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Is freedom nothing more than an instrumental value?

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(FINAL DRAFT)

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Introduction

Let me begin with a confession: I am not an economist — even though I have read most, indeed practically all, of the books and article collections of Mises, Hayek, and Rothbard, and a good deal of the writings of Menger, Böhm-Bawerk, Wieser, Kirzner, and other "Austrians". I am here as a philosopher of law. I know, many people easily get annoyed with philosophy. That is understandable: Philosophy is mostly belabouring the obvious. However, the philosophers have a decent excuse, viz. when people, especially intellectuals, get going then the obvious is often the first thing they lose sight of. And, forgetting the obvious holds a serious risk of dire consequences.

My theme is the statement "Freedom is nothing more than an instrumental value." Few Austrian economists even mention it, but at least Mises and Hayek insisted that freedom is nothing more than that. They intimated that they disagreed with socialists only on the means to reach a goal all of them sought to achieve, viz. prosperity for all members of society. The goal being the same, free markets and centrally planned economies are but different ways of reaching it. In principle, then, it should be possible to answer the question, which is the best means to achieve the common goal: Liberalism, Socialism or, perhaps, some middle-of-the-road ("Third way") compromise? However, Mises and Hayek also insisted that, really, there was no "third way". Any third way was a "road to serfdom" (Hayek) or a slippery slope at the bottom of which there was only centrally planned Soviet-style socialism (Mises). Of course, to most people, the "third way" was simply business-as-usual, i.e. opportunistic muddling through — which, as historians will agree, is the only thing mankind as a whole is relatively good at.[1]

At the risk of making Hayek and Mises turn in their graves, I am going to argue that freedom is not a merely instrumental but an absolute value — to strive to be free is an objective virtue. At a theoretical level, the problem is obvious: If freedom is but a means then it is not the only one; so humans will constantly face the choice of giving up some or all of their freedom for more of other means — and vice versa. Who knows where this opportunistic trading off of one thing for another will end up?

Mises, Hayek and David Hume

Mises and Hayek, each of them in his own way, were utilitarians, albeit of the muffled Humean rather than the naked Benthamite variety. David Hume, the man who had wakened Kant out of his "metaphysical slumber", was their intellectual guru.

Hume famously pointed out that one cannot logically derive "ought" from "is. Most of his followers took him to be saying that only *is*-statements can be true or false, and that *ought*-statements are neither true nor false, unless one can somehow reduce them to *is*-statements — which is what Bentham pretended to have succeeded in doing. "Ought", the followers of Hume say, may express feelings or urges, preferences or desires, but it does not express verifiable opinions about what is or is not the case "out there", in Nature, in the universe of material things and physical processes. However, this leaves us with a problem: How would we ever be able to

argue which *is*-statements we ought to consider true or more likely true than another? How would we argue that we ought to prefer truth to falsehood? Hume's question-begging answer was: The method of the natural sciences (Newtonian physics) — is the one and only way of deciding what is really true or not. Of course, Hume was not a physicist and he was not a mathematician. He was not even a philosopher of science or mathematics. Before Hume chose to make a name for himself as a historian and a public intellectual — i.e. before he abandoned his philosophical project, which had culminated in his famous *Treatise of Human Nature* — he had obviously thought that the scientific method was a simple, definite thing. You either applied it and then you were in the business of discovering truth, or you ignored it and then you were an obscurantist. In any case, there was no place for absolute values in that naïve Humean, supposedly scientific worldview, which Mises took to heart. Hayek too took his inspiration from Hume.

However, unlike Mises, Hayek was far more interested in Hume's emphasis on the animal-like, instinctive or reflexive behaviour of human beings than on Hume's adulation of the method of "natural science". In the world of animals and plants, more-or-less durable patterns of order appear that are not rationally designed but are the results of the ex ante uncoordinated interactions of many animals or plants with each other and with their physical environment. Following Hume, Hayek held the same to be true in the human world. Animals and plants are not supposed to know what they are doing or why they are doing it, and yet, their populations can thrive and flourish and, most important of all, adapt to changing circumstances. The same is true for human beings. Not the physicists' physics, but the evolutionary biologists' population dynamics was to be the loadstar of Hayek's science of the human world.

Mises followed Hume in categorically denying that *ought*-statements have a place in science, if they cannot be reduced to *is*-statements. In his *Theory and History* (1957), he wrote:

> [Mental acts that determine... a choice of means to an ultimate end] are **technical decisions derived from factual propositions**... Choosing means is a technical problem... a matter of reason.
>
> [Mental acts that determine... a choice of ultimate ends] are called **judgments of value**... Choosing ultimate ends is a personal, subjective, individual affair... a matter of the soul and the will. (*T&H*, p.12)

A few pages later, he stated that propositions of existence or non-existence are descriptive, so that, with regard to them

> questions of truth and falsity are significant. They must not be confounded with value judgments. (*T*&*H*, p.19)

Apparently, where value judgements are concerned, questions of truth and falsity are not significant. Mises concluded:

> There is no such thing as a normative science, a science of what ought to be. (*T*&*H*, p.55)

As a philosopher of law, I could not disagree more.

Methodological dualism

Mises departed from the Humean canon when he rejected the idea that every genuine science is an application of the method of physics. Hume had assumed that the body rules and governs the mind — "Reason is and ought to be slave of the passions". He blatantly negated the classical tradition — e.g., Seneca's "Nemo liber est, qui corpori servit."[2] Mises was inclined to agree with Hume, but he saw no proof of the

assumption. He accordingly insisted on methodological dualism. He had made the science of human actions (praxeology) his particular field of enquiry, and he considered it a genuine science — in other words, "a value-free science", a science that did not presuppose or produce value-judgments. However, praxeology differed significantly from the sciences of Nature. Natural scientists are supposed to know what they are doing and why they do it, but they study mindless things that cannot be supposed to know what they are doing and why. In contrast, a praxeologist, who is also supposed to know what he does and why, studies things (human agents) that are very much like him. He has no reason to think that they are incapable of knowing what they do or why they do it. However, he has plenty of reasons to think that he does not know what they know or why they do what they do. He has no access to their minds or intentions.

Mises hedged his bets. His dualism was *only* methodological. He did not want to be understood as saying that human persons will never be shown to be anything more than objects of physical science. As far as we know at present, human persons are different from physical objects — that was as far as Mises would go. For the time being, our ignorance of future physical knowledge leaves us no choice but to develop a separate methodology for the study of human actions.[3] In line with the prevailing climate of academic opinion of his day (neo-Kantianism, logical-positivism), he wanted to define a "pure theory of economics", just as his contemporary and compatriot Hans Kelsen wanted a "pure theory of law". In both cases, a pure theory had to be not only value free but also free of statements about physical and psychological causation.

Speaking as a philosopher of law, I'd say that Kelsen's "pure theory of law" was not about law at all. It was about the formal structure of internally coherent legal systems, i.e. systems of prescriptive utterances (commands, rules or norms of conduct) that derive their legal validity from the same source — irrespective of their truth or falsity. Statements about prescriptive utterances might be true or they might be false, but prescriptive utterances are neither. For me, the study of law is the study of the order of the World to discover its principles and to find out which actions, commands or prescriptions are lawful and which are disruptive of order. Just so, the study of physics is the study of the order of Nature to discover its principles and the effects of human actions in Nature. The difference between Nature and the World is that in Nature nothing is supposed capable of making mistakes — hence, our theories of Nature can be wrong, but Nature never is. In contrast, in the World making mistakes is par for the course — hence, theories of the World can be wrong, but we should not assume that there is never anything wrong with the World itself. After all, the World is constituted by the actions of error-prone human beings.

