, Evaluation, Authorization and Registration of Chemicals) created the new agency ECHA (European Chemical Agency) in Helsinki in 2007. ECHA employs already 500 people, and an increase to 600 is expected. It is important to realize that this number means an addition to those already employed by the respective national agencies of the mem-

ber states of the EU. The implementation of the REACH legislation has meant a gigantic effort for the business firms concerned. The well-known German chemical producer BASF has provided for this purpose an amount of 250 million euros.¹

Another problem with the power of the respective agencies not to admit the use of pharmaceutical drugs because of negative side-effects though they have a positive influence on the specific ailment is the following. This policy prevents the suffering patients to decide to use of the helpful drugs in full knowledge of the negative side-effects. Moreover, the high costs connected with the evaluation may prevent the development of new important drugs. Many small innovative companies are already unable to bear these expenses. As a consequence they have either to license or to sell their invention to big businesses, or they are acquired themselves by them.

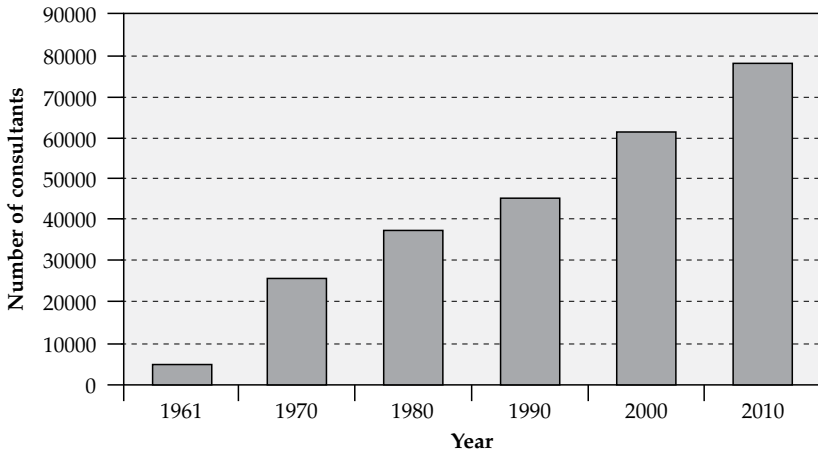
The problems for the rule of law are clearly illustrated by the perversity of tax laws. Everybody enjoying some different kinds of properties and income sources is obliged to witness by his signature under his wealth and income tax declarations their completeness and compliance with the full truth. And this despite the fact that even his tax consultant is scarcely able or even unable to know all relevant articles of the laws and decisions of courts.

The increasing number of tax consultants is highly indicative for this development. (See Figure 8 for Germany). Similarly, it would be interesting to know to what extent citizens' freely disposable time is reduced by the same development. The same questions about time and resources spent can be asked for business firms, tax consultants and the administration of the state. And though the situation is especially bad in Germany, the developments in other nations have been similar, as the author can even testify for Switzerland.

But in spite of this situation it seems impossible in countries like Germany to simplify tax laws. A well-designed proposal by the tax specialist and former judge at the Federal Constitutional Court, Prof. Kirchhof (2011), to radically simplify the body of tax

¹ I owe this information to Dr. Christoph Bauer, who formerly worked on these problems for the pharmaceutical firm Novartis.

FIGURE 8
INCREASE OF THE NUMBER OF TAX CONSULTANTS
IN GERMANY, 1961-2010



Source: NWB Steuerberater Magazin: Steuer Extra-Ermittlung auf Datenbasis des Statistischen Bundesamtes mit Stand 1.3.2010.

law was met with silence by all parties of the Bundestag (the lower house of parliament). The reasons for such policies are probably twofold: First, benefits and loopholes for special interests have to be hidden from the eyes of voters. Second, with the high level of taxes some exceptions have to be granted to prevent an earlier breakdown of economic growth. For a simplification of the tax system would mean the removal of all exceptions which usually prefer special interest groups and are thus resisted vehemently by those benefiting from them. All this is veiled with slogans of «equality of living conditions», «social justice», and special aims like helping the environment by specific subsidies etc.

Another important field of regulation is scarcely perceived by the population. Since the introduction of compulsory schooling the state is normally running schools and universities in most countries. But this reduces or prevents the beneficial influences of competition, especially in countries where the respective systems and the obligatory rules and standards are highly centralized. The reasons given for this system are the following: Every child should have the same chances, and this would not be possible

with private schools for poorer people, who could not afford the expenses. Also, the standards of education should be the same everywhere, so that parents and their children would find the same conditions after moving to another place. The first of these arguments has been rejected by Milton Friedman by proposing decades ago the issue of vouchers to all parents, financed by the government. A realization of this proposal would also allow children from low income families to attend private schools, and presumably rises the level of education in public schools by competition. The second argument loses much of its force because of the question: how good are unified standards if they are of a low level, as is now the case in many schools run by the government in many states?

As dangerous as the rising flood of regulations is not only the breaking of promises and of treaties among states, but also their tendency to question the validity of contracts among private citizens, firms and other organizations, or even to invalidate them. The numerous changes of laws and administrative orders not well adapted to practical needs is leading to a flood of complaints at the courts.

We have already mentioned the one-sided change of pension promises by governments. In the European Monetary Union the rules asking for a limitation of government deficits and debts to 3 and 60% of Gross Domestic Product (GDP) have not been followed by France and Germany already after a few years. But meanwhile much worse events have happened: Not only the article in the Maastricht and Lisbon Treaties forbidding the bailout of bankrupt members by other members and the European Union has been broken several times since 2010, but the European Central Bank (ECB) has also violated the rules contained in these treaties not to buy the debts of about bankrupt governments and banks. And during the debt crisis of Cyprus in 2013 governments have not shied away from directly confiscating bank deposits which are higher than 100000 euros. Though this is certainly better than to ask the taxpayers of other countries to carry the burden of the mismanagement by banks, since the depositors could have watched the soundness of their banks more carefully before, this raises another question. How can individuals protect themselves

against such measures at a time when they are not allowed to carry more than 10000 euros in banknotes across national borders? How can citizens after such events have any longer trust in the rule of law and the protection of their freedom and wealth against the despotism of rulers?

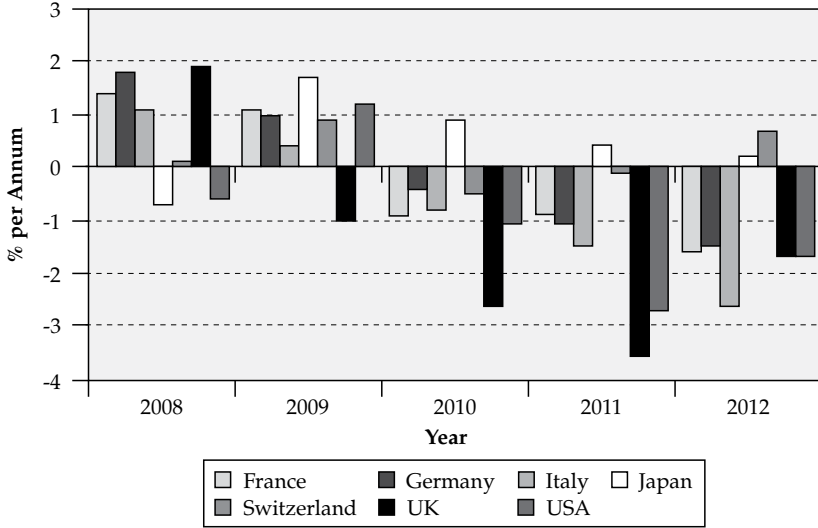
IV THE FINANCIAL REPRESSION OF CITIZENS

Since the beginning of the last financial crisis in 2007/08, followed by government debt crises, leading central banks have reacted, led by the US Federal Reserve System (Fed), by reducing interest rates to nearly 0%. And governments, who had increased their debts already substantially before the beginning of the crisis, not surprisingly, by assisting several of the national banks threatened by bankruptcy, entered an even more precarious financial situation (Figure 3). Indeed, several Southern nations in the Euro Zone were only saved from government bankruptcy by billions of euros in help from the other member states (although this had been forbidden by the Maastricht Treaty) and the International Monetary Fund (IMF). Besides, the ECB granted help by softening conditions for credits, buying government bonds and allowing Southern Central Bank members of the European Monetary System to pile up huge transfer obligations (Target 2 balances) with it (Sinn, 2013). The first of these countries facing bankruptcy was Greece, which is looking back to a long history of bankruptcies since the 19th century. But instead of allowing open bankruptcy again, it received dramatic and escalating financial help, and a veiled bankruptcy was allowed by forcing private creditors into writing off a significant part of their claims.

But what do these events mean for the savings of individuals and their pension funds, even in nations not yet threatened by government bankruptcies? As a matter of fact these events led to a creeping confiscation especially for the poorer part of the population (Figure 9).

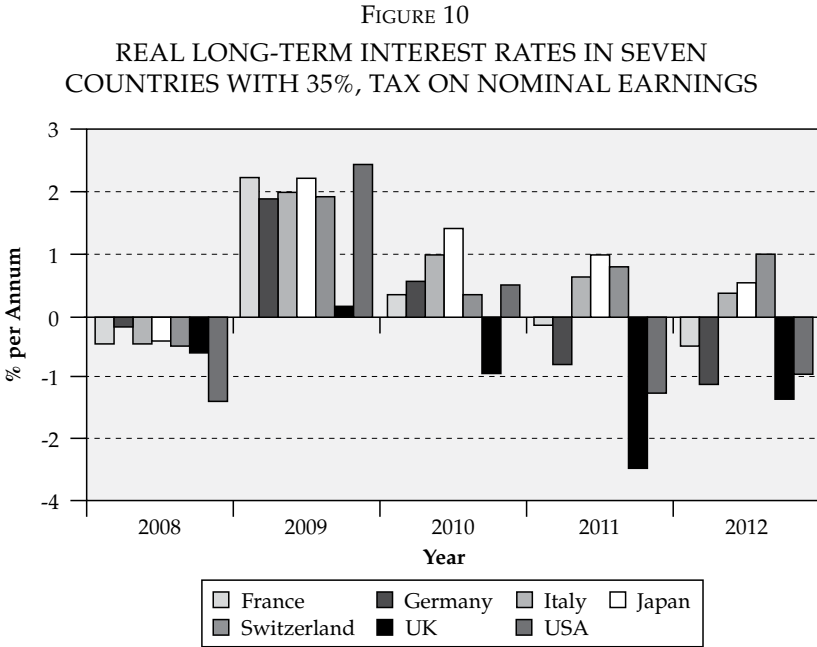
As can be seen, the real earnings from assets bearing short-term interest have become negative for most countries during the last

FIGURE 9
 REAL SHORT-TERM INTEREST RATES IN SEVEN
 DEVELOPED COUNTRIES, 2008-2012



Source: OECD Economic Outlook 92, November 2012.

years. An exception is Japan because of its deflation and also Switzerland in 2012. But these are only gross earnings, namely nominal interest rates minus the rise of the consumer price index. Things are looking worse, if the taxes on nominal earnings are taken into account. For real long-term interest rates the picture seems to look more favorable. Here only Switzerland, the UK and the USA show negative real gross rates during 2011 and 2012. But to get some impression of the net real long-term interest earnings after taxes, I have deducted a 35% tax on nominal interest earnings (Figure 10). In this case the earnings in all countries become negative in 2008, and for four of the seven in 2011 and 2012. It is important to realize that not only private individuals, but also insurance firms and pension funds (which have historically also often been forced to buy government debt at low interest rates) are suffering from the low interest rates brought about by the policies of central banks.



Source: OECD Economic Outlook 92, November 2012.

Moreover, as shown by Reinhart and Rogoff (2011) such events are not an exception limited to the financial and government debt crisis since 2008. They explain:

It is worth noting that the real ex post interest rate on public debt (appropriately weighted by the type of debt instrument) was negative for US debt for 25 percent of the years during 1945-80, while the comparable share for the United Kingdom was nearly 50 percent, ... (p. 31 f.).

Though it has been shown meanwhile that Reinhart and Rogoff made a mistake in their calculations, it is still true that growth rates are negatively influenced by high burdens of debt.

V
DRUGS, TERRORISM, «MONEY-LAUNDERING»
AND THE TRANSPARENT SUBJECT

Since long years all citizens are already suspected of «money-laundering» whenever they do not declare to the border controls that they are carrying more than 10 000 euros or Swiss francs with them. The US regulations are even more rigorous. And if they declare that they carry, let's say 15 000 euros across the border, the usual burden of proof is reversed. For they have to prove that the money is their legal property and has been legally acquired. If they cannot prove it or if they did not declare the amount, their property is confiscated.

To carry your own money with you had not been a crime in earlier decades. It was artificially made a crime following the pressure by the USA, since American authorities were not able to win the «war» against drug providers, which they had initiated by forbidding the production, sale and use of drugs.

As a consequence of making the production and use of drugs a crime, the prices of drugs went up substantially and their production and distribution became a flourishing business. The high prices led to secondary criminality by drug consumers who had now to try to get enough money to pay for them. Moreover, since it became rewarding for farmers to produce drugs, several nations trying to suppress the production with the financial and military help of the USA, now entered a long-lasting fight against their own farmers and the «drug barons» supporting them and smuggling their product to the countries with the highest demand.

Soon it turned out that the laws against «money laundering» did not help to win the «war». Quite the contrary: Several countries like Columbia, Bolivia and Afghanistan were soon at least partly dominated by the «drug barons», who were making big profits because of the high prices. At the moment the drug war is raging in Mexico, where the number of deaths because of the fights of drug barons with each other and the police has been steadily increasing during the last years. As a consequence private citizens are already active in forming militias to fight these crimes. Near Acapulco hundreds belonging to a private militia have

recently occupied and isolated a small town. Eighteen suspects were arrested, among them the local chief of the police suspected of close relationships with the criminal cartels (reported by the *Neue Zürcher Zeitung*, the leading Swiss newspaper, on March 30, 2013).

On the other side of the globe the Taliban terrorists in Afghanistan are financing their activities against the NATO armies in this country mainly with the help of selling drugs.

But in spite of this contradiction with its own efforts to stabilize Afghanistan, the USA has taken Islamist terrorism after the attack on the World Trade Center in New York as another pretext to strengthen not only the laws on «money-laundering» against all citizens, but also to introduce strict bodily controls of all persons crossing its borders. And during the last years these controls against «money-laundering» have been more and more used for tax purposes.

These are disquieting attacks on the freedom of the majority of citizens who have nothing to do with the drug business, terrorism and are regularly paying their taxes. And all these measures have been taken though banknotes are the only legal tender and though their value as a means of payment depends partly on their nature as a bearer's note. Moreover, banknotes of relatively stable currencies are not only a last safeguard against confiscation of bank deposits like in Cyprus in 1913, but also against high inflations in many nations. But the measures against paying with banknotes are getting more and more extensive. It seems that presently (2013) France and Italy are considering to forbid the use of cash for payments higher than 1000 euros. And recently (February 2013) the Swiss government has proposed to forbid payments in banknotes of more than 100 000 Swiss francs domestically. Moreover, rumors are circulating (2013) that the USA are exerting pressure on Swiss authorities to abolish the 1000 franc banknote. All this would be quite consistent with US policies to force all banks having business with the USA to become a kind of police for its tax authorities, obliged to report all holdings with them of American residents (by the so-called *Fatca* legislation). This means again that all people residing in the USA with foreign bank accounts are now suspected of tax fraud.

Several Swiss banks have already decided not to accept any deposits of people living in the USA. This is of special concern to Swiss citizens living in America who need a Swiss account for ordinary payments they have still to make and are receiving in Switzerland.

The war against drugs has been without any success until now. It has only brought about the rise of criminal gangs, secondary criminality and the possible take-over of power by drug barons in several countries. As a consequence the criminalization of the production, distribution and use of drugs should be abolished. The consequent fall of prices would destroy the huge profits of drug barons, reduce secondary criminality and the murderous fights among drug gangs and police (who are also partly corrupted by receiving bribes) in several nations. At the same time, it has to be doubted that the number of drug addicted people would much increase because of lower prices. For addiction remains the same whatever the prices. The only problem might be that younger people were more often attracted to experiment with their use. But this problem should be taken care of by a better education drastically pointing out the dangers of drugs.

