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EQUALITY IN EXCHANGE: A REHABILITATION OF THE CLASSICAL CONCEPT

LUKÁŠ AUGUSTIN MÁŠLO

Abstract:

The author makes an effort to rehabilitate the classical concept of the equality in exchange which lies in the foundations of the theory of just price and the scholastic criticism of usury. The author supplies a proof that the non-equivalent contract of “exchange” is 1) a contradiction in terms because it represents a combination of a basic contract and a super-contract which contradict each other; and 2) an act of commutative injustice because the contractor negates implicitly within the super-contract what he declares explicitly in the basic contract. The following objections are being settled dialectically: objection of an isolated exchange, objection of voluntariness, objection of Pareto efficiency, objection of rating, objection of greater evil. The author presents a proof that the just price in an isolated exchange is equal to the reservation price of the seller. The author contends that requiring a transfer from anyone becomes commutative injustice if this requirement is accompanied by 1) external direct pressure or 2) external indirect pressure or 3) deception. The external indirect pressure is defined by the author as a situation when a subject makes a transfer a condition for his consent to a basic contract within the super-contract. The contractor consents to the non-equality in “exchange” only if he wants to give a gift anyway. Since the injustice originates in the agent and benevolence of the sufferer does not cancel the injustice, the non-equivalent contract of “exchange” is an act of commutative injustice even if the sufferer wants to give a gift out of his benevolence. The author claims that the state can adopt four different positions in the question of non-equivalent contracts of “exchange”: 1) to prosecute the perpetrator, 2) to declare the unenforceability, 3) to tolerate the private enforcement, 4) to enforce. Since the enforcement and toleration go against the purpose of the state, the author puts forward the following legal solution: the state declares the non-equivalent contracts of “exchange” unenforceable, nevertheless, it does not automatically prosecute the subjects which commit injustice for making such contracts but, on the other hand, it protects the subjects which suffer injustice if they ask for it.

Keywords:

equality in exchange, commutative justice, voluntariness, Pareto-efficiency, usury, just price

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Authors:

LUKÁŠ AUGUSTIN MÁŠLO, Vysoká škola ekonomická v Praze, Czech Republic, Email: lukas.maslo@vse.cz

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Introduction

There are two categories of contracts. Onerous contracts and gratuitous contracts (Gordley, 2011, p. 78). The first one is usually being referred to by a general term “exchange,” the other one by a general term “gift” (or “transfer”)¹ (Gordley, 2011, p. 1, p. 49). I can either exchange my property rights with someone or I can alienate them onto someone, free of charge. As much as I want to do an exchange with someone, I do not want to give him a gift. As much as I want to give him a gift, it is not an exchange. (comp. Gordley, 2001, p. 267). If I do not want to give a gift in the process of an exchange, then I need to acquire something which represents the same purchasing power in exchange for the alienated item. This is called equality in exchange. It is being applied especially to two questions: a loan and a just price. I am going to argue in this paper that the violation of the equality in exchange, i. e. an unequal exchange contract (usury², unjust price) is a self-contradictory act which, as a result, is invalid from the very beginning and, as a result, unenforceable. I will continue to argue that such a contract is an act of commutative injustice. I will pay a special attention to the relation of justice and voluntariness. After that, I am going to settle objections of hypothetical opponents.

Equality in an Isolated Exchange

Before we proceed to the problem itself, one fundamental objection against the concept of the equality in exchange needs to be settled which focuses on the alleged impossibility of this concept to be generalized for all kinds of monetary exchange. The objection says: is the argument of the equality in exchange also applicable to the act of an isolated exchange, the object of which is an item which does not have a market price? In other words, does a just price exist in case of an exchange between Robinson and Friday? Let's get back to the foundations of the theory of the just price. To pay a just price is an act of commutative justice which consists in the preservation of the just distribution of shares of purchasing power (Gordley, 2006, pp 363-363). Where this distribution alone is an act of distributive justice.³ So, as long as the current distribution of shares of purchasing

¹ The difference between “gift” and “transfer” is that “gift” is a transfer which is being rendered voluntarily, while “transfer” is a value which is being rendered without an adequate counter-value, either voluntarily or involuntarily.

² Usury, in the classical meaning of the term, refers to chargeable money lending, i. e. a situation when a creditor makes a loan of e. g. 100 and requires a repayment of the principal (100) plus a usurious interest (e. g. 10). Usurious interest needs to be distinguished from a compensatory payment based on one of the extrinsic titles, i. e. circumstances which can but do not necessarily have to accompany the contract of loan. In other words, if the creditor wants more than the principal alone and there are no adequate reasons for this, he commits the usury. For a detailed introduction into the problem of usury from the classical perspective (i. e. Aristotelian-Thomistic perspective) in the Czech language see e. g. Máslo (2018, 2019a, 2019b); in the English language see e. g. McCall (2008); for a short introduction in the English language see e. g. McCall (2010a, 2010b); for the teaching of the Catholic Church on usury see the papal encyclical *Vix pervenit* (1745).

³ Commutative and distributive justice are principles described by Aristotle in the 5th book of his *Nicomachean Ethics* and borrowed and named by St. Thomas Aquinas (see St. Thomas Aquinas: *Sententia libri ethicorum. Liber V; Summa, II-II, questio 61, articulus 1, 2*). Commutative justice or justice in exchange regulates the relation of one individual to another individual and commands “to render to each that which is his, according to an equality” (Dempsey, 1943, p. 135).

power is just, it is an act of commutative justice to preserve such a state. (Comp. Gordley, 2001, pp. 311-312).

