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The Price of Freedom is Eternal Vigilance

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Live Not By Lies By Aleksandr Isayevich Solzhenitsyn Feb 12th 1974

Foreword

On the day Solzhenitsyn was arrested, February 12, 1974, he released the text of "Live Not by Lies." The next day, he was exiled to the West, where he received a hero's welcome. This moment marks the peak of his fame. Solzhenitsyn equates "lies" with ideology, the illusion that human nature and society can be reshaped to predetermined specifications. And his last word before leaving his homeland urges Soviet citizens as individuals to refrain from cooperating with the regime's lies.

'Even the most timid can take this least demanding step toward spiritual independence. If many march together on this path of passive resistance, the whole inhuman system will totter and collapse.'

At one time we dared not even to whisper. Now we write and read samizdat*, and sometimes when we gather in the smoke room at the Science Institute we complain frankly to one another: What kind of tricks are they playing on us, and where are they dragging us. Gratuitous boasting of cosmic achievements while there is poverty and destruction at home. Propping up remote, uncivilized regimes. Fanning up civil war. And we recklessly fostered Mao Tse-tung at our expense – and it will be we who are sent to war against him, and will have to go. Is there any way out? And they put on trial anybody they want, and they put sane people in asylums – always they, and we are helpless.

Things have almost reached rock bottom. A universal spiritual death has already touched us all, and physical death will soon flare up and consume us both and our children – but as before we still smile in a cowardly way and mumble with our tongues tied. But what can we do to stop it? We haven't the strength?

We have been so hopelessly dehumanized that for today's modest ration of food we are willing to abandon all our principles, our souls, and all the efforts of our predecessors and all opportunities for our descendants – but just don't disturb our fragile existence.

We lack staunchness, pride and enthusiasm. We don't even fear universal nuclear war death, and we don't fear a third world war. We have already taken refuge in crevices. We just fear acts of Civil courage. We fear only to lag behind the herd and to take a step alone, and suddenly find ourselves without white bread, without heating gas and without a Moscow registration.

We have been indoctrinated in political courses, and in just the same way was fostered the idea to live comfortably, and all will be well for the rest of our lives. You can't escape your environment and social conditions.

Everyday life defines consciousness. What does it have to do with us? We can't do anything about it? But we can – everything. But we lie to ourselves for assurance. And it is not they who are to blame for everything – we ourselves, only we.

One can object: Gags have been stuffed into our mouths. Nobody wants to listen to us, and nobody asks us. How can we force them to listen? It is impossible to change their minds.

It would be natural to vote them out of office – but there are no elections in our country. In the West people know about strikes and protest demonstrations – but we are too oppressed, and it is a horrible prospect for us: How can one suddenly renounce a job and take to the streets? Yet the other fatal paths probed during the past century by our bitter Russian history are, nevertheless, not for us and truly we don't need them.

Now that the axes have done their work, when everything which was sown has sprouted anew, we can see that the young and presumptuous people who thought they would make our country just and happy through terror, bloody rebellion and civil war, were themselves misled. No thanks, fathers of education!

Now we know that infamous methods breed infamous results. Let our hands be clean! The circle – is it closed?

And is there really no way out? And is there only one thing left for us to do, to wait without taking action?

Maybe something will happen by itself? It will never happen as long as we daily do not sever ourselves from the most perceptible of its aspects: Lies.

When Violence intrudes into peaceful life, its face glows with self-confidence, as if it were carrying a banner and shouting: "I am violence. Run away, make way for me – I will crush you."

But Violence quickly grows old. And it has lost confidence within itself, and in order to maintain a respectable face it summons falsehoods as its ally- since violence lays its ponderous paw not every day and not on every shoulder. It demands from us only obedience to lies and daily participation in lies – all loyalty lies in that.

And the simplest and most accessible key to our self-neglected liberation lies right

here: Personal non- participation in lies.

Though lies conceal everything, though lies embrace everything – not with any help from me. This opens a breach in the imaginary encirclement caused by our inaction.

It is the easiest thing to do for us but the most devastating for the lies. Because when people renounce lies it simply cuts short their existence. Like an infection, they can exist only in a living organism.

We do not exhort ourselves. We have not sufficiently matured to march into the squares and shout the truth out loud or to express aloud what we think. It's not necessary. It's dangerous. But let us refuse to say that which we do not think.

This is our path, the easiest and most accessible one, which takes into account our inherent cowardice, already well rooted.

And it is much easier – it's dangerous even to say this – than the sort of civil disobedience which Gandhi advocated.

Our path is to walk away from the gangrenous boundary.

If we did not paste together the dead bones and scales of ideology, if we did not sew together the rotting rags, we would be astonished how quickly the lies would be rendered helpless and subside. That which should be naked would then really appear naked before the whole world. So in our timidity, let each of us make a choice: Whether to remain a conscious servant of falsehood (of course, it is not out of inclination, but to feed one's family, that one raises his children in the spirit of lies). Or to shrug off the lies and become an honest man worthy of respect both by one's children and contemporaries.

