

# First Principles

First principles are an idea in debating that every issue can be broken down to a clash between one or more core concepts, each of which has two or more competing perspectives. These core clashes are the 'first principles' are the basis upon which a debate is fought.

Familiarity with these concepts can provide you with a framework to approach many secret topics. However, you need to be careful that you clearly and explicitly link these core concepts to the context of the debate at hand.

In this document are several chapters, mostly taken from university debating handbooks that explore what first principles are and give you a bit of an idea of what some of the key ones are. This is designed to assist you in preparing for AIDPSC.

Note that it will take time to properly understand, process and apply these concepts. Don't just try and read this the night before your debate – you need to go through the ideas, and maybe do some of your own work or research, to make sure you understand them correctly.

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# First Principles

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## What is a 'First Principle'?

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First principles are a difficult concept, so to begin with consider the following illustration. It would seem extremely difficult to prove that money is more important than a person's life. But how would you defend the 'value of life' argument? It is possible to enter into a cost/benefit ping-pong match with the opposing team, but quite often such 'practical' arguments can be effectively rebutted by logical and relevant counter-arguments (not to mention that there is a very real risk simply trying to bury the opposition under a bigger list of examples).

Yet it is unlikely that any amount of pragmatic justification can overturn something that feels so fundamentally wrong – it will never overcome those lingering doubts in the back of your mind. Ask yourself: what is at the crux of your argument, of your *beliefs*? What are those 'lingering doubts' *saying* to you? In this case it is not the practical, but the *moral* dimension that makes the monetary valuing of life so repugnant. These *moral* characteristics are what we call 'first principles': they are near-universal 'truths' which are very difficult to rebut.

## Why use them in a Debate?

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First principles are the basic building blocks of a proper debate. Every topic will have its own central moral, theoretical or philosophical themes, and these will often re-emerge in many different ways. These often form the most powerful and important arguments, but they are not often capitalized on as people we just 'assume' them to be self-evident or true, and do not consider the logic or theory behind them.

It is easy to neglect arguments based on first principles and to jump straight to the 'practical' arguments (e.g. what effect will it have on the environment? How much will it cost? Will it increase unemployment? etc). Try to look at *why* we accept these beliefs as undoubtable and beyond challenge. To begin with, try looking at the following areas. Exploring these dimensions will often lead you towards the first principles associated with a topic:

- Individual rights and freedoms (and responsibilities to society generally)
- The role of government in society
- Values and principles (e.g. equality, tolerance, etc)
- Basic rules (e.g. the rule of law, the presumption of innocence, etc)

## **How can you use First Principles in a Debate?**

Firstly, you need to be able to identify what these core moral and philosophical principles are, so you will need to look at the topic closely and consider who is affected and how. The next step is crucial – do not simply assert that these principles exist and think that this constitutes an argument. You *must* explain *why* these principles do or should exist (i.e. you should be arguing ‘this is how society *should* be’, rather than just saying ‘this is how society *is*’).

Let us return to the opening illustration. Why should a human life not be given a monetary value? Your justifications may have a number of roots:

- Your belief may be linked to ideas of equality, democracy, and the rule of law: to place a value on a person’s life devalues all human life, making it incompatible to a society where the inviolability of the person is at the core of maintaining civil order and civilization itself.
- Your argument may be humanist in nature: the dignity and self-worth of all people means that quantifying their value in such a way is innately evil.
- You may take a religious stance: a human being possesses a soul, whose ownership and value cannot be determined by other men, but only by God/a deity/supreme being, etc. (or some other variation upon these ideas).
- Your belief may be linked back to notions of social contract: in the interest of self-preservation, we respect a common, inviolable right to life so that our own most valuable possession – our own lives and the lives of those we care about – are protected, and not subjected to valuation and negotiation based on another’s personal gain.

If you follow through on your ideas, you will find that there are countless ways to justify such a belief. In a debate these are often amongst the most passionate and idealistic arguments you can put forward, and if done correctly can have a profound impact on the audience (often because, as these principles lie at the core of our common culture, anyone, except perhaps the most cynical psychopath, will at least in part share the same beliefs).

In a secret topic debate, identifying the relevant first principles is an important step in planning your topic. Do not ever disregard these moral or philosophical arguments – they may be less tangible than sets or raw figures or practical examples, but they are no less powerful (and adjudicators love them).

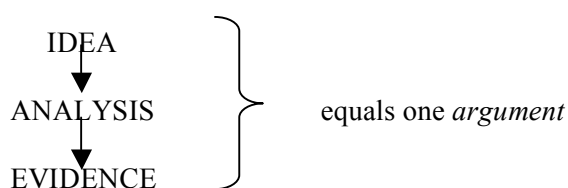
## Chapter Four: Making Arguments from First Principles.

Before we get to first principles theory, you need to know the difference between an argument and an assertion. In simple terms an assertion is something that is stated as true, without enough analysis to demonstrate that it is reasonable to believe that the statement is likely to be true. It's a statement of fact, without proof of its validity.

To avoid using assertions, you need to understand the anatomy of an argument<sup>1</sup>.

### The 'Anatomy of an Argument'

Whereas an assertion is simply a statement of fact (or in slightly more sophisticated terms, an assertion can include simplistic/superficial analysis – see 'Casual Causation' below) a proper 'argument' has the following structure:



Different people will use different labels for the various sections of an argument, but this basic format is necessary to have a properly formed argument.

IDEA refers to the concept or proposition that you seek to prove – it might be a principle, such as “the government has an obligation to provide free education” or it might just be something that would be helpful to your side of the debate, such as “the death penalty is an effective deterrent for criminals”. Either way, it's nothing on its own – it *may* be true, or it might not. The point is that you and your team want people to *believe* that it's true.

So how do you make them believe it? Well you start with some ANALYSIS of why it is likely to be true – why it is logical and reasonable to believe that it's true. This involves saying (out loud or in your head) “why?” and “because” a lot! But I'll give you an example in a moment.

Finally there is the EVIDENCE. I put it last for two reasons – first because it's the least important, and second because it should be the last thing you worry about – focus first on having the right IDEAS about what your side needs to argue, and then spend your time coming up with smart analysis to make it sound reasonable. If after that you have time for thinking up evidence and examples, then that's great.

EVIDENCE can be statistics (boring, but can be helpful – like the unemployment rate before and after a policy, or the percentage of people affected by a particular problem, or the costs of a proposal) or quotes (not direct quotes, but knowing what important people have said about an issue). But at university level evidence is more commonly presented by case study or analogy. So having an example of a similar situation or policy can be very handy if you can clearly draw the link back to the issue at hand.

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<sup>1</sup> See Appendix Three for a similar discussion, just with a simpler example!

**NOTE:** It really should go without saying, but it's important to note that you should *never* invent evidence – firstly its just poor form. You should have enough respect for your opponents not to try and cheat or cheapen the debate. Also it's stupid. The more experienced debaters/adjudicators get, the better equipped they become at spotting lies. It's pretty humiliating to have someone show that you were lying because they know the real details of a given situation. Don't take the risk of it happening to you!

Let's bring all that together by using a common motion as an example. On the affirmative of "That we should stop protecting our local film industry", it would be handy to be able to show that small-budget, local productions can compete with big budget imports – since fear of competition is the rationale behind government protection (i.e. IDEA – 'local media can successfully compete against imports').

How would you go about demonstrating an IDEA that is a little counter-intuitive? Well you'd need some logical analysis mixed with relevant examples. For instance:

*"The fear of unrestricted foreign media – particularly American – stems from the belief that bigger budget productions are inherently more attractive to viewers. Although it's true that people do enjoy special effects laden films and TV, there is plenty of reason to believe that even without government protection, local media can survive and even prosper. Why? Because beyond the superficial desire to see things blow up, what really attracts viewers is media that is relevant to their interests and culture. For instance one of the most popular shows on the ABC is Gardening Australia – it consistently out-rates the news, and every other competitor that rival networks have run against it. It might seem like an odd choice for a hit show, but it has very loyal viewers because it's relevant to their interests.*

*Similarly the ABC had a major hit with the drama series Seachange – which was not only well written, but it so accurately tapped into the mood of the times that it sparked the real-life "seachange" and "treechange" phenomenon's, in which city-based people move to beachside or rural towns to enjoy the same laidback lifestyle they saw on the show.*

*At the other end of the scale there is Neighbours – although it's often ridiculed, it is one of the most consistently popular shows in Australian television history and has launched the careers of many Australian actors and artists – you might think its lame, but to 15 year olds, it's relevant.*

*None of this should be surprising, since although American culture is very popular, people from all over the globe respond to stories about their own country, and their own culture. Australian media doesn't need government protection to be competitive, it just need good writers and talented actors – which the evidence shows that we have in abundance."*

**NOTE:** The argument doesn't have to rigidly follow the structure outlined above – but you should be able to clearly identify the key elements of the 'anatomy of an argument' within that example.

## Making Cases from First Principles

As a novice or even intermediate debater you will constantly feel like you don't know enough to debate most topics to their full potential – and unfortunately that's probably true. But how do you fix that lack of knowledge? You focus on first principles.

### First Principles has two key elements:

- (1) A good understanding of the principles of logic (i.e knowing how to show that an argument is logically flawed without knowing any facts about the issue).
- (2) A good understanding of the key concepts that form the fundamental 'clash' in the debate - (see Appendix One for a basic list).

Simply put, you can't prep a good case without having good and consistent IDEAS about a topic, and short of being an expert on every issue; these two elements are the best way to generate those ideas in prep.

**NOTE:** The language isn't that important. Don't worry about learning the labels/jargon used in Appendix One, it's the IDEAS that are important.

None of this is meant to suggest that you shouldn't try to keep up with the news, and even go further than that and specifically research issues that you think might be useful – of course you should do that. But that's a process that will be on-going throughout your debating career. At the start you want to give yourself the best possible chance of building good cases on a wide range of issues – and first principles is the best way to do that.

The case prepping method outlined in Appendix Two is designed to show you how to build up a case by approaching it from first principles – incorporating both logical progression of ideas, as well as being able to identify and understand the philosophical clash that lies at the heart of any debate.

There are few short cuts to learning first principles. The best ways are to read and to pay attention during debates/adjudications. All debates are built on a foundation of conflicting ideas and theories about how to solve problems – like how to best run the economy (e.g. Keynesian or Neo-liberal?) or the best principles for a political system (e.g. communitarian or liberal?), etc. These ideas might sound complicated, but for the purposes of debating you just need to understand the key concepts in each theory.<sup>2</sup>

So what is an example of first principles theories in action? Well many of the 1<sup>st</sup> P theories relate to disputes over the 'proper' role of the government – and you can learn the fundamentals of dozens of debates by just mastering a few simple concepts.

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<sup>2</sup> For more examples of how specific 1<sup>st</sup> P theories relate to a range of debates, see the matter articles in the Members section of the MAD site, on democracy and secularism (etc) [www.monashdebaters.com](http://www.monashdebaters.com)

## First Principles – The Role of Government

At some point everyone learns about liberalism (“small ‘l’ liberalism, not the Liberal Party). Obviously because Australia is notionally a ‘liberal-democracy’, the concept of liberalism must have a lot to do with how we conceive of the proper role and responsibilities of government. But what does it mean? Well, liberalism means “small government” – giving individuals as much freedom as possible (as long as that freedom wouldn’t be used to hurt other people). So true “small ‘l’ liberals” believe that when given the choice between banning something or merely regulating its use, governments should choose to regulate it, because banning something implies that the government is telling you what sort of behaviour is acceptable or beneficial for you – proper liberals think that wrong.

So while it might save lives and money if we banned smoking and drinking, true liberals would argue that these things should be regulated (e.g. preventing children from using them) but otherwise if people want to choose to do something that will do them harm, that’s their choice. The key is “informed choice” – so long as adults fully understand the choice they are making, and then they should be free to make it. For example, everybody knows that smoking is incredibly dangerous. If they still want to smoke, then the government shouldn’t stop them, because it’s an ‘informed choice’.

