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Ontology, Epistemology, Axiology: Bases for a Comprehensive Theory of Law

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Abstract:

This article presents a comprehensive theory of law founded on correct ontological, epistemological and axiological bases and proposes that monism materialism and holism will have greater explanatory and predictive power than dualist, atomist and realist International Relations (IR) theory have had. The theory, though focussed on IR theory, is applicable to domestic law as well.

Western thought has long been predicated on either an ontological materialism (matter determines mind) or an ontological idealism (eidetic realism: mind determines matter). Normally, the materialist view is also monist (reality is fundamentally unitary), whereas the idealist view is generally presented as dualist (reality is fundamentally binary). This ontological choice between monist materialism or dualist eidetic realism habitually entails either an atomistic epistemology (one can only comprehend reality by decomposing it into discrete real elements) or an epistemological wholism (to understand reality we must examine it as a whole). The epistemological and ontological choices also habitually entail either an axiology of moral scepticism and thus relativism (morals as intellectual constructs have no material existence) or of cognitivism (morals as expressions of the intellect are real entities).

In fact however these habitual associations are not inevitable: Other choices are possible. The greater part of the endemic conflict in western thought is due to an erroneous linkage of dualism and materialism as somehow necessarily consequent from each other, thinking – wrongly - that dualism implies materialism or materialism implies dualism, or both. A materialist can in fact imply an epistemology based not on atomism, the dominant western paradigm, but rather on wholism. Likewise, axiology can be based not on relativism but on moral cognitivism grounded not on eidetic realism but rather on materialism.

This presents two ruptures from western thought: First, in describing a monistic materialist reality which must be understood not analytically but synthetically. Second, by describing moral choice not in relativistic terms but as a real entity based in the material world. Rejection of eidetic dualism does not entail moral relativism. Adhesion to a materialist viewpoint does not entail atomism. These two key ruptures are the basis of a unique and far reaching theoretical basis for legal analysis presented here.

Introduction

The international system has historically been defined around and by State actors. Recently that has no longer been the case: non-state actors such as transnational corporations, subnational regions, and supranational organizations now flank the state – along with terrorists, mercenaries, drug dealers and pirates. When a system becomes dysfunctional and collapses, the facts force people to reevaluate their theories. Competing world views such as fundamentalism versus globalization struggle not just over economic outcomes but more importantly over, and because of, conflicting basic assumptions. If one is to understand and influence the interactions of entire systems, such as the Soviet system and U.S. capitalism or Islamic fundamentalism and Christian fundamentalism, then theory is necessary.

Our basic assumptions are the subject of theory. Theory questions the global assumptions of the system, allowing us to work changes on that system. Legal theory is key to systemic change. If you don't like the game you are playing, change the rules.

Understanding brings control: Though true consequences always follow from true premises, true consequences sometimes seem to follow from false premises.¹ Much confusion in life and law can be traced to the fact we can have right answers for wrong reasons.² Eventually however reality catches up to our beliefs.³ And if our beliefs and reality don't correspond,⁴ we and those we love suffer.

These facts, and natural human curiosity, justify theoretical inquiry. Theory questions assumptions to explain dysfunction.⁵ If one is to understand, let alone influence, the interactions of entire systems then theory is necessary.

¹ Karen K. Koehler, Michael D. Freeman, *Don't Fall for Defense Fallacies*, 36-NOV Trial 88 (2000); 2 Litigating Minor Impact Soft Tissue Cases § 12:24 (2005).

² Kenyon Bunch, *If Racial Desegregation, Then Same-Sex Marriage? Originalism And The Supreme Court's Fourteenth Amendment*, 28 Harv. J.L. & Pub. Pol'y 781, 840-841 (2005).

³ Francis J. Mootz III, *Nietzschean Critique And Philosophical Hermeneutics*, 24 Cardozo L. Rev. 967, 1036 (2003).

⁴ Ronald J. Krotoszynski, jr., *The New Legal Process: Games People Play And The Quest For Legitimate Judicial Decision Making* 77 Wash. U. L.Q. 993, 996 n. 11 (1999)..

⁵ "Critical Race Theory scholars question the traditional assumptions of both liberals and conservatives with respect to the goals and means of traditional civil rights reforms." Harvey Gee, *Some Thoughts And Truths About Immigration Myths: The "Huddled Masses Myth: Immigration And Civil Rights* 39 Val. U. L. Rev. 939, 940 (2005);

It is thus essential as lawyers that we start from correct first principles.⁶ At the same time, we must be open to the idea that what we think is correct isn't. Sceptical⁷ certitude is a nice way to summarize what I think is the correct attitude towards our basic assumptions. We should do our best to be certain what we believe and why and constantly search for reasons we are wrong.

Even with the right attitude -- probing scepticism, which seeks to make sure what we believe really is so -- we can still be confused about basic questions. This is because everything in life can ultimately be related to everything else if we just get creative.⁸ Of course, that leads to magical thinking.⁹ Where do individuals and groups draw lines?

I present here a theoretical methodology that I believe cuts through the confusion and uncertainty so prevalent in theorization. We start with a problematique. A problematique is a question set. By following the problematique, by answering the questions, we get to answers, at least for ourselves. But, if our answers are good enough, we can hope that others might see things as we do. This is not postmodernism with its tepid view of truth as subjective or intersubjective nor is it the idea that values are merely a question of taste. Rather it is liberalism, the understanding that my values, if correct, are by that very reason persuasive, that I respect myself and that I respect you and so rather than force my ideas on you I present them. They are I think true, and you are welcome to disagree and correct me, I appreciate that in fact since that is the nature of science, to synthesize the most accurate view from incomplete and inaccurate views.

" An important contribution of feminist moral theory has been to question the firmly embedded assumption..."
Kimberly M. Mutcherson, *Whose Body Is It Anyway? An Updated Model Of Healthcare Decision-Making Rights For Adolescents* 14 Cornell J.L. & Pub. Pol'y 251, 273 n. 82 (2005).

⁶ See, e.g. Rene DesCartes, *Meditations on First Philosophy*. While I am no Cartesian (he's dualist, I'm monist), DesCartes radical scepticism, questioning basic presumptions to be certain they are true, is methodologically sound.

⁷ Scepticism in western theory can be traced back at least to William of Occam (Ockham's razor: "Essentia non sunt multiplicanda praeter necessitatem." - don't multiply entities beyond what is necessary to explain, author's translation). See *The Cambridge Companion to Ockham* ch. 5 (1999); DesCartes too was a sceptic. Louise Harmon, *Wild Dreamers: Meditations On The Admissibility Of Dream Talk*, 79 Wash. L. Rev. 575, 634-635 (2004).