With the legalization of drugs all laws and regulations on «money laundering» and the use of cash should be given up. For the successes in fighting terrorism compared to the expenses of these policies seem to be negligible. The same is probably true for the strict border controls. Presently the Department of Homeland Security in the USA is costing about 40 billion dollar annually (Presidential Bureau of the Budget).

But the really more important costs are not measurable, namely the loss of freedom citizens experience who are suffering from all these measures. The extension of the rules against «money-laundering» to control everybody for suspected drug business, terrorist activities and tax evasion is putting all citizens under suspicion and is leading in time to absolute transparency of people for government agencies, including police, secret services and tax authorities which cannot be adequately controlled by the legislature. In this way citizens are turned into subjects who are not willing to face the risk of standing up against problematic or illegal acts by government authorities because they are afraid

that these agencies may know some trivial or unintentional transgression of laws or orders by themselves.

VI
CONTROL OF PRIVATE INFORMATION FLOWS
UNDER THE PRETEXT OF PROTECTING
THE PEOPLE OR THE STATE

The privacy of citizens is more and more threatened by government access to information covering all their private messages. In some cases this may be illegally done by secret services which are often transgressing their rights granted by law.² Even in Switzerland it was revealed in the late 1980s that the federal public prosecution acting for the Staatsschutz (the agency responsible for protecting the state) had illegally gathered information about 900000 out of about 7 million Swiss inhabitants. This led to a public outcry, so that this information was obliterated and the rights of the agency severely restricted. But in recent years governments are even granting legal rights not only to secret services but also to the police to watch all private contacts and (or) information flows. At the moment the Swiss secret service is «only» allowed to register all contacts by phone, computer and mail among persons and to store them for one year. The contents

² After this paper had been completed, the American Edward Snowden revealed in the beginning of June 2013 the all-encompassing world-wide spy activities of the American National Security Agency without adequate Congressional or judicial control. Domestic and foreign telephone and internet contacts between private people, business firms, private organizations and foreign government agencies have been looked into at the discretion of this agency, partly with the help of such telephone firms as Verizon, ATT, Sprint Nextel. With the help of a program called Prism the NSA was able to directly open the servers of Microsoft, Google, Yahoo, Facebook, Youtube, Skype and Apple. It remains to be seen whether the following international outcry persists or even spreads. But it seems clear that these events are violating the Fourth Amendment of 1791 to the US Constitution: «The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.»

of the information are, however, not stored. But now (March 2013) the government is proposing to legalize the opening of mail, the listening to phone conversations and the spying out of computers by the Nachrichtendienst des Bundes (the Federal Information Service). This, however, would be «only allowed» if one out of five dangers were present: terrorism, foreign espionage, assembling of dangerous weapons, and threatening attacks on communication, energy and other critical structures. Moreover, first the Federal Administrative Court (Bundesverwaltungsgericht) would have to agree to corresponding measures, then the Minister of Defense and finally a group of three federal ministers. On the other hand, no limits are planned for espionage in foreign countries, and the federal government «can use the services of the Federal Information Service in other specific situations for safeguarding other important interests of the country.» According to the proposal this includes «the protection of the Swiss workplace, its economy and financial institutions.» (Neue Zürcher Zeitung, March 9, 2013) It has to be seen whether this bill has indeed a chance to be approved by the federal parliament. But there it is quite possible that its politicians will accept the proposal without many changes. For recently the parliament has agreed that the federal agency responsible for the gathering of information on money-laundering will be allowed to pass on this information to foreign agencies (Neue Zuercher Zeitung, March 22, 2013). Similarly, the parliament has passed a motion (March 14, 2013) to allow the police to get information from the data bank obtained by assembling vital information for providing new passports. And this though it had been promised not to use it for purposes of the police when the extension of the information required for the new set of passports had been introduced. Given that such developments are possible in peaceful and neutral Switzerland it should not come as a surprise that the secret services of countries like the USA have much earlier begun to spy out their own compatriots without the limits still observed in this small country with a strongly developed direct democracy.

A much more subtle suppression of the free flow of information or free speech is hidden under the label of so-called «political correctness». This implies that certain words like Negro, Eskimo

and (Red) Indians are no longer socially correct. They have to be substituted for instance by African American, Inuit or Native American. Often this is bordering the ridiculous. For Negro means just black in Latin. And are whites whose ancestors have come to the USA before the American Revolution no longer natives there? In Germany expressions like «Lehrling» (apprentice, verbally translated: Somebody who has still to be instructed) are considered inappropriate and have been substituted by «Anzulernder» which ironically has about the same meaning. But things are getting worse. In the German newspaper «Die Welt» (31.1.2013) a lady, Kathrin Spoerr, is reporting, that an educator at a protestant kindergarten was rebuked by her superior, a priest, for using the expression Zigeuner instead of Sinti and Roma, which is now the correct expression for gypsy in German, in a play organized with the children.

In certain countries liked Germany and Switzerland it is now forbidden by law to deny in public historical events like the holocaust, the mass murder of Jews committed by the Nazis, or the mass killings of Armenians in the Osman Empire during the World War I. Moreover, the use of Nazi symbols like the Swastika, though it is a very old symbol for instance in India, is defined as a crime.

The former is a severe violation of the right of free speech, the latter just ridiculous. If certain uneducated people deny that the holocaust happened, let them just reveal their stupidity. Whereas penalizing their assertions may even motivate some people to suspect that they are containing some truth.

VII THE ABOLISHMENT OF HABEAS CORPUS AND THE INCARCERATION AND KILLING OF PEOPLE WITHOUT DUE PROCESS OF LAW

It should be clear to everybody that wars are the greatest threat to human liberty. This begins already during peace in countries where all young males are drafted to «serve» in the military, sometimes up to two years. From a radical point of view one could

describe this as a kind of time-limited slavery. And indeed, many misuses of their power to command by sergeants and officers have emerged. Aggressive wars which are not justified by purposes of defense against other nations have brought death and misery not only to the members of fighting armies, but also to millions of civilians.

In recent years such wars have been initiated by President George W. Bush under dubious pretexts. He fought a war against Iraq under Dictator Saddam Hussein and one against Afghanistan dominated by the radical Islamic Taliban after the attack on the World Trade Center by al-Qaeda on November 7, 2001 (7/11). Whereas the latter may have been justified by the close relationships of the Taliban with al-Qaeda, and thus has been supported by NATO, this was certainly not true for Iraq. The dictator was the last to allow an erosion of his abject power by Islamists. But Bush asserted, perhaps even against better knowledge, that he was involved with al-Qaeda. The results of this victorious war are catastrophic after the withdrawal of most American and British forces. Apart from a murderous civil war, especially between Shiites and Sunnites, al-Qaeda is now more influential in Iraq than it could ever have been under Saddam Hussein. And in Afghanistan, when NATO forces are planned to be withdrawn from the country, there is a grave danger that the Taliban may return to or at least participate in power. In fact, this could be foreseen by any knowledgeable observer.

But the secondary consequences of these wars and the general «war on terrorism» declared by President Bush and still maintained by President Obama are much more dangerous for the freedom of citizens in developed democracies. I have already mentioned the increased border controls and the strengthening of laws against money-laundering. But far worse, with the beginning of the war all prisoners suspected of terrorism were brought to Guantanamo, an American base in Cuba, with the purpose to keep them outside the jurisdiction of American courts. Here they were tortured with water-boarding (simulated drowning) and other procedures clearly violating the Geneva Convention protecting prisoners of war. Obama promised to end the prison camp at Guantanamo when he became President, but has still not succeeded to do so after four

years in office. This is caused by resistance in the US Congress, who prohibited the Administration to pay for the transfer of prisoners to the American mainland.

Meanwhile at Guantanamo a special military court has begun legal proceedings against five leading terrorists in the end of 2012. But the court decided that any information about the arrest, the place where they were kept before being brought to Guantanamo and about the special interrogation methods like waterboarding should be suppressed during the transmissions of the court proceedings into the room for spectators.

This news corresponds well with other information concerning the violation of human rights by US agencies. On December 13, 2012 the European Court in Strasbourg decided that Macedonia had violated the rights of kidnapping victim Khaled al-Masri and had to pay him a compensation in the amount of 60000 euros. The government of Macedonia were responsible for the torture and maltreatment of this German-Lebanese citizen on its territory and also his extradition to the US CIA. The court saw in the maltreatment of the victim on the airport of Skopje a kind of torture.

A similar case was decided by the Court of Appeal in Milan on January 8, 2013. In this case the court condemned the former head of the Italian Secret Service, Nicolo Pollari, and his Vice, Marco Mancini, to 10 and 9 years in prison, because they had collaborated in the seduction of the Egyptian Imam Abu Omar by the American CIA in Milan on February 17, 2003. The Court of Appeal also condemned three other members of the Italian Secret Service and two dozen agents of the CIA in absentia to prison sentences. Moreover, it granted the former Imam a compensation in the amount of one million euros.

Another decision of the European Court in Strasbourg throws more light on the practices of the CIA in kidnapping suspected but sometimes innocuous victims. In this case the court decided to begin public legal proceedings concerning an alleged former secret and illegal CIA prison in Northeast Poland. The proceedings relate to the Saudi-Arabian Abderrahim an-Nashiri who complains to have been imprisoned and tortured in Poland for some time.

On March 2, 2013 the British newspaper Guardian and the BBC reported that the USA had helped Iraq to introduce military prisons during the last decade, where people were tortured. Two Americans had played prominent roles in doing so, who had already participated in the «dirty wars» in Central America in the 1980s. They had reported directly to the boss of the Pentagon, Donald Rumsfeld, and to general David Petraeus, respectively. If these British inquiries should prove true this would throw a suspicion on Rumsfeld and Petraeus. Until now the USA have always asserted that well-known cases of maltreatment, for instance in the prison Abu Ghraib, had been caused by abnormal behavior of single soldiers

A further characteristic of American «war on terror» is the expansion by Obama of George W. Bush's drone war, that is of unmanned airplanes to commit targeted assassinations. This may have been warranted to a certain degree as long as it is selectively directed against high-ranking enemies because of saving own lives and limiting collateral damages. But it is exactly this higher selectivity which is tempting to extend the use of drones to areas of lesser threat, even at the risk that many innocent civilians are killed. However, even if it is admitted that the first attacks were justified to get rid of very dangerous high-level al Qaeda terrorists in Pakistan, who were trying to strike the United States, this is no longer true presently (in April 2013). As Ivan Eland (2013), member of the Independent Institute, put it:

now American drone attacks are mainly striking mid-to low-level Islamist fighters in Pakistan and Yemen who focus their attacks on the Pakistani and Yemeni governments. As the attempted Times Square and underwear bombings show, the U.S. now has new enemies in the Pakistani Taliban and al Qaeda in the Arabian Peninsula, respectively. The same blowback may happen in Somalia and other countries where drones are being used to target would-be terrorists. ...

Even more problematical than the blowback is the dubious constitutionality of the expanded drone campaign. ...The worst problem is Obama's killing of Americans anywhere anytime using secret criteria....

The major problem with Obama's expanded drone war are that he is stretching the terms «immediate threat» beyond recognition to justify dubious presidential action and that he is now targeting regional al Qaeda affiliates in Pakistan, Yemen and Somalia.- all of which had no role in the 9/11 strikes and which focus their attacks mainly against local governments. This expanded war is congressionally unauthorized, and so it is illegal and unconstitutional to kill anyone in these countries - Americans or foreign people.

It is thus not surprising that Congress has taken up the problem. As became known later, the legal service of the Department of Justice had analyzed in 2011 the targeted killing of an American in the process of fighting terrorism. This they did mainly because they intended to present to certain members of Congressional Committees the arguments of the Department. Now the NBC has acquired a 16 page memorandum in which the analysis is sketched. This occurred at the same time when eleven Senators of both parties tried to get information about the original analysis.

According to the memorandum four conditions must be fulfilled to legalize the assassination of American citizens when fighting terrorism:

1. The respective suspects are executing high operational functions in al Qaeda or affiliated groups;
2. An arrest must be impossible without doubt;
3. The military strike against suspects must be in accordance with the international rules of war and humanitarian law;
4. A high official of the government must conclude that the activities of the suspect pose an imminent danger to the USA.

Here the broad interpretation of «imminent danger» is especially disturbing. Already the constant and purposeful preparation of an attack is defined as such. Moreover, it is assumed that the USA are involved in a war against a non-state enemy in accordance with humanitarian international law. Finally, the attack against the enemy can also take place within the territory

of a third nation, if this state could or would not take adequate action against the enemy on its territory.

It is also important that the Washington discussion refers only to the killing of American citizens and that the decision whether an imminent danger is present is at the discretion of the administration not controlled by the independent judiciary.

Considering the facts discussed above, we should not be surprised to read the following statement by Jonathan Turley, professor of law at George Washington University:

An authoritarian nation is defined not just by the use of authoritarian powers, but by the ability to use them. If a president can take away your freedom or your life on his own authority, all rights become little more than a discretionary grant subject to executive will. ... Since 9/11, we have created the very government with sweeping and largely unchecked powers resting on the hope that they will be used wisely.

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EL PENSAMIENTO ECONÓMICO EN LAS ENSEÑANZAS DE JESÚS DE NAZARET

CARMEN GONZÁLEZ MARSAL*

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I INTRODUCCIÓN

Los testimonios sobre la vida de Jesús de Nazaret que llegan hasta nuestros días nos muestran cómo vivió, cómo se relacionó con sus coetáneos y qué les enseñó con sus palabras y obras. Si bien es cierto que su mensaje es principalmente espiritual, no puede decirse que se olvidara de los asuntos mundanales,¹ ni rehusara referirse a cuestiones políticas y económicas, pues sus enseñanzas contienen numerosas referencias a las autoridades públicas, así como a propietarios, comerciantes y trabajadores, y a la riqueza y sus frutos. El hecho de que Jesús afirmara «mi reino no es de este mundo»² no resta interés a sus ideas sobre el gobierno de los hombres, la capacidad humana de descubrimiento y creatividad y otros aspectos de la vida social y económica.

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¹ Como así parece indicar Rothbard (1995, p. 61).

² Jn 18, 36.

II PROPIEDAD PRIVADA Y CONTRATOS

Tanto en la parábola de los viñadores homicidas³ como en la de la viña,⁴ Jesús comienza hablando de un propietario. En la primera el propietario valla su terreno y edifica una torre para protegerlo y diferenciarlo de los campos colindantes, planta en él una viña y construye un lagar para pisar la uva que obtenga del cultivo de la vid y así producir mosto o vino. Después decide arrendar la finca a unos labradores para que la trabajen y pueda dar fruto. En la segunda parábola el personaje central vuelve a ser el propietario de un campo que quiere cultivarlo para producir uvas y por eso busca trabajadores. Al final del relato este propietario

³ «Había un propietario que plantó una viña, la rodeó con una cerca, cavó en ella un lagar, construyó una torre, la arrendó a unos labradores y se marchó lejos. Llegado el tiempo de los frutos, envió sus criados a los labradores para percibir los frutos que le correspondían. Pero los labradores, agarrando a los criados, apalearon a uno, mataron a otro y a otro lo apedrearon. Envío de nuevo otros criados, más que la primera vez, e hicieron con ellos lo mismo. Por último, les mandó a su hijo diciéndose: “Tendrán respeto a mi hijo”. Pero los labradores, al ver al hijo se dijeron: “Este es el heredero: venid, lo matamos y nos quedamos con su herencia”. Y agarrándolo, lo sacaron fuera de la viña y lo mataron. Cuando vuelva el dueño de la viña, ¿qué hará con aquellos labradores? Le contestan: “Hará morir de mala muerte a esos malvados y arrendará la viña a otros labradores que le entreguen los frutos a su tiempo”», Mt 21, 33-41.

