

PRAXEOLOGY, ECONOMICS, AND LAW: ISSUES AND IMPLICATIONS

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Praxeology has been described as a process of deducing correct, universal, historically-invariant principles from one, or a few, axiomatic propositions; that is, from propositions which are self-evidently true (Rothbard 1979, pp. 31-43; Hoppe 1995, pp. 7-27). The emphasis is on the subjective¹ nature of individuals' preferences and values, and on verbal rather than mathematical reasoning. It is an *a priori* method in that it claims not to rely on specific, concrete observations of external events, which observations then form the basis for quantitative tests of hypotheses. Instead, the praxeologist makes extensive use of the fact that he, the analyst, is himself a member of the set of entities whose actions he wishes to examine and illuminate: individual human beings. Introspection and deductive logic would seem to be the centerpieces of the approach. The use of the following terms certainly can be misunderstood, but one can categorize a praxeologist as a rationalist rather than an empiricist (Hoppe 1995, pp. 27-48).

Alternatively, one could say that the praxeological approach, in sharp contrast to the much more common positivist/empiricist approach, recognizes that teleology and causality fold into one another insofar as human affairs are concerned. He who intentionally causes a particular result does so because he values it. The purposive actor, upon reflection, can find embedded within his actions both motivation and (psychological) justification, on the one hand, and causal relations between himself and the external environment, on the other.

The praxeological method outlined above has long been considered a distinctive, almost defining, feature of the Austrian School of economics. What most mainstream economists are unaware of is that several of the classical

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¹Some possible dangers that can accompany the focus on "subjectivism" will be discussed later.

economists seemed to view their discipline as being rooted in praxeological insights. For example, Jean-Baptiste Say declared:

Political economy, in the same manner as the exact sciences, is composed of a few fundamental principles, and of a great number of corollaries or conclusions, drawn from these principles. It is essential, therefore, for the advancement of this science that these principles should be strictly deduced from observation; the number of conclusions to be drawn from them may afterwards be either multiplied or diminished at the discretion of the inquirer, according to the object he proposes. (Say 1971, p. xxvi)

It is quite telling that Rothbard (1979, p. 46), in a vigorous defense of praxeology, favorably cites this same statement by Say—along with citations from John E. Cairnes and Nassau W. Senior—and concludes that he has found in the Frenchman a kindred spirit. Yet, one should be cognizant of the fact that Say (1971, p. xviii) seems simultaneously to have conceived of economics as, in some sense, a broadly empirical, even experimental, science which is not unlike chemistry.

The science of political economy, to be of practical utility, should not teach, what *must necessarily* take place, if even deduced by legitimate reasoning, and from undoubted premises; it must show, in what manner that which in reality does take place, is the consequence of other facts equally certain. It must discover the chain which binds them together, and always, from observation, establish the existence of the two links at their point of connexion. (Say 1971, p. xlvii)

The above quotations are not intended to serve as the touchstone for a detailed analysis of Say and his place in the history of economic thought.² The task at hand is quite different from that. The reason for referring to these comments by Say is to suggest that (1) it may be possible for even such a penetrating thinker and dedicated praxeologist as Rothbard to misidentify advocates of praxeology and (2) it is not obvious exactly to what extent—if at all—or in what precise sense, the praxeological method may be said to have an empirical foundation. Certainly it is true that most who embrace praxeology in economics appear to be saying that it is an approach which utterly eschews all that is empirical. The boundaries between theory and history are supposedly drawn with precision. Praxeology deals with necessary, abstract principles. History deals with contingent, particular facts. One of the tasks of this paper is to confront that boundary issue.

The other methodological question of interest here has to do with the “subjective” nature of actors’ values, preferences, expectations, and plans. When Austrian economists, or any other practitioners of the praxeological method, invoke such a term, what exactly do they mean to convey? If values, to choose one of the above, are subjective, does that mean that they can exist

²For an introduction to the work of Jean-Baptiste Say, see Sechrest (1999a).

independently of all external reality, that is, as an arbitrary construct of a metaphysically active consciousness? Or does that mean only that each conscious human mind is epistemologically active? In other words, each person interprets his or her relation to the external world in a (potentially) unique way, but everyone is still ultimately constrained by what is metaphysically real.

Of those who see themselves as working within the “Austrian paradigm,” a number have failed to address adequately the above two methodological questions. This has, no doubt, weakened their position and diminished the impact that Austrian ideas might otherwise have had. But these questions are by no means unanswerable. This paper will first argue that, *properly understood*, praxeology remains a rich and insightful means of analysis. This must be the initial concern, because without a sound methodological base, one cannot safely proceed to the application stage.

If a praxeological approach to economics is a powerful tool, can that tool be applied to other disciplines? If this approach enunciates the abstract principles of human action, are those principles sufficiently general that they can be usefully applied to a wider range of human interests? Or must praxeology be confined to the limits of economics? In particular, can legal theory be explored praxeologically? In partisan terms, is there a uniquely Austrian analysis of legal issues just as there is a uniquely Austrian analysis of economic issues?

To answer that last question is the second major task here. The reader will find that the answer is affirmative. Praxeology can indeed serve as the analytical framework for both economic theory and legal theory. That is itself a significant result, but there is something more, something quite remarkable. It will be seen that the consistent application of praxeological reasoning leads one to the same general social system, regardless of whether one’s explicit concern is with economics or with law.

Murray Rothbard takes the praxeological road in economics, and, as is well known, it leads him to a pure, *laissez-faire*, or “anarcho-capitalist” society (1977, pp. 203-66). This paper proposes that anyone who, like Adolf Reinach, adopts a praxeological method in law will be irresistably led, whether it is intended or not, to a similar anarchistic (or “polycentric”) conclusion.

Praxeology may indeed be the one (and only?) unifying framework which reveals the principles that connect all varieties of human decision-making and interaction. Moreover, such analysis holds the promise of stripping away centuries of muddled thinking and demonstrating that all which is essential to a civil human order can be achieved within an anarchistic system.³

³Does this mean that, in a sense, Ludwig von Mises was actually *insufficiently radical* regarding his claims on behalf of praxeology? See, for example, Mises (1966, pp. 1-71).

