BEYOND COMMUTATIVE JUSTICE: CONTRACT LAW, JUSTICE, AND JUST PRICES*

Más allá de la Justicia Conmutativa: Derecho de Contratos, Justicia y Precios Justos

Joaquín Reyes Barros**

Abstract:

In this paper I evaluate James Gordley's account of the just price as the price that preserves commutative justice. After raising some objections to this approach, I suggest that focusing on the institutional nature of prices, rejecting the value monism implicit in the standard account of the just price and allowing for the possibility of a pluralist approach to price justification can contribute to moving just price theory forward.

Keywords: *Commutative Justice; Just Price; Equality in Exchange; Exchange Value; Institutional Facts*

Resumen:

En este artículo evalúo la teoría del precio justo defendida por James Gordley, según la cual el precio justo es aquel precio que preserva la justicia conmutativa. Luego de oponer algunas objeciones a esta perspectiva, sugiero que enfocarse en la naturaleza institucional de los precios, rechazar el monismo valórico implícito en la versión estándar del precio justo y permitir la posibilidad de un enfoque pluralista a la justificación de los precios puede contribuir a avanzar la teoría del precio justo.

Palabras clave: *justicia conmutativa; precio justo; igualdad en el intercambio; valor de intercambio; hechos institucionales*

* For helpful comments and suggestions on early versions of this paper, I am grateful to Amalia Amaya, Chloe Kennedy, Luís Duarte D'Almeida, Alice Krzanich, Ismael Martínez-Torres, Euan MacDonald, Cormac MacAmlaigh, Claudio Michelon, Lucas Miotto-Lopes, Margaret O'Brien, Felipe Oliveira de Sousa, Diego Papayannis, Esteban Pereira Fredes, Alberto Pino Emhart, Alexander Vargas Tinoco, Antonia Walterman, Neil Walker, and two anonymous reviewers. I would also like to thank audiences at Lucerne, Girona, Maastricht, Oxford, and Edinburgh.

** University of Edinburgh, UK and Universidad Finis Terrae, Chile (Joaquin.Reyes@ed.ac.uk). Article received on March 14, 2020 and accepted for publication on June 3, 2020.

I. INTRODUCTION

In our experience as market agents, we encounter many situations in which the price of a certain good seems 'wrong', either because it is exorbitant, a 'rip off', 'too much', or, at the other extreme, because it is 'a bargain' or 'too little'. Whether it is a professional extracting enormous profits for a job he would be willing to do for less, a seller charging more for a good because he knows how intensely the buyer wants it, a buyer taking advantage of the ignorance of the seller to buy cheap a costly item, or even a hardware store increasing the price of their snow shovels just after a snowstorm, it seems to be the case that the price paid for some goods does not match the price they *ought* to have, *i.e.*, their just price.[1]

Several legal rules and practices dealing with unequal exchange and unfair pricing in private law seem to track this intuition. Indeed, the intelligibility of deep-seated private law rules and institutions depends upon establishing some normative standard of fair pricing. Civil law remedies against *laesio enormis*[2], price unconscionability in the Common Law[3], standards of conduct in the form of implied duties of fair dealing and good faith[4], prohibitions on price gouging, etc., are instances of private law rules shaped by a concern for the fact that certain goods are being sold for more or less than they ought to be.[5]

But what *ought* the price of a thing to be? According to the standard view, which can be traced back to the Scholastic doctrine of the *iustum pretium*, the just price is the price that preserves commutative justice. According to this view, a price preserves commutative justice when it keeps equality of exchange value

1 The snow shovel example is taken from Kahneman *et al*. (1986), p. 76.

2 *Laesio enormis* consists in the buying and selling of goods for more or less than a certain proportion, usually half-price above or below certain standard. See generally Gordley (2006), pp. 364ff.

3 On price unconscionability, see generally Deutch (1977), pp. 122-136; Gordley (1991), pp. 154-158; Gordley (2006), p. 365.

4 See, for instance, *Restatement (Second) of Contracts* (1981), §205: "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."

5 This is not to deny that there have been recent signs of a decline of the impact of just price theory in private law- See, for example, the explicit exclusion of just pricing as a standard of fairness in Study Group & Acquis Group (2009), p. 225: "II. - 9:406 Exclusions from unfairness Test (2): For contract terms which are drafted in plain and intelligible language, the unfairness test extends neither to the definition of the main subject matter of the contract, *nor to the adequacy of the price to be paid*." (emphasis added). For its exclusion in the United States, see *Restatement (Second) of Contracts* (1981), §79: "if the requirement of consideration is met, there is no additional requirement of equivalence in the value exchanged."

between the goods exchanged.[6] Among contemporary legal scholars, this view has been defended and developed by James Gordley, who claims that, under ideal conditions of economic competition, the just price would correspond to the market price, because exchanging at the market price would preserve the ongoing distribution of purchasing power.

In this paper, I evaluate and provide a critique of this view of justice in pricing and explore the possibility of a partial restatement and revision of just price theory. The proposed view focuses on the institutional nature of prices and claims that the just price is best conceived as the price that can be fetched under just background conditions of exchange. This conception of the just price entails a rejection of the value monism implicit in the traditional understanding of the just price and a subsequent endorsement of value pluralism in price justification. On the proposed approach, commutative justice is just one among many values that can serve the purpose of justifying prices.

The paper is structured into two main sections. The first section explains Gordley's account of the just price and puts forward two main objections to Gordley's account. The first is an objection against Gordley's claim that the just price can preserve the ongoing distribution of purchasing power. The second and most important objection casts some doubts regarding the normative pull of market prices and, therefore, their ability to serve as a normative standard for just pricing.

The second section explores an alternative approach to justice in pricing, one that has as its starting point the institutional nature of prices and the price system. This approach allows us to disentangle the issue of justice in pricing from concerns over commutative justice and opens theoretical space for value pluralism in price justification, in which other values such as autonomy, efficiency or distributive justice can have a bear on questions of price justification. This section does not develop a full theory of price justification: it only argues for the *possibility* of developing such an approach.

Finally, the paper concludes with a few remarks about the implications of the proposed view for our more general understanding of contract law.

6 Gordley (1981), Gordley (1991), Gordley (2006), Gordley (2001), Gordley (2015), Gordley & Jiang (2019).

II. GORDLEY AND THE JUST PRICE

For private law theorists, it is almost part of their job description to explain and justify pre-modern legal schemes in relation to modern concerns over individual autonomy or economic efficiency.[7] A quick review of contemporary private law theory is enough to notice that deontological rights-based theories as well as efficiency-based theories are indeed the two most common approaches to private law. This holds true for contract law as well. Deontological approaches to contract law tend to stress the relevance of the contracting parties respecting each other's rights in their mutual dealings, while *Law and Economics'* approaches to contract are typically more concerned about how to maximize preference satisfaction by reducing transaction costs and finding rules of risk allocation that are both economically efficient and agreeable by both parties.[8]

However, these two approaches do not tell the whole story about contract law. James Gordley has been claiming for nearly four decades that modern contract law owes more to Aristotelian metaphysics than to Kantian or utilitarian principles, and, therefore, that it is to Aristotle that we must go back to in order to make sense of our private law institutions. In his most influential work, *The Philosophical Origins of Modern Contract Doctrine*, Gordley argued at great length that the fact that modern private law is organized all over the world across the same basic categories of contract, tort, and property, is the result of late Scholastics' self-conscious attempt to organize private law according to Aristotelian principles.[9] Gordley explains that this articulation of private law institutions became pervasive across legal systems through a process of dissemination that begun with the works of the seventeenth-century northern natural lawyers –Grotius, Pufendorf, and Barbeyrac. Although these authors consciously rejected the philosophy of Aristotle—or, at least, what they took to be Aristotle's philosophy—they nevertheless preserved the structure of private law developed by the late Scholastics according to such principles. The works of the northern natural lawyers deeply influenced eighteenth-century French jurists such as Domat and Pothier, and the

7 This anachronistic tendency in private law theory was recently noted and criticised in Gardner (2018), p. 197.

8 For autonomy-based theories of contract, see, for instance, Fried (2015), Weinrib (1995), Weinrib (2012), Ripstein (2016), Voyiakis (2017), Dagan & Heller (2017). For efficiency-based theories of contract, see Kronman & Posner (1979), Posner (2014), Kaplow & Shavell (2006), Kornhauser (2017).