⁸ Donald T. Bogan, *ERISA: State Regulation Of Insured Plans After Davila*, 38 J. Marshall L. Rev. 693, 704 n. 40 (2005).

⁹ "[M]agical thinking is a uniquely childlike inability to approach situations with an adult decision-making process. The child's wishes become his/her reality." Donna Sheen, *Professional Responsibilities Toward Children In Trouble With The Law*, 5 Wyo. L. Rev. 483, 490 n. 38 (2005).

The problematique I present is: What is the nature of being? (Ontology)¹⁰ What is truth? (Epistemology)¹¹ What are our fundamental values? (Axiology).¹² I think answers to these three questions determine more or less where we stand when it comes to law.¹³ I did not invent this problematique,¹⁴ but the answers I present are mine. I think 1) your answers to these questions will drive your practice of law. If you believe that life is a fundamental value then you will oppose the state killing, just for example. If you think "the truth is out there" you will take a philosophical view of the law. I cannot answer these questions for you. I can ask you these questions and I can show you my answers. I do think that these questions are related. So I ask them in what I think is the correct order. If we know what the nature of existence is (ontology) then we can determine when something is true, false, unknown or unknowable (epistemology). If we have a correct science of truth (epistemology) then we can determine whether a correct science of values (axiology) is possible and what it is.

I think there are objective values, that these values flow from objective truth, and that this objective truth is nothing more than a reflection of material reality. You are welcome to disagree. You are invited to look at my thoughts to see whether you do and why.

The ontological, epistemological, and axiological foundations I present here are the base for what I call a new theory of natural law. The theory explains conflicts in the international system

¹⁰ "Ontology is the science of being, 'the study of what is'" Scott DeVito, *The Ontology Of Copyright Infringement: Puzzles, Parts, And Pieces*, 35 Conn. L. Rev. 817 (2003). In computer science the word has a particularized meaning of a certain domain: "An ontology is a shared and common understanding of some domain that can be communicated across people and computers." Thomas F. McInerney, *Implications Of High Performance Production And Work Practices For Theory Of The Firm And Corporate Governance*, 2004 Colum. Bus. L. Rev. 135, 176 (2004).

¹¹ Epistemology is the science of truth; it is "the branch of knowledge concerned with how knowledge is derived." Jeffrey M. Lipshaw, *Contingency And Contracts: A Philosophy Of Complex Business Transactions*, 54 DePaul L. Rev. 1077 p. 1102 n. 110 (2005).

¹² "'Axiology' is derived from the Greek, axios meaning 'worthy' and logos meaning 'science.' As a general philosophical theory, it involves a study of 'goodness, or value, in the widest sense of these terms. Its significance lies (1) in the considerable expansion that it has given to the meaning of the term value and (2) in the unification it has provided for the study of a variety of questions--economic, moral, aesthetic, and even logical-- that had often been considered in relative isolation.'" Robert F. Blomquist, *Rethinking The Citizen As Prosecutor Model Of Environmental Enforcement Under The Clean Water Act: Some Overlooked Problems Of Outcome-Independent Values*, 22 Ga. L. Rev. 337 p. 406 n. 204 (1988).

¹³ Ontology could be described as "the science of being" of ouisa: The object of ontology is to determine what is. Epistemology is the science of knowledge, that is the theory of how we know that which we know. Epistemology is by nature recursive. Axiology is the science of moral choice, of fundamental values.

¹⁴ I wish to thank Prof. Christophe Grzegorzczuk of the University of Paris X for presenting this problématique.

such as the rise of human rights and the decline of state sovereignty.¹⁵ The decline of sovereignty and the rise of non-state actors are key contemporary aspects of international relations. Only an overarching theory can explain and resolve systemic conflicts. To develop a theory to explain the rise of non-state actors and the decline of state sovereignty as well as the recurrence of war requires a clear understanding of *ontological, epistemological, and axiological* foundations of our thought.

Before proceeding further I wish to present a “checklist” of the competing ideas both as a reference for the reader and to introduce the principal terms of our discussion:

A Theoretical Checklist
(which positions are yours?)

ONTOLOGY

Monism [] -versus- Dualism []

Holism [] -versus- Atomism []

EPISTEMOLOGY

Materialism [] -versus- Idealism []*

AXIOLOGY

Cognitivism [] -versus- Relativism []

*Idealism is also known as philosophical realism and/or platonic formalism)

We now turn to basic definitions of these terms and their relations to each other. These will be deepened and elaborated *infra*.

Ontology is the "the science of being" of *ousia*: The object of ontology is to determine what is.

¹⁵ Frederick J. Petersen, *The Facade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations*, 15 *Ariz. J. Int'l & Comp. L.* 871, 883-884 (1995).

Epistemology is the science of knowledge, that is the theory of how we know that which we know. Epistemology is by nature self referential, recursive.

Axiology is the science of moral choice, of fundamental values.

Western thought has long been predicated on either an ontological *materialism* (matter determines mind) or an ontological *idealism* (eidetic realism: mind determines matter). Normally, the materialist view is also *monist* (reality is fundamentally unitary), whereas the idealist view is usually presented as *dualist* (reality is fundamentally binary). The association of monism and materialism on the one hand against dualism and eidetic realism (Platonic formalism) on the other is not inevitable or necessary. A dualist materialist view or a monist idealist view is also possible. That is, monism and dualism may combine with either materialism or idealism – four possibilities – with no necessary logical contradiction, abstractly speaking.

Usually monism and materialism are closely associated to each other. Dualism and idealism are also usually seen as going hand-in-hand -- though they do not in fact necessarily imply each other.

The ontological choice of monism versus dualism and of materialism vs. eidetic realism (Platonic formalism) habitually entails, respectively, an atomistic epistemology or an epistemological holism. Atomism argues that one can only comprehend reality by decomposing it into discrete real elements. An atomist key phrase is ‘the whole is equal to the sum of its parts’. Its opposite, holism, argues that reality is only comprehensible in its entirety at once. A holist keyphrase is ‘the whole is greater than the sum of its parts’. However, the association of monism and materialism with atomism is, like the association of dualism with platonic formalism and holism, *a merely contingent habitual association*. Those linkages are *not* necessary implications compelled inductively or deductively by theoretical logic - though implications among various basic assumptions may be implied from practical reasoning (phronesis). In all events however, there are clear habitual associations between dualism and idealism; atomism and materialism; idealism and cognitivism; those associations are however merely contingent and not necessary.

Axiology, the choice of basic fundamental values, may be either *relativist* (values are subjective and relative) or *cognitivist* (moral choice is possible and objective). Moral **relativism** usually argues that morals are purely intellectual constructs having no material existence. **Cognitivism** usually argues that moral values are expressions of the intellect and are “real” (intentional) entities. Usually, **cognitivism** is associated with dualism and idealism and possibly also with holism. Likewise, relativism is usually associated with materialism, atomism and monism. Again, these associations are not compelled by theoretical logic! They are merely habitual!