METHODOLOGICAL ISSUES

It should be clear from the foregoing that the present writer has high regard for the praxeological method. However, being a proponent of a given approach does not preclude one from suggesting improvements by means of clarifications or modifications.⁴ The first item that requires attention is the question: To what extent, if at all, is economics an empirical enterprise?

As will be explained below, the seeming rejection of all empirical elements by Austrians is often more a semantic problem than a substantive one and thus can be dispatched fairly easily. But in order to do so, one must distinguish between “empirical” and “empiricism.” Empirical knowledge is that gained by means of observational experience of external reality. Initially, it involves the use of one or more of the five senses. Secondly, it requires one to interpret the perceptual data provided by that sensory apparatus. In this broad sense, all human knowledge is empirical. Empiricism, on the other hand, is a particular attitude toward verification of that knowledge. The strict empiricist, or positivist, declares that man cannot know the essence of a category of entities, only the concrete entities themselves. Therefore, to reflect on the essential nature of a kind of entity, and how it would interact with an entity of another kind, is pointless. What one must continually do is *test* to discover whether this particular A reacts to this particular B in the same way that all As have in the past reacted to all Bs.⁵

Austrians certainly do reject empiricism.⁶ Do they also deny that theirs is an empirical science? Superficially, yes. Actually, no. It is easy to conclude otherwise, because so many have condemned empiricism so often, and one might equate the (justifiable) rejection of empiricism with the (unjustifiable) rejection of all things empirical. Nevertheless, careful consideration of Austrian thought will reveal that the praxeological method itself is fundamentally empirical. Hoppe states that “[o]bservational experience can only reveal things as they happen to be; there is nothing in it that indicates why things must be the way they are” (1995, p. 19). What must be added, according to Hoppe, is introspection upon ourselves as acting persons. Then “the gulf between the mental and the real, outside, physical world is bridged. . . . For it is through actions that the mind and reality make contact” (1995, p. 20). It is the necessary categories of human action which reveal “why things must be the way they are.” In short, there do exist propositional statements which can properly be termed “synthetic *a priori*,” to use the Kantian phrase (Hoppe 1995, pp.

⁴The suggestions which follow are meant to strengthen praxeology, not destroy it.

⁵Of course that begs the question of how, if the essence of a class of entities cannot be identified, one is able to categorize the entities as “As” and “Bs” in the first place. That is one of the deficiencies in the positivist approach.

⁶Hoppe (1989, p. 188) calls empiricism “a methodology suited to the intellectually poor, hence its popularity.”

17-27). From the foregoing it may seem that Hoppe has demonstrated that economics is indeed both an *a priori* and a nonempirical discipline.

Despite the depth of his analysis, however, Hoppe has not gone deeply enough. He himself grants that causality is one of the categories of action. “[E]very actor must presuppose the existence of constantly operating causes. Causality is a prerequisite of acting” (1995, p. 21). Furthermore, “the validity of the principle of causality cannot be falsified by taking any action, since any action would have to presuppose it” (Hoppe 1989, p. 195). How do humans gain an understanding of causality and the other categories of action? Causality is apprehended by means of “reflection upon ourselves rather than being in any meaningful sense ‘observable’ ” (Hoppe 1995, p. 20).

But causality in economics is principally concerned with humans’ manipulation of things external to themselves. After all, that is why scarcity plays such a central role. Many Austrians might try to counter with the proposition that, despite the constraints placed upon us by nature, the core of economics is thoughtful reflection, introspection into the functioning of our conscious minds. That claim is true as far as it goes, but it is incomplete. How can we know that we can “cause” a particular desired result if we ignore the external, empirical world? Perhaps we can know “in principle” that actions can effect results even though we may not know that a particular action will effect a particular result. False. We *discover* by means of our actions and our observations of the results that we can, under some circumstances, achieve the goals we seek. Purely in terms of inner mental functioning all we know is that we desire to achieve particular goals and that we choose particular means as the route to those goals. We are not born with an innate understanding of cause and effect. Indeed, there are no innate ideas at all.

And here is the crux of the problem. Austrians such as Hoppe insist that understanding causality is an inescapable part of our consciousness. It is true that causality is axiomatic (Menger 1976, p. 51). However, what they overlook is the most fundamental question of all: How does a person know that he possesses the conscious mind he calls “I”? There is only one way to do this. One must differentiate the operations of his mind from external events. To know that A causes B, one must first be able to differentiate A from B. In short, one achieves self-awareness through reflection upon one’s *observations*. In that sense, life is ineluctably observational and empirical. This may seem to run counter to the fundamentals of Austrian theory, but this writer is not alone in positing an empirical base for the Austrian School. Murray Rothbard, whose credentials as an Austrian are unimpeachable, states (1979, pp. 35-36):

There is considerable controversy over the empirical status of the praxeological axiom. Professor Mises, working within a Kantian philosophical framework, maintained that like “the laws of thought,” the axiom is a priori to human experience and hence apodictically certain. This analysis has given rise to the designation of praxeology as “extreme apriorism.” Most praxeologists, however, hold that the axiom is based squarely in empirical reality, which makes it no less certain than it is in Mises’s formulation. If

the axiom is empirically true, then the logical consequences built upon it must be empirically true as well. But this is not the sort of empiricism welcomed by the positivist, for it is based on universal reflective or inner experience, as well as on external physical experience. . . . While this sort of empiricism rests on broad knowledge of human action, it is also prior to the complex historical events that economists attempt to explain.

Philosopher Barry Smith agrees with Hoppe about the key role played by the idea of synthetic *a priori* propositions, but sees this solution as being one which is both non-Kantian and non-Misesian. He relies for insight more on Carl Menger, Edmund Husserl, and Franz Brentano (1986, pp. 2-15). Smith is led thereby to a strongly worded exhortation (1986, p. 18):

The Misesian vision of economics as an edifice generated entirely by conceptual (logical) analysis of this single [human action] notion . . . has done much to inhibit the acceptance of the more general aprioristic claims made on behalf of Austrian economics. The suspicion has remained . . . that other core notions, in addition to the concept of action, have been smuggled into his theory. . . . It is the most important lesson of Husserl's work that Austrian economists, armed with the conception of synthetic *a priori* (intelligible) connections between parts and moments in the world, can properly abandon the official Misesian conception of their discipline as a part of the analytic theory of human action and conceive it instead precisely in Menger's terms: as a synthetic *a priori* theory of the whole family of kinds and connections manifested in the phenomena of economic life.