⁴ «El reino de los cielos se parece a un propietario que al amanecer salió a contratar jornaleros para su viña. Después de ajustarse con ellos en un denario por jornada, los mandó a la viña. Salió otra vez a media mañana, vio a otros que estaban en la plaza sin trabajo y les dijo: “Id también vosotros a mi viña y os pagaré lo debido”. Ellos fueron. Salió de nuevo hacia mediodía y a media tarde, e hizo lo mismo. Salió al caer la tarde y encontró a otros, parados, y les dijo: “¿Cómo es que estáis aquí el día entero sin trabajar?”. Le respondieron: “Nadie nos ha contratado”. Él les dijo: “Id también vosotros a mi viña”. Cuando oscureció, el dueño dijo al capataz: “Llama a los jornaleros y págalos el jornal, empezando por los últimos y acabando por los primeros”. Vinieron los del atardecer y recibieron un denario cada uno. Cuando llegaron los primeros, pensaban que recibirían más, pero ellos también recibieron un denario cada uno. Al recibirlo se pusieron a protestar contra el amo: “Estos últimos han trabajado solo una hora y los has tratado igual que a nosotros, que hemos aguantado el peso del día y el bochorno”. Él replicó a uno de ellos: “Amigo, no te hago ninguna injusticia. ¿No nos ajustamos en un denario? Toma lo tuyo y vete. Quiero darle a este último igual que a ti. ¿Es que no tengo libertad para hacer lo que quiera en mis asuntos? ¿O vas a tener tú envidia porque yo soy bueno?”», Mt 20, 1-15.

asegura que es justo hacer lo que quiera con su propiedad, es decir, que nadie debe decirle cómo o para qué debe emplearla.⁵ Como se observa, los dos propietarios que Jesús pone en estos ejemplos actúan libremente, utilizando la tierra de su propiedad para perseguir los fines que ellos mismos han elegido, sin injerencia ni coacción externa.

Ambos propietarios acuerdan celebrar sendos contratos con arrendatarios y trabajadores asalariados respectivamente para, en el primer caso, ceder el uso y disfrute del terreno a cambio de un bien o un precio y, en el segundo caso, dar trabajo a cambio de una retribución. Jesús aprueba que el contrato libremente acordado entre dos personas sea de obligado cumplimiento, pues en la primera parábola, como los arrendatarios se niegan a pagar al propietario el alquiler de la tierra y asesinan a las personas que este les envía para cobrarlo, dice que cuando vuelva el propietario les dará muerte y arrendará su finca a otros que sí respeten el contrato y se comprometan a cumplirlo.⁶

Igualmente en la segunda parábola Jesús presenta el conflicto entre el propietario del campo y algunos de los trabajadores contratados, que protestan porque quienes han trabajado menos tiempo que ellos han cobrado lo mismo. La respuesta del propietario de la viña es clara: dos personas están sujetas al contrato libremente aceptado por ellas, con independencia de los acuerdos a los que una de ellas haya llegado con terceros y de las valoraciones que una de las partes o terceras personas puedan hacer de las diferencias entre dichos contratos. En este sentido, el ejemplo evangélico apunta también a la libertad de contratación en el mercado de trabajo, mediante la libertad de establecer los salarios exclusivamente por acuerdo entre empleador y trabajador asalariado.⁷

De esta forma, en la parábola de los viñadores homicidas y en la de la viña Jesús muestra cómo debemos ejercer nuestra libertad a través del respeto a la propiedad privada y la libre contratación, comprometiéndonos individualmente a cumplir lo

⁵ Gave (2005, p. 133).

⁶ Gave (2005, pp. 136-138).

⁷ Gave (2005, pp. 132-134).

estipulado y siendo, por consiguiente, personalmente responsables de las obligaciones contraídas.

III GOBIERNO LIMITADO

La idea de Jesús «dad al César lo que es del César y a Dios lo que es de Dios»⁸ resulta absolutamente novedosa en aquella época, pues al separar la religión del poder político, implica la desacralización del mismo, su limitación a un determinado ámbito y la consecuente actuación libre del individuo al margen del estado.⁹ El gobierno no tiene legitimidad para intervenir en cuantos aspectos de la vida personal, familiar y social de los ciudadanos considere oportunos, sino que su poder debe estar limitado y supeditado al respeto a la libertad individual y la independencia de los cuerpos intermedios de la sociedad civil en los que los ciudadanos decidan asociarse.¹⁰

Siguiendo el planteamiento de que es justo que cada cual actúe como le parezca mejor con su propiedad, Jesús advierte del riesgo de utilizar el anhelado fin de erradicar la pobreza del mundo como pretexto para apropiarse de recursos ajenos, según se narra en el pasaje de la unción de María en Betania.¹¹ Judas —que se encargaba de llevar la bolsa con el dinero— considera que es preferible que María dedique su dinero a un fin benéfico elegido por él, esto es, a los pobres, antes que a la compra de un perfume de nardo para ungir los pies de un amigo. Sin embargo, Jesús le justifica, ya que es ella misma la única que debe decidir cómo gastar

⁸ Mt 22, 21.

⁹ Gregg (2007, pp. 254-255).

¹⁰ Ya sean iniciativas de carácter religioso —como señala Jesús— o familiar, educativo, profesional, cultural, recreativo, etc.

¹¹ «Judas Iscariote, uno de sus discípulos, el que lo iba a entregar, dice: “¿Por qué no se ha vendido este perfume por trescientos denarios para dárselo a los pobres?” Esto lo dijo no porque le importasen los pobres, sino porque era un ladrón; y como tenía la bolsa, se llevaba de lo que iban echando. Jesús dijo: “Déjala; lo tenía guardado para el día de mi sepultura; porque a los pobres los tenéis siempre con vosotros, pero a mí no siempre me tenéis”», Jn 12, 4-8.

su dinero. En este sentido, podemos entender que Jesús desaprobaba la tan pretendida redistribución forzosa de la riqueza a través de los impuestos.¹²

IV DESCUBRIMIENTO Y PERSPICACIA EMPRESARIAL

Una parte importante del pensamiento económico contenido en las enseñanzas de Jesús de Nazaret lo encontramos en las parábolas del tesoro y de la perla,¹³ en las que aborda el emprendimiento poniendo de ejemplo a un propietario y a un comerciante, respectivamente. Ambos venden todas sus propiedades para comprar algo que han descubierto y valoran muchísimo: el primero, un terreno en el que ha encontrado un tesoro y el segundo, una perla maravillosa. Con estos relatos Jesús reconoce y realza el mérito de la perspicacia empresarial, esa capacidad humana de percibir y aprovechar las oportunidades que hay a nuestro alrededor y los demás aún no han visto, de estar atentos en cada situación y descubrir nuevas posibilidades para alcanzar un determinado fin o conseguir un beneficio.¹⁴

Esta llamada a estar alerta y agudizar el ingenio, a desarrollar la propia creatividad en el entorno de incertidumbre en el que nos movemos, para obtener ganancias y así satisfacer las necesidades propias, familiares o ajenas, constituye una exaltación de la empresarialidad, de la innata aptitud humana para descubrir continuamente nuevos fines y nuevos medios para alcanzarlos. Al actuar sagazmente experimentamos la alegría del descubrimiento,

¹² Gave (2005, pp. 106-107).

¹³ «El reino de los cielos se parece a un tesoro escondido en el campo: el que lo encuentra, lo vuelve a esconder y, lleno de alegría, va a vender todo lo que tiene y compra el campo. El reino de los cielos se parece también a un comerciante de perlas finas, que al encontrar una de gran valor se va a vender todo lo que tiene y la compra», Mt 13, 44-46.

¹⁴ Se trata de la *alertness* que describe Kirzner (1979). Huerta de Soto define la función empresarial como «descubrir y apreciar (*prehendo*) las oportunidades de alcanzar algún fin o, si se prefiere, de lograr alguna ganancia o beneficio, que se presentan en el entorno, actuando en consecuencia para aprovecharlas» (2000, p. 34).

de la oportunidad bien aprovechada, del beneficio obtenido a través de la acción ingeniosa y el trabajo resolutivo.¹⁵

V COMERCIO Y CREACIÓN DE RIQUEZA

La famosa parábola de los talentos¹⁶ está impregnada de contenido económico, en la medida en que presenta a un hombre con muchas propiedades que deja su administración a diferentes trabajadores y al cabo del tiempo les pide cuentas y espera recibir sus frutos. En primer lugar, el protagonista de esta historia es consciente de las desigualdades existentes entre las personas y, en vez de distribuir sus bienes en partes iguales entre los administradores, deja a cada uno una cantidad distinta en función de sus diferentes capacidades. En segundo lugar, el propietario sabe que mediante la actividad comercial se crea riqueza, y por eso espera que sus empleados inviertan, intercambien en el mercado, o al menos depositen el capital en el banco para que —transcurrido el tiempo establecido— obtengan los intereses correspondientes. En tercer lugar, valora muy positivamente el trabajo

¹⁵ Percy (2010, pp. 45-46).

¹⁶ «Es como un hombre que, al irse de viaje, llamó a sus siervos y los dejó al cargo de sus bienes: a uno le dejó cinco talentos, a otro dos, a otro uno, a cada cual según su capacidad; luego se marchó. El que recibió cinco talentos fue enseguida a negociar con ellos y ganó otros cinco. El que recibió dos hizo lo mismo y ganó otros dos. En cambio, el que recibió uno fue a hacer un hoyo en la tierra y escondió el dinero de su señor. Al cabo de mucho tiempo viene el señor de aquellos siervos y se pone a ajustar las cuentas con ellos. Se acercó el que había recibido cinco talentos y le presentó otros cinco, diciendo: "Señor, cinco talentos me dejaste; mira, he ganado otros cinco". Su señor le dijo: "Bien, siervo bueno y fiel; como has sido fiel en lo poco, te daré un cargo importante; entra en el gozo de tu señor". Se acercó luego el que había recibido dos talentos y dijo: "Señor, dos talentos me dejaste; mira, he ganado otros dos". Su señor le dijo: "¡Bien, siervo bueno y fiel!; como has sido fiel en lo poco, te daré un cargo importante; entra en el gozo de tu señor". Se acercó también el que había recibido un talento y dijo: "Señor, sabía que eres exigente, que siegas donde no siembras y recoges donde no esparces, tuve miedo y fui a esconder mi talento bajo tierra. Aquí tienes lo tuyo". El señor le respondió: "Eres un siervo negligente y holgazán. ¿Con que sabías que siego donde no siembro y recojo donde no esparzo? Pues debías haber puesto mi dinero en el banco, para que, al volver yo, pudiera recoger lo mío con los intereses. Quitadle el talento y dáselo al que tiene diez"», Mt 25, 14-28.

y la perseverancia de los administradores valientes y astutos, y les premia por ello. Y en cuarto lugar, censura la falta de actuación empresarial debida al miedo, la paralización de la capacidad creativa por el temor a la incertidumbre del futuro. En consecuencia, en esta parábola Jesús afirma la importancia del comercio, la inversión y la búsqueda de rentabilidad.¹⁷

En esta línea, Jesús propone también la parábola de la gran cosecha,¹⁸ en la que critica al propietario que una temporada tuvo gran abundancia de trigo y, en vez de utilizarlo para satisfacer las necesidades de los demás, regalando los cereales a familiares y amigos o vendiéndolos en el mercado, los acumuló para sentirse seguro de por vida y no tener que esforzarse en descubrir nuevas oportunidades de ganancia y emprender nuevas actividades para crear riqueza.¹⁹

VI EL MAL RICO

Como hemos visto, Jesús de Nazaret parte del respeto a la institución de la propiedad privada y los contratos para explicar algunas de sus enseñanzas, introduce la idea de la libertad personal frente al estado, hace hincapié en la importancia del emprendimiento como capacidad de percibir y aprovechar las oportunidades para lograr determinados fines, y reconoce que el comercio es clave en la creación de riqueza.

Finalmente, en relación con ella, al sostener que «ningún siervo puede servir a dos señores, porque, o bien aborrecerá a uno y amará al otro, o bien se dedicará al primero y no hará caso del

¹⁷ Percy (2010, pp. 48-49), Gave (2005, pp. 72-74).

¹⁸ «Las tierras de un hombre rico produjeron una gran cosecha. Y empezó a echar cálculos, diciéndose: “¿Qué haré? No tengo donde almacenar la cosecha”. Y se dijo: “Haré lo siguiente: derribaré los graneros y construiré otros más grandes, y almacenaré allí todo el trigo y mis bienes. Y entonces me diré a mí mismo: Alma mía, tienes bienes almacenados para muchos años; descansa, come, bebe, banquetea alegremente”. Pero Dios le dijo: “Necio, esta noche te van a reclamar el alma, y ¿de quién será lo que has preparado?” Así es el que atesora para sí y no es rico ante Dios», Lc 12, 16-21.

¹⁹ Percy (2010, p. 50), Gave (2005, pp. 148-149).

segundo. No podéis servir a Dios y al dinero»,²⁰ Jesús condena el amor excesivo a la riqueza y al dinero, pero no es contrario a la búsqueda de prosperidad y de desarrollo económico en sí misma.²¹ Hay una gran diferencia entre tener unas determinadas propiedades —sean muchas o pocas— y ser esclavo de las mismas, entre ser rico y vivir al servicio de esa riqueza. Jesús no condena a quien tiene muchos bienes, sino a quien los ama por encima de todo; no condena al rico, sino al «mal rico».²²

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²⁰ Lc 16, 13.

²¹ Rothbard (1995, p. 61).

²² Gave (2005, p. 99).

THE CURRENT UNSUSTAINABLE BOOM IN THE ARGENTINE ECONOMY

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Since 2010, Paul Krugman has been suggesting that Greece, Spain, Ireland and other European countries should consider abandoning the euro and devalue their currencies in order to solve their fiscal difficulties. In January of 2011 Krugman repeated the same prescription, but added that the Argentine default and devaluation of 2001-2002 should be taken as an example of what Greece and other European countries in trouble should do to escape the crisis in which they are immersed.

In Krugman's own words:

Some economists, myself included, look at Europe's woes and have the feeling that we've seen this movie before, a decade ago on another continent - specifically, in Argentina. [...] Argentina didn't simply default on its foreign debt; it also abandoned its link to the dollar, allowing the peso's value to fall by more than two-thirds. And this devaluation worked: from 2003 onward, Argentina experienced a rapid export-led economic rebound. (Krugman, 2011a).¹

The Argentinian government could not resist the temptation to use the unfortunate words of this Nobel Prize winner to congratulate themselves on the success of policies implemented over the last decade.

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¹ See also Krugman 2010, 2011b, 2011c, 2012.

My objective is to try to clarify what happened in Argentina's recent economic history, in order to shed light on a current and controversial topic in the field of economic policy.

I «MENEMISM» (1989-1999)

After the return to democracy in 1983, the administration of President Ricardo Alfonsín experienced serious economic difficulties that ended with his resignation in the midst of uncontrolled hyperinflation in 1989 (Hanke and Krus 2012).

The Peronist Carlos Menem took office in these circumstances and, after two years of blunders, he installed an economic team led by Domingo Cavallo that found a way out of the impasse. As the fiscal deficit could no longer be financed by issuing money and the country was without access to external credit, revenue could only be obtained through the privatization of loss-making state-owned companies. Between 1991 and 1993, Argentina pegged the peso to the dollar (Hanke and Schuler 2002), privatized loss-making state owned companies, agreed to the Brady debt restructuring Plan (Vásquez, 1996), came out of default, joined the free-trade area MERCOSUR and began to plan the privatization of the pension system (Figure 1).

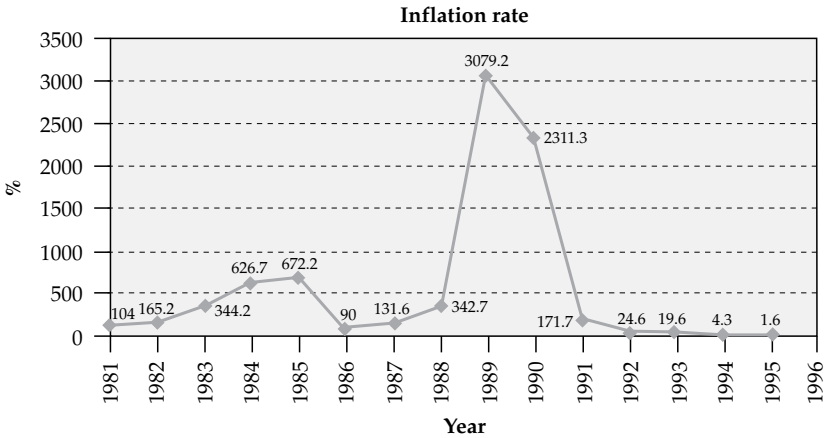
Argentina was unable to completely eliminate its fiscal deficit, but in 1993 the extraordinary income earned from privatization provided some relief. After 1994, government spending and the fiscal deficit began to grow but were financed with external credit (Guido and Lazzari 2003).

