

LAWS256/456 – BUSINESS ORGANISATIONS

COURSE NOTES, RESOURCES, AND MATERIALS

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WEEK 1: CORPORATE PERSONALITY AND THE HISTORY OF THE CORPORATION

Lecture 1

❖ *Part One*

- Capitalism: Capitalism is an economic system based on private ownership of the means of production and their operation for profit. Characteristics central to capitalism include private property, capital accumulation, wage labour, voluntary exchange, a price system, and competitive markets. In a capitalist market economy, decision-making and investment is determined by the owners of the factors of production in financial and capital markets, and prices and the distribution of goods are mainly determined by competition in the market
- Business organisations or corporate law is an extremely interesting story. Corporate law is one of the major points in world history and its actually one of the most exciting areas of study not only because it is generally always moving and changing but also because you are at a critical point at the unfolding of this story, and it is the choice that you have on how this story ends

Adam Smith

- Early literature focuses on brail tails, people who were trying to find this holy grail or are on their quest for it. Wealthy kings are still searching for this grail, this isn't an internal grail sitting in the lands of Europe, the grail is sitting offshore, sitting in the new world is America and Asian and all they need to do is send boats off into the new world to return full of gold and wealth and spice. The world history around the story at this point is world misery, it is colonisation, it is genocide, where they are far less interested in what these wealthy kings are doing. We will however become interested with what is happening in the new world but for now let us focus on the merchant king. He wants to send out boats to return to riches and that is high right as merchant king, the problem however is that he cannot secure funding to buy the boat, which is very expensive, so he is introduced to a character Sharlock, who is greedy and horrid and is committing the great sin of usury (was a sin of great concern at the time, excessive interest on money was never a component, usury was charging interest of money), if you want to get a loan then somebody wants something in return for giving you that loan, they have taken the risk and want a reward, at least this is what we are made to believe now. If usury is a sin, this means that our merchant king cannot loan money, which poses a great deal of problems. If they cant loan the money then he won't be able to find his grail, he therefore needs Sharlock because he was Jewish and

Jewish people were able to loan money but this rule only extending to lending to your brother and this posed obvious issues for this Christian class because the Lord had said that everybody is their brother. In Venice a great call was made out for Jewish people to come to Venice and lend money and a lot of people heeded to this call. When they got there they were needed but certainly not wanted, and were corralled into ghettos and locked away only to be treated as criminals for doing exactly what they were asked to do.

- Focussing on this concept of usury, how on earth did a sin that was so great that the Venetians would have to import Jewish migrants to lend money become the everyday source of just about all transactions of society? And why exactly is usury forbidden, why should we be so opposed to interest?
- The story of corporate law is one that we can start with usury. The story of the corporation and the economy as a whole as we stand is usury which became marketed by abers and ended up as a great idolatry and as we step through these readings, we are presented with the idea that the whole thing has been based on a faulty logic and then marketed by an even more faulty logic only to result in a system that had to engage in a massively erroneous concept in order to lock people in.
- If this is correct, if it is in fact usury marketed by abers that has become idolatry, nearly all of us as good members of capitalist society are kneeling at the font of usury and bowing before the recital of capitalism and it is very difficult to shadow the conceptions, particularly if you have been raised before it from a particularly young age.
- What is capitalism? Is it this thing that directs and distributes all of the resources for us in the best possible way it is efficient, and you ask how it works? Explains in the most superstitious language available that there is an invisible hand, which pushes everything around and it is all very good, we just need everybody to act selfishly all the time and we're fairly sure that this is the case anyway. It seems a fairly simple matter to ask well who created this capitalism? You say, well we did. In which case, how then can it direct you if you are its creator? Are you not greater than it, in what sense does it have power over you? The concept needs to go much deeper than this and it will in the next couple of weeks but the central point that we want to start with is that economics is not the theory of how to produce the most stuff, and it is not econometrics of how do we work out the supply and demand, how do we work out the marginal costs and benefit, how do we derive a supply curve and does it dictate our lives? Economics is the answer to the question of how do we supply unlimited wants with limited means? Even that question is flawed in its own sense because how do we even have unlimited wants? Most people are satisfied with relatively little. It is the question of how do we distribute what we have. Economics answers to us, we do not answer to it. No one ever needs to be forced to do something for the market, no one ever need to be forced to

do something for efficiency's sake. This is a weird position that we have gotten to but it certainly wasn't where we started.