Of the two methodological problems noted earlier, the second is clearly the thornier and will, therefore, require a more extensive exploration. Austrian economists typically describe economics as one of a constellation of disciplines, all of which share the characteristic of being interested in illuminating purposive human action (Kirzner 1976, pp. 148-56). Thus praxeology is the broader category. Economics is one of the subsets of praxeological inquiry. "[T]he praxeological view sees economic affairs as distinguished solely by the fact that they belong to the larger body of phenomena that have their source in *human actions*" (Kirzner 1976, p. 148). Yet many Austrians slip into the habit of equating praxeology with economic theory alone. This is understandable as long as Austrians think of economics as the science of human action. However, to do so is an error, since it is praxeology which is the science of human action, not economics. In other words, it would be preferable to define economics in a narrower fashion, one that does not merely equate it with praxeology. What, then, is it that distinguishes economics from other, related disciplines?

George Reisman has recently offered an answer that looks very promising. He insists that economics should be defined as "the science that studies the production of wealth under a system of division of labor" (1996, p. 15; italics omitted). Indeed, those economists who focus on choice *per se* "confuse an aspect of the science with its totality." . . . "They seek esoteric extensions of the subject that have nothing whatever to do with its actual nature" (1996, p.

42). For Reisman, choices (human action) are certainly important, but only insofar as they are involved in the process of producing more wealth.⁷

Why does Reisman concentrate on the creation of wealth? Because, he declares, man's need for wealth is unlimited. This need for ever-greater wealth is the unavoidable result of the fact that man "possesses the faculty of reason. . . . The potential of a limitless range of action and experience implies a limitless need for wealth as the means of achieving this potential" (1996, p. 43). Man's unique mode of survival, the dependence on cognition at the conceptual level, marks him as the only living creature which requires progress. Other animals, both domesticated and wild, do not possess our conceptual mode of functioning and, therefore, do not seek always to expand both the magnitude and the variety of their material goods. Endless repetition is commonplace in the rest of the animal kingdom, but is intolerable to humans (Reisman 1996, p. 44). We need the new and different. We need both (a) tools to further our productive enterprises and (b) objects of contemplation and esthetic appreciation to enrich our leisure time. We need not only to survive, but also to flourish.

The endless array of new "gadgets" which the free market has (blessedly) produced may have often elicited derision from socialists, but are actually a profound reflection of the mental capacities and psychological needs of the human race. To attack capitalism for exhibiting "affluence" and "conspicuous consumption" is to attack man's conceptual faculty.

By the way, if economics is the science that studies the production of material wealth, what about the so-called service industries? Does Reisman mean to claim that the activities of accountants, lawyers, nurses, barbers, bartenders, and so forth are of no consequence and need not be studied by economists? Not at all. But he does point out that, in all such occupations, the services in question either (a) are provided "as auxiliaries to the production, distribution, or ownership of goods" or (b) "vitaly depend on the use of goods in their rendition" (1996, p. 41). "The rendition of personal services falls within the sphere of economics insofar as the providers of such services render them *for the purpose of acquiring wealth*" (1996, pp. 41-42). In other words, economics should concern itself with services, but only when those services are the means by which the providers generate a monetary income. In contrast, Reisman posits that although identifiable services are mutually provided in a pleasurable personal conversation, this does not constitute a true economic activity.

Reisman's alternative definition of economics should be a refreshing change from certain fashionable trends in economics. In recent decades various economists have expanded the boundaries of their discipline to include

⁷It is interesting to see that in the course of his discussion Reisman draws a distinction between "property" and "wealth" much as did Carl Menger. To Menger, property was "the entire sum of goods at a person's command"; while wealth was "the entire sum of *economic* goods at a person's command" (1976, p. 109).

discussions of, among other items, monogamous marriage as a kind of bilateral monopoly, the family as a productive enterprise, politics as a subset of catallactics (or market exchanges), and the price system as a semiotic exercise in “embedded meanings.” These manifestations of “economic imperialism” are clearly wrongheaded if economics is the science that studies the production of wealth under a system of division of labor. Marriage is not mutual enslavement, families are not business firms, political “exchanges” are not comparable to market exchanges, and prices are not arcane linguistic symbols fraught with multiple layers of explicit and implicit meanings.

Austrians should be particularly concerned with clarifying the proper limits of economics, at least in part because a number of Austrians have been at the forefront of the trend described above. Perhaps the most egregious offenses have been those committed by the hermeneuticians. Inspired by the ruminations of Marx, Heidegger, Gadamer, Foucault, and Derrida, these writers bury the reader under “ponderous and obscurantist verbiage surrounded by a thicket of broad citations to largely irrelevant books and articles” (Rothbard 1989, p. 52). For hermeneuticians, objective reality fades into the background, and they seem only to be concerned with “maintaining the discourse” upon an endless variety of “interpretations” until some sort of “consensus” is achieved. These influences have been felt in literature, sociology, philosophy, political theory, linguistics, and history for decades (Windschuttle 1997; Kimball 1990), but only rather recently have begun to infect economics, even though such ideas are really not new. “It is the ancient tune of skepticism and nihilism, of epistemological and ethical relativism that is sung here in ever-changing, modern voices” (Hoppe 1989, p. 179). “[T]he economics discipline has been in a state of methodological confusion for over a decade, and in this crisis situation minority methodologies, now including hermeneutics, have begun to offer their wares” (Rothbard 1989, p. 53).

Of course, another of those minority methodologies is the praxeology of the Austrian School. Are the hermeneutical approaches to economics encouraged in some way—even if only implicitly or by mistake—by the relentless emphasis on *subjective* valuation to be found in the works of Mises, Rothbard, and other advocates of praxeology? Whatever the proper answer, Austrians should not shrink from the question, nor dismiss it. The term “subjective” can easily be misconstrued in a way that could lead one to adopt the radical irrationality of hermeneutics. And in that case, all is lost.