Argentina's economy enjoyed stability, but as long as the fiscal deficit remained the country's growth depended on increasing foreign debt, which was only obtainable with the International Monetary Fund as a guarantor (E.A. Bruno, 2006).

Surprisingly, Menem reached an agreement with Ricardo Alfonsín that enabled him to amend the Constitution and seek reelection in 1995. Once he was re-elected, complications began to arise.

The 1995 Tequila crisis, the Asian crisis of 1997, the Russian crisis of 1998 and the Brazilian devaluation of 1999 were all serious

FIGURE 1
HYPERINFLATION IN ARGENTINA



setbacks for Argentina’s economy, and it was on the brink of collapse by the third quarter of 1998 (Hanke 2002, Calvo, Izquierdo and Talvi 2003).

II
BETWEEN «MENEMISM» AND «KIRSCHNERISM»
(1999-2003)

In 1999, the «Alliance» led by Fernando De la Rúa won the elections. A decision was made to maintain the convertibility system, but the external adversities and the consequent strengthening of the dollar made it impossible to control the fiscal deficit.²

² «Signs of recovery appeared in late 1999 and early 2000, but the incoming de la Rúa government choked the recovery by enacting large tax increases that took effect at the start of 2000. The government (and the IMF, which lent support to the government’s program) thought the tax increases were necessary to reduce the budget deficit. Instead, tax collections fell. When Domingo Cavallo became minister of the economy in March 2001, he pushed through a financial transaction tax, which was increased in August to its current rate of 0.6 percent on bank debits and credits. Although the tax rate may appear low, it is not.» (Hanke 2002).

After another early resignation in December 2001 followed by a rapid succession of presidents and another declaration of default, Eduardo Duhalde decided to abandon convertibility, forcibly transform domestic dollar deposits into pesos, and devalue the currency.³

Argentina's GDP fell by more than 10% in 2002, and a process of exchange rate adjustment began which saw the peso/dollar rate move from parity (1-1) to 3-1 in a controlled manner.⁴

III «KIRCHNERISM» (2003-2011)

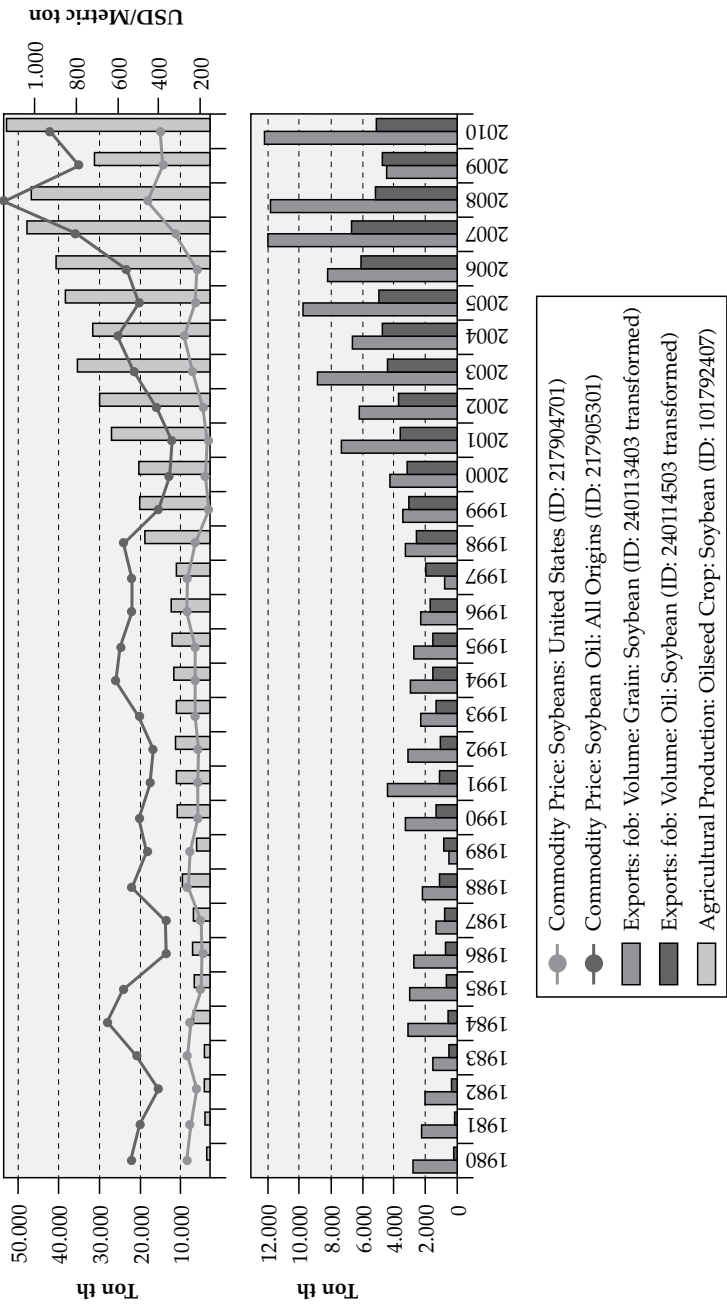
In 2003 elections were held and Nestor Kirchner came to power with less than 23% of the votes. Argentina's economy had just started to recover and was in the process of emerging from a deep crisis. As the result of the sharp devaluation, local wages were very low in dollar terms, and Argentine industries became competitive abroad.

Then the international context changed: 1) There was an absence of international shocks until the American sub-prime crisis of 2008; 2) the United States abandoned the strong dollar and short term interest rates turned negative in real terms (Ravier and Lewin 2012); 3) China became the world's factory, and a source of demand for Argentina's commodities which raised prices to record levels (Figure 2); 4) In sharp contrast to its normal policy, Brazil allowed its currency to float, which improved Argentina's trade balance with that country.

³ Conventional wisdom in Argentina held that linking the peso to the dollar somehow «overvalued» it, making the Argentine economy uncompetitive and stifling economic growth. Hanke and Schuler (2002) point out that before central bankers accept this conventional wisdom they should examine it carefully. The dollar-linked monetary system Argentina abandoned was never fully understood, either in its strengths or its weaknesses. An alternative solution to convertibility would have been dollarization. See Hanke (1999).

⁴ The three factors contributing to this devastating crisis were fiscal inconsistency, lack of flexibility and external shocks. See R. López Murphy, D. Artana and F. Navajas 2003.

FIGURE 2
SOYBEAN PRODUCTION, EXPORTS & PRICES



In this context, Argentina's economy began a rapid recovery and some authors recalled the nickname given to Argentina in the late 19th and early 20th centuries: «the Granary of the World». The government, however, hindered the process.⁵

First it became a dependent of the rural sector as it took advantage of the export tax amounting to about 35% of the value of export. Revenue from this source rose over time due to the upward spiral of commodity prices and export volumes. Conflicts with the sector were an obvious consequence. The resulting «war with the rural sector» will stand out as one of the most important factors in Argentina's history over the past decade (Schweimler 2008).

Second, Nestor Kirchner, and later his wife, understood that raising the nominal exchange rate (devaluing the peso) would make domestic industry more competitive while at the same time increasing export withholding tax revenues. This led to a gradual rise in the nominal exchange rate from 3-1 in 2003 to approximate 5-1 in early 2013, but with an unofficial («blue») dollar rate exchange rate that now exceeds 7 pesos.

The real exchange rate, therefore, is again back at the same level as it was at the end of 2001, which means that industries «created» in the last decade will find it difficult to survive (Figure 3).

Third, and linked to the aforementioned points, it was decided to impose an inflation tax (issue money) to help finance the state budget. This is, in short, the main cause of the escalating inflation that private analysts estimate at between 22 and 30% (as opposed to the official data of Indec which puts it at around 10%) (O'Grady 2012, Turner 2011).

Fourth, the government re-nationalized pensions, on the basis that this allowed it to use both the funds appropriated from private plans to pay current pension obligations and the «retirement savings» of workers remitted as pension premiums as though they were taxes (Niemietz 2009).

Fifth, the government destroyed the last vestiges of the independence of the Central Bank and demanded large amounts

⁵ See García Hamilton (2006) Historical Reflections on the Splendor and Decline of Argentina.

FIGURE 3
REAL EXCHANGE RATE IN ARGENTINA (BASE DEC. 2001)



Source: IERAL.

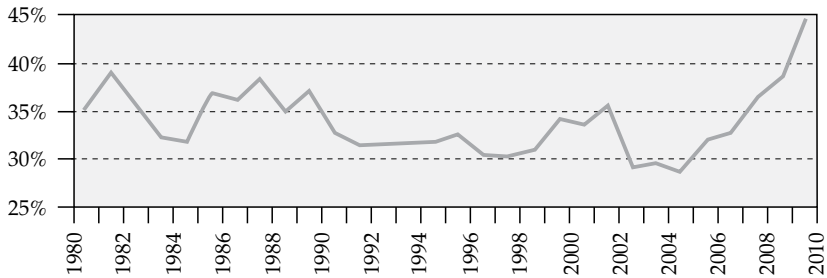
of dollar reserves be used to pay down commitments to the International Monetary Fund, thereby avoiding any audits by multilateral credit agencies (Katz 2005).

Sixth, it re-nationalized Repsol-YPF,⁶ and thus tried to follow the path of Venezuela, increasing production of crude oil and its derivatives in order to increase the resource tax revenues available to sustain the «Kirchner (“K”) Scheme» (Moffet and Turner 2012).

These measures financed an increase in the level of consolidated public spending from 30% to 45% of GDP, as shown in Figure 4. Political analysts detail how the government developed a complicated arrangement which required the support of local governors and mayors for the Kirchner scheme before any delivery of discretionary funds occurred. Alleged cases of corruption may even extend to buying the votes of members of congress and Senators to support key congressional laws.

⁶ Founded in 1922, YPF (Yacimientos Petrolíferos Fiscales, («Treasury Petroleum Fields»)) was the first oil company in the world established as a state enterprise. In the middle of hyperinflation and a huge fiscal deficit, Menem start to think in a privatization of YPF —along with other public services— and this took place in 1993. In 1999 the Spanish firm Repsol bought 98% of YPF. After some years of declining investments which were the inevitable response to price controls, YPF-Repsol was expropriated and re-nationalized in May 2012.

FIGURE 4
EVOLUTION OF THE CONSOLIDATED PUBLIC
SPENDING RELATIVE TO GDP



Source: FIEL on data from the National Public Expenditure and Social Programs and the FIEL Macroeconomic Forecasts.

In 2007 elections were held and «Kirchnerism» won again, but this time with Cristina Fernandez de Kirchner as president. However, Néstor Kirchner didn't relinquish power: he accompanied his wife as a virtual Minister of Economy and participated in every decision made at the Casa Rosada or Olivos (the equivalent of the White House and Camp David in Argentina).

Between 2007 and 2011 the same policy direction was followed. The death of Nestor Kirchner in October 2010 left his wife as the ruling party candidate in the next election. Yet another electoral victory began her second term in office which will end in 2015. It seems that when the economy in any country in the world is growing, its society agrees not to «rock the boat».

IV DIFFICULTIES DURING THE THIRD TERM OF «KIRCHNERISM»

The main challenges for economic policy over the period 2013-2015 are 1) economic growth, 2) control of public spending and 3) inflation avoidance.

Although the government emphasizes the «growth» of Argentina's economy during the last decade, strong rates of growth in economic activity have only allowed recovery from the depths

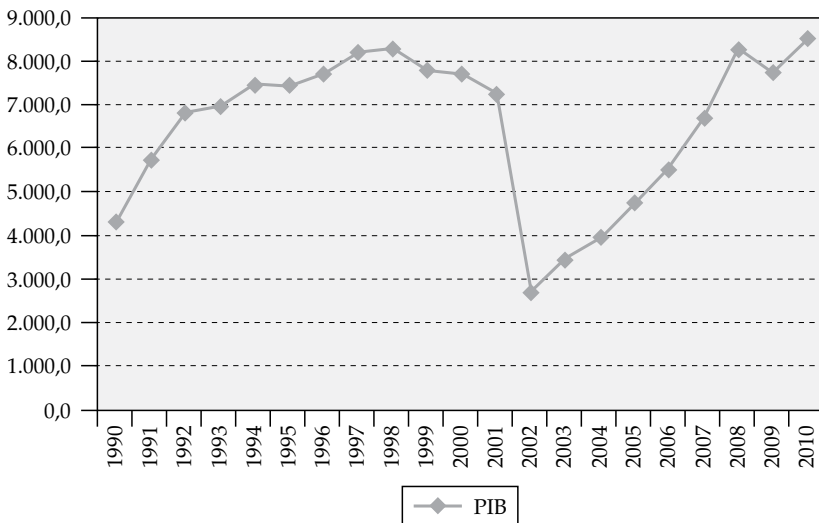
of the 2001/2002 crisis. This can be demonstrated with reference to GDP per capita and installed capacity utilization.

In the first case, as we can see in Figure 5, when we measure GDP per capita at current prices, it is clear that the economy has only just returned to the peak reached in 1998.

This point is crucial to understanding Krugman’s «love affair» with the Kirchner Scheme. In various articles, he uses different graphs of economic growth to prove the «basic fact» that Argentina’s growth outperforms that of neighboring Brazil. Juan Carlos Hidalgo demolishes this conclusion by pointing out that:

Krugman’s dismissal of economics reporting about Argentina may explain why he doesn’t mention the fact that the administration of Cristina Fernández de Kirchner cooks the inflation numbers. The story was recently highlighted in *The Economist*, which even removed the official inflation figure from its indicators page. As the magazine put it, «Since 2007 Argentina’s government has published inflation figures that almost nobody believes.» Apparently, nobody but Paul Krugman.

FIGURE 5
EVOLUTION OF REAL GDP PER CAPITA IN DOLLARS



Source: CEI.

Since Argentina’s Consumer Price Index significantly understates true inflation (the official figure for 2011 was 9.7% whereas private estimates put the figure at 24.4%), the country’s real GDP is overestimated (Hidalgo, 2012).

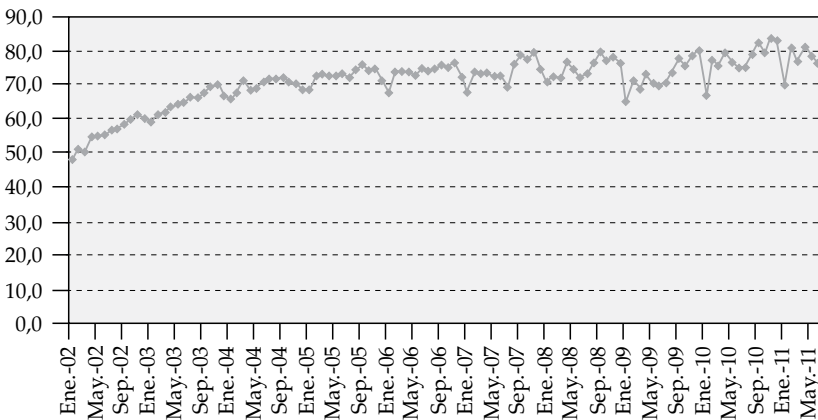
In terms of capacity utilization, in 2001 the Argentine economy was operating at below 50% of capacity, as shown in Figure 6. The recovery of Argentina’s economy between 2002 and 2011 saw utilization move up to 80% of installed capacity, indicating less room for future growth without significant new investment.

Note in Figure 7 the similarity between the 2002-2008 recovery and the one that occurred between 1990 and 1998. Clearly these levels of growth will be difficult to sustain.