And from that day onward he:

- Will not henceforth write, sign, or print in any way a single phrase which in his opinion distorts the truth.
- Will utter such a phrase neither in private conversation nor in the presence of many people, neither on his own behalf nor at the prompting of someone else, neither in the role of agitator, teacher or education nor in a theatrical role.
- Will not depict foster or broadcast a single idea which he can see is false or a distortion of the truth whether it be in painting, sculpture, photography, technical science or music.
- Will not cite out of context, either orally or a written, a single quotation so as to please someone, to feather his own nest, to achieve success in his work, if he does not share completely the idea which is quoted, or if it does not accurately reflect the matter at issue.
- Will not allow himself to be compelled to attend demonstrations or meetings if they are contrary to his desire or will, will neither take into hand nor raise into the air a poster or slogan which he does not completely accept.
- Will not raise hand to vote for a proposal with which he does not sincerely sympathize.

- Will vote neither openly nor secretly for a person whom he considers unworthy or doubtful abilities.
- Will not allow himself to be dragged to a meeting where there can be expected a force of distorted discussion of a question.
- Will immediately walk out of a meeting, session, lecture, performance or film showing if he hears a speaker tell lies or purvey ideological nonsense or shameless propaganda.
- Will not subscribe or buy a newspaper or magazine in which information is distorted and primary facts are concealed.

Of course, we have not listed all of the possible and necessary deviations from falsehood. But a person who purifies himself will easily distinguish other instances with his purified outlook.

No, it will not be the same with everyone at first. Some, at first will lose their jobs. For young people who want to live in truth, this will in the beginning, complicate their young lives very much, because the required recitations are stuffed with lies, and it is necessary to make a choice. But there are no loopholes for anybody who wants to be honest.

On any given day one of us will be confronted with at least one of the above-mentioned choices even in the most secure of the technical sciences.

Either truth or falsehood: Toward spiritual independence or toward spiritual servitude.

And he who is not sufficiently courageous even to defend his own soul – don't let him be proud of his "progressive" views, and don't let him boast that is an academician or a people's artist, a merited figure, or a general – let him say to himself: I am in the herd, and a coward. It's all the same to me so long as I'm fed and warm.

Even this path, which is the most modest of all paths of resistance, will not be easy for us. But it is much easier than self-immolation or a hunger strike: The flames will not envelop your body, your eyeballs will not burst from the heat, and brown bread and clean water will always be available to your family.

A great people of Europe, the Czechoslovaks, whom we betrayed and deceived: Haven't they shown us how a vulnerable breast can stand up even against tanks if there is a worthy heart within it? You say it will not be easy? But it will be the easiest of all possible resources. It will not be an easy choice for a body, but it is the only one for a soul.

It is not an easy path. But there are already people, even dozens of them, who over the years have maintained all these points and live by truth. So, you will not be the first to take this path but will join those who have already taken it.

This path will be easier and shorter for all of us if we take it by mutual efforts and in close rank. If there are tens of thousands of us, then we would not even recognize our country.

If we are too frightened, then we should stop complaining that someone is

suffocating us. We ourselves are doing it.

Let us then bow down even more, let us wail, and our brothers the biologists will help bring nearer the day when they are able to read our thoughts and that they are worthless and hopeless.

And if we get cold feet, even taking this step, then we are indeed worthless and hopeless, and the scorn of Pushkin should be directed to us:

Why should cattle have the gifts of freedom?

Their heritage from generation to generation is the belled yoke and lash. ***

* clandestine copying and distribution of literature banned by the state, especially formerly in the communist countries of eastern Europe.

The Product of Imagination By Arnis Luks ***Libertarianism (unfettered capital) On Steroids***

As my research evolved this week I came across several references to *Lex Mercatoria* - the codification 'to me', of world law as Transnational Trade Law, The Law of The Merchant, or, Admiralty Law. I am hoping that others will take up a scientific investigation of the repercussions 'that appear to be the erosion of both, the 'common law', and, the sovereignty of the 'nation state'. I see this issue as an important part of the background of deceit to ushering in world governance. This is not happening in a vacuum but is the result of carefully laid out plans (mythically conceived), being imposed over every nation through vehicles such as the WTO World Trade Organisation, and the WEF World Economic Forum, TPP etc....

A few most telling principles introduce the subject to our readers, and hopefully fellow researchers.

https://trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.1

48. To the extent that uniform principles and rules did not exist in certain areas of general commercial practice in the Middle Ages and in early modern times, the uncritical adoption of claims related to the existence of its historical counterpart by the proponents of the New *Lex Mercatoria* has been heavily criticized as the "tyranny of a construct"⁵⁷. However, even when acknowledging that the medieval *Lex Mercatoria* is a myth, that myth is not without merit for the modern debate. It serves as the projection of an ideal rather than as an accurate reflection of Medieval reality. As such, it provides the theoretical starting point for the pragmatic conception of its modern counterpart:

"A foundation myth smacks of irrationality, but there is a rational counterpart: the medieval *lex mercatoria* as a thought experiment. To some extent, that seems to be what libertarians have in mind when they invoke a medieval *lex mercatoria* as a pure private governance. It is not intended as a description of how things actually were, but an imagination of how things could have been.....The underlying idea is, presumably, one of globalization: If we want to create a law for globalization after the nation state, then we should look for models from the time before the nation state—the Middle Ages in particular."⁵⁸

2. The New *Lex Mercatoria*

a. Rediscovery

The *Lex Mercatoria* was rediscovered in the 1960s by Berthold Goldman and Clive Schmitthoff. Their research activities had their roots in developments in the global economy since World War I, particularly in the standardization of contract clauses for sales, (maritime) transports, international trade and finance and the proliferation of international commercial arbitration. Schmitthoff's early observations of the changed nature of world trade law in those days are to a large extent still valid today, albeit with an emphasis on the technical revolutions of the digital era:

*"The changed nature of world trade law is due to various factors of a technical, economic and socio-political nature which, taken together, form the background to the development of law in the second half of the 20th century. Technical advances, especially in the field of aviation and the international exchange of ideas through radio and television, have led to an unprecedented shrinking of the world for the broad masses. Mass production of goods, by its very nature, demands ever wider market areas, and internationally interconnected corporate enterprises have opened up world markets for these mass sales. In addition, the nation-state is no longer regarded as the measure of all things; the great international organizations of our time, of which only the United Nations and the European Economic Community need be mentioned, have shown that the nation-state is not necessarily the highest form of social organization. In legal science, the zeitgeist is most clearly reflected in the new law of international trade."*⁶⁰ ***

References and Comments of Note

47) Wolaver, The Historical Background of Commercial Arbitration, 83 U. Pa. L. Rev. 132, 144 (1934): "A typical expression from the early books is the following from Malynes: 'Merchant affairs in controversy ought with all brevity to be decided to avoid interruption of the traffick.' Traders always thought of the common law as something beyond their experience. It was local, not general, custom, and its processes were slow and formal. It is perfectly certain the merchant had a great need of rule and law, but it was rule and law in the market and as he and his kind knew and practiced it. It was not deduction from cases; it was self-generative from transactions themselves. He ordinarily found it possible to operate his affairs without controversy or aid of lawyers or courts, but should he find himself at odds with someone in the course of trade, he had an all-complete system of law to direct the settlement."

48) Holdsworth, A History of English Law, 7th ed. rev. 1956, 66, emphasizing the "cosmopolitan character of the Law Merchant"; Wieacker, Historische Bedingungen und Paradigmen supranationaler Privatrechtsordnungen, in: Bernstein/Drobnig/Kötz (eds.) Festschrift für Konrad Zweigert zum 70. Geburtstag, 1981, 575 et seq; Horn, Festschrift Karsten Schmidt, 2009, 705, 710 et seq; Trakman, The Law Merchant:

The Evolution of Commercial Law, 1983, at 9; Trakman, The Twenty-First-Century Law Merchant, American Business Law Journal 2011, 775 et seq; Berman, Law and Revolution. The Formation of the Western Legal Tradition, 1983, 55, arguing that in the late 11th and 12th century "the basic concepts and institutions of modern western mercantile law – *Lex mercatoria*, 'the law merchant' – were formed, and even more important, it was then that mercantile law in the west first came to be viewed as an integrated, developing system– a body of law"; Benson, The Spontaneous Evolution of Commercial Law, Southern Econ. J. 1989, 644, 647, 650: "[v]irtually every aspect of commercial transactions in Europe was governed for several centuries by this privately produced, privately adjudicated and privately enforced body of law".

57) "Historians have for decades now been sounding the warning that the law merchant emperor has no clothes, but to little avail... True, scholars writing about private ordering do sometimes cite these historical studies. In the middle of discussing the existence of the medieval law merchant, they drop a footnote to historical works to the contrary as providing 'other perspectives'.... Yet following this apparently obligatory nod to the opposition, the authors continue with their discussion of the law merchant as if no challenge to the accepted construct could be seriously entertained" (references omitted).

58) Michaels, Legal Medievalism in *Lex Mercatoria* Scholarship, Texas Law Review 2012, 259, 264 and 265; see also id, 267: "It may seem obvious that such an imaginary Middle Ages, and an imaginary *lex mercatoria*, need to be rejected because of their ideological potential. I am not fully convinced. It is worth pointing out that legal positivism equally rests on mythical foundations, as does the ideal of the state, on which so much current legal thinking rests. The problem is not, it seems to me, dreaming per se. The problem begins...once these dreams are taken as reason, and as direct models for our present problems"; see also Trakman, The Law Merchant: The Evolution of Commercial Law 1983, p. 17, hinting at the historical *Lex Mercatoria*'s potential usefulness as a "model for innovation".

ED: The world around us is increasingly having imposed upon it a creation of men's imagination - of how the world ought to be. No room for God and His natural Order, Absolutes and all that silly stuff that has endured since time began. The Introduction to the book *Autopoietic Law: A New Approach to Law and Society* mentions having grown from a conference at the European University Institute in Florence, 1987. The establishment of the UN in 1945 was the precursor to World Government, established by the victors upon a war-weary world with little or no due consideration, as a formal entity able to fabricate 'rules' out of thin air to suit merchants above national interests. Advocates for the 'Rule of Law' and 'National Sovereignty', in my view, have not taken up the mantle to adequately expose this recently concocted system of 'rules' that jeopardise both. You will own nothing.....