9 Gordley claims that the organization of contract doctrine provided by the late Scholastics is both (1) the *origin* of modern contract doctrine and (2) the *best explanation* of modern contract doctrine. See Gordley (1991), p. 3 and *passim*. I thank an anonymous reviewer for this observation.

doctrines of these jurists, especially those of Pothier, were to be repeated almost verbatim by the Napoleonic Civil Code. From then onwards they passed onto most legal systems throughout the world, including the Common Law. In effect, when nineteenth-century common law jurists tried to understand the common law according to abstract categories, they did so by extensively borrowing from the continental doctrines of Grotius, Pufendorf, Domat, and Pothier.

Systems of private law modelled on Aristotelian principles now "govern nearly the entire world".[10] However, as Gordley himself acknowledges, those Aristotelian principles that helped to shape modern contract doctrine have now fallen into disrepute. Talk of formal causation, final ends, essence, substance and attributes, as well as the Aristotelian understanding of justice as a virtue guided by practical wisdom have been replaced in contract law theory by a theoretical discourse in which concepts such as 'utility maximization', 'preference satisfaction', 'autonomy' or 'freedom' are dominant. According to Gordley, these modern concepts have very limited explanatory power. Autonomy and efficiency theories of contract law would both share the same basic defect, namely, to assume that contracts are explained exclusively by the fact that the parties have chosen something, regardless of the content of what is chosen. Neither preference satisfaction nor autonomy are able to explain why the law sometimes fails to enforce the will of the parties, nor why it reads into the contract a specific set of terms—the 'natural' or 'implied' terms of the contract—to which the parties have never consciously agreed to. Whatever their merits, therefore, these modern theories of contract are not able to explain some very basic features of currently existing contract law.

To solve this problem, Gordley argues that we need to return to the very Aristotelian categories which were so passionately rejected in previous centuries.[11] According to Gordley, a teleological—and hence Aristotelian—approach to contract law is the best way to overcome the deficiencies of both autonomy and efficiency theories of contract, without abandoning their insights.[12] For Gordley, however, these insights are far more present on the side of efficiency than on

10 Gordley (1991), p. 1.

11 Gordley (1991), p. 232: "We can have a theory of contract, but to do so we need the very concepts that the nineteenth-century jurists threw out. (…) I know that we could not resurrect these concepts without major changes in the way we understand the world. I am also aware that it would take a good deal of hard thought to see how these concepts should be applied. Although we can learn from the late scholastics, we cannot simply copy them. (…) Nevertheless, I do not see how that larger approach would be possible without using these older concepts."

12 Gordley (2006), pp. 11-12.

that of autonomy. Thus, although he rejects some core *Law and Economics* doctrines—such as the possibility of an 'efficient breach' of contract[13]—he agrees that contracts should be efficient in the sense that the risks and burdens of a contractual agreement should be placed on the party who can bear them least costly. For Gordley, this rule of risk allocation is not only efficient, but it corresponds *exactly* with what the Aristotelian virtue of commutative justice demands.[14] In contrast, there seem to be no real insights stemming from nineteenth-century will theories of contracts, Charles Fried's theory of 'contract as promise' or even Peter Benson's Hegelian approach to private autonomy and contract law.[15] To be sure, Gordley does not claim that these writers are always mistaken. He admits that, sometimes, their conclusions are compatible with an Aristotelian approach, but, according to Gordley, this happens because these writers are sometimes inconsistent with their own theories and end up explaining autonomy in terms of justice.[16]

The idea of a just price plays a central role in Gordley's account of contract law. According to Gordley, if one assumes the desirability of the ongoing distribution of purchasing power among society members, or at least that they would not like to change it by means other than a collective decision, then the only exchanges enforceable by law should be those that keep equality in exchange. Equality in exchange is preserved when things are bought and sold according to their just price. To know the just price of a thing, one must ask what price would preserve the ongoing distribution of purchasing power.[17] According to Gordley, this price is the competitive market price—i.e., the price that can be fetched in a competitive market. Under ideal conditions, the just price would correspond to the price of equilibrium, that is, the price at which the supply and demand curves intersect. Under non-ideal conditions, the just price would be the price that most resembles the long-run equilibrium of the market. If contractual burdens and risks are efficiently allocated among parties—i.e., if they are born by the party who can bear them least costly—and these burdens and risks are proportionally reflected in the price of the contract, then the price is just, even if one party ends up losing purchasing power as a result of price fluctuation in the market. Thus, while *in the short run* a price might seem unjust, *in the long run* justice is preserved, because market prices tend towards equilibrium.

13 Gordley (2006), pp. 389-391, 394.

14 As he recently puts it, it would be "economically fair". Gordley & Jiang (2019), p. 1. See also Gordley (1991), pp. 318, 323; Gordley & Jiang (2019), *passim*.

15 See Fried (2015); Benson (2001), p. 118.

16 Gordley (1991), p. 242; Gordley (2006), pp. 27-28, 355.

17 Gordley (2006), p. 404.

I agree with Gordley in that prices can be assessed in normative terms and that offering a theory of justice in pricing is relevant for contract law. However, I find his conception of the just price unconvincing.[18] This for the following reasons. First, competitive market prices do not seem to possess the just-making feature that Gordley attributes to them—*i.e.*, the ability of preserving the ongoing distribution of purchasing power. And second, and `more importantly, ongoing market prices seem to lack the required normative pull in order to provide a normative standard of justice. I elaborate in what follows.

The first problem with Gordley's account, therefore, concerns the claim that the just price has the ability to preserve the ongoing distribution of purchasing power among members of a society. However, *pace* Gordley, keeping equality in exchange does not seem to help too much in preserving the ongoing distribution of purchasing power. The reason: each party's purchasing power *ex ante* is different from their purchasing power *ex post*. Consider, for instance, the contractual transfer of non-durable goods or services. If I pay for watching a football match, or buy an apple, my purchasing power *after* paying for the game or buying the apple has decreased compared to my purchasing power before buying it. By contrast, the value of money is not debased and, therefore, the seller's purchasing power has increased after the transaction.