This shows an urgent need for the investment required to shift the «production possibility frontier», which alone will permit further improvements in the welfare of Argentinians. However, Argentina’s economy has been aligned in recent years with countries such as Cuba, Venezuela, Ecuador and Bolivia, none of which can be expected to contribute the capital required.

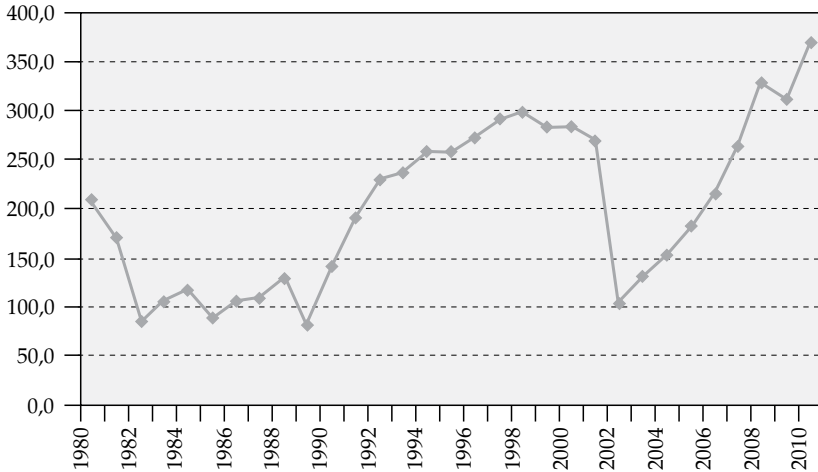
Not only that. The flight of capital from the country has been dramatic in recent years, showing that not even Argentinians trust

FIGURE 6
EVOLUTION OF INDUSTRIAL CAPACITY UTILIZATION
(2002-2011)



Source: INDEC.

FIGURE 7
GDP IN MILLION OF DOLLARS (1980-2010)



Source: CEI.

their country (Romig 2012). The expropriation of pensions and YPF, and the pressure applied to companies by the government scares away business capital.⁷ The only reason this capital flight has not yet registered as a serious financial problem for the country is the strong inflow of foreign currency generated by soybean exports.

With regard to public spending it is clear that Argentina exceeds levels that can be financed with taxes. The difference is financed by printing money and dipping into private pension funds and central bank reserves (ANSES and BCRA respectively). This has several implications:

First, the difficulty controlling levels of public spending that are already excessive. Accelerating inflation causes constant union demands for salary increases in both the private and the public sectors.

⁷ «Argentina often blocks or delays imports to boost its trade surplus and force foreign companies to make their goods here. Last month, the European Union complained that Argentina was limiting imports for around 600 products, according to a report by the World Trade Organization. Argentine trade officials declined to comment for this article» (Turner 2011).

Second, to maintain the aforementioned acceleration in spending of recent years and thus prevent further union demands requires a steady acceleration in tax revenues, which in turn depends on repeating indefinitely the normally rare coincidence of record crops and commodity prices.

The latter in turn depends on two decisive factors: on the one hand, demand from China, which we conjecture will continue, and secondly, the liquidity policy of the United States, contributing to higher commodity prices (from soybeans to gold). No one can predict how long this second factor will last. On one side are the difficulties faced today by the United States in terms of the «inflation risk» inherent in lax monetary policy. On the other, we have a new announcement of Ben Bernanke at the U.S Federal Reserve that interest rates will be kept at around 0 per cent at least through 2014. This may give the Argentine government a break, but the situation may well change dramatically in 2015.⁸

Third, the acceleration of government spending growth relies on the funds of ANSES, which will be depleted by the frequent «extractions» the government makes from the institution sometime in the next four years (Stang 2011).

Fourth, opinion is currently divided between analysts who think that the reserves held by the Central Bank remain sound and others who believe the quality of the reserves has diminished as the result of a process whereby the government has appropriated reserves in exchange for «junk» bonds (Cachanosky 2005, 2009a, 2009b).

Admittedly, these reserves will also be strengthened if Argentina maintains a favorable trade balance with the world. This is becoming increasingly unlikely, because the real exchange rate (Figure 3) is as «overvalued» today as it was in the 1990s. This threatens not only the trade balance but also the competitiveness of industry which is, consequently, pushing for a further devaluation.

⁸ If we consider high commodity prices a consequence of the Fed's monetary policy, then it can be said that the latest Bubble is developing in Latin America, and in Argentina in particular! The «bust» will occur as soon as the Fed moves short term interest rates higher.

To choose not devalue the peso compromises competitiveness even further, but devaluation will inevitably accelerate inflation. The dilemma is clear.

V CONCLUSION

Argentina recovered from the great depression of 2001/2002 thanks to a favorable international context and despite the government. The latter was the main culprit behind high inflation, lack of investment, unprecedented public spending growth and unsustainable economic growth.

It is difficult to foresee a change in the direction recently adopted by the government between now and 2015. The good news is that some institutions still operate in Argentina, and the Constitution now precludes Cristina Fernandez de Kirchner from a third term as president.

After the next election it will be necessary to reverse the process, dismantle the «K scheme», eliminate export withholding taxes and return public spending to levels that can be sustained by the tax base, estimated to be 20% of GDP (O'Connor and Vignale 2011).⁹

There are three potential ways to accomplish this. The first is to reduce public spending; however, given the power that unions and «protesters» have attained in recent years, such a policy seems highly unlikely (Morales Solá 2009).

The second is to freeze public spending in nominal terms and allow inflation to do the rest, until it is in line with tax revenue. As in the previous case, this is extremely unlikely given the strength of the unions.

The third is for the government to implement a fiscal rule whereby public spending can only increase at a rate lower than the

⁹ If we accept the conclusion reached by R. Lizardo and A.V. Mollick (2009) in an article examining the effect of government consumption on economic growth in 23 Latin American countries over the period 1974-2003, we will appreciate that «increases [decreases] in government consumption lead to unambiguous decreases [increases] in economic growth.»

increase in revenue. If the international context remains favorable—at least through 2013 and 2014—this policy may allow time to reverse the trend and solve the problem by taking advantage of revenue growth in the short term. This gradually shrinks the size of the government, and was the mechanism used by Chile to reduce its level of public spending to 18% of GDP, making it a model for other Latin American countries.¹⁰

Will this current government have the will to implement a comprehensive reform of the state necessary to avoid another profound crisis? Will the government to take office in 2015 be willing to change the policy that by that date would have been in effect for 12 years? Will the government have time to avoid another depression?

My tentative answer is negative in all three cases. Neither the ruling party proposals, nor those of the opposition, suggest any willingness to change course.

It appears that the most likely scenario for the coming years is: 1) lack of private investment and consequently stagnation of economic growth, with negative effects on job creation; 2) fiscal difficulties that prevent salaries in the public sector from maintaining their purchasing power in real terms; 3) successive general strikes, even more widespread lawlessness and riots, all of which require increased public spending to maintain order; and 4) increased reliance on inflation to push government fiscal problems off into the futures that will necessarily result in accelerated inflation. The combined effect of these will be an erosion of per capita incomes and the growth of homelessness and poverty.

The year 2013 is crucial if reforms are to be implemented. What happens beyond this year depends on two factors: 1) the moment at which the favorable international context which has benefited the country in recent years turns adverse, particularly an increase in U. S. interest rates and the end of loose monetary policy (not expected before 2014; and 2) whether or not the Argentinian government manages to reverse the policy it has followed in recent years.

¹⁰ See the Economic Freedom Index published annually by *The Wall Street Journal* and the Heritage Foundation.

Paul Krugman is wrong in two distinct senses. First, he underestimates the economic and social losses involved in the crisis of 2001/2002. Second, he overestimates the «growth» of Argentina's economy in the period 2003/2011. Yes, Argentina recovered from the previous crisis, but future growth does not start from the pit in which Argentina found itself in 2003, but from the level recently attained. Argentina again offers an example of an «unsustainable boom» and is in the process of losing a unique opportunity for development on which other Latin American countries are capitalizing.

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HACIA LA CREACIÓN DE UN MERCADO DEL SUELO EN ESPAÑA

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I DEL RESULTADO A LOS MEDIOS

Comenzado por el final, la foto fija de la política urbanística y de ordenación del territorio en España no puede ser más desalentadora. Basta una mirada superficial por la geografía para comprobar en toda su magnitud el consumo de territorio, la transformación del suelo, la destrucción de la costa y el litoral, la edificación en las laderas y cimas de los montes...

Pero más desesperante que la realidad estática, lo verdaderamente cruel es que toda esta degeneración se ha producido en los últimos treinta o cuarenta años, que es curiosamente cuando mayor intervención sobre el suelo ha existido por parte de los poderes públicos.

En efecto la legislación del suelo es relativamente reciente en nuestro país, de suerte que la primera Ley del Suelo data de 1956. Hasta entonces el legislador fue siempre ajeno a la edificación, y es precisamente hasta esas fechas y un poco más cuando el consumo de recursos naturales obedecía a la lógica y al sentido común. De hecho son los centros históricos de cualquier población los espacios más bellos, más ordenados y más deseados, al tiempo que nacieron de forma espontánea por el operador económico al margen de la regulación planificadora de la autoridad urbanística.

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Por el contrario los extra radios de las ciudades y la ocupación de la costa han proliferado bajo la vigencia de leyes y reglamentos, estatales o autonómicos, planes generales, normas subsidiarias... extremo que supone una evidente contradicción y que obliga a reflexionar sobre cuáles son los errores cometidos. Lo mismo hay que decir de la viviendas y urbanizaciones ilegales, cuyo número resulta imposible de determinar. Sólo en la provincia de Málaga se estima que existen unas sesenta mil viviendas al margen del ordenamiento urbanístico, de las cuales ocho mil se sitúan en el municipio de Mijas; en la provincia de Sevilla se calcula que existen cincuenta y dos urbanizaciones legales, la mitad que en Madrid.

Cualquier intento de recopilar exhaustivamente la ingente normativa que regula el suelo es una tarea titánica por no decir imposible: la Ley estatal del Suelo, diez y seis leyes autonómicas del suelo (todas las Comunidades menos Baleares), leyes de suelo rústico o no urbanizable, ley patrimonio histórico, ley de patrimonio natural y biodiversidad (que deroga la Ley de Conservación de la Naturaleza del Estado, si bien subsisten todas las leyes autonómicas de conservación de la naturaleza), Ley de Costas, Ley de Montes y sus homónimas autonómicas, todas las leyes de medidas urgentes y desarrollo sostenible que se han aprobado en los últimos años, leyes de incendios forestales, la red Natura 2000 y los espacios declarados LIC (lugar de interés comunitario) o ZEPA (zona de especial protección para las aves), leyes de medidas ambientales, normativa en materia de recursos hídricos que afectan al subsuelo y al suelo, limitaciones de normas sectoriales en materia de carreteras, litoral, puertos y aeropuertos, reglamentaciones técnicas (Código Técnico de la Edificación, Reglamento de Instalaciones Térmicas de los Edificios)... y a todo ello hay que añadir los instrumentos municipales de planeamiento (que tienen naturaleza reglamentaria): planes generales, normas subsidiarias, planes parciales, planes especiales y estudios de detalle.

Pues bien, todo este sobre dimensionamiento normativo no ha sido capaz de frenar un desarrollo urbanístico errático. Se han dictado febrilmente leyes y reglamentos, se han creado organismos públicos para vigilar y controlar la disciplina urbanística (observatorios, agencias...) y, pese a ello, la tozuda realidad es la que es:

la de un crecimiento caótico y descontrolado, en muchos casos con daños irreversibles.

II DE LA INTERVENCIÓN IMPENITENTE

El régimen del suelo es de vital importancia para dar cumplimiento a un principio rector de la política social y económica, la vivienda (art. 47 CE), así como para cualquier actividad productiva. Sin suelo no existe prácticamente nada. La Carta Europea de Ordenación del Territorio aprobada por la Conferencia Europea de Ministros de Ordenación del Territorio de 23 de mayo de 1983 la define como la «expresión espacial de la política económica, social, cultural y ecológica de toda la sociedad».¹

No se olvide que el suelo afecta directamente a la actividad productiva y comercial: a día de hoy el suelo afecta a la vivienda, y no en vano las noticias dramáticas sobre desahucios de familias enteras son constantes; infinidad de pequeñas y medianas empresas han desaparecido por no poder pagar rentas en concepto de alquiler o las hipotecas de sus negocios; pero también el suelo afecta a los salarios y al empleo, dado que el empleador debe reducir gastos y despedir personal; incluso en época de bonanza económica el suelo afecta a la edad de emancipación de los jóvenes e incluso a la edad en que se tienen hijos, que se ha retrasado entre quince y veinte años (una generación)² como consecuencia de los precios de la vivienda.

¹ Citado en la Sentencia del Tribunal Constitucional 149/1991, de 4 de julio, en los recursos de inconstitucionalidad 1689/1988, 1708/1988, 1711/1988, 1715/1988, 1717/1988, 1723/1988, 1728/1988, 1729/1988 y 1740/1988, interpuestos contra la Ley 22/1988, de 28 de Julio, de Costas.

² Jurídicamente el concepto de generación se ha situado en la *tria genicula*, los treinta y tres años, haciendo acopio en derecho administrativo del derecho canónico y en este caso concreto de la edad de Cristo. El profesor García de Enterría explica cómo en las concesiones administrativas se situó el límite de noventa y nueve años por ser interpretar que después de dos generaciones se perdía la memoria de las cosas. Y por ello el máximo de un título concesional era la generación presente y dos más. García de Enterría (1995), pp. 34-35.

De ahí que el suelo no pueda ser desatendido por los poderes públicos en cuanto garantes del interés general y de los principios constitucionales. Otra cosa consiste en el alcance y los límites de esa intervención.

La intervención administrativa en materia de suelo se lleva a cabo en nuestro ordenamiento jurídico a través del planeamiento municipal. En los planes municipales el Ayuntamiento y la Consejería correspondiente deciden por dónde debe crecer el municipio, qué usos urbanísticos deben llevarse a cabo en cada polígono, y hasta la densidad de población en cada núcleo.

A nadie escapa que esta intensidad de intervención no es en modo alguno admisible. El planeamiento queda en manos de arquitectos y políticos, en algún caso aparecen los juristas, pero los economistas son los grandes olvidados en este procedimiento y tienen mucho que decir.³ Entre otras cosas, porque no hay que olvidar que, como recurso que es, el suelo se encuentra sometido a las leyes del mercado. Y resulta que el juego de la oferta y la demanda se ve literalmente entorpecido por la decisión política.

En efecto el grado de intervención es tal que el gobernante decide hasta el último detalle el diseño de la ciudad. No en vano el informe del entonces Tribunal de Defensa de la Competencia de 1993 titulado *Remedios políticos que pueden favorecer la libre competencia en los servicios y atajar el daño causado por los monopolios* dedica su epígrafe décimo a la competencia en el mercado del suelo y censura cómo la decisión errática del planificador dinamita el mercado del suelo hasta el punto de fragmentarlo y desvirtuar el precio de mercado del suelo.

El problema en España es que, en vez de fijar unas reglas generales de defensa de los intereses públicos, la autoridad urbanística va decidiendo todo hasta el extremo de poder determinar con el máximo detalle el uso de cada espacio. Al impedir a los propietarios decidir el uso del espacio, se segmenta el mercado del suelo, de tal forma que los distintos usos no compiten por la utilización del suelo. Es como si en vez de haber un mercado hubiera ochenta o cien mercados diminutos. Esta falta de competencia entre usos

³ Vid. Jacobs, J. (1969).

alternativos, genera una mala asignación de recursos y da lugar a la aparición de rentas monopólicas. La compartimentación del mercado disminuye la oferta para cada uno de los usos y fuerza al alza los precios.

El problema de no permitir el juego de la competencia, es que, como el futuro no se corresponde siempre con lo previsto por la autoridad urbanística, se producen movimientos espasmódicos en cantidades y en precios. Así, en algunos casos, resultan terrenos sobrantes y en otros, como ha sucedido con las oficinas, faltó espacio y los precios se dispararon, porque la demanda de usos del espacio no se ajustó a lo que la autoridad urbanística había previsto.