Conversely there are people who are sometimes called “communitarians” or more broadly, “socialists”, who take the opposite view. They favour “big government”, a government that actively involves itself in shaping the choices that people can make, in an effort to create a society that promotes the “social good”.

It was ‘big government’ socialists who decided that wearing a seatbelt should be compulsory and that getting immunised for diseases should be compulsory. That’s the government telling you what’s best for you – saying “We’re not going to take the chance that you’re stupid enough to ignore the obvious benefits of wearing a seatbelt, so we’re going to make it a law and then punish you if you don’t do it.

This clash between “big government” and “small government” is a constant theme of Australian politics. In practice people don’t always support one philosophy consistently, but both sides are always represented in public debate.

Think about it. Regards of whether the topic was about gun control, gambling, pornography, drugs, smoking, (etc), the *core* of the debate is the same – big government versus small government. On top of that core clash you would include any specific knowledge you might have of the harms or benefits of the thing in question, but each debate would be a clash of the same two principles.

Once you learn a few 1<sup>st</sup> P ideas, you’ll start to see them underpinning every debate you do. Even if no one ever mentions the names of the theories involved, you’ll see how the logic of those ideas permeates every argument made. It would be great if you became an expert on drugs, guns, gambling (etc) but in the meantime, learning these two 1<sup>st</sup> P ideas will allow you to build a strong case in any of the innumerable ‘role of government’ debates. It will also help you devise rebuttal.

## Chapter Five: Rebuttal from First Principles.

Once you understand the anatomy of an argument, it should be relatively simple to see how best to attack an argument. Appendix Three explains in detail how to best damage and hopefully destroy an argument in the most efficient and effective way.

But in just the same way that you can (and should!) use ‘first principles’ to construct your arguments, there some fundamental, logical principles by which you can attack arguments. So even if you don’t know anything about the evidence they used, and you’ve never heard that type of analysis before, if you listen carefully and take good notes, then you might find one of the following flaws has occurred in the argument.

### **5 common flaws with arguments which anyone should be able to spot regardless of how much you happen to know about a topic – this is just logic.**

- 1) Assertion – the argument is in fact not an argument at all, it’s simply an assertion, and as such there is no logical reason given to believe that is it true. Simply point out why there has not been any/enough analysis to demonstrate the validity of the assertion and then provide a reason why the assertion is not obviously or intuitively true.
- 2) Contradiction – The argument may be valid, but it is in contradiction with a previous argument. To be a real – or ‘full blown’ contradiction, it must be the case that it is *impossible* for the two arguments in question to both be true simultaneously. So it cannot logically be both *cheaper* and *more expensive* to do a given thing. Don’t go calling every argument you hear a contradiction or you will look foolish. If it is in fact a contradiction then that can cause massive damage to an opponent’s case, but if it isn’t, then the false accusation can cause massive damage to your credibility!



But spotting – and pointing out – a contradiction is only the beginning, if you want to fully exploit it you have to explain to the adjudicator exactly how this compromises the credibility of their case.

So don’t just say “first they said their plan would be really cheap, and now they say it would be really expensive, but is worth the money – that’s a pretty blatant contradiction”, follow it up with some analysis, like; “so which is it then? One of them clearly doesn’t really understand the nature of this situation – if a cheap program can be effective, then why is this she trying to tell us we’ll need to spend lots of money to resolve the problem, but if she’s right and it would take a lot of money to make a dint in this problem, then everything the first guy said is rubbish. Hopefully their next speaker will tell us which of his team mates knows what they are talking about, and which one was just making stuff up”.



You need to make it as uncomfortable for them as possible, and try and force them to not just retract the statement, but concede that a number of their arguments are irrelevant (they usually won't say that out loud, they'll just stop mentioning all the arguments on one side of the contradiction – that's when you know they're in trouble and you should listen closely to how they defend themselves – if they stop mentioning certain arguments then attack them for abandoning a chunk of their case).

**NOTE:** The most important thing is that you can clearly explain the contradiction – it's critical that the adjudicator understands and believes you – so explain it carefully, and keep an eye on the adjudicator to see if they understand you.

As you can see, a contradiction is such a serious flaw in a case, so if an opponent accuses your team of running a contradiction it is very important that your side respond as soon as possible and attempt to demonstrate how the two arguments in question are not contradictory.

- 3) Casual Causation – Essentially this is a lack of analysis. It occurs when someone tries to draw a link between two events, without showing how the former event actually caused the latter event to happen.

A classic is when people argue that the introduction of the death penalty for murderers causes a reduction in the number of murders. Never mind the fact that there are instances in which introducing the death penalty has preceded a *rise* in the murder rate, there is simply not reason to believe – *prima facie* – that the death penalty is a deterrence. There may have been a reduction in murders the following year for any number of reasons (it depends entirely on why people commit murder in the first place). Between 1996 and 1997 there was dramatic drop in the number of murders in Australia – but the death penalty was abolished here in the 1970s. So what happened? Well in 1996 there was the “Port Arthur massacre”, when Martin Bryant killed 35 people in Tasmania. Immediately after that incident the Federal Government instituted strict, uniform gun laws, which saw thousands of guns handed in as the result of a “gun buy-back” scheme and it became much harder to legally buy a gun and keep it in your home. Without wanting to say too much about gun control, the point of this example is that there can be many reasons why the crime rate – especially the murder rate – goes up and down. So be careful not to be too quick to assume that one factor is more important to the outcome than another, unless you have the analysis to show why that is the case.

- 4) False Dichotomy – This a particular type of mischaracterization of a debate or problem. It occurs when someone says that there is a choice to be made, where the only options are ‘A’ or ‘B’, when in fact they are not the only choices available.

This can occur because a speaker is trying to assert a self-serving dichotomy (in effect they are saying, “this debate/argument is a choice between doing something positive to address this problem, or simply letting things get worse” – in a decent debate this won't be true, it's almost always a choice between two options designed to improve a situation. Or a speaker can offer a false dichotomy because they are stupid/lazy and don't understand the debate/your argument properly.

Either way it's important to recognise when someone is attempting to falsely divide the debate into two positions, one of which is either not what you are arguing, or not what *anyone* would argue. Be very clear at all times about what your team is trying to prove and you should be able to deal with this situation easily enough.

- 5) Straw Man – This is another type of misrepresentation or mischaracterization of an argument. Basically the straw man is when a team set up an argument (which you have not made, and don't intend too) and then proceed to rebut it.



Sometimes this happens when a speaker takes an extreme example of your proposal, sometimes it happens when they misrepresent something you said, sometimes it happens when they were hoping you would argue a certain thing, and you actually proposed something slightly different. It doesn't really matter why, it's important to point out when a team is not engaging with your case, because if you let a straw man argument be beaten to death without pointing out that it's not your argument in the first place, a weak adjudicator can assume that it was part of your case. Also it's important to point out when your opponents are not engaging because that's a critical part of having a good debate.

**NOTE for adjudicators:** The 5 'first principle' rebuttal techniques listed above are really just logical flaws that can exist in an argument. As such, 'the average reasonable person' should be able to spot them (a 'reasonable' person is persuaded by logical arguments and not convinced by illogical arguments) and so even if an opposition don't spot a contradiction or an assertion, if you do you should penalise the speaker that made those arguments.

So if you hear an argument, and you're convinced (this is where taking good notes is important) that its contradictory with something else said by that team, you should penalise the speaker/team for that mistake. If their opponents also spot the flaw and point it out, then you should reward them in the same way you reward any good piece of rebuttal – but regardless of what the opposition do, logic is logic and if an argument is clearly illogical then it should be marked down.

This isn't a controversial idea – we don't adjudicate from the perspective that "I'll believe anything I'm told unless the opposition rebut it effectively" – that would be a crazy and unreasonable way to judge. If a team said in a debate that Australia had the highest unemployment rate in the entire world, even if their opposition was stupid enough to believe them, you should still penalise them because that is obviously not true. Logical flaws are no different – they create an obvious flaw that renders an argument either irrelevant (in the case of something like a straw man) or significantly less persuasive (in the case of an assertion).

But don't take this too far. Adjudicators are not the 'logic police', so don't go crazy searching every argument for a logical flaw. But if you were properly taught the rules (as set out in the Australia-Asia Debating Guide) then you should be evaluating each argument based on the "cornerstones of matter" – logic and relevance, and these 5 categories are examples of the first part of that equation.

### **Rebuttal – Remember the “Even If” argument?**

In the previous chapter I showed you to build up a proper argument, and Appendix Three shows you how to use that knowledge to tear apart an argument – targeting one of the links in the argument chain. There is of course another, simpler way of discrediting an argument, and ironically it’s so simple that the more experienced most debaters become, the less they tend to think about arguments in this way.

The simplest form of rebuttal is: Accept the premises, deny the conclusion.

Too often debaters – especially good debaters, who are used to thinking about issues and arguments in fairly complex ways – forget to apply the simplest and most powerful test: what would happen if the model was implemented exactly as your opponents suggest?

Might sound a little too simplistic, but it’s basically just an “even if” argument that most debaters are taught very early on.

Of course there are benefits to attempting to show that a problem is more complicated than your opponents seem to realise, and yes it’s good to show that their model is just too unwieldy or poorly designed to ever be implemented in the way they suggest. But that still leaves the most important question for any debate – what if it was?

For example, consider the topic “That the African Union should have a standing army” – essentially a topic about whether peace keeping/peace enforcement in African countries should be done by African or international forces.

The affirmative team will do what the topic requires of them and the standard negation will be to laugh at the idea and say it’s not viable because of the limitations of African militaries – limited resources, poor training and discipline, (etc) in comparison to EU, US or other international forces. That’s probably all true, and should be said, but the more powerful arguments lay in the opposite direction.

Rather than explain why it can’t be done, and won’t work, it’s worth considering what would occur if it *did* happen. If African states invested heavily in defence - building well armed and disciplined forces that could contain neighbouring conflicts.

The likely outcome is that states which have weak democratic institutions will now have powerful and well organised militaries, making civilian rule difficult (think Fiji by analogy). Furthermore, interventions might become permanent, with ‘peacekeepers’ exploiting their relative power (such as when ‘intervention’ forces plundered the Congo for decades).

These sorts of arguments are far more difficult for your opponents to predict or defeat, and that’s why you should consider “what if we did that” before you get too caught thinking about why “that’s impossible”. You might always be able to make use of this tactic, but it’s a great habit to get into if you want to become a top debater.

## Chapter 8: Intro to First Principles

By Tim Sonnreich, from *Tips, Tactics & First Principles*

### Making Cases from First Principles

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## First Principles Exercises

In 50-100 words describe the key features of the following philosophies/concepts.

### Governance

- 1) *Liberal* democracy (some liberal democracies are more liberal than others)
- 2) *Social* democracy (see Scandinavia).
- 3) *Guided* democracy (see Singapore)
- 4) Dictatorship
- 5) Communism
- 6) Regionalism („pooled sovereignty“)

### Environment

- 1) Humanist ecology (Sustainable development)
- 2) Technological ecology
- 3) Deep-green ecology
- 4) Tragedy of the Commons

### Legal

- 1) Social Contract theory
- 2) J.S.Mill“s Harm principle
- 3) Aims of the Criminal Justice System
- 4) Zero Tolerance („broken windows“)
- 5) Retributive Justice
- 6) Restorative Justice („harm minimisation“)

### Business (Corporate Social Responsibility)

- 1) Stakeholder model
- 2) Shareholders only
- 3) Industrial Democracy

### Politics

- 1) Liberalism
- 2) Socialism/Communitarianism
- 3) Secularism

### Feminism

- 1) Liberal feminism
- 2) Radical feminism
- 3) Developing-world feminism
- 4) Power feminism

### International Relations

- 1) Neoconservatism
- 2) Realism
- 3) Liberal Internationalism (multilateralism)
- 4) „Soft Power“ vs „Hard Power“
- 5) „Constructive engagement“ vs Sanctions

### Economics

- 1) Efficient Market Hypothesis (Neoliberal)
- 2) Keynesian
- 3) Behavioural economics

### Morality

- 1) Kantian (people as ends, not means)
- 2) Utilitarianism – (preference and hedonistic)

### Others

- 1) Game Theory

### Science

- 1) Precautionary principle

### Security

- 1) Collective & Cooperative Security
- 2) Just war theory
- 3) Pre-emptive and Preventative war
- 4) „Golden Arches“ peace theory
- 5) „Democratic Peace“ theory

### Australian Politics

- 1) Federalism vs Unitary government
- 2) Bi-cameral vs Uni-cameral
- 3) Subsidiarity vs Centralised power
- 4) Party discipline (Aust vs USA)
- 5) Mandates

### Development Theories

- 1) Dependency Theory
- 2) Liberalisation (free trade)
- 3) Export Promotion & Import Substitution
- 4) Capital Controls
- 5) „Development as Freedom“ (Sen)

# Chapter 9: Rights & Morals

By Amit Golder

I am not a philosopher, philosophy lecturer nor a particularly good/hard working philosophy student. Much of the content of this is stolen from first year philosophy subjects, so apologies for boring some of you to death. With that caveat in mind, please enjoy this brief introduction to moral and rights theory. If you want to know more, use the words/names that are **bold and underlined** as the start of your wikipedia-ing/ actual research.