18 Besides the two main reasons addressed in the main text, there is also a somewhat minor worry concerning the connection between the concept of the just price and the concept of the price of equilibrium. The worry is that linking the concept of the just price with the price of equilibrium puts an unnecessary burden on the theory of the just price, since, for such a theory to obtain the equilibrium model of the market must obtain as well. But the latter condition may not be so easily satisfied. In effect, the equilibrium model of the market has not been immune to criticism. Besides Karl Polanyi's famous critique of a disembedded economy, consequence of the modern project of producing a self-regulating market (Polanyi (2001), pp. 31, 71ff, and *passim*), and of John Maynard Keynes' famous scepticism regarding long-run economic models—"this *long run* is a misleading guide to current affairs. *In the long run* we are all dead" (Keynes (1971), p. 65)—contemporary economists associated with a branch of the Austrian School of economics have also argued against the idea of equilibrium on the basis that it assumes long-term rationality and stability of choice among economic agents, neither of which seems likely to be the case in real markets On this, see generally Hayek (1945), Hayek (1948), Shackle (1972), Lachmann (1973). Moreover, economists of all shapes and sizes—even neoclassical economists!—have argued that the economic model of perfect competition has little value as normative guidance. For critiques from neoclassical economists, see generally Chamberlin (1956), Clark (1940). For critiques from post-keynesian economists, see Robinson (1969). What these criticisms seem to show—coming, as it were, from the 'left', 'centre' and 'right'—is that explaining the just price in terms of a price of equilibrium might entail committing the explanatory fallacy of *obscurum per obscurius*, *i.e.*, explaining a seemingly obscure concept (the just price) for another which is even more obscure (the equilibrium price).

When the transfer involves *durable* goods the situation is not so different. For even when goods are durable, the very fact of buying and selling them decreases the buyer's purchasing power and increases the seller's. If I have bought a book, now I can only sell it as a 'second-hand' one. My purchasing power, therefore, has decreased, whereas the seller's purchasing power has increased (in normal circumstances, money is not debased by exchange: nobody cares about getting 'second-hand' money). The conclusion seems to be that a contract that keeps equality of value in exchange might even help to *upset* the ongoing distribution by decreasing a person's purchasing power and increasing someone else's: freedom of contract is bound to upset the ongoing distribution of wealth.

Note that my argument against Gordley's account is not that the price that keeps equality of value between things exchanged—the just price—is unable to preserve *ideal* distributions. My claim is that keeping equality of value in exchange is unable to preserve *any* sort of ongoing distribution of resources, ideal or not. My argument differs in this sense from Stephen Smith's critique according to which Gordley's account of the just price would entail that a contract could be fair "only in societies—unlike any we know of—which are already distributively just." [19] However, as Gordley has rightly pointed out, his account does not assume an ideal distribution. He acknowledges that a system for distributing resources need not work perfectly and that pragmatic reasons might justify a deviation from the ideal. True, Gordley assumes that there must be good reasons to respect the ongoing pattern of distribution, but the fact that it is an *ideal* system of wealth distribution need not be among those reasons.[20]

The claim I am putting forward has more in common with Robert Nozick's *Wilt Chamberlain argument*, when he noticed "how liberty upset patterns"[21], that is, how the way in which each person uses her freedom of contract—one might say her purchasing power—often upsets the original patterns of wealth distribution.[22]

19 Smith (1996) p. 147; Smith (2004), p. 355.

20 See Gordley (2006), p. 13.

21 Nozick (1974), p. 160.

22 Nozick (1974), p. 161: "Suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. (Also suppose contracts run only for a year, with players being free agents.) He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. (…) The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. (…) Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with $250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to his income? Is this

Gordley's answer to Nozick is that the state has a duty to interfere "to prevent the ideal from being too severely compromised."[23] This is certainly quite right, but I think here Gordley is conceding what he ought not to concede, namely, that paying the just price and keeping equality in exchange cannot effectively preserve the ongoing distribution of resources. If equality in exchange fulfils any role whatsoever in preserving the ongoing distribution of purchasing power, this role seems to be too insignificant to be used as a solid justification for keeping it.[24]

I now turn to my second objection to Gordley's account. I would like to suggest that taking ongoing market prices—prices fixed by supply and demand—as a normative standard for just pricing is problematic. The reason for this is that ongoing market prices consist in an aggregate of prices over an arbitrary timespan that lacks any normative pull. These prices can be—and perhaps usually are—*the final result of an extended series of unjust prices*. To see this, consider the following example:

Housing Prices. I buy a house in Edinburgh under opressive circumstances and pay double the ongoing market price. Those opressive circumstances that forced me to pay that price replicate all over Edinburgh for 6 months. By the end of the period the market price for my house is equivalent to the price I paid for it.[25]

Housing Prices illustrates a familiar experience that also reveals the problematic nature of taking ongoing market prices as standard of justice. If the price I paid for my house was unjust, then it must be the case that all prices that led to the new market price in *Housing Prices* were also unjust. But if the ongoing market price accounts for justice, then the new market price, the sum of a series of unjust prices, must be nonetheless just. But as Walsh and Lynch

new distribution (…) unjust? If so, why? (…) Each of these persons chose to give twenty-five cents of their money to Chamberlain. (…) If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn't D2 also just?"

23 Gordley (2001), p. 288.

24 For a similar critique, see Saprai (2010), p. 80. Saprai believes that the problem with Gordley's account is that equality in exchange *causes* unfair distributions, because he believes—wrongly, in my view—that Gordley claims that "equality in exchange is justified because it promotes fair, or autonomy-promoting, distributions of resources" (p. 80). Therefore, the fact that Gordley concedes that the state has a duty to intervene when people exercise their autonomy would mean that he is conceding that equality in exchange harms the pursuit of autonomy. Gordley, however, does not conceive autonomy in such an absolute way. See, for instance, Gordley (2006), pp. 15-18, 25, 355, 376-379.

25 This is a slightly modified version of an example given by Walsh & Lynch (2008), p. 135.

aptly observe, "how can a series of unjust pricing practices, when summed, give rise to a just price?"[26]

Another problem for taking ongoing market prices as a standard of justice lies in the indeterminate and malleable nature of market prices. Now, one may think that the laws of supply and demand are sufficient to determine what counts as the market price of a given commodity. But this is not the case. Consider, for instance, the appropriate timespan to determine the market price. How far back in time should we go to calculate the market price of a given commodity? One month, 6 months, one year, a decade? The choice of timespan is a decision that will considerably affect what counts as the market price (and therefore as the just price), and yet the laws of supply and demand provide no normative guidance to choose between different periods of time.[27] The same applies to the identification of the *relevant market* for a given commodity. Economic goods can receive many different (and even incompatible) descriptions. A house can be both a consumption good and a financial asset. This makes it the case that goods can belong to more than one market at the same time. Moreover, they can even belong to different markets depending on the level of generality of a given description (a bottle of Laphroaig can belong to the market of 'whiskies', or to the market of 'single malt whiskies', or 'Islay single malt whiskies', or 'Islay single malt whiskies sold in Scotland', etc.). Our preferred description will considerably affect what the relevant market for an item will be, and the specification of the relevant market is a decision that precedes what counts as supply and demand for that item. It is a decision, therefore, for which the laws of supply and demand provide no guidance.