How Much is Enough? By Neville Archibald

Across Australia at this time, parliaments are doing as they have always done, or so it seems. Preparing a budget, discussing taxes and spending, and looking to justify their decisions during election campaigns. Whatever they do, it is sure fire that they will increase their overall tax take, even if they make some spending cuts.

I remember an Old fellow from my younger years, talking about the introduction of income tax. He had been fired up by yet another tax being introduced and recounted how a number of his older contemporaries had bristled at the thought of government knowing just how much they earned, “none of their bloody business how much I earn”, was the attitude taken. The introduction of such a government oversight into their affairs, clearly was not welcome. Now we seem to take it for granted – it is the right of Government! If those old blokes came back today, they would not recognise us as free Australians, as for how they would view our Governments ...

Federal income tax was first introduced in 1915 and was initially intended to be a temporary measure to support the war. Prior to this only a few states had income taxes. 1884, a general tax on income was introduced in South Australia. 1895, NSW introduced it at 2.5%. Primary taxes for the, then colonies, was excise, customs duties and only some had income taxes; with income tax being a relatively small proportion of total revenue. Queensland had no income tax until after federation. Of course the federal Government's introduction of an income tax as a war time measure, was not given up after the war as was initially intended.

At it's introduction, one member, Mr W Elliot Johnson MP, presciently observed that “there is all too much reason to believe that this taxation will not end with the war”. “To me it seems only a part of a policy of frightfulness in taxation for which the war is made the excuse by honourable members opposite.”

(*Income Tax at 100 Years: A Little History*, by Miranda Stewart)

<https://www.austaxpolicy.com>

Indeed, income tax, as with most other taxes, has steadily grown in size with the promise of more to come. The result being more and more revenue is extracted from the population, to the point now where the combined tax take is almost unbearable for many.

Looking up the graph of the tax mix since federation (*History of Tax Reform in Australia*: by Paul Tilley, Melbourne law school) **<https://law.unimelb.edu.au>** we see that at the beginning of federation, 100% of revenue for the first 9 years was simply Customs and Excise(C&E). After that, by the mid 40s Income tax (IT) and C&E were about the same with a smattering of sales tax and company tax.

By 2019, C&E had reduced to less than 10%, while personal Income tax provided 50%, sales tax around 15% and company tax about 22%. with total take ever increasing!

What does this do to a population?

The actual available spending power of individuals has been continually eaten into. More of the burden of tax has come at the expense of the run of the mill average Australian. Pressure to earn more or work longer hours has morphed into a constant quest to make ends meet somehow; less time for leisure or the consideration of just why this taking of our earnings is ever increasing.

As war was made the excuse for the raising of an income tax, so to have many other reasons been given for the imposition of many more and varied taxes. The shuffling of tax burdens from one group to another within our Australian population has been done in order to appease the rising anger at such a large tax take.

Instead of identifying excesses or faults in economic policy, the rearranging of what is now such a convoluted system, becomes the instrument of pacification. A group is picked out as “wealthier than need be”, or “not paying their fair share”, and targeted for tax reform. Voters who are doing it hard (an ever increasing number) then think they will be shouldering less of the burden - if only those wealthy ones would pay their way!

On an interesting note, in the History of tax reform, under creeping tax rates: the share of income paid by high income earners in 1954 was 54%. by 1984 it had dropped to 21%. I am not sure what it is now, but judging by the record profits being made by global and larger entities, I doubt it has changed for the better (for us at least).

All these figures aside, the more you look into graphs and figures, and the reasons for these changes, the more complicated it seems to become. Different entities will show slightly different things and explain them as happening for various economic reasons. Each seems plausible enough at a glance, and I'm sure most can justify their reckonings. The practical ‘on the ground’ results; however, still turn up as a reduction in our ability to do our own thing, with our own money. We are being made more and more reliant on government services (perhaps dependent on the largess of what government allows us to do, or what money is left after their take). In this way we are controlled, limited; both financially and by legislation. The legislation we see clearly as a limit, the removal of our money vote, is less clear to us.

The shackles of slavery are easily felt, for they leave a mark and chafe where they bind. The shackles of economic slavery do not. We still feel as if we are free, doing our own thing, concerned that perhaps we are to blame for not working as hard, or smart, as the successful ones around us. After all, it is possible to become rich, isn't it? Enough of us are allowed to succeed to keep the dream alive I'm sure; but, slowly the chains are being drawn in. Like a fish on a hook, we are being let out and reeled in, closer each time to total control over us; tiring us out, until we have no will to fight against it.

Am I being too melodramatic? Probably! But I watch as our treasurer Jim Chalmers, talks of a capital gains tax, an unrealised capital gains tax. A tax on superannuation, but only for those “wealthy”, - “I've got too much” ones who have \$3

million dollars or more, not the poor underclass: and that is of course where it starts. Pitting us one against the other.