Lo mismo sucede continuamente en el caso del suelo para vivienda donde coexisten terrenos sin edificar y precios altos. Es la paradoja del intervencionismo extremo: por un lado sobra terreno y por otro lado, y simultáneamente, los precios se disparan.

En España la única liberalización del suelo que se ha emprendido fue con la Ley de 1998. Pero esta liberalización se centró en desclasificar suelo; el razonamiento del legislador fue el siguiente: si existe más suelo urbano, su precio descenderá. No obstante, no se acometió la desregulación del sector del suelo; a día de hoy el mercado del suelo sigue siendo una ficción, sencillamente no existe y la causa no es otra que el intervencionismo impenitente.

III

EL MERCADO DEL SUELO

1. Un mercado inexistente

Libertad de empresa y planificación son dos institutos antagónicos. De hecho en la denominada Constitución económica los dos extremos son la libertad de empresa en el marco de la economía de mercado (art. 38 CE) y la planificación estatal de la actividad económica general (art. 131 CE).

Entre ambas opciones el legislador español se ha decantado por este segundo en cuanto al régimen jurídico y económico del suelo.

Como idea, la planificación del suelo no es mala en sí. En un alarde de inocencia, el art. 131 CE justifica la planificación en el objetivo de «atender a las necesidades colectivas, equilibrar y armonizar el desarrollo regional y sectorial y estimular el crecimiento de la renta y de la riqueza y su más justa distribución». Lo que sucede es que en la práctica los efectos de la planificación del suelo son perversos por los motivos expuestos.

No se olvide en este sentido que el ideal planificador responde a la filosofía soviética, extinguida desde hace décadas por su fracaso fundamentalmente social y no menos económico.⁴ En el sistema político soviético ni existe la propiedad privada ni tampoco la iniciativa de los particulares. La anulación del emprendedor deja todo el espacio a la autoridad gubernativa, que decide *manu militari* la marcha del país.

El suelo en el sistema político continental de corte francés no dista de ese juego macabro. Para empezar el Estado desconfía del ciudadano, y no en vano cualquier actividad se encuentra sometida a autorización con carácter previo. Desde la Directiva de Servicios 2006/123/CE, conocida por el nombre del Comisario de Comercio que la impulsó, Sr. Bolkenstein, en algunos campos se sustituye la licencia previa por una declaración responsable o una comunicación previa.⁵ No obstante en materia de urbanismo esta Directiva no resulta aplicable por considerarse una razón imperiosa de interés general.⁶ De ahí que en urbanismo se siga exigiendo

⁴ Vid. *El fracaso histórico del socialismo* en Huerta de Soto, J. (2010). p. 21.

⁵ Bauzá Martorell, F.J. (2010).

⁶ Según el Considerando 40 de la Directiva, que se reproduce en el art. 4.8, el concepto de «razones imperiosas de interés general» al que se hace referencia en determinadas prescripciones de la presente Directiva ha sido desarrollado por el Tribunal de Justicia en su jurisprudencia relativa a los artículos 43 y 49 del Tratado y puede seguir evolucionando. La noción reconocida en la jurisprudencia del Tribunal de Justicia abarca al menos los ámbitos siguientes: orden público, seguridad pública y salud pública, en el sentido de los artículos 46 y 55 del Tratado, mantenimiento del orden en la sociedad, objetivos de política social, protección de los destinatarios de los servicios, protección del consumidor, protección de los trabajadores, incluida su protección social, bienestar animal, preservación del equilibrio financiero de los regímenes de seguridad social, prevención de fraudes, prevención de la competencia desleal, protección del medio ambiente y del entorno urbano, incluida la planificación urbana y rural, protección de los acreedores, garantía de una buena administración de

la licencia previa con toda la burocracia —en muchos casos innecesaria— que ello comporta.

Por razones obvias debemos ser críticos con el sistema de la Directiva de Servicios y en especial en lo que concierne al urbanismo. En efecto Cholbi Cachá y Merino Molins entienden que el régimen de autorización previa queda con carácter residual a partir de la Directiva 2006/123/CE, salvo en los supuestos en que pueda existir una serie de riesgos o peligros por la falta de intervención *a priori* o, cuando entren en juego razones imperiosas de interés general. La cuestión de mayor calado estaría en qué tipo de actividad no reúne alguno de los ámbitos relacionados con los objetivos de orden público; salud pública, protección de los consumidores, protección del entorno urbano o del medio ambiente que harían por vía de «excepción» la necesidad, por razones imperiosas de interés general, de acudir a un régimen de autorización previa que, evidentemente, no sea discriminatorio en razón de la nacionalidad.⁷ De ahí que, incluso en este punto en que en apariencia se aprecia un avance, por el contrario en la realidad no nos alejamos de la ambigüedad normativa, que es al que da lugar a la inseguridad jurídica, tan perniciosa para la actividad económica. Y prueba de ello es que tanto el derecho positivo como la doctrina jurisprudencial hacen acopio de esta ambigüedad.

Así existen leyes autonómicas urbanísticas y de ordenación del territorio que —al amparo del Considerando 9 de la Directiva de Servicios excluyen por completo la declaración responsable,⁸ mientras que otras sí lo permiten: Castilla La Mancha reserva

justicia, seguridad vial, protección de la propiedad intelectual e industrial, objetivos de política cultural, incluida la salvaguardia de la libertad de expresión de los diversos componentes (en especial, los valores sociales, culturales, religiosos y filosóficos de la sociedad), la necesidad de garantizar un alto nivel de educación, mantenimiento de la diversidad de prensa, fomento de la lengua nacional, conservación del patrimonio nacional histórico y artístico y política veterinaria.

⁷ Cholbi Cachá, F. y Merino Molins, V. (2010).

⁸ Ley 10/1990, de 23 de octubre, de Disciplina Urbanística de Baleares; Ley 7/2002, de 17 de diciembre, de Andalucía; Ley 5/1999, de 8 de abril, de Castilla y León; Ley de Ordenación del Territorio y Urbanismo de Asturias aprobada por Decreto Legislativo 1/2004, de 22 de abril; la Ley 3/2009, de 17 de junio, de Aragón; Ley 2/2001, de 25 de junio, del Suelo de Cantabria; Ley Foral 35/2002, de 20 de diciembre, Ordenación del Territorio y Urbanismo de Navarra; Ley 16/2005, de 30 de diciembre, de

determinados actos tasados a licencia urbanística (art. 165 del Decreto Legislativo 1/2010, de 18 de mayo) y deja el resto de actos sujetos al régimen de comunicación previa. Cataluña va más allá al enumerar también de forma exhaustiva qué actos se someten a autorización previa (Decreto Legislativo 1/2010, de 3 de agosto), remitiendo a las ordenanzas municipales la posibilidad de sustituir la licencia por la comunicación previa.

En sede jurisprudencial la situación no es distinta: la Sentencia del Tribunal Superior de Justicia de Madrid, Sala de lo Contencioso Administrativo, Sección 2.^a, de 1 de octubre de 2009 (rec. 616/2009) confirma el cese de una actividad en un despacho de abogados por incumplimiento de normas urbanísticas a pesar de la Directiva de Servicios, mientras que la Sentencia del mismo Tribunal, Sala y Sección de 17 de febrero de 2011 (rec. 701/2009) por el contrario establece que la Ordenanza del Ayuntamiento de Madrid de 29 de junio de 2009 (BOCAM de 6 de julio de 2009) queda fuera del ámbito de aplicación de la Directiva.⁹

2. Las trabas del mercado del suelo

a) *Burocracia administrativa*

La tramitación de cualquier licencia urbanística, si se escapa de los cauces ordinarios, supone un auténtico calvario para el promotor de incalculables dimensiones. Dadas las competencias concurrentes entre las distintas Administraciones, un expediente tiene que discurrir por órganos especializados (comisiones de medio ambiente), departamentos específicos (carreteras, litoral, costas...) que convierte a la tramitación en el mito de *sísifo*: vuelve a empezar una y otra vez, modificando continuamente el proyecto durante años con el consiguiente coste económico.

La maraña administrativa no se explica sino por el número de procedimientos existentes, que a su vez se modifican caprichosa-

la Comunidad Valenciana; Ley 15/2001, de 14 de diciembre, de Extremadura; Ley 5/2006, de 2 de mayo, de La Rioja; Ley 9/2001, de 17 de julio, de Madrid.

⁹ Hernández López, J. (2012).

mente. Si las reglas son pocas y claras (y no por ello menos contundentes), el particular conoce el coste y la duración de un proyecto, y puede optar por intervenir en el mercado o no. Por el contrario la situación actual impide tener conocimiento del devenir del proyecto y de su final. De ahí que el incumplimiento de la normativa —fruto del empacho de regulación— sea una opción para el promotor, y de ahí los casos de corrupción.

Pero la corrupción no siempre es tal; dicho de otra forma, no todo incumplimiento de la legislación constituye un delito urbanístico o contra la ordenación del territorio. En ocasiones la cantidad de normas que recaen sobre una actuación de un particular es tal, que se alcanza una situación de bloqueo. Y este enroque se trata de deshacer con soluciones imaginativas. Así no es infrecuente encontrarse con licencias urbanísticas provisionales o en precario, que no es más que dar forma jurídica a una imposibilidad legal de edificar.

Melián y Calzada explican este fenómeno en el carácter estático del planeamiento urbanístico, cuando la realidad es mucho más dinámica.¹⁰ En efecto desde una perspectiva jurídica Soriano García plantea que —al ser el grado de intervención tal— el planificador decide hasta el más mínimo detalle la calificación y la clasificación del suelo al margen de la iniciativa particular; a continuación el promotor decide emprender un proyecto, si bien se encuentra en un laberinto administrativo que le obliga a demorar su actividad durante años, de manera que su idea se convierte en obsoleta.¹¹ Ahí radica la distorsión de la oferta y la demanda: cuando la oferta consigue ver la luz, la demanda —si no el mismo plan— ha variado.

De ahí que una necesidad *de lege ferenda* sea la de formular un inventario de procesos y simplificar al máximo el régimen jurídico del suelo.

¹⁰ Melián, G. y Calzada Álvarez, G. (2012), p. 53.

¹¹ Soriano García, J.E. (1995).

b) *Nefanda política*

Más importante que lo anterior, la política debe alejarse del suelo. Santamaría Pastor vierte el símil de que los medicamentos deben situarse fuera del alcance de los niños y el urbanismo de la política.

Como consecuencia de la discrecionalidad y de la ambigüedad con que se redactan las normas, no es infrecuente que el plan o las normas subsidiarias se modifiquen para atender casos singulares. Incluso se hace uso del instrumentos de la rectificación de errores materiales para exceptuar por conveniencia una norma urbanística, extremo que se encuentra próximo —sino dentro— de la corrupción.

En otras ocasiones el agente político deniega —pese al carácter reglado de la licencia urbanística— una licencia al promotor que solicita edificar con arreglo a derecho, sólo por una causa ideológica, obligando al particular a recurrir en vía contenciosa y modificando paralelamente el planeamiento para que, cuando el juzgado o tribunal estimen el recurso, alegar una imposibilidad material de ejecutar la sentencia. Más allá que eso, es posible la concesión ilegal de una licencia, y una vez dictada sentencia que ordena el derribo, el Ayuntamiento suspende con total desfachatez la ejecución para modificar el plan. No en vano Soriano García denuncia una nueva inmunidad del poder consistente en la inexecución de sentencias condenatorias a la Administración basándose en el *ius variandi* como fundamento jurídico para alterar el planeamiento.¹²

Esta práctica ha sido objeto de atención por el Tribunal Constitucional, que ha concedido amparo al particular cuyo derecho fundamental a la tutela judicial efectiva (art. 24 CE) ha sido conculcado.¹³

La inexecución de sentencias condenatorias a la Administración es una lacra social y una carga de profundidad para el estado de Derecho: existe un título jurídico concreto que sorprendentemente se pretende desconocer, y ello no lo hace cualquier sino la propia Administración.

¹² Soriano García, J.E. (2010).

¹³ Rodríguez Fernández, I. (2009).

Por último aparecen configuraciones de ciudades a la carta: ciudades deportivas,¹⁴ ciudades del ocio, ciudades del juego¹⁵... todo ello fruto de presiones sociales, económicas y políticas, que demuestran que la normativa urbanística es cambiante y que no obedece a criterios generales. También aparece una mezcolanza entre lo público y lo privado cuando determinadas obras o servicios se licitan incluyendo como mejoras una instalación para el municipio (polideportivos, parques, centros sociales o culturales...).

IV

LA COMPETENCIA EN EL MERCADO DEL SUELO

No se puede crear un verdadero mercado del suelo si no se introduce el factor de la competencia, y para ello habrá que desburocratizar y despolitizar el régimen jurídico del suelo.

Urge superar la actual rigidez del urbanismo. Los poderes públicos deben devolver al ciudadano la iniciativa que con la legislación del suelo le usurparon, lo cual no significa en modo alguno que el urbanismo pueda convertirse en salvaje. La Administración no puede renunciar a la regulación del suelo; en su *Camino de servidumbre*, Friedrich Hayek admite que la planificación es inevitable (capítulo cuarto).¹⁶ Pero debe hacerlo con reglas claras y permitiendo que sea el promotor el que introduzca la competencia en el suelo. De esta manera los usos del suelo responderán a una demanda efectiva y real, y los tiempos para ejecutar las decisiones responderán a cánones factibles.

El legislador ha querido situar expresamente el suelo al margen del mercado, cuando alrededor del mismo giran intereses muy fuertes. Tal es así que hasta proliferan plataformas y *lobbies* de afectados por viviendas ilegales que claman por una amnistía

¹⁴ Vid. Martínez Gutiérrez, R. (2012), pp. 147-188.

¹⁵ Vid. la crítica —que no podemos menos que compartir que formula López Ramón (2012), pp. 11-14.

¹⁶ Hayek, F. *Camino de servidumbre*. Unión Editorial. Trad. de José Vergara Docel. Prólogo de Carlos Rodríguez Braun. Introducción de Bruce Caldwell.

urbanística.¹⁷ Como el hecho de que un porcentaje elevadísimo de los casos de corrupción giran en torno al urbanismo.

Desde la perspectiva económica, la legislación —en este caso, urbanística— o es eficiente o no es. A diferencia de otros sectores que han experimentado con éxito la desregulación, por el contrario el régimen jurídico del suelo sigue sometido a un derecho dictado y un derecho impuesto. Al decir de Huerta de Soto «el deseo voluntarista de “ordenar” la sociedad vía mandatos coactivos es esencialmente generador de desorden»,¹⁸ entre otras cosas por la normativa no ha incorporado el factor de la eficiencia y el Estado no puede suplantar totalmente a la sociedad civil sin equivocarse. De ahí que desde la óptica política haya que hacer propia la teoría del *raynerismo* anglosajón: hacer retroceder las fronteras del Estado.

Por poner un ejemplo reciente: el Real Decreto 235/2013, de 5 de abril regula el procedimiento básico para la certificación de eficiencia energética de los edificios. ¿Acaso un asunto que afecta a la economía doméstica del consumidor (pagar menos por el consumo de energía) debe estar regulado coactivamente? ¿Es posible que haya que obligar a los propietarios de viviendas a contar con un certificado de eficiencia energética cuando son los primeros interesados en que su vivienda sea lo menos costosa posible? Pues en nuestro país el legislador concibe algo tan elemental como un deber de obligado cumplimiento para el titular de un inmueble con todo un régimen sancionador detrás (art. 18 del Real Decreto citado).

El error que los poderes públicos han ido rectificando en los últimos quince años consiste en suprimir los mandatos imperativos por el desarrollo de un marco normativo en el que, articulado en torno a la competencia, los operadores han ido interviniendo

¹⁷ Bajo el paraguas de las medidas urgentes y el desarrollo sostenible, no son pocas las Administraciones tanto estatal como autonómicas que tienen que rendirse ante los hechos consumados de viviendas y urbanizaciones ilegales que se consolidan en el tiempo como consecuencia de la nefasta gestión pública del suelo. La reciente Ley del Parlamento de Cantabria 4/2013, de 20 de junio (BOC de 3 de julio) es un claro ejemplo al llevar por título el régimen jurídico de las autorizaciones provisionales de edificaciones o actuaciones preexistentes.