## 1 MORALS

Utility vs Deontology – the central dichotomy of all moral discussions. Should we analyse ideas and conduct by looking to their consequences or their intrinsic moral rightness or wrongness?

Utility – something is good if it leads to the best outcomes

- But what are the best outcomes? Most preferences fulfilled? Most urgent preferences fulfilled? Greatest net happiness?
- No extra importance is placed on the lives of those with special relationships to you (family/friends)
- Does not care about rights! As **Bentham** said, the notion of rights is “nonsense on stilts”.

**Deontology** – stuff the consequences, things are moral if they follow rules. Something is good if its good (right?), that is, if it follows the rules of being good. For example, for many philosophers, the exercise of reason (rational thought) is something that is just good.<sup>7</sup> For **Kant**, the unique capacity of human beings to exercise rationality means that each individual must always be treated as an ends in and of themselves, and never as a means to an end.

That’s his rule, and so following that is morally correct. Wonder what he’d think of medical testing on people?

Note: if you are actually a deontological, rights-based thinker (as many of us claim to be) you can’t abandon rights when it’s convenient. The whole point of something being a right is that it can’t be traded away, that it is non-derogable, as **Dworkin** would say, that “rights are trumps”.

Now for a classic ethics thought experiment:

*A tram is running out of control down a track. In its path are 5 people who have been tied to the track. Fortunately, you can **flip a switch**, which will lead the trolley down a different track to safety. Unfortunately, there is a single person tied to that track. Should you flip the switch?*

Obviously, a utilitarian would flip the switch. A deontological moral system might not be so quick to approve of that. Yes more people will be saved, but the person flipping the switch becomes much more closely involving in choosing to end someone’s life – possibly leading to greater moral culpability.

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<sup>7</sup> See also: the enlightenment

In debating-land (where we all live) **utility almost always wins**. I don't mean that in a competition between a utilitarian account of something and a rights-based account, the utilitarian will always win. I mean that most debates occur within a solely utilitarian paradigm, where consequence is the only metric of value. This is something that Australian debaters are accused of a lot – ignoring principle. I can understand why this is so – it's much easier to explain why something will/won't lead to certain outcomes, as opposed to explaining why something is morally right or wrong.

A debate which illustrates this clash is *“That we should torture terrorist suspects for information”*. The affirmative will typically outline a utilitarian case – basically that torture leads to potentially life-saving information. The negative will often rebut this utilitarian idea by saying that it leads to poor information/lies and that it ruins interactions with key stakeholders etc. The negative can also argue that, further to the disutility of torture, it is also immoral to violate someone's bodily integrity, cause them pain and suffering and diminish their autonomy – particularly where that person is merely suspected of wrongdoing. In this example, the negative, but not the affirmative, have dealt with the principled component of the argument.

## 2 RIGHTS

When we talk about rights we're talking about many things. Human rights tend to control what humans can do to themselves/each other, what the state can do **to** us and what we can legitimately expect/demand **from** the state.

### **Sources of Rights**

God? Do we have rights because God gave them to us?

- excludes certain people/ living things
- excludes certain things as rights ie taking life (abortion, euthanasia)

Utility? Do we have certain rights because the best consequences flow from having them?

- Maybe social cohesion/trust/ basic functionality require respect for life and autonomy
  - o Major justification for eg. property rights (patenting)
- Does this mean that if they aren't useful/don't generate the best outcomes, rights can be ignored? Torture example again...

Inherent in Humans? This is what Kant would say – why?

- Because we have souls? Not us atheists...
- Rational Capacity? What about babies and the severely disabled?

Social Contract? The social contract is an implicit/artificial agreement between society/the sovereign/the state and the people to alter the distribution of rights. There can be two conceptions of the social contract as it relates to the formation of rights:

- Citizens agree to reduce their individual freedoms in exchange for collective benefits provided by the state. In effect, ceding some rights in exchange for protection; or
- Citizens collectively agree on what rights people do/do not have – meaning that rights are culturally specific and can vary.

### **Types of Rights**

1. **Negative (Liberty Rights)** – these are freedoms that you have and that most people can exercise from without the help of the state. The role of the state in facilitating negative rights is to **not** restrict them, and not allow others to eg by using the criminal law. An example of a negative right is freedom from pain/torture.
2. **Positive (Benefit Rights)** – freedoms which require the active support and participation of the state to materialise. The role of the state here is to actively **do/provide something**, so that these rights can be activated. For example, the right to education is usually considered a positive right, meaning the state is obliged to provide this for all.
3. **Individual** – rights that correspond to people and not communities, other groups, nations etc. The United States, and its **Bill of Rights**, is a prime example of a society/document which preferences individual conceptions of rights. Individual rights are closely associated with liberty rights – freedom to do what you want and so on.
4. **Community** – rights that accrue to communities, not just the individual constituents that comprise them. Similar to the social contract, the principle here is that sometimes individual rights can be either damaging to, or just less important than, community-wide benefits. **Communitarian** theory usually involves advocating for positive rights – the state doing things for the community, eg welfare. Communitarian accounts of human rights are popular in Scandinavian/Northern European nations.
5. **Legal Rights** – this is a stricter account of rights than many of the above, which holds that rights are things that can be sued against for infringements. For example, if a constitution/bill of rights has a „right to housing“ (eg South Africa), then technically you can sue the government if they fail to provide those rights. This is stricter, because many things we would consider rights are not enshrined in explicit laws which give standing to sue the government.

## **The Limits of Rights**

### 1. The Harm Principle

Where do rights end? Pretty simple, when they conflict with other rights!

This smart dude called **JS Mill** enunciated a clever theory for when it should be acceptable for the government to limit your rights and freedoms: when their exercise reduces the rights and freedoms of others. That’s why, for example, the government can legitimately use coercive force to imprison people who assault others.

But it’s hard to define the border of when the exercise of one right actually starts impinging on the rights of others. What about drug-taking? Certainly, if it involves assault or theft, that’s harm to others and the state can stop you doing that. But what if it’s only self-regarding conduct? It could be argued that in welfare states, voluntarily harming yourself drains resources from welfare and healthcare, which harms other citizens. This is far from a **direct harm** justifying state intrusion though. But it is the principle behind, for example, mandatory seatbelt and helmet laws. Its hard to find a satisfactory line which includes intuitively bad things, such as drugs and public nudity, but excludes things like drinking alcohol and even eating meat!

Mill’s harm principle, as described above, is all about negative rights – what about **positive rights**? Can the government justifiably reduce some of your rights, not because you’re impinging on the freedom of others, but to grant *extra* freedoms to others? Sounds rubbish, right? But that is (to be fair only one part of) the justification behind **redistributive taxation**.



## 2. Consent + The Paternal State

Another option for where the state can justifiably intrude on human rights and freedoms is where people don't/can't consent. Why can the state force children to go to school or prevent them from getting tattoos or engaging in sex below a certain age? Because as a society we've decided that people who are young (or perhaps cognitively incapable) cannot consent to certain activities and therefore do not have the freedom to engage in them.

That makes a lot of intuitive sense, and is particularly true if you believe that human rights flow from our rational capacity. But what about cases where consent is just unclear. An adult is judged to be able to consent to smoking a cigarette (or 1,000), despite the fact that the actual risk of that person developing deadly cancer is real but unknown. What about the fact that cigarettes (and other fun drugs) are addictive? If you are chemically addicted to something, do you consent? What about those who argue (and I suspect they are correct) that human beings are bad at judging long-term risks against short-term gains/pleasure?

This is similarly true of **collective-action problems**, where individuals do not have the foresight or the ability to comprehend the full extent of consequences of their actions, but the state does. This might, for example, justify seatbelt laws, or the regulation of CO2 emissions. In fact, it could easily be said that it is in someone's long-term best interests to cede much of their freedom to the state. But this makes for quite a fuzzy line about where the state can and can't intrude into our lives.

Debates about euthanasia, medical testing, sexual freedom and, of course, drugs are all classical discussions of when the state can step in and limit the freedoms of individuals based on unclear conceptions of consent and consequence.

### **Balancing Rights**

Regardless of whether you accept Mill's formulation, sometimes seemingly equal rights will come into conflict – how do we decide who wins? Two options include:

1. A hierarchy of rights: this could differ but would usually have a right to life at the top, followed by freedom from pain and suffering, a right to act autonomously, then followed by secondary rights, perhaps such as privacy, free speech, religion, education and so on.
2. Utility: we could potentially solve conflicts of rights by asking "giving preference to which rights will result in the best consequences for the most people?". That might be a self-defeating way to conceptualise rights-clashes though. If utility is again our metric, why bother with thinking about *rights* at all?

Debates about *hate speech* are good rights-clash debates. One side argues that speech which offends people, makes them feel uncomfortable in society and creates social friction should be prohibited. The other side argues that the government shouldn't punish thought, that the market place of ideas is the best regulator of pernicious bigotry and that free speech is important for a functioning democracy. The clash is thus: right to be free from offence vs right to free speech. Fight!

# Chapter 10: Justice

By Tim Sonnreich, from *The Next Step*

## Introduction

After basic debates about the „role of government“ (banning drugs, gambling, guns, offensive speech etc) and democracy, arguably the next most common category of topics relates to what I’ll call „crime and punishment“. Generally speaking these debates involve a simple clash – harsh punishment for criminals versus a greater focus on rehabilitation. Some examples of debates featuring this clash include; mandatory sentencing, public registries for paedophiles (variations of which are sometimes referred to as Megan’s Law and Sarah’s Law), death penalty, at-home detention, juvenile detention, etc.

Like most debates, there are sophisticated and interesting ways of debating these issues, and then there are boring and simplistic ways. Hopefully this article will steer you away from the latter category which is all too common even at the university level.

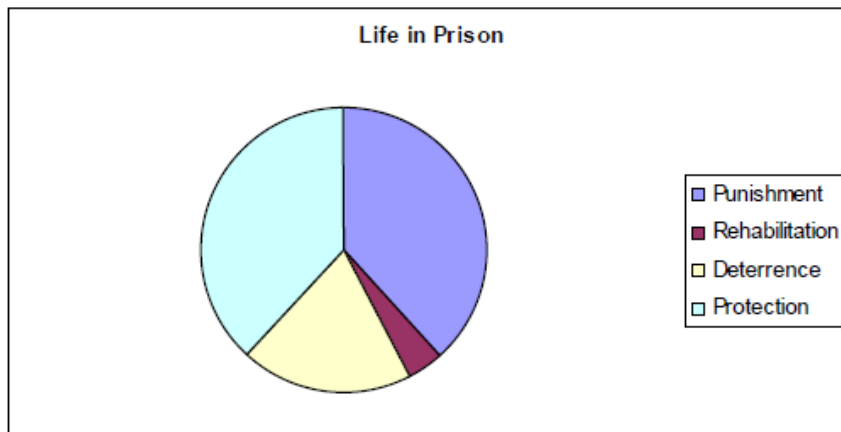
## The Criminal Justice System

The phrase „the criminal justice system“ (CJS) is commonly used, but somewhat poorly understood. The CJS is the entire process of law enforcement – from the police, to the courts and finally punishment (sometimes in prison, sometimes in another form of punishment). It is widely recognised that there are four aims of the criminal justice system, these are:

- **Punishment/Retribution (of criminals)**
- **Protection (of society from further criminal acts)**
- **Deterrence (of similar acts)**
- **Rehabilitation (of the criminal)**

While most debaters can easily recite these aims, few have really considered how they interact with each other. The simplest example is the relationship between punishment and rehabilitation. The tougher you punish a criminal the more difficult it is to rehabilitate them. The reasons for this fact are straight forward. The more you isolate and disconnect someone from society, the more you brutalise or dehumanise someone, the harder it is to successfully reintegrate them back into society. The flippant response from many people to this claim is to say “so what? They don’t deserve to be well treated, they did despicable things”. However, regardless of whether or not criminals „deserve“ to be well treated, since the vast majority will eventually re-enter society at some point, we all have an interest in ensuring that they emerge better adjusted than when they went in. Otherwise it will be one of us that suffers when they re-offend.