Finally, there are problems associated with the very idea of *demand*.[28] 'Demand' is an umbrella term that implies the conceptual identity between two quite different notions: wants ('preferences') and needs. As David Wiggins notes, professional economists typically conceive of needs simply as a special type of wants: a need would always be a need of something you *want* but are nonetheless unwilling to pay for.[29] However, needs are not a type of wants. The difference seems to be that wants, like preferences or desires, depend exclusively on subjective states, whereas needs also depend on an objective state in the

26 Walsh & Lynch (2008), p. 135

27 Walsh & Lynch (2008), p. 135.

28 For this paragraph, see Wiggins (1987), pp. 5-9, 25-26; Meikle (1995), pp. 119-121.

29 Wiggins (1987), p. 5.

world, namely, whatever it is necessary for someone or something to flourish.[30] But unlike needs, the concept of demand does not have this necessary connection with flourishing. Wiggins explains it thus:

> If I want to have *x* and *x* = *y*, then I do not necessarily want to have *y*. If I want to eat an oyster, and that oyster is the oyster that will consign me to oblivion, it doesn´t follow that I want to eat the oyster that will consign me to oblivion. But with needs it is different. I can only need to have *x* if anything identical with *x* is something that I need. Unlike 'desire' or 'want' then, 'need' is not evidently an intentional verb. What I need depends not on thought or the workings of my mind (or not only on these) but on the way the world is. Again, if one wants something because it is F, one believes or suspects that it is F. But if one needs something because it is F, it must really be F, whether or not one believes that it is.[31]

Unlike wants, then, needs depend on an objective state in the world. That objective state consists in whatever it is necessary for someone or something to flourish. The concept of demand does not have this necessary connection with flourishing.

Moreover, the concept of *market* demand—as the term is used in the expression 'the laws of supply and demand'—is even more problematic and puts even more pressure on the idea of taking ongoing market prices as a standard for just pricing. Market demand means *effective* demand, *i.e.*, demand which registers in the market. It is *demand backed by money*.[32] This means that needs and wants that are not backed by money do not count as market demand for a given good. As Koehn and Wilbratte aptly observe, the market price "exclude[s] marginalized community members whose resources are insufficient to afford them a place on the demand curve, thus preventing them from having a say in what the prevailing price [*i.e.*, the market price] should be."[33]

30 Anscombe (1958a), p. 7: "To say that an organism needs that environment is not to say, e.g., that you want it to have that environment, but that it won't flourish unless it has it."

31 Wiggins (1987), p. 6

32 See Meikle (1995), pp. 120-121.

33 Koehn & Wilbratte (2012), p. 506.

III. THE NORMATIVE SIGNIFICANCE OF ECONOMIC VALUE

Gordley's account of the just price entails a vindication of the kind of inquiry that the Scholastic tradition of the doctrine of the *iustum pretium* represents, namely, a normative inquiry into economic value. However, the shortcomings of his theory hint towards the possibility of a partial restatement and revision of that same tradition. It is to this that I now turn.

One alternative worth mentioning, even if I cannot do justice to it within the limits of this paper, is to develop a content-neutral account of justice in pricing. This is the path taken by authors such as Ernest Weinrib and Peter Benson, who propose corrective or commutative justice as the formal normative structure of private law.[34] According to Weinrib, corrective justice provides a normative structure able to link plaintiff and defendant within one single integrated justification, one which is independent from matters pertaining to economics, morality, politics, etc. or to any "rich and full notion of the good."[35] The same applies to Benson's account of commutative justice as the normative structure that brings coherence into contract law.[36] For both of these views, the normative significance of economic value for contract is that it allows the contracting parties to abstract from their actual needs and wants, serving as a common standpoint from which they can see each other as equals. For Weinrib and Benson, equality in exchange is concerned with keeping equality between the parties and their correlative rights so that they can be seen as equals in legal contemplation.[37] By abstracting from

34 More precisely: Weinrib claims that the normative structure of private law (or, at least, of tort law) reflects the requirements of corrective justice, whereas Peter Benson claims that contract law reflects the requirements of commutative justice.

35 Weinrib (1995), p. 80: "The object of Aristotle's ethics generally is to elucidate the excellences of character that mark proper human functioning. Corrective justice, where "it makes no difference whether a worthy person has deprived an unworthy person or vice versa", obviously stands apart from Aristotle's general concerns. By ignoring considerations of worthiness, corrective justice abstracts from the considerations that pertain to Aristotle's rich and full notion of the good."

36 Benson (2019), p. 3: "Contract law (…) can be reasonably understood as specifying a distinct normative conception that not only is drawn from its principles and doctrines but also constitutes their organizing idea, underpinning and explaining the whole of contract law as well as its various parts."

37 Weinrib (2012), p. 130: "The notion of value fits into corrective justice in the following way. Corrective justice deals with interacting parties correlatively as doer and sufferer of an injustice. Inasmuch as it governs interaction, corrective justice applies to parties who impinge upon each other by acting on particular things in the world pursuant to their specific needs and wants. But inasmuch as it embraces the two parties as correlatively situated, corrective justice abstracts to a common standpoint from the particularity of these things and from the

the actual needs and wants of the parties as well as from any other consideration of fact, the conception of economic value that stems from Weinrib's account of corrective justice and Benson's account of commutative justice has the advantage of detaching the just price from concerns over distributive justice and market equilibrium, as well as from the critiques associated to the lack of normative pull of ongoing market prices. It is a purely transactional, non-distributive, autonomy-based account of justice in pricing.

Here I would like to propose another—perhaps complementary—alternative for thinking about justice in pricing, one that highlights the institutional nature of prices and sees the just price as the price that can be fetched under just institutional arrangements. In what follows, I would like to suggest that focusing on the institutional nature of prices allows us to take a broader approach to price justification, one in which there is more to price justification than keeping the requirements of one single justificatory framework, be it commutative justice, autonomy, efficiency, or distributive justice. On this view, an adequate restatement of just price theory would involve rejecting the value monism implicit in the standard approaches to questions of justice in pricing and endorse instead

specificity of these needs and wants. Value is the economic notion that fulfils this abstracting function." Benson (2019), pp. 177-178: "Exchange value always presupposes two qualitatively different usable things, but abstracts from these qualitative aspects and treats the objects as commensurable in purely quantitative terms: so much of *x* equals so much of *y*. (…) [A] judgment in terms of price has to do with exchange value and a relational judgment as between the two sides. (…) The price judgment, being relational and coming under the idea of the reasonable [as opposed to the idea of the rational involved in use value], is something that a properly constituted third party, such as a court, can appropriately assess", p. 181: "As participants in the promise-for-consideration relation, parties objectively view each other as promisors and promises—as movers and receivers—of something that has value in legal contemplation. Because each of the parties contributes from his or her side exactly in the same way as the other, the interacting parties may be viewed in this respect in identical terms and as equals. Moreover, in this relation and vis-à-vis each other, they count as mutually separate and independent persons, each with something usable that is initially under his or her exclusive rightful control and that the party uses by giving it up in order to obtain the consideration provided in return. This use of one's thing as a means to obtaining another's is the thing's purchasing power. Now, purchasing power, when generalized in relation to many other things, becomes a quantifiable potentiality that transcends any one transaction and yet at the same time can only be realized in and through particular transactions. And, supposing the existence of the market relations, this generalized purchasing power is potentially measured as the thing's price", p. 387: "Value is the dimension of abstract equality of the objects of a transfer paralleling the abstract equality of the parties who do the transfer", p. 388: "Equivalence or the equality between thing and thing is thus the transactional sign of the equality of persons as owners", p. 389: "Because this principle stipulates equality between thing and thing in transactions, it explicitly and fully expresses the idea of corrective or commutative justice: a requirement of arithmetic equality in and for transactions."

value pluralism in price justification. This approach might also help solving the problem identified above regarding the lack of normative pull of market prices: the normative pull of market prices would be given by the normative commitments embedded within the rules regulating exchange. In what follows, I argue for the possibility of developing an institutional and pluralist approach to price justification.