The very concept of “price” indicates that a just price can only arise in an exchange of a good for a generally accepted medium of exchange (i. e. money). In effect, we cannot talk about a just price in the case of an in-kind exchange (barter), unless we have an exchange of goods for goods in a monetary economy, so that the market values of these goods would have to be equal. Next, what is the matter in case of the equality in exchange is not the equality of subjective values but equality of objective exchange values, market values.⁴ At this place, we need to say that if a service is being bought, then the price for this service is a wage and the question of justice is a question of a just wage, then.⁵ Next, if the selling of a good is an object of the seller’s business, the question of justice is a question of a just profit, i. e. the seller has the right to increase the equal price by the just profit. This also concerns a purchase, when a purchasing entrepreneur can subtract his just profit from the equal price. So, our analysis concerns the cases when the act of a purchase/selling is not an object of business of one of the contractual parties. If, then, a purchase/selling is being realized between a buyer and seller, where neither makes this contract within his business, the above said can be applied to the just price. A just price is such a price, then, which preserves the distribution of the purchasing power between the contractual parties. Neither the seller, nor the buyer can get better off by this transaction, from the viewpoint of the purchasing power. By this transaction, the buyer will acquire an item which, if resold, would bring him a sum approximately equal to that which he had paid for this item (minus transaction costs).

If the current distribution of the purchasing power is supposed to be preserved in a monetary exchange, the good has to be exchanged for a price equal to its market value. The market value is undergoing a permanent change, though. If the market values of goods keep changing, the distribution of purchasing power among individuals keeps changing, too, though. Which means that two different distributions of purchasing power can be just simultaneously? Should the prices be fixed, then? In that case, the distribution of the purchasing power would not change and, if the initial situation was just, the price fixing will preserve it, won’t it? This conclusion is wrong, of course. The change in the price structure is not only a question of the allocative efficiency but a question of the justice, too.⁶ The reason why the state must allow the prices to fluctuate and, effectually, allow a permanent redistribution of purchasing power among individuals is not only the excess

Distributive justice regulates the relation of the community to an individual and commands “to render to each that which is his, according to a proportionality” (Dempsey, 1943, p. 135).

⁴ Which Rothbard (1995, pp. 16-17) does not seem to grasp when he says: *If A trades shoes for sacks of wheat owned by B, A does so because he prefers the wheat to the shoes, while B's preferences are precisely the opposite. If an exchange takes place, this implies not an equality of values, but rather a reverse inequality of values in the two parties making the exchange.*

⁵ Even if a just wage is a question of commutative justice, too, it is a question of legal or social justice, too (Burke, 2010, grasps legal and social justice as synonyms; Hayek, 1973, grasps social justice as a synonym of distributive justice), which regulates the relation of the community to an individual (see Summa, II-II, questio 61, articulus 1). Gordley (1980, p. 1634) is wrong, then, to my opinion, when he treats the reward of a captain of a ship who is saving the crew of a sinking ship as a question of a just price. To the problem of a just wage, see e. g. Máslo (2021a).

⁶ I would like to thank for this insight to James Gordley with whom I had the opportunity to discuss the issue of the just price within our e-mail communication.

supply/excess demand which would otherwise emerge in the markets. That would be a weak justification. In fact, alternative allocative mechanisms to the price mechanism could be applied. If there are ten buyers for one unit of a good, the seller would have to decide on the basis of some other non-price criterion. That this would cause an allocative inefficiency because the goods would not be allocated to those who are willing and able to pay the highest price? Why should this be relevant? Now, why the state must allow the permanent redistribution of purchasing power resulting from the price fluctuation is that if the state did not do it, it would violate the commutative justice, in effect. In fact, that is commutatively just that a seller gets approximately the same price for his good for which the buyer will be (probably) able to resell the good, subsequently. In a situation of excess demand, the seller can charge the buyer a higher price than that which he had paid himself before, because the buyer will be (probably) able to resell this good for this higher price, too. So, if the seller got a lower price than that for which the buyer will be (probably) able to resell the good, subsequently, the seller would suffer a commutative injustice. The reason why it is necessary for the state to allow the fluctuation of the distribution of the purchasing power among individuals is, then, that preventing such a fluctuation from happening would result in commutative injustice. So, a man can justly sell a good for a price higher than the acquisition costs if the buyer can resell the good for this higher price himself, subsequently.

How is it with the just price in an isolated exchange, then? What gives Robinson the right to sell a knife to Friday for a higher price than that which he had paid himself before? The fact that Friday will be able to resell the knife for this higher price? To whom, though? There is nobody else but Robinson. If the buyer does not have anyone to resell the good to, does this mean that the just price in such an isolated exchange is equal to zero? That would be a precipitate conclusion.

It might seem that there is nothing to latch onto in the matter of the isolated exchange between Robinson and Friday. Let us ask the question in a different way, though. Let us assume that Robinson owns a box full of pocket mirrors which Friday has never seen until now and Robinson offers one of these mirrors to Friday to buy it and leaves Friday in the illusion that such a pocket mirror is a precious thing. As a result, Robinson charges Friday a sum in gold for which Robinson could buy for example a well-trained horse from Friday. Can such a price be called just? Friday obviously labors under the delusion that the supply of such pocket mirrors is very limited and this wrong information determines his willingness to pay, i. e. his demand. If Friday knew that Robinson owns a box full of such pocket mirrors, his reservation price would plummet instantly. However, let us ask ourselves: why would his reservation price drop? Because Friday would grasp that the pocket mirror offered by Robinson is not so rare? Or because he would grasp that Robinson's marginal utility of the last mirror is very low and, in effect, Robinson's reservation price is very low? Why should this matter, though? Maybe because Friday would guess correctly that if he happened to want to resell such a mirror to Robinson some day in the future, the price which Robinson will be willing to pay will be close to zero? This would mean, though, that, in an isolated exchange, the buyer's concept of a just price is determined by his conviction about the seller's reservation price, with respect to a potential future reselling. If Friday believes that Robinson values his knife twenty silver coins, Friday will not regard it as just to pay Robinson substantially more than twenty silver coins. Of course, if Friday will need this knife badly, he will be forced by his need to pay even substantially more than twenty silver coins. However, he will not do so voluntarily. He would be doing so voluntarily if he paid Robinson more than twenty silver coins by his own choice.