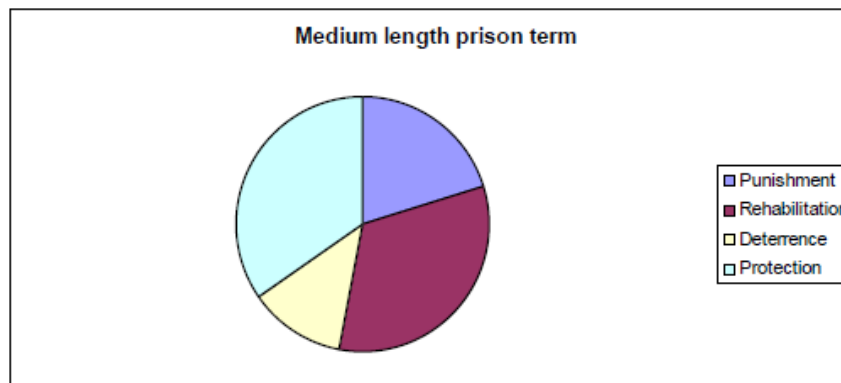
So the four aims of the CJS need to be seen as (to some extent) competing interests, and that any time you increase the focus on one element, by necessity there is a reduction in focus on at least one of the others. Think of it as a pie chart – if you want to increase the size of one „slice“, you have to decrease the size of another.



This is a rough representation of sentencing a criminal to „life in prison“ (with parole as a possibility).

In this scenario, punishment and protection factors are high (because

the criminal will not leave prison for a long time), but rehabilitation is very low (in part because neither the criminal, nor the state, have much incentive) and deterrence is medium (since most criminals don't expect to get caught, deterrence is always less than we might hope, which is why there is no statistically proven link between the use of the death penalty a reduction in associated crimes).



In this second scenario of a moderate term of imprisonment (say 10 years) you naturally see a significant decrease in the level of punishment. But protection is

only slightly lower because there is a large increase in rehabilitation, which helps to off-set some of the loss of „protection“ because of the far lower likelihood of re-offence. Deterrence is also a little lower, but again, deterrence is already substantially lower than most people realise to begin with because any level of jail time generates a certain base level of deterrence, but there is not a linear relationship between increased lengths of jail time and increased levels of deterrence.

So when you're debating about the CJS remember that it's a complex and inter-related system where any change to one element, affects all the others (positively or negatively). Finding the right balance between all four legitimate (but competing) aims is very difficult (that's why judges get paid the big bucks), but that's also why they make such interesting debates.

### **If you do the crime...**

One of the easiest rhetorical devices is the „tough on crime“ mantra, because it aligns so closely to most people's base assumptions about crime and criminals. If any of these phrases sound familiar (either from debates, or from politicians during elections) then you'll understand what I mean:

*“We're not going to be soft on crime”*

*“If you do the crime, you should do the time”*

*“Criminals give up their rights when they decide to hurt other people”*

*“We need to send a strong message to the criminal elements in our society that their behaviour will not be tolerated”.*

*“All this talk about the rights of criminals, what about the rights of victims and their families?”*

The point I’m trying to make isn’t that these messages are entirely wrong – they wouldn’t resonate so strongly with the average person if they didn’t contain just enough truth to generate an intuitive sense of accuracy. But if when viewed in isolation these sentiments don’t seem simplistic and reactionary then you’re probably not thinking about it carefully enough.

The simple fact is that in a democratic society, people never lose all of their rights. Even convicted criminals have the right to appeal, to a fair trial and legal representation, the right to be free from torture, and the list goes on. But of course they must lose some rights – imprisonment entails the loss or diminution of freedoms of association, speech, movement, voting (sometimes), etc.

So the real question that underlies all „crime and punishment“ debates is; where do we draw the line? To put that another way; what balance of loss and preservation of the rights of criminals is appropriate in a given situation? The purpose of this article is to give you the philosophical tools to construct consistent and sophisticated cases on either side of the divide.

### **The state of nature**

Whenever you need to make the hardline – „hard on crime“ – argument, there are few concepts more useful than that of the „Social Contract“. Its worth pointing out, as a disclaimer of sorts, that what I’m about to say about social contract theory is a selective interpretation of elements of the theory that are relevant to criminal justice theory. This is in no way intended to be a comprehensive or authoritative discussion of the general concept. But that said, I’ve rarely lost a debate when I’ve used this principle as the cornerstone of my case.

The Social Contract is a theory about the nature and origins of rights. Even amongst theorists who agree that there are such things as rights, there is fierce debate over their origins, since their origins have a substantial impact on questions of what rights people have, and when they can be legitimately breached. For some thinkers, human rights are an extension of the fact that man was created by a divine power, in His image, and therefore we enjoy a privileged status. But you don’t need to be religious to justify the existence of rights. For social contractarians rights are (as the name implies) the result of a „contract“ between citizens and the state – a *quid pro quo*, in which the people agree to limit their personal autonomy by granting their government the legitimate power to set and enforce laws. In exchange for this reduced freedom the state agrees to use its power to enforce and protect those liberties that remain.

To put that another way, without government we would have anarchy (the state of nature) – I mean that in the literal sense of people being able to do anything they liked because there would be no such thing as „laws“. Under a system of anarchy we would have ultimate freedom, we can kill, steal, cheat, and no institution would seek to prevent it or punish it. But anarchy is also dangerous for obvious reasons. If I can kill

you without consequence, then you can also kill me without consequence, and that's not a great position for me to be in unless I'm a lot stronger than everyone else (which unfortunately I'm not). So it makes sense to make deals with people for mutual protection – you help protect me and I'll help protect you. The social contract is the idea that the whole reason for the existence of government is because it functions as one big mutual protection society. We all give up option of killing each other without consequence, in exchange for the protection of the group against those who might refuse to be part of the deal or to try to cheat.

### **Lock em up and throw away the key**

Any time you need to argue in favour of a „tough on crime“ response you need to prove at least two things – firstly that it's necessary (i.e. that there is a serious problem) and secondly that a strong punishment is appropriate and proportionate to the crime. I'll come back to the issue of „necessity“ in a moment, because the second problem is usually the more difficult and important, and social contract theory has important implications for demonstrating the appropriateness of harsh punishments. Firstly it establishes the idea that rights are artificial, and therefore can be rescinded (especially useful in death penalty debates for obvious reasons) or at least curtailed to meet society's needs. Second they establish a wider societal interest in a given criminal act. This is a little complicated, but astonishingly important and useful.

When you want to argue that truly vile criminals – murders, rapists, paedophiles – should be punished harshly, you can get away with making the argument that the devastating suffering inflicted on the victim is justification for a stiff penalty. However when you need to argue that lesser criminal acts (such as drug crimes, or property crimes) should be punished harshly (e.g. a „3 strikes law“ debate) you need a better argument because the impact on the victim is much less, or might be nothing at all (in the case of say graffiti of public property). Here is where the impact on society is especially useful. Drugs are a good case study. In a debate about mandatory death penalty for drug traffickers (such as in Singapore) the social contract is a critical concept to justify such a draconian policy. The argument works like this:

*“When seen in isolation, the impact of a single drug offence – importation of a bag of marijuana, or a few hundred ecstasy tabs - doesn't really justify the death penalty. Even in instances where these drugs result in the death of the user, that's usually not intended – since dead drug users make terrible customers – and in any case the ‘victim’ was an accessory to the crime by purchasing an illegal substance. But to view drugs in this way would be to ignore the pervasive social impacts of drugs, which are the real reason why responsible governments have responded by instituting the harshest punishment, and strongest deterrence available”.*

*“Drugs don't just injure people, they damage societies. It fuels crime, funds corruption, turns family members against each other and creates ghettos and no-go areas in our cities. Each of these is a harm of its own, but in total drugs rob people of their sense of safety and personal security, which is the single most important obligation of the state. Without a broad sense of trust and security, the social capital of our societies is eroded, and our ability and willingness to pursue our other rights is dramatically reduced. Property rights are meaningless in suburbs where addicts regularly break into homes*

*looking for ways to fund their addiction. Freedom of movement and association is meaningless if you're too scared to use public transport or venture into the city at night".*

*"When seen in this way, the potential harm of drugs is very high, and avoiding what amounts to a fundamental break-down of society's rights is justification enough for severe punishments. The comforting sense of security you feel on the streets of Singapore is evidence enough for the effectiveness of appropriately strict punishment for drug offences".*

It should be reasonably clear that this type of argument can be extended to cover most, if not all, of the topics where you would be required to advocate a stiff punishment for a particular category of crime.

**"<insert crime here> is out of control!"**

Having seen how social contract theory can help you to build a coherent argument justifying strong punishments as appropriate, even for seemingly moderate crimes, we can turn to the issue of proving the necessity for such punishments – in other words, how do you show that there is a problem that needs the solution you're proposing?

The most obvious problem facing the „tough on crime“ advocates is that in Australia (and many other parts of the developed world) serious crime isn't actually a big problem because it doesn't happen very often. One of the reasons why virtually all of Australia's major cities are rated amongst the „world's most liveable cities“ is because of the very low crime rates.



But that fact isn't very helpful to the team that is proposing a tougher line of crime. So what should they do? Well what school kids do is simply lie. They tell the audience that crime is out of control, and because the media constantly tells us that it is, a lot of oppositions (and adjudicators) will believe them. But lying (on purpose or not) is never a good strategy, because sooner or later you're going to come across someone who knows the truth. So the more effective, and honourable, strategy is to come at the issue from another angle – public perception – and again social contract theory provides the justification.

While it may be true that crime rates are generally low and have remained that way for many years, it's also true that in the public imagination the opposite is true. Tabloid media (like Today Tonight and the Herald Sun) play up the crime rate to boost their ratings, and politicians (especially Conservatives, but Opposition parties generally) also have a vested interest in heightening public fears about crime. Surveys consistently show people have a distorted view of the prevalence of crime, especially serious crime, despite very little evidence to support such views. Similarly, there is a widespread public perception that the punishment meted out to convicted criminals is too lenient, and that judges are „out of touch“ with public expectations about sentencing. Again, neither of these things is actually true but it's a persistent myth and

governments have an obligation to respond to those fears.

### **Broken Windows**

But why does elevated perceptions of crime and lenient sentencing justify harsher punishments? Doesn't it justify better public education? Maybe, but if you're the „tough on crime“ team, the answer has to be „no“. Firstly, the tough on crime team doesn't admit that the perception is wrong, you just talk about the perception and how important it is to address it. Secondly, it's not very easy to simply re-educate the public on this issue, and even if you could it wouldn't be a quick process. In the meantime (going back to the social contract) the government has an obligation to make people *feel* safe, because perception matters as much as fact – since if you don't feel safe you'll behave in the same inhibited way as you would if you were actually unsafe.

Furthermore, this principle extends equally to the CJS. It's just as important for justice to be *seen* to be done as it is for just to actually *be* done. If people lose confidence in the CJS, then they begin to feel unsafe, with all the loss of liberty and social capital that was discussed above. So one of the burdens for the „tough on crime“ team is to show that harsher punishments will make people *feel* safer, and improve their confidence in the CJS.