He is also angling for the ability to make changes to this legislation after the fact: without going back to the parliament to make those changes. Not something that anyone would rationally give a politician: a blank cheque!

How long will it take before the \$3 million, becomes 2 or 1? What else could be added that may contain unrealised capital gains? Houses? Is your house now worth much more than when you bought it? You may not wish to sell it, but if government decrees you could be \$200,000 richer if you did, is this to be taxed as if you had actually earned that extra income? That is what an unrealised capital gain is! Where do you find the money to pay such a tax, short of selling your house?

Our federal treasurer made it quite clear after a leaked treasury document about reforming indirect taxes and reforms to superannuation tax came to light. He owned it by saying he was “personally willing to grasp the nettle”. The leaked release spoke of raising the tax take as a part of broader tax reform.

Let's face it, when a budget is in deficit you either need more money, or you cut spending. Government has a history of raising taxes as we have seen.

(for more see: [Tax reform talk heats up ... by business editor Michael Janda](https://www.abc.net.au/news/2025-07-16/tax-talk-ramps-up-after-treasury-foi-ahead-of-roundtable/105534060)
<https://www.abc.net.au/news/2025-07-16/tax-talk-ramps-up-after-treasury-foi-ahead-of-roundtable/105534060>)

The States are also in the process of raising more money, especially Victoria, whose debt is spiralling out of control. They are searching for any way to increase income from taxes; recently raising the fire services levy by between 100% and 190% depending on the type of land it relates to. This levy is being renamed the Emergency Services and Volunteers Fund and will hit hardest the very people it is named after, the volunteers. The members of the CFA (Country Fire Authority), which is made up largely of volunteer land owners and farmers are to be met with the 190% increase. These volunteers as you may guess by the name, don't get paid, and roll out to fires, accidents and other incidents, time after time, leaving jobs or work on the farm, to wait until they get back. For those land owner volunteers to be hit with such an increase, while doing the very work the tax is supposedly for, is more than just rude.

The thing about all these deficits and the rising levels of debt we face as a Nation, it is all a fabrication, a means of dragging us down to a point where we accept some form of servitude. We will own nothing and be happy! Happy just to work to survive.

The debt we all owe (the world over) is un-payable and has no real owner. Each nation is in debt to some amorphous entity, each population are wage slaves, economic slaves, who face increasing demands on the little they do earn.

Until we recognise that the tax take will never be enough to satisfy the expenses, or pay the debt, we cannot begin to look for a true solution to our problem. Yes, we have a virtual dictatorship by pre-selected candidates, picked for each election, and this we could turn around with effort, but it is the entrenched economic policy of debt finance and the never ending quest for tax dollars, that firmly holds our noses to the

grindstone. It stops us from becoming the best we can be.

The love of money is the root of all evil, the inability to see that truth when it rears its head everywhere around us, is what is stopping any reform we might make. Whether it is us chasing enough to live, or government taking more to satisfy their need, we must stop and question why, in such an abundant world, with such fantastic technology and labour saving machinery, are we still too poor to do more than just exist.

In Merry England (1400 – 1700), workers who were without our technological advantages, worked between 120 and 220 days a year. There are many detailed seasonal accounts to confirm this! During this period, those people had many more days of leisure than we could even dream of now. The stark contrast between then and now can not be simply explained away as myth or that we desire too much by comparison. With less labour needed to provide for our wants, the physical can be met with ease, it is just the conceptual, the coming to grips with how to pay for this abundance, (or the fact that we have to?) that we must deal with.

When will the tax take be enough, the more they take from us, the less production we can buy. The bigger the debt, the more tax is used to service it. The more tax money that goes into that never ending hole of debt payment, the less it can be used to buy what we can produce, be it roads, hospitals or any other thing government would deign we use it for.

It is a two-fold problem we face, that of the coming servitude, and the means of making it happen – debt finance. If we reform our government and make it respect our freedoms, but do not alter the debt finance economic system, we will be leaving the means of enslaving us to once again be used against us. Both problems must be solved.

Further reading: *Dictatorship by Taxation*, C.H.Douglas.

<https://alor.org/Storage/Library/PDF/Douglas%20CH%20-%20Dictatorship%20by%20Taxation.pdf>

The Nature of the Present Crisis and It's Solution, C.H.Douglas.

<https://alor.org/Storage/Library/Douglas%20CH%20-%20The%20Nature%20of%20the%20Present%20Crisis%20and%20its%20Solution.htm>

God is a trinity, a relational structure. Every work of the devil is to divide us into warring camps - East vs West, Ukraine vs Russia, Israel vs Palestine, Sport team A vs Sport team B, Liberal vs Labor, Democrat vs Republican, Husband vs Wife, Young vs Old. Resolution is to be found in upholding this relational structure, of the natural law, community, of discussion, love if you like.