At this point, the opponent can object that Friday would not pay even those twenty silver coins voluntarily because he would prefer a zero price to twenty silver coins which means that any non-zero price is being paid involuntarily by Friday. This is true, of course, but there is no point in this argument. What matters is whether the resistance of Friday's will is justified or not justified. Which brings us to the point. To pay an unjustly high price brings about a resistance of will (i. e. involuntariness) which is justified. Next, the injustice of a higher than just price is not given by the fact that the buyer is paying this price involuntarily but, vice versa, the involuntariness on the buyer's side is only relevant when the price is higher than just. The justice of a just price means that this price preserves the current distribution of purchasing power, then. Whereby the current distribution is being preserved when the price is approximately equal to the price for which the buyer could resell the item. Now, the reservation price of the seller is such a price in an isolated exchange.

If Robinson values his knife twenty silver coins, he should not charge Friday more than twenty silver coins for this knife because if Robinson happened to rebuy this knife someday, he would not give more than twenty silver coins for it. The seller's surplus is zero in such a case which means that the seller will become neither better off, nor worse off as a result of such an exchange. After all, Robinson does not have to sell his knife to Friday if he does not want to do so. It is his right to not sell. However, if he wants to sell his knife to Friday, he must not charge Friday more than his own reservation price. What if Friday is willing to pay up to sixty silver coins for the knife, though? Is it not unjust that Friday the whole surplus of utility will accrue to him? No, it is not unjust. The utility is subjective. The market price is objective. What if Friday buys the knife for twenty silver coins, though, and Robinson will want to rebuy it later? How much can Friday charge Robinson? Well, Friday can charge Robinson up to sixty silver coins because he knows that he would be willing to rebuy the knife from Robinson for this price. However, Robinson will not be willing to pay sixty silver coins for the knife because Robinson's reservation price is only twenty silver coins. Sure, that is why Friday will not resell the knife to Robinson. It is Friday's right to not resell the knife.

However, what if a third subject appears on the island which will be willing to give up to fifty silver coins for the knife? Is it still true that Robinson must not charge a buyer more than his own reservation price? Of course not because now, as the third subject is present, it is no more true that Robinson is the only one to whom Friday can resell the knife. If the third subject is demanding the knife, besides Friday, Robinson can sell the knife to that one who is willing to pay a higher price. The reason is that the subject which will buy the knife can resell the knife for a slightly lower price to the other demander. In our case, Friday will buy the knife from Robinson for fifty one silver coins and he knows that he will be able to resell the knife to the third subject for fifty silver coins (a reservation price of the third subject). And what about the one extra silver coin? Is it not unjust to charge Friday this one extra silver coin if Friday himself will not be able to resell the knife for more than fifty silver coins? Strictly taken, Robinson should give this extra one silver coin back to Friday after a successful sale. This one extra silver coin has fulfilled its allocative function: it has decided that the knife will go to Friday. As a matter of fact, it would not have to be the whole silver coin. A copper coin would fulfill the allocative function, too. Since we talk about a relatively marginal sum, with respect to the price of the knife, and taking into account that the reservation price of an individual can change in time depending on changes in his income, preferences and prices of substitutes and complements, we can say that since the evil represented by this commutative injustice is relatively small, the resulting injustice can be regarded as acceptable.

Equality in Exchange as A Commutative Injustice

If a subject is asked to pay more than the equivalent value, then the contractual counterpart makes a transfer a condition of his consent to the exchange. To ask for a transfer as a condition of the consent to a contract of exchange represents a self-contradiction in the will of the subject which asks for the transfer. Which makes the contract of exchange invalid.⁷ To ask for a higher than equivalent value in an exchange makes this contract of exchange invalid. In fact, such a contract is a combination of two contracts (i. e. the basic contract and the super-contract) which contradict each other. An exchange which violates the equality is a contradiction, in effect. As much as this contract wants to be an exchange, it cannot violate the equality. However, as much as this contract violates the equality, it is not an exchange.⁸ A realization of such a pseudo-exchange represents a violation of the principle of the equality in exchange.

Can such a non-equivalent pseudo-exchange violate a commutative justice, though? What is a contradiction is non-existing. Only something existing can violate a commutative justice, cannot it? Well, a non-equivalent contract of “exchange” (i. e. pseudo-contract) is a contradiction and, as a result, non-existing, that is true, but the transfer resulting from this non-equivalent contract is not non-existing. In fact, as we have shown, the concept of non-equivalent “exchange” implies two separate contracts: basic contract of exchange and super-contract of exchange. Since within the super-contract a contractual party negates implicitly what he declares within the basic contract explicitly, there is a self-contradiction in the will of this contractual party and, as a result, the combination of the basic contract and the super-contract is a complex of mutually contradicting elements. A non-equivalent “exchange” as a contradictory concept refers to the combination of a basic contract of exchange and a super-contract of exchange. A contractual party sells his consent to the basic contract of exchange within the super-contract of exchange, by which he negates his consent given within the basic contract, at the same time, and liquidates the validity of the acquisition title within the super-contract. Without a valid acquisition title within the super-contract, the contractual party sells a non-existing item: he requires a payment for his consent which he does not intend to express, ever, and which he will never express, either. “To sell a consent” to an

⁷ For the proof see e. g. Máslo (2018). In a nutshell: If a subject gives his consent to an exchange, he declares within the contract of exchange that he consents to the equality in exchange and he does not ask for a transfer; if a subject asks for a transfer in exchange for his consent to the exchange within the super-contract of exchange, he declares that he does not consent to the equality in exchange and he asks for a transfer. Actually, a subject which requires a transfer in exchange for his consent to the exchange declares that he wants to sell his consent to the exchange; by selling his consent to the exchange, the subject negates his will to exchange; if he does not want to exchange, he does not consent to the exchange; if he does not consent to the exchange, he cannot sell his consent to the exchange because he does not have any consent to sell. This is not the only contradiction, though. As much as the subject requires a higher than equivalent value within the contract of exchange, he requires a transfer. However, as much as the subject wants to sell his consent to the exchange within the super-contract of exchange, he does not require a transfer because he wants to exchange his consent for an equal value.