The habitual associations in western thought of: dualism, idealism, and cognitivism on the one hand versus monism, atomism, and relativism on the other are in fact *not* compelled by logic. The choice of a given ontology does *not* necessarily entail any given epistemology and the choice of an epistemology does not necessarily entail an axiology, a theory of values. *The contingent nature of the connections between these views explains why they can be decomposed and reassociated in ways which will no longer doom the west to pointless self destructive conflict.*

The greater part of the endemic conflict in western thought is due to an erroneous linkage of dualism, materialism and atomism: the vision of endemic conflict, expressed in its most practically effective manner (e.g., fascism). Secondly, grave errors have also resulted from the linkage of dualism to idealism and cognitivism – the wrong choice of values to be regarded as moral linked to a dualist conflict of indemonstrable principles (e.g., religious persecution). However, these habitual and conflict laden associations are not logically compelling. The complex of ideas which constitutes fascism (atomism, materialism dualism) or religious fanaticism (idealism, dualism, cognitivism) can be decomposed and reassociated in more accurate ways which are healthier for society and it’s members by purging social life of pointless and self destructive conflicts arising out of basic errors in presumptions about the nature of reality which become expressed in laws.

Proceeding from a materialist ontology the author exposes an epistemology based not on atomism, the dominant western paradigm, but rather on holism. The author then describes an axiology based not on relativism but on moral cognitivism, grounded not on eidetic realism but rather on materialism. Thus the author ruptures from western thought twice: First, in describing a monistic materialist reality which must be understood not analytically but synthetically (western

thought, in contrast, is usually dualistic and analytic). Second, by describing moral choice not in relativistic terms but as a real entity based in the material world the author again breaks fundamentally from western thinking. Most contemporary axiological thinking is relativist because contemporary thinking recognizes correctly that the wrong moral values were identified by dualist idealists and that those wrong values were themselves a source of conflict. But rejecting morals wholesale due to the erroneous selection of moral values by others goes too far – it 'throws the baby out with the bathwater'. The misidentification of moral values due to dualism and idealism does not imply that moral values don't exist. Moral values do exist and are founded on material facts of life. In other words: 1) Rejection of eidetic dualism does not entail moral relativism. 2) Adhesion to a materialist viewpoint does not entail atomism. These are the two key ruptures I make from western thought which I regard as implying a unique and far reaching theoretical basis for legal analysis.

I. Ontology: Materialism v. Philosophical Idealism

Scientific materialism is the idea that the material world is only understood mediately through the senses and mental faculties. According to materialism:

1. Objective reality is outside the observer in “the real world”;
2. Facts are prior to ideas and their source.
3. Science is the comparison of ideas and reality.
4. The world of thought is a reflection of the material world.

In contrast, philosophical idealism is the opposite of scientific materialism. To the philosophical idealist, ideas are prior to reality and the universe is nothing but a projection of mind. For the philosophical idealist (Plato is the best example), ideas can be compared to other ideas but not to material reality because the senses are or inherently limited and prone to error.

The problem with philosophical idealism is that it is not strictly speaking scientific, for philosophical idealism cannot be verified by material experience. Philosophical idealism does

not lead to *episteme* (knowledge) but only to *doxa* (opinion).¹⁶ Further, philosophical idealism also leads to unnecessary multiplication of intentional objects, against the dictum of Occam,¹⁷ thus risking confusion.

Because philosophical idealism cannot be objectively verified this author rejects it. The source of understanding of the material world is experience. While it is possible to intentionalise *eidos*, such is *doxa* not *episteme* because it is incapable of demonstration.

II. Epistemology: Realism v. Atomism

International Relations (IR) theory has been marked by two competing schools of thought: ontological atomism¹⁸ and its corollary international relations (IR) realism¹⁹ vs. ontological holism and its corollary IR transformationism.²⁰ Understanding these theories allows us to understand international law generally and international human rights law particularly.²¹ At the broadest and simplest level, the principle of sovereignty, a consequence of atomism and realism,

¹⁶ For an explanation of *episteme* and *doxa* in the context of law see: Brett Scharffs, *Law as Craft*, 54 Vanderbilt L.Rev. 2263 (2001) esp. note 98 available at: <http://law.vanderbilt.edu/lawreview/vol546/scharffs.pdf>. *Doxa* is generally translated as “opinion” and *episteme* as “knowledge”.

¹⁷ See, e.g., *State Of Alaska, v. Candice Auliye*, 57 P.3d 711;2002 Alas. App. LEXIS 218 (Alaska app., 2002) “Seven centuries ago, the English philosopher William of Occam described a philosophical principle that is still employed to good effect today: the best explanation of a condition or phenomenon is the one that is the simplest, *i.e.*, the one that uses the fewest assumptions or hypotheses to adequately explain what is observed. This principle, known as Occam's razor, is used to pare away extraneous labels and concepts, thus allowing the unadorned truth of the matter to be seen.”

¹⁸ Alfred P. Rubin, *Actio Popularis, Jus Cogens And Offenses Erga Omnes?*, 35 New Eng. L. Rev. 265, 280 (2001). See also: C. Kernig (ed.), *Sowjetsystem und demokratische Gesellschaft*, vol. 1, p. 426 “*atomismus*” (1996).

¹⁹ For a good summary of realist theory, see Johan Karlsson, *The Stubbornness of Realism - Problemshifts in International Relations Theory*, available at: <http://hem.passagen.se/kafkan/ uppsatser/stubbornness.pdf> (Arguing that though realist theory is showing evidence of losing explanatory power, institutionalism has not yet explained the success of realism as an IR theory).

²⁰ Antonio Cassese describes the current international system as “a gradually unifying world” Antonio Cassese, *Human Rights in a Changing World* Polity Press (1990) p. 153.

²¹ Frederick J. Petersen, *supra* note 1 at 878 (1998) (UN simultaneously recognises two conflicting principles, sovereignty and human rights)

is in conflict with the principle of human rights. Sovereignty and human rights clash because human rights are essentially founded on the liberal concept of the human being, i.e. classical Aristotelian liberalism,²² a holistic theory.²³ Sovereignty, the idea of individual states as atoms interacting, hermetically isolated internally, results from atomism. Atomism, the view that we understand the world best by analyzing its constituent elements, is diametrically opposed conceptually to holism. Holism looks at the entire object and seeks to find synergies and syntheses which explain why the whole is in fact greater than the sum of its parts.

