

# **How Economics separated as a scientific discipline from Law**

## ***Homo Juridicus vs. Homo Oeconomicus***

by

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## *Abstract*

*In the attempt to understand how economics separated as a scientific discipline from law I will first identify some of the key characteristics of the Western legal tradition by looking at its origins and will also highlight some of the major moments in the development of the European intellectual climate which led to the transformation of our conception of the individual. The individual, presumed as the core element of both disciplines, within the Western legal tradition is represented through the legal personality and has been characterized by Alan Supiot as “homo juridicus”. In economics, the idea of a rational wealth-maximizing agent was initially characteristic of the utilitarian approaches to human nature. However, I will argue that once this rational wealth-maximizing agent was placed within the “natural order” of the market system, subsequently attaining the definition of “homo oeconomicus”, economics was able to distinguish itself as a discipline separate from the legal and political domains.*

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## Introduction

Historical analysis is inherently a normative endeavor and due to the wealth of facts with a sufficient degree of ingenuity one may construe a logically coherent account. Although this does not immediately imply that all of history is up for interpretation and that the way it is presented is necessarily contingent on the person that is writing it, but the interpretive element does seem to play a greater role when we deal with the history of knowledge and ideas, which is the topic of this thesis. Therefore, with no pretense to be providing the one and true account of how economics emerged from law and taking into consideration all that is said above, I will start out by defining the elements which I will be looking for in the distant past and the grand theme that unifies them all.

Before exploring further the notion that economics separated as a scientific discipline from law, some conceptual clarifications are necessary. These pertain to the terms “economics”, “law”, “scientific and “discipline”. The task at hand would be greatly simplified if there were some generally agreed upon definitions of those terms, but clearly that is not the case. Another aspect which adds to the complexity of this analysis is that neither of those terms can be identified with a definition that is static. What has been defined as law or economics or scientific has changed over the course of time and has been highly contingent on the societal perception predominant at each point in time. Growth or development of a discipline not only results in but is also sustained by a plurality of opinions and thoughts. Analysis involving all three concepts at the same time consequently presents the danger of appropriating definitions that are either too wide or too narrow or which are supported by contradictory philosophical foundations. Therefore in order to provide some coherence to my

analysis I will start off clarifying what I mean by science, and the criteria chosen for distinguishing a split between law and economics.

Starting with the more general concept, science for the purpose of this analysis is defined in line with Richard Olson's definition as "a set of activities and habits of mind aimed at contributing to an organized, universally valid and testable body of knowledge about phenomena" (Olson, 1990). Therefore science is regarded as an activity. To this definition I would add a criterion of having an identifiable community of practitioners engaged in it. Another criterion is that scientific activity presumes that its goal is to illuminate the unknown and thereby contribute to the expanding body of knowledge. Whether it would be in the form of discovering general laws and principles or whether the goal is to identify particularities that are specific to the subject-matter at hand depends on the nature of the inquiry. It is worth noting that the notion of scientific laws and preoccupation with their discovery, as it will be shown throughout this analysis, is a peculiarly "western" phenomena and its emergence can be partly attributed to the historical development of the western legal tradition.

For the establishment of the definition of a discipline the most general 5 criteria that will have been partially adopted from Kline's analysis (Kline, 1995):

1. establishment of a delimited and coherent domain of knowledge
2. formulation of domain specific concepts and variables
3. subdivision of observations into taxonomies
4. formulation of "rules"/principles
5. elaboration of generally accepted methods of verification/testing of "rules"

Accepting the existence of a vague linearity in historical development two historical paths will be retraced in this analysis. The first retraces the relationship between laws as part of

jurisprudence and laws within the scientific definition. The second path retraces the development of jurisprudence and economics within the domain which they both have come to share, namely society.

What unites both law and economics is their broad domain of inquiry – society. However, within society, the individual is the “basic unit of account”. The term “*Homo Juridicus*” was coined by Alan Supiot’s in his description of an individual whose identity rests on his/her legal relation to authority. In the West, with the secularization of the political domain “homo juridicus” superseded the theological conception of a human being as *Imago Dei* (in the image of God) (Supiot, 2007). In general, the common purpose of both of those identities is to represent a certain structure within which an individual acquires an identity since even in the secularized form the individual was conceived as the subject in the sense that he/she was “subjected to the observance of laws” (p.21) of the state. In contrast, *Homo oeconomicus*, the birthchild of modern economics, which characterizes an individual as a rational, wealth maximizing and self-interested agent, represented an individual as a subject and an object and therefore susceptible to scientific inquiry. In looking back at the early development of economics I will argue that it was precisely this conception of an individual which had allowed economics to breakout from the legal and political domains, and with the displacement of scientific concepts helped establish itself as a distinct discipline.

Before analyzing the development of the western legal tradition, a brief overview of its background will be presented in Chapter 1 as it had significant impact not only its development but also on the subsequent rise of modern science and economics. In Chapter 2 I will give an overview of the shift from jurisprudence to legal science.

Prior to the rise of economics, western jurisprudence, which had been considered as the “mother of social sciences”, enjoyed almost virtual monopoly over structuring and

defining social relations. Representing the accepted or enforced norms of the society it also provided information about its functioning. With the rise of economics, which claimed to provide explanations of social behavior through calculable motivations and commercial relations, law was forced to share its domain.

On a theoretical level, what has served as the foundation of the course of development of western legal thought, science, and subsequently economics has been the concept of Natural Law. This concept in itself is very ancient and has infiltrated western thought primarily through the Aristotelian tradition and due to its “plasticity” has had an incredibly lasting influence. In the western legal tradition it found its inception in the Roman *ius gentium*. In the scientific domain it found its expression in the universal physical laws of nature. Finally in economics it was expressed as the “natural” mechanism of the market. Therefore, in Chapter 3, I will trace the evolution of the idea of natural law and how it has been adopted during the shifting world views. Chapter 4 will cover the emergence of political economy and how it slowly transformed into a distinct discipline. Here I will focus more on the framework within which the early political economist were theorizing rather than their analytical achievements.

In conclusion the overall goal of this thesis is not only to historically retrace the development of law, subsequent emergence of the discipline of economics and their early interaction with each other but also to throw light on some of the socio-political factors which may have contributed to this development. Divorcing the social determinants from this analysis would result in an extremely one-sided story and as I have mentioned above, economics, just as law, did not only arise from the social reality but also contributed to shaping it. Just as the scientific discoveries of the 17<sup>th</sup> century have led to a dramatic shift in our perception of the world, so has the rise of and acceptance of the ideas of the early

economists reshaped our social relations. Therefore, although a great part of this historical analysis will be devoted to the history of ideas, brief comments on the context in which they were born will accompany.

## **Chapter 1: Background of the Western Legal Tradition**

According to Kelley, in contrast to the natural philosophers, who sought to uncover the secrets of the universe or the physical realm, it was the law-makers who as “observers of human behavior...confronted by the predicaments of the society” were the first to seek similar insights in the social realm. Citing Henry Frankfort, Kelley mentions that this distinction between the real of Nature or physical reality and the realm of human or the social realm can be traced to the Greek legacy. With the establishment of this dichotomy a dialectical relationship between the two ensued and has been the fundamental force driving the progress of human thought resulting in the emergence of a multiplicity of disciplines. Within legal theory over time this divide manifested in the distinction between Natural Law (universal law) and Positive law (“man”-made law).