⁸ Rothbard (1995, p. 16) obviously does not grasp this simple thing when he says: *Another grave fallacy in the same paragraph in the Ethics did incalculable damage to future centuries of economic thought. There Aristotle says that in order for an exchange (any exchange? a just exchange?) to take place, the diverse goods and services 'must be equated', a phrase Aristotle emphasizes several times.*

exchange is also a contradictory concept. Selling a consent to an exchange liquidates the consent. To sell a consent to an exchange is tantamount to selling a picture of a round square. I'm selling something contradictory and, as a result, something non-existing. If I'm selling something non-existing, I'm requiring a payment for nothing, I'm requiring a transfer. To require a transfer means to require that which I have no right to require, though. To term such an act of requirement an act of commutative injustice, such an act of requirement must be accompanied by action by which the subject wants to realize his requirement. Such action can be threefold: 1) external direct pressure, 2) external indirect pressure, 3) deception. An external indirect pressure means that someone asks me for that which he has no right to and he makes the satisfaction of his requirement a condition of consent to an unrelated contract. So, a non-equivalent contract of "exchange" represents a requirement by a contractual party of something which he has no right to require accompanied by external indirect pressure. As a result, a non-equivalent contract of "exchange" is an act of commutative injustice.

Now, if someone requires from me that which he has no right to and he makes the satisfaction of his requirement a condition of his consent to an unrelated contract (or if he takes it from me directly) and provided I would have given it to him **anyway**, then this subject commits a commutative injustice and I suffer this injustice **in the material sense**. In other words, I give a gift (=voluntary transfer) in response to a committed injustice. If someone requires from me that which he has no right to and he makes the satisfaction of his requirement a condition of his consent to an unrelated contract (or if he takes it from me directly) and provided I would **not** have given it to him **under different circumstances**, then this subject commits a commutative injustice and I suffer this injustice **in the formal sense**. In other words, I give a transfer (involuntarily) in response to a committed injustice.

Injustice originates in the agent. It can be suffered voluntarily, i. e. in the material sense – then, a sufferer gives a gift. Or it can be suffered involuntarily, i. e. in the formal sense – then, a sufferer renders an (involuntary) transfer. Manifestation of my consent with a suffered injustice can be voluntary (gift, i. e. voluntary transfer) or involuntary (involuntary transfer). When is a consent manifested voluntarily, then? If a consent is being manifested out of my choice, willfully. Even if a subject has a gun to his head, he can still want to give a gift – not because he has a gun to his head but in spite of the fact he has a gun to his head.

Injustice is committed when a subject requires from me that which he has no right to and when he accompanies his requirement by 1) external direct pressure or 2) external indirect pressure or 3) deception. A non-equivalent contract of "exchange" is a case when another subject requires from me that which he has no right to and he accompanies his requirement by external indirect pressure, at the same time. If another subject requires from me that which he has no right to, it can be called impolite. Such impoliteness turns into commutative injustice as a result of the pressure or deception. A laissez-faire opponent rejects an argument of indirect pressure on the grounds that if the seller requires a payment as a condition of a sale, it is an indirect pressure, too. However, this objection is missing the point because the indirect pressure constitutes a commutative injustice only when another subject requires from me that which he has **no right** to. Not when he requires from me what he **has right** to.

Equality in Exchange and The Objection of Voluntariness

Violation of equality in exchange means a non-compensated harm which is an essence of the commutative injustice. A buyer paying an unjustly high price pays an equivalent price plus a sum on top of it for which he does not receive anything. A debtor pays back the principal plus a sum on top of it (usurious interest) for which he does not receive anything. In both case the damaged party does not want to pay this extra sum because if he did, he could do so without the contract of exchange. In case of violation of the equality in exchange, a following objection can be brought up: what if the buyer/debtor regards the contract just, as a result of which he renders a transfer to the seller/creditor voluntarily, in a belief that the exchange is equivalent? In that case, the acquisition title of the seller/creditor is that the buyer/debtor wants to render this extra sum to him. Since the extra payment can lean on the corresponding acquisition title, such a transaction does not violate the equivalence and, in effect, is just. In other words, the belief of the damaged party that the contract is just makes this contract just.

The trouble with this argument is that, since the buyer/debtor does not get the equivalent value for this extra sum, then, if this transaction is just, the seller/creditor must lean on the only possible acquisition title that is left: it must be a gift. A gift is exactly what the buyer/debtor does not want to render, though, because he regards this payment an equivalent payment. Which means that he is mistaken.⁹ As a result, he renders a transfer on the grounds of this mistake, a transfer which he mistakenly regards as an equivalent payment in an equivalent exchange.

A classic objection of laissez-faire advocates¹⁰ is: if the contractual counterpart consents to the non-equivalence, the question of commutative justice is a pseudo-problem. However, the benevolence of the sufferer does not cancel this injustice. That the bishop gave the candlesticks to Jean Valjean does not negate the fact that Jean Valjean had stolen these candlesticks from the bishop before. Which is why the bishop didn't tell the police that Jean Valjean had stolen the candlesticks. Even if the harmed party consented internally to the non-equality, the commutative injustice resulting from the non-equality in "exchange" calls for a punishment. All the more so does the commutative injustice call for a punishment if the harmed contractual party does not consent internally to the non-equality in "exchange". The subject does not consent to the non-equality in "exchange" if he does not want to give a gift anyway. If a debtor does not want, in principle, to give a gift to the usurer, he does not consent internally to the non-equality of the usurious contract even though he manifests his consent externally.¹¹ As I will argue later on, the state can – to divert a

⁹ Ignorance is traditionally regarded as one of the sufficient conditions of involuntariness. Comp. Chafuen (2003, p. 91).

¹⁰ Also known as neoliberals in both Europe and the U. S., comp. Máslo (2021b, p. 3, n. 1).