Is economic value essentially subjective or essentially objective? Traditionally, Austrians have embraced the former and rejected the latter. Or so most have said. One must try to be clear about what one *ought* to mean by these two terms. Since knowledge should be a seamless continuum,⁸ not a series of isolated cubicles, the economic meanings of subjective and objective should at

⁸This does not, however, preclude the possibility that the different fields of knowledge may require significantly different technical procedures.

least be consistent with their proper use in philosophy and other fields. Therefore, this writer takes a truly subjective theory of value to be one which claims that what is of value to an individual is, in a literal sense, *created* by the individual's mind without any necessary reference to the facts of external reality (Runes 1968, pp. 303-04). "The subjectivist school . . . holds that values, like concepts and definitions, are creations of consciousness independent of reality. . . . In this view, the consciousness of each individual is the creator of its own reality" (Peikoff 1993, pp. 246-47). To a subjectivist, the human mind is metaphysically active.

In contrast to this is an objective approach to value which, while recognizing that values only have meaning in relation to some valuing consciousness, asserts that relation is essentially one of *discovering* what maintains, furthers, and enhances the life of the individual. This is a process of apprehending reality rather than creating it (Runes 1968, p. 217). The fact that resources are scarce relative to man's endless need for additional wealth requires individuals to choose among a vast array of possible goals (and goods). Although the individual chooses a course of action, no act of will can cause entities to possess characteristics inconsistent with their nature. "The particular evaluations a man should make, therefore—both in regard to ultimate purpose and to the means that foster it—do not have their source in anyone's baseless feeling; they are discovered by a process of rational cognition" (Peikoff 1993, p. 242). To an objectivist, the human mind is epistemologically active, but metaphysically passive.

Confusion reigns at the boundaries of objectivity. On the one hand, one encounters intrinsicism (often mistaken for true objectivity), which recognizes that reality is to be discovered, but ignores the fact that values must be values to an actual human being. Values are contextual. On the other hand, one encounters true subjectivism, which recognizes that values do not float through the cosmos with no relation to human life, but ignores the fact that values are not whimsical concoctions. Values are identified, not created, by one's mind.

What has all this to do with economic theory? Broadly speaking, there have been two approaches to valuation in the history of economic thought. Classical economics is usually portrayed as asserting that labor, in some more-or-less mechanical way, is the proper measure of value. Adam Smith ([1776] 1937, p. 30), for example, intoned that "[l]abour . . . is the real measure of the exchangeable value of all commodities." This allegedly objective approach culminated in the dead-end known as Marxism. The Marginal (and Subjectivist?) Revolution of the 1870s, led by Carl Menger, Léon Walras, and William Stanley Jevons, is usually thought to have demonstrated just that, namely that all attempts to found economics on objective grounds are certain to prove barren and misguided.⁹ But this presents economists with a *false*

⁹To interpret Menger as making this claim may be an error, despite the frequent and favorable use (in translation at least) of the phrase "subjective value" (1976, pp. 74-77, 119-21, 226-35). It seems that what Menger objects to should more accurately be

dichotomy: Either goods are intrinsically valuable because they contain a certain quantity of labor, or they are valuable merely because the buyer believes them to be, irrespective of any characteristics they may actually possess. Both propositions are untenable. Properly understood, an objective theory of valuation is one which recognizes two fundamental facts. The concept “value” presupposes a valuer, a conceptual consciousness. And goods possess specific and identifiable attributes. In short, objective values are *relational*. They result from an individual actor’s attempt to achieve certain goals within the limits of external reality.¹⁰

A long-standing problem in Austrian economics has been the aggressive declaration by many of its proponents that this is a school of economics which concerns itself wholly with subjective processes. As one can see from the foregoing, that is not really correct. One may call these processes introspective or idiosyncratic, but they are not, strictly speaking, subjective. The hermeneutical wing of the Austrian School has understood the Austrian paradigm to be literally concerned only with the subjective and, therefore, has contributed little if anything to the discipline, other than obfuscation. On the other hand, and somewhat in their defense, a dispassionate observer can see how easily such writers might honestly misperceive the proper task of economics.

Hans-Hermann Hoppe seems to understand the issue at stake here, although he will probably disagree with this writer’s conclusions. He grants that much rationalist analysis appears dangerously subjective in that it seems to suggest some form of philosophical idealism (1995, pp. 68-69). However, he believes that the problems can be solved by the realization that knowledge is itself a category of human action (Hoppe 1995, pp. 69-70):

Understood as constrained by action categories, the seemingly unbridgeable gulf between the mental on the one hand and the real, outside physical world on the other is bridged. So constrained, a priori knowledge must be as much a mental thing as a reflection of the structure of reality, since it is only through actions that the mind comes into contact with reality . . . a priori knowledge . . . must indeed correspond to the nature of things. The realistic character of such knowledge would manifest itself not only in the fact that one could not *think* it to be otherwise, but in the fact that one could not *undo* its truth.

Austrians should abandon all talk of subjectivism and, instead, describe their approach to valuation as being relational and objective. There is no need to abandon praxeology. However, Austrians do need to defend it as being

termed an intrinsic rather than an objective approach to value. The same *may* be true of Mises, although Mises, due to the Kantian elements in his thinking, more often sounds like a true subjectivist.

¹⁰For a political philosopher who is very familiar with the Austrian School, and who expresses a similar viewpoint, see Sciabarra (2000, p. 197 n. 16).

broadly empirical and fundamentally objective. These are not concessions to the empiricist/historicist mainstream but merely recognition of the proper basis for the science of human action.

IMPLICATIONS FOR LAW AND ECONOMICS

It has been argued above that praxeology, although incorrectly portrayed by many Austrians as having subjective and nonempirical underpinnings, nevertheless remains a potent tool of analysis in economics. Can it also, and with equal success, be applied to legal theory? Yes, it can. Moreover, the political implications of a praxeological approach to law are the same as those which emerge from a praxeological approach to economics—*anarchy*. This is particularly evident with the various rationalist theories of rights that have appeared in recent years.