The Dangers of Lex Mercatoria: A Threat to National Sovereignty

By Professor X

Lex Mercatoria, once known as the “law merchant,” began in medieval Europe as a practical, custom-based system to support trade across borders. Back then, with fragmented political systems and unreliable national courts, it gave merchants a flexible way to settle disputes. Rooted in the shared traditions and Christian values of the time, it was a conservative framework, built organically from the ground up:

https://trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.1

But that was centuries ago. Today’s *Lex Mercatoria* is a different beast, if not monster. It’s a sprawling transnational legal system governing global trade and investment through international contracts, arbitration rulings, trade customs, and standardised rules like the UNIDROIT Principles and INCOTERMS.

<https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>

<https://internationalcommercialterms.guru/>

Its advocates claim it brings consistency and predictability to global business. Yet, from a nationalist conservative viewpoint, this system is a direct threat to national sovereignty, democratic accountability, and cultural identity. Unlike its historical predecessor, which grew from shared values, the modern version is a top-down creation of international institutions, corporations, and unelected experts who often see national borders as barriers to progress rather than expressions of a people’s will.

The Rebirth of Merchant Law

In the 1960s, scholars like Berthold Goldman and Clive Schmitthoff “rediscovered” *Lex Mercatoria* amid a push for global economic integration. Goldman saw it as a standalone legal system, free from national laws, a “third legal order” that operated above state authority. Schmitthoff, while more grounded in British legal traditions, viewed it as rooted in the autonomy of contracting parties but still tied to domestic systems. Both recognised a growing set of global legal principles shaped by business practices and organisations like UNCITRAL. <https://uncitral.un.org/>

This “living law” evolves quickly to meet the demands of global trade, often bypassing national legislatures entirely. Its flexibility is praised, but for conservative nationalists, this is a flaw. It’s a system built without the consent of citizens, shaped by elite consensus rather than democratic debate, severing the link between law and the values or traditions of a free society.

Undermining National Authority

Lex Mercatoria operates outside national legal systems, shifting judicial power from accountable courts to private arbitration panels. These panels, staffed by unelected experts, apply global norms that can override domestic laws. This process erodes what legal scholar Martin Loughlin (*The Idea of Public Law* (2003)), calls the state’s “constitutional authority” to govern its economic life.

For example, when a foreign company contracts with a local entity and includes an arbitration clause, disputes bypass national courts.

The company can challenge local labour, environmental, or cultural regulations using transnational norms that prioritise trade and efficiency. Arbitration panels, assuming these are supreme values, may rule against national policies meant to protect citizens.

The investor-state dispute settlement (ISDS) system shows this in action. In *Philip Morris v. Uruguay* (2016), the tobacco giant challenged Uruguay's anti-smoking laws, claiming they violated international treaties. Uruguay won, but only after spending millions in legal fees, a warning to smaller nations. Similarly, when Germany moved to phase out nuclear power after Fukushima, Vattenfall, a Swedish energy company, sued for billions through ISDS. These cases show how *Lex Mercatoria* can limit a nation's ability to make democratic choices.

Lex Mercatoria's Philosophical Rejection of Sovereignty

At its core, *Lex Mercatoria* dismisses the Westphalian idea of national sovereignty. It treats borders and democratic governance as hurdles to economic efficiency, clashing with conservative values that see the nation-state as the guardian of cultural identity and self-governance. This mindset chooses global markets over the will of the people.

Elite Control and Technocratic Rule

Lex Mercatoria's norms are crafted by a small circle of legal scholars, law firm partners, arbitrators, and officials at bodies like UNIDROIT. These groups, often based in global commercial hubs, create rules governing massive trade flows without democratic input. For instance, UNIDROIT's model contracts are developed by experts with no public mandate, yet they shape global commerce through arbitration and international agreements. This breaks from Western legal traditions, where laws come from elected legislatures or constitutional frameworks. From a conservative perspective, this technocratic approach lacks legitimacy. Complexity doesn't justify bypassing democracy, especially for laws with such far-reaching impacts.

Cultural Erosion and Moral Decline

Lex Mercatoria reduces economic life to transactions optimised for profit, ignoring conservative principles that tie economics to culture, morality, and community. Thinkers like Edmund Burke and Russell Kirk argued that economic activity should serve higher goals, like preserving family and tradition. Yet, *Lex Mercatoria* treats these as "externalities" to be ignored. When a corporation challenges laws protecting cultural practices, like Sunday rest or traditional crafts, this system provides the tools to opt for efficiency over heritage.

It also promotes a secular, materialist anti-Christian worldview, sidelining values like just pricing or the dignity of labour. By treating all places as interchangeable and cultural practices as trade barriers, it undermines the "rootedness" that philosopher Roger Scruton saw as vital to healthy societies: *Conservatism: An Invitation to the Great Tradition* (2017).

Corporate Power and a New Feudalism

Lex Mercatoria empowers corporations to act like sovereign entities. Through ISDS, they can challenge national policies with costly arbitration, creating a chilling effect on governance. Elected officials hesitate to pass laws that might trigger corporate lawsuits, inverting the proper balance where businesses operate under democratic rules, not above them.