Mises's praxeology: value-free, formal utilitarianism

Mises thought that humans could be taught praxeology and, to the extent of their theoretical knowledge of praxeology, would eventually be able to design the best of all possible worlds, as far as the condition of the World depends on human actions. For this, he was called 'a rationalist'. In contrast, Hayek thought that theoretical knowledge plays at best a marginal role and that the emergence of order in the human world depends primarily on non-rational factors, just as it does in the worlds of animals and plants. For this, Hayek was called 'an irrationalist', at least by some Misesians for whom the analogy of Man and Beast was a methodological anathema. In Mises's words:

> For animals the generation of every new member of the species means the appearance of a new rival in the struggle for life (*T&H*, p.56)

whereas

> Only man has the power to escape to some extent from the rule of [the Darwinian struggle for life] by intentional cooperation" (*T&H*, p.40).

The latter statement echoed what he had written much earlier in his *Socialism*[4]:

> To Liberalism, the concepts man and social man are the same. Society welcomes as members all who can see the benefit of peace and social cooperation"

However, in *Theory and History*, Mises significantly qualified his defence of the uniqueness of man — and, by implication, his insistence on methodological dualism:

> So long as there is social cooperation *and population has not increased beyond the optimum size*, biological competition is suspended. It is therefore inappropriate to refer to animals and plants in dealing with the social problems of man. (*T&H*, p.40)

Apparently, unlike humans, animals and plants always live in an overpopulated world and treat their offspring as "rivals". Clearly, biology was not Mises's forte. At the time he wrote this, "overpopulation" was on the verge of becoming a major meme in public and even academic discourse. In the lingo of academic economists, "Malthus was back!" — Economics was again the "dismal science".

By the early 1970s, probably a vast majority of Westerners were ripe for what came to be called 'watermelon socialism' — green on the outside, red on the inside. Soon it would be no longer a question of slowing the rate of population growth but of reducing the absolute size of the planet's human population. A new progressivism emerged that viewed humans — i.e. "*other* people" — as the public enemy n° 1, a cancer in the planet's ecosystem. As far as progressive ethics was concerned, abortion and euthanasia became fundamental human rights and sterile sex a quasi-religious duty. Around 1900, eugenics and even genocidal wars had captured the imagination as "scientifically" justified means for improving the quality of the human race. By the year 2010, they were justified as means to save planet, to get rid of all the superfluous people. According to Paul Ehrlich, the author of *The Population Bomb* (1968), the optimal population size had been surpassed shortly after the year 1900.

This raises a question that is relevant to the theme of this conference, *Socialism and Liberty*: If Mises had shared Ehrlich's opinion, would he have deployed his praxeology in the service of socialism? Would he have stormed out of a meeting with Hayek, Milton Friedman, Wilhelm Röpke, Frank Knight and others (as he did at the founding of the *Mont Pèlerin Society* in 1947[5]), but now denouncing them all as "a bunch of liberals" rather than "a bunch of socialists"? Maybe — after all, he wanted his praxeology to be "value free". Of course, "optimum population size" is an excessively theory-laden notion. A supposed "optimum" is always relative to one or other factor or condition (e.g., inhabitable space, climate, fertility of the soil, supply of potable water) which may be more or less controllable by technological advances, expansion of trade, or changes in habits or lifestyles.

Mises also wanted his economics to be "the finest product of the philosophy of utilitarianism" (*T&H*, p.55). To make praxeology a value-free science, he resorted to extreme subjectivist formalism: Man pursues goals by using means — it is of no concern to the praxeologist what human agents believe to be means to their ends, or what they take to be their goals or ends. Nor is it the praxeologist's concern to prescribe which ends human agents ought to pursue, which means they ought to use in pursuing particular ends, or how they ought to use the means at their disposal. Scientific praxeology ought to be a purely formal logic of action. To make economic praxeology the finest product of utilitarianism, Mises resorted to a sleight of hand:

> In the strict sense of the term, acting man aims only at one ultimate end, at the

> attainment of a state of affairs that suits him better than the alternatives. (*T&H*, p.12)

Following Bentham, he called that one ultimate end 'happiness'. In ordinary discourse, 'happiness' means "feeling fortunate", but Mises defined it as "the one and only ultimate end". To him, everything else one might ordinarily associate with happiness was an irrelevant connotation, a merely psychological association of ideas of no logical importance. It was a sleight of hand, because it obscured the fallacious substitution of "acting man aims at only one ultimate end" for "every human agent aims at the attainment of a state of affairs that suits him better than any alternative". The fallacy is the non-sequitur "Every agent pursues an end; therefore there is an end which all agents pursue", which underpins the utilitarian mantra "The desirable is the desired". The fallacy is ubiquitous in Mises's writings. He did not always distinguish carefully between the meanings of a key word when it is used as an uncountable noun (e.g., 'Man' and 'Society', which denote a philosophical or Platonic *Idea*) and its meanings as an countable noun (which denotes one or more instances of a kind of thing, as in 'this or that man, some or all men', 'this or that society, some or all societies'). What is true of uncountable Man or Society is not necessarily true of all or even any countable human beings or societies.

Anyway, from "Happiness is the one ultimate end" Mises inferred, again fallaciously, that "social cooperation" is the universal means to achieve happiness. He did not specify how social cooperation differs from cooperation in general, or from non-social forms of cooperation. Are wars, including wars of aggression, not gigantic examples of socially organized cooperation? Was the 'social' in Mises's 'social cooperation' just as much a weasel word as, according to Hayek, it was in 'social justice'? In any case, Mises apodictically declared

> There prevails among the members of society disagreement with regard to the best method for its organization. But this is a dissent concerning means, not ultimate ends. The problems involved can be discussed without any reference to judgments of value. (*T&H*, p.52)

In other words, the problem of organizing society — note the uncountable noun 'society' — is a matter of "technical decisions derived from factual propositions". Should we conclude that, for Mises, either Society or every society is and ought to be a technocracy?[6]

Mises's formal economic praxeology relied heavily on the distinction between supply and demand. However, the distinction is not internal to economic praxeology — it is made in each economy's legal system. Accordingly, "consumption" does not refer to physically using up things. Similarly, "production" does not refer to making things ready for consumption. Children, senile elderly, seriously ill or handicapped, imprisoned or interned persons, soldiers in their barracks, pupils of boarding schools, cattle, pets and rodents and other pests, fires, natural disasters, even regular wear and tear may physically consume goods. They are not economic consumers, unless the relevant legal system tells us they ought to be considered as such. Animals, trees and plants, rivers and streams produce consumables but they are not producers in the economist's sense of the word, unless the legal system designates them as such. Many producers ("workers", "employees", "subcontractors") expect to get paid by other producers, not by consumers. They earn income by pleasing their bosses, not consumers.

In the sense of Misesian praxeology, we have an economy only where the presupposed legal system defines who or what are "producers" and "consumers", who or what are "members of society". Mises's economics is a formal analysis of that

definition of 'an economic system'. It tells us that a competitive supply is beneficial to the legally recognized consumers and that competitive demand is beneficial to the legally recognized producers. The analysis implies that in an economic system with only one consumer ("the emperor" or "the slaveholder") the one consumer benefits from forcing a regime of competitive supply on his servants — let the slaves compete for their master's favour. It also implies that in a system with only one producer, the producer benefits from forcing a regime of competitive demand on his clients — let the clients compete for the producer's favour.

