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# **EQUITABLE COMMERCE: THE MEDIAEVAL ORIGINS OF AMERICAN ANARCHISM**

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## **EQUITABLE COMMERCE: THE MEDIAEVAL ORIGINS OF AMERICAN ANARCHISM\***

Traditional ideas sometimes turn into revolutionary ones because of changing circumstances in which they continue to exist. Their revolutionary appearance, however, might be intentionally accentuated by the new followers of these ideas. Consequently, a legitimate and respectable tradition of thought becomes marginal and ridiculed. It is an aim of the history of political thought then to reveal the true origins of these ideas. This paper focuses on one such case, namely, the equitable commerce theory of the first American anarchist Josiah Warren. The study seeks to show that the novel character of this theory is overestimated and that an essentially conservative idea of just price lies in the foundation of the whole American anarchist movement.

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There are a few assumptions within the history of radical political thought concerning the nature and the origins of specific ideas, which seem to be widely accepted amongst scholars and general public. The reasons for this certainty aside from the historical ones are definitely political. These assumptions are especially strong in regard to ideas of those authors who are generally seen as the founding fathers of some specific political movements. The presumed ideological purity of their intellectual background serves to keep the left wing of political spectrum separate from the right. We should not however accept these conventions just for the sake of keeping the dichotomy intact. It is often the case that contemporary interpretation of the ideas of the past is heavily dependant on the commentaries given by the authors who regarded these ideas as their credo. This influence may be rather obvious (as in Soviet interpretations of Marx influenced grossly by Lenin's and Stalin's works) or it may remain unnoticed.

I want to suggest an openly revisionist interpretation of a cornerstone idea of the American individualist anarchism's first saint, Josiah Warren (1798-1874).<sup>2</sup> Namely, the cost as the limit of price. I shall argue that we should look for the origins of this idea not only in socialist experiments<sup>3</sup> and the whole egalitarian agenda, but should direct our attention to the more immediate yet less articulated connection this idea had with European traditional practices of trade and price regulation. My point is that the label 'anarchist', ascribed to a person, does not necessarily mean that he can not hold views which are essentially conservative. The process of incorporating Warren's ideas into the canon of anarchist thought has already begun during the XIX century with the help of Benjamin R. Tucker, who openly declared Warren a godfather of the individualist camp. But we should not limit our understanding of development of American radical thought by strictly following the contemporary understanding of conservative vs. progressive debate. I believe that traditional practices and theories could have a strong influence on radical thought even if the fact had not been admitted by the proponents of the movement themselves.

This study seeks to confirm the notion that we always have to deal with an intricate network of intellectual currents which constitute a landscape of thought at any given time, if we want to achieve a relatively reliable vision of political thought in its historical context. At least we should take all the possible ideological sources in account.

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<sup>2</sup> This article is not intended to cover Warren's theory in detail. For a standard biography of Warren see Bailie W. Josiah Warren. *The First American Anarchist*. Boston, 1906. For a short survey of his theories see e.g. Rocker R. *Pioneers of American Freedom*. N.Y., 1949, pp. 49-69. For a general introduction to the American individualist anarchism see Schuster E.M. *Native American Anarchism // Studies in History*, XVII, 1931-1932, pp.118-187; Madison C. A. *Anarchism in the United States // Journal of the History of Ideas*, №6, 1945, pp.46-66.

<sup>3</sup> E.g., Josiah Warren was a member of an Owenite commune New Harmony.