These ideas were embodied in the so-called “broken windows” theory of crime prevention propounded by Wilson and Kelling, and enacted by New York City's former mayor Rudy Giuliani in what he called “zero tolerance” policing. Boiled down, zero tolerance means cracking down harshly on minor crimes such as littering, graffiti and minor property damage (like broken windows) because of the belief that tolerance of these

lesser offences undermines the social conventions that discourage more serious crime. Streets covered in graffiti and litter, neighborhoods in disrepair, are places where people *feel* very unsafe, even if they're actually not. Why does this perception matter? Well it matters because a seemingly permissive attitude towards crime might encourage more serious crimes, but also because honest, decent people will flee these kinds of neighborhoods, reducing them to ghettos and further increasing the likelihood that these places will descend into crime and dysfunction.

Hopefully you can now see how even without the reality of a crime wave, the „tough on crime“ team can still justify a crackdown on what little crime there is, because of the importance of public perception. A combination of arguments about addressing public perceptions of crime and lenient punishments, coupled with a clear analysis of the appropriateness of particular „tough“ policies, is a very consistent and powerful case – and there is no need to lie about anything!

### **Hug a criminal**

OK, now that I've shown you how to argue for a focus on punishment and protection in the CJS, how do you defend a more rehabilitation focused system? The most important thing to do is to be well prepared with the facts about the status quo.”

Firstly, as mentioned above, crime rates are low and falling across Australia and most parts of the developed world. So the „problem“ of crime is much more about perception than reality.

Second, punishment for criminals is not „soft“, nor is it getting „softer“. The Australian CJS generally traps criminals between a rock and a hard place. The rock is that more people are going to jail – the size of the Australia’s prison population is rising year on year – in part because now even „lesser“ criminals are regularly being sent to prison for crimes that would not normally have led to jail time. One good example is culpable driving. In 1998-99, 54% of culpable drivers were jailed, but in 2005 the figure was 77%, a massive increase.

The hard place is that the perception that the worst criminals are getting off lightly is also wrong. 96% of murders go to jail, and the average sentence for convicted murders is a little over 18 years – meaning that judges are certainly not hesitating to hand out long sentences if that’s the appropriate penalty.<sup>2</sup>

Thirdly, the idea that judges are out of touch with community standards on sentencing is also untrue. Last year a team of Melbourne Uni researchers released the findings of a two-year study into community standards on sentencing. They gathered groups of people from across Victoria and presented them with all the evidence and testimony of four real-life serious crimes, but didn’t tell them the sentence handed down by the court. In three out of four cases the community juries handed down sentences that were, on average, *less* than those actually imposed.<sup>3</sup> Basically, when the public is *fully* informed about the circumstances of a given crime, they tend to be more forgiving than judges. Unfortunately the media doesn’t fully inform people of all the facts, they summarize the crime and focus on the most lurid and distressing elements. No wonder public perception is so off the mark!

Fourthly, rehabilitation of criminals really works – meaning it reduces rates of re-offence, which reduces the suffering associated with future crimes, and saves governments the extremely high cost of incarceration. To realise how important rehabilitation is, consider the fact that, despite the increasingly rates of imprisonment, and the increasing average sentences, on average 800 people are released from prison *each day* across Australia. That means that roughly 30,000 convicted criminals will re-enter society each year.<sup>4</sup> That means we can either do everything within reason to try to ensure that people come out of prison better than when they went in, or we can roll to dice and hope that their next crime isn’t going to be committed against us or someone we care about.





In 2000 the Victorian Government initiated a \$334.5m program designed to boost rehabilitation of prisoners – it included three new prisons (to reduce overcrowding), community corrections (e.g. at home detention and „half-way houses“ like the Judy Lazarus Transitions Centre<sup>5</sup>), specialist Koori courts and diversionary programs for drug offenders. The result of that program is that Victoria now has a prison population that is half the size of NSW (who have followed a strict „tough on crime“ approach) on a per capita basis.<sup>6</sup>

Finally, remember that safeguards such as judicial discretion over sentencing, and rigorous appeals processes exist for good reason. Judges are highly trained and are well equipped to dispassionately assess the fairest punishment for a given crime. Each crime should be assessed individually, on their specific merits, since every crime is different. People who favour mandatory sentencing of any variety seem to ignore the fact that different criminals have different levels of culpability, different levels of remorse and different likelihoods for rehabilitation. It doesn“t make sense to treat them all the same, and more importantly, it doesn“t work. As Tony Blair used to say, we need to tough on crime, but also tough on the causes of crime”.

#### **Further Reading:**

Therapeutic Jurisprudence

Karen Kissane, “Healing side of the law” *The Age*, 21/7/07 (available online)

Neighbourhood Justice Centres

“One-stop legal shop”, *The Law Report*, ABC Radio National, 3/4/07 (online)

Koori Courts

“Koori Courts in Victoria” *The Law Report*, ABC Radio National, 3/4/07 (online)

Circle Sentencing/Circle Courts

“Indigenous justice in Australia - Community and government interventions in Indigenous justice”, Australian Institute of Criminology, [www.aic.gov.au](http://www.aic.gov.au)

#### **References**

<sup>2</sup><http://www.theage.com.au/news/national/judges-tough-on-killer-drivers/2005/09/11/1126377206386.html>

<sup>3</sup> <http://www.theage.com.au/news/in-depth/time-fits-the-crime/2006/09/29/1159337334468.html?page=fullpage>

<sup>4</sup> <http://www.abc.net.au/4corners/content/2007/s1863714.htm>

<sup>5</sup> <http://www.news.com.au/sundayheraldsun/story/0,,21377015-2862,00.html>

<sup>6</sup> Geoff Wilkinson, “Trading Places”, *Herald Sun*, 17/3/07

# Chapter 11: Democracy

By Tim Sonnreich, from *The Next Step*

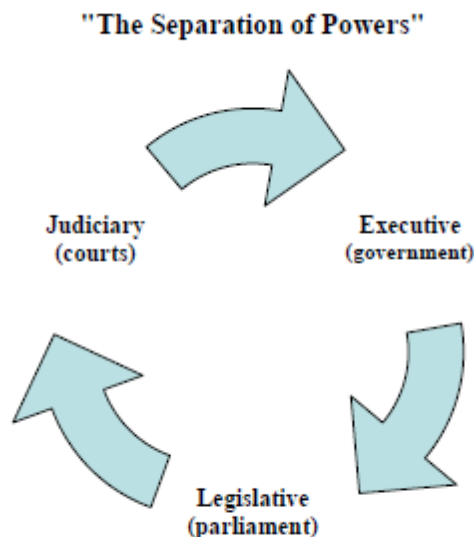
## Defining Democracy

There are many debates, ranging from Australian politics to third world development priorities, which require you to have an understanding and definition of democracy. Please avoid the temptation to wax lyrical about the ancient Greeks - or anything else you have learned in any course that includes the words "introduction to..." and instead simply say that democracy is a system of governance that seeks to maximise:

- Accountability
- Representation
- Participation.

"Accountability" means that at every level there is some sort of oversight and everyone is answerable to someone. Basically it's what people mean when they talk about 'checks and balances'. So the lower Houses of both State and Federal Parliament, (the government at least), are held accountable to their upper Houses (houses of review), and the whole parliament is answerable to the people every 3-6 years when there are elections.

Plus the decisions of parliament can be scrutinised by the court system, in accordance with the Constitution - which is enforced by the High Court and the Governor General. But the courts themselves are also accountable. Firstly the judges are picked by the parliament and can be sacked by them too. Plus the Constitution can be changed by the people via a referendum (or in some jurisdictions by a simple act of parliament) and the courts can usually only interpret laws, not create them, which again come from the parliament. In short it's what called:



"Representation" refers to the fact that democracy is a system where leaders derive their credibility, their 'mandate', directly from the people. I'll talk about mandates in more detail later, but the principle of representation means that all citizens and have a right to be heard in their political system.

This is problematic though because democracy is also about voting and that's a process that inherently benefits 'majorities' over 'minorities,' so how can minorities be assured of proper representation? That's the question that leads to many debates, but there are a number of structural responses built into most democracies. For one there are different levels or 'tiers' of government (local, state and federal) which give people multiple opportunities to be heard (it's worth learning more about the concept of *subsidiarity*, which is another first principle).

Secondly remember that the minority is not excluded from the system - that's what the Opposition is for, and it has many powers. Additionally there the rights and restrictions built in to the Constitution to protect minorities.

And finally there are different voting systems in use that attempt to compensate for the tendency of majorities to dominate the system. The simplest example is "Proportional Voting" which is used in the federal upper house (Senate), which means that political parties receive a percentage of the available seats, equal to the percentage of the overall votes they received. So if a party represents the views of 10% of Australians, assuming all 10% voted for that party at an election, the party would then control 10% of the Senate seats. Whereas in the lower house, which uses a different voting system ("Preferential") that same party, with the same number of voters, would be unlikely to win any seats at all. This is why the Senate is considered a 'house of review' - because it includes a far greater spectrum of views than are represented in the lower house, and so it modifies potential laws to be inclusive of the minority views that they represent.

But it's obviously not perfect. Many minority groups are not officially represented in the Senate (eg there are no parties specifically representing the views of minority religions, sexualities or ethnicities - which can sometimes be a problem). That's why you need to debate these issues and why I'm writing this article.

Finally, "Participation" is the most basic and arguably the most important principle of democracy. It's so crucial because it underpins the other two principles and because it is the fundamental basis for democracy - government 'by' the people, 'for' the people... blah, blah, blah. So simply put, participation means that; unless there is a very good reason, everyone deserves a vote and all votes should have equal weight.

Clearly there are exceptions to this – for example we don't let mentally ill people vote, or children (but there was a finals debate at 2004 Worlds on the topic that we should give children voting rights), or hard-core criminals (but round one of Australs 2003 was on the topic of prisoners voting rights) - so you need to think very carefully about this issue. Denying people the right to vote is one of the most serious things a government can do in a democracy, and something that has been thoroughly abused in the past 100 years.

### **Deeper Analysis**

Ok, now you have the basics of democratic theory, how can you build on it and develop it into more sophisticated analysis - since that's the stuff that wins debates against strong teams. There are many ways to develop democratic theory, but here's one example - mandate theory.

As I said before, a mandate is the authority politicians have to make decisions that derives from the fact that you voted for them. That's a 'direct' mandate. There are also indirect mandates, for say appointed officials (judges, public servants, etc.) They have a mandate (or authority) because they were given power by people who you voted for, or the law/constitution empowers them to act on behalf of other people.

So how is it used? Well the clearest example of a direct mandate is when a government tries to implement policies they ran as an election platform. Basically political party X campaigns before an election saying "vote for us and we'll do A, B and C". Then they win the election and claim a 'mandate' to do A, B and C - because you voted for them knowing it would mean those policies would be enacted. That's the way that mandates are traditionally conceived.

Simple right? Sometimes. But the deeper analysis stems from the understanding that elections are far more complicated than that. It would be fine if every political party only had a couple of policies - but in fact they score (for example, in the 2006 Victorian election, the then Bracks Government put out almost 50 policy documents including over 400 specific promises). And this is compounded by the fact that there are so few viable political parties (there are over a hundred registered parties but very few have the cash, the brains or the organisational capacity to seriously campaign) that people almost never vote for a party they entirely agree with - they vote for a party they mostly agree with.

So to use my previous hypothetical - the majority of people might have wanted policies A and B, but not C. But they liked even less of the policies advocated by the other parties, so still voted for party X. Does that mean party X has a mandate for all their policies? Most people would say no. Plus what about spontaneous policies - not everything a government does was part of their election platform. What about in emergencies (like September 11?) The government didn't campaign on specific policies relating to events that no one imagined would happen - so they have no mandate. Or do they?

Well strictly speaking, no they don't have a direct mandate but they do have a lot of legitimacy that comes from the fact that the majority of people voted for them. You see political parties don't just campaign on policies - they campaign on philosophy, and people know that. Voters know that electing the Liberal Party in Australia means 4 years of philosophically "conservative" policy and knowing that, if they still vote for the Liberals, then surely they are delivering a mandate for conservative policies in general, and the election platform more specifically?