The Natural law tradition is generally associated with the thought of Plato and Aristotle who paid greater praise to the laws of natural or physical reality and regarded custom as instable and irregular. In the *Nicomachean Ethics* Aristotle formulated a variety of dichotomies which derived from his basic division of “political justice” into “natural” (*physikon dikaion*) and conventional (*nomikon dikaion*). “Natural justice” was seen as unchanging and universal, while conventional justice or custom was mutable and therefore irregular. From this he presented the dichotomies “practical” and “theoretical”, “pure science” (*episteme* – exemplified by mathematics) and “prudence” (*phronesis*, which is derived



through experience, *empierias*) (Kelley, 1990). For my later analysis of economics it is interesting to note that for Aristotle, economics (*oikonomia*) fell into the “prudence” category of knowledge and so did legislation (*nomothesia*). Both were regarded as variable and somewhat inferior to the “natural” and therefore could only be interpreted through the method of *logos* in order to uncover the truth that was obscured by conventional appearance. This view also manifested in Aristotle’s thought on economic matters, where his primary concern was with establishing what was naturally “just”. Roots of Positive Law can be traced to the Sophists, or as deemed by Jaeger, the “first humanists” who exhibited a much more skeptical attitude towards the claims of natural philosophers. One of the main figures of this school Protagoras proclaimed his view on cosmological explanations: *“concerning the gods, I have no means of knowing whether they exist or not, nor of what form they are; for there are many obstacles to such knowledge, including the obscurity of the subject and the shortness of human life”* and for him *“man is the measure of all things”*. It is not surprising that he was deemed by some as the first atheist and skeptic for he emphasized the relativity of truth since according to him it was seen differently by each. For the Sophists social laws and customs were man-made and the result of arbitrary forces. They rejected the assertion of divine origins of laws which were hitherto obscured by custom and could be revealed through some form of “pure science” but instead claimed that custom was all that there was. Therefore they turned to the practical and defended the art of discourse and rhetoric in making truthful assertions (Kelley, 1990).

It is important to note that the rise of the sophists and a general skeptical attitude towards divine explanations occurred in Athens when it was undergoing quiet a turbulent period. Perpetual conflict with the kingdom of Persia had a deteriorative effect on the living conditions of its citizens. The Plague of Athens (430BC) ravaging the city added to the misery

of its population. Even after the Persians were successfully fended off a conflict broke out between Greece's two major powers, Sparta and Athens. This resulted in the Peloponnesian War (431-400 BC) in which Athens' defeat spelled the end of the Golden Age. In such a hostile environment it is not surprising that the discourse of the natural philosophers preaching the divine, had lost its power of persuasion. This can be seen as an example of an incongruence between the explanation of social reality, as it is explained by those advocating for non-worldly origins, and the social reality as it is experienced by the everyday mortals. The scepter of doubt inevitably sets in as the struggle to understand the world when the old means of understanding no longer offer consolation or relief. This dialectical relationship will also be demonstrated as a partial reason for the emergence of economics, when the legal order was no longer able to provide a comprehensive understanding of the rapidly changing social conditions in the 16<sup>th</sup> century. However, before leaping so far ahead, the foundations of the western legal tradition, which was later superseded by economics, requires a more elaborate explanation.

## **1.1 Roman Law**

Athens's defeat to Sparta marked the decline of the Golden Age of Greece and the establishment of Sparta's hegemony. However, simultaneously occurring conflicts between other city-states could not be managed by the already stretched militant power of the Spartan's. Before Greece finally lost its independence to the Roman Republic (146 BC), it passed through the Hellenistic period under the rulership of the Macedonian Empire. This period was marked by the conquests of Alexander the Great, during which Greek cultural influence had spread as far as the steppes of Central Asia.

Somewhat leaping we come to the era of the ancient Roman civilization the influence of which has been one of the main shaping factors of the Western legal tradition. Through its conquest-driven mentality the Roman Republic slowly grew into a Roman Empire. Although heavily influenced by the ideas of the Greeks, Roman thought was more practically oriented due to its militant attitude and did not pay much due to abstract or theoretical knowledge. Their main goal was to preserve its customary culture and organization while spreading it in their conquered territories. Memory was praised over reason, practice over theory, code over divinity. As Kelley (1990) had noted even their gods tended to personify more of the social values rather than natural principles, and their myths were centered on the stories of foundation and not creation.

Some of important aspects of the Roman legal tradition stemmed from the persistent territorial expansion and encounter with foreign customary law of the conquered colonies. In order for central power to be able to achieve its autocratic interests with predictability, a uniformly enforceable law needed to be established. However it also needed to be flexible enough to adapt to the existing custom of the foreign territories and not simply by substituting them with a new social order but modifying them. The subsequent divisions that were made had established the fundamental categories in Western Legal thought.

## **1.2 Development of key legal categories**

The first contrast was between natural law (*ius naturale*) and civil law (*ius civile*) (corresponding with the Aristotelian basic division into *physiokon dikaion* and *nomikon dikaion*). *Ius Civile*, the older and more formalistic law, was applied strictly to the citizens of Rome. The second division was the one between *ius civile* and *ius gentium* was used to represent law common to all people. *Ius Civile* was the older, more formalistic law and *ius*

*gentium* was more flexible in order for it to be applied for relations with foreigners (peregrine). Another division was between written (*ius scriptum*) and unwritten law (*ius nonscriptum*) (Kelley, 1990)

The Twelve Tables signified the adherence of the Roman to the practice of codification, with the written form replacing the oral form as the transmission mechanism of custom. According to Varga (1991) this conscious and purposeful codification of the Romans led to the transformation of law into an instrument of social control whereas before, in the form of custom, it represented more of the “collective consciousness” in Durkheimian terms. Whereas the Twelve Tables were compiled to represent customary law in written form, Codex Justinianus had specifically imperialistic ambitions with the sole purpose of reinforcing central power. Although the established order had lost its ties with the divine or “natural” order, it had now provided a domain for analytic study and thereby a subject-matter of “legal science”.

Roman legal thought was not entirely devoid of systematic analysis. One of the most notable examples of this was the work of Q. Mucius Scaevola (d. 82 BC) who had applied Aristotle’s dialectical reasoning to *ius civile* by classifying it into categories dealing with law of persons, law of things, law of inheritance and law of obligations (Berman, 1983). However, in contrast with the Greek dialectical method and the subsequent method of the scholastics of the 11<sup>th</sup> century, the focus was mainly on classification and no attempts were made at derivation of general principles.

With the gradual decline of the Western Roman Empire, Roman Law as contained within the Justinian Code was transferred into the Byzantine Empire until its rediscovery in the West in the 11<sup>th</sup> century.