Josiah Warren was a first American author, who openly argued for dissolution of the state as an institution contrary to the right of every individual to make his own decisions and take personal responsibility for his actions. Warren called this right ‘individual sovereignty’. But the problem with the state was not a strictly political one. The state protected perverse economic conditions people had to live in. Destruction of these conditions would have inevitably led to the destruction of the state. The essence of these conditions is that some people have an opportunity to abuse others by getting from the latter more than they have provided in exchange. This becomes possible because of value being made the basis of market price. “The *value* of a loaf of bread to a starving man, is equivalent to the value of his life, and if the ‘price of a thing’ should be ‘what it will bring,’ then one might properly demand of the starving man, his whole future life in servitude as the price of the loaf!”<sup>4</sup> Consequently, the individual sovereignty becomes impossible and the freedom is lost if such injustice lies in the foundation of society. Therefore the first problem Josiah Warren proposes to solve in his book on ‘equitable commerce’ is “the proper, legitimate, and just reward of labor”.<sup>5</sup> The solution he proposes is the establishment of the just price principle, which supposes the cost instead of value being made the limit of price, and distinguishes the price of the product from the expenses the seller had to go into during the process of commerce. This principle should apply to all commercial enterprises, such as rent, money loans, etc.: “Rents of land, buildings, etc., especially in cities, are based chiefly on their value to the occupants, and this depends on the degree of want or distress felt by the landless and houseless; the greater the distress, the higher the value and the price. The equitable rent of either would be the wear, insurance, etc., and the labor of making contracts and receiving the rents, all of which are different items of COST”.<sup>6</sup> This reasoning led Warren to the idea of a “time store” where people could use the labour notes as means of exchange, which represented a specified amount of labour, instead of money, which represented an abstract, fluctuating quantity.<sup>7</sup>

This idea was praised by Warren’s follower, the most well-known of American individualist anarchists, Benjamin Tucker. He stressed the fact that Warren invented mutualism simultaneously with Pierre-Joseph Proudhon and was a first American anarchist. Consequently, Warren was regarded as an innovator, the godfather of an essentially new movement. I want to show however that Warren’s idea of equitable commerce has too much in common with the deeply conservative, traditional concept of just price, born in Antiquity and developed during the Middle Ages, to be called new and radical. And the negative attitude of Warren towards the state

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<sup>4</sup> Warren J. *Equitable Commerce*. N.Y., 1967, p. 42.

<sup>5</sup> *Ibid.*, p.11.

<sup>6</sup> *Ibid.*, p.46.

<sup>7</sup> *Ibid.*, p.67.

should be regarded as a separate idea, which could co-exist and even be derived from his conservative economic theory.

First of all, a striking resemblance of ideas exists on the terminological level. Warren's main text which contains his theory of price is entitled 'Equitable Commerce'. Actually, the whole mediaeval debate on the problem of just price is necessarily devoted precisely to the problem of equitable commerce. The Digest of Justinian, which, together with Aristotle's Nichomachean Ethics, comprises the foundation of the *justum pretium* concept, reads in 50.17.206: "*Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*". It can be translated as: "It is naturally equitable that no one can be enriched at another's loss or injury". And as I pointed out before, the whole 'Equitable Commerce' is actually about the perverted commercial system which allows a minority to live "by some subtle and hidden means" luxuriously upon the labor of the majority "without rendering an equivalent".<sup>8</sup>

The doctrine of just price played an important role in the Middle Ages at least on the theoretical level. Different conceptions exist of what constituted the just price or the methods of its calculation. Contemporary studies have shown that there were several different schools of thought.<sup>9</sup> Some of the latter considered as just the current market price usually paid for some products. Some theorists (legists mainly) declared the freedom of bargaining, albeit within the borders of *laesio enormis* regulation.<sup>10</sup> But there were also authors who regarded as just only the price limited by the production costs plus a small sum required for the survival of the seller. We can list John Duns Scotus and his followers among them.<sup>11</sup>

The early antecedents to the just price doctrine may be found in the Carolingian period in the legislation against usury which would define the latter in broad terms as demanding back more than what was given.<sup>12</sup> It also prohibited speculative trade – buying products when they were cheap to sell them later when there would be a desperate need. The most common example of this practice was selling food at high prices in times of famine. These regulations would later appear in the *Decretum* of Gratian in even stronger terms. All commercial activities aimed at gaining profit through the difference in prices were declared *turpe lucrum*, shameful gain.

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<sup>8</sup> Ibid., p.10.