Formally, an island where, say, ten families live, each with about ten thousand slaves, may be a free-market society, if the government of the island uses its apparatus of coercion and compulsion to hold the heads of the ten families to the Misesian principles of the unhampered market. It is apodictically true that the source of income is production, not consumption. However, the analysis does not imply anything about the source of an individual's "income", whether it is the sale of his own products or a wage obtained by working for a producer. Mises liked to say that on a free market, the consumers, not the "captains of industry", determine what will be produced. (Think about what this means in an economy with only one "consumer".) However, an economy is consumption-driven only if the consumers are sovereign; if they can freely spend their income and obtain their income without having to conform their consumption to requirements or inducements imposed by their employers or other organized interests. One day, maybe, Guido Hülsmann will write a book on the cultural effects of the employee-mentality in an employee-society where the most important employers seek to please their major shareholders (the present-day equivalents of the absentee-landlords of earlier times) or their legal superiors, and where producers' propaganda plays a significant role. William Penn's "Let the people think they govern and they will be governed"[7] matches the commercial propagandist's "Let people think they can buy what they want and they will let you tell them what to want".

Austrian economics and law

My interest in Mises was aroused by his confident statement that his theory of human action, his praxeology, was apodictically right. If that was true then it ought to be possible to develop an apodictically true praxeology of law. It turned out, however, that this was impossible without bursting the confines of Mises's methodology. He *presupposed* that all economic actions take place within a "society" (a legal order, imposed by a "government" — "a social apparatus of coercion and compulsion" — that effectively maintains the society's legal system[8]). This permitted him to ignore the pesky problem of external effects. The legal system of a society determines where the chips of anybody's actions may or must fall, and an effective government makes sure that they fall in the prescribed places. Which legal system a "government" ought to implement, was of no concern to Mises, the economic praxeologist. Moreover, as noted already, he categorically excluded the possibility of any normative science, including a praxeology of law. So, as far as law (as distinct from a government-imposed legal order) was concerned, Mises was not particularly helpful.

Hayek was better: At least he provided a sensible theory of law, albeit only of customary law. But, as Tertullian wrote, "Custom without truth is but error grown old." Hayek accordingly noted that it may be necessary, occasionally, for "legislation" to correct the spontaneous drift of customary law. Such corrections are indeed common in traditional communities (where customary law is supreme), but there they are usually left to the rulers of the community (its king, a senate, an assembly of the

elders of the community or of its "nobility", i.e. the heads of prominent or exemplary families who are known by name throughout the community for their *liturgiae*, i.e. public works and services, for the benefit of all its members). Hayek's use of the term 'legislation' for corrections to the customary law was therefore unfortunate, because in the setting of a traditional community, such corrections take the form of authoritative judicial (reasoned, motivated, consensus-based) verdicts rather than binding commands issued by a legislator or legislative body, empowered to make "new law" at will. A verdict (*veredictum*) is what is said truly or rightly; its truth or rightness is expressed as a *ius* or *iustum* (from *iurare*, to swear, speak solemnly, in earnest, under oath, having considered the pro's and cons). As a ruling, it is the expression of a judge's judgment, not of a commander's will.

Rulers (as distinct from governors or legislators) are supposed to ensure that any "new law" conforms to the spirit and the basic principles of the "old law", in line with the adage "New law, same as old law". This supposition characterized medieval law. Medieval kings (or queens) were rulers of their realms, i.e. guardians of the law of their tribe, the law of their subjects. Unlike modern monarchs, they had no right to govern (i.e. to command) or to "make law" for anything other than their own private households. In that respect, they were like every other head or master of a private household or "house", i.e. the master's spouse, children, other close relatives, domestic servants and bodyguards (knights), and his material property (mainly land but also capital-intensive tools, e.g., mills). Tenants and peasants were not parts of the landholder's "house", but they paid rent (mostly in kind) for the use of his land and the benefit of his protection according to the criteria of justice and charity that defined the local customary law. Medieval serfs (mostly peasants sustaining themselves by working poor-quality fields) were not slaves. Although they were useless as warriors or soldiers, because they were too poor to own battle-ready weapons or horses, and had hardly any bargaining power vis-à-vis the landholder, they could not be bought or sold.

Because of his role as the pre-eminent guardian of the law of his subjects, the king was considered a *primus inter pares*, a "first among equals", a figure of outstanding authority under the law rather than overwhelming military or economic power — a king was not always the most powerful or the richest person in the realm; more often than not, he depended on (even had to beg for) the support of his subjects (especially the grandees or magnates among them) for maintaining his "majesty", his ability to rule, i.e. to dispense justice "free of charge" to every one of his subjects.[9] The king or ruler was not yet an "imperator in regno suo". Only in times of war or to cope with natural disasters did a ruler assume ad hoc governing powers over his male subjects to organize and lead an army or other dedicated workforce for the "common good" (e.g., to build or restore dykes, bridges, ditches, protective walls). However, even then, he was not a monarch in the modern sense, i.e. a governor "*legibus solutus*" (above the law).[10] As a ruler, the king's principal virtue was wisdom, which he cultivated by seeking the advice of counsellors and sages with a reputation of holiness — in medieval times, they were preferably monks and churchmen, for they had vowed to serve God (and, by implication, the rightful interests of all the king's subjects) rather than any particular secular interest.

Adding the prerogative of "legislation by arbitrary command" to the traditional prerogatives of medieval kingship was Jean Bodin's[11] momentous innovation in political theory that launched the idea of the modern sovereign territorial state and began the processes of de-legitimizing the authority of customary law and subordinating the judicial function of doing justice under a communal law to the political function of enforcing obedience to legislated rules (*leges*, plural of *lex*, from

legere, to choose, pick out, single out, select, elect, appoint; to take, carry off, steal; to read out loud; hence, to proclaim a decision as a general command). Consequently, the medieval ruler's or king's subjects became the modern monarch's subordinates, his citizens (*cives*, plural of *civis*, original meaning in Roman law: a comrade-in-arms, whose military service entitled him to the *status libertatis*, the privileges of citizenship in the Roman Republic[12], which was essentially a mighty, fearsome, rigidly organized society of warriors, robbers and conquerors). With the advent of regular, later "standing", armies in early modern times, a distinction was made between military *cives*, i.e. active and former soldiers, and non-military *cives* (now called 'civilians'), al of them subject to the commands (the government) of the monarch, the ruler-legislator (often a single person, occasionally a committee of nobles, grandees or magnates).

After the rediscovery of the Law Books of the sixth-century Roman Emperor Justinian toward the end of the 11th century and the institution of universities, medieval learned writing and theorizing about law became increasingly Romanized. University-trained lawyers began to use the prestige of the "written law" to subvert the authority of not only customary law[13] but also the Church's Christian glosses on the Roman texts by means of which she had tried to accommodate the imperial framework of Justinian's Law Books to the medieval reality of a stateless patchwork of highly diverse communities, unified by faith rather political power. Although the basic structure of daily life and work continued for nearly eight hundred years in the mould of traditional, ungoverned local communities of independent households under a rule of customary law, the theoretical ascendancy of the military, highly hierarchical and centralized model of the Roman society of robbers and conquerors was unmistakable. It bore its nefarious fruit in the emergence of the modern state in the fifteenth century[14] and in its obsession with perfecting the techniques of *divide et impera*, racketeering, war making and colonial conquest.

Despite the objections of some Catholic liberals, e.g., Frédéric Bastiat and Lord Acton, against adulation of the politics of Ancient Rome; despite Hayek's nostalgic celebration of law as essentially community law, Mises apparently never ventured outside the Roman-inspired societal model of law as a legal (legislated) system. Mises's argument for the thesis that there is no such thing as a normative science, a science of what ought to be, has all the markings of a fallacy, at least from the standpoint of classical philosophy, which is rooted in the concept of the rightly ordered or rational soul, a harmonious collaboration of an agent's cognitive and conative powers to discipline and control the human body's default animal driving forces (e.g. urges, habitual reactions to physical stimuli, whether rationalized as "desires" or not).[15]

Using Plato's political analogy (which he developed at length in his *Politeia*), we may say that the intellectual part of the rational soul *rules* the soul and the wilful part *governs* the body. Unfortunately, the distinction between "ruling" and "governing" has largely been lost in modern conceptions of political organization. As noted above, the distinction was central to the medieval outlook. It made a half-hearted comeback in the seventeenth century (e.g., in the writings of John Locke), when classical-liberal thought sought to make representative assemblies (parliaments) the seats of ruling, with authority to judge the actions of the government. The program was deeply flawed, because it identified ruling with legislating, i.e. to change the law of the people at the mere will of a parliamentary majority.