A. Atomism

Atomism describes material reality using an analytic method.²⁴ Namely, it breaks down all elements into their constituent parts. This analytical method ensures that atomism maintains the material connection to empirical reality needed for scientific thought. By denying the noetic existence of intentional entities atomism limits the objects of its inquiry to both a manageable number and those which are necessarily capable of scientific verification which partly explains its success. However, realism, the international relations (IR) theory homologue to atomism, no longer corresponds to empirical reality. Because atomism is an empirical theory it is epistemologically biased toward inductive inference and tends to ignore (with the exception of

²² “With regard to giving and taking of money the mean is liberality, the excess and the defect prodigality and meanness. In these actions people exceed and fall short in contrary ways; the prodigal exceeds in spending and falls short in taking, while the mean man exceeds in taking and falls short in spending.” Aristotle, *Nicomachean Ethics*, Book II, Part 7 (ca. 350 B.C.) translated by W. D. Ross, available at: <http://classics.mit.edu/Aristotle/nicomachaen.2.ii.html> Obviously then, most neo-liberals are in fact illiberal, namely they are mean and grasping. Clearly, for Aristotle, liberality is a virtue based on objective values. “Virtue, then, is a state of character concerned with choice, lying in a mean, i.e. the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it. Now it is a mean between two vices, that which depends on excess and that which depends on defect; and again it is a mean because the vices respectively fall short of or exceed what is right in both passions and actions, while virtue both finds and chooses that which is intermediate...” *Id.* Book II, Part 6.

²³ Aristotle, *Politics*, Book I, Part II. (ca. 350 B.C.) “Further, the state is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part;” available at: <http://classics.mit.edu/Aristotle/politics.1.one.html>.

²⁴ Thomas Hobbes, *De Corpore* (1655) (Chapter 6, section 7). Available at: <http://www.philosophy.leeds.ac.uk/GMR/hmp/texts/modern/hobbes/decorpore/decorpindex.htm>

ampliative induction) deductive inference. This is not at all to say that scientific materialism, or even economy of thought (which atomism encourages) are erroneous epistemological and methodological principles (respectively). They clearly have a place in any flexible description of reality. However, because atomism is an empirical theory, and because empirical reality does not correspond to its propositions, that theory must be either modified or rejected.

B. Critique of Atomism and, by extension, Realism

There are several critiques of atomism. Atomism's analytic method condemns realists to reject the existence of collective entities. As a consequence, the realists' world view is ultimately stunted and cannot conceive of events above or below the state level as being truly important. Further, realism continues to apply a false analogy²⁵ from Newtonian physics to international relations, essentially seeing states as isolated atoms, like billiard balls, reacting mutually according to scientific laws akin to those of classical physics²⁶ - despite the fact that Newton's *Principia*²⁷ has since been modified by general and special theories of relativity:²⁸ States in fact are no longer hermetic atoms, separate from each other. Rather they are part of a continuum of interaction ranging from individuals to transnational entities. The relevant analogy or model from natural science would be quantum mechanics - sub-atomic particle physics, wave/particle theories of light - not Newtonian mechanics.

Another critique of atomist theory is that atomism cannot in its own terms synthesise parts into greater wholes. Thus, atomism stunts the realists' world view by limiting realists to a uni-dimensional world-view that sees only material objects, e.g. physical power, as having any

²⁵ For an interesting attempt to update the Newtonian analogy to take into account implications from contemporary physics see: Dimitrios Akrivoulis, *Redesigning Newton's Cenotaph: Quantum Spacetime and the State* Proceedings of the 1999 Annual Conference held at the University of Nottingham (1999) available at: <http://www.psa.ac.uk/cps/1999/akrivoulis.pdf>

²⁶ Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EJIL 503 (1995) available at: <http://www.ejil.org/journal/Vol6/No4/art1.html> (describing, *inter alia*, the realists' paradigm of states as atoms analogous to billiard balls which react according to pre-existing laws).

²⁷ Isaac Newton's (1687), Translated by Andrew Motte (1729), available at: <http://members.tripod.com/~gravitee/>

²⁸ Albert Einstein, *Relativity: The Special and General Theory*, Translated by Robert W. Lawson New York: Henry Holt, (1920) available at: <http://www.bartleby.com/173/>

existence or relevance. This leads in turn to a fixation by realists on physical power as the key determinant of interstate relations which distorts realist descriptions, and as consequence distort realists' predictions and prescriptions as well. Even within realist assumptions of zero sum conflict and power maximisation economic power is still more important than military force: without economic power there can be no military power. It has long been a maxim that "gold is the sinews of war".²⁹ Thus, a consistent atomist/realist IR theory must collapse into economic theory. Such a theory is possible: just as the realists posit a "balance of power" to synthesise discrete atoms (states) into an orderly system (which by the way is completely a-historical!) Adam Smith's posits "an invisible hand"³⁰ (of God) implicitly reaching down from the heavens to direct the affairs of humanity. Smith clearly was not engaging in *noesis* however.³¹ Though realists are, properly, materialists some of the other realists' basic assumptions are flawed.

Another critique of realist IR theory is empirical. Realist IR theory begins with flawed assumptions. Realists assume:

1. Military force is the key element of power;
2. Conflict is essentially zero sum)

But life does not work like that. Economic power is clearly more important than military power: Japan is powerful yet has a very small military. Conflicts are usually positive sum, as at the WTO. Since realism begins with flawed assumptions the consequences that flow from them are also likely (though not necessarily) to be erroneous. Empirically speaking, the realist description of reality does not correspond to observations of the real world.

To some extent the failure of realism was due to a misapplication of atomist methods, namely ignoring synthesis in the name of materialism and fixating on analysis. However, it seems inevitable that atomism must ignore dialectics and synergies because it cannot conceive of a

²⁹ Marcus Tullius Cicero, *Speech In Defence Of The Proposed Manilian Law* (66 B.C.) translated by Charles Duke Yonge, available at: http://www.4literature.net/Cicero/Speech_in_Defence_of_the_Proposed_Mani/

³⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book IV, Ch.2, "Of Restraints upon the Importation from Foreign Countries", paragraph IV.2.9 (1776) available at: <http://www.econlib.org/library/Smith/smWN13.html>.

³¹ See: Plato, *Republic*, Book 6 Stoa 510b (ca. 360 B.C.) Translated by Benjamin Jowett. Available at: <http://classics.mit.edu/Plato/republic.7.vi.html>. For Plato, *noesis* as the highest form of knowing because it occurs when subjective experience apprehends truth independent of reason, sense perception (*aesthesis*) or empiricism.

whole which is somehow greater than the sum of its parts. Yet, a glance at basic economic processes such as standardisation of parts and assembly line production³² shows that specialisation increases economic productivity, that a group of people working together can accomplish far more than the same number of individuals working in isolation. Economies of scale also belie atomist presumptions. The whole really is greater than its parts.