## Chapter 2: Rise of the Western Legal Tradition

Law as a body of knowledge, as an object of systematized study and as a domain disembodied from the social and political realms, according to Maitland emerged only in the 12<sup>th</sup> century, a period which he deemed as “a legal century” (Berman, 1983). One of the main impulses behind this was the declaration of independence of the Western church of Rome from the secular control of the emperors by Pope Gregory VII. Historically this event has been named as the Gregorian Reformation or the Papal Revolution (1075 – 1122). Berman deemed the newly independent Church of Rome as the “first modern state” with the first comprehensive unified body of law written by the Bolognese monk Gratian in 1140 (*Concordance of Discordant Canons*). Gratian’s treatise represented the first attempt to systematize canon law into a legal system that could be seen as a coherent whole or unity, and not just a chronological compilation of laws and rules.

This resulted in the split of the jurisdiction domain into the ecclesiastical and the secular and the further subdivision of the secular into the feudal, urban, manorial and mercantile laws. Mercantile law provided many of the concepts which allowed the economy to emerge as a subject matter for further analysis. However, before overviewing its development, the emergence of a standard method of analysis that was developed by the early scholastics and which planted the seeds for the future rise of the scientific method deserves greater elaboration.

### 2.1 Legal Science

The fact that the Holy Roman Church in the 11<sup>th</sup>-12<sup>th</sup> centuries exercised almost virtual monopoly on knowledge and learning may be seen as deplorable from perspective of

modern sciences which have always claimed to hold freedom of inquiry, objectivity and universality as their most fundamental values. However, in Berman's account of the formation of the western legal tradition, the establishment of independence of the Roman Church from secular control, was actually seen as propelling the study of law as a legal science and was partly responsible for the rise of modern sciences.

Period of 11<sup>th</sup>-13<sup>th</sup> century, known as the High Middle Ages, was characterized by the expanding power of the Latin Christendom which through integration of the Greek, Roman (although in diluted form) and Christian teaching, provided the unifying spiritual force for the dispersed tribal society. Great economic expansion, propelled by the technological innovation, agricultural revolution, increase of commercial activity and the rise of towns, which served as the cultural and intellectual centers supported the rejuvenation of society from the "ground". Since Christianity was a religion of the book, the Church placed a great emphasis on literacy. Traditionally majority of the learning was conducted in monasteries and cathedrals where the main subjects that were taught were Latin, rhetoric, grammar and logic. With the rediscovery of Greek and Arabic manuscripts rapid translation into Latin ensued, and the rational tradition of ancient Rome was fused with the Christian doctrines. This fusion resulted in the resetting of the dialectical relationship between the Natural and Physical into the relationship between Natural and Supernatural (Kelley, 1990)

For the legal tradition, the monumental event was the discovery of the Justinian Code, which provided a "body of knowledge" or a new domain of study and according to Berman, "gave all Europe its basic legal vocabulary" (p.899). Scholastic method, which arose out of the need to reconcile the medieval Christian thought with ancient classical teachings of natural reason, was the predominant mode of reconciling contradictions. Just as the Christian doctrine of the Bible was not questioned, but rather required application of reason for the

reconciliation of contradictions, so was the Justinian Code taken as a whole which had to be harmonized into a system. Primary attention, however, was devoted to the *Digest Pandectae* which was a collection of opinions of Roman jurists on various civil cases (*ius civilis*). *Digest Pandectae* did not represent an internally coherent system of rules or principles but consisted primarily of holdings followed by opinions of the jurists (Berman, 1983). This was probably due to the above mentioned practically-oriented philosophy of the Romans who directed their efforts at resolution of problems at hand as opposed to the theoretically-oriented Greeks whose main goal was to derive general principles.

Rediscovery of the Justinian Code and with it Roman Law in Italy at the end of the 11<sup>th</sup> century provided a new domain of study, an object of systematic analysis and caused a frenzy of learning across Europe. Prior to the establishment of universities, students would form guilds and hire a teacher to tutor them, to whom they paid directly. A prominent Italian jurist of the time Irnerius, who was located in Bologna, had attracted a particularly large number of students. The foundational mode of teaching was the scholastic method of analysis and synthesis, which was applied to doctrinal books in law or theology. It consisted of analyzing the text and reconciling discovered contradictions, thereby synthesizing it into a coherent whole. Commentaries would be made in the spaces between the lines or on the margins to further explain some ambiguities in the text. The unity of the text however, was taken to represent an “ideal body of law”. As Berman (1983) noted, this “dialectic method was the scientific method in law” and was one of the embryonic forms of the scientific method that was subsequently to be applied to other disciplines.

General interest in the study of law during that period was driven by two forces. The first came from the Roman Church which pushed for the study of law out of its own interests as it sought to establish its autonomy and independence from secular control. University of

Bologna was founded by a friend of Pope Gregory VII, Matilda the Duchess of Tuscany and in the 12<sup>th</sup> century, in addition to the study of the Justinian Code, the new canon law of the Roman Church, which was just compiled in the great Gratian treatise (*A Concordance of Discordant Canons*), was added to the curriculum. Because the Christian doctrine included the idea of the “divine” which was absent from Graeco-Roman thought, Gratian had established a hierarchical distinction within the concept of natural law. This resulted in the idea of divine law, which represented the will of God that could only be attained through revelation and natural, which also represented the will of God but could be attained through both revelation and human reason. The last was human law which was the law established by the Church and Prince. The hierarchical relation implied that human law could not contradict natural law and in turn natural law could not contradict divine law (Supiot, 2007)

The second force, which helped spread the legal tradition and the scholastic method, across Europe, was rise of the merchant class and expansion of trade activity in which the knowledge of law a necessary part of the merchant’s trade<sup>1</sup>.

This is where Berman emphasized the important role that the Papal Revolution played in the inauguration of the western legal science. As the legal jurisdiction was divided into secular and ecclesiastical, the secular authorities sought to establish their own body of law that would deal with non-ecclesiastical matters. With most of legal “professionals” trained at law schools in canon law, its basic characteristics infiltrated the secular domain. From the ecclesiastical tradition divine law found its manifestation in the natural law. Since according to the theological teaching everyone was subject to the law of God, even the monarch, people

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<sup>1</sup> “...whenever you have an hour to spare give thought to your studies, especially to the law books...Make study of all the laws...if you are acquainted with the law, you will not be annoyed by the quibbles when you have suits to bring against men of your own class, but will be able to plead according to law in every case” King’s Mirror, Chapter 3, The Activities and Habits of a Merchant, written by an anonymous Norseman in the 13<sup>th</sup> century. (cited Perry et al, 1991)



found greater justification to demand their liberties and refuse to be subjected to the arbitrary powers of the rulers<sup>2</sup>. Concepts of justice, truth and dialectical reasoning for reconciliation of contradictions were also transplanted. The general idea of a systematized body of law gave rise to the study of appropriate modes of governance in the secular arena<sup>3</sup>. Overall, the development of secular law paralleled canon law and so did all of its branches: feudal, manorial, royal, imperial and mercantile law.

## **2.2 Implications of Canon Law for Secular Law**

Setting aside the progress of legal science that was promulgated by the scholastics in their development of canon law, some of the more general influences that were transferred from their methodology to secular law need to be highlighted. The technique of reconciling contradictions was part of the Christian theological tradition of the study of scriptures. As the scriptures are taken to be the word of God that was passed on to humankind through revelations, they are studied with the goal of acquiring divine knowledge or in our modern conception “scientific knowledge”.