You could argue that. But as usual, there are problems. You see most democracies are bi-cameral (two houses of parliament) and the weird thing is that very, very few political parties in Australia, Britain and everywhere except America, get a majority of seats in both houses. It happens sometimes (think of the Kennett years, the second term of the Bracks government, or the fourth terms of the Howard government) but it's increasingly rare as more and more minority parties gain prominence. So what does that mean? Well it could be that voters are just a bunch of stupid monkeys OR it might be that they are in fact highly intelligent monkeys who purposefully split their vote between the two Houses to deliberately create conflicting mandates. "Whoa, slow down egghead", I hear you say. Let's look at that more closely.

For the first three terms of the Howard government the majority of Australians clearly wanted the Liberal Party to be the government. But if that same majority had wanted all of the Liberals' policies and 4 years of totally conservative policies, why didn't they give the Libs a majority of seats in the upper house so they wouldn't have tree-huggers and communists modifying and blocking their legislation? Well maybe they wanted it that way. Take the GST for example. Howard made it pretty clear that if he was elected to a second term, he'd introduce a GST on almost everything. And the people voted him in, so I guess they were ok with that. BUT they also gave the Democrats the balance of power (the deciding votes) in the Senate - and they had made it pretty clear that although they would support the GST, they would want to modify it in certain ways. So if we assume people aren't stupid, then it means they wanted a GST, but not the exact GST being offered by the Libs, so they split their vote (voted Lib in the lower and Democrat in the upper) and got what they wanted. In that case the Libs had every right to claim a 'mandate' to pass the GST, but the Democrats also had mandate to modify it... complex stuff, eh?

**What about the fact that politicians often hate each other & won't compromise?**

That's another problem. The previous example shows that "conflicting mandates" can sometimes be resolved fairly easily through a degree of compromise. But there are times when compromise is impossible. The US political system provides generates this sort of situation virtually on purpose, which seems sort of odd, but they're the leaders of the free world so who am I to judge?

The problem in America is of course the fact that the Executive and Legislative branches of government are entirely separate, so it is easy for conflicting mandates to arise. Former Democratic President Bill Clinton experienced this problem follow the Congressional election in 1994 when the Republicans gained the majority in both Houses. This meant that there was a socially progressive President and a socially conservative Congress. Trouble was unavoidable.

The obvious issue was abortion. While Clinton was elected on an explicit „pro-choice“ platform, the Republicans campaigned hard on „pro-life“ policies. In 1996 the Congress passed H.R. 1833, a bill that would have imposed a nationwide ban on the type of abortion known as dilation and extraction (sometimes controversially referred to as „partial birth abortion“). Both sides could claim a mandate (and both did) so what should happen?

1. The legislation should be enacted. Congress should prevail because they are the legislators and they have a direct mandate from the people. Clinton might not like it but he doesn't have the right to block it.
2. President should veto it – he has a clear mandate and on an issue this divisive you have to ensure that people's rights are protected.
3. Whoever has the 'fresher' mandate - i.e. whoever was elected more recently, since that reflects the most recent desires of the people.
4. No one does - it's stuffed, call elections or toss a coin...

If you're interested, the outcome in 1996 was that Clinton vetoed the bill, as well as several others that the Republican controlled Congress put up over the remainder of his term in office. But that doesn't resolve the question of what he *should* have

done, which is certainly a matter of considerable debate today in the US where the situation is reversed – a Republican President facing a newly elected Democrat-majority Congress. In March 2008 President Bush vetoed H.R. 2082, the Intelligence Authorization bill, which would prevent the CIA and other agencies from using techniques widely considered to be torture during interrogations. The use of torture by the US military was a key issue in the previous Congressional elections, but equally President Bush could claim a conflicting mandate on „homeland security“ issues as a result of his re-election.

But you should be ready for lots more debates than the few examples I have given here. Think about how you could use democratic and mandate theories for these common topics:

That we should elect our judges

That we should abolish the Senate/States/Local Government

That we should extend voting rights to minors/criminals

That we should become a republic (and any republican model debate)

That we need a Bill of Rights

That we should have quotas in parliament for women/minorities

That the third world should put democracy before economic development.

### **Further reading**

J.R. Nethercote, “Mandate: Australia's Current Debate in Context”, ”, *Research Paper 19 1998-99*, Australian Parliamentary Library (available online)

Margaret Healy, “Deadlock? What Deadlock? Section 57 at the Centenary of Federation”, *Research Paper 2 2000-01*, Australian Parliamentary Library, (available online)

[http://www.elections.org.nz/printer\\_mps-make-decisions.html](http://www.elections.org.nz/printer_mps-make-decisions.html)

Todd S. Purud, “Shutdown by US fast approaches in budget battle”, *New York Times*, 12/11/95 (available online)

## Chapter 12: Environmental Theory

By Victor Finkel

\*Global warming... groan.\* You hear it all the time. Don't be like that - environmental debates are awesome!

So, what I want to do in this article is just lay out a couple of thoughts to help in approaching environmental debates from a first principles perspective.

1) Nearly every environmental debate can be construed as a clash between three fundamental viewpoints – deep green ecology, sustainable development and technological development. (courtesy of TS) With these principles as a framework, you should be clearly able to identify where you stand on any environmental debate.

	<b>DEEP GREEN</b>	<b>SUSTAINABLE DEVELOPMENT</b>	<b>TECHNOLOGICAL DEVELOPMENT</b>
<b>CONCEPTUAL APPROACH TO SOLUTIONS</b>	Enviro damage is caused by over-consumption. Only way to protect earth is to cut consumption. This could be seen as the „hippy“ approach.	Development is crucially important, and technology will provide the solutions, but it needs to be guided and bad actions actively regulated away.	The solution to environmental problems is ever more rapid economic development. Development leads to cleaner technology.
<b>HUMANS v NATURE</b>	Nature has intrinsic and equal value	Nature has intrinsic value, but human interests trump them	Nature only matters as it serves human interests
<b>Example action on Climate Change</b>	Outlaw dirty industries, directly intervene in markets	Carbon Trade – Kyoto Protocol	Asia-Pacific Pact for Clean Development (no restrictions, just promises of investment)
<b>- Views on 3<sup>rd</sup> World/1<sup>st</sup> World responsibility</b>	All nations must cut	Focus on 1 <sup>st</sup> world – easy steps and weak timetables to get people on board	Let things happen naturally
<b>Efficiency</b>	“efficiency paradox” – While cars today are twice as efficient as 20 years ago, there are three times as many – ergo while efficiency	Essentially these guys are a bit from column A, a bit from column B. It's about taking the arguments from either side and explaining why in particular cases tech solutions are not	“efficiency” – market forces that drive ever cheaper products also drive production to become more and more efficient, and hence environmentally friendly – because using up resources

	gains are real, they make things cheaper and more accessible and hence total env impact goes up. “inefficiency paradox” – open free trade might bring prices down but it actually makes things less environmentally efficient – as everything is shipped from further afield	sufficient, while in others showing they are.	costs money.  Random point that doesn’t fit anywhere else: People care more about the environment when they have enough wealth to be able to go beyond struggling for the fundamentals necessary for life.
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2) There are a number of slightly economic principles that are extremely useful to understand in environmental debates.

***Tragedy of the Commons***

Common goods – air, forests, water. No one necessarily owns them, but everyone uses them. In the historic example, farmers in the UK had shared access to a pasture. Individual farmers tried to get as many cows on it as possible to maximize their profits, but in doing so, overgrazed the fields and hence destroyed them.

Possibly the best contemporary example of a tragedy of the commons is fishing in international waters. While overfishing will cause fish stocks to be depleted unsustainably, individual fishers have an incentive to fish as hard and fast as they can, because if they don’t get the fish, someone else will.

Solutions to such tragedies involve privatizing commons, or issuing permits for their use. These solutions have their pros and cons, but we’ll touch on these more in an another article on economics.

***Negative Externalities***

A related concept is that of Negative Externalities. An externality is something that isn’t included in the cost of production or of a product. Negative implies it’s bad. For example, air pollution. It doesn’t cost you anything to emit waste, or carbon dioxide into the air. But doing so has a profoundly negative impact on the world. But because it’s cheaper to do it than to not (expensive systems to clean out exhaust, or completely change industry,) people do. Solutions to this are to either charge for them (either through taxes or through creating permits that *internalize* the cost of the negative externality) or restrict their use. Hard limits were used to significantly cut down



Sulphur Dioxide emissions (contribution to Acid Rain.) Adding a price to negative externalities to internalize the costs is the logic behind carbon trading.

3) Environmental debates are not that different from any other debate – you need to think carefully through the incentives of various actors, and how particular policies will change their behaviours.

Sample env topics:

- This house believes we should not trade with nations that do not act to reduce their carbon emissions
- This house believes that China and India should bear the same obligations as the west in fighting climate change
- This house would not prosecute eco-terrorism
- That we should grant asylum to climate change refugees
- THBT the west should only direct aid to nations that pursue environmentally sustainable development
- THW subsidise the purchase of electric cars
- THW lift the IWC moratorium on Whaling
- THW adopt nuclear power
- THW ban the importation of lumber from nations that log unsustainably

## Chapter 13: Economics

By Ravi Dutta

*“The science art of explaining tomorrow why the predictions you made yesterday failed to come true today”*

The ultimate goal of economics is to try and explain all aspects of human behaviour – to understand why people make the choices they make, and to use that to predict how individuals will then make choices in the future. Choices don’t have to be purely about buying and selling things (though they often are), and even monetary choices can have other, non-monetary factors at play. Analysing the costs and benefits faced by individuals, and how they are likely to react is something that is useful not just in economics debates but in all kinds of debates (and indeed just generally in life).

### Margins

The first thing to realise is that economic effects are not black and white; they are often about shades of grey. Any policy, even a blanket one, will affect only some people (seems obvious, but you’d be surprised how often this idea gets lost in debates). Raising taxes on cigarettes by 10% isn’t going to stop everyone smoking, but it will have some effect. Who will it affect? Well, probably those people for whom the benefits of smoking just outweigh the costs, before the 10% tax rise. For them, a 10% tax rise is just enough to make the costs now outweigh the benefits, leading them to quit. An economist would say they are “at the margin”.

Marginal analysis can be quite powerful in debates – it means that you don’t prove as wide a benefit, but you end up proving a relatively smaller benefit much more effectively. For example, in a debate about the death penalty, it’s hard to prove that the death penalty will deter all murders, but it’s relatively easier to argue that for some people, the harsher punishment will alter the way they weigh up the risks and benefits of their crime. Similarly, in the previous example about smoking, it’s hard to say any amount of tax rises will deter everyone from smoking, but clearly you can argue that even some addicts will be forced to quit if the price gets too high for them. Another way of thinking about marginal analysis (which can often allow you to turn the argument around the other way) is to consider the marginal impact as the “extra” impact of the policy. This is just another way of conceiving the same idea as above – given that we already have a certain set of incentives and disincentives in place, we’re not interested really in the total effects of incentives or disincentives, we’re really interested in the extra impact a given policy will have.

A good example is the death penalty debate – whilst the threat of death may very well be a significant deterrent in its own right, what’s really important is if the death penalty is a substantially greater penalty than the existing harshest penalty (life without parole). You might argue that the people deterred by the death penalty would already be deterred by the existing punishment regime; whilst those not deterred at present wouldn’t see the death penalty as a substantially greater cost to them, given the alternative is spending their life in prison.

## Markets

It's useful to keep in mind marginal analysis when considering markets. Markets are mechanisms through which scarce resources are allocated. Now, people don't consume goods continuously – even when things are very good, people usually have a point at which they stop. Why? Because, eventually, the extra benefit they get from consuming an additional unit of the good is outweighed by the extra cost. Generally, the more of something you consume, the less benefit each extra unit gives you (try eating 10 Cornettos and see if the 10<sup>th</sup> one is as enjoyable as the first). So, individuals will buy things until they no longer gain benefits. Similarly, producers will sell things as long as they still make a profit (except for a few exceptional circumstances, firms don't sell things at a loss, and even then they have a logic behind it).