3.1. Prices as Institutional Facts

The starting point of the proposed approach is that prices, like wages and rates of interests, are *economic* facts. On the surface, this might seem like a complex starting point, for pointing out to the economic nature of prices might seem to rule out the very idea of a just price. As British philosopher R. G. Collingwood famously argued, if prices are facts fixed by economic considerations (such as supply and demand of a given product), then the very idea of a *just* price may seem like a "contradiction in terms."[38] However, this is not necessarily the case. Indeed, there are two ways to specify the claim that economic facts are fixed by economic reasons or considerations, namely:

(1) Economic facts are *necessarily* fixed by economic reasons.

(2) Economic facts are *exclusively* fixed by economic reasons.[39]

38 Collingwood (1926), p. 174: "It is, therefore, impossible for prices to be fixed by any reference to the idea of justice or any other moral conception. A just price, a just wage, a just rate of interest, is a contradiction in terms. The question what a person ought to get in return for his goods and labor is a question absolutely devoid of meaning. The only valid questions are what he can get in return for his goods or labor, and whether he ought to sell them at all." Quoted with approval by Hayek (1990), p. 442.

39 Collingwood's original argument against the very idea of a just price is ambiguous regarding these two claims See, for instance, Collingwood (1926), p. 176: "a wage fixed by any but economic considerations ceases to be a wage" (endorsing claim 1), and p. 174: "It is, therefore, impossible for prices to be fixed by any reference to the idea of justice or any other moral conception." (endorsing claim 2). This ambiguity is what allows him to claim that a *just* price is a contradiction in terms (because prices are fixed *exclusively* by economic reasons), but, at the same time, concede that a demand for prices fixed "by supply and demand in a market where law insured fair bargaining" (Collingwood (1926), p. 176) is nonetheless a rational demand (because prices are *necessarily* fixed by economic reasons, but not *exclusively*: prices partially fixed by normative reasons are still prices so long as they are also fixed by economic reasons). The only thing that Collingwood categorically denies—because it is entailed by both (1) and (2)—is the idea of a price fixed exclusively by non-economic reasons.

Both claims are arguably false, but only (2) is incompatible with the introduction of normative standards allowing legal officials to distinguish between just and unjust prices. Indeed, the law cannot ensure *fair* bargaining without introducing moral considerations into the determination of economic facts. Laws protecting fair bargaining regulate the market according to justice-based reasons, making it the case that the prices in those market are fixed, at least in part, by legal and moral considerations.

If prices are sensitive to justice-based considerations introduced by the rules and institutions that regulate market transactions, and, therefore, economic facts are not entirely devoid of normative elements—in other words: if prices are *necessarily* but *not exclusively* fixed by economic reasons—then it is possible to develop a conception of the just price grounded upon the justice of those rules and institutions. The just price would be, under this conception, the price that stems from just institutional arrangements regarding exchange.

To be sure, this path is not open to us if we have good reasons for endorsing claim (2), *i.e.*, if prices are fixed *exclusively* by economic considerations. If (2) is correct, then prices can be neither just nor unjust. Many economists used to believe this conclusion to be logically entailed by the value-free nature of economic discourse.[40] According to this view, the entanglement of the descriptive and the normative that would be at the core of the idea of a just price would distort our understanding of prices. Prices would be simply *facts* about the world, facts fixed by economic considerations such as supply and demand, costs of production, etc. On this view, there is simply no theoretical space for just price theory: prices are simply not the kind of thing justice can be predicated upon. Just like earthquakes, atoms and molecules, prices would be neither just nor unjust, because *facts*—including economic facts—are neither just nor unjust.

The picture of economics as a value-neutral discipline, however, is not accurate.[41] The current consensus among philosophers of social science is that a purely

40 This is especially salient among scholars associated with the Austrian School of Economics. See, for instance, Mises (1966), p. 203: "[Economics] is a theoretical science and as such abstains from any judgement of value." Hayek (1993), p. 231 (claiming that the concept of justice is inapplicable to the spontaneous order of the market); Hayek (1993), pp. 237-238. Robbins (1949), p. vii: "[judgements of value] are beyond the scope of positive science"; Robbins (1949), p. 148: "Economics deals with ascertainable facts; ethics with valuations and obligations. The two fields of enquiry are not on the same plane of discourse. Between the generalisations of positive and normative studies there is a logical gulf fixed which no ingenuity can disguise and no juxtaposition in space or time bridge over."

41 On the connections between the descriptive and the normative in economics, see Hausman (1992), (2018); Hausman *et al.* (2016).

descriptive economic theory of human action without value assumptions is impossible. Amartya Sen has dedicated a life's work to this idea, and Hilary Putman's *The Collapse of the Fact/Value Dichotomy* has given further analytical support to the idea that when it comes to propositional discourse in economics, facts and values cannot be sharply separated.[42] As Russel Hardin has stated, there is no such thing as a "rational choice without substantive values."[43] Not even in economics.[44]

Be that as it may, the main point is that claim (2) does not follow from pointing out that prices are economic facts. For even if prices are economic facts—facts fixed by economic considerations—economic facts are facts *of the wrong kind* for the purposes of claim (2). For (2) to obtain, economic facts should be similar to brute or natural facts, since these are the kind of facts that cannot be fixed by moral considerations. However, it seems odd to think of economic facts—and hence of prices—in this way. In what follows I elaborate on this claim by suggesting that prices—quantities representing the exchange value of a good—are best conceived as a kind of social fact, namely: *institutional* facts.

The price of a good is not simply something that just so happens to be the case regardless of the will of any individual. In this sense, prices are different from purely natural facts such as atoms or molecules: the fact that atoms and molecules exist does not depend on our having any beliefs or other propositional attitudes towards them. *Social* kinds, on the contrary, are partially constituted by the beliefs

42 Putnam (2012).

43 Hardin (2001), p. 57.

44 These authors have further developed an insight first articulated by ordinary language philosophers such as J. L. Austin in the 1950s and 1960s, and then taken one step further by Quine. Ordinary language philosophers had pointed out to hybrid cases in which the terms we use in ordinary language are not straightforwardly factual nor evaluative (*e.g.* 'dainty', 'dumpy', or 'cruel'). Quine's defence of belief holism—the idea that our beliefs constitute a web where every belief is tied to all others—allowed him to break the sharp analytic/synthetic distinction—and the fact/value distinction with it. The upshot of Quine's approach is that there is simply no way to distinguish accurately between evaluative and descriptive claims. This idea deepens the significance of Austin's findings, for terms like 'dainty', 'dumpy' or 'cruel' would not be simply exceptional cases of terms with hybrid meaning. Since terms are holistically linked to both evaluative and factual components, then it should not be so difficult to find more cases in which the descriptive and the normative are constitutively entangled. Analyses of categories of race and gender in the social and biomedical science are important examples of this kind of entanglement. The response to the critics of just price theory would be, therefore, that economic analysis of prices should also be added to the list of hybrid categories such as race and gender.

and propositional attitudes of those who engage with them. Let me illustrate this point with the following examples borrowed from MacIntyre[45]:

Brain Lesion and Particle Theory. Suppose that there is a widespread disease that causes localised brain lesions resulting in the loss of all our beliefs and concepts about atoms and molecules, thus leaving no trace of such concepts and beliefs in our language or practices.