Gregorian Reformation set in motion a dialectical relationship between Church and State, which has continued to influence the political milieu in Europe until their complete conceptual separation which found its roots in Luther’s doctrine of the two kingdoms and

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<sup>2</sup> In 1215 the Magna Carta (The Great Charter of Freedoms) was issued to limit the powers of King John of England, one of the most important notions of which was that the King himself was subject to the law.( Perry et al, 1991)

<sup>3</sup>One of the first exemplary comprehensive treatises was that of John of Salisbury (Johannes Parvus) “Politricaticus” in 1159 (Berman, 1983).

later in Locke's. The importance of establishing a legal foundation for its organization, the Church fueled the rise of universities which led to the systematization and indoctrination of the scholastic method. In Berman's view, the analysis and synthesis of the scholastic jurists of that time can be qualified as legal science in the modern definition. He further states that "the legal science of the 12<sup>th</sup> century jurists of Western Europe was the father of the modern Western sciences". I think that it is somewhat of a stretch to draw a direct link between the jurists' method of synthesizing obscure rules among various legal systems into general laws and the hypothetico-deductive method as applied to the physical phenomena. However, the scholastic jurists' method of verifying the consequences of their derived general rules through analyzing whether order or disorder would ensue if they were applied, can most certainly be regarded as the inauguration of the social sciences, since this order and disorder took place in the social realm. Schumpeter was one of the first to praise the contribution of the scholastic method to the inauguration of the analytical approach of economic phenomena, although he was speaking about the work of the scholars at the School of Salamanca which differed from the early scholastics primarily in their practical approach to theology. A further contribution of the scholastics is the acceptance of the unity of the body of law regulated by the divine order. This unified view of the law was passed on to all the branches of secular law, including mercantile law. How the development and growth of mercantile law not only contributed to the spread of commercial life but also to the conceptualization of socio-economic phenomena which were later studied by the early political economists, will be discussed below. The same occurred with economics, for before the economy was perceived as a whole, only partial analysis of observed regularities could be conducted. Schumpeter credited Walras as the "greatest economist of all" for the development of the general theory of equilibrium. However, in my understanding, Schumpeter was much more interested in the analytical progress that took place in economics, for he saw science as "tooled knowledge" (p.).

## 2.3 Mercantile Law

Improvements in agricultural productivity in the 11<sup>th</sup> century resulted in the appearance of large agricultural surpluses. Manorial and feudal law at the time did not allow either peasants or the feudal lord to undertake trade activities while serving on the manor, therefore a great inflow of ex-peasants ensued into the cities in order to take advantage of trade opportunities. Towns and cities re-emerged and slowly started becoming the cultural centers of Europe. Commercial activity was expanding leading to the rise of a new merchant class. Merchants began taking up trading activities across cities and with greater technological advances, spurred in part by the rise of the artisans craft, territories that merchants were available to cover expanded as well. Territorial expansion of trading activity was also supported by the ambitions of the Roman Catholic Church to increase its dominion through its Crusade campaigns, as a continuation of the mission of the Gregorian Reformation. This promoted overseas and long-distance trade, with commercial activities increasingly taking on an international character. As international trading activities could be easily undermined by fraud and dishonest practices there was a demand for their greater regulation. Increasing complexity of commercial relations required institutionalization of customary and best-practices. The Roman Law tradition provided an almost ideal base for this with their elaborate sets of legal rules on contract formation, sale, money loans and partnerships. Their concept of *ius gentium*, which was initially developed for relations with the non-Roman citizens established the base upon which a legal system covering international trade could be developed.

However, an authoritative conscious development of merchant law did not take place right away, with the merchants taking it upon themselves to regulate commercial activities

through establishment of mercantile courts for the resolution of disputes and mercantile offices to facilitate transactions. There was also an initial reluctance on the part of the merchant class to have their activities regulated through a higher authority, because the trend of commerce proceeded at a much more rapid pace than the feudal life. Disputes needed to be resolved on the spot, rules required flexibility and constant adaptation, and those administering them had to have knowledge of the merchant trade in general (Berman, 1983)

Therefore mercantile courts were established and the judges presiding over them were usually selected by the merchants themselves with knowledge of the trade being the most common criterion. Overtime, mercantile law was developing into a body of rules which bore traits of universality, objectivity and growth.

As it has been mentioned above, non-ecclesiastical law and all of its branches, at their foundation, strived to emulate the framework of canon law as it was elaborated by the early scholastics. Although merchants represented a new class, characterized by their cosmopolitanism and a certain break with tradition, they were nevertheless in their metaphysical beliefs adherents of the teachings of the Church. It has been a conventional view to regard religion and commercial activity as inherently contradictory, as the former represents stability and adherence to tradition, while the latter advocates for change and innovation. The notion of usury has been a particular point of contention. In Weber's view acceptance and propagation of commercial activity could only take place in a society permeated by the Protestant Ethic, which paid tribute to individual achievements and represented a break from the authoritarian teachings of the Church. Berman on the other hand contested this by stating that "*the Western Church of the late 11<sup>th</sup> and 12<sup>th</sup> centuries believed in the reconciling of commercial activity with a Christian life, just as it believed in the possibility of reconciling agrarian activity with a Christian life*" (p.338). As long as pursuit of

wealth was conducted according to moral principles and directed towards a moral purpose<sup>4</sup>. He further pointed out that the reciprocity of rights principle, which was one of the core principles of growing mercantile law, only emerged in the period of 11<sup>th</sup>-12<sup>th</sup> century. It differed from the general principle of reciprocity that underlies all commerce exchange because in its ideal conception it involved “the element of equality of burdens or benefits”. The substantive aspect of this entailed that an exchange must involve a proportionality of costs and benefits for each party. Therefore one party should not impose costs on the other that would be unduly disproportionate to the benefit that the other party would obtain<sup>5</sup>. The procedural aspect dealt with contract formation and the doctrine of *bona fides* (good faith). Because contracts entailed an oath of faith, they fell under the jurisdiction of ecclesiastical law which used Roman and Germanic tribal law as a foundation with some modifications with respect to the formalism<sup>6</sup>.

Overall, the assumption that mercantile practices purposefully contradicted canonical doctrines is speculative at best. The merchant class still did not represent a majority of the population at the time in order to be able to exert that much influence. However, some modifications and adaptations were inevitable due to the nature of commercial activity. The very fact that mercantile law needed to be established as a separate body of rules shows that the general principles of canon law were not enough. Extent to which the structure and

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<sup>4</sup> Berman mentions the distinguishments between trade based on good faith and on avarice, satisfaction of legitimated needs and mere self-interest, legitimate interest charges and usury, just and unjust price. (p.338)

<sup>5</sup> The costs and benefits in this doctrine were most likely defined in absolute terms and not relative to each side, but if they were, in the modern marginalist analysis this could be an example of the MC=MB efficiency.