We can also criticise atomism because its analytical method ignores dialectics. Dialectical materialism may have been made famous by Marx³³ and Marxists,³⁴ who used it alongside historical materialism.³⁵ But dialectics are found as early as Aristotle³⁶ and even earlier with Heraclitus.³⁷ However, the Aristotelian dialectic is an intellectual process, a dialog, whereas the Marxist dialectic is a collective and historical process. Atomism ignores dialectics because it focuses on the constituent elements, not the relations between them and whether those relations resolve into a greater whole. Atomism does go far however: dispelling needless entities³⁸ and

³² For example, Smith's famous pin-factory, where each worker alone could only fashion, perhaps, one pin a day, but where even but ten poor workers specializing could produce two pounds of pins per day. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, B.I, Ch.1, "Of the Division of Labour", in paragraph I.1.3 (1776). Available at: <http://www.econlib.org/library/Smith/smWN1.html>.

³³ E.g., "Any development, whatever its substance may be, can be represented as a series of different stages of development that are connected in such a way that one forms the negation of the other...In no sphere can one undergo a development without negating one's previous mode of existence." Marx, *Moralizing Criticism & Critical Morality*, Oct. 1847, in Marx Engels Collected Works, Vol.6, p.317 (1847) from Deutsche-Brüsseler-Zeitung No. 86, October 28, 1847. Available at: <http://www.marxists.org/archive/marx/works/1847/10/31.htm>

³⁴ Id. Josef Stalin, *Dialectical And Historical Materialism* (1938) Available at: <http://www.marxists.org/reference/archive/stalin/works/1938/09.htm>

³⁵ Josef Stalin, *Dialectical And Historical Materialism*, (1938) From Josef Stalin, *Problems of Leninism*, Foreign Languages Press, Peking, (1976). Available at: <http://www.marx2mao.org/Stalin/DHM38.html>

³⁶ Aristotle, *Posterior Analytics* (ca. 350 B.C.) Translated by G. R. G. Mure, Book I, Part 1. Available at: <http://classics.mit.edu/Aristotle/posterior.1.i.html> and at: <http://www.rbjones.com/rbjpub/philos/classics/aristotl/o4219c.htm>

³⁷ Clearly Heraclitus was a monist: "all things are one."; a holist: "Concepts: wholes and not wholes, convergent divergent, consonant dissonant, from all things a unity and from this unity all things [are made]." 18 *Systemist* 161-176 (1996) available at: <http://cis.paisley.ac.uk/crow-ci0/Articles/heraclitus.html>. Also see, e.g., Paul Harrison, *The Greek materialists: Thales, Anaximander and Anaximenes* (1997) at: <http://members.aol.com/heraklit1/greekmat.htm>

³⁸ Occam is not the only scholar to argue that entities should not be multiplied beyond those needed to explain an observed event. Newton similarly advises that "We are to admit no more causes of natural things than such as are both true and sufficient to explain their appearances."

breaking down objects into their constituent parts are valid scientific methods. But atomism does not go far enough because it cannot synthesise those elements into greater entities nor does it consider their relations *inter se*, i.e. dialectical processes. Of course, one can combine the analytic/synthetic and inductive/deductive methods – but, unfortunately, few do.

A final critique of atomist theorists is that atomism compels us to eventually believe in fictions such as the "the social contract", the "invisible hand" and the "balance of power". Those fictions somehow (how?) accomplish the syntheses which atomistic method ignores: These metaphors supposedly resolve constituent atoms (whether market actors or states) into a harmonious whole. However the exact process by which that resolution occurs is a mystery. And the inability of atomism to explain this act of synthesis via some exact method is a serious flaw, for science must explain reality. In fact, by this conceit atomism reproduce the very *noesis* and blind faith which it claims to surmount by materialism and analytic method! While integration of elements into a whole is certainly possible it should not rely on a modern version of a mystery of faith; rather, models of integration should expose their presumptions in order to reveal and resolve any possible flaws in the theory.

C. Holism

Epistemologically, holism is the opposite of atomism.³⁹ Holism argues that any entity cannot be entirely understood by reference to its constituent elements alone because those constituent elements work together dialectically to produce a new result which they would not produce separately. Thus, rather than analysis, holism seeks synthesis: holism seeks to integrate different elements and to explain that integration comprehensively. This is a much more ambitious methodology. It is also more complex, both as method and as to its object of study. However, if the holistic explanation is in fact accurate it allows the holist to make a quantum leap which the atomist could never make within the presumptions of atomism.

The Principia, Book III. "The System Of The World Rules Of Reasoning In Philosophy" (1687), Translated by Andrew Motte (1729) Available at: <http://members.tripod.com/~gravitee/rules.htm>.

³⁹ See, e.g., James Schombert, *Glossary* "Holism" (2003) at: <http://zebu.uoregon.edu/~js/glossary/holism.html>

Holistic theory, unlike atomistic theory, necessarily⁴⁰ comprehends that analysis is only one method of scientific inquiry and while it does reveals truth only reveals part of the truth. The fact that the holism that I propose is materialist explains how synthesis can occur, because grounding theory in the material permits verification of hypotheses, even intuitive⁴¹ hypotheses, whether by analysis or synthesis. These hypotheses, once verified, can be integrated into theorems about the entity *in toto* which may be more explanatory than the individual propositions from which they are formed. A holistic theory grounded in materialism, will necessarily become more accurate than any purely analytic theory because empirical verification occurs at both macro and micro levels. Purely analytic theories like realism usually correctly reject philosophical idealism, the idea that intentional entities are real and that the world is a reflection of ideas. However, purely analytical theories are heuristically sterile because they cannot formulate or test hypotheses about collective objects because analytical theories such as realism and atomism conflate groups with ideas about groups. The *Polis* is a material object. It is not a mere idea.

D. Critiques of Holism

Holist theory often links holism to philosophical idealism. Philosophical idealism, asserts that ideas (*eidos*) have a “real” character and are *a priori* to material experience.⁴² Philosophical idealism is basically the opposite of materialism.⁴³ Philosophical idealism is incorrect: the world is not a reflection of our ideas, otherwise yogic levitation would be possible. Though holism is often linked to idealism that linkage is not a necessary one but rather is contingent. It is possible to have a holist materialist theory which is the theoretical combination that this author recommends and applies.

⁴⁰ Aristotle, *Nicomachean Ethics*, Book 6 Section 6.

⁴¹ Aristotle, *Posterior Analytics*, Book 2 Part 19, (ca. 350 b.c.).

⁴² See, e.g. Plato, *Republic*, Book VI (ca. 360 B.C.), translated by Benjamin Jowett. Available at: <http://classics.mit.edu/Plato/republic.7.vi.html>.