The first task is to identify some parallels between the use of praxeology in law and its use by economists. Special attention will be given to the similarities with Murray Rothbard's defense of anarcho-capitalism. Adolf Reinach, a prime exponent of praxeology in law, describes his approach thusly (1983, pp. 6, 114-15):

Together with pure mathematics and pure natural science there is also a pure science of right, which also consists in strictly apriori and synthetic propositions and which serves as the foundation for disciplines which are not apriori. . . . If one formulates the essential laws of right in such a way that the possibility of their being suspended is taken into account, then they hold unconditionally. Otherwise their validity depends on those possibilities not being realized. But in either case it remains true that the validity of these laws, considered in themselves, is free from any exception. . . . There can be no question of a "contradiction" between the apriori theory of right and the positive law, there are only deviations of ought-enactments from the laws governing what is. These deviations, however, can never be used as an argument against the validity of the apriori laws of being. . . . The idea—posing as so scientific whereas it is ultimately quite simple-minded—that the relations which are grounded in the essence of social acts and are available to our direct insight could be refuted by the study of historical facts, proves to be thoroughly untenable and even absurd.

Just as with Austrian economists, Reinach's interest is in human *actions*. There is no way to know what another person wants without observing what that person does. If person A desires X, that preference can only be demonstrated by A undertaking a course of action so as to acquire or achieve X (Rothbard 1977, pp. 2-7).¹¹ But Reinach focuses largely on actions of a particular kind, what he terms "social acts." These are acts, e.g., commanding,

¹¹Rothbard points out that this "demonstrated preference" differs from the "revealed preference" of mainstream economists in that it recognizes that one's ranking of preferences is constantly subject to change.

promising, or requesting, that are not only spontaneous and intentional, but also “are in need of being heard” (1983, pp. 18-19). They are not merely inner mental phenomena such as wishing or intending. For example, to establish an obligation/claim relation between persons A and B, A must demonstrate this by means of a statement in which the obligation is willingly and knowingly expressed. If this has not occurred, B cannot subsequently demand performance of the specified obligation by A. This is a most crucial example, because the greatest part of those human relationships which involve practical legal questions are of an obligation/claim sort. In theory, it might even be said that all legal conflicts can and should revolve around obligations and claims, whether directly or indirectly.

Furthermore, the analysis of social acts reveals certain axiomatic statements which are true everywhere and always (Reinach 1983, p. 89). “[E]ssential laws . . . are rather grounded in the essence of the acts and in the essence of relations of right, no matter when and where they are realized. They hold not only for our world but for any conceivable world” (p. 138). As one can see, Reinach frequently refers to the “essence” of a thing, as in the preceding, or in “the essence of legal structures” or “self-evident essential laws” (p. 96). It is not clear whether, to Reinach, the essence of an entity is a metaphysical or an epistemological concept. That is, does a given, concrete entity literally “partake” of the metaphysical essence of the class to which it belongs, or is the essence of an entity merely a reflection of the epistemological processes of integration and differentiation which enable human beings to sort concretes into classes. The first might be called naive realism (or Aristotelian essentialism), and the second contextual realism.¹² In either case, Reinach’s mode of reasoning is of the “causal-genetic” sort espoused by Austrian economists.¹³

Reinach and Rothbard also share a commitment to methodological individualism. Rothbard categorically declares that “only an individual can adopt values or make choices; only an individual can *act*. This primordial principle . . . must underlie praxeology” (1979, p. 57). Therefore, groups, nations, and states simply do not exist in a metaphysical sense. All such collective concepts are just linguistic conventions, that is, they are succinct ways to describe various complex interactions of the only real entities—individual, concrete, specific human beings. No attribute of a conscious mind should be associated with those collective concepts, although it is commonly enough done. It is crucial to understand collective concepts correctly, because misapplications of the law of causality will result otherwise. All events are the actions of existing entities, therefore to identify the cause of an event one must identify the entity which initiates the causal chain. Little or nothing has been accomplished if one ascribes causal power to a mere linguistic convention. Positive damage is

¹²See Kelley 1986 for an extensive treatment of the appearance of these ideas in the history of philosophy and their meaning, significance, and implications.

¹³See Rothbard (1979, p. 53) for comments on the Aristotelian influence in Austrian economic thought.

done if one thinks collectives possess feelings, values, preferences, interests, and so forth. Rothbard understands this very well.

For his part, Reinach refers to “a legal power which cannot be derived from any other legal ability but which has its ultimate origin in the person as such . . . [this] forms the ultimate foundation for the possibility of legal-social relationships” (Reinach 1983, p. 81). Or, more bluntly, “only persons can be the holders of rights and obligations” (p. 102).

In comparing Reinach and Rothbard, one finds that both men draw a sharp distinction between the abstract principles of his discipline, on the one hand, and the manifestations of those principles under particular circumstances, on the other hand. For Rothbard, this is the contrast between economic theory and economic history, or alternatively, applied economics. The praxeological principles of economics are valid for all places and times, but they yield no historical laws because each historical event is “the highly complex result of a large number of causal forces, and, further . . . it is unique and cannot be considered homogeneous to any other event” (1979, p. 42). Economic principles are the result of mental experiments which depend on the *ceteris paribus* assumption. In history, those “other factors” are rarely if ever actually constant.

For Reinach, the parallel contrast is between the “a priori theory of right” and “positive law.” The former identifies the logically undeniable rights and claims of individuals. The latter constructs a legal code that (supposedly) embodies those rights. Reinach elaborates:

[C]onfusion results when principles of the apriori theory of right are conflated with questions of the positive theory of law. . . . It is the task of positive jurisprudence to investigate in detail how the natural entitlement to a thing is related to obligatory claims, at what point in time it arises—in particular whether it presupposes that one is given possession of the thing in question—how far its sphere of application and its practical consequences extend. Philosophy of right has only to establish the essentiality of the concept of natural absolute rights.¹⁴ (Reinach 1983, p. 123)

Finally, both Reinach and Rothbard embrace the Lockean homesteading principle as a vital component of praxeological analysis. Reinach the legal theorist refers, for example, to the

case in which someone *produces* a thing out of materials which have never belonged to anyone. Here it seems quite obvious that the thing from its very beginning belongs to the one who produced it. . . . Just as a relation of owning is *not* grounded in the nature of possessing or using, it *is* grounded in the nature of production. (Reinach 1983, p. 73)

¹⁴One should note that Rothbard ([1973] 1985, pp. 42-44), like Reinach, construes natural rights as being absolute.