<sup>9</sup> For a general overview of mediaeval theories see e.g. Baldwin J.W. The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries. // Transactions of the American Philosophical Society, New Series, vol.49, No.4 (1959).

<sup>10</sup> *Laesio enormis* is a Roman Law concept which offers a remedy for the party to a contract if that party has sold its property (mostly immovable) at less than half of its just price.

<sup>11</sup> Schumpeter J. History of Economic Analysis. N.Y., 1993, p.93.

<sup>12</sup> Baldwin J.W., op. cit., p.32.

However, the problem was not only with an intended *turpe lucrum*, it was generally believed that all transactions of trade were generally susceptible of becoming sinful. Therefore, “it is to the advantage of those undergoing penance to avoid such affairs because it is difficult to transact commercial affairs of buying and selling without committing sin”.<sup>13</sup> Later, the Decretists followed the same path of condemnation of trade as universally based on deceit. They made exception for the fair craftsmen who got the compensation for their work out of necessity. The price they could ask for consisted of their expenses and their labour. Anything beyond the surplus needed for the mere survival of the artisan and his family was considered shameful and sinful. Some authors would later allow (although with suspicion) the merchants also to do their business if their gain was limited to the provision of the same necessities. The merchants acted rightfully if they provided the useful services such as transportation of goods and therefore should obtain a reasonable profit from their service.

Obviously there were different attitudes towards the strict following of the just price provisions among different groups of social thinkers in the mediaeval Europe – from the advocacy of complete enforcement of the doctrine by the theologians to the growing theory of freedom of bargaining among Romanists.<sup>14</sup>

As John W. Baldwin noted, “the doctrine of the just price was the result of the penetration of justice into the world of commerce”.<sup>15</sup> For the theologians the aim was not to understand the mechanism of the commerce but to evaluate it and to enforce a normative point of view.<sup>16</sup> The justice as such was a concept inherited by the mediaeval authors from the Antiquity – both Pagan and Christian. Especially important was the influence of Cicero, whose definition of justice as “a habit of mind which gives every man his desert while preserving the common advantage”<sup>17</sup> was a very useful one for implementing the notion of justice into the world of commerce. Giving to each his due was an ancient concept which would later reappear in the writings of such authors as Thomas Aquinas and Albert the Great. Another source of their ideas was Aristotle and his distinction between distributive and commutative types of justice. Commerce was regarded as a sphere where a commutative justice should prevail as the parties enter the contract voluntarily and all the differences of status between them cease to exist within this specific interaction. Moreover, both Thomas and Albert believed that without the “reciprocal compensation, the losses incurred would eventually result in total enslavement of the citizen

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<sup>13</sup> Ibid., p.37.

<sup>14</sup> Ibid., p.8.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., p.59.

body, because a slave is one who is not justly rewarded for his work”.<sup>18</sup> They also refined the Aristotelian conception of value – it consisted not only of human needs, but it was also dependent on the factors of labour and expenses. The thing is worth more than another one because of the greater amount of labour and expenses involved in its production. Therefore, in ideal circumstances products should be exchanged in proportion to these costs.

The modern European jurists had to go at lengths in defending an essentially *new* theory, which depicted price as fluctuating freely in accordance only with mere judgment of parties involved in specific contract. It is rather noteworthy that some of them have employed Hobbes’ understanding of the nature of human interaction in support of their theory: “The value of all things contracted for, is measured by the Appetite of the Contractors: and therefore the just value, is that which they be contented to give”.<sup>19</sup> This reference reveals the modern character of the fluctuating price concept.

The remedies against the malign practices involving unfair price were abolished in Europe in many cases only during the XIX century: in 1861 in Bavaria, in 1863 in Saxony, partially in France in 1812 (however, there remained an exception in article 1674 of the Civil Code for land sold at less than five-twelfths its value).<sup>20</sup> However, as I said earlier, the just price theory had not been fully enforced even during the Middle Ages. But this does not matter for our case – what is important is that all the parties of a dispute about the just price provided their arguments within a collective discourse in which the idea of the *justum pretium* was an important and a viable one. Even the authors who were trying to set prices free from any external regulations had to take into account an old belief in justice penetrating the world of commerce.