- If we start with Adam Smith's so called capitalism (turn to books), who is the creator of capitalism, did not think he was creating something that would surpass us all, yes he is credited with the famous "invisible hand" line, it is one of the most misquoted lines in all of literature, the invisible hand was not directing everything to an efficient allocation of resources, it was simply saying that if everyone acted in their own self interests an Englishmen would buy English made products to protect his own job, that isn't modern capitalism at all, it is quite the opposite. But Adam Smith is an interesting character and stands out of all of the characters as the greatest, here is the man that changed the world and was able to do so with just incisive observation and brilliance, which came from being the son of a customs worker and a son of an artistry in the church of Scotland and these things are absolutely fundamental to the forming of his theory of capitalism.
- First of all, if you go down to the customs docks of the day and look at what is happening, there is in fact a marketing operation, which is the black market. There is all sorts of corruption on the docks, people are buying and selling goods and Adam Smith is a young boy who is curious as to how they derive the prices that they are getting. There is no rule, there is no governing law, it is a process that is actually happening outside of the law yet seems to be working quite well, in fact it seems to be working a lot better than the formal process which is driven by forms, policies, procedures and government regulation. This sets in a thinking of how we allocate our resources, which he learnt from this black market trade, one thing that we can learn from this is that markets exist outside of capitalism. There were more markets before capitalism than afterwards. Every time a persons says the market system, they are playing a linguistic game with you, they're not talking about the market, they are talking about capitalism, they don't like the word because it raises the mire of the capitalist, which is actually where Adam Smith will start. They start with the division of labour, if we're talking about manufacturing something, Adam Smith who explains on the basis of manufacturing pins, if you go to a factory where they are factoring a pin and he sits there, gets a string of wire, cuts it into a fairly small shape and files it own the ends to a point and then solders a bit of metal on the end and flattens it out and allows it to cool into the form of a pin that it is, then sets it aside and starts the process again, then this is what we would consider as being a fairly inefficient process. When he rolls out the wire and cuts it, he needs a cutting tool, which he will pick up, cut the wire and move the metal to the side, put down his cutter, now he needs to switch both his mind and his tool to the next process which is filing, once that has been done he puts down the file, gets out his next tool and so on, until he has his pin. He can produce however many pins he can produce in a day, he is a pin maker and finds meaning in this does, this is what he does, this is his existence, however it is inefficient. What we can do instead is get four people

who all make pins and we can give them each a process, which means that each person doesn't have to change his mind to the next process, or move things to the side, or set down and pick up new tools, he just does one of the processes repetitively and passes it to the next. By doing this, they can produce far more pins than they otherwise would. If all four of them take $\frac{1}{4}$ of the tasks, they're much more efficient as they each simply go about the one same process over and over again and they become extremely good or specialised in that one process.