Using very similar language, Rothbard the economist declares that “an unowned resource should, according to basic property-rights doctrine, become owned by whoever, through his efforts, brings this resource into productive use” (1977, p. 255). Moreover, Rothbard (1977, p. vii) contends that employment of the homesteading principle remains “value-free” and thus within the boundaries of praxeology.

In other words, no particular presumptions regarding ethics are involved. What is involved is an analysis of the nature of man, the meaning of the concept “ownership,” knowledge of the finiteness of resources, and the necessity therefore of some system of property rights. Any system that does not begin with self-ownership, that is, the right to control one’s own actions, will prove self-contradictory. If each man owns himself, then whatever he creates out of unowned raw materials must belong to him. If it does not, then man ceases to be able to function as a causal agent. At that point human action becomes useless and ceases, because it *presupposes* that man can cause the ends he seeks. Without the homesteading principle as the basis for property rights, mankind would eventually die out, albeit slowly. Or equivalently, without the homesteading principle, mankind would be mired in socialism.

It is clear from the foregoing that Murray Rothbard and Adolf Reinach are thinkers committed to the praxeological method. The works of both men are characterized by value-free, *a priori* reasoning, abstract universal principles, methodological individualism, homesteading as the origin of property rights, and a focus on human *actions* rather than on intentions, wishes, or hopes. Furthermore, as will be discussed below, both men lead the reader to an engagement with anarchistic social systems. One does it quite explicitly, while the other does it implicitly.

Before progressing to the topic of anarchy (or polycentrism), one additional, broad comparison must be drawn. Are there connections between law and economics beyond the particular works of Rothbard and Reinach, connections which may suggest why both disciplines can be explored so profitably by praxeologists? It would appear so, since both are concerned with wealth. If economics is the science that studies the creation of wealth under a system of division of labor, as was argued earlier in this paper, then how might legal theory be defined? Perhaps one could say that it is the study of the *protection* of wealth under a system of division of *property titles*. Of course, what is meant here is law in the abstract—what Reinach calls “the *a priori* theory of right”—not some specific society’s legal code. Legal theory rather than practical jurisprudence. Further, the concept of wealth would have to be extended to include one’s self and one’s rights. Rothbard (1977, p. 213) says that praxeology as applied to economics is based on three axioms: “the major axiom of the existence of purposive human action; and the minor postulates, or axioms, of the diversity of human skills and natural resources, and the disutility of labor.”¹⁵

¹⁵This seems to be a departure from both Hoppe (1989, pp. 199–200; 1995, pp. 22–25) and Mises (1976, p. 24), who insist that only the core axiom of human action is necessary.

In imitation of Rothbard, one might say that praxeology as applied to law is based on purposive human action plus the minor axioms of the diversity of human interests and the disutility of rights violations.¹⁶

Even if one's viewpoint is not explicitly praxeological, there are good reasons to consider law and economics to be overlapping fields of study. Those reasons find their basis in the relative scarcity of all resources and the attendant necessity of human choice.

Law consists of both rules of conduct and the mechanisms or processes for applying those rules. Individuals must have incentives to recognize rules of conduct or the rules become irrelevant, so institutions of enforcement are necessary. . . . Clearly the enterprise of law . . . requires scarce resources that must be allocated. Beyond that, economic theory explains human behavior by considering how individuals react to incentives and constraints. (Benson 1990, pp. 2, 11-12)

PRAXEOLOGY, ANARCHY, AND RATIONALIST THEORIES OF RIGHTS

It is well known that Rothbard devoted much of his career to a spirited defense of what might be called anarcho-capitalism. This he undertook from several perspectives—historical, political, ethical, cultural—but predominantly from the perspective of an economist. Insofar as the last is concerned, his goal was to demonstrate that there exists no legitimate role for the State, because private, free-market enterprises or associations are capable of providing every good or service actually demanded by noncriminal individuals.¹⁷ One may grant that Rothbard is fully successful in this endeavor but still question whether he demonstrates that the free market *must* provide all essential goods and services, or merely that the free market *can* provide all such goods and services. This requires careful elaboration, especially because it is not meant in any way as a diminution of Rothbard's very real contributions. The suggestion is just this: By adopting a praxeological approach to law one can analyze this issue in a way that augments Rothbard's conclusions.

The point of departure is the fact, discussed earlier, that a thoroughgoing application of praxeology requires that the analyst adopt an individualistic methodology. Praxeology examines the actions of humans, living, breathing, thinking, striving, goal-oriented individuals. Collectives, that is, groups of individuals, merely represent the interactions of those individuals. In no meaningful metaphysical sense are they entities in their own right. To

Moreover, it supports Barry Smith's contention that axioms in addition to the core axiom are effectively included (1986, p. 18).

¹⁶These are not Reinach's words, but those of the present writer.

¹⁷This excludes "public goods," which concept Rothbard criticizes and rejects (1970, pp. 883-88).

treat them as though they are real entities produces serious intellectual errors and dangerous public policies (Rothbard 1979, pp. 57–61). The principal error—though very common—is to forget that the *meaning* or *significance* of any given action is relational. It varies depending upon which particular individual actor one refers to. Therefore, it is mere presumption to ascribe a single, internally consistent meaning to actions undertaken by a variety of individual actors/valuers. Although doing so is not strictly correct, almost all Austrians describe this as the “subjective” nature of individual actions.