<sup>6</sup> Roman Law was subjected to modifications by the scholastics as they attempted to establish general rules from it. With respect to contracts attempt was made to support the freedom to make binding promises but also Even the formal agreements which were entered into under oath or were in writing would not be enforced if a case of fraud, deception or misrepresentation was discovered. On the other hand informal oral agreements would be enforced (Berman, 1983)

principles of mercantile law reflected canon law is still a matter of debate. However, divorcing the theological aspect from our analysis, the main idea of early scholastics that legal rules needed to be contained in a unified structure that was internally coherent and non-contradictory is most certainly reflected in mercantile law. Whether it was from the inherent nature of commercial activity, or whether this was the infiltration of theological notions of seeking to establish an order in all affairs, would entail attempting to establish the direction of an arrow of causality. The main point is that legal practices in all affairs of life appropriated the general overtone of regularity, orderliness and predictability. Each domain - feudal, mercantile, royal - began to establish a microcosm of its own with its specific terms, definitions and concepts, yet fundamentally adhering to the principle of internal consistency. Spread of written practices, development of legal procedures and principles, centralization of administration slowly started pushing custom out of the view of analysis. Antagonism towards merchants was slowly overcome and principles of trading activity earned the status of valid legal principles. Widespread codification of commercial customs<sup>7</sup> on the one hand fostered the expansion of commerce yet at the same time, was motivated by the greater desire to control of economic activity by the ruling authorities, as accumulation of wealth through taxation had started to take on greater importance (Berman, 1983)

Overall, the domain of commerce was slowly taking on a more orderly structure, however, this structure was not yet seen as an inherent aspect of it. It could not have presented an object of study in itself, first of all, because economic activity has not spread enough to become an essential part of social life and second of all, whatever regularities it represented, were only seen being the result of legal practices. In a society permeated by an omnipresent conception of God only as Heilbroner (1986) noted “the explanation of the world lay line an

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<sup>7</sup> Customs of Genoa (1056), Constitutum of Usus of Pisa (1161), Book of Customs of Milan (1216) (Berman, 1983)

open book in the laws of manor and the Church and the custom of life”. Theology was the “queen of sciences” however it was not undertaken to reveal “new knowledge” as is the purpose of modern science, but to uncover the divine meaning or intention<sup>8</sup>.

### Chapter 3: The World – a book

The learning frenzy that ensued after the discovery of the Justinian Code was not only driven by Gregorian Papacy’s urgency to establish its legal autonomy from the secular realm but was also a reflection of the predominant world view of the Middle Ages. Prior to the Scholastics of the 11<sup>th</sup> century, early Christian Fathers adhered to the Patristic theology. One of its main representatives was St. Augustine of Hippo who had reformatized Origen’s system of the three senses for interpreting the Scripture by adding a fourth level – symbolic. The physical world was seen as a vast land of signs, inchoate and disorderly in itself, but its true interpretation could only be attained through the scripture. Therefore it was futile to seek knowledge in the realm of worldly things, and observation of the natural world was generally disdained, the main concern always being with the “other world”. Allegory was the main mode of representation. After the complete decline of Rome, during the domination of Germanic tribes over its territory, the Christian teachings of the Church Fathers, with their Platonic conceptions managed to be preserved mainly within the monasteries. Gregorian Reformation and the parallel improvements in living conditions led to their revival but now under the guidance of philosophy of scholasticism. The dialectical method of Scholastics was one of its most distinguishing features. With the great inflow of Jewish, Arabic and Greek

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<sup>8</sup> *theologia* (θεολογία) (from *theos* (θεός) meaning god and *logos* (λόγος) meaning word, discourse, or reasoning

“For the whole sensible world is like a kind of book written by the finger of God – that is, created by divine power – and each particular creature is somewhat like a figure, not invented by human decision, but instituted by the divine will to manifest the invisible things of God’s wisdom” – Hugh of St. Victor, *De Tribus diebus* (Perry et al, 1991)

works and their translation into Latin, Aristotelian view of philosophy as “the science of the universal essence of that which is actual” as opposed to Plato’s focus on the “idea” was revived and received its coronation in the philosophy of St. Albertus Magnus and his somewhat more known disciple St. Thomas Aquinas (Funkenstein, 1988). The natural world was discovered and the patterns discovered within it were now perceived to hold potential for attaining the knowledge of God. Transcendental meaning of worldly objects was not simply to be attained through their scriptural interpretation but through their “relatedness” to each other and as parts of the whole. In Foucauldian terms, the “vertical similitudes” (Augustinian signs in relation to the divine) were supplemented by “horizontal similitudes” (relations among physical objects) (Foucault, 1970). Therefore concept of divine order also found its manifestation in the natural world with the microcosm of nature being the mirror of the macrocosm of the universe. This focus on the physical also gave tribute to the corporeal and the human body was also perceived as mirror or the microcosm of the universe. The individual had earned a place in the divine order of things. Nevertheless the Biblical notion of the human being as a fallen creature still prevailed but now the path to redemption and reestablishment of the human resemblance of the divine could be attained through the ordering process of the mind.

This re-discovery of Nature did not however entail that its interpretation would be based on what we would call now as objective scientific inquiry. Medieval science cannot be characterized by path-breaking discoveries for it was mostly engaged in the reconciliation of theological questions<sup>9</sup>.

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<sup>9</sup> St. Albert Magnus (c. 1206 – 1280), Roger Bacon (c. 1214 – 1294), Robert Grosseteste (c. 1175 – 1253) were some of the medieval scholars which had engaged in the study of physical nature. Significant advances were made in the fields of optics, tidal movements and mechanics (Perry et al, 1991)



With such a theocentric conception the laboratory of the world was a domain for re-ordering through rational classification according to the relatedness of things to each other. Order was imposed on physical objects from above and through the legal framework, was redirected towards society as a whole. Within the new providence of jurisprudence society gained ascendancy and but also reflected the divine order. Establishment of a divine order in society through legislation for the scholastics of the Church represented the potential to redeem our fall from grace but first appropriate legislation had to be derived in accordance with the scriptural interpretation. Aside from the changes in the socio-economic conditions this was one of the motivating factors behind the proliferation of legal studies.

Overall, as Edgar Zilsel had pointed out, the medieval scholastics' method of inquiry was teleological, partly due to the Aristotelian influence and partly due to the obsession of establishing a link between the earthly microcosm and the heavenly macrocosm. Therefore it was primarily directed at explaining events in relation to their purposes or ends, as opposed to the scientific method of investigating the causes.

The main challenge to this world-view was later posed by the famous discovery of Nicolaus Copernicus (1543). His presentation of the heliocentric view of Earth led to a paradigm shift from the hitherto predominant Ptolemaic conception of the universe. The foundation of the hierarchical order between the worldly and the divine or between the microcosm and the macrocosm, lost its foundation. The "vertical similitudes" no longer provided powerful heuristics for the interpretation of the natural order and in a sense the world had collapsed in itself. All that was left was the relation of worldly objects to each other and within this arrangement the individual was slowly starting to represent an object worthy of inquiry. Of course this was a very gradual process and probably would not have had the same impact without the subsequent efforts of Galilei, Kepler and Newton in the field of

natural sciences and Descartes, Bacon and Kant in the development of empirical methods. It also did not prove or signify the death of the divine which could still be found in natural law. In the ideas of Enlightenment thinkers the trinity of the divine, natural and human was replaced by the duality of natural and human, guided by the light of reason.