¹⁸ Huerta de Soto, J., *op. cit.*, p. 112.

libremente con espíritu emprendedor. En palabras de Martínez Meseguer «la ley no debería perseguir crear un determinado orden, sino poner las bases para que el propio orden espontáneo crezca y evolucione en un contexto de libertad».¹⁹

El problema en este punto consiste en que el suelo ha sido el gran olvidado del proceso desregulador, quizás porque los poderes públicos no han prestado atención a la variable económica del suelo y a la existencia de un mercado de suelo, enfocando la regulación bajo el prisma de la intervención más absoluta.

Un ejemplo del intervencionismo caótico es el de la Sociedad Pública de Alquiler (SPA), creada en 2006 bajo un mandato socialista con el objetivo de estimular el mercado de alquiler y contrarrestar el precio de la vivienda. Lo que olvidó de manera garrafal el Ministerio de la Vivienda en esa fecha fue que el alquiler no es libre en nuestro país como consecuencia de una falta de legislación que otorgue seguridad jurídica y material al propietario arrendador, que puede perfectamente encontrarse con un inquilino que no satisface las rentas, al que cuesta horrores (tiempo y recursos monetarios) desahuciarle, que durante todo el procedimiento encima debe abonarle sus gastos de consumos de servicios básicos, que puede haber abandonado la vivienda y sin embargo el propietario no puede acceder hasta que lo considera el Juzgado, y, por último, que finalmente no puede repercutirle gasto algún por haber desaparecido y no tener domicilio conocido. Frente a este escenario irracional, al poder público no se le ocurre otra medida que crear un organismo público que medie entre arrendador y arrendatario, sin modificar ni una sola norma que hace posible este absurdo; de ahí el estrepitoso fracaso de la SPA, que a día de hoy se encuentra en disolución. Todo lo contrario de lo que debería haberse hecho: crear un marco jurídico que impida estas situaciones de injusticia y que elimine el temor del propietario a arrendar su inmueble; con una legislación estable, no haría falta ninguna medida de fomento del alquiler. Por un criterio meramente económico, el propietario de una vivienda vacía la ofrecerá sin pestañear al mercado para obtener una renta. En caso contrario, si la normativa no acompaña, por mucho que exista un organismo público

¹⁹ Martínez Meseguer, C. (2009), p. 14.

que haga de mediador, pueden que las rentas no monetarias de paz y tranquilidad sean más convincentes que una renta monetaria que puede convertirse en un infierno.

Recientemente y de forma parcial el Real Decreto Ley 19/2012, de 25 de mayo, de medidas urgentes de liberalización del comercio y de determinados servicios —que por cierto en sus únicos dos títulos mezcla dos regulaciones tan dispares como el impulso del comercio y la exportación de material de defensa— en su art. 3.3 suprime la necesidad de licencia urbanística para obras de acondicionamiento de los locales para desempeñar la actividad comercial cuando no requieran de la redacción de un proyecto de obra de conformidad con la Ley 38/1999, de Ordenación de la Edificación.²⁰ Pero más allá de este supuesto residual, la autorización administrativa sigue estando vigente en toda su extensión. Se trata de un primer paso, tímido todavía, pero que debe ir cogiendo forma y extendiéndose a todos los ámbitos, entre otras cosas porque el legislador reconoce en el art. 1.1 de esta norma «cargas y restricciones administrativas existentes que afectan al inicio y ejercicio de la actividad comercial». En consecuencia, estas cargas son predicables de cualquier actividad, no sólo la del comercio minorista.

Habrà que superar este pánico del legislador e introducir la competencia en el suelo, crear un verdadero mercado con unas reglas claras y con un control efectivo y ejemplarizante de la Administración, que es algo que —como se ha visto— a día de hoy deja mucho que desear. Como cualquier sector económico que es, en el mercado del suelo los poderes públicos deben crear un marco regulador que haga posible que la sociedad civil decida con el juego de la oferta y la demanda, así como el factor tiempo, los usos y destinos del suelo. La Administración debe establecer los parámetros urbanísticos (alturas, tipología, coeficientes de edificabilidad, índices de ocupación...) y a partir de ahí los promotores deben actuar conforme a las normas generales y objetivas.

La experiencia histórica es más que notoria: si a lo largo de miles de años los núcleos de población han crecido espontáneamente (siendo como son los más atractivos) y por el contrario en las

²⁰ Ortega Montoro, R.J. (2012), pp. 1636-1644.

últimas décadas, a raíz de la regulación coactiva hasta el más mínimo detalle, el territorio se ha maleado hasta límites insospechados, la conclusión no puede ser más contundente: regresemos a la espontaneidad, volvamos a la libertad del individuo dentro de un marco jurídico general, sin renunciar a la intervención, pero con un nivel que permita al promotor y al consumidor de suelo generar oferta y demanda. El territorio —al decir de Azpitarte— tiene un orden propio fruto de la interacción de los ciudadanos,²¹ un orden que no puede ser sustituido por el orden artificial de la Administración, un orden que los poderes públicos deben respetar y potenciar.

Por razones obvias el cambio no puede ser radical. Existe una cultura administrativa alrededor del suelo, tanto en España como en países de nuestro entorno, que obligan a que el cambio sea gradual. El cambio debe comenzar por las instituciones, las cuales —al decir de Douglas North— tienen mayor incidencia en el cambio económico que la propia tecnología;²² y del cambio institucional habrá que pasar al normativo.

En definitiva hace falta acercar la Economía al Derecho. El análisis económico del Derecho, en este caso urbanístico, no supone siempre una retirada de normas, sino un cálculo económico y técnico de su oportunidad y eficiencia.²³

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²¹ Azpitarte, J. (2012), p. 79.

²² North, D. (1990).

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LA ECONOMÍA Y LAS CIENCIAS DE LA COMPLEJIDAD

El fenómeno de la Pila de Arena

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Aceptar que acontecimientos tan diferentes como las crisis económicas y los tsunamis puedan tener algo en común resulta llamativo. Lo tienen. Son actos que no podemos predecir y se rigen por fenómenos cuyas leyes no conocemos pero que la experiencia nos informa se producirán inexorablemente. Nos resulta imposible establecer la fecha y la hora del próximo suceso, pero en el recuento histórico que llevamos van dejando su huella y su aviso. En general los hechos de esta naturaleza resisten al tratamiento predictivo, fin último de una buena teoría. Son únicos.

Algo parecido sucede con las crisis económicas. De acuerdo con los datos disponibles, están registrados los siguientes ciclos (expansiones y contracciones) de la economía americana¹:

- 1854-2009 (33 ciclos).
- 1854-1919 (16 ciclos).
- 1919-1945 (6 ciclos).
- 1945-2009 (11 ciclos).

En el último período (1945-2009) ha tenido lugar, en media, un ciclo cada seis años, y si se calcula una duración media de cada ciclo de un año, cada cinco años la sociedad americana estuvo inmersa en una recesión.

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¹ <http://www.nber.org/cycles/cyclesmain.html>

Con estos datos podemos afirmar que, aparte del período entre guerras, una crisis económica es un fenómeno relativamente frecuente en la escala humana y social formando parte de la vida de las personas y de las sociedades occidentales. La globalización ha contribuido a su extensión y severidad, ya que al estar las economías nacionales progresivamente más conectadas, las crisis han ganado en extensión afectando a un mayor número de países.

La mayor parte de las crisis resultan en unos pocos meses de convalecencia, pero de tanto en tanto suceden algunas de años de duración, con graves repercusiones sobre la vida de las personas y el funcionamiento de las empresas. Periódicamente se producen crisis virulentas, caracterizadas por su celeridad y extensión, que recuerdan a los fenómenos catastróficos naturales como son los seísmos y los tsunamis.

Hoy en día, dada la magnitud de la catástrofe y el impacto sobre las personas, existe gran interés por parte de la Sociedad y sus dirigentes en estudiar y analizar qué se puede hacer ante estas situaciones. Dicho de otra forma, la Sociedad se hace la pregunta que se plantea el que padece crisis epilépticas: «¿Podemos contar con alarmas tempranas? ¿Qué señales nos pueden avisar de la formación o desarrollo de una crisis? y, en el mejor de los casos, ¿hay algo que se pueda hacer para evitarlas?».

Con objeto de ilustrar una forma de estudiar problemas sobre los que no contamos con toda la información, y donde nos resulta difícil relacionar lo que observamos con lo que suponemos que son las causas subyacentes, existen algunos modelos que nos pueden ayudar a reflexionar. No son una solución apresurada, son una forma de empezar a tratar aquello que no podemos describir de la manera científica a la que estamos acostumbrados, esto es, con toda precisión.

Todo el mundo recuerda ese montoncito de arena que se hace en la playa. Se deposita lentamente tierra húmeda en el suelo, que escurre por el hueco del puño de la mano con mimo y delicadeza. El montoncito lo hacemos crecer hasta que llegado un momento, si añadimos más arena ésta resbala por el lateral y arrastra a otra con ella. Lo conocemos con el nombre de la Pila de Arena o en su variante sajona *Sandpile*.

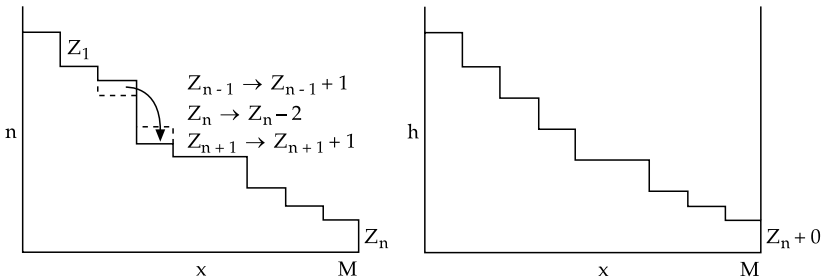
Este modelo tan familiar y sencillo nos presenta una interesante oportunidad para analizar situaciones complejas. Desde un punto de vista conceptual,² la descripción escueta de la pila de arena no presenta ninguna complicación. Se resuelve para una dimensión con el uso de unas pocas reglas de transformación sencillas que describen la adición y el desmonte, es decir la dinámica de la Pila de Arena, generalizable a varias dimensiones sin problemas. Las expresiones del modelo ilustran que los granos de arena se van depositando localmente de una manera ideal, y que una vez hecho esto sólo se ven afectados por causas o fuerzas cuya acción se describe geoméricamente. Estas causas o fuerzas, que no se mencionan, se activan cuando la pendiente del lado de la pirámide excede cierto valor, momento en el cual el grano de arena cae a la posición vecina.

Dicho formalmente. Sea $h(n)$ la altura en un punto de la pila n , trabajaremos con el valor $z(n) = h(n) - h(n+1)$. Las reglas de transformación del modelo son las siguientes:

Cuando se añade un grano en la posición n se verifica que

$$z(n) \rightarrow z(n)+1 \quad z(n-1) \rightarrow z(n-1) -1$$

Si la diferencia de altura es mayor que un determinado valor crítico z_c la unidad cae al nivel más bajo:



$$z(n) \rightarrow z(n)-2$$

$$z(n\pm 1) \rightarrow z(n\pm 1) +1$$

para $z(n) > z_c$

² Bak P. and Paczuski M. (1995), «Selforganized Criticality» *Proc. Natl. Acad. Sci.* 92, 6689-6696.

Este proceso se repite hasta que en todos los puntos se verifica que:

$$z(n) < z_c$$

o condición de estabilidad. El modelo se completa con las condiciones de los bordes o contorno que no incluimos aquí.

Es necesario añadir algo más. La pila de arena tiene avalanchas, efectos dominó o corrimiento general de granos de arena cuando llegado al límite de la pendiente se añaden más granos. Se denomina tamaño de la avalancha al número de granos que arrastra. Es decir, si la adición de un grano de arena provoca que se produzcan s desmontes la avalancha tiene un tamaño de s .

Este modelo tan sencillo proporciona unos elementos generales sobre los que debemos reflexionar. Primero describe un fenómeno contingente, es decir, señala que si pasa esto sucede aquello. Relacionamos lo que observamos con lo que sucede: la construcción de la pila (añadiendo granos de arena) hasta alcanzar uno de los estados de equilibrio y, en su caso, su ulterior colapso. El estado de equilibrio se alcanza de muchas maneras y el equilibrio es crítico. Perturbado al añadir más arena, el sistema retorna a un estado de equilibrio que no es el original. El modelo no revela cuando se produce esta situación ni establece una previsión al respecto. No es predictivo ni descriptivo en el sentido de ligar causas y efectos. El funcionamiento y descripción de las fuerzas de la mecánica no forman parte del mismo. Finalmente se trata de un modelo no-lineal: no plantea relación causa-efecto alguna. Se puede considerar que es narrativo, nada más.

El segundo elemento de reflexión tiene que ver con una categoría de fenómenos que conocemos. Son los fenómenos propios de los sistemas dinámicos grandes que están al límite del equilibrio. Cuando son perturbados estos sistemas pueden tener un comportamiento caótico, como lo representan las avalanchas. Podemos incluir en esta categoría fenómenos como los atmosféricos, seísmos, tsunamis y crisis económicas. Concuera muy bien con la experiencia que tenemos de esos sistemas, en los que aparentemente una pequeña perturbación puede generar una hecatombe.

El tercer elemento es algo más elaborado. Si se simula el modelo en un ordenador podemos estudiar la distribución de las

avalanchas en relación a su tamaño, y determinar la probabilidad $P(s)$ de que se produzca una avalancha de tamaño s , es decir, con s desmontes. La distribución obtenida $P(s)$ es de la forma

$$\text{Log}(P(s)) \sim -\alpha \text{Log}(s)$$

o potencial, también conocida como distribución de Pareto-Levy. Este patrón tiene para nuestro caso varias lecturas. Resulta que los acontecimientos extremos, grandes en particular (corrimientos de muchos granos), son casi tan relevantes como los pequeños (de pocos granos) y en relación a la media no son improbables. Es decir, los sistemas al borde del equilibrio exhiben un comportamiento en el que entre los fenómenos pequeños se sitúan los grandes. Esto ha conducido a la suposición de que hay principios o leyes macroscópicas emergentes en las estructuras complejas que no hemos descubierto.

En particular, en aquellos fenómenos de la economía en los que estudiamos su distribución en algunos casos aparece, y en otros se asume que adopta una distribución natural o gaussiana, que en general es la que regla para describir fenómenos sociales. Esta distribución es muy intuitiva, sencilla de manejar y para los asuntos humanos muestra algo con lo que estamos muy familiarizados: que los fenómenos de fuera de escala (muy grandes o muy pequeños) son improbables. En la distribución gaussiana, los sucesos atípicos o aquéllos que se rigen por las colas de la distribución son muy poco probables comparados con la media, pues la función gaussiana se atenúa exponencialmente en los extremos. Las llamadas colas de la distribución, es decir, aquella parte que da cuenta de los fenómenos muy pequeños o muy grandes en relación a la media, se amortigua rápidamente de modo que los presenta como improbables. Sin embargo, según las observaciones la realidad no es así. Seísmos de toda magnitud tienen lugar y los muy grandes no son improbables como sabemos tristemente.

En Economía tenemos un caso tomado del mundo de las finanzas que es el siguiente. Al analizar la serie de los valores β (desviación respecto a la media) de las cotizaciones de los T-bonds (bonos del tesoro) a 10 años durante un período de 22 años, se observaron desviaciones superiores a 4,5 SD (Desviaciones Estándar) en 11 ocasiones a lo largo de ese período. De acuerdo con

la distribución de Gauss, eventos de este calibre deberían producirse 1 vez cada millón de años. Además, estos valores que deberían haberse presentado al azar durante los 22 años, estaban agrupados o clusterizados. Es decir, no eran improbables y no eran azarosos. Por tanto, la estadística que rige estos valores dudosamente es la gaussiana.