¹¹ Szilagayiova (2019) talks about voluntary exploitation of households taking payday loans. Szilagayiova (2019, p. 142) says, among other things: *Despite of awareness of higher risk and likelihood of making their financial situation worse, households' spontaneous urge to action is underpinned by unsustainable pressure on households' ability to cover financial commitments and is in fact an act in desperation. [...] Strong motivation to cover their survival needs is a heritage instinct of self-preservation that urges to action rather than inaction and due to exclusion from other forms of credit, households option for being voluntarily exploited by payday loan companies. Although traditional economic theories might see action when individuals are voluntarily exploited as irrational behaviour, for households with absolute disadvantage it is the only option and therefore their reasons for acting "irrationally" are perfectly rational.* When Szilagayiova says "voluntary exploitation", she does not, by all accounts, mean "willingness of a debtor to give a gift to

greater evil – stop punishing perpetrators of commutative injustice for non-equivalent contracts of “exchange” and restrict itself to protection of sufferers if they ask for it. Which they will do only if they do not want to give a gift to the counterpart. In which case the debtor does not consent to the non-equality of the usurious contract. In which case it cannot be said that the commutative injustice is a pseudo-problem.

There are three options.

- 1) I want to give a gift to the usurer.
- 2) I don't want to give a gift to the usurer and I don't know that the usurious contract is self-contradictory. In that case, I'm acting in ignorance. Since the ignorance excludes voluntariness, I manifest my consent involuntarily in a belief that I make an equal exchange.
- 3) I don't want to give a gift to the usurer and I know that the usurious contract is self-contradictory. In that case, I also know that my consent to this contract will suffer from self-contradiction: I don't want to render a transfer (within the basic contract) and I want to render a transfer (within the super-contract). A self-contradictory statement is saying nothing. A self-contradictory statement is a pure sound. It's blah blah blah. I am committing myself to absolutely nothing on the grounds of a self-contradictory pseudo-consent. I don't commit myself to render a transfer, either. I am also aware that I don't commit myself to it. If anyone attributes to my self-contradictory pseudo-consent, to that pure sound blah blah blah, the meaning of a consent to render a transfer, it can be said that my consent in this sense is being manifested involuntarily. I know, in fact, that this sound does not have this meaning.

I suffer a commutative injustice in all three cases because the usurer requires from me that which he has no right to and he exerts an external indirect pressure on me to achieve it. Let us notice that the commutative injustice arises in the first case, as well. Nobody has a right to a gift, in fact. So, if anyone requires a gift and exerts an external indirect pressure on me to get it, he commits a commutative injustice. That I give the gift to the usurer, out of my benevolence, does not make the guilt of the usurer any smaller.

the creditor”. What she has in mind is rather the fact that the debtor is better off thanks to the exploitation. The debtor moves to a higher indifference curve, simply. I must act voluntarily if I'm moving to a higher indifference curve, must I not? Such an inference is based on a following sophism: Whatever I do that makes me better off, I want to do it; whatever I want to do, I do voluntarily; ergo: whatever I do that makes me better off, I do voluntarily. The mistake is in the first premise. “I want to do it” refers to the means in one case and to the end in another case. The end is consumption. The means is either an equivalent exchange (then it is just), or a non-equivalent “exchange” (then it's unjust). The opponent can object that all means are always suffered involuntarily. From this viewpoint, the equivalent exchange would never be made voluntarily, any more than non-equivalent “exchange”. However, the injustice originates in the agent. Whether it is suffered by the sufferer voluntarily (materially) or involuntarily (formally) is a derived problem. Equally derived is a problem whether justice is done by the agent voluntarily or involuntarily. Voluntariness/involuntariness is usually not observable from outside. Justice/injustice is observable from outside. When can we say that action of a subject is voluntary? When it is done without external direct or indirect pressure and without deception. Only then we can say that **the subject renders a transfer voluntarily** when he renders it without being directly or indirectly asked to do so, i. e. **when the transfer is no means to achieve an end within an interpersonal interaction**. So, we can reasonably talk about “voluntary exploitation” only if the household decided to subsidize the creditor even if the chance to get a usury-free loan did not depend on it.

Equality in Exchange and The Paretoian Objection

We have proven that “non-equivalent exchange” is a contradiction in terms. We have proven that non-equivalent “exchange” is an act of commutative injustice. We have proven that a contract of non-equivalent “exchange” contains a self-contradiction in the will of the perpetrator of injustice which is why this contract is invalid and unenforceable from the very beginning. One ultimate objection needs to be settled, though. A contract of non-equivalent “exchange”, no matter how contradictory, increases the utility of both contractors. If the state will criminalize it, for whose benefit? Whom does the state want to protect, actually? Protect from what? For example, if someone won't be able to take a usurious loan (and he won't manage to find any but usurious loan), he will be worse off than if he suffered an injustice. What I say is the following: what logically follows from the nature of a non-equivalent “exchange” is that it is unenforceable.

The opponent will object: very well, but there is a demand for such contracts of non-equivalent “exchange”. A demand which does not care that these contracts are self-contradictory. If the state stops protecting the contractors which are committing an injustice, the market will create its own alternative mechanisms of enforcement of such contracts. Such contracts of non-equivalent “exchange” will be offered by Mafia which will be enforcing the compliance of the contracts by means of draconian punishments for non-compliance. So, whoever will want to make a contract of non-equivalent “exchange”, he will go to Mafia and makes the contract with Mafia, voluntarily. Which means that the only result of non-enforcement of such contracts by the state will be crowding-out of these contracts outside of the legal economy. Another unintended consequence will be the loss of tax revenues. How should this objection be settled? First of all, this objection completely ignores the fact that non-equivalent “exchange” is invalid not because somebody said so but from its own essence. The state does not have a choice whether it should enforce or not enforce such a contract. If someone proclaims that he wants and, at the same time, does not want to lend one hundred for hundred to someone, then there is really nothing to lean on. What should the state regard as a violation of the contract? If the debtor pays back the principal only and no usurious interest? However, the creditor himself proclaims that he does not want the usurious interest (within the basic contract), as much as he proclaims that he wants the usurious interest (within the super-contract). As much as the creditor requires the usurious interest, he requires it for his consent to not requiring the usurious interest. It's similar as if I gave one thousand to someone but I would require one thousand for this gift from him. It's not a perfect analogy, I agree, but it shows the same degree of absurdity. A gift for which I require a payment is not a gift. In fact, such a transaction is lacking the essential characteristic of a gift which is that it is for free. A loan for which I require a payment is not a loan. It is lacking the essential characteristic of a loan which is that it is for free.