⁴³ See, e.g., V.I. Lenin, *Materialism and Empirio-Criticism*, “Conclusion” (1908) available at: <http://www.marxists.org/archive/lenin/works/1908/mec/conclusion.htm>

Holist theory is criticised because it tends to ignore analytical methods because it is looking at the whole and not the parts thereof. However, analytical methods can be applied within a holistic theory, particularly where that theory is materialist. While some holists could be criticised for ignoring analysis that does not mean that analysis is impossible within holism. Thus the critique is only valid when applied to certain holists. It is not a valid critique of holism itself.

Philosophical idealism and ignoring analytics explain the failure of idealist-holist theories such as Plato's. Yet, though holism and idealism are often linked (just as realism and materialism are usually linked), there is nothing necessary about that linkage. I specifically de-link holism from idealism and remap it to materialism. From that perspective international relations can only be understood (to the extent that understanding is possible) by examining the world as an interconnected whole. The validity of that theory is verified by comparing the correspondence of the holist model to material reality.⁴⁴

E. Is it possible to Synthesize Holist and Atomist methods?

To some extent the conflict between atomism/analysis and holism/synthesis is illusory. Analysis, a classic atomist method, and synthesis, a classic holist method, are both valid scientific instruments which good scientists have at their disposal. They can and should be used complementarily to study the same object of inquiry – Hobbes does exactly this.⁴⁵

The atomists, as materialists, were not entirely wrong. However, their analyses were distorted because of dualism or the analytic method and possibly both which blocked them from grasping the essentially unitary character of experience. Consequently, the atomists over-emphasised the importance of military force and zero-sum conflict. Many, probably most, atomists were

⁴⁴ For a general discussion of method see: Kenneth Einar Himma, *Substance And Method In Conceptual Jurisprudence And Legal Theory*, (2002) 88 Va. L. Rev. 1119.

⁴⁵ Thus in *De Corpore*, Hobbes uses both analysis and synthesis. "The method of civil and natural science is analytic when it goes from sensation to principles, and synthetic when it returns back again from principles." He even devotes an entire section to exactly this subject: Thomas Hobbes, *De Corpore*, 6.7 (Translated by George MacDonald Ross) (1655) available at: <http://www.philosophy.leeds.ac.uk/GMR/hmp/texts/modern/hobbes/decorpore/decorp1.html#c6>.

hampered by dualism, like so much in western thought. Synthetic sterility and, at times, dualist manicheanism, explain the failure of atomism. These failings are seen most clearly in the work of realist international relations theory leading to dualistic wars fought by individuals isolated from each other and society as a whole.

III. Axiology: Relativism (post-modernism and neo-liberals) v. Cognitivism (classical liberals)

Post-modern thought argues that there are no universal narratives, no universal values, that value judgements are subjective. As a consequence, post-modernists find themselves trapped by their inability to use concepts which they must necessarily reject such as “truth”, “beauty” and “the good”. For example, Nigel Purvis, who correctly criticises platonic idealism, also adopts subjectivism consequent to a rejection of philosophical idealism. But simply because pre-modern thought sometimes adopted the wrong values does not mean there are no values. Rather, the failure of earlier generations to correctly resolve difficult social problems demonstrates that values can only be truly known, like anything else, through practical experience in the material world and that values develop with economic progress. Purvis mixes his rejection of Plato’s epistemology (philosophical idealism - *eidos*)⁴⁶ -- with post-modern axiology and thus reaches an incorrect conclusion. Axiology is not necessarily formalist or idealist. A materialist axiology is possible (and is the author’s position).

IV A NEW NATURAL LAW THEORY OF INTERNATIONAL RELATIONS

The atomist/realist paradigm – which guided the world from one global war to another - was simplistic in theory and unworkable in practice. This was because of a failed synthesis due to rampant dualism, both epistemological and legal. A categorical break from dualism via a

⁴⁶ "Greek term for what is seen - figure, shape, or form. In the philosophy of Plato, the *eidos* is the immutable genuine nature of a thing, one of the eternal, transcendent Forms apprehended by human reason {Gk. νοῦς [nous]}. Aristotle rejected the notion of independently existing Forms and understood them instead as abstract universals." Garth Kemerling, *A Dictionary of Philosophical Terms and Names* (2002)at: <http://www.philosophypages.com/dy/e.htm#eidos>

monist-materialist holist epistemology could permit the internationalist system to avoid repeating the same errors which led to the world wars.

Combining holism and materialism in order to understand and explain the world might at first seem counterintuitive. But even pragmatist Americans, who would question the use of theory because of their scepticism, would admit that understanding is necessary before control is possible – and that the alternative to a radical break from the past, a lawless world of rogue states and terror, is all too thinkable. Though it is true that holism and idealism were historically often linked (just as realism and materialism are usually linked) there is nothing necessary about that linkage. The author specifically de-links holism from idealism and remaps it to materialism. IR can only be understood by observing the world as an interconnected whole and comparing one's hypotheses with the observed material reality.⁴⁷ Once this step is taken, reconceptualizing the world to explain why and how conflicts arise “out of nowhere” and suddenly engulf the world in flames becomes possible. And with that understanding, perhaps preventing or remedying such conflicts at their root causes becomes possible.

The clash of competing ideas within theories of ontology, epistemology and axiology and historical and legal observations leads to three conclusions from which the contemporary international system can be described. The utter failure of the proponents of the Project for a New American Century to comprehend the existence and significance of two of these three intellectual trends explains the mire within which U.S. foreign policy is trapped.

1) *Transformationism*: Transformationalist theories argue that economic and not military power is the decisive indicator of state influence in a nuclear armed world.⁴⁸ In a world mad with “terrorism” this might seem counterintuitive: until one sees that just as the state cannot stop terrorists, terrorists generally do not stop states.

⁴⁷ For a general discussion of method see: Kenneth Einar Himma, *Substance And Method In Conceptual Jurisprudence And Legal Theory*, (2002) 88 Va. L. Rev. 1119.

⁴⁸ For a brief summary of the tenets of various IR theories, including transformationism, see: Parkland Institute, *Neo-Liberal Globalism and its Challengers: Sustainability in the Semi-Periphery*, (2000) at: <http://www.ualberta.ca/~parkland/mcri.html>

2) *Neo-functionalism*: Neo-functionalists⁴⁹ argue that state institutions must be shaped piece by piece in manageable areas over the long term where international accords are possible, rather than vainly seeking overly ambitious unachievable goals in the immediate present.⁵⁰ “Mere governance” may seem “quaint” in a mad world. But in fact the failure of the old mechanisms of governance, force, explains why governance is a key contemporary issue. The rise and success of functionalism in the post-war era, largely ignored and almost never exploited by U.S. foreign policy, is one of the salient features of the post-Westphalian system. The European Union is only the most well known and most successful example of functionalism.⁵¹ It is not the only one. The UN human rights convention system is not as successful but is another example of functionalism. MERCOSUR, NAFTA, and the African Union may also prove to be functionalist success stories.