Llegados a este punto es necesario preguntarse qué podemos hacer. Modelos como la Pila de Arena pueden ayudar a que podamos estudiar fenómenos complejos, en tanto en cuanto el conocimiento progresa, como ya sucedió con las Leyes de Mendel, el Genoma y el principio de Hardy-Weinberg. Las leyes de la herencia a través de las Leyes de Mendel establecieron el resultado de la misma sin referencia al detalle, es decir, la composición del genoma, su mecanismo fue refrendado posteriormente por el principio de Hardy-Weinberg³ que llega al mismo resultado tomando en consideración la estructura del genoma. Por tanto, debemos descubrir leyes económicas que permitan tener información sobre la economía desconociendo el detalle. Es de esperar que la progresión del conocimiento nos permita ir contando a su vez con teorías y modelos más refinados que a su vez consigan conectar ambos paradigmas.

Es posible tratar los problemas económicos mediante modelos derivados de otras disciplinas. En este sentido, nos interesan teorías que presenten las siguientes características:

- Generalidad: Cuantos más fenómenos expliquen más verosímil nos parece.
- Consiliencia: Preferimos teorías que usen unidades y procesos de una disciplina que conforman con lo conocido en otras disciplinas.
- Predictibilidad: Preferimos teorías que puedan establecer predicciones precisas en diversos entornos que sean fácilmente observables.
- Parsimonia: Cuantas menos unidades y procesos utiliza la teoría para dar cuenta de un fenómeno, mejor.

³ http://en.wikipedia.org/wiki/Hardy-Weinberger_principle.

La Ciencia con la que actualmente contamos para dar cuenta de los fenómenos de la Naturaleza es «contra natura», es decir, no hay principios menos intuitivos que los de la Relatividad y la Mecánica Cuántica, pero nunca en la Historia se han obtenido experimentalmente resultados más exactos. El genoma, base del motor que explica la construcción del ser humano, está milimétricamente determinado y ensamblado por los aminoácidos que lo constituyen. Se persigue con ahínco el misterio del cerebro utilizando técnicas de escrutinio del mismo para ver qué se pone en marcha cuando pensamos, sentimos, o imaginamos. Las Ciencias Sociales se ven expuestas a dificultades desde el punto de vista de la valoración y consideración social, ya que no son capaces de dar respuesta a los importantes problemas que afectan a la sociedad del bienestar y que atribulan a las personas. Los avances en las Ciencias Naturales se han obtenido después de un largo período de experimentación que ha dado lugar a las hipótesis tan poco intuitivas que las sustentan. El salto cualitativo ha sido el fruto de nuevas teorías acuñadas a la sombra de datos experimentales, lo que en otros casos no es posible pues no se pueden hacer experimentos ni son esperables, ya que las circunstancias cambian más deprisa que las teorías que se pretenden validar.

Entretanto, la búsqueda de soluciones a los problemas que afronta la sociedad la hacemos por otros caminos. Fundamentalmente porque pensamos que dos problemas que comparten una apariencia semejante se debe a que tienen una raíz común. La apariencia afecta a aquello que observamos.

No hemos encontrado la manera de transitar entre los modelos que hacemos para imaginar y explicar lo particular, y lo que observamos, que es lo general. El ejemplo clásico más a mano es la mecánica estadística. A partir del modelo cinético de las partículas de un gas, relacionamos las variables que observamos, esto es la presión y la temperatura, con los aspectos mecánicos de estas partículas como es el momento. No es necesario caer en el vicio contrario, es decir, porque seamos capaces de tal cosa no podemos afirmar que las partículas del gas tengan la naturaleza que el modelo les asigna. El general no valida lo particular. Tenemos familiaridad con la célebre anécdota de la mariposa, cuyo aleteo en un lugar distante puede provocar un tornado en el Caribe.

Sabemos que en sistemas dinámicos grandes una pequeña perturbación puede inducir a un comportamiento caótico, esto es, en el que no podamos hacer predicciones. Hemos observado que las mismas ecuaciones que describen acertadamente un modelo como puede ser el de la predicción meteorológica, bajo una alteración de los parámetros que describen la misma da lugar a soluciones divergentes o caóticas.⁴ También sucede lo mismo bajo pequeños cambios de las condiciones iniciales. Es decir, un sistema descrito por las mismas ecuaciones «bifurca» a partir de unas mismas condiciones iniciales a diversos estados de estabilidad e inestabilidad según el valor de los parámetros. Es posible que para explicar el comportamiento desbocado de ciertos sistemas no sea necesario recurrir a otros modelos de la realidad. Los mismos modelos bajo ciertas circunstancias de los parámetros que los definen, dan cabida a comportamientos divergentes. El ser humano ha estado acostumbrado a la linealidad de causas y efectos y a los fenómenos estáticos, sin embargo ni los fenómenos de la vida ni los de la sociedad lo son.

⁴ http://en.wikipedia.org/wiki/Lorenz_attractor.

BANK REFORM DEMANDS MONETARY REFORM

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The complex and technical subject of bank reform has scarcely been more popular. Events in Cyprus have demonstrated banks are a way of investing money for a return, with all the risk that entails. Van and minibus entrepreneur Dave Fishwick has created a documentary —*Bank of Dave*— which shows banking can be a simple entrepreneurial function providing a safe return to savers at the entrepreneur's risk. It's award-winning and a soar-away popular success.

Of course, thanks to regulators, it's not actually a bank: it's a savings and loans firm. Whereas these route savings to borrowers, a bank creates credit. That is, banks lend money into existence. It is that distinction, together with other features of the financial system, which has led the world into crisis. It is both one of the least well-understood economic phenomena of our time and the most central to our present difficulties.

Yet, astonishingly, Dave Fishwick has struck on a model of banking close to a theoretical ideal: he carries his own commercial risks and, even if he could take deposits, he wouldn't provide credit in excess of savings.

It is towards this model the world should move.

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I THE FEATURES OF TODAY'S BANKING SYSTEM

As Governor of the Bank of England Sir Mervyn King told us in 2010: «Of all the many ways of organising banking, the worst is the one we have today.»

Notes and coins are irredeemable: the promise to pay the bearer on demand cannot be fulfilled, except with another note or coin with the same face value. Notes and coins are tokens worth less than their face value and are issued lawfully and exclusively by the state. This is fiat money.

When this money is deposited at the bank it becomes the bank's property and a liability. The bank does not retain a full reserve on demand deposits. In the days of gold as money, fractional reserves on demand deposits explained how banks created credit. Today, credit expansion is not bounded by the redemption of notes, coins, and bank deposits in gold.

Because banks are funded by demand deposits but create credit on longer terms, they are risky investment vehicles subject to runs in a loss of confidence. States have come to provide taxpayer-funded deposit insurance. This subsidises commercial risk, producing more of it and creating moral hazard amongst depositors who need not concern themselves with the conduct of banks.

The state also provides a privileged lender of last resort: the central bank. It lends to illiquid but solvent banks getting them through moments of crisis. In a fiat money system, central banks have the power to create reserves and otherwise intervene openly in the money markets. Today this is most evident in the purchase of government bonds with new money, so-called quantitative easing.

The central banks also manipulate interest rates in the hope of maintaining a particular rate of price inflation through just the right rate of credit expansion to match economic growth. That otherwise free-market economists and commentators support such obvious economic central planning is one of the absurdities of contemporary life.

Compounding these flaws is the limited liability corporate form. Whereas limited liability was introduced to protect stockholders from rapacious directors, its consequence today is ensuring no one

taking commercial risks within banks stands to share in the downside. This creates further moral hazard.

Regulatory decisions have been taken to encourage banks to make bad loans and dispose of them irresponsibly. Among these are the US Community Reinvestment Act and the present government's various initiatives to promote the housing market and further credit expansion.

Having insisted banks make bad loans, the regulatory state imposed the counterproductive International Financial Reporting Standards (IFRS) which can over-value assets and over-state the capital position of banks. This drives the creation of financial products and deals which appear profitable but which are actually loss-making. Since these notoriously involve vast quantities of instruments tied to default, the system is booby-trapped.

Amongst the many practical consequences of these policies was the tripling of the money supply (M4) in the UK from £700 billion in 1997 to £2.2 trillion in 2010. Credit expansion at this rate has had predictable and profound consequences including asset bubbles, sectoral and geographic imbalances, unjust wealth inequality, erosion of physical capital, excess consumption over saving, and the redirection of scarce resources into unsustainable uses. Moreover, credit cannot be expanded without limit. Eventually, the real world catches up with credit not backed by tangible assets: booms are followed by busts.

II OBJECTIVES FOR MONETARY REFORM

This crisis first emerged in banking. We were then told it was a debt crisis. Shortly, it will be generally realised that most money is created as debt and therefore this is a monetary crisis. Bank reform will then properly become a matter of monetary reform. Any plan for bank reform must therefore also be a plan for monetary reconstruction.

The goals of reform must include:

- The privatisation of commercial risks which are now socialised.

- The availability of bank accounts which provide safekeeping of money.
- Choice in currency.
- Prudent accounting rules.
- An end to systematic intervention in credit markets by central banks.

The following two proposals would deliver a free market in money and banking. Their authors differ passionately over the status of demand deposits but, in the end, they take two routes to systems whose differences are largely semantic. The merits of each proposal differ according to the circumstances and political realities in which reform becomes possible.

1. Constitutional fiat money as a route to free banking

Proposals for banking based on constitutional fiat money run in the tradition of Peel's 1844 Bank Charter Act and Irving Fisher's *100% Money*, published in 1935 and recently raised to prominence by the IMF.¹ The essence of the proposal is to separate the monetary and credit functions of the banking system by requiring a 100% reserve for demand deposits. Under such a system, bank runs are impossible, banks cannot create money, and a major source of business cycles is reduced or eliminated. Current accounts effectively become vaults for safekeeping and banks provide credit by intermediating between savers and borrowers.

A robust, comprehensive, and consistent justification of full-reserve banking from legal and economic principles is provided in Jesús Huerta de Soto's treatise, *Money, Bank Credit and Economic Cycles*. Controversially, he argues that it is a fraud to hold less than a 100% reserve against demand deposits of money, one with profoundly damaging consequences.

He identifies five stages in a process of reform, including central bank independence. The next and crucial steps for the UK may be summarised as follows:

¹ «The Chicago Plan Revisited», Jaromir Benes and Michael Kumhof, IMF WP/12/202.

Reform is announced: bank depositors decide to what extent they wish to swap their deposits for shares in the investment funds to be created.

By legislative act, every bank deposit becomes the property of the depositor, redeemable in cash produced by the state.

Having removed the banks' liability to depositors, the equivalent assets are placed in investment funds. Shares are issued proportionately to relevant depositors. The remaining shares are exchanged for outstanding government debt and other state liabilities, converted into bonds.

At this point, banks are safe: bank credit must be backed by savings and demand deposits are fully reserved under clear contractual principles. Savings would not be under taxpayer guarantee but could be privately guaranteed for competitive advantage. Investment funds would provide for those seeking short-term returns. Money supply growth would be transparently in the hands of the central bank: currency debasement to fund public spending would be clearly understood as such.

Huerta de Soto's plan is not inflationary. Changing the status of demand deposits and pledging to redeem them in cash does not create new money. Expropriating those assets of the banks acquired through decades of state-sponsored credit expansion could clear the state's debts and provide for at least a substantial proportion of future liabilities to the public.

In the remaining stages of his proposal, Huerta de Soto sets out steps to abolish the central bank and to provide for commodity money and free choice in currency. Ultimately, he provides for complete freedom in money and banking subject to a 100% reserve on demand deposits.

Finally, after the reform, the monetary and fiscal environment would demand honest politics. Former Federal Reserve Chairman Alan Greenspan concisely explained why in his essay *Gold and Economic Freedom*. He wrote:

Under a gold standard, the amount of credit that an economy can support is determined by the economy's tangible assets, since every credit instrument is ultimately a claim on some tangible asset. But government bonds are not backed by tangible wealth,

only by the government's promise to pay out of future tax revenues, and cannot easily be absorbed by the financial markets. A large volume of new government bonds can be sold to the public only at progressively higher interest rates. Thus, government deficit spending under a gold standard is severely limited. The abandonment of the gold standard made it possible for the welfare statisticians to use the banking system as a means to an unlimited expansion of credit.

That is why for 40 years our monetary arrangements have been not merely tolerated but encouraged: chronic credit expansion has facilitated the deficit spending necessary to support welfare states in excess of the tax base. This is the source of the debt crisis now engulfing mankind. A new, honest, and sustainable politics would be required by the new financial environment. This proposal provides that environment and a fiscal reset.

2. Moving directly to free banking

After the Huerta de Soto plan was published in 1998, credit expansion in the UK proceeded at an astounding pace, with the broad money supply more than tripling between 1997 and 2010. This produced various asset bubbles and other distortions in the structure of relative prices. The effect on banks has been worsened by imprudent IFRS accounting. It is therefore an open question whether bank assets are susceptible to Huerta de Soto's proposal.

An alternative route to deliver a free banking system without passing through constitutional fiat money has been brought forward, drawing on the work of Kevin Dowd and Richard Salsman, in an article for the Cobden Centre by Anthony J Evans. Under the title *2 days, 2 weeks, 2 months: A proposal for sound money*, the plan proceeds as follows:

- Over two days – ensure all operating banks are solvent:
 - Deposit insurance is removed – banks will not be able to rely on government support to gain the public's confidence.
 - The Bank of England closes its discount window, which currently helps banks insure against liquidity shocks.

- Any company can freely enter the UK banking industry.
- Banks will be able to merge and consolidate as desired.
- Bankruptcy proceedings will be undertaken on all insolvent banks: suspend withdrawals to prevent a run; ensure deposits up to £50,000 are ring-fenced; write down bank's assets; perform a debt-for-equity swap on remaining deposits.
- Re-open with an exemption on capital gains tax to avoid unjust taxation on the new shares held by depositors.

Over two weeks - monitor the emergence of free banking:

- Permanently freeze the current monetary base.
- Allow private banks to issue their own notes.
- Mandate that banks allow depositors to opt in to 100% reserve accounts free of charge.
- Mandate that banks offering fractional-reserve accounts make public key information. These might include reserve rates, asset classes being used to back deposits, and compensation offered in the event of a suspension of payment but they could be decided by an appointed panel.
- Government sells all gold reserves and allows banks to issue notes backed by gold (or any other commodity).
- Government rescinds all taxes on the use of gold as a medium of exchange.
- Repeal legal tender laws so people can choose which currencies to accept as payment.

Over two months – the end of central banking:

- The Bank of England ceases its open-market operations and no longer finances government debt.
- The Bank of England is privatised (it may well remain as a central clearing house).

This reform swiftly establishes a free banking system and the monetary context for honest politics. Large-scale depositors will have been bailed in to banks as shareholders in what remain investment vehicles. Not stated in Evans's summary is Dowd's

proposal to extend bank directors' liability which I brought forward in my Financial Institutions (Reform) Bill.

Unlike the Huerta de Soto plan, fractional-reserve demand deposits are permitted and there is therefore no provision to expropriate banks in such a manner as to offset public liabilities. In an environment without taxpayer-backed deposit insurance, however, it seems likely that 100% reserve accounts would be popular. It is not clear how they would be backed by cash: perhaps banks would obtain the necessary reserves by selling assets to government in exchange for new money with a similar affect on the public finances.

III CONCLUSION

We have lived through an era of monetary history unprecedented in the industrial age. Chronic credit expansion has significantly funded welfare states' deficit spending while eroding the stock of physical capital. We have come to a profound crisis of political economy: social democracy underpinned by easy money is ending.

That process of conclusion will be marked by a series of bubbles as desperate interventions are applied in an attempt to defibrillate stagnant economies. At some point, it will become apparent that these interventions are futile when some combination of widespread default and massive price inflation takes place. Rapid action will then be necessary to reinstate a basis for sustainable and just prosperity based on free-market capitalism without the systematic intervention in money and bank credit which is even now bringing us to calamity.

Finally, it is food for thought that Dave Fishwick, a van and minibus entrepreneur, has substantially invented an appropriate popular model without recourse to high theory or obedience to state regulation.