### **3.1 Secularization of Theology**

Theology, by rising to the status of the “Queen of Sciences”, had formed itself into a systematized and separate discipline by the 13<sup>th</sup> century, protected by the authority of the Church. Matters of the divine were strictly separated from the secular domain and most learning had to be conducted under the auspices of religious authority. St. Thomas Aquinas represented one of its most influential theologians at the time and so did his idea of human reason being subordinate to divine revelation. However, this scholastic synthesis of Greek rationality and Christian doctrine started to be challenged within the Church by the late 13<sup>th</sup> century. The continuing battle over supremacy between the Papal authority and secular authorities was putting pressure on the delicate balance established by Aquinas. Deteriorating economic conditions, compounded by the Black Death (1347-1350), peasant uprisings and culminating in the Hundred Years’ War (1337-1453) between the monarchies of England and France resulted in the declining authority of the Church which found itself deeply involved in the power politics. As it was no longer able to offer religious leadership to the Christian community, voices of dissent and “heresy” were becoming more widespread. Denouncing the acquired wealth and hierarchical organization of the Church, as well as the monopoly on providing the path to salvation, for being contrary to Christian teaching, the early dissenters began to stress the worth of the individual and the value of the personal relationship with God (Perry, 1993)

Battles in the political domain between the church and the monarchy were paralleled by battles within the domain of theology over human reason and the divine. William of Ockham (c. 1280 – 1349) has been regarded by some as one of the precursors of modern rationality with his approach of relegating the function of reason for attaining natural knowledge and leaving the religious doctrine up for matters of faith, as well as his advocacy for the separation of church and state.

While the ecclesiastical world was experiencing “the great schism” and the political realm was being tested by imperial tensions, the towns and cities of Italy, which had begun their emergence in the 11<sup>th</sup> century, were experiencing what we now call the Renaissance<sup>10</sup>. Geographical location of Italian city-states has been attributed as an important factor in their more developed commercial life, growing industry and heavier reliance on self-governance<sup>11</sup>. Italian cities also took on the leading role in the systematic development of mercantile law the institutional principles of which were adopted by many other European cities (Berman, 1983). Urban life provided a setting that was conducive for cultural and intellectual exploration, which in the 14<sup>th</sup> century resulted in the Humanism movement. Writings of classical Greeks were restored and with the proliferation of the study of Greek, were now read in the original. The Renaissance Humanists were attributed their name in part due to their belief in the creative powers of the human being and particularly the human mind. The key difference between the scholastics focus on scriptural interpretation and the humanist education was that studies of science and art were no longer seen as simply the path towards redemption of the

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<sup>10</sup> I am here referring to the renaissance (rebirth) of the 15<sup>th</sup> century which in historical terms is usually referred to as a cultural movement. There is disagreement on whether this period represented the starting point of modernity (Burckhardt's thesis) or whether it represented a continuation of the Middle Ages (Perry, 1993)

<sup>11</sup> City-states such as Rome, Milan, Florence, Venice, Genoa and Bologna had enjoyed privileged access to Mediterranean trade and by the 11<sup>th</sup>-12<sup>th</sup> century had established themselves as flourishing commercial centers (Berman, 1983)

human inherent sinfulness but as the expression of the divine beauty through the human intellect. The potential of the individual was praised and one of the most representative expressions of this idea was Giovanni Pico della Mirandola's *Oration on the Dignity of Man* (1486) (Perry et al, 1991).

However, it would be erroneous to regard the humanist movement as the supersession of the medieval scholasticism. As Kristler (1979) had pointed out "the two traditions had their locus and center in two different sectors of learning: humanism in the field of grammar, rhetoric, and poetry and to some extent in moral philosophy, scholasticism in the fields of logic and natural philosophy". Contribution of the scholastics to the development of economic theory was given special recognition in Schumpeter's *History of Economic Analysis* in which he audaciously stated that "it is within their systems of moral theology and law that economics gained definite if not separate existence, and it is they who come nearer than does any other group to having been the 'founders' of scientific economics" (p.97). Therefore an overview of the scholastic views on economic phenomena will be presented in the next section.

### **3.2 Second Scholasticism**

Marjorie Grice-Hutchinson's rediscovery of the contributions to economic theory by the scholastics of the School of Salamanca and the subsequent attention drawn to it by Schumpeter have led historians of economics to acknowledge a certain degree of continuity in the development of the discipline. One of the main reasons why the economic theories of these schoolmen had not received the attention that they deserved was their reluctance to break with Aristotelian philosophy.

Interest in economic phenomena in 16<sup>th</sup> century Spain was primarily driven by the discovery of what was then called the New World. The influx of gold and silver had spurred commercial activity, promoted the rise of markets and fairs and led to the proliferation of mercantile practices. The issue of usury had become pressing due to its condemnation by the Church. Resulting inflation from the inflow of bullion turned the attention of scholars towards investigation of monetary phenomena. Nevertheless, economic matters were not dealt with as part of a separate discipline, but still fell under the domain of law and ethics. Due to a strictly legalistic mindset their primary concern was with legality of contracts, just price and usury and all economic matters were analyzed through this interpretive framework. Nevertheless, even within such strict methodological confines, they had made substantial progress in elaborating general principles of value, price and utility, some of which are on par with the modern economic theories. Some of the notable examples are San Bernadino of Siena who identified utility, scarcity and pleasurable as the main sources of value and had stated that the just price is “the estimation made in common by all the citizens of the community”. Martin de Azpilcuetta, made the link between the influx of gold and the rise in prices and even expressed the principle of higher value of scarce metals. Their greatest obstacle was the doctrine of usury and the schoolmen of Salamanca tried desperately to reconcile the rising demand for loans with the prohibition of usury. Nevertheless, their fancy inventions of extrinsic titles and licit contracts had only led to further complications rather clarifications of their stance.

Overall their strict adherence to the doctrine of the Church and reluctance to adapt to the rapidly changing environment, led them away from any analysis which we would now regard as objective or scientific. Their interest in economic matters was propelled not only by necessity but also had a teleological component of establishing what was “just”. Most of the

progressive insights that were made by the scholastics of Salamanca with regards to analysis of economic phenomena were overshadowed due to their conflation with explicitly stated religious connotations and led to their dismissal all together. The rising spirit of the Renaissance and spreading contempt of the dogmatic doctrine of the Church caused a general level of prejudice towards the ideas of scholastics in the 14<sup>th</sup> century. However, as I have mentioned above, humanism was not wholly contradictory to the tradition of the scholastics and did not represent their succession. Aristotelian idea of natural law, which was so skillfully integrated with Christian teachings by Aquinas, was embraced by the 16<sup>th</sup> century natural philosophers such as Hugo Grotius (1583-1645), Samuel Pufendorf (1622-1694) and Locke (1632-1704) and through the writings of Francis Hutcheson (1694-1746) and Adam Ferguson (1723-1816) had a substantial influence on Adam Smith.

The period of 16<sup>th</sup>-17<sup>th</sup> century Europe was characterized by many turbulent events. Declining power of the Church sparked by the Reformation movement and rise of humanist ideas led to political tensions which were subsequently followed by the rise of nation states. Educational ideals driven by the Renaissance movement not only allowed a greater number of individuals to be involved in the studies of jurisprudence but also led to a split in the intellectual domain into legal and political matters. Growing influence of the state apparatus sparked a number of treatises on political thought. Those that had gone along the jurisprudential branch still carried with them the ideas of the scholastics while those that engaged themselves in the study of governance and state were more influence by the developments in the natural sciences.