In this case, there is no doubt that atoms and molecules would still exist after the loss of our concepts and beliefs. As MacIntyre notes, "nothing that is now true in particle theory would then be false."[46] But now consider the following situation:

Brain Lesion and Prices. Suppose that there is a widespread disease that causes localised brain lesions resulting in the loss of all our beliefs and concepts about money and prices, thus leaving no trace of such concepts and beliefs in our language or practices.

In this case, the outcome is clear: there would be no such thing as prices and money after the loss of our beliefs towards them. The reason is that prices are not brute or natural facts. They do not belong to the same category as atoms and molecules. The reason for this is also clear: the existence of money and prices depends upon our beliefs and attitudes towards them.[47]

But there is something else. At least in complex and civilised societies such as ours, prices are not simply fixed by isolated individuals nor even by groups of individuals according to their own purposes and whims.[48] Prices are the product of

45 MacIntyre (1998), p. 57.

46 MacIntyre (1998), p. 57.

47 This holds true for the kind, but not necessarily for each individual token. See Searle (1995), p. 32: "[A] single dollar bill might fall from the printing presses into the cracks of the floor and never be used or thought of as money at all, but it would still be money. In such a case a particular token instance would be money, even though no one ever thought it was money or thought about it or used it at all. Similarly, there might be a counterfeit dollar bill in circulation even if no one knew that it was counterfeit, not even the counterfeiter. In such a case everyone who used that particular token would think it was money even though it was not in fact money. About particular tokens it is possible for people to be systematically mistaken." See also Khalidi (2015), p. 98.

48 Hayek believed that this fact alone makes it the case that justice is not applicable to market prices, because there is nobody that can be made responsible for them. See Hayek (1993), pp. 231ff. This is a non-sequitur. On the compatibility between Hayek's insights about market prices and substantive conceptions of justice, see generally Burczak (2006). See also Atria (2010).

institutions. The complex web of legal rules and institutions that regulate prices is what we call the *price system*. Without the price system, there would be no such thing as quantities representing exchange value. Indeed, the existence of prices in a society requires a common medium of exchange (money), private ownership, contracts, and other facts generated by legal contexts. Prices, therefore, like money,[49] taxes, and private ownership,[50] are creatures of the law. In fact, prices are one of the most—if not *the* most[51]—paradigmatic case of *institutional* facts, *i.e.*, facts generated by institutional contexts.

In Searle's terminology, prices are facts regulated by *constitutive* rules, rather than merely *regulative* rules. Regulative rules regulate pre-existing forms of behaviour, whereas constitutive rules do not merely regulate, "they create or define new forms of behavior"[52]. They have the form "X counts as Y in context C."[53] Searle explains it thus:

> Where the rule is purely regulative, behavior which is in accordance with the rule could be given the same description or specification (the same answer to the question "What did he do?") whether or not the rule existed, provided the description or specification makes no explicit reference to the rule. But where the rule (or system of rules) is constitutive, behavior which is in accordance with the rule can receive specifications or descriptions which it could not receive if the rule or rules did not exist.[54]

The rules of exchange are constitutive rules. They do not simply acknowledge and regulate pre-existing prices. Quite the opposite: they give *institutional meaning* to pre-institutional facts about exchange. Thus, it is only when we take into account the background social and legal context provided by rules regulating exchange that the brute fact of 'A giving two metal coins to B' transforms into (*i.e.*, can be understood as) 'A *buying* a quarter of potatoes from B' or, to use a slightly different terminology, 'A *paying the price* of a quarter of potatoes to B.'[55]

49 Desan (2016), Rahmatian (2018).

50 Murphy & Nagel (2002).

51 When Elizabeth Anscombe introduced the distinction between brute facts and institutional facts, she used the price of potatoes in a contract sale to illustrate the point. Anscombe (1958b), p. 69.

52 Searle (1969), p. 33.

53 Searle (1969), p. 35.

54 Searle (1969), p. 35.

55 On institutional facts, see especially Anscombe (1958b). See also Searle (1969), MacCormick & Weinberger (1986), pp. 49-76; MacCormick (2007), pp. 11-74.

If constitutive rules define what counts as the price of *x*, then the identification of certain facts and not others as the price of *x* depends upon the institutionally embedded normative commitments that shape the market system. Institutions are themselves shaped by the normative commitments of a given political community. Thus, a market system exclusively biased towards higher outputs will tend to identify the fact that people want *x*, whatever *x* is, as a reason to put a price on *x*, and the fact that people are willing to pay as much as £100 for *x* as a reason to count £100 as the price of *x*. By contrast, a market not exclusively concerned with higher outputs will count facts other than buyer's willingness or ability to pay as relevant to identify the price of a good. For instance, a normative commitment to satisfying basic needs would make it the case that the price of prescription drugs will not be so affected by how much people are willing to pay for them. Therefore, the identification of the price of drug *x* as £10 will be insensitive to the fact that some people are willing to pay £100 for *x*.

The demand for a just price is thus equivalent to a demand for *just institutional arrangements regarding prices*.[56] The adequate functioning of the price system is of great importance to society. If prices are too high or too low for certain goods, the whole society is affected. Price calculation, therefore, is not something that can be left entirely to one individual. One cannot do as one pleases with prices, because prices also 'belong' to the community, as it were, and the community will make certain decisions about what is the right price to pay for a certain item. To some extent, I buy and sell as a representative of the community, and not as an isolated individual. This is why one of the functions of the laws of contract is to regulate market transactions according to reasonable standards and not according to the whims of private individuals. Thus, under what conditions, if any, *accesio*, *traditio*, or *usucapio* count as a valid form of acquisition of property rights, whether certain kind of goods are susceptible of private ownership at all, what a property right actually entails, what are the basic requirements for a contract to be legally enforceable, etc. all define in a very specific manner the underlying conditions under which goods *ought* to be exchanged.[57]

The institutional nature of prices also has implications for claim (1)—namely, that economic facts are *necessarily* fixed by economic reasons. The implication is that this claim seems to hold true only if we stipulate an *ad-hoc* definition of

56 In a similar vein, Lang (2017), p. 326: "To the extent that the market values of assets are a function of the legal order constituting the market (…) the question whether the market value is the 'right' one (…) becomes indistinguishable from the question of whether the legal order on which the market rests is normatively justifiable."

57 Cf. Michelon (2014), Michelon (2018).

wages and prices, one that does not track the way in which we use these concepts in ordinary language. Let me illustrate this point with an example:

Fixed Prices. P lives in a country where prices are fixed by Wise Communist, one of the elders of the country who is thought to have a divine gift that gives him epistemic access to the value of everything. Wise Communist fixed the price of a quarter of potatoes at £2. P goes to a shop to buy a quarter of potatoes. The grocer tells P that the price for a quarter of potatoes is £2. P pays £2 for the quarter of potatoes.

Someone who endorses claim (1)—like Collingwood did—must claim that Wise Communist did not fix the price of a quarter of potatoes, that the grocer did not tell P the price for a quarter of potatoes, and that P did not pay a price for those potatoes. This seems counterintuitive. There is nothing that contradicts our common usage of the word 'price' in saying that P paid a *price* for those potatoes. To be sure, one could simply bite the bullet and go against our linguistic conventions about the way we use the word 'price'. However, I find this too big a bullet to bite. I see no other motivation to deny that P paid the price of those potatoes other than clinging on to a definitional point about prices being necessarily fixed by supply and demand. It seems to me that this position would be like the position of someone who believes that all swans are white and that, after being shown a black swan, denies that black swans are proper swans.