3) *Liberalism*: Classical liberal theory⁵² also provides guidance to determine the limits of individual and business liabilities in post-Westphalian transnational law. One of the great failings of the Westphalian system in the industrial era was the fact that trade and territory were directly linked such that trade conflicts and territorial conflicts were mutually reinforcing - and zero sum. The post-Westphalian order used and will continue to use the Breton Woods⁵³ institutions – The International Monetary Fund (IMF),⁵⁴ the International Bank for

⁴⁹ For a summary of the various movements within functionalist theory see, Jürg Gabriel, *Die Renaissance des Funktionalismus*, Beiträge 27 ETH (2000) available at http://www.cis.ethz.ch/gabriel/docs/Publications/res_pap/27_Funktionalismus.pdf

⁵⁰ See Jürg Gabriel, *Funktionalismus: Ein Überblick*, 8 ETH Beiträge (1996) available at http://www.cis.ethz.ch/gabriel/docs/Publications/res_pap/8_Funktionalismus.pdf

⁵¹ Within functionalist integration theory, different metaphors are used to describe integration, e.g. "multi speed", "variable geometry", "a la carte" etc. For an overview of different branches of functionalist integration theory see Claus-Dieter Ehlermann, *Increased Differentiation or Stronger Uniformity*, EUI Working Paper RSC No. 95/21 (1995) available at http://www.iue.it/RSC/WP-Texts/95_21.pdf

⁵² I.e. the theories of Aristotle (with qualification as to natural inequality) and, John Locke (with qualification as to alienation).

⁵³ Thomas Oppermann & Ernst-Ulrich Petersmann, *Reforming the International Economic Order* 173 (1987).

⁵⁴ The International Monetary Fund originally sought “only” to equilibrate member states’ balance of payments, exchange rates, and exchange controls. However today the IMF puts conditions on its loan guaranties. Thus domestic state policies, despite the increasingly moribund international law doctrine of “non-intervention”, are increasingly reviewed by an international organisation. “[B]udgets, taxes, and the money supply, but subsidies, wage policies, competition law, corporate governance, even accounting practices and regulatory reform” are subject to IMF

Reconstruction and Development (World Bank),⁵⁵ and the General Agreement on Tariffs and Trade (GATT – now the WTO)⁵⁶ to consciously promote free trade⁵⁷ not only to increase economic productivity⁵⁸ but also to de-link trade and territory, both of which work to prevent wars⁵⁹ for market share⁶⁰ and ensure peace⁶¹ - all of which erodes the idea of sovereignty. The Breton Woods institutions seek to create prosperity in order to insure peace. If realism posits “peace through order” liberalism can be contrasted⁶² as positing that “prosperity⁶³ will cause⁶⁴

scrutiny, all of which erode sovereignty. Andreas F. Lowenfeld, *The International Monetary System And The Erosion Of Sovereignty* 25 B. C. Int. Comp. L. Rev. 257, 257 (2002). Available at: http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/25_2/05_FMS.htm

⁵⁵ The World Bank also promotes human rights: “Largely as a result of scrutiny from non-governmental organisations and activists ... the [world] Bank has begun to pay attention to social safety nets, human rights, and the notion of good governance. By 1990, the General Counsel determined that, ‘[v]iolation of political rights may . . . reach such proportions as to become a Bank concern due to significant direct economic effects or if it results [in violation of] international obligations.’” Dinah Shelton, *Protecting Human Rights In A Globalized World*, 25 B. C. Int. Comp. L. Rev. 273, 290. (2002) Available at: http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/25_2/06_TXT.htm.

⁵⁶ Carrasco, *Critical Issues Facing the Bretton Woods System: Can the IMF, World Bank, and the Gatt/Wto Promote An Enabling Environment For Social Development?*, 6 *Transnat'l L. & Contemp. Probs.* I, I (1997).

⁵⁷ This was nothing new. The formula “Free trade increases prosperity and reduces the likelihood of war” had already been recognised by the mid 1800s. See, e.g. John R. Finneran, *Free Trade and the Irish Famine*, 41 *The Freeman* (1991) available at: <http://www.libertyhaven.com/regulationandpropertyrights/tradeandinternationaleconomics/freetradeandirish.html>

⁵⁸ Enrique R. Carrasco, *supra* at II (noting economic prosperity - in the first world).

⁵⁹ Enrique R. Carrasco, *supra* at I (argues post-war liberal global economic order guaranteed prosperity and peace).

⁶⁰ But for a critical view of the equation of free trade, prosperity and peace see: Jędrzej Frynas and Geoffrey Wood, *The Liberal View of the Trade-Peace Relationship Re-considered: Oil and Conflict in Angola* (2002) available at <http://www.vad-ev.de/papers/frynas.pdf>

⁶¹ Richard M. Ebeling, *Can Free Trade Really Prevent War?* Mises Institute (2002) at: <http://www.mises.org/fullstory.asp?control=915> (answering the question in the affirmative).

⁶² For a comparison of realism and transformationist theory see Sam Roggeveen, *Towards a Liberal Theory of International Relations, Policy*, (2001) available at: <http://www.cis.org.au/Policy/aut2001/polaut01-6.pdf> (Arguing that realism is both too pessimistic and possibly too relativist to be consistent with liberalism).

⁶³ Adam Smith long ago explained why trade is a positive sum game and favors both parties. Ricardo explained that this was true even where one party has an absolute advantage in all goods being traded. For a basic summary of liberal trade theory's presumptions see Robert Schenck, *Comparative Advantage* (1997), available at: <http://ingrimayne.saintjoe.edu/econ/International/Comparative.html> or refer directly to Adam Smith: *Wealth of Nations*, (1776) available at <http://art-bin.com/art/oweala.html>, and David

both justice⁶⁵ and peace.”⁶⁶ Though the U.S. has not yet understood either functionalism, governance, and transformationism due to a failure to comprehend theory it has, thanks largely to its British heritage at been able to implement some of the features of liberalism.

Conclusion

In conclusion, a combination of liberalism, functionalism, and transformationism developed out of materialist presumptions but expressed within a holist world view will better explain and guide the international system than the failed presumptions of realists and atomists.