Within the arena of political thought Hobbes, influenced by Galilean and Newtonian discoveries as well as the Cartesian mathematical approach sought to elaborate a mechanistic science of society. Locke, Montesquieu and Rousseau pursued the elaboration of appropriate

forms of government that would limit the powers of government and protect the sovereignty of the natural liberties of persons.

Although the ideas of natural law philosophers within the jurisprudence branch were to have a more lasting influence on the development of economic theory, political and economic climate of the 16<sup>th</sup>-17<sup>th</sup> century demanded more imperative solutions. This led to a spread of ideas on economic matters that greatly reflected the circumstances of their time. As I have mentioned above, although the economic thought of scholastics was heavily permeated by the doctrines of the Church, their primary goal was not to influence government policy but to establish what was “just” and “unjust” through purely analytic efforts. As will be shown below, subsequent economic theories no longer had the doctrine of the Church in mind but the political interests of the state.

## **Chapter 4: Rise of Political Economy**

The term “political economy” was coined for the first time in 1615 by a French soldier and dramatist Montchrétien in his *Traité de l'économie politique* (Speigel). With the spread of markets commercial and economic matters were attracting greater attention from people of all trades. With the rise of nation states international economic affairs and the study of trade were gaining greater attention in the political arena. One result of this was the emergence of political arithmetic led by Sir William Petty (1623-1687). In the history of economic thought, this has marked the birth of mathematical analysis. One of his major contributions was *A Treatise of Taxes and Contributions* (1662). Overall he had stood out among the earlier thinkers of mercantilist era primarily due to his greater devotion to elaboration of a methodological approach. Another significant contribution that was made by Petty was the derivation of the concept of national income success of which was unfortunately

overshadowed by his crude census making methods. From the analytical perspective his statistical bent was mainly driven by his goal to measure and not so much to derive principles or regularities.

However prior to Petty's arithmetik, the trade depression which occurred in England in 1620 led to a breakout of a discussion among who we now view as the representatives of mercantilism. Below is an overview not so much of their specific ideas but mainly their general approach to economic affairs within which it is clear that very few hints were made at the establishment of economics as a separate discipline.

## **4.1 Mercantilism**

Mercantilism has often been criticized for being an unsystematic conglomeration of ideas of the influential businessmen which were attempting to influence public policy for the promotion of its own interests. The main areas that were of concern to the mercantilists are commonly listed as maintenance of a positive balance of trade, protectionist policies, promotion of inflow of bullion and identification of money with wealth. Their writings were usually in the form of brief pamphlets on specific issues that were of immediate concern. No serious attempt was made to provide a unified analytical framework and E.A.J. Johnson's phrase that in the mercantilist realm "everyone is his own economist" quiet aptly captured the spirit of mercantilist thought. A certain prejudice towards their writings on economic matters came from a general negative attitude towards traders and due to their almost outright explicit goal to influence public policy. Subsequent avalanche of criticism first from the Physiocrats and later by Adam Smith contributed to their negative reputation within the history of economic thought.



There have been varying opinions on whether mercantilists did strive towards a comprehensive analysis or whether they were primarily concerned with promoting their interests, but for our analysis one of their grave mistakes was once again establishment of a teleological end. Their theories were concerned with the demands of their immediate environment and lacked transcendental character which is one of the prerequisites of modern science. Mercantilist saw the economy as instrument in promoting political interests and thereby implicitly constrained their analysis within the nationalist policies of their respective location. Raymond de Roover had pointed out that it would be fallacious to classify economic thought of 16<sup>th</sup> century under the unified term of mercantilism which according to him would be appropriate for characterization of British economics. Economic policies in Germany fell under the domain of cameralism (Kameralwissenschaft) and in France they found their expression in “Colbertism”. In Germany particularly, cameralist sciences, which started promoting a statistical approach to issues of national policy, slowly started to present a challenge to the traditions of jurisprudence.

This was the time when the power of the state was associated with wealth and wealth was (erroneously) associated with money. National economy was subsumed under the political domain mainly due to the common presumption of trade being a zero-sum game. Although one result of this was greater interest in the analysis of economic phenomena but it also justified the interventionist mentality since wealth of the world was seen as static and therefore required active pursuit by the government so as not to lose out to the other states.

Although we can note the separation of economic thought from moral criteria towards criteria of what thought to be efficient, there was still no conception of the economy being a separate domain and a worthy subject of inquiry in itself. One of the main problems was that those theorizing on economic issues were heavily involved in politics and one might say

lacked “the scientific spirit”. Trade received greater attention and economic thought on the domestic economy was much more fragmented. This resulted in partial analysis without seeing the whole since the whole at that time was represented by the state.

## 4.2 Intellectual Climate of the 18<sup>th</sup> century

To note the distinction between the modern conception of science and the conception of science that was applied in the 17-18<sup>th</sup> century it is worth mentioning that at that time systematic inquiry in natural phenomena was classified as natural philosophy<sup>12</sup> and inquiry into human action was classified as moral philosophy. In contrast to the 17<sup>th</sup> century, when most attention was devoted to the discoveries in the arena of natural philosophy, 18<sup>th</sup> century was characterized by the rise of moral philosophy. The individual had become the focus of analytical inquiry. However, just as Newton’s natural philosophy was embedded with a theological goal so was moral philosophy directed at a normative objective – to derive rules and principles from the nature of the human being, the observance of which would lead to a virtuous life. There was no strict disciplinary divide between the two intellectual streams and cross-usage of methods was widely admired<sup>13</sup>.

## 4.3 Physiocrats

For the “discovery” of the economy most credit goes to the Physiocrats. Quesnay and Cantillon were the first to analytically represent economic life as a closed circular process and

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<sup>12</sup> Isaac Newton’s treatise of 1687 was titled “The Mathematical Principles of Natural Philosophy” (Redman, 1997)

<sup>13</sup> David Hume’s *Treatise of Human Nature*: “Tis evident, that all the sciences have a relation, greater or less, to human nature...Even Mathematics, Natural Philosophy, and Natural Religion, are in some measure dependent on the science of Man;” (1896, p.19) (as cited in Redman, 1997, p.110)

allowed to see it as a somewhat independent whole. As Schumpeter had famously stated “the first discovery of science is the discovery of itself”.

In contrast to the mercantilists Physiocrats presented a distinct and unified school of thought lead by the influential character of François Quesnay. They had called themselves *philosophes economistes* and made the elaboration of a system of social philosophy as their ultimate goal. Natural law outlook was very much embedded in their thought and can be noted from their name (Gr. *physio* – nature, *krátos* – power, rule)<sup>14</sup>. Quesnay believed in the existence of an objective natural order which could be comprehended through human reason. However, the statement that this natural order was objective he implied that it was reason that was supposed to correspond to it and not the other way around.