This system also favours large corporations over local businesses. The complexity of transnational law demands resources only multinationals can afford, sidelining small enterprises and contradicting conservative ideals of distributed ownership and economic democracy championed by thinkers like G.K. Chesterton: *The Napoleon of Notting Hill* (1904).

A Social Credit Alternative

C.H. Douglas's Social Credit theory offers a way to counter *Lex Mercatoria's* corporate dominance. Douglas argued that economies should serve human needs, not financial elites. He identified a gap between production and purchasing power, caused by a financial system that creates money as debt, forcing reliance on global markets: *Economic Democracy* (1919).

Here are some very basic ideas as an introduction and counterpoint:

The National Dividend

Social Credit proposes a National Dividend, a regular payment to all citizens based on the nation's productive capacity, not welfare or taxation to reduce dependence on corporate jobs, boost local purchasing power, and support domestic businesses over global supply chains. It also frees citizens to engage in democratic and cultural life without economic coercion.

Monetary Sovereignty

Douglas advocated for nations to issue their own credit based on production, not borrowing from private banks. This debt-free money could fund infrastructure, education, or cultural preservation, breaking the cycle of debt that ties nations to global finance and *Lex Mercatoria*.

Local Economies

Social Credit supports local production through national credit and policies like local banking or regional currencies. This strengthens communities against global corporate pressure, aligning with conservative values of subsidiarity and local control.

Cultural Renewal

By securing basic needs, Social Credit allows communities to focus on tradition, family, and moral values. It counters *Lex Mercatorias* view of humans as mere economic units, valuing dignity and cultural heritage.

Addressing the Efficiency Argument

Supporters of *Lex Mercatoria* claim it reduces costs and boosts trade. But this assumes efficiency trumps democracy, culture, and cohesion, a materialist view conservatives and Christians should reject.

The system's complexity often burdens smaller businesses with high legal costs, and its "efficiency" ignores social and environmental harms. Most critically, even if it were efficient, it lacks legitimacy without democratic consent.

Globalisation is Not Inevitable

Lex Mercatoria's backers call globalisation unstoppable, but this hides the political choices behind it. The system was built to favour corporations over nations, technocrats over citizens. These choices can be undone through democratic will and policies that choose sovereignty over the forces of globalisation.

Reclaiming Control

To combat *Lex Mercatoria*, nations must:

- Strengthen Courts: Reassert domestic judicial authority over commercial disputes, limiting private arbitration in public-interest cases.
- Limit Arbitration Clauses: Restrict their use in contracts affecting essential services or cultural heritage.
- Reform Trade Agreements: Re-value national interests, protecting workers and heritage from corporate challenges.
- Ensure Democratic Oversight: Involve citizens in adopting global norms, ending technocratic rule.

Social Credit policies like the National Dividend, national credit creation, and local development banks would further empower nations to resist corporate globalisation while supporting local economies and cultural values.

Resistance to Globalism

Lex Mercatoria isn't just a legal system, it's a challenge to sovereignty, democracy, and cultural identity. It hands power to corporations and technocrats, sidelining the common good. Social Credit offers a way to reclaim economic and cultural sovereignty, ensuring economies serve people, not profits.

The choice is stark: accept the erosion of national control for a hollow promise of efficiency, or rebuild systems rooted in tradition, community, and democratic legitimacy, and economic freedom and democracy. By embracing conservative principles and Social Credit policies (described by Douglas as "practical Christianity"), we can protect our societies and ensure future generations inherit nations that reflect their values, not a homogenised global market.

The Shifting Sands of Law: Neo-Formalism, Neo-Functionalism, and the Decline of the Welfare State By Ian Wilson LL.B

In an era defined by rapid globalisation and the erosion of traditional state authority, the landscape of legal regulation is undergoing a profound transformation. The welfare state, once a cornerstone of 20th-century governance, is fading, giving way to a globalised "knowledge society" where law's role is increasingly precarious. A recent academic paper, part of the Sfb 597 "Transformations of the State" series by Peer Zumbansen, "*Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflexive Law*" (2009):

discusses into this shift, examining the resurgence of neo-formalist and neo-functional approaches to law-making. These approaches, the paper argues, mark a departure from the socially responsive legal theories of the 1970s and 1980s, favouring market-driven deregulation and private autonomy over state intervention.

However this shift raises serious concerns about the erosion of national sovereignty, cultural cohesion, and the state's role in safeguarding its citizens.

The Decline of the Welfare State and the Rise of the Global Knowledge Society

The welfare state, with its ambitious programs of social regulation and redistribution, has long been a defining feature of Western governance. Yet, as globalisation accelerates, the state's ability to regulate societal actors, particularly corporations engaging in jurisdictional forum-shopping and decentralised business practices, has weakened. The paper describes this as a shift from hierarchical "government" to a fragmented, heterarchical "governance" model, where law struggles to maintain its relevance. <https://www.britannica.com/topic/heterarchy>

The rise of the global knowledge society, characterised by interdisciplinary discourses and the diffusion of regulatory authority, further complicates law's role.

Scholars across law, economics, and social sciences now grapple with a world where national boundaries blur, and global actors challenge state control.