By liberalism the author must make clear that classical liberalism and not the pseudo “neo-liberalism” is intended. Classical liberalism finds its champion in Aristotle. Aristotle describes right action as the median between extremes. He proposes liberality, being generous to the right person to the correct extent and for the right reasons as the median between the vices of greed and miserliness. Later liberal theorists of note are Rousseau, John Locke (Two Treatises of Government), Adam Smith (The Nature and Causes of the Wealth of Nations), and (*inter alia*) David Ricardo.⁶⁷

For classical liberals like Aristotle the state exists to ensure the good life for its members.⁶⁸ While later liberals such as Smith⁶⁹ or Locke⁷⁰ may be individualists it is clear that Aristotle

Ricardo, *On the Principles of Political Economy and Taxation* (1817), available at: <http://www.econlib.org/library/Ricardo/ricP.html>.

⁶⁴ Paul W. Kahn, *American Hegemony And International Law Speaking Law To Power: Popular Sovereignty, Human Rights, And The New International Order*, 1 Chi. J. Int'l L. 1, 2-3 (2000) (critiques liberal hypothesis that by focusing on trade and prosperity war is averted).

⁶⁵ Enrique R. Carrasco, *supra* note 43 at VI.

⁶⁶ John Oneal and Bruce Russett, *Assessing the Liberal Peace with Alternative Specifications: Trade Still Reduces Conflict*, 36 Journal of Peace Research (1999) <http://www.yale.edu/unsy/brussett/AssessingLiberalPeace.pdf>

⁶⁷ David Ricardo, *The Principles of Political Economy and Taxation* (1817) available at: <http://www.marxists.org/reference/subject/economics/ricardo/tax/>.

⁶⁸ "Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest

certainly and probably Rousseau and even Hobbes were collectivists,⁷¹ i.e. holists (though whether Hobbes is a liberal⁷² can be debated). This is very different from the atomist and neo-liberal position which denies the existence, let alone primacy, of any collective.

The author's liberalism must be qualified however because many liberals (not Aristotle) are also social-contract theorists. The author rejects social contract theory because it does not correspond to empirical reality. On this point the author splits from Locke,⁷³ Rousseau and Hobbes⁷⁴ (and Rawls,⁷⁵ Dworkin,⁷⁶ and Nozick⁷⁷ for that matter).

good." Aristotle, *Politics* (350 B.C.) Book One, Part I (translated by Benjamin Jowett) (ca. 350 B.C.) available at:

<http://classics.mit.edu/Aristotle/politics.1.one.html>.

⁶⁹ E.g. "Though it may be true, therefore, that every individual, in his own breast, naturally prefers himself to all mankind, yet he dares not look mankind in the face, and avow that he acts according to this principle." Adam Smith, *The Theory of Moral Sentiments*, (1759) available at: <http://www.ecn.bris.ac.uk/het/smith/moral.2>. It is not that Smith wants to be an individualist, rather that he feels compelled by human nature to accept the practical fact of human egoism: he then seeks to harness that egoism to serve society.

⁷⁰ Locke clearly assigns the individual primacy. The individual is prior to the state for Locke for the state is only formed by their consent. "when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority: for that which acts any community, being only the consent of the individuals of it" John Locke, *Second Treatise of Government*, Ch. VIII, Sec. 96. (1690) available at:

<http://history.hanover.edu/early/locke/j-12-012.htm>.

⁷¹ For Hobbes it is clear that the State is greater than the individual: "by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE (in Latin, CIVITAS), which is but an artificial man, though of greater stature and strength than the natural, for whose protection and defence it was intended" Thomas Hobbes, *Leviathan*, Introduction para. 1 (1651) available at: <http://www.uoregon.edu/~rbear/hobbes/leviathan.html>.

⁷² "the sovereign is absolute... or else there is no sovereignty at all" Hobbes, id. at Ch. XX: "Of Dominion Paternal And Despotical" (wherein Hobbes argues that the conquered also consent to the conqueror's government).

⁷³ John Locke, *Second Treatise of Government* (1764) Ch. VIII, Sec. 96. available at:

<http://history.hanover.edu/early/locke/j-12-012.htm>. It is exactly on these points where the author splits from Locke. No state of nature could exist, nor was there ever any transfer of personal sovereignty to the state. Further the state is not a monolith expressing the perfect united will of all its inhabitants.

⁷⁴ Hobbes clearly believes that government is formed through a pact. His subject (not citizen) assents to the pact in this manner: "I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of that great LEVIATHAN,

Despite their disagreements on the origins of the state and the role of the individual *vis à vis* the collective, Locke and Aristotle agree that objective moral values do exist and can be the object of choice and rational inquiry. In contrast, modern neo-liberal theory asserts that moral values are subjective and relative.⁷⁸ When modern neo-liberal theory claims to be liberal and claims that values are subjective it betrays its ignorance. Liberality means the art (not science) of generosity, of making the moral choice of when and to what extent and to whom one should or should not be generous of what the virtuous mean is between two extremes. It is a value choice. Normative axiology is inherent in the classic notion of liberality (as in all of classical thought). Modern neo-liberalism, divorced from any theory of objective value or morality, eventually finds itself in the same morass of ambiguity, and sterility which plagues post-modern thought.⁷⁹

To close, the world can still escape from the incorrect presumptions which drove it into two world wars and continue to threaten it with a third. The correct lesson of September 11th is not the continuing relevancy of military force but rather its irrelevance. As the destructive power of weaponry continues to grow, states become increasingly vulnerable to non-state actors. The correct lesson of September 11th is however counterintuitive. The realist presumption that force is the sine qua non of statecraft and that political relations are fundamentally zero sum power plays are as wrong in 2008 as they were in 1938 and 1918. By comprehending past failures through theory it is possible to avoid repeating them.

or rather, to speak more reverently, of that mortal god to which we owe, under the immortal God, our peace and defence.” Hobbes, *Leviathan*, Ch XVII.

⁷⁵ See, e.g., John Rawls, *A Theory Of Justice*, Cambridge, Mass. : Belknap Press of Harvard Univ. Press, (2001).

⁷⁶ See, e.g., Ronald Dworkin, *Taking rights seriously*, London : Duckworth, (1981).

⁷⁷ See, e.g., Robert Nozick, *Anarchy, state, and Utopia*, Oxford : Blackwell, (1975).

⁷⁸ See, e.g., Murray N. Rothbard, ed., *The Logic of Action* (Edward Elgar Publishing Limited, 1997)

pp.78-99; Ludwig Mises, *Money, Method and the Market Process*, Ch. 3, “Epistemological Relativism in the Sciences of Human Action” in Richard M. Ebeling, (ed.) Amsterdam: Kluwer Academic Publishers, 1990. (Article first published in 1962). Available at: <http://www.mises.org/mmmp/mmmp3.asp>.

⁷⁹ For an example see, Nigel Purvis *Critical Legal Studies In Public International Law*, 32 Harv. Int'l L.J. 94, (1991).