If collectives do not really exist, then concepts founded on the premise that they do exist must be invalid. It makes no sense to speak of the attributes, preferences, values, goals, or choices of nonexistent entities. It is an act of fantasy, much like speculating about some characteristic of the mythical unicorn. There are, to put it bluntly, no such things as “public goods,” the “public interest,” the “public good,” the “national interest,” or “collective security.” These are just empty phrases used by particular persons to manipulate others in order to bring about specific ends. Moreover, this should be obvious to economists. To be a “public good,” X must first be an economic good. To be an economic good, X must be relatively scarce, the valuer must have control over X, and there must exist a causal relation between X and the utility of the valuer (Menger 1976, p. 52). Otherwise, X cannot be the object of action by the valuer. And acting man is the subject matter of economics. To choose one of these alleged public goods as an example, security is not, and cannot be, collective. Hoppe explains:

[A]re there any non-arbitrary borders separating different security-risk (attack) zones? The answer is yes. Such non-arbitrary borders are those of private property. [p. 9] . . . [T]he insurance of property against aggression would seem to be an example of individual rather than group (mutual) protection. . . . [T]he correct answer to the question of who is to defend private property owners from aggression is the same as for the production of every other good or service: private property owners, cooperation based on the division of labor, and market competition. [p. 15] . . . [T]he idea of collective security is a myth that provides no justification for the modern state . . . all security is and must be private. (1999, p. 1)

Collective notions as applied to human beings are invalid and presumptive. Well and good. But what has this to do with legal theory? A very great deal, because civil law is based on relationships of obligation and claim between individuals, perceives violations as torts, and seeks redress through restitution. Civil law is fundamentally private and individualistic. On the other hand, criminal law is based on the notion of public safety (a variant of the concept of the public good), perceives violations as crimes against the State as the alleged representative of the people, and seeks redress through punishment. Criminal law is fundamentally public and collectivistic. It is revealing to note that even some who otherwise are extremely critical of the depredations of the modern State

nevertheless defend both the alleged necessity and the collective nature of public law. For example, law professor Murray Franck¹⁸ asserts (2000, p. 153):

[E]ach individual has a right to a “*sense of tranquility*,” against even a threat to the security of his rights, if he is to be free to focus on life-sustaining productive activity and his happiness. Civil as well as criminal trespasses upon rights are public harms, not merely private wrongs. The enforcement of contracts and of other rights is not a “private good” only; it is a “public good” as well, and thus merits and validates taxation.

One should notice that Franck assumes that the systematic protection of rights, and thus this “sense of tranquility” he quite correctly espouses, are impossible without the State. This writer believes that latter claim to be false.¹⁹ However, that is not quite the issue at hand here. The issue here is the public and therefore collectivistic nature of State law. From a praxeological perspective, all valid law must be individualistic—and therefore private. Law, just like economics, must use as its components the actions of individuals. This is precisely what civil or tort law does. Moreover, those legal systems which have developed without, or even in defiance of, State direction—systems variously described as anarchistic, polycentric, or customary²⁰—have been systems based on the principle that “offenses are treated as torts (private wrongs or injuries) rather than crimes (offenses against the state or ‘society’)” (Benson 1990, p. 13).

Is this some accident of history? Not at all. In the absence of a centrally planned, authoritarian legal system, individuals naturally gravitate toward principles of interaction which they perceive as mutually beneficial.

Because the source of recognition of customary law is reciprocity, private property rights and the rights of individuals are likely to constitute the most important primary rules of conduct . . . incentives must be largely positive when customary law prevails. . . . Protection of personal property and individual rights is a very attractive benefit. (Benson 1990, p. 13)²¹

The praxeology of law must be built upon the actions of individuals, and thus must consider interpersonal offenses as torts. In short, a praxeological approach to law leads one unavoidably to the promotion and defense of a system of customary, or polycentric, legal principles. Even more bluntly, anarchy is the logical extension of praxeology.²²

¹⁸Franck is an Objectivist who, like most Objectivists, is a “minarchist” (or defender of limited government) and extremely critical of anarchy in any form.

¹⁹For details, see Sechrest (1999b and 2000).

²⁰Legal scholar Randy Barnett studiously avoids calling them anarchistic, opting instead for the term polycentric (1998, pp. 264-82).

²¹Also see Benson (1993, p. 48).

²²This is the present writer’s conclusion. One should not assume that Reinach shares this view.

Parallel reasoning leads to parallel conclusions. A close analysis of human interaction for mutual benefit forms the foundation for both private markets and private law. But what if one rejects the whole of praxeology itself? Might there still be an argument on behalf of polycentric law? It turns out that there is.

Tom Bell recognizes that express individual consent—a common feature of such legal structures—is superior to all other methods of justification, because “[o]nly express consent reliably signals that a justification has achieved its objective” (1999, p. 13). Clearly, for the praxeologist as a strict methodological individualist this requires the direct and explicit agreement of every person involved. However, “[o]ne need not become a methodological individualist to accept this account of justification . . . one can believe that social organizations exist independent of their members and still agree that a justification succeeds only relative to the individuals who consent to it” (Bell 1999, p. 15).

Moreover, justification is transitive. So any organization, as long as it is justified as the representative of its individual members, can legitimately act in their names (Bell 1999, p. 15). Bell then retreats further, suggesting that one may have to invoke “hypothetical consent” in certain “borderline cases.” Nevertheless, “[d]espite this more generous view of justification, statist law still fares poorly. . . . Because statist law is only justified relative to its fans, they can only justify inflicting institutionalized coercion on themselves” (Bell 1999, p. 18). He concludes that “statist law can never be fully justified, and can never be as justified as polycentric law” (Bell 1999, p. 13).

Granting the point that anarchistic law is in principle more defensible than State law, one still must ask what theory of rights should be the basis for an anarchistic legal system. Reinach offers a theory of rights which are founded on the Lockean concept of homesteading and expressed through “social acts” which create relations of obligation and claim, and therefore the possibility of violations in the form of torts. Reinach’s approach may be described as *a priori*, praxeological, and rationalist. More recently several writers have argued in a fashion reminiscent of Reinach; such rationalist theories of rights can be found summarized in Kinsella (1996).