The just price theory was also present within the common law system. Morton J. Horwitz in his brilliant study of transformation of common law in the United States wrote: “The most important aspect of the eighteenth century conception of exchange is an equitable limitation on contractual obligation. Under the modern will theory, the extent of contractual obligation depends upon the convergence of individual desires. The equitable theory, by contrast, limited and sometimes denied contractual obligation by reference to the fairness of the underlying exchange. The most direct expression of the eighteenth century theory was the well-established doctrine that equity courts would refuse specific enforcement of any contract in which they determined that the consideration was inadequate”.<sup>21</sup>

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<sup>18</sup> Ibid., p.63.

<sup>19</sup> Hobbes T. Leviathan. Oxford, 1929, p.115.

<sup>20</sup> Gordley J. Equality in Exchange // California Law Review, Vol. 69, No. 6 (Dec., 1981), p.1593.

<sup>21</sup> Horwitz M.J. The Transformation of American Law, 1780-1860. Cambridge; London, 1977, p.164

John Adams provided reasoning behind the logic of equitable commerce when he stated: “It is a natural, immutable Law that the Buyer ought not to take Advantage of the sellers Necessity, to purchase at too low a Price. Suppose Money was very scarce, and a Man was under a Necessity of procuring a £ 100 within 2 Hours to satisfy an Execution, or else go to Gaol. He has a Quantity of Goods worth £ 500 that he would sell. He finds a Buyer who would give him £ 100 for them all, and no more. The poor Man is constrained to sell £ 500s worth for £ 100. Here the seller is wronged, tho he sell voluntarily in one sense”.<sup>22</sup>

The jurists of England and the USA who tried to put forward the fluctuating price ideology followed basically the same line of argument as their Continental colleagues did. Joseph Story, one of the leading American lawyers of the first half of the XIX century, wrote that a “person, who is not, from his peculiar condition or circumstances, under disability, is entitled to dispose of his property in such manner and upon such terms as he chooses; and whether his bargains are wise and discreet, or profitable or unprofitable, or otherwise, are considerations, not for Courts of Justice, but for the party himself to deliberate upon”.<sup>23</sup> James Gordley in his study of equality of exchange principle mentions Chitty, Addison, Metcalf, William Story, Leake, Taylor, Bishop, Smith, Newland, and Hammon among the Anglo-Saxon authors, providing arguments for essentially the same position, all of their relevant works published only between 1790 and 1912.<sup>24</sup> The Supreme Court of the United States had to provide arguments against the price restrictions even in 1910.<sup>25</sup> The anti-forestalling and anti-regrating regulation has been in operation during the post-Revolutionary war period<sup>26</sup> and still exists in some American states.<sup>27</sup>

Now that we bear in mind the historical scale of the just price debate and its real implementation in everyday legal practice, it seems then highly improbable that Josiah Warren could be so strangely ignorant of the whole just price matter and at the same time could provide a line of argument against the fluctuating prices, which was very similar to the mediaeval tradition. Even if we assume that he has not read any studies concerning this problem of crucial importance for his social philosophy, it would still be difficult to accept the idea that he has

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<sup>22</sup> Diary and Autobiography of John Adams. vol.I. Cambridge, 1961, p.112.

<sup>23</sup> Story J. Commentaries on Equity Jurisprudence: As Administered in England and America. London; Boston, 1849, p.267. The first edition of this work was printed in 1836.

<sup>24</sup> Gordley J., op. cit., pp.1599-1600.

<sup>25</sup> See *Standard Oil Company of New Jersey v. United States*. 221 US, 1. 1910.

<sup>26</sup> McDonald F. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Lawrence, 1985, p.114.

