The Financial Crisis and the Disciplinary Challenge of Natural Law

by Harold James

The recent financial crisis displayed apparent deficits in the methodology of economics. The marginalisation of factors such as human personality, morality and natural law led, according to some critics, to an empirical failure of the discipline. Furthermore, severe economic crises damage not only monetary but also ideal values. In this context, some economists turn looking at long time disregarded questions like justice. Moral and religious arguments also apply in the discussion on debt and inflation.


The current financial crisis has sharpened the tone in a set of debates concerned with economic policy and the legitimacy of institutions (both domestic and international) and the outcomes they shape. Many of these discussions were already unfolding before 2007 and 2008, but the unexpectedness and severity of the financial crisis imposed a new and highly controversial dimension. One of the fallouts of the global financial crisis, especially in its post-September 2008 or post-Lehman phase, has been a questioning of the value of economics, whether as delivered by the mathematical adepts of sophisticated financial modelling in the business world, or by academia. This kind of economics promised a rational world of ever increasing predictability as well as happiness and stability. But by now the analytical tool box appears to be rather empty.

Some of the accusations against the discipline of economics are: that it lent itself to misleading calculations of probabilities, based on too limited data ranges; that it found difficulties in explaining the logic of institutional responses; and that the
explicit eschewal of values necessarily precluded an analysis of policy choices. The principles of empirical economics – establishing relationships between masses of data – appeared so successful that the approach became the prevailing methodology of the social sciences.

The criticism runs in two directions: the first fundamental, the second empirical. The fundamental challenge asserts that the economic approach is premised on a very shallow conception of human personality, with the result that many phenomena are inexplicable. The further the approach extends into attempts to comprehend complex or enigmatic behaviour, the more confused it appears. Thus spectacular and highly popular attempts to explain everyday life, such as Steven Levitt and Stephen Dubner’s Freakonomics and its sequel, confront an ultimate impasse. Explaining why prostitution can be very profitable, for instance, these popularisers of an ambitious economics conclude, “The real puzzle isn’t why someone like Allie becomes a prostitute, but rather why more women don’t choose this career.”¹ There is no way, apparently, to explain the character of moral choices.

The increased popularity of approaches involving behavioural economics appears to solve one problem, that of the sub-rationality of outcomes or of the possibility of reaching multiple equilibria, but leaves open a further set of problems and challenges. The imperfect rationality of outcomes explained by such phenomena as aversion to loss still assumes a world in which – in an optimal setting – a participant would want to judge to the outcome in terms of a specific set of criteria, such as income or wealth maximisation. The task of the analyst lies in explaining why these outcomes are not achieved. But is this really a characteristic way of judging results? And is it the best way? Those are questions which cannot so easily be answered.

Perhaps since many economists deny any professional concern with morality, this raises no great difficulties; the second problem is more obviously painful and central to the disciplinary crisis. Many observers have commented that much conventional economics has failed empirically, in that it ignored themes such as financial instability or the possibility of multiple equilibria leading to sub-optimal outcomes. Many prominent economists followed the maker of the rational choice revolution, Robert Lucas, in erroneously claiming that improved economics made financial crises an impossibility. Consequently, many people, including

many economists, have complained that “economic theories failed just when we needed them most.” Such prominent figures as Paul Krugman have joined in the orgy of recrimination and castigation (though rarely in self-castigation).\(^2\)

The discipline was not always like this: for much of the nineteenth century, it involved a concern with institutional analysis, and revolved around controversies of how value was determined. The economists who worked in this tradition recognised that the framework for market activity was given by specific institutional design, and that the market does not generate price-setting or value determination simply by itself. These directions were literally marginalised – by the marginal revolution. Is there a case for the revival of the older concerns, and how should that inquiry be mounted?

A second issue concerns the legitimacy of institutions, and the ability to assess legitimacy of a social science that critically depends on being value free. This is not primarily the domain of modern economics, but in a parallel exercise to that of the economists, many political scientists evolved a picture of how international order that painted an optimistic picture of increasing functionality that derived from the simple fact of inter-connectedness. The literature self-consciously avoided dealing with issues of legitimacy, since it was clear to its practitioners that the system functioned well.

The problems in the functioning of processes (markets) and institutions raise questions about the relationship of positive and normative analyses. To be clear: the argument presented here is not that modern economics or social science is useless, but that they need to be placed in a context which explains why some preferences exist: why we value some things but not others. This paper tries to think about the current crises in some very important and apparently pre-eminently successful ways of doing social science. Why has a severe economic crisis also become a methodological crisis, and what are the ways out? In particular, will or can there be a return to some of the older perspectives that depend on a more complex view of human personality, human problems, and human potential?


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I. Values and Deglobalisation

In financial crises, assessments of the future, which form the basis of monetary valuations, change very quickly. An inability to put a correct price on an asset leads to the breakdown of markets and the erosion of confidence. Banks, businesses, but also people in general no longer trust each other. The effect on social cohesion is devastating. Collapsing values also have a spillover effect, which intensifies the process of disintegration. They fundamentally change immaterial values as well, and the globalisation collapse becomes a story of changing values in both the usual senses of the term, as monetary and ideal values are shaken. The consequence is profound vulnerability. Trust depends on a wide range of institutional arrangements, on states, on corporations, but both governments and business become vulnerable when values change abruptly and unexpectedly. At the 2009 London G-20 summit, world leaders asserted “the desirability of a new global consensus on the key values and principles that will promote sustainable economic activity.”

The breakdown of globalisation in the past was associated with financial crises, and a shifting of the geopolitical balance. Financial flows are closely correlated with the geography of power: a powerful country attracts capital, and it is also able to re-export this capital in a way that bolsters its international position. Small-scale financial crises may strengthen the link between security and dominance of the capital markets; but large scale crises lead to a breakdown. Smaller scale events, like 1929, may look very dramatic, but they do have quite easy and obvious policy answers. The catastrophic meltdown, of which the historical twentieth century case was the Central European banking crisis of 1931, which then ricocheted around the world, do not have such readily available solutions.

The connections of finance and the character of power and authority work not just at a level of high politics and the arcane calculations of security experts. They also influence the way in which people think about the myriad connections that link people across long distances, and make possible the globalisation phenomenon.

Complex transactions and relations in a globalised society and economy require an element of certainty that is provided by a simple capacity to make equivalences. The most obvious form of this security is the stability that is provided by

a secure monetary standard, and globalisation upswings have always had a widely recognised and shared international measure of value. The late nineteenth century was characterised by Charles de Gaulle in retrospect as the époque du trois pour cent, the absolute confidence that government and other high quality bonds would produce a stable and predictable return of three percent. The foundational belief is that market prices send an intelligible signal, and it has political implications. Markets limited the capacity of governments to behave badly. In the late twentieth century, price stability became a major objective of policy. Because the experience of the twentieth century indicated that politicians could not be trusted, this task was delegated to increasingly independent central banks.

The confidence that was at the core of the globalisation belief in universal connectedness led many people to extend credit, and take larger and larger risks. In short, the expectations aroused by globalisation set off credit booms, and the downswing of deglobalisation came with the disappointment of bubbly expectations and then with financial collapse. Raised expectations produced the sense that anything and everything is possible, or in other words a euphoria ensues that lacks rational foundations. The power of markets in this case means that alternative disciplinary methods, in the form of state regulation or in the imposition of a complex non-state system of authority in a corporation, also begin to be eroded. There is then a universal questioning of every type of value.

In credit booms, there is not necessarily a synchronised upward movement of all prices upward. Speculative bubbles develop in some sectors, but not everywhere. To take a well known example: in the bubble that preceded the current clash, values for contemporary art exploded, but prices of Old Masters remained more or less stagnant. The bust was consequently larger for the contemporary market, while “traditional” paintings also did not fall as much in the slump. There is further uncertainty because periods marked by technological transformation and structural breaks in the economy also see very radical breaks in the pattern of demand. Both the bubble and the technical change mean that the relations of prices become radically unstable.

There are then consequences for policy of radical price instability in times of stress. The instability of prices means that it is hard to find a single guideline for judging monetary policy. The weapon that destroys a broad range of values is price instability.

Severe financial crises of the 1931 type do their damage by dramatically heightening monetary uncertainty, and eroding or destroying the idea of a common
way of measuring. Even technical terms like inflation or deflation do not capture what is happening well, because values shift dramatically relative to each other. When monetary uncertainty prevails, trust and confidence are destroyed. The monetary uncertainty also corrodes institutions that had previously developed in order to eliminate additional uncertainty, companies which internalise some transactions or states that offer a guarantee of stability. People in these circumstances will cast around desperately, seeking some better or truer measure of value, and hence of a guide to conduct.

II. Economics and Natural Law

Responses to the crisis have given a much greater room to policy initiatives. There is a new attention to the role of the state in stabilising expectations. The mid-twentieth century recommendations of John Maynard Keynes have a new degree of actuality. Many aspects of the new policy are worrying: will temporary surges in state spending to deal with the aftermath of banking crises lead to permanently higher levels of government spending and indebtedness? How can the resulting deficits be financed? Is there a danger of inflationary developments as a consequence of ballooning public sector deficits? Citizens should ask precisely what is worrying in the new policy initiatives: only with an articulation of that concern will it be possible to formulate legitimate policies. Very often complaints about the inadequacy of economics are linked to a very strong advocacy of some policy position in response to the crisis. Such policy positions are fiercely contested, and many of them appear linked to particular and powerful interests: banks and financial services, lawyers, automobile producers and automobile trade unions are all groups that have tried to assert that a general good depends on the subvention and rescue of their particular kind of activity.

One particular distributional issue has dominated national and international debates: what sorts of compensation level are appropriate, and how should these levels be determined? What criteria can be used in setting levels of compensation? Or is this an activity which the state should not be involved in at all, and which should be left as the outcome of market processes? The most divisive issue at the G-20 Pittsburgh meeting concerned precisely the appropriate response to the problem of remuneration in the financial sector. Most Americans are prepared to argue that high pay levels are not appropriate where losses mean

that financial institutions need to be bailed out with public money. More generally, it is plausible to argue that even if the government gave no explicit guarantee, the doctrine of major banks being too big or too inter-connected to fail established an implicit guarantee; and as a consequence, the high rewards for taking risk were effectively underwritten by the government. Some others argue that a distorted incentive system in the past led bankers to take inappropriate risks, and that consequently, for pragmatic reasons, the incentives should be better adjusted to mirror long term performance (and also the long term social or general gains). By contrast, some European governments and thinkers suggested that excessive pay levels were in themselves wrong – regardless of whether they led to losses and inappropriate gains or not.

The controversies do not really address the causes of the perceived failure of conventional economics. The question remains whether this is a simply technical failure, or whether it derives from some more basic problem. Is there a more general failure, because of an unwillingness of economists to discuss fundamental questions concerned with value?

What is the value of public goods such as currency stability? Why should we place a value on open markets? For what reasons should people have the opportunity of undertaking employment?

Sometimes discussions of such motivations revolve around concepts of natural rights: a right to employment, to a fair income, or to access to markets. What is the source of such rights, and how can conflicts of rights be arbitrated?

It is not surprising that there is a new concern of some economists with justice (notably Amartya Sen’s recent book), and with ways of interpreting justice that do not necessarily involve the clash of two or more conflicting rights but rather as a way of developing potentials that are inherent in human beings. One interesting consequence of this new concern has been a revived interest in how different cultures have handled the problem of clashes of interest. Often the idea of precepts that can be derived from reason is traced back to Greek philosophy, especially to Aristotle, and especially as mediated in medieval philosophy in the writings of Averroes and Aquinas. But Sen has pointed out how Indian thinkers evolved a rather parallel discourse to that of Aristotle; and Arthur Waldron has identified the same debate in China over two millennia ago.6

It is reasonable to think that the crisis in empirical economics and the broader crisis in values are connected. Financial crisis is linked to other sorts of crisis in that the language and thinking that produced financial disorder had spread to other domains of life.

Some analysts, for instance argued that modern finance simply corresponded to contemporary art, which experienced a remarkable asset price bubble in parallel with the financial markets, especially after 2004. Some modern artists and their patrons explicitly point to the parallel between contemporary art and new financial products. In both cases a fundamentally unintelligible product was being marketed to a wide audience. Two Swedish management gurus in a book entitled “Funky Business” wrote that bankers should learn from experimental art: “If you want to do something really interesting and revolutionary, learn to ignore your customers. Most customers function as rear-view mirrors. They are extremely conservative, boring, lack imagination, and don’t know their own minds.”7 Deutsche Bank, a pioneer in the field of corporate cultural engagement, explained a new project (called “Moment”) by saying that “Moment mirrors developments in the increasingly virtual banking business as well as tendencies in contemporary art.” Customers faced by avant garde art, or buying complex derivatives, were thus in a fundamentally similar situation, and could not understand the underlying value.

After financial implosions, such as the collapse of the dot-com bubble in 2000 or the sub-prime meltdown of 2007–8, such views appear arrogant. The parallel between bewildering and apparently meaningless art and unintelligible financial products is damning rather than reassuring.

The language of finance not only affected art (and vice versa); it spread into personal relationships. A study of dating and sexual practices in New York found that users of a candid website explained that they avoided any permanent relationships and instead sought to establish a pattern of put and call options in their private lives. Potential partners were ranked according to degrees of social attractiveness, and then held in reserve in case a superior relationship did not materialise. The personal life thus came to resemble a trading floor. The chronicler of this process explains: “They use their cell phone to disaggregate, slice up, and repackage their emotional and physical needs, servicing each with a different

partner, and hoping to come out ahead. This can get complicated quickly, how-
ever, and can lead to uneasy situations."

Natural law thinking can be a powerful corrective to the distortion of values. In the natural law tradition, a body of guiding principles can be derived from the application of reason. Ancient and medieval writers found no problem in combining empirical economics with an ethical orientation, but this tradition largely disappeared.

One outstanding problem is that the two traditions of analysis have no way of speaking directly to each other. Moral philosophy is normative, while economics self-consciously avoids the creation of norms, and instead analyses the relationships inherent in empirical data. Economic analysis has become increasingly mathematical, natural law thinking has been developed within analytic philosophy, which concentrates on the meaning of concepts and language. Economists systematically refrain from making judgments of moral value, supposing that individuals will define their own goods or preferences. The task of the social scientist or the economist is held to lie in the calculation of the consequences of their acting to attain these goods or preferences. The different approaches look as a consequence like endless parallel bars, inviting impossible intellectual and moral gymnastics between is and ought.

Both disciplines in consequence have their own very distinct version of a crisis. For moral philosophers, the world of the market does not behave as they hold it should; while economists have discovered that the market does not behave as they think it will.

There are also different views of the time framework for analysis, each of which presents their own peculiar problems. The concepts of justice are eternally valid, with the result that many will ask how they should adjust to a world which is constantly changing and generating new problems that require new analyses. By contrast, the problem of utility is that it may be a very short term concept. Indeed, much of the literature on happiness has been devoted to showing that many forms of consumption generate only a short term surge in happiness, without leading to a long-term increase in well-being. There is as a result a widespread sense that a truer measure of felicity would need to examine long-term contentment. Latin distinguishes very clearly between the short term state of happiness –

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felix – and the longer term state – beatus.

The most basic issue in the debate on the contribution of natural law thinking is the question of the realisation of human freedom. Over the past thirty years, a prominent theme of much analysis has been that political and economic freedom produces benefits, in particular gains in well-being. Sophisticated measures such as those provided annually by Freedom House are used to establish the empirical veracity (over fairly narrowly defined time periods) of this social science claim. A parallel stream of thought tried to make the claim that religious practice was desirable and beneficial because – again as demonstrated empirically – it was associated with gains in income and wealth. The social science analysis of religion in this kind of way goes back at least to Max Weber’s famous identification of the protestant ethic with the “spirit of capitalism.” But in both cases, the thinking behind the empirical argumentation is deeply distorted and quite destructive. Freedom has a value – or represents a truth – in itself. Religious values are not derived from their potential material benefits but from a transcendent order. Even though it may be true that faith and love represent a powerful tool in tackling poverty, they do that because of their intrinsic value as an expression of what is truly human. The greatest contribution that the natural law tradition provides is its powerful insistence on a hierarchy of value, in which value as such is recognised, rather than appearing as an instrumental tool for some other purpose.

III. Debt and Crisis

Can we apply this thinking in a particular case that is central to the current crisis? Is there a solution to the problem of debt – of the vast expansion of financial assets and liabilities – that is often interpreted as lying at the origins of the 2007–8 financial crisis: debts of households, of financial institutions, as well as of governments that attempt to guarantee or take over the debts of households and banks in order to assuage the panic? Debt is at the heart of the current crisis. The financial relationship raises acute moral issues, which suddenly appear to be at the heart of the problem. Why should burdensome obligations come with a duty to repay? Is it good to be in debt?

Deflation produces radical anti-capitalism, and a demand for a cancellation of debt. Revulsion against the market economy often takes the form of a specific condemnation of debt and debt instruments. The Saudi cleric, Grand Mufti Abdelaziz Al al-Sheikh made the case that the cause of the crisis is interest on debt, and that the sharia principle of risk participation would eliminate the problem.
This is a very old answer. The Old Testament famously recommended a cancellation of debt every forty-nine years in a “jubilee”. The medieval church attacked usury. Such arguments are not built on simple obscurantism. Both the medieval church and Islam distinguish between debt that is exploitative, in which individuals are tied in debt servitude, and the relationship that arises out of a sharing of entrepreneurial risk. The old answers invite us to think about the circumstances in which debt may inhibit free choice, or the free development of the human personality.

The theological interpretation of modernity is that we borrow from one another on an increasingly grand scale for a reason, and that that reason stands as a condemnation of modern life. We borrow because we are convinced that our utility schedule is more important than someone else’s. If I see a beautiful piece of jewellery or a bright new car in a shop, I am convinced that it should be mine and that it can be more usefully employed in my possession than in that of someone else. In that way greed feeds on a kind of pride or self-regard. The problematical character of debt is captured in an ambiguous phrase of the Lord’s Prayer that refers not only to spiritual offense but to actual debt (and was often in the past translated as “forgive us our debts”: dimitte nobis debita nostra).

Solutions to the crisis include a simplification of finance, a return to lower levels of debt, and a reduction of flows across long distances. The quasi-nationalisation of banks is already producing some of these effects, in that the new government-owned institutions are unlikely to be willing to let their funds flow across national frontiers, where they would be used to the benefit of citizens of a different political entity. Sometimes this package is discussed as a move to “retro finance”.

Some natural law traditions point in a very radical direction, and demand regular cancellations of debt, as in the Old Testament “jubilee.” A less radically intrusive approach would demand the end of those incentives that created powerful motives for households and corporations to increase their debt. In particular the tax deductibility of mortgage interest payments led to an excessive level of household debt; and tax deductions for interest led to high levels of corporate leverage. Some countries have already experimented with ending or reducing the levels of permissible mortgage interest deduction. A progressive ending of this distortion would remove an economic and psychological burden.

An alternative direction thinks in terms of measures that would increase confidence. There might be a more direct relationship of individuals to financial activity, that leaves them more empowered, and which does not place them in the hands of people that they do not and cannot trust. But trust is not something that can simply be created at will by governments or ordered by legislative fiat. Trust depends on a delicate social infrastructure.

Trust is also intrinsically related to a capacity for empathy or sympathy, the capacity to put oneself in the perspective of another when contemplating a business transaction. This is a tradition of thought that one the one hand derives from Adam Smith’s reflections in the Theory of the Moral Sentiments, and on the other from religious and perhaps specifically Christian thinking about compassion or misericordia. But it was largely marginalised because of the development of powerful institutions, corporations, and state regulation that seemed to obviate the need for a moral imagination.  

Benedict XVI’s recent encyclical Caritas in Veritate tries to push even further, and make love (caritas) rather than misericordia the basis for economic life. But, as some commentators have pointed out, this may for some religious traditions be a step that goes too far into the mystical and the transcendental.

The projection of moral thought into business relations runs against a powerful stream of recent thinking, in which financial thinking detached itself from the rest of the world and became a sort of mathematical abstraction. One of the most reflective and self-critical modern masters of finance, George Soros, wrote that: “If I had to deal with people instead of markets, I could not have avoided moral choices and I could not have been so successful in making money. I blessed the luck that led me to the financial markets and allowed me not to dirty my hands.”

10 See the 1980 encyclical of John Paul II, Dives in misericordia: “The present-day mentality, more perhaps than that of people in the past, seems opposed to a God of mercy and in fact tends to exclude from life and to remove from the human heart the very idea of mercy. The word and the concept of ‘mercy’ seem to cause uneasiness in man, who, thanks to the enormous development of science and technology never before known in history, has become the master of the earth and has subdued and dominanted it. This dominion over the earth, sometimes understood in a one-sided and superficial way, seems to leave no room for mercy.”


At this stage, there arises the most fundamental problem in regard to values in economics. Many analysts have suggested that a market society cannot live simply on the basis of the values that it generates itself as a result of its own commercial activities and exchanges. The fundamental values derive from some other source. A powerful current of interpretation suggests a religious origin of such basic values regarding human dignity, human motivation and conduct. In a famous tract, Max Weber tried to suggest that the ethic that drove modern capitalism had originated with a cultivation of a very unbusiness-like asceticism in the world of the Reformation. The idea of renunciation and a denial of consumption then produced an accumulation of surpluses. The initial asceticism of the business elite gradually eroded as it was replaced by what Weber called the “iron cage” of rationalistic calculation. The original motivation disappeared, generating a feeling of emptiness in Weber’s account.

Conduct in a market society needs to be guided by some external source of commonly defined and commonly held values. If those values erode, instability ensues. Globalisation does not automatically establish a self-sustaining set of values. On the contrary, the continual change and uncertainty, driven by new encounters, new possibilities and new technologies, tends to subvert. A crisis then produces the demand for a return to older values. In the current circumstances, there is even nostalgia for the Weberian conception of a Protestant work ethic. At his inauguration in January 2009, President Obama spoke of American greatness: “In reaffirming the greatness of our nation, we understand that greatness is never a given. It must be earned. Our journey has never been one of shortcuts or settling for less. It has not been the path for the faint-hearted, for those who prefer leisure over work, or seek only the pleasures of riches and fame.” The President of the United States appeared to be explicitly setting aside the late twentieth century obsession with happiness and the measurement of “pleasures” as a way of judging the value of economic activity. It coincided happily with the themes of Asian frugality and Asian values that framed the Governor of the People’s Bank of China’s attack on American hegemony. Zhou Xiaochuan emphasised the importance of Confucianism, which values “thrift, self-discipline, Middle Ground and anti-extravagancy.” Such appeals still raise the Weber question of how and why the work ethic is motivated, and in what

ways it corresponds to basic human proclivities. We cannot simply understand economic life by observing its operation; we need to think about an inner logic, and about how that logic corresponds with the nature and the development of human character. In that sense, the financial crisis has brought us back to basics.