Note that this objection collapses if one affirms not that a price fixed exclusively by non-economic considerations ceases to be a price, but that it is the *wrong* price to pay, or that the price that P paid was *unjust*. If we endorse the claim that the just price is the price fetched under just background conditions of exchange, then the problem with the *Fixed Price* example is that those prices would be unjust because they are generated by unjust institutional arrangements—arrangements that do not seem to ensure fair bargaining. To claim that fixed prices are unjust is compatible with the claim that there is no necessary connection between economic facts and economic reasons. An institutional approach to prices allows us to separate claims about economic facts from claims about the reasons justifying those facts.

IV. CONCLUDING REMARKS

Here I present four implications of the proposed approach to price justification for both the traditional account of the doctrine of the just price and for our general understanding of contractual justice:

First. Since institutions can be shaped by different normative commitments, an institutional approach allows us to adopt a more pluralistic approach to price justification, one that entails a partial reform to the Scholastic approach to the *iustum pretium* and a revision of just price theory's commitment to commutative justice as the sole source of price justification. The upshot of this recognition is that, in order to move just price theory forward, the original Scholastic doctrine of the just price needs to be partially modified and complemented by a more pluralistic approach to price justification, one that can accommodate the fact that some prices can be normatively justified by criteria other than commutative justice. Indeed, a conception of the just price that focuses on the institutional nature of prices entails a recognition that it is at least conceptually *possible* to talk of just prices *without* invoking equality of value in exchange or commutative justice as a moral standard: if there is no such thing as pre-institutional prices, it follows that there is no such thing as *pre-institutionally just* prices either. As the Scholastic theologian Domingo Bañez (1654) would put it, "there is no just price by natural law, only by positive law."[58]

Second. An institutional approach to justice in pricing might also help solving the problem (identified above) regarding the lack of normative pull of market prices. On this view, the normative force of market prices would stem from their ability to manifest the multiple normative commitments embedded within the rules regulating market exchange and the price system, which may or may not coincide with those of commutative justice.

Third. If we want to make price justification in contract law coherent with a concern for value pluralism, then economic inefficiencies, the reproduction of inegalitarian patterns of wealth distribution, the systematic oppression of certain groups within society and the subsequent autonomy-deficits in those oppressed, among other normative concerns, must also be taken into account in order to determine the justice of contract law rules regulating market exchange and prices. This may involve an expansion of the traditional normative role assigned to contract law and contractual justice viz-a-viz markets and distributive justice, in which the role of contractual justice is simply to respect the autonomy of the parties and their corresponding moral powers.[59] Thus, besides commutative justice and the value of autonomy, a concern for efficiency, the promotion of distributive justice, egalitarianism, as well as other normative commitments can and perhaps should also be assumed as part of

58 Bañez (1654), II-II 77 1 272: "*Nullum est pretium iustum lege naturali, sed solum lege positiva*".

59 For what I call the 'traditional view', see Benson (2019), pp. 395-476. Admittedly, 'traditional' is perhaps not the best word to describe Benson's approach to the relationship between contract law, markets and distributive justice. I am not interested in defending the label.

the tasks of contract law.[60] This claim does not mean, of course, that there cannot be other normative forces at play, even within the same legal system, that might run in the opposite direction to the development of value pluralism in price justification.

Fourth. The emphasis on promoting value pluralism in price justification may entail an understanding of contract law and private transactions different from both the model of mutually disinterested parties bargaining to obtain preference satisfaction (*Law and Economics*) and from the model of individuals protected from each other by a sphere or moral rights and duties, in which the role of private law is to reflect promissory morality ('Contract as Promise').[61] An alternative approach might help in making sense of the emergence of several systems of legal rules governing private transactions that challenge the logic of free market and freedom of contract—*v.gr*. labour law, consumer law, antitrust law, etc. These fields are often seen as intrusions of the public sphere into the private. While this narrative of increasingly persistent public encroachments in the private sphere is not necessarily false, the growing pervasiveness of such encroachments might be an indication of the need for adopting an alternative narrative that better captures this feature of contemporary private law.[62] A theory of contract law sensitive to normative concerns beyond commutative justice might help in providing such a narrative.

Given that contract law typically operates under the assumption of formal or juridical equality, a pluralist approach to price justification, one in which commutative justice leaves its place of honour as the normative structure underpinning contracts, is bound to be met with resistance. However, if (and as) price justification becomes increasingly recognised as part of the normative structure underlying our contractual practices—as part of the normative landscape of contract law—this may help in directing the attention of private law to the pervasiveness of inequality in contractual transactions.

60 For a similar claim regarding tort law, see Keren-Paz (2007).

61 The reflection metaphor is taken from Shiffrin (2012), pp. 250-256.

62 On the need for a new narrative for private law, see Michelon (2013), pp. 96-100 and *passim*. See also Michelon (2012), which is fully reproduced in the present volume.

BIBLIOGRAPHY CITED

Anscombe, G.E.M. (1958a). "Modern Moral Philosophy", *Philosophy*, Vol. 33, No. 124, pp. 1-19.

Anscombe, G.E.M. (1958b). "On Brute Facts", *Analysis*, Vol. 18, No. 3, pp. 69-72.

Atria, Fernando (2010). "Socialismo Hayekiano", *Estudios Públicos*, No. 120, pp. 49-105.

Bañes, Domingo (1654). *Decisiones de Iustitia et Iure, tomus quartus.*

Benson, Peter (2001). "The Unity of Contract Law", in Benson, Peter (ed.), *The Theory of Contract Law: New Essays* (Cambridge University Press).

Benson, Peter (2019). *Justice in Transactions: A Theory of Contract Law* (The Belknap Press of Harvard University Press).

Burczack, Theodore (2006). *Socialism After Hayek* (The University of Michigan Press).

Chamberlin, E.H. (1956). *The Theory of Monopolistic Competition: A Re-Orientation of the Theory of Value* (Harvard University Press, 7th ed.).

Clark, J.M. (1940). "Toward a Concept of Workable Competition", The *American Economic Review*, Vol. 30, No. 2, Part 1, pp. 241-256.

Collingwood, R.G. (1926). "Economics as a Philosophical Science", *International Journal of Ethics*, Vol. 36, No. 2, pp. 162-185.

Dagan, Hanoch and Heller, Michael (2017). *The Choice Theory of Contracts* (Cambridge University Press).

Desan, Christine (2016). "Money as a Legal Institution" in Fox, David and Ernst, Wolfgang (eds.), *Money in the Western Legal Tradition: Middle Ages to Bretton Woods* (Oxford University Press), pp. 18-35.

Deutch, Sinai (1977). *Unfair Contracts: The Doctrine of Unconscionability* (Lexington Books).

Fried, Charles (2015). *Contract as Promise: A Theory of Contractual Obligation* (Oxford University Press, 2nd ed.).

Gardner, John (2018). *From Personal Life to Private Law* (Oxford University Press).

Gordley, James (1981). "Equality in Exchange", *California Law Review*, Vol. 69, No. 6, pp. 1587-1656.

Gordley, James (1991). *The Philosophical Origins of Modern Contract Doctrine* (Clarendon Press).