- Adam is not presenting this as some sort of Utopian society that we can live in where we all can divide labour and all of a sudden everybody is a million times richer and happier. Adam believes strongly in thinking things through and presents a very considered theory. He says, well sure you can make all of these pins now, but somebody has to have organised all of this, someone has come in and taken the risk of all of this, there has to be a pin factory owner or manager, someone who oversees the productive process. To get to this position he may have worked a lot harder than many others to get a lot richer to be able to go out and now buy the resources he needs to make his own company and have his own employees. He is deserving of his reward. The person who started this factory is the one who will reap all of the benefit. This actually puts the workers and the owner at odds with one another. The interest of the dealers is always in some respects different from and even opposite to that of the public. What he's talking about here sounds a lot like Marxism, he's not saying that this needs to be torn down, he is saying that it needs to be implemented. It is a million times better than the slavery and the mercantilism that is going on at his time. But of course there is a cost to this, it puts us in class warfare, it also means that the worker naturally loses therefore the habit of exertion and generally becomes as stupid as is possible for a human creature to become, by manufacturing not a pin but a small segment of a pin. That person will lose their complete ability to work and over time they won't even know how to manufacture a pin. He cannot now go to another factory or start his own, he doesn't have that skill anymore, he has lost his identity in work and must now find it elsewhere. This is preferable to Adam Smith in regards to what is happening and it will work and the reasons it will work is because Adam has a very strong belief in something that he gets from his father's religious beliefs, which is that man can do no good. Adam Smith might not have been religious but if you are brought up with a belief that man is not capable of any good whatsoever, is incapable of doing a righteous deed, then it makes sense when sitting down and making a system that will divide up and distribute wealth, that you would make sure that it appealed to humans basis nature, not to mans good nature. Adam Smith says this is a system that will rely on greed, and the only reason why human will do anything for themselves is because they will get something in return for themselves, they will not do this for the public good.

- Adam Smith is basing his system of original sin and he is basing his notions for this system on the corruption of man and that human can do no good. What a tragedy if we have gotten it wrong, what if man wasn't born evil? What if man is born as a blank slate, capable of both good and evil? But what if we motivate someone from birth with aberos. What if we say the best, most moral thing you can do is act selfishly. If you want to survive you need to start thinking about yourself. Everyone is told this at some point when we are growing up, money is life, trust no one, and be selfish. And now 21 something years on, think about it, not people in the world are selfish assholes, we have rewarded selfishness from birth. But what a tragedy if we have it all wrong, imagine if when we are born we are not born as a blank slate but with a tendency to do good. Psychological studies actually suggest that this may be the case.
- Without a monopoly however, any exchange company, it would appear could not carry on any long-term foreign trade. This is a very different type of capitalism that we are used to. Adam Smith has thought things through; he is a great advocate of public education, where everyone has an ability to earn the same money. Adam Smith is also a big believer in death taxes. He is also in a time where we are not in a state where joint stock companies exist, at least not in the form we are used to. Adam Smith thought it was wise that England agreed never to have anything similar to a joint stock company is existence again. A joint stock company is a subversion of capitalism and Coast identified this.

Coast

- Coast – The Nature of the Firm – is a Nobel prize winning work and in to and a half pages he just breaks ground and it should be something that we constantly reflect back onto every time we tend to fall back into the modern trap of talking about capitalism and Adam Smith. Coast says well what I want to do is go and have a look at how things work within a firm. The argument is that we have corporations because corporations are efficient. That in itself you can have a problem with because why are we seeking efficiency, we should be seeking effectiveness and what we want instead because the government would make a whole lot more money by instead of doing what it does, selling and marketing cocaine and getting us all addicted. That would be a terrible thing to do because morality places limits on the market because efficiency isn't really what we are after, there is legality, there are things that we want, and capitalism serves it. But even if we decide that what we really want is just the most stuff, is the corporation really efficient? Is it a justifiable entity? Coast goes out to all of the large corporations that he is let into and has a look at how resources are being allocated and he says well what should happen is we should see what Sourcer? Said (supply and demand guy), is that we should see all sorts of formulas buzzing around in the sky; the invisible hand should

be pushing stuff around like magic. However it is not what he saw, instead he finds islands of conscious power in this hopeless unconscious organisation. The firm, the corporation, is not just not using the price mechanism (magical formula that works out how supply and demand are working), it is suppressing it. No one ever works in a firm and is asked to move departments because of the marginal curve, its not an efficient decisions, its because of business, politics and the individual. The manager is sitting there arbitrarily ordering and organising people according to the manager's whim, because the manager thinks he knows better than the market, frankly the manager doesn't, however it is better for that person if there are no rules of supply and demand. You will learn that in economics there are all these magical formulas, which are found not really to be the reality, and therefore there are managers that are just using them as an excuse to do whatever they really want. Supply and demand just gets in the way of what that person wants to do both inside and outside the firm. So inside the firm is inefficient, and outside the firm, the firm wants to crush the price mechanism.