This transformation has sparked a revival of neo-formalist and neo-functional legal theories. Neo-formalism champions rigid, rule-based legal frameworks, sceptical of law's capacity for social engineering, while neo-functionalism sees law's primary role as facilitating individual autonomy and market efficiency. Both approaches reject the welfare state's interventionist legacy, valuing private ordering over public regulation. The Zumbansen paper argues that this shift depoliticises law, treating markets as self-regulating entities and ignoring their historical embedding in political and legal frameworks.

A Historical Perspective: From Formalism to Reflexive Law

To understand this shift, the Zumbansen paper traces the evolution of legal thought through the 20th century. Early formalism, rooted in the rule of law, promised certainty and predictability, shielding law from political contestation. Legal Realism in the U.S. and progressive movements in Europe, challenged this, advocating for functionalism, law as a tool for social change. By the 1970s and 1980s, disillusionment with the welfare state's overreach led to new theories: responsive law in the U.S., which sought to align law with societal needs through participation, and reflexive law in Germany, which saw law's adaptability to a complex, functionally differentiated society.

Responsive law, as articulated by Nonet and Selznick, aimed to foster civility and participation, acknowledging law's limitations in a divided society. Reflexive law,

proposed by scholars like Teubner and Wiethölter, went further, viewing law as a self-referential system that must navigate competing societal rationalities without dictating outcomes. These theories sought to balance state intervention with societal self-regulation, but the paper argues that neo-formalism and neo-functionalism abandon this balance, embracing a market-driven agenda that sidelines political debate.

Contract Law: A Case Study in Neo-Formalist and Neo-Functionalist Triumph

The paper uses contract law to illustrate this shift. Neo-formalists criticise contract adjudication as paternalistic and inefficient, advocating for social norms as a more effective regulatory tool, especially in transnational contexts. Neo-functionalists, meanwhile, favour market demands, viewing state intervention as an impediment to private autonomy. This approach, the paper contends, ignores the historical interplay between law and social norms, as well as the political nature of contract law, which has long balanced individual freedom with societal protections. By framing markets as naturally self-regulating, these theories obscure the state's role in structuring contractual governance.

The paper introduces autopoietic law as a counterpoint, portraying law as a self-referential, yet socially embedded system. <https://archive.org/details/autopoieticlawn0000unse> Unlike neo-formalism's rigid rules or neo-functionalism's market-driven instrumentalism, autopoietic law focusses on law's unique communicative role in a differentiated society. It neither dictates outcomes nor retreats into isolation but engages with societal conflicts through its own legal code. This perspective, the paper argues, offers a more nuanced understanding of law's place in a post-welfare state world, challenging the depoliticised vision of neo-formalism and neo-functionalism.

The paper's analysis, while insightful, raises troubling questions about the erosion of national sovereignty and cultural identity. The shift from government to governance, driven by globalisation, undermines the nation-state's authority to enforce a unified legal order rooted in national values. The paper's focus on legal pluralism and reflexive law risks fragmenting this order, valuing transient societal trends over enduring cultural principles. A strong state, nationalists argue, is essential to preserve national cohesion and protect citizens from the destabilising forces of global markets.

Neo-formalism, despite its flaws, aligns more closely with conservative values by accepting clear rules and the rule of law, which provide stability and respect for tradition. The paper's critique of neo-formalism as ahistorical overlooks its potential to safeguard national legal systems against globalisation's homogenising effects. Conversely, neo-functionalism's reliance on market-driven norms exposes nations to exploitation by global corporations, which rank profit over national welfare. The welfare state, for all its imperfections, served as a bulwark against such pressures, ensuring that citizens' needs were valued. The paper's failure to propose a robust

alternative to the declining welfare state leaves nations vulnerable to external economic forces.

The concept of autopoietic law, while intellectually compelling, is rejected as an elitist abstraction that detaches law from the nation's moral and cultural fabric.

Law, from a conservative and nationalist view, should reflect the nation's identity and values, not operate as a neutral communicative system.

The paper's emphasis on transnational regulatory patterns marginalises the importance of national legal systems, risking cultural relativism and the erosion of sovereignty. Moreover, the focus on regulatory complexity ignores the moral decay associated with globalisation, which a strong, centralised state must counter to maintain national unity.

Conclusion

The Zumbansen paper offers a compelling analysis of the resurgence of neo-formalist and neo-functionalist legal theories, highlighting their depoliticisation of law and retreat from the welfare state's ambitions. By tracing the historical evolution of legal thought and using contract law as a case study, it underscores the risks of valuing market efficiency over political contestation. Yet, from a conservative and nationalist perspective, the paper falls short in defending the nation-state's role as the guardian of legal and cultural authority. The embrace of globalisation, legal pluralism, and autopoietic law threatens to erode national sovereignty and traditional values, leaving nations exposed to the whims of global markets. A robust legal framework, rooted in national identity and enforced by a strong state, is essential to navigate the challenges of the 21st century while preserving the nation's moral and cultural core.

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The Australian League of Rights National Seminar will occur in Western Australia the weekend 11th - 12th October. Mark Your Calendar.

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