<sup>27</sup> See e.g. Arkansas Code §14-140-101 (2010), which provides the city councils with a ‘full power’ to prevent forestalling, or a New Hampshire provision, which grants the city councils a right “to prevent and punish forestalling and regrating”. New Hampshire RSA §47:17 (2010).



never even had a chance to hear about these fundamental legal issues. This is especially strange if we know about his active commercial enterprises.<sup>28</sup>

Another thing we should take into account is a general contempt Warren had for something we could call the mercenary spirit, the pursuit of constant gain. This ‘spirit of capitalism’ was something Warren considered a notable feature of the present. We should remember, however, that this spirit was a relatively new phenomenon for a Western civilization, even for its American part. It is important to note that Warren not only condemns the spirit of acquisition as such, he also goes into detail about the “disgusting features of this iniquitous spirit of the present pecuniary commerce”.<sup>29</sup> He tells us about “the cheating, higgling, huckstering, and falsehoods, so degrading to both purchaser and vender, and the injustice done to one party or the other, in almost every transaction in trade”. He characterises as disgusting the “process of bargaining in every little transaction”, which is “so repugnant to good sense” that “the best citizens are often induced to do without conveniences, or undertake to supply themselves to great disadvantage rather than enter into the degrading warfare which generally attends our pecuniary commerce”.<sup>30</sup> The whole contemporary process of doing business Warren regards as “disturbing our social feelings and self-respect”.<sup>31</sup> All these condemnations vividly remind us of the mediaeval authors, such as Jacques de Vitry, who wrote that: “cheating, fraud, lying, perjury, circumvention, and deception roam through all market places”<sup>32</sup>. These bitter invectives of Warren could easily belong either to Cicero or to any of his aristocratic European followers who did not have any respect for the tradesmen and their practices.<sup>33</sup>

Moreover, Warren addresses his writing primarily “to the noble few whose intellects and hearts have not been destroyed by the prevailing cannibalism of the world”.<sup>34</sup> This phrasing does not seem to mean any would-be socialists as “the noble few”. Warren writes about some people who *already* have intellects and hearts which *have not been destroyed by the prevailing* situation. This obviously presumes the existence of conditions which could have made these hearts and intellects noble and therefore ready for the “just price” principle. So when Warren says about prevailing cannibalism and present pecuniary commerce, he does not necessarily say about something well-established. His concern about the present may lead our thoughts not only to the socialist future; it may be as well nostalgia for the past.

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<sup>28</sup> See Bailie W., op. cit.; Martin J.J. *Men Against The State*. Colorado Springs: Ralph Myles Publisher, Inc., 1970, pp.1-102.

<sup>29</sup> Warren J., op. cit., p.47.

<sup>30</sup> Ibid., p.66.

<sup>31</sup> Ibid.

<sup>32</sup> Baldwin J.W., op. cit., p.67.

<sup>33</sup> See Sekora J. *Luxury. The Concept in Western Thought*, Eden to Smollett. Baltimore, 1977.

<sup>34</sup> Warren J., op. cit., p.104.

This does not mean that this nostalgia must refer directly to the Middle Ages. The Founding Fathers of American Republic were profoundly versed in European tradition and could have been the point of departure for a discontented radical opposed to the mercenary spirit of the age. George Washington wrote in one of his letters: “But, alas! virtue and patriotism are almost extinct! Stockjobbing, speculating, engrossing, seem to be the great business of the day and of the multitude, whilst a virtuous few struggle, lament, and suffer in silence”.<sup>35</sup> The Jeffersonian democracy, being essentially a restatement of the ancient values in a radically changed environment of the Enlightenment, was a concept widely accepted amongst the American individualist anarchists as a part of their cultural heritage.<sup>36</sup> But the same holds true for example for the admittedly conservative Southern Agrarians. This common heritage makes the whole “left-right” dichotomy not that useful when dealing with development of American political thought. At least this heritage allows for reconsideration of the political lineages.