The specific mechanism through which this happens is the price – it's a signal to people and to firms about how much they should buy or produce. If a product is priced too low, it will run out quickly, and firms can then take this as a signal to raise prices. This then deters some people from buying, till eventually the amount being bought and sold is the same. If the price is too high, fewer people will buy the good, or another producer will come along and find a cheaper way to sell the good, so the price will fall.

The effect is thus that everyone gets what they want – people end up buying things if they are at a price they want, and other people sell them at a price where they make a profit. Things get allocated without waste, and everyone's happy. Or so you'd think.

## Market failure and Intervention

The theory behind markets rest on several assumptions, almost none of which turn out to be true in the real world – we get close, or close enough that it doesn't matter in some cases – but by and large there are some gaping holes in the free market's execution. Most debates about economics revolve around some sort of market failure as a result of one of these assumptions failing. They end up being a clash between a side arguing that harms of the market failure necessitate intervention, and a side arguing either that there isn't really a failure (or that the market can more or less fix itself), and that the harms of intervention are worse than the current market failure.

**So how do markets fail?** Spectacularly, in many cases (I also would have accepted “frequently” and “hilariously”). We'll look at some of the assumptions and how they break down below.

### *Infinite Buyers and Sellers*

If I wanted to get all Freakonomics on you, it's about now that I would ask a question like “How is Telstra similar to the AFL draft?”

The answer is not particularly interesting, and won't come up in debates much – but it's a concept that most people will be familiar with and helps to explain market failures. In the case of Telstra, at least in the past, it used to be a monopoly – that is, it was the only seller in the market. If what Telstra sells was needed by people (and it was), then as the only seller it could charge whatever it wanted and people would still have to buy from it.

Prices wouldn't come down because there was nowhere else to get telecommunications services. Of course that's changed now (to an extent), but this is a clear-cut example of market failure, and of justified Government intervention – the Government has all sorts of regulations that force Telstra to provide access to its phone and cable internet infrastructure at competitive prices to other telecommunications providers. Incidentally,

the AFL draft is an example of a monopoly – a market with only one buyer who can charge as little as they like. When a player gets drafted by a club, that club is effectively the only buyer of the player’s labour.

A similar problem is the concept of oligopolies – when instead of one seller, there are a small number of sellers. This is not the same problem as a monopoly, but can still result in elevated prices, as firms may collude both explicitly and implicitly to set an artificially high price. Government policies generally prohibit collusion and cartel-like behaviour (a cartel is an industry group that meets to set high prices – there’s a global cartel of oil producers called OPEC who routinely do this), but they can’t always stop implicit cartel-like behaviour, such as when firms set high prices similar to their competitors.

There’s little argument that the Government should not intervene (except, perhaps, to suggest that the Government should make it easier for competitors to enter the market), so generally we don’t have debates about monopolies or oligopolies, but the principles are useful to consider – issues about market power and relative competitiveness do come up in other debates, particularly when considering labour debates such as minimum wage, labour union or right to strike debates.

### ***No External Effects***

One key assumption behind markets is that the transactions that go on are entirely self-contained – that is, no third party is affected in any way by the result of the buyer and seller transacting. When a third-party is affected, it’s considered an externality. Externalities can be positive or negative, and can occur in production or consumption. The classic example of a negative externality in production is the case of pollution. If a factory produces cars, and then dumps waste into a local river or emits gases into the air without having to pay for it, then it imposes this as a cost on the people who live near the factory. The buyer of the car doesn’t pay for it (and thus doesn’t account for the cost they impose), but the third party is affected nonetheless. This means that a free market will see cars being over consumed, as the economic costs don’t reflect the social costs.

An example of a positive externality in consumption are the economy-wide benefits of education. Being educated has direct benefits to the individual, but an educated society has extra benefits. If all of society can read, then information can simply be printed and widely distributed, reducing costs of doing business and administering the society. A large number of tertiary-educated individuals is attractive to large corporations, encouraging them to set up operations. Individuals consider the benefits to themselves, but don’t necessarily consider the wider benefits to society. So a free market will see a less than socially optimal amount of education consumed.

The usual Government response is to either outlaw or mandate certain things, or tax or subsidise externalities to make the social costs and benefits align more closely with the economic costs and benefits. Hence, some types of pollution are banned entirely and some education is mandatory for all people. Generally, however, taxes and subsidies are used – the Government subsidises tertiary education to ensure that a socially optimal number of people undertake it. Similarly, heavily polluting vehicles are generally taxed at a higher rate to reflect the costs they impose. Note that in both cases the externality is not completely eliminated – it is just brought to efficient levels.

However, these mechanisms can be imperfect – whilst they will create certainty around the costs and benefits for individuals, there is no certainty as to what effect they will have. This is because in order to be effective, we need to know what the socially optimal

amount of production or consumption is, and we need to know exactly what everyone is willing to pay (i.e., what the marginal impact of a subsidy or tax will be). So, even if we can determine that a certain amount of education is optimal, or that a certain level of pollution is optimal, we cannot be sure that a 10% subsidy or tax will achieve this. Even if it does, if the preferences or situations of people change, then the subsidy or tax will no longer be as effective.

Another solution that has gained popularity recently is a market-based solution. Here, the rights to pollute (or the rights to clean air) are created and assigned, and are made tradeable. They can then be bought or sold, meaning that the efficient market amount also becomes the efficient social amount (because parties can buy or refuse to sell the rights to pollute beyond which they deem excessive). This of course requires a fair process to distribute the rights, and runs into income inequality problems, but those are separate issues.

### ***Public Goods***

Similar to an externality in some respects, a public good is a good that is non-rivalrous in consumptions and non-excludable. In other words, it doesn't matter if one person or a thousand people consume the good, it costs the same to provide it (and one person consuming doesn't interfere with another person consuming the good), and it is not possible to stop people from consuming the good. A good example is free-to-air TV, national defence or a lighthouse.

Let's take the lighthouse example to explain why they are an important concept. Building a lighthouse obviously has benefits to certain people, but if it's on for one person then it's on for everyone – this means that if someone builds a lighthouse, everyone else can access the good without having to pay for it. This is why they are interesting – on their own, most public goods wouldn't come about because individuals have no incentive to create the good in question, or at least will create it below the optimum level.

### ***Tragedy of the commons***

This is a situation where the good in question is non-excludable (so you can't stop people from accessing it) but it is rivalrous in consumption, meaning that one person's consumption does affect everyone else's. The most common example is a communal field, or global fishing grounds.

Take the example of a communal grazing field. The more the land gets grazed, the less productive it is, and there is the possibility that it will eventually be grazed to the point that nobody can use it. However, every individual has the incentive to consume as much as possible – because even if they hold back, that simply means others will use more and deplete the resource. So, they need to maximise consumption to gain benefit before it runs out. Everyone thinking like this leads to the resource running out. Ways to fix it are usually centered around creating a market to trade the rights.

### ***Perfect Information***

In order for consumers to be able to make the right decisions, they need to have perfect information about everything (you can hardly choose the product that satisfies your needs the most if you don't know which one that is). However, this clearly doesn't happen in the real world. So, Governments intervene to protect individuals by ensuring that products are of a certain standard, and label how they work or what went in to them.

However, sometimes there are insurmountable cases of information asymmetry (where one party has information, and the other party doesn't, and that information is very important to the transaction). The two most interesting cases are moral hazard and adverse selection, and something like health insurance gives a good example of both.

**Moral hazard** occurs when, by protecting an individual against some bad outcome, it leads to behavior that actually may increase the likelihood of that bad outcome occurring. If you have top notch health insurance, and know you will be covered no matter what happens, then you are likely to be less careful with your health, meaning you may in fact be more likely to get sick (without insurance, the threat of getting sick and having to pay for all your medical bills may make you more careful). There are many other examples, including several that involve the Government, where individuals are protected from some bad outcome in a way that means that their behavior changes.

**Adverse selection**, on the other hand, describes the fact that the people who are most likely to seek health insurance are the people who are the sickest, or most prone to getting sick (most people in their 20s don't have health cover, and frankly don't need it because they don't get sick much). In other words, when people self-select in a certain way, it is often the least desirable candidates who will present themselves. There aren't examples of Government intervention, but there are other examples out there that can be explained by adverse selection (like, say, used cars).

### ***Perfect Rationality***

The assumption that is the basis for most economic thought (and indeed much of Western thought), is probably the most flawed. People are stupid. Like, incredibly stupid. The new and rapidly growing field of behavioural economics is demonstrating time and time again that people are simply incapable of making the right decision. For example, offer most people \$50 now or \$100 in a year, and far too many people will take the \$50 now (even though that implies discount rate, or effective interest rate, of 100%). People cannot value money across time very well, and they can't value their future selves very well. That's why, for example, a lot of people smoke far too much (and end up regretting it later on). This can justify some interesting interventions – probably my favourite of all time is superannuation. The Government actively restricts your right to income by sequestering a portion of it until you are much older, because without it you simply will not save enough.

Of course, you have to ask yourself whether, even if people are stupid, interventions are justified, as once you start arguing the Government can intervene in these places, it is difficult to point to a place where they should stop.

### **But is Intervention Always the Solution?**

Even though the assumptions underlying markets often don't even come close to holding up, markets often have a way of correcting for this on their own, or acting as if the assumptions do hold up. Take the example of the employment market, especially graduate employment – it's a classic example of information asymmetry. Employers don't really know how smart you are, and they especially have a hard time working out more intangible factors like your dedication, motivation and other soft skills. Yet, markets find ways to get around this – education, especially higher education, is basically a market correction. Aside from vocation-focused courses like medicine, and law to an extent, most of what people learn in university isn't used at all in their later careers. Instead,

education acts as a signalling mechanism to employers that shows them how intelligent, capable and motivated a person is (as do, to a lesser extent, extra-curricular activities).

If you're not convinced, just take a look at the number of people who do honours after their undergraduate degree, but don't go on to do a PhD/Masters, or academic work. Honours is meant to be a preparation for post-graduate work, yet most people choose to go straight into work after honours, and this trend has been growing in the past couple of decades especially. This is because an undergraduate degree on its own has lost its relative prestige, so to further separate themselves from the crowd, people are doing an honours degree to signal that they are not just an ordinary graduate.

Even if the market can't come up with its own solution, intervention has its downsides as well. Governments are notoriously inefficient, and the private sector can often provide the same goods at a much cheaper price. This is because the private sector faces competition and aims to maximise profits, whereas the Government has different priorities. Governments and their bureaucracies aim to maximise accountability, and often have multiple checks and layers to ensure transparency, which adds to costs. Moreover, the very act of collecting taxes and administering the Government generates costs through the employment of bureaucrats.

Even then, however, Governments don't always achieve their aims. Governments suffer heavily from lobbying, where relatively small interest groups seek to gain advantage through pressuring Governments to bias legislation in their favour. One of the biggest problem with emissions trading schemes around the world has been that they have had their effectiveness consistently eroded by special interest groups who lobby to have permits given away to their sector for free, undermining the effectiveness of putting a cost on carbon.

It is also questionable (or, debatable, in case you didn't get the hint) as to whether some things that are claimed to be market failures really are market failures; they may in fact be the market correcting itself. A classic case is debates about bailing out failing industries – most economists would argue that if a bank or a company fails, this is not a market failure, this is in fact the market correcting itself by weeding out an inefficient company. Protecting the company only causes further problems (through moral hazard).

## **Conclusion**

Most economics debates will be about whether or not there is some market failure (sometimes there is, sometimes there isn't) and if there is, whether Government intervention is best. However, remember that economics can be applied to almost all debates in some way – ultimately debates are about analyzing how individuals will respond to incentives that are presented to them, and that's what economics is all about.

# Chapter 14: International Relations

By Fiona Prowse

## First Principles: IR

### Key Terms

We've all had those moments where we think...what the \$%^& does that mean, hopefully this helps!

**Sovereignty:** when a country has independent and absolute authority over territory.

The Treaty of Westphalia (1648) codified the basic principles of territorial integrity, border inviolability, and supremacy of the state (rather than the Church).