Gordley, James (2001). "Contract Law in the Aristotelian Tradition" in Benson, Peter (ed.), *The Theory of Contract Law: New Essays* (Cambridge University Press), pp. 265-334.

Gordley, James (2006). *Foundations of Private Law: Property, Tort, Contract, Unjust Enrichment* (Oxford University Press).

Gordley, James (2015). "The Just Price: The Aristotelian Tradition and John Rawls", *European Review of Contract Law*, Vol. 11, Issue 3, pp. 197-219.

Gordley, James and Jiang, Hiao (2019): "Fairness and the Law of Contract", SSRN Scholarly Paper ID 3324001, in: <https://papers.ssrn.com/abstract=3324001> (accessed 19 June 2019).

Hardin, Russell (2001). "The Normative Core of Rational Choice" in Mäki, Uskali (ed.), *The Economic World View: Studies in the Ontology of Economics* (Cambridge University Press), pp. 57-74.

Hayek, Friedrich A. (1945). "The Use of Knowledge in Society", *The American Economic Review*, Vol. 35, No. 4, pp. 519-530.

Hayek, Friedrich A. (1948). "The Meaning of Competition", in Hayek, Friedrich A., *Individualism and Economic Order* (University of Chicago Press), pp. 92-106.

Hayek, Friedrich A. (1990). *The Constitution of Liberty* (Routledge).

Hayek, Friedrich A. (1993). *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (Routledge).

Kahneman, Daniel; Knetsch, J.L. and Thaler, R. (1986). "Fairness as a Constraint on Profit Seeking: Entitlements in the Market", *The American Economic Review*, Vol. 76, No. 4, pp. 728-741.

Kaplow, Louis and Shavell, Steven (2006). *Fairness versus Welfare* (Harvard University Press).

Keren-Paz, Tsachi (2007). *Torts, Egalitarianism and Distributive Justice* (Ashgate).

Keynes, J.M. (1971). *The Collected Writings of John Maynard Keynes: Volume 4. A Tract On Monetary Reform.* (Second edition, Cambridge University Press (published for the Macmillan for the Royal Economic Society).

Khalidi, Muhammad Ali (2015). "Three Kinds of Social Kinds", *Philosophy and Phenomenological Research*, Vol. 90, Issue 1, pp. 96-112.

Koehn, Daryl and Wilbratte, Barry (2012). "A Defense of a Thomistic Concept of the Just Price", *Business Ethics Quarterly*, Vol. 22, Issue 3, pp. 501-526.

Kornhauser, Lewis (2017): "The Economic Analysis of Law", *The Stanford Encyclopedia of Philosophy,* Fall 2017, in <https://plato.stanford.edu/archives/fall2017/entries/legal-econanalysis/> (accessed 19 June 2019).

Kronman, Anthony and Posner, Richard (1979). *The Economics of Contract Law* (Little, Brown and Company).

Lachmann, L.M. (1973). *Macro-Economic Thinking and the Market Economy: An Essay on the Neglect of the Micro-Foundations and Its Consequences* (Institute of Economic Affairs).

Lang, Andrew (2017). "Market Anti-Naturalisms" in Desautels-Stein, Justin and Tomlins, Christopher (eds.), *Searching for Contemporary Legal Thought* (Cambridge University Press), pp. 213-329.

MacCormick, Neil (2007). *Institutions of Law: An Essay in Legal Theory* (Oxford University Press).

MacCormick, Neil and Weinberger, Ota (1986). *An Institutional Theory of Law: New Approaches to Legal Positivism* (Reidel).

MacIntyre, Alasdair (1998). "Social Science Methodology as the Ideology of Bureaucratic Authority" in Knight, Kelvin (ed.), *The MacIntyre Reader* (Polity Press), pp. 53-72.

Meikle, Scott (1995). *Aristotle's Economic Thought* (Oxford University Press).

Michelon, Claudio (2012). "The Public Nature of Private Law?" in Michelon, Claudio; Clunie, Gregor; McCorkindale, Christopher and Psarras,

Harris (eds.), *The Public in Law: Representations of the Political in Legal Discourse* (Ashgate).

Michelon, Claudio (2013). "The Public, the Private, and the Law" in Mac Amhlaigh, Cormac; Michelon, Claudio and Walker, Neil (eds.), *After Public Law* (Oxford University Press), pp. 83-102.

Michelon, Claudio (2014). "Virtuous Circularity: Positive Law and Particular Justice", *Ratio Juris*, Vol. 27, Issue 2, pp. 271-287.

Michelon Claudio (2018). "What Has Private Law Ever Done for Justice?", Edinburgh Law Review, Vol. 22, Issue 3, pp. 329-346.

Mises, Ludwig (1966). *Human Action: A Treatise on Economics* (Liberty Fund, 3rd ed.).

Murphy, Liam and Nagel, Thomas (2002). *The Myth of Ownership: Taxes and Justice* (Oxford University Press).

Nozick, Robert (1974). *Anarchy, State, and Utopia* (Basic Books).

Polanyi, Karl (2001). *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 2nd ed.).

Posner, Richard (2014). *Economic Analysis of Law* (Wolters Kluwer Law & Business, 9th ed.).

Rahmatian, Andreas (2018). "Money as a Legally Enforceable Debt", *European Business Law Review*, Vol. 29, Issue 2, pp. 205-236.

Ripstein, Arthur (2016). *Private Wrongs* (Harvard University Press).

Robbins, Lionel (1949). *An Essay on the Nature and Significance of Economic Science* (Macmillan & Co Ltd, 2nd ed.).

Robinson, Joan (1969). *The Economics of Imperfect Competition* (Macmillan, 2nd ed.).

Saprai, Prince (2010). "Against Equality of Exchange", *King's Law Journal*, Vol. 21, Issue 1, pp. 71-95.

Searle, John R. (1969). *Speech Acts: An Essay in the Philosophy of Language* (Cambridge University Press).

Searle, John R. (1995). *The Construction of Social Reality* (Allen Lane Penguin Press).

Shackle, George L.S. (1972). *Epistemics & Economics: A Critique of Economic Doctrines* (Cambridge University Press).

Shiffrin, Seana Valentine (2012). "Are Contracts Promises?" in Marmor, Andrei (ed.), *The Routledge Companion to Philosophy of Law* (Taylor and Francis), pp. 241-258.

Smith, Stephen (1996). "In Defence of Substantive Fairness", *Law Quarterly Review*, Vol. 112, pp. 138-158.

Smith, Stephen (2004). *Contract Theory* (Oxford University Press).

Study Group on a European Civil Code (Study Group) and Research Group on EC Private Law (Acquis Group) (2009). *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)* (Sellier. European Law Publishers, Outline ed.).

Voyiakis, Emilios (2017). *Private Law and the Value of Choice* (Hart Publishing).

Walsh, Adrian and Lynch, Thomas (2008). *The Morality of Money: An Exploration in Analytic Philosophy* (Palgrave Macmillan).

Weinrib, Ernest (1995). *The Idea of Private Law* (Oxford University Press, rev. ed.).

Weinrib, Ernest (2012). *Corrective Justice* (Oxford University Press).

Wiggins, David (1987). *Needs, Values, Truth: Essays in the Philosophy of Value* (Oxford University Press, 3rd ed.).

LEGISLATION CITED

United States of America:

Restatement (Second) of Contracts (1981).