In the correspondence between Du Pont and Jean-Baptise Say the physiocrats’ stance on economics as a discipline was made very clear. DuPont mounted criticism against Say for advocating the study of economics as a “science of wealth”, which according to him constituted a division of the domain of physiocracy which covered “all the sciences and all the morality of economics”<sup>15</sup>

Although the term *laissez-faire* was coined by the Physiocrats their idea of the benefits of economic individualism had a dual nature. From their natural law outlook they derived the idea of benevolent “legal despotism” within which the king would be vested with the power to enforce the natural laws regulating the economy. Establishment of rules contrary to the

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<sup>14</sup> DuPont who was one of the most prolific publishers of the ideas of physiocrats defined that physiocracy “sets forth with certitude the natural rights of man, natural order of society, and the natural laws which are most advantageous to men assembled in society” (*Discours de l’editeur*) as cited in Neill J Thomas, 1948

<sup>15</sup> “Why have you attempted to split this science in two in order to separate the science of wealth, which is only a collection of calculations, from that of the developments appropriate for showing the utility of conforming to the law? The latter was, always has been and always will be everything within the law, which cannot be violated without justice, without tyranny, without crime” (Correspondance de Du Pont de Nemours avec J.-B. Say in Daire, op.cit., 396) as cited in Neill JThomas, 1948

natural order would be the result of positive order and therefore the legislator must be “enlightened by reason” so as to avoid this result. This is an example of the core doctrine of the natural law outlook which presupposes the presence of a legislator, whether divine or in the form of a legislator invested with absolute power.

Aside from their philosophical ideas Quesnay’s *Tableau Économique* which was perhaps one of their most important contributions to the development of economics presented the hallmark of the physiocrats’ school. The tableau represented the relationship between the three classes of landowners (proprietary class), agricultural labourers (productive class) and artisans and merchants (sterile class) and depicted the circular flow of annual reproduction and expenditure. Its circularity outlined the interdependence of economic variables and sectors and presented the notion of equilibrium which paved the way for a coherent analysis of economic. However, their view of agriculture as the sole source of productivity, probably stemming from the economic structure of France at the time, prevented the elaboration of a more universal theory of the functioning of the economy and undermined the role of the individual.

Overall, within their philosophically driven antagonism towards seeing economics as a science in itself, it was inevitably difficult for the split to occur.

#### **4.4 Birth of Homo Oeconomicus**

Schumpeter, who, in contrast to the conventional thought, had given credit to the second scholastics as the first to have set of the separation of economics as a scientific discipline in the same unconventional manner contended that Smith’s *Wealth of Nations* did not contain any new analytical insights and simply represented the synthesis and

reorganization of the old. While I partially agree with the statement regarding Smith, the fact that he has been noted by those within and outside the discipline as “the father of economics” cannot be completely disregarded either. From such a divergence between Smith’s analytical achievements and his popularity one can conclude that Smith reputation is in part indebted to his power of persuasion<sup>16</sup>.

The three most common ideas associated with Smith are the “invisible hand”, the notion that private self-interested behavior leads to public benefit and subsequently his constrained interventionism stance. Blaug (1997) has insightfully pointed out that as much as the “economy” was discovered as a domain worthy of intellectual inquiry it would not have received as much attention among scholars of various disciplines had it not been for the shroud of mystery that followed the idea of Smith’s “invisible hand”. Adam Smith did not simply reveal a principle of the functioning a market by proposing that there is an underlying order governing the efficient allocation of resources through market exchange, but also spurred an interest in other economists and non-economists to attempt to reveal how that order can be conceptualized or harnessed. As the markets grow and become more and more complex, so do they provide more scope for inquiry. From a rhetorical perspective the fact that concept of the “invisible hand”, which has been mentioned only twice in Smith’s work, is most closely associated with his name even by non-economists, hints at its power of persuasiveness perhaps to its abstract connection with the notion of a “divine order”. Smith’s affinity for the writings of Newton are well known. Clark (1992) in his analysis of Smith’s Natural Law outlook has even contended that the concept of the “invisible hand” was directly derived by Smith from natural theology. However it was not only the idea of self-governing

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<sup>16</sup> Accentuating his non-belief in the existence of single rationalist truths in his *Lectures on Rhetoric and Belles Lettres* Adam Smith had explained that communication of knowledge has to be done in a persuasive manner, appealing not only to the prior knowledge of the audience but also their imagination, as cited in Alexander Dow and Sheila Dow, 2009

or divinely-governed markets that held sway but also the self-interested individual which was placed right into the center of analysis. The domain of *homo juridicus* whose personality was derived from within a unified system of laws has been directly challenged by the rising *homo oeconomicus* whose personality derived from the system of market transactions. Placing the individual in the context of a market system where the individual derived its definition from the market and vice versa, has provided a powerful heuristic device for the abstract analysis of economic phenomena. Smith also benefited from identifying this self-interested individual only within the confines of commercial relations and perhaps purposefully had written two books, leading some to witty remarks that there were two Adam Smiths.

Therefore, even if Smith's contribution may not have held much analytical value, his synthesis instead of adding to the accumulating collection of knowledge, instead opened up a new window.

#### **4.5 Institutionalization and Formalization**

By mid 18<sup>th</sup> century political economy, had drawn the attention of many scholars who had previously been trained as lawyers including Marx and Proudhon (Kelley, 1991). Subsequent institutionalization, through the increasing number of university chairs, clubs and associations as well academic institutions had certainly marked the break of economics from law but not completely yet from the political realm. Because the institutionalization process had occurred along somewhat different paths in different countries with their distinctive "intellectual styles", a debate ensued over the form that this new discipline should take. The methodological battles that followed are beyond the scope of my analysis but I am quite sure that the subsequent course of development which economics took was probably quite different from how Smith had envisioned it. Mathematization of the discipline is probably is

most distinguishing feature and although many factors had probably influenced this outcome two of the most common ones have linked it with the desire of the new discipline to achieve scientific respectability and with the fact that commercial behavior is by default expressed in numbers. Of course these are just crude assumptions and Weintraub has written a very insightful book on not only the appropriation of the mathematical language by economics but also the interaction of the two disciplines over time (Weintraub, 2002). However within the 5 criteria that I had mentioned in the introduction mathematization represented the second step of formulation of domain specific concepts which entails the elaboration of the “language” which the practitioners speak. The other three steps were fulfilled much later and as I have mentioned above, step 5 has not gone unchallenged.

## Conclusion

In this thesis my main argument was that economics had separated as a scientific discipline from law primarily due to the birth of *homo oeconomicus*. This concept has provided an immensely powerful heuristical device and allowed economics to establish its own exclusive domain of inquiry within the social realm which has been previously occupied solely by law. The simplicity of this concept has also allowed economics to survive the realization of the complexity of social phenomena by either branching out or merging with other disciplines. Of course the establishment of a discipline does not only entail acceptance by a community of practitioners but also society at large. With the expansion of commercial life, economics as a public policy instrument has earned the recognition of policy makers from whom the subsequent development of the discipline has enjoyed substantial support. Within the early Law and Economics movement the relationship between *homo juridicus* and

*homo oeconomicus* had slowly shifted from one of competition towards one of cooperation. Just as economists realized that the basic and mathematically irreducible fundamentals of a functioning economy, such as property and contracts required a certain level of legal ordering so did some legal scholars come to appreciate the insights that economics has to offer. However, with the not so recent shift from “law and economics” towards “economic analysis of law” this balance has been somewhat tipped to one side.



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