According to the classical conception of the rational soul, the intellect discriminates between true and false values, between what, in any case, ought and what, in any case, ought not to be. The will devises opportune action programs or policies (proposals to use particular currently available means to achieve currently relevant ends) that satisfy the value criteria imposed by the intellect. The rational will

then implements a policy that the intellect judges permissible. If the intellect does not rule then the will's government of the body is arbitrary and unruly. Instead of trying to satisfy the intellect, the will may seek to please the body and so become weak or deficient. As it does so, the agent comes to resemble more and more a mere animal. From this classical point of view, Mises's suggestion that the choice of ends is fundamentally irrational and that reason is concerned only with apportioning means to "given" ends is simply absurd — an echo of Hobbes's and Hume's ridiculous notion that the will is nothing but the momentarily strongest urge or desire. Unable to observe intentions, an observer can always attribute a person's or an animal's behaviour or activity to a dominant urge and call it 'deliberate' — as did Thomas Hobbes, the first modern utilitarian anti-philosopher and, indeed, the first modern praxeologist (who defined Man as a power- rather than a wealth-seeking animal). Hobbes wrote:

> When in the mind of man, appetites and aversions, hopes and fears, concerning one and the same thing, arise alternately; and divers good and evil consequences of the doing, or omitting the thing propounded, come successively into our thoughts; so that sometimes we have an appetite to it, sometimes an aversion from it; sometimes hope to be able to do it; sometimes despair, or fear to attempt it; the whole sum of desires, aversions, hopes and fears, continued till the thing be either done, or thought impossible, is what we call deliberation... And it is called de-liberation, because it is a putting an end to the liberty (16) we had of doing, or omitting, according to our own appetite, or aversion... This alternate succession of appetites, aversions, hopes and fears is no less in other living creatures than in man; and therefore beasts also deliberate.[17]

An observer can explain animal behaviour as the consequence of an animal's prevalent urge. Just so — as utilitarians are wont to do — he can explain human actions as the irresistible, unavoidable consequences of one or other urge or passion taking control of a person's body. In either case, he obliterates the difference between animals and human beings. Mises's fallacy is his reduction of human reason to "technical" *Zweckrationalität*, which led him to dismiss the ruler's *Wertrationalität* as either a misrepresentation of *Zweckrationalität* or else as simply irrational.[18] The specific function of the intellect, to discriminate wisely between true and false values and to judge the value-rationality of actions, is cast aside — and with it, the possibility of the art of judging rightly ("jurisprudence"), which presupposes an objective science of values that ought to be respected, no matter what the circumstances.

Neither Mises nor Hayek had any use for absolute values. They were subjectivist and relativist neoliberal utilitarians: "The end (whatever it may be) justifies the means (whatever these may be)." The classical idea that only justifiable ends can justify the means had dropped out of the neoliberal picture — even though it was millennia older than the classical liberalism[19] which started in the seventeenth century as a reaction against the governmental claims and encroachments of the then prevailing monarchical regime of the absolute (sovereign) territorial state. In England, the territorial principle had been established already with the Norman Conquest (1066), when the last king of the Anglo-Saxons was defeated and William the Conqueror claimed the conquered territories as his own. His successors eventually imposed the King's law as the Common Law of the land. However, until the early thirteenth century, the kings continued to bear the title King of the English (*Rex Anglorum*) rather than King of England (*Rex Anglie*). The *Magna Charta* of 1215 became the source of the celebrated "English liberty" by formalizing the medieval principle that the king was not the master of his subjects, even though he was the nominal owner of the land "by the right of conquest". On the other side of the Channel, under Philip

Augustus, after the Battle of Bouvines (1214), the king of the Francs became the king of France, also by the right of conquest. However, lacking an effective apparatus for administering compulsion and coercion (i.e. enforcing obedience), kings continued to be rulers rather than governors until the sixteenth century. This was true also for the emperors of the so-called Holy Roman Empire (which, as the quip goes, was "neither Roman, nor holy, nor an empire").

Nevertheless, the territorial principle provided kings with a legal excuse to start one war of conquest after another and to expand their governing powers (e.g., taxation) to bolster their military ambitions. The combined impact of the Renaissance (which included adulation of the "glory of Imperial Rome") and the Reformation (which denied the possibility of human reason to participate in the divine or right reason) created the conditions for the emergence of Absolute Monarchy and its doctrine "Right is Might" — not reason-based wisdom, but force-based power was the supposed principal cause of order in the world. No longer rulers, i.e. guardians of the law of their subjects, the modern monarchs claimed to be law makers, the source of the law to be applied (enforced) in their territories. Unlike the medieval king, the modern monarch styled himself a *rex* (from *regĕre*, to steer, direct, govern) or *imperator* (commander-in-chief, from *imperare*, to command, to requisition goods or services, to levy taxes), as if the whole of his territories and all its inhabitants were his *familia* (in the Roman sense of the word, from *famulus*, servant, slave), i.e. economic assets of his personal household. Thus, 'one's right' came to stand for "one's *rectum*" ('rectum', a participle of 'regere', meaning "that which is within one's power, under one's effective control").

Not only the distinction between ruling and governing dropped out of the modern picture of an orderly state of affairs, in the soul no less than in the world at large. So did the distinction between, on the one hand, what is believed to be true, is desired or honoured, and on the other hand, what is true, desirable or honourable. E.g., according to the classical view of Man (as a rational soul), a distinction should be made between the honourable and the honoured, i.e. between 1) true honour (Greek ἀξίωμα, rightness), which is a personal property, characteristic or quality that makes honourable persons worthy of esteem for doing what is right, and 2) utilitarian honour (τῑ́μή), which exists only in the eyes of the beholder and consists in receiving tokens of esteem for services rendered, regardless of the rightness of those services or the goals they serve. An honourable man may not be honoured; an honoured man may not be honourable.[20] It is akin to the distinction between the desirable and the desired which exposes the utilitarian heresy of reducing the desirable to the desired, i.e. turning absolute and objective values, which are perceptible only to the intelligent, thinking mind, into "agent-relative, subjective values", which are mere conceptualisations of preferences produced by the supposed "animal mind" (the brain, an organ of the body). Because the body can be manipulated by exposing it to various physical and psychological forces, it is hazardous to ascribe behavioural manifestations of agent-relative, subjective values to the person whose body exhibits the behaviour in question rather than to the manipulators. From the standpoint of the philosophy of law, politics and economics, the essential utilitarian heresy is the reduction of the lawful (i.e. that which maintains, strengthens or restores order in the world) to the legal (i.e. to the command of an effective master or superior).

Rothbard: the praxeologist's search for objective law

To his credit, Murray Rothbard, somewhat belatedly, realized that the neo-liberalism of Hayek and especially Mises was not as strong an intellectual support for his own

libertarian project as he had once hoped it would be. He rightly noted that Mises's argument against the socialist planned economy merely assumed that the planners intended to maximize the wellbeing of the population, when in fact they may have other intentions (e.g. to satisfy their own lust for power and wealth, or to re-shape human nature). In 1982, Rothbard published *The Ethics of Liberty*. He turned to medieval, especially late-Scholastic and early-modern theories of the Natural Moral Law, hoping to find there solid bases for his Austro-libertarian position. He succeeded in identifying some venerable antecedents, but that was obviously not enough to justify his own theory. After all, theories of the Natural Moral Law were no longer considered respectable in academic circles. Such theories had been based on faith in the Christian God — a belief which in the mean time had been dismissed as a mere "private opinion". Even among Christians, the idea of a Natural Law had been contested, especially by the early Protestants, who insisted on sticking to the text of the Bible and were hostile to the suggestion that human reason is capable of participating in the Divine Reason. Human reason, according to Luther, was "the Devil's whore" — "Man cannot distinguish between God's will and the Devil's will."

The Fundamental Principle of Law

In the same year in which Rothbard published *The Ethics of Liberty*, I submitted and successfully defended my *thèse d'agrégation de l'enseignement supérieur* (German: *Habilitationsschrift*). Its title: *The Fundamental Principle of Law*.[21]

The starting point of my thesis was the observation that most people most of the time have a certain amount of control over a few parts of their body (a number of muscles) which allows them to do things *at will* — certain "basic actions" which one can perform without first having to do something else and without being made to do them by some external force or command. A child quickly learns the difference between raising a finger and having one of its fingers pulled up by someone else or experiencing an uncontrollable spasm in its hands. Watching a pianist, a magician, or a pickpocket, even grownups are amazed at what the ability to perform basic actions can achieve, when people set their mind to develop and train it. That people have "by nature" a measure of control over their body seemed to me as solid a basis for a discourse on law as I could imagine. For lack of a better term, I referred to it as "the power of self-determination". The problem, of course, was to get from that incontrovertible fact to principles of law, which everybody understands to mean principles that state that something ought to be or ought to be done. In other words, how do we get from the *power* to the *right* of self-determination — or, as Rothbard put it, "self-ownership" — and, from there, to a right to own things outside one's body? How do we get from "a right as *rectum*" (an effective power) to "a right as *ius*" (a rationally justified claim)?

Argumentation ethics

In my thesis, I applied an idea I had picked up in an earlier existence as a researcher in the field of foundations of logic[22], viz. the idea that objective validity is, and can be, established only in a dialogue, where each speaker tries to think along with the other, while asking and answering questions to the best of his ability. For a dialogue to be possible the speakers must be able and be allowed to speak freely and as equals. That idea, rebranded "argumentation ethics" rather than "dialogue ethics", got wings in certain Austro-libertarian circles, when Hans-Hermann Hoppe introduced something similar to it to Rothbard, as it seemed to offer a logically irrefutable foundation for Rothbard's fundamental axiom that every person *is* a self-owner and *ought* to be respected as such. In other words, it seemed to validate Rothbard's doctrine of

absolute rights as implications of every individual's absolute "self-ownership" — which is the cornerstone of his libertarian ethics and the basis for his libertarian political philosophy, i.e. his non-aggression principle, as well as other characteristically Rothbardian propositions, e.g., "All rights are property rights", "There are no public goods" and "No one owns his reputation".

However, Hoppe's intervention was not welcomed by all "Austrians", including most Misesians, especially those who persisted in attempts to reduce ethics and politics to "technical decisions based on factual propositions".[23] Why the opposition? Argumentation ethics presupposes a concept of action that does not fit the subjectivist, relativistic paradigm that the anti-Hoppeans hold dear above all: "All values are subjective." As they see things, to speak of objective, absolute values is to open the door to tyranny and slavery.[24]

While sympathetic to Hoppe's demarche, I thought it overstated his case. For argumentation to be possible, it is indeed necessary that the participants have the natural power to speak their minds. However, establishing the participants' power does not to prove that their use of that power amounts to a justifiable right, a right that *ought* to be respected.[25] For argumentation to be possible, it is also necessary to *presume* that the participating speakers speak freely, in their own name; that they speak seriously, honestly, have no hidden agenda, do not aim to deceive or to intimidate with threats or promises — in short, they must be presumed innocent, *bona fide* speakers. Precisely these presumptions make it possible to speak of argumentation *ethics*. The important point, however, is that they are *presumptions*. That means that they are defeasible. It may turn out in the course of an argumentation that a speaker is not in control of himself, not honest; that he is a mercenary hack, manipulator, conman or flimflammer. In such cases, the presumption that he is rightfully exercising his self-control must be abandoned. Then, the presumed respectability of his positions and arguments proves groundless, as do the rights that were accorded to him when he seemed willing to participate in an argumentation. Rights, in then sense of *iura*, attach to the undefeated presumption that one is a bona fide speaker.

So, the question is: How can argumentation validate anything? How can argumentation discriminate between an "is" that ought to be and an "is" that merely is? How can it do so, when, according to Misesian methodological preconceptions, argumentation is nothing more than a subspecies of negotiation?

Conscience and conscientiousness

Argumentation, negotiation and debate are unique to humans — they involve speech and logic. No other animal or natural object exhibits anything that resembles human argumentation, negotiation or debate. However, while making threats and promises is the common fare of negotiations, it has no place in argumentations. Argumentation also differs from debate. In a debate one seeks to win over a majority of the audience of listeners, often with rhetorical tricks or demagogical chicanery. The uniqueness of argumentation is that it alone presupposes common sense or common knowledge in the specific sense of *conscientia*, conscience.

Conscience is the *conditio sine qua non* of argumentation. To argue is to appeal to another speaker's common sense, to his conscience. From a logical point of view, argumentation is different from making a sales pitch, which appeals to another's personal interests or preferences, to his prejudices, fears and hopes. The seller (or his sales manager, advertising consultant or advocate) need not share the particular interests, preferences or prejudices of his audience — he merely has to pretend that he does. Argumentation, in contrast, does not seek to play on another's particular

interests, preferences or prejudices. Rather, it plays on what people agree they ought to agree on, on what they know in their hearts they cannot deny, even if, as a matter of fact, they are not inclined to pay much attention to it. Argumentation starts from the common knowledge of human fallibility — *Errare humanum est*, Nobody is perfect[26] — the common knowledge that what one believes or desires is not necessarily true or desirable. It appeals to one's sense of values such as Truth, Justice, Goodness and the like, i.e. values which are not person- or situation-relative and not subjective but absolute and objective — values which no mature (intelligent, conscientious) person can deny without contradicting himself or without avoiding, even refusing, to answer critical questions from other mature persons. The maxim of argumentation is "Take one another seriously as conscientious persons". Superficially, argumentation may seem a mere exchange of words between two persons, between an "I" and a "You", but in reality it is a dedicated, conscientious attempt to uncover the "We" that must be there, if taking one another seriously is to be at all possible.

Of course, in the law schools, as I experienced them both as a student and as a faculty member, the emphasis was on training in the art of salesmanship, i.e. advocacy, on using the by then immense mass of legal rules to make a case for almost any particular purpose, and on adding new rules to expand the number of possible cases and, with it, the market for legal services, employment opportunities for law-school graduates. From institutions dedicated to the pursuit of wisdom — that is to say, from philosophical, wisdom-seeking institutions — the universities had become caterers to the demands of the labour market, the demands of all kinds of corporate interests.[27]

I was convinced that argumentation was the proper method for validating principles of law, including the Natural Moral Law.[28] Certainly, self-referentially, argumentation validated the principles of argumentation ethics. However, that did not answer the question of the validity of argumentation itself, in particular, the validity of the appeal to conscience, the common sense or knowledge shared-in-common by all mature adults. Moreover, in the prevailing intellectual climate in the schools and universities, conscience was considered at best a sentimental illusion, and at worst, a partisan prejudice of one or other group or individual.[29]

The key to conscientious thinking

When I quit the university, I finally had the time start looking for the key that would unlock the human commons of conscience, mind and will — what philosophers used to call 'the rational soul'. I found[30] it some 250 km to the north of Angers, in a place called Le Bec Hellouin, where it had been forged nearly one thousand years ago. I should have found it much earlier. After all, although it was locked away in the academic equivalent of a no-go zone, it was one of the most famous arguments in the history of Western civilization: Anselm's "single argument"[31], which later became known under the pompous name "Anselm's ontological argument for the existence of God", i.e. for the proposition "Deus existit". The argument had been recognized as valid and sound by most mathematically minded philosophers, from Descartes to Leibniz and on to Kurt Gödel, but almost everybody else dismissed it, especially those who had been talked into believing that *only* empirically observable or empirically detectable *physical* things can exist — a prejudice shared by no mathematician and few natural scientists before the mid-nineteenth century.

Anselm presented his "single argument" in the second chapter of his *Proslogion* (ca 1077), which summarized and emended his *Monologion* (ca 1075) by reducing its many convoluted arguments to a single format. To understand the single argument, we need to grasp Anselm's understanding of the two words of its conclusion, 'deus'

and 'existit'. The first, 'deus', he understood as "that greater than which cannot be thought"[32], which he took to be the common denominator of everyone's understanding of the word 'god'. Whether you are a Christian, a Jew, a Mohammedan or an atheist; whatever you might think of gods, if you do not understand the expression 'that greater than which is unthinkable' then you should not even attempt to speak in earnest of gods. As for the second word, 'existit', Anselm understood it as "emerges unmistakeably, beyond doubt", either from a careful observation or from a logical process of thought. E.g., careful, conscientious thinking establishes the existence of a mathematical proof, hence of an indubitable mathematical truth about unobservable things, viz. numbers, things which are "purely quantitative". We also have to remember that in *Monologion* Anselm had specified that he intended to use 'greater' as meaning "better, more excellent", not "greater in size". The crucial principles in moving from "God is that greater than which cannot be thought" to "God exists" are:

1) **'Greater than which is unthinkable' is not a logically inconsistent expression.**
   . (Nobody has ever demonstrated that it is a *contradictio in terminis*.)
2) **If there is at least one good thing then that better than which is unthinkable is certainly a good thing**
   . (This is an elementary logical truth)
3) **It is unthinkable that no good thing is thinkable**
   . (E.g., it is unthinkable that every proposition is false, therefore, truth can only be thought a good thing. Also, it is unthinkable that every argumentation is fallacious; therefore, logic can only be thought a good thing)
4) **It is greater (i.e. better) for a good thing to exist in reality than only in the imagination**
   . (This is certainly not true of bad or neutral things)
5) **What logically must be thought real is real**
   . (This is the axiom of realist philosophy, e.g. of Parmenides and Plato[33])

These propositions, which Anselm had established already in *Monologion* and which he presupposed in *Proslogion*, are indubitably true. No mature, intelligent person will seriously, conscientiously want to deny them. They are true a priori, even though, in the form in which they are stated, they are not obvious formal tautologies or trivial analytical statements. They are, if you prefer the Kantian lingo, synthetic a priori propositions.

Anselm's single argument is, then: "Whether or not you subjectively believe that God exists, if you understand the expression 'that greater than which is unthinkable' then you cannot deny that its meaning implies the reality of what it means. God cannot logically be thought an imaginary thing; He must be thought a real thing. And if He must be thought real then He is real." In short, God *is* the Idea of God — i.e. the Platonic Idea of God.[34]

Note that 'greater than which cannot be thought' names a quality, not a number or quantity, nor a measurable physical or material thing or magnitude. The great intellectual breakthrough Anselm achieved with his single argument was that it proved the reality of all the qualities that fit into the scheme of his *Monologion*: "The Divine is supremely whatever good thing it is" (e.g. "God is Love, Life, Reason, Truth, Justice, Goodness …"[35]). These qualities are often misleadingly called 'attributes of God', but that expression misses Anselm's point: "God does not *have* these qualities, he *is* these qualities". I prefer to call them divine — literally, enlightening[36] — qualities. One might also call them 'objective and absolute values'. To cultivate them is a divine virtue. Moreover, Anselm proved that they are but logical aspects of that greater than which is unthinkable (God). Lose sight of that fact and you end up with a mass of seemingly unrelated, possibly incompatible concepts. Even before copies of the Law

Books of the sixth-century Emperor Justinian became widely available, Anselm's single argument explicated one of their most enigmatic statements, viz. Ulpian's "The science of law is knowledge of divine and human affairs, the knowledge of what is just and what is unjust" (*Digesta* 1.1.10). In short, Anselm's argument, proved the existence of an order of "moral things", which is the presupposition of every theory of the Natural Moral Law.

Discovering absolute values

You can take any quality you want and ask yourself "Is it logically possible to think it divine without diminishing God's greatness?" You can then devise a test for determining whether a quality is divine, e.g. as follows:

1) **A quality can be more or less present**
   - (E.g., one can be more or less wise)
2) **A true quality is not a magnitude**
   - (E.g. one person can be wiser than other, but there is no unit of wisdom with which to measure wisdom)
   - (Contrast a pseudo-quality such as bigness, tallness, fastness, strength, wealth, which are measurable magnitudes)
3) **A divine quality can only be thought better than its opposite**
   - (Bad or neutral qualities are not divine, e.g., stupidity, left-handedness)
4) **More of a divine quality is necessarily better than less, regardless of circumstances**
   - (More of it makes one a better person than one would be if one had less of it or lacked it all together)
5) **A divine quality considered in itself is better than which is unthinkable**
   - (E.g., nothing can be thought wiser than pure wisdom, i.e. wisdom itself, because pure wisdom is uncorrupted, uncontaminated by anything external to it — it is free of any defect)
6) **That better than which cannot be thought (God) is all divine qualities in their purity**
   - (Otherwise it could not be thought better than which is unthinkable)

Thus, *if* "that better than which is unthinkable" is a logically possible and single Idea the reality of which cannot be denied *then* every divine quality is equally real and every divine quality implies every other — a fortiori, no divine quality considered in itself (in its purity) is incompatible with any other. In other words, in God, there is no need or even logical possibility to trade off some of one divine quality for more of another. Of course, humans are not God. For them, trading off one absolute value for another is par for the course of life. However, that does not affect the logic or the reality of the divine qualities.

The Clincher

Unless Anselm can be proven wrong, there is no excuse for Mises to disregard a priori truths about objective values, or to deny the reality of objective, absolute values, or the possibility of a true normative science. In that respect, Rothbard was certainly right to seek to go beyond Mises. Unfortunately, he could not — in any case, did not — shake loose from Mises's instrumentalist, utilitarian concept of human agency. He failed to follow up on Hoppe's argumentation ethics to include arguing (as distinct from negotiating or debating) among the human actions with which a praxeologist ought to deal. Thus, he did not produce the praxeology of law which he needed to round off his Austro-libertarian project.

The challenge is, then, 1) to identify the divine qualities that Mises dismissed as merely subjective, irrationally held opinions, and 2) to interpret them in such a way

that, at least in their pure form, they are all logically compatible with each other and, normally "compossible"[37] even for human beings. Apart from situations of dire necessity or extreme duress, no divine quality provides a valid excuse for sacrificing, ignoring or neglecting any other.

The list of possible candidates is long. It does not include *only* the obvious, i.e. Truth and Logic, which few subjectivists dare to deny unless they are prepared to declare their own theories merely personal opinions that commit no one, even themselves. It includes, among many other things, Reason and Conscience, the cultivation of which is objectively virtuous; also Personhood and Community,[38] and Freedom.[39] Of course, it is not the freedom to do what you want, or even the freedom to do what you want with your own property. It is rather the freedom to do what is right. As Lord Acton (1834-1902) wrote in *The Church in the Modern World* (1860): "The Catholic notion, defining liberty not as the power of doing what we like, but as the right of being able to do what we ought, denies that general interests can supersede individual rights."[40] Note that Acton's "right to do what one ought" does *not* imply that every instance of "not doing what one ought" ought to be a punishable offence.[41]

Anselm's (and Acton's) notion of freedom would have required Rothbard to abandon his cherished subjectivist but illogical position, viz. that one's natural rights include the right to do wrong — as if the power to control parts of one's body validates (makes respectable) the right to do wrong. Unless one equates natural right with natural power, that position is illogical. As a matter of fact, if one seeks to define an *ethics of liberty* then it leads straightforwardly into a legal-positivist theory of law — "Might is right"; the opposite of "Justice is right", which Rothbard sought to validate. The logical position is: People ought to be presumed to have no evil intentions; they ought to be presumed free persons, until proof of the contrary is established by conscientious argumentation. At this point, the praxeology of law merges with the praxeology of education, another missing chapter in Rothbard's Austro-libertarianism. The quality of prevailing educational practices determines how often the presumption of freedom will be defeated. Only the right kind of education is capable of closing the gap between animals of the human kind and humane beings, between reason-*able* and reasonable persons — capable of turning an *animal rationis capax* into an *animal rationale*.

Conclusion: Not only Austro-libertarians but all Austrian School economists ought to consider human action in the light of the absolutes values and virtues that constitute the World as an argumentatively justified moral order. They have to do this, if they want to make a serious case for free markets and for liberty as a fundamental, if only presumptive right. Cherry picking a few a priori truths is not enough.

ENDNOTES

[1] Frank van Dun, "Hayek and Natural Law: The Humean Connection", in Jack Birner and Rudy Van Zijp (eds), *Hayek, Co-Ordination and Evolution : His Legacy in Philosophy, Politics, Economics and the History of Ideas,* 1994, pp. 269–86

[2] Seneca, *Epistula* 92, 33: "Nobody is free in the service of the body"

[3] A philosopher would certainly note that, unless the basic postulate of physics is false and physical objects as such know what they are doing and why, physicists cannot even be thought ever to reach the point where they know that man is nothing but a physical object. This is incontrovertible, at least as long as physicists do not transform themselves into Demons of Laplace, or gods. But Mises was not a philosopher.

[4] Mises, *Die Gemeinwirtschaft* (1922, English: *Socialism, An Economic and Sociological Analysis*, 1936, 1951), Part III, chapter 3, §3

[5] M. and R. D. Friedman, *Two Lucky People: Memoirs* (1998), p. 161.

[6] From the technocratic website https://technocracy.works: "Technocrats see the world as an engineering problem. Something we can employ the best of science to resolve. We're concerned about solving reality-based problems for all by identifying and supporting the needs of the people."

[7] William Penn, *Some Fruits of Solitude* (1693), n° 337.

[8] Mises, *Human Action*, Chapter XIV, section 3. The Austro-libertarian anarchocapitalist case for free markets rests on a different but equally questionable assumption, viz. that the overwhelming majority of people are morally well-educated, bona fide individuals, whether they are market participants or guardians of the market order.

[9] The same was true for medieval popes, the bishops of Rome, who had traditional authority but no governing power over the other bishops in Western Christendom.

[10] 'Absolute monarchy' is strictly speaking a pleonasm. 'Monarchy' means "single cause", hence, a monarch is "the one and only leader / commander", "the sovereign" (holder of supreme, autonomous power, i.e. "full power" or *plenitudo potestatis, legibus solutus*, unchecked by any other or external principle) and "the source and principle of law"

[11] Jean Bodin (ca 1530-1596), *Les Six livres de la République* (1576)

[12] The *status libertatis* was also accorded to conquered peoples who agreed to pay tribute to Rome and to make their sons serve in the Roman legions. Later, when Rome had enough foreign troops to serve its military needs, native Romans were no longer required to do military service. The *status libertatis* became an inheritable political right, accorded to the legitimate descendants (children, grandchildren, etc., born in a certified marriage or matrimonium) of the original *cives Romani*.

[13] After the demographic calamity of the Black Death (1348), which left many manorial domains ownerless, lawyers were instrumental in "freeing" documented property titles from their mostly undocumented medieval ("feudal") obligations under customary law — on occasion, by means of forging or destroying documents. The practice gave rise to the notion of absolute property, unencumbered by the weight of the mutual, traditional obligations that defined the relations between a landlord and his tenants and peasants as well as his neighbours. It gave substance to the charge "Property is theft", which, interpreted philosophically, is nonsense but is all too often an accurate description of the origins of actual, legally protected property titles.

[14] A factor may have been the influx of rich, technologically and legally savvy refugees from the still existing but crumbling Eastern Roman (Byzantine) Empire, which finally fell to the Ottoman Turks in 1453.

[15] See e.g.,Thomas Asquinas' treatise on human action, in *Summa Theologiae*, Ia-IIae, Qs1-114; also Steven A. Long, *The Teleological Grammar of the Moral Act* (2007)

[16] FvD — The English verb 'deliberate' derives from Latin 'deliberare', *to weigh,* in particular, *to weigh the pro and con*, cf. 'libra', *weigh scales*; it is not a negating form of the Latin 'liberare', *to set free*. Hobbes's "etymology" of 'deliberate' anticipates Humpty Dumpty's "When I use a word, it means just what I choose it to mean — neither more nor less... The question is, which is to be master — that's all" (Lewis Carroll, *Through the Looking Glass, and What Alice Found There*, 1871). Fortunately, Hobbes's explanation of 'deliberate' never took root in English as a common, natural language.

[17] Hobbes, *Leviathan,* Part I, chapter 6.

[18] Mises, *Epistemological Problems of Economics* (3rd edition, 2003), p.90

[19] As I use the term, classical liberalism implies that freedom is an absolute value and the quest for freedom an objective virtue — in short, a "natural right" under the Natural Law. Contrast, e.g., Norman P. Barry, *On Classical Liberalism and Libertarianism* (1987); Barry virtually identifies classical liberalism with the consequentialist (utilitarian, economic) liberalism of David Hume, Adam Smith, Jeremy Bentham, Friedrich Hayek et al. Bentham notoriously called natural rights nonsense on stilts

[20] The distinction is relevant for assessing the validity of, e.g., Rothbard's claim that no one owns his reputation.

[21] Frank van Dun, *Het Fundamenteel rechtsbeginsel* (1983, expanded edition 2008, 2013); it was my attempt to show that it is possible to teach law starting from elementary, commonsensical principles rather than, in the usual dogmatic manner, from contingent "legal facts" (legal codes, legislated texts and a handful of court verdicts that the law professors thought "very important"). Teaching law from commonsensical principles would have the advantage of making students more critical of the flood of "special legislation" that had become the common fare of life in modern society.

[22] Frank van Dun, "The Modes of Opposition in the Formal Dialogues of Paul Lorenzen", *Logique et Analyse*, IV, 57/58, 1972, 103-136 (issue edited by Leo Apostel, *Negation*)

[23] Leland B. Yeager, *Ethics as a social science: The Moral Philosophy of Social Cooperation* (2001), which was obviously inspired by another libertarian economist, Henry Hazlitt (*The Foundations of Morality*, 1964)

[24] At the back of their minds, there may be a religious motive: To them "Absolute values" connoted Catholic medieval obscurantism, its insistence on something it called "the human conscience", from which Luther's doctrine of "private conscience" supposedly had liberated modern man. (Never mind that 'private conscience' is a *contradictio in terminis*.) Luther's doctrine came down to "Do what you will, but have faith in the Bible", and eventually, via the Humean and Hayekian "Go with the flow of your neighbours" and Kant's "Criticize freely, but obey", to Mises's "Think what you will, but be a social co-operator" — in other words, "Society (i.e. social cooperation) is always right".

[25] The proof of an "ought" can be delivered only in and through argumentation — an "ought" cannot be observed, it is *sola mente perceptibile* (perceptible only to the mind).

[26] I.e. Man's original sin — taking 'sin' to mean *mode of being* ('sin' is formally akin to the Germanic 'sein', *to be*, and only semantically related to the Latin 'peccare', *to stumble, to fall*, also *to err*). Man's mode of being is by nature prone to error. It took a huge jump of Saint Augustine's imagination to read into this universally acknowledged (and, indeed, inheritable) condition of human nature an intention to commit "a crime of disobedience, punishable by death". Wise parents warn their small children that a little knowledge of good and evil is a dangerous thing, but they would be singularly bad parents, if they forbade their children from ever seeking to learn about good and evil (i.e. to prepare for the day when they will have to plant their own "tree of life", outside their parents' house).

[27] E.g., the state, political parties, pressure groups, the three MICs (the military-, the medical- and the media-industrial complexes) and the two FICs (the financial- and the philanthropic-industrial complexes). The change was perhaps most conspicuous in the faculties of law and economics, but it could be observed also in virtually all other departments, even in those which continued to call themselves 'philosophy departments'. As "situation ethics" — media-driven advocacy of partisan interests — crowded out ethics in the traditional sense of the word, so did "situation science" crowd out science in the sense of argumentatively validated knowledge claims. This was quasi-officially acknowledged in President Eisenhower's *Farewell Address*, in 1961.It was at once confirmed and covered up in November 1963 by the assassination of Eisenhower's successor, John F. Kennedy, when the CIA's decade-old investment in its "Operation Mockingbird" paid off — an investment in controlling the media, including institutions of formal education, cultural expression and last but not least entertainment. Other corporate interests were quick to jump on that particular bandwagon. Almost overnight, we were ushered into the post-modern age of mass-produced propaganda and advocacy: the Age of *Post-Truth Science* and *Utilitarianism Triumphant*, of "The end justifies the means", "Whatever it takes", "Anything goes", "Catch-as-catch can" and "Only financial credit is sacred" — the latter a reminder of the fact that, in the wake of the First World War, another medium of interpersonal exchanges, money, had been replaced by the mass media of targeted credit policies and legislated subsidies, all of them ensnaring masses of people into multi-layered webs of dependency on opaque, convoluted decision-making processes and undisclosed interests.

[28] Frank van Dun, "The Philosophy of argument and the logic of common morality" in E.M. Barth & J.L.Martens (eds), *Argumentation: Approaches to Theory Formation*, Benjamins, Amsterdam, 1982, 281-293.

[29] Nevertheless, Plato's *Meno* had provided an extended example of teaching the truths of geometry to a simple soul, Meno's slave, by appealing to his conscience — in the lingo of modern Academia, his a priori knowledge. That a priori knowledge or conscience is the knowledge he had picked up as a naïve child, growing up in the World, most of it prior to his becoming self-consciously aware of the distinction between knowing and merely believing or pretending to know, and some of it prior even to his learning to speak. (Cf. M.N. Rothbard, "In Defense of 'Extreme Apriorism,'" *Southern Economic Journal* 23 [January 1957]: 317–18, where Rothbard rightly notes that Mises's "action axiom" is an experience-based truth rather than a Kantian "law of thought", even though it refers to experiences that do not meet the requirements the natural, physical sciences use to validate "empirical truths".)

There is no reason to interpret 'a priori knowledge' as "innate knowledge", the knowledge of foetuses or knowledge that magically infests a newborn baby when the umbilical cord is cut. However, it is, metaphorically speaking, "innate" in adult, *reason*-able persons in proportion to their *education*, i.e. the cultivation of their really innate capacity of learning to free (purify)

their judgment from errors, weaknesses and defects. A similar remark applies to the will. At birth, the will of humans is not free at all, but they have the capacity of learning to free (purify) their will from weaknesses and defects.

[30] Thanks to a comment by an American correspondent, Ben Novak (the author of "Anselm on Nothing", *International Philosophical Quarterly*, XLVII)

[31] Anselm's *unum argumentum*:

- Everybody who possesses a modicum of intelligence understands that the word 'god' stands for "that better than which is unthinkable"
- However, if — as the presumably somewhat intelligent Fool of the book of Psalms alleges — God is not real then God cannot be thought "better than which is unthinkable", because
  - it is better for a good thing — a fortiori, a thing better than which is unthinkable — to be real than to be merely a product of the imagination,
  - Therefore, either the Fool does not understand the expression 'that greater than which is unthinkable' or he contradicts himself. "God is an imaginary thing" cannot be thought, because it implies it's own negation, "God is real"
- Therefore, everybody who understands what the word 'God' stands for must logically acknowledge that God can only be thought real
- **Ergo, God is real, God exists**

[32] Cf. Seneca, *Quaestiones Naturales*, "Quid est Deus? ... [M]agnitudo qua nihil maius excogitari potest..." Note that Anselm dropped the teference to "magnitudes". Seneca was not a Christian. His god was the Roman deity, Jupiter

[33] E.g., Alessandro Medri, "Anselm's *unum argumentum* and its Development in St. Bonaventure", *Lyceum*, XI, n°2, 2010

[34] Remember that although, in the eleventh century, very few texts by Plato were available in Latin, Anselm was the pre-eminent Platonist of medieval times. Two hundred years later, Thomas Aquinas muddied the waters by taking Aristotle, rather than Plato, as "the philosopher", mainly to be able to assign a physically causal role to God. Whereas Anselm was a monk, a member of a contemplative or religious order (a Benedictine), Thomas was a friar, a member of a mendicant order of preachers (a Dominican). As a philosopher and a monk, Anselm was primarily interested in the questions "What is God? What does it mean to devote one's life to God?" Thomas's primary interest was the question "How do we sell our Church doctrine to heathens and to merely nominal Christians?" His *Summa contra gentiles* was a handbook for Dominican friars, whose job was to go out into the world to convert heathens and to remind the hordes of lukewarm Christians of what they were supposed to believe. He then re-wrote it as a course book for theology students at the universities (his *Summa theologiae*). Anselm wrote before the university movement started. He was not involved in the struggle for control of the universities which opposed the mendicant orders (Dominicans and Franciscans) to the secular branch of the Church (priests and bishops) and lay-intellectuals. However, in 1093, he was invested with the archbishopric of Canterbury and then, as a member of the Church hierarchy, turned to writing highly influential works that were more apologetic than philosophical. Also, as a monk, he had been largely unaffected by the politically and ecclesiastically motivated Great Schism of 1054 between the Latin and the Greek Churches

[35] "Obviously the Supreme Nature (God) is supremely whatever good thing it is. Therefore, the Supreme Nature is Supreme Being, Supreme Life, Supreme Reason, Supreme Refuge, Supreme Justice, Supreme Wisdom, Supreme Truth, Supreme Goodness, Supreme Greatness, Supreme Beauty, Supreme Immortality, Supreme Incorruptibility, Supreme Immutability, Supreme Beatitude, Supreme Eternity, Supreme Power, Supreme Oneness. And all these descriptions describe the same thing: Supreme Being, Supreme Living, and so forth." (*Monologion*, Chapter 16, in fine)

[36] 'Divinus' from 'divum', daylight, plain air; 'deus