The first of these is Hoppe’s “argumentation ethics,” which begins with the observation that “[i]t is impossible to deny that one can argue, as the very denial would itself be an argument” (Hoppe 1995, p. 65). Thus, the statement that “humans are capable of argumentation and hence know the meaning of truth and validity” is axiomatic (*ibid.*). Argumentation, per Hoppe, is both a subset of human action and an independent axiom that exists at the same, or an even higher, level of fundamentality (1995, pp. 66–67). Given that argumentation is the method by which humans search for truth and try to persuade others, both self-ownership and the ownership of scarce resources are implicitly assumed by all who argue. In order to engage in argumentation at all, one must control his own person. Furthermore, to maintain one’s existence as a person who argues, one must also be able to own certain nonhuman resources. The

alternative to peaceful argumentation is violent conflict. Whether or not they are aware of what they are doing, those who choose argumentation indicate their preference for nonviolent interaction and, therefore, for a structure of property rights which discourages conflict over those scarce resources. Hoppe's train of thought demonstrates that even the most dedicated collectivist, insofar as he tries to persuade others of the superiority of collectivism, *implicitly assumes* the necessity of individual rights and private property. Verbal attacks on capitalism are thus performative contradictions, and, as such, are logically indefensible.

Kinsella is a proponent of an approach remarkably similar in some ways to that of Hoppe: estoppel theory. This is based on the common law principle that "a person may be prevented, or estopped, from maintaining something (for example in court) inconsistent with his previous conduct or statements" if that denial brings harm of some kind to another party (Kinsella 1996, p. 317). When applied to the issue of punishment,²³ this means that an "aggressor contradicts himself if he objects to . . . his punishment" (Kinsella 1996, p. 317). By this reasoning, then, individual rights must exist, because individuals, as actual or potential victims of aggression, are fully justified in requiring that violators of those rights be punished. Kinsella's approach shares with Hoppe's the characteristics of being *a priori*, rationalistic, and devoted to revealing implicit contradictions, but differs from Hoppe's in that it focuses more narrowly on the interaction between aggressor and victim. Hoppe's argumentation theory is meant to be applied broadly to any and all cases of verbal disagreement.

A third approach to rights deals with the self-contradictions committed by those who deny the existence of rights altogether, that is, so-called "rights skeptics" (Kinsella 1996, pp. 319–20). To rebut this position, one must first reflect on exactly what it means to have a right. Whether or not one has a right to a certain course of action hinges on enforceability. Having a right to action X means the holder of the right (A) can use force against anyone (B) who tries to prevent him from doing X. At this point in the proceedings the rights-skeptic condemns A, saying A has no such right because no one has rights of any kind. But to insist that A has no right of enforcement means that B must be justified in using force to stop A. That of course implies that B has a right to stop A. In other words, rights do exist. Dramatically, but appropriately, Kinsella suggests that the proponent of rights should announce that he will shoot the rights-skeptic. If the skeptic objects, he can only do so on the

²³This writer assumes that Kinsella here means generally any method of redress, whether specifically referred to as punishment or restitution. See Kinsella (1997, p. 608). However, the estoppel principle seems even stronger in the case of private restitution for torts than in the case of public punishment for crimes. With the former, the hypothetical dialogue is with the victim himself (or an unambiguously designated agent of the victim); whereas with the latter, that dialogue is with a public sector employee who presumes to act on behalf of society at large—one member of which is the aggressor himself.

grounds that he possesses a right not to be aggressed against. Otherwise, the proponent of rights must possess a right to shoot the skeptic. Either way, individual rights of some kind do exist. This method of establishing rights—by uncovering the contradictions of the rights-skeptics—“is similar to the estoppel approach outlined above, although the discourse under examination need not involve an aggressor” (Kinsella 1996, p. 319).

The three approaches Kinsella surveys²⁴—argumentation, estoppel, and refutation of rights-skepticism—all achieve something quite important. They establish, by means of clear reasoning from irresistible axiomatic propositions, that (a) such things as rights do indeed exist and (b) those rights are attributes of an individual human actor, not of a collective. The power of these approaches lies in the fact that “they show that the opponent of individual rights, whether criminal, skeptic, or socialist, presupposes that they are true. Critics must enter the cathedral of libertarianism even to deny that it exists” (Kinsella 1996, p. 326). For reasons given earlier, this writer would go one step further and suggest that it is specifically the cathedral of anarchism which one must enter.

CONCLUSION

The praxeological method is an efficacious way to investigate the fundamental theoretical questions at the heart of any study of human endeavor. Unfortunately, however, Austrian economists have often erred in portraying the method as subjective and nonempirical. It is neither. It is rooted in empirical reality and concentrates on valuations that are relational and objective. For some Austrians those distinctions are, more than anything else, just semantic differences. For another branch of the Austrian School, they represent significant conceptual differences, and result in a departure from the foundational work of Carl Menger.

Once praxeology is correctly understood, one can apply it to subsets of human action such as economics and law. Two of the outstanding exemplars of praxeology in those fields are, respectively, Murray Rothbard and Adolf Reinach. There are many interesting aspects to the work of both men, but perhaps the most compelling is the parallelism one finds. Specifically, Rothbard’s employment of praxeology demolishes the argument for any sort of government intervention into the economy and produces the explicit conclusion that society and the State are inherent enemies. Therefore Rothbard argues that the only fully free society is an anarchistic society. Working from the homesteading principle as the source of rights, as does Rothbard, Reinach demonstrates that legal principles have their origin in certain “social acts” which create relations

²⁴He actually mentions several others. However, they are all either some sort of variation on these three, or have little in common with praxeology, and so will not be discussed here.

of obligation and claim. These are individualistic and private acts which in no way require the existence of the State. Although Reinach apparently does not himself realize it, the implication of his analysis is that all law can be private. In order to see that all truly beneficial law *should and must* be private, one need only reflect on the fact that public law is inescapably collective, while private law is inherently individual. Moreover, when left to their own devices, human beings naturally opt for privately defined and enforced legal principles in preference to public (or statist) law.

Praxeology, when applied to either economics or law, produces the same conclusion: anarchism. Recent rationalist defenses of rights have only served to reinforce that conclusion.

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