One problem, however, remains – it is Warren’s own insistence on the essentially novel character of his ideas, as when he says for example that he has been frightened to start his theoretical enterprise because of “the impossibility of conveying new ideas by old words”.<sup>37</sup>

There seem to be three possible explanations of this inconsistency with my propositions. The first one could be simply that Warren actually knew nothing about the centuries-long just price dispute, but that would be highly improbable. That would be especially odd if we consider the fact that Warren mentioned William Blackstone a few times throughout his works, showing his interest in legal literature.

The second one is that Warren has been trying to avoid any connections with established debates and provide a reader with a theory which *would seem* to be new. We don’t have however any plausible explanation for such behaviour. Warren never gained anything personally from his theoretical activities, instead, he had lost a lot of opportunities to grow wealthy through his inventions and successful commercial activities because of his ‘equitable’ principles.

And the third explanation might be that Warren’s theory was new only in some special aspect, which was nevertheless important enough to declare the whole theory new. It offered, for example, the new method of determining the just price; it excluded authorities from price regulation; it showed connection between the just price and the principle of individual sovereignty professed by Warren. Warren proposes that cost being made the limit of price,

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<sup>35</sup> George Washington to Henry Laurens. 5 November, 1779 // The Writings of George Washington, vol.VI. Boston, 1840, p.397.

<sup>36</sup> About the ‘anarchist’ compound in American political theory in general and its connection with Jefferson see DeLeon D. The American as Anarchist: Reflections on Indigenous Radicalism. Baltimore, 1978; Matthews R.K. The Radical Politics of Thomas Jefferson. Lawrence, 1984. For a direct reference by Benjamin Tucker to Jefferson as an ideological ancestor see e.g. Tucker B. Anarchism and Consent // Liberty. Vol. II. № 5 (December 9, 1882), p.2.

<sup>37</sup> Warren J., op. cit., p.ix.

would after all “raise every one ABOVE THE TEMPTATION TO INVAD E ANOTHER, and every one would, consequently, feel secure from any encroachments—governments and laws would not then be thought necessary, in order to restrain men from encroaching on each other, and this excuse for their existence would be swept away”.<sup>38</sup> It is feasible that this specific radical outcome could be the feature which was regarded as essentially new and which was difficult to convey “by old words” of the just price theory. The new thing was the repudiation of the need for government, the openly anarchist cause.

The fact that Warren was critical of the state did not make him less traditional: the state as Warren knew it was a recent invention. There was nothing traditional in government established only fifty years ago in the course of a revolutionary war. It is rarely disputed that the development of the nation state is closely connected to the growth of the bourgeoisie and its main sphere of activity, the free market. Therefore, the ideas which we use to regard as socialist might be rather reactionary in their historical context.

By pointing at the possible sources of Warren’s thought I do not wish to imply that he has not been influenced by the socialist experiments of his time or to contend that the whole ‘equitable commerce’ concept has been basically borrowed from the actual legal practice. Both assumptions would have been gross exaggerations. What I would like to propose is merely the idea that Warren’s ideas should not be regarded as separate from the whole Western intellectual tradition. It seems to be not very probable for a person of Warren’s intelligence and curiosity to exist in the intellectual vacuum and be fully unaware either of the ancient and mediaeval theories of *justum pretium* or the contemporary legal debates.

Even if we supposed that Warren himself could sincerely believe that his ideas were totally novel, it would not actually contradict our main thesis. A person, who proposes a conservative scheme of commerce within a growing market-ridden bourgeois ideology, is not necessarily socialist. It is actually more natural to call him conservative or, to be precise, paleoconservative. This term, which appeared in 1980s, was used to define the conservative beliefs which had their origins not in the essentially modern concept of state and bourgeois society, but in the values of Antiquity and the Middle Ages. This layer of thought, which has never been fully abandoned, continued to influence modern thinkers. Some of the latter fully acknowledged this influence,<sup>39</sup> but even those who did not, could not fully abstain from the legacy of the past.

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<sup>38</sup> Ibid., p.55.

<sup>39</sup> E.g. the Anti-Federalist thinkers, the state right theorists, the Southern Agrarians.

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