Basically, whatever happens within a country's borders, stays within those borders.

Application in debates: often an issue in debates about invasion – on what terms can we sacrifice sovereignty and intervene? How high should that threshold be? Genocide? Absence of political rights?

**Sanctions:** a method for attempting to influence the behaviour of others. Can take a variety of forms:

- Economic sanctions - typically a ban on trade, possibly limited to certain sectors such as armaments, or with certain exceptions (such as food and medicine)
- International sanctions - coercive measures adopted by a country or group of countries against another state or individual(s) in order to elicit a change in their behavior
- Trade sanctions - economic sanctions applied for non-political reasons (WTO disputes for example)

Application in debates: it's always easy to talk about problems with another country...not so easy to propose a solution in 7-8 minutes that can fix them.

Often useful to argue through analogy – so when have past sanctions worked on other countries, how are the two cases similar etc.

Always make sure your sanction is proportionate to the problem and explain how it will actually change behaviour/get results. Don't just assume an economic sanction will work (i.e. perhaps the despotic leader doesn't care about the economy).

**Mutually Assured Destruction (MAD):** prominent school of thought during the Cold War, belief that if both parties have nuclear weapons, and are aware that the other could blow them up, then they won't attack each other because their destruction is mutually assured.



Perhaps relevant during the Cold War (although questionable – think Cuban Missile Crisis) but less so now because assumes a) bipolar world or at the very least, b) rational actors (think terrorists, not always about the long term....that is if you're a suicide bomber who thinks they'll soon meet their bevy of virgins in heaven).

### **Schools of Thought**

Academics and politicians have spent hundreds of years developing political theory – here is a brief snap shot of the concepts which most commonly arise in debates.

**Neoconservatism:** a political philosophy that emerged in America which supports using American economic and military power to bring liberalism, democracy, and human rights to other countries.

Really popular term during the presidency of George W. Bush given the perceived neoconservative influence on American foreign policy, as part of the Bush Doctrine.

**Just war theory:** a doctrine of military ethics which says that a conflict can and ought to meet the criteria of philosophical, religious or political justice, provided it follows certain conditions

Just War Theory has two sets of criteria. The first establishing jus ad bellum, the right to go to war; the second establishing jus in bello, right conduct within war.

Jus ad bellum - just cause - the reason for going to war needs to be just and cannot therefore be solely for recapturing things taken or punishing people who have done wrong; innocent life must be in imminent danger and intervention must be to protect life.

Jus in bello - Once war has begun, just war theory also directs how combatants are to act. (Think Geneva conventions, ottowa convention on land mines, POW's etc)

**Democratic peace theory (or liberal democratic theory):** democracies rarely go to war with one another.

The original theory and research on wars has been followed by many similar theories and related research on the relationship between democracy and peace, including that lesser conflicts than wars are also rare between democracies, and that systematic violence is in general less common within democracies.

**'Golden Arches' peace theory:** theory is that no two countries with a McDonald's franchise have ever gone to war with one another (it's a version of the democratic peace theory).

The argument goes that when a country has reached an economic development where it has a middle class strong enough to support a McDonalds network, it will not be interested in fighting wars anymore.

## Clashes

Sitting in a debate and think you've heard it all before? You probably have! IR debates are notoriously predictable when it comes to the clash.

**'Soft Power' vs. 'Hard Power':** broadly describes different ends of the „influence“ spectrum.

Soft Power is just that – soft and almost the warm and fuzzy bits of IR. Includes things like diplomatic negotiations, aid, engagement etc. and seeks to influence behaviour of other states subtly and positively.

If Soft Power is the carrot, Hard Power is the badass stick – often associated with things like invasion, economic sanctions and diplomatic isolation. Seeks to send a strong message to other actors and often also attempts to undermine/disempower said actors.

Application in debates: what's better, the carrot or the stick? Most likely the answer lays somewhere in the middle. It's always useful to be able to point to a progression in actions – i.e. we've tried soft power, it hasn't worked, we need to therefore progress to hard power.

Also relevant to consider issues of proportionality – are you sanctioning a country for a minor offence?

**Unilateral vs. multilateral war:** big issue in recent years – is it legitimate for and should countries intervene internationally on their own? Is there a certain mandate and legitimacy that comes with collective intervention?

Application in debates: aside from the obvious example of Iraq II, which was latterly unilateral, it often arises where it's claimed that „we can't wait for things to get any worse“.

Consider issues of precedent, slippery slope, role of the UN etc.

**Rational vs irrational actors:** also a big issue of late – important to consider the nature of actors – are they logical, rational actors i.e. will respond to conventional threats like economic sanctions? Or are they nut jobs with too much power who won't be swayed by normal tactics? Think Kim Jong Il.

Application in debates: often relevant in debates about dictators and terrorists – generally speaking, the least rational. Aren't influenced by normal means.

## Chapter Three: Debates About Secularism

### Introduction

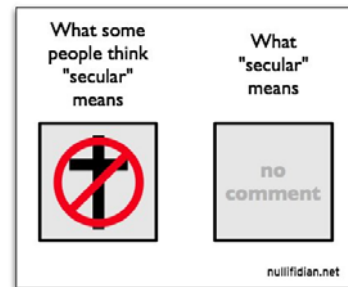
How much should religion influence politics? Before you answer too quickly, consider what your answer might mean. Would you support the government providing funding to religious organisations? What if there is a non-religious group providing the same service, should the government have a *preference* for non-religious groups? And while we're talking about preferences, what about political leaders – is it right for them to support or block policies on the basis of their personal religious beliefs?

These are some of the most difficult questions facing any democracy, and as Western democracies become increasingly multi-cultural (generally bringing with it greater diversity in religious views) these issues are even more important and difficult.

### You can't have one without the other...

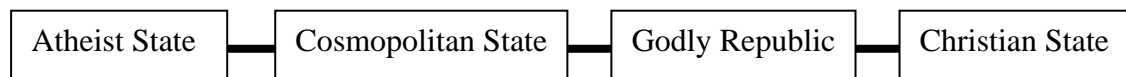
It's tempting to think that these issues are actually very simple. Liberal democracy includes the notion of *secularism* - a separation between church (or mosque) and State right? So while people are free to worship as they please, religious beliefs have no place in politics. That would be fine if most people were not religious, but we live in a society of believers.

A further complication is the fact that the definition of secularism is a matter of perspective – is the separation between church and state intend to insulate government from the pressures of religions, or the other way around? Both views have some merit.



### The Secularism Spectrum

Like all first principles, secularism exists on a spectrum. Where you sit on the spectrum depends in part on your inherent views about religion (a source of truth or just well intentioned fairytales?) and partly on your views on the limits on the public/private spheres. Let's sketch each of the key points on the spectrum.



An **Atheist State** generally conjures images of *militant* atheism – such as the former USSR, where all religious creeds are actively suppressed, but that is not a version of secularism so it doesn't belong in this conversation (but is valid in some debates).

The second form of atheism is more *passive*, and advocates for a strict and total separation between the functions of the State and religion. So while there would be tolerance of religion in private, there would be no government support for it – no funding for religious schools or charities, no religious holidays, and no consideration of religious beliefs in the creation of laws or the delivery of public services (e.g. no exemption from equal opportunity laws or special status for the purposes of taxation).

**Cosmopolitanism** can be summarised as a 'live and let live' philosophy – beyond *tolerance* of difference, its much closer to a general *acceptance* even *encouragement* of different views. To the cosmopolitan religion is a private matter, belonging at home, in the church, etc. The public sphere should be limited to regulations that promote the general good (e.g. seat belt laws) and leave matters of morality to

personal conscience (e.g. abortion should be legal not because its *good*, but because women should not be denied access to it because of moral views they don't share).

So naturally cosmopolitans oppose the involvement of religion in politics – its unnecessary (because no one will be forced to act against their conscience, and that should be all that matters) and dangerous (if religious views are included in decision making it will invariably be the religion of the majority – oppressing the views of minority faiths as well as atheists). The only way to protect everyone's rights is to give preference to none.

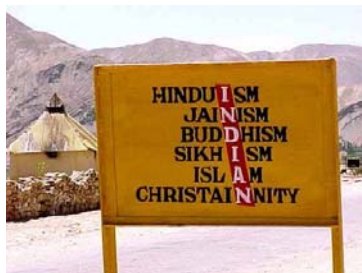
A **Christian State** is one where the majority faith (in the case of virtually all liberal democracies that's a Christian creed) is supported by the State. It's not a theocracy – that's not on the spectrum of secular democracy any more than militant atheism is.

In its purest form, it means that Christian values should be actively promoted by the government and the Christian tradition should be elevated above that of other faiths. It's undeniable that Western nations have a common Christian heritage, and that despite immigration and multiculturalism, Christianity has remained the dominant faith – that means that the majority of people see Christianity as integral to the values and culture of the nation. That sounds extreme but you can see traces of this view even in Australia – we have multiple public holidays for significant days on the Christian calendar – Easter, Christmas – but none recognising other faiths.

In the United States the most distrusted category of people amongst those standing for elections are atheists. Even after September 11, it's easier for a devout Muslim to get elected than a committed humanist. As it stands there is only one openly atheist member of the US Congress – Pete Stark (D-Cal) – and despite being elected in 1973 he only officially 'outed' himself in 2007!

A softer view might be called a **Godly Republic** (a term coined by John DiIulio) and this perspective borrows a little from both of the previous two positions. A Godly Republic respects the role of religion in public life, but also respects the right for people to be free from religious influence.

In practice that means that the government should fund religious groups when they have the capacity to make a positive contribution, as long as the money isn't used to seek conversions, or in ways that exclude non-believers (e.g. Habitat For Humanity). Religious schools should be subsidised so that they are within the reach of average families – because in a nation of believers you shouldn't have to be rich to be able to have your children schooled in line with your beliefs.



## Conclusion

The principle of secularism is relevant to a variety of contemporary political issues such as; education (sex education, chaplains in schools, etc), social welfare (so-called 'faith based initiatives' and 'charitable choice' laws) and health (abortion, circumcision and stem cell research). All four strands of thinking (and many variations in between) are represented in political discourse on these issues – and like

the choice between big and small government, each society is generally an uneasy mix of all the options rather than a single, consistent application of one concept to all issues. By way of illustration the table below sketches out responses to two common battleground issues in the secularism debate – but you should hopefully now be able to see how each position would respond to any of the issues identified above. Just remember, this debate isn't static. The appropriate secular balance is constantly being negotiated and renegotiated by society – that's what makes it so interesting!

	<b>Atheist State</b>	<b>Cosmopolitan</b>	<b>Godly Republic</b>	<b>Christian State</b>
<b>Marriage</b>	Only civil unions carry weight of law. Civil unions have all the rights and stature accorded to 'marriage' today. Sexuality is irrelevant.	Civil unions available regardless of sexuality. Religiously sanctioned unions recognised as equal unless incompatible with common law – such as polygamy.	Civil and religious unions are equal in most cases. Common law accommodates some religious views (no gay 'marriage', but lesser 'unions' are ok. Polygamy is not necessarily allowed).	Civil and religious unions equal in most cases. Common law accommodates majority religious views (no gay marriage, civil unions, registries or anything like it).
<b>Education funding</b>	No public funding of any kind to religious schools. Private religious schools should be rare	Limited public funding for religious schools is ok, on the basis of need, not to facilitate access. Majority of system is public	Funding for religious schools acceptable to assist religious families' access to a religious education. Private schools common – even the majority	Funding for Judeo-Christian schools should ensure and promote access to religious schools. Public schools are a minimal 'safety net'.

### Further Reading

- John DiIulio Jnr, *The Godly Republic*, University of California Press, 2007.
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- "Defining the Limits of Exceptionalism", *The Economist*, 14/2/08 (available online)
- Seumas Milne "Religion is now a potential ally of radical social change", *The Guardian Weekly*, 27/3/08 (available online)
- Lisa Miller "In Defense of Secularism", *Newsweek*, 25/2/08 (available online)
- James Carrol, "Carroll: America's politics of religion", *International Herald Tribune*, 17/12/07 (available online)