Nevertheless, let us assume, hypothetically, that the state would make such a self-contradictory contract of sale of loan enforceable. Or, more precisely, let us assume that the state would say that the creditor has a right to require a payment for its consent to something to what he manifests his dissent, at the same time. Now, it's basically the same as if the state said that from now on the round square will be round. Well, the state can say it. The state can also punish anyone who will question this. What would that mean? A self-contradictory statement is a statement which says nothing. Simply, it is a mere sound: blah blah blah. To make a self-contradictory contract

enforceable is tantamount to decree that if a creditor lends one hundred to the debtor and says “blah blah blah” in the process, then the creditor has a right to charge the debtor one hundred and ten, on the grounds of this sound, and if he only gets one hundred, he has a right to turn to the state which will force the creditor to pay the extra ten, too. The creditor has the right for this extra payment of ten. He said his “blah blah blah”, didn’t he?

In reality, the state cannot remain neutral with respect to the contract of non-equivalent “exchange”. There are three options: 1) the state can declare such a contract unenforceable – in which case the state makes a commitment to protect that contractor in relation to whom the other contractor would lay claims on the grounds of this contract; or 2) the state can declare such a contract enforceable – in which case the state makes a commitment to enforce this contract to the benefit of the contractual party which lays claims to the transfer on the grounds of this contract; or 3) the state can play possum, i. e. it can stop enforcing the contract and, at the same time, stop protecting the contractor in relation to whom the perpetrator of injustice lays claims. In the third case, the state will, for example, let the creditor break the hands of the noncompliant debtors. In the second case, the state commits an injustice directly, while in the third case, the state “only” allows committing of injustice. Since the goal and purpose of the state is the common good – and protection and enforcement of justice falls within this goal – the state betrays its goal and purpose in cases 2) and 3), i. e. whether the state enforces contracts of non-equivalent “exchange” or allows the private enforcement thereof.

The Equality in Exchange and The Objection of Rating

Let us raise another objection: What if the state declares the contracts of non-equivalent “exchange” unenforceable but the reality will be such that the victims of commutative injustice will keep on rendering a transfer to the contractual counterpart in order to not put their own rating in dander and, as a result, to not endanger their chance to make such contracts in the future? We may be tempted to say that the transfers are being rendered voluntarily in such a case, i. e. the subject which renders the transfer consents to the gratuitous contract, i. e. he consents to give a gift. However, as we said at the beginning, this subject does not perceive this transfer as a transfer. This subject perceives this transfer as an exchange: for this payment, he buys the possibility to make such contracts of non-equivalent “exchange” in the future. It seems that we can apply the same argument to this objection which we used to settle the objection of voluntariness: the subject is acting in ignorance and ignorance is a hindrance to the voluntariness. The subject renders a transfer which he mistakenly regards as an (equivalent) exchange. The subject pronounces a consent to a current contract of non-equivalent “exchange” (which is self-contradictory) and he is willing to pay to the contractual counterpart for his “blah blah blah” in order to be able to make such a contract of non-equivalent “exchange” in the future.

The question is: which position should the state adopt? If the state declares such a contract unenforceable, the state will not prevent the injustice from being committed, obviously. The fear that he could lose the possibility to exchange will force the subject to accept unjust conditions of the contract of non-equivalent “exchange” not only ex ante but also ex post (i. e. the fear will force the subject to render the transfer about which he does not grasp that it is a transfer, though). The state could take one more step, though: it could take legal action against the subjects which commit a commutative injustice within the contract of non-equivalent “exchange”. For example, against a creditor, at the moment when he receives the usurious interest payment. Or even as soon as the

creditor makes the contract of non-equivalent “exchange”. The fourth option for the state, except for the unenforceability, state enforcement and tolerance of private enforcement, is thus prosecution of contractors who commit an injustice through the non-equivalence.

The Equality in Exchange and The Objection of Greater Evil

At this moment, someone could object that the very fact that unenforceability or even prosecution will crowd out the contracts of non-equivalent “exchange” to the mobster economy is a strong-enough argument why the state should not do this. However, let us review: the alternative to unenforceability/prosecution is state enforcement/tolerance of private enforcement which, in case of contracts of non-equivalent “exchange”, contradicts the purpose of the state, which is achieving the common good, within which falls the protection of justice. So, either the crowding out and the injustice committed by the Mafia or the injustice committed or tolerated by the state. However, what about the argument that elimination of evil must never bring about a greater evil? Isn't this the reason why St. Augustine (De Ordine, Volume 2, Chapter 4) does not recommend that the state persecutes the prostitution (even if it should not support it)? On the one hand, there is the evil of crowding out the contracts of non-equivalent “exchange” to the mobster economy; on the other hand, there is the evil represented by injustice committed by the state or officially tolerated by the state. It is true that the elimination of the evil must never bring about a greater evil but it is also true that the end doesn't justify the means and the direct performance of evil (*directa procuratio mali*) is not allowed under any circumstances. Since the state enforcement of contracts of non-equivalent “exchange” is a direct performance of evil (namely: injustice), it is not allowed under any circumstances. What is left is the state tolerance of the private enforcement. What else is the tolerance of private enforcement but the tolerance of the Mafia? The state has only two options in this regard: to tolerate the mobster practices or to fight them. The opponent can object: fighting the Mafia increases its costs which will cause that the contracts of non-equivalent “exchange” will become even more unjust and the mobster practices even more draconian, because of the deterrence effect. Similarly, as the fight against the producers and distributors of alcohol under the prohibition led to the increase in the prices of alcohol. However, sticking to the analogy, we would also have to argue against the prosecution of frauds, blackmailers, terrorists etc. Yes, elimination of evil must never bring about a greater evil but the state also has the obligation to punish the evil when committed. Murderers and thieves cannot be tolerated just because they resist arrest.

What about the objection of the greater evil, then? Well, if the Mafia starts breaking hands and burning down the houses of the defaulters, tolerance of such practices can barely be justified by the effort to avoid a greater evil. This is the greater evil which was supposed to be avoided. It would be a wrong conclusion to infer that, in such a situation, the state itself should start enforcing the contracts of non-equivalent “exchange” in a more “humane” way. A direct performance of evil is never allowed and it cannot be justified by saying that this directly performed evil is lesser than some other evil. However, at the same time, prosecution of perpetrators of injustice may make the situation even worse. Which would go against the principle that elimination of an evil must never bring about a greater evil. What if a subject turns to the state saying the Mafia is extorting transfers from him, though? Should the state stop investigating such a case, as soon as it finds out that the subject signed a contract of non-equivalent “exchange”? Such a suggestion is not so stupid. I. e. a subject which signs a contract of non-equivalent “exchange” is willingly giving up the right to protection by the state. It seems, though, that tolerance of private enforcement is tantamount to legalization of some kinds of violence. What seems to be a solution to this, is that the state declares

contracts of non-equivalent “exchange” unenforceable but it does not automatically punish the perpetrators of injustice for making such contracts but it protects the sufferers if these ask for it. The argument of crowding out to the mobster economy cannot be reacted to in another way but that no matter how unavoidable this crowding out is, the state can never fight this crowding out by state enforcement (because the direct performance of evil) and tolerance of private enforcement is incompatible with the obligation of the state to punish evil.

Summary

Leaning on the postulate that a just price – i. e. a price which preserves the equality in exchange – is a price for which a buyer could resell the bought good, I come to the conclusion that a just price in case of an isolated exchange in a monetary economy is equal to the reservation price of the seller.

I prove that “non-equivalent exchange” is a contradiction in terms. In fact, a contractor is selling his consent to the **basic contract** of exchange within the **super-contract** of exchange, by which the contractor negates his consent to the basic contract, at the same time, by which he cancels the validity of the acquisition title within the super-contract, as a result. Without the valid acquisition title within the super-contract, the contractor is selling a non-existing item: he requires a payment for manifestation of his consent which he does not intend to manifest, though, and which he also never will manifest. In effect, the violation of the equality in exchange makes the contract of exchange invalid because such a contract is a combination of two contracts which contradict each other. So, an exchange which violates equality is a contradiction in terms. As much as it wants to be an exchange, it cannot violate the equality. As much as it violates the equality, it is not an exchange.

Next, I prove that a non-equivalent contract of “exchange” represents an act of commutative injustice. To lay claim to a gift means to lay claim to something that I have no right to. For such a claim to be commutative injustice, though, such a claim needs to be accompanied by action through which the subject wants to realize his claim. Such action can be threefold: 1) external direct pressure or 2) external indirect pressure or 3) deception. An external **indirect** pressure means that another person requires from me that which he has no right to and he makes the satisfaction of his requirement a condition of his consent to an unrelated contract. A non-equivalent contract of “exchange” represents a contractor’s requirement of that which he has no right to, accompanied by an external indirect pressure. So, a non-equivalent contract of exchange is an act of commutative injustice.

Next, I prove that a sufferer of injustice who **does not grasp** that non-equivalent “exchange” is unjust expresses his consent to the non-equivalent pseudo-contract of “exchange” involuntarily. Within the super-contract of exchange, a sufferer of injustice wants to buy the consent of the agent to the basic contract of exchange, which means the sufferer does not want to render a transfer. Since the agent cannot sell such a consent to the sufferer – because by selling his consent, the agent is negating his consent, at the same time – the sufferer is rendering a transfer to the agent, actually. The sufferer is acting in ignorance, then. Since ignorance is a hindrance to voluntariness, the sufferer manifests his consent to the non-equivalent contract of “exchange” involuntarily. If the sufferer does not manifest his consent to the non-equivalent “exchange” voluntarily, he does not consent to it.

I respond to the objection of voluntariness that benevolence of a sufferer of commutative injustice does not cancel this injustice. Even if the harmed party did internally consent to the non-equality in “exchange”, the commutative injustice caused by this non-equality in “exchange” calls for a punishment. All the more so does the commutative injustice call for a punishment if the harmed party does not internally consent to the non-equality in “exchange”. The harmed party does not consent to the non-equality if it does not want to give a gift anyway. If a debtor does not want to

give a gift to the usurer, in principle, then he does not internally consent to the non-equality of the usurious contract, even though he externally manifests his consent. Nevertheless, commutative injustice arises even in that case that I voluntarily give a gift to the usurer. Nobody has a right to a gift, in fact. Which means that if somebody lays claim to a gift and, at the same time, he exerts an indirect pressure on me, he commits a commutative injustice. That I in my benevolence give him this gift does not make the guilt of the usurer any smaller.

I respond to the Paretoian objection (to whom is it a benefit if the state criminalizes a contract which makes both parties better off?) that the self-contradictory nature of the non-equivalent contract of “exchange” implies the unenforceability of it, not necessarily the obligation of the state to prosecute the contractor who commits injustice for making such a contract.

I respond to the objection of rating that a subject which renders a transfer in order to be able to make a non-equivalent contract of “exchange” in the future is acting in ignorance, misbelieving that he makes an equivalent contract of exchange. Since ignorance is a hindrance to voluntariness, he is acting involuntarily.

In the question of what position the state can adopt in towards the non-equivalent contracts of “exchange”, I contend that the state can adopt 4 different positions: 1) to prosecute the perpetrator, 2) to declare the unenforceability, 3) to tolerate private enforcement, 4) to enforce. Since enforcement of these contracts is a direct performance of evil, it is never allowed. Tolerance of private enforcement goes against the purpose of the state which is achieving the common good which the protection of justice falls within. That is why I’m putting forward the following legal solution: the state declares the non-equivalent contracts of “exchange” unenforceable, nevertheless, it does not automatically prosecute the subjects which commit injustice for making such contracts but, on the other hand, it protects the subjects which suffer injustice if they ask for it. To the objection of crowding out of these contracts to the mobster economy I respond that the state can never enforce (because the direct performance of evil is never allowed) and tolerance of private enforcement is incompatible with the obligation of the state to punish the evil.

In this paper, I present arguments in support of the statement that “non-equivalent contract of exchange” is a contradiction in terms and also an act of commutative injustice. I am leaning on the fact that the categorization of monetary contracts into onerous (exchange) and gratuitous (gift/transfer) represents a complete disjunction and, as a result, violation of the equality in exchange means that such a non-equivalent contract of “exchange” is a combination of an (equivalent) contract of exchange and a transfer. As much as a contractor makes a transfer a condition of his consent to the (equivalent) contract of exchange, he contradicts himself: he declares explicitly that he wants to make an (equivalent) contract of exchange but he negates this implicitly, at the same time, by requiring a transfer from the counterpart. In fact, he requires an extra payment for his consent to not require an extra payment. A self-contradictory statement does not say anything, in reality. A non-equivalent contract of “exchange” means, in principle, that one contractual party lays claim to a transfer on the grounds of his statement “blah blah blah”. To make such a pseudo-contract enforceable is really mere semantic, philosophical and legal arbitrariness.

References

- AUGUSTINUS. *De Ordine*. In: Borusso, S. 2007. *On Order [De Ordine]*. South Bend: St. Augustine’s Press. ISBN 1-58731-603-X.
- BENEDICT XIV (1745). *Vix pervenit*. URL: <https://www.papalencyclicals.net/ben14/b14vixpe.htm>.
- BURKE, J. (2010). Distributive Justice and Subsidiarity: The Firm and the State in the Social Order. *Journal of Markets & Morality*, Fall 2010, Volume 13, Number 2, 297–317.

- CHAFUEN, A. A. (2003). *Faith and Liberty: The Economics of the Late Scholastics*. Lexington Books, 2003. ISBN 0-7391-0540-X.
- DEMPSEY, B. W. (1943). *Interest and Usury*. Washington, D. C.: American Council of Public Affairs, 1943.
- GORDLEY, J. (1981). Equality in Exchange. *California Law Review*, December 1981, Vol. 69, No. 6, pp. 1587-1656.
- GORDLEY, J. (2001). Contract Law in the Aristotelian Tradition. In: Benson, Peter (ed.). 2001. *The Theory of Contract Law*. Cambridge University Press, 2001. pp. 265-334. ISBN 978-0-521-04132-4.
- GORDLEY, J. (2006). *Foundations of Private Law. Property, Tort, Contract, Unjust Enrichment*. Oxford University Press 2006. ISBN 978-0-19-929167-0.
- GORDLEY, J. (2011). *The Philosophical Origins of Modern Contract Doctrine*. Oxford University Press, 2011. ISBN 978-0-19-825830-8.
- HAYEK, F. A. von. (1973). *Law, Legislation and Liberty*. London: Routledge, 1998. ISBN 0-415-09868-8.
- MÁSLO, L. A. (2018). Lichva a úrok: úvod do problému - Část 1. *Distance*, 2018, vol. 21, no. 4, pp. 59-71. ISSN 1212-7833. Dostupné z: <https://www.distance.cz/ro%C4%8Dn%C3%ADk-2018/4-%C4%8D%C3%ADslo/lichva-a-%C3%BArok-%C3%BAvod-do-probl%C3%A9mu-%C4%8D%C3%A1st-1>.
- MÁSLO, L. A. (2019a). Lichva a úrok: úvod do problému - Část 2. *Distance*. 2019. vol. 22, no. 1, pp. 38-47. ISSN 1212-7833. URL: <https://www.distance.cz/ro%C4%8Dn%C3%ADk-2019/1-%C4%8D%C3%ADslo/lichva-a-%C3%BArok-%C3%BAvod-do-probl%C3%A9mu-%C4%8D%C3%A1st-2>.
- MÁSLO, L. A. (2019b). Lichva a úrok: úvod do problému - Část 3. *Distance*. 2019. vol. 22, no. 2, pp. 58-68. ISSN 1212-7833. URL: <https://www.distance.cz/ro%C4%8Dn%C3%ADk-2019/2-%C4%8D%C3%ADslo/lichva-a-%C3%BArok-%C3%BAvod-do-probl%C3%A9mu-%C4%8D%C3%A1st-3>.
- MÁSLO, L. A. (2021a). A Just Wage: Social Justice in the Labor Market. *International Journal of Teaching and Education*, 2021, Vol. IX, No. 1. pp. 29-48. DOI: 10.52950/TE.2021.9.1.003.
- MÁSLO, L. A. (2021b) Guilds and Competition: A Response to Objections of Laissez Faire. *International Journal of Social Sciences*. 2021. v. X, no. 2, pp. 1-14. ISSN 1804-980X. DOI: 10.52950/SS2021.10.2.001.
- McCALL, B. M. (2008). Unprofitable Lending: Modern Credit Regulation and The Lost Theory of Usury. *Cardozo Law Review*, vol. 30, no. 2, pp. 549-613.
- McCALL, B. M. (2010a). Usury: Profit On A Loan. *Distributist Review*, 2010, Jul 18, URL: <https://distributistreview.com/usury-profit-on-a-loan/>.
- McCALL, B. M. (2010b). Usury: Part II. *Distributist Review*, 2010, Jul 21, URL: <https://distributistreview.com/usury-part-ii/>.
- ROTHBARD, M. N. (1995). *Economic Thought Before Adam Smith. An Austrian Perspective on the History of Economic Thought, Volume I*. Auburn: Ludwig von Mises Institute, 2006. ISBN: 0-945466-48-X.
- SZILAGYIOVA, S. (2019). Exploitation of payday loan users: Fact or fiction? *International Journal of Economic Sciences*, Vol. VIII(2), pp. 127-147. DOI: 10.20472/ES.2019.8.2.009.
- Thomas Aquinas. *Summa Theologiae*. Dostupné z: <http://summa.op.cz/sth.php>.
- Thomas Aquinas. *Sententia libri ethicorum. Liber V*. Available at: <http://dhsprory.org/thomas/Ethics.htm>.