- Importantly, even if you want to believe in the efficiency of the firm, it being the goal you are aiming for, of which capitalism is the best way of achieving efficiency, and I'm just in love with efficiency, then you do have to contend with the imperatives of Coast and just everyday experience. Its not hard to see that most firms are giant beauracracies led by idiots in power who seem to have a gut feel sensation of how they operate, at best they are just an accountant who are running the firm based on a few predetermined numbers who generally have very little to do with economics, for better or worse.

Friedman

- Friedman – we've been criticising capitalism for some time now, it seems to be better than what has come before, however its not as good as what we need to move to. Friedman is going to show you how to critique what is being said about criticising capitalism today, can't just say did you see what capitalism did for the USSR, you need to back this up with a better argument and Friedman does. Friedman provides in one page, a stellar defence of capitalism, a critique of all other systems.
- Friedman is saying that capitalism is an excellent idea, what we are talking about here is a system of contracts and this is based on a theory called contractarianism, which was very big a while ago, it still is but you just don't see it. the idea is that every single time that somebody enters into a contract for exchange, well great, everybody is better off. Now you wouldn't enter into a contract if you weren't better off, every person is better off working into a contract. People are not free, they still need to be fed, so any type of exchange for one thing, you are getting something in return. Yet neither of things in the contract are what you really want, however its better than just starving to death. Every single contract is for the benefit of society, everybody is better

off. One party may be much better off and one party only marginally better off, but either way every party comes out with something more than they had before. This is undeniable truth. Everybody in a liberal, democratic society is free to choose, if you are in Australia, nobody points a gun at you and says you must work, it is up to you, you're not stuck here. Evaluation actually goes further and deeper than this, this critique runs even further into world history, it is not based in isolation, it is not a spur of the moment thing. Friedman cleverly deciphers Adam Smith and says will give me any period in world history, lets go back to the great empire of Egypt and lets have a look at what pharaoh was doing to the Jews. Lets now have a look at WW2 and have a look at what Hitler was doing to the Jews. Or perhaps you might want to have a look at what the USA was doing to the blacks or even in current history, what most people are doing to gays. He says give me any period of history in the world and what you will see is some human being in power and when you put a human being in power there is no such thing as an innocent era, human beings are full of viciousness and prejudice and they act out on that prejudice with violence and compulsion. "Yes if I go to capitalism I may be forced to work because I need to eat but nobody is pointing at a gun telling me I have to do it and if I'm in capitalism I may be born poor (Friedman isn't an idiot, he doesn't believe that if you're born poor that you'll somehow strike riches and become a billionaire, he's not a dreamer like the great Gatsby), in which case you will likely be always poor, denied an education, work a crappy job and be buried in a proper grave". The market is the only ruler we have that is really free of prejudice (it does not care what colour, sex, age or religion we are or who we sleep with at night etc.). This is what we call negative freedom, if nothing is stopping me from doing something then I am free to do it. However it is all well and good to say that there is nothing constraining you from capitalism, except from the last 20 years of social conditioning and pro-capitalist propaganda, except that no matter where you go you will have a very lonely life without it (to be able to do something and be given actual freedom to do it, you need to be given the means and all of the tools and the ability to do it). You don't have positive freedom to leave, only negative freedom and negative freedom is a very limited freedom.

- Another thing we might want to take from Friedman is that when we talk about Adam Smith's comment "I've never known anyone to do any good acting for the public's good", however this will be talked about in more detail next week

Galbrough

- Galbrough – earlier we talked about how Coase pointed out that the suppression of the price mechanism works out for political reasons and it is in the firms interested to suppress the price mechanism outside – Galbrough give a stellar critique of why. Galbrough did not win the Nobel price but should have (Friedman and Coase did, note that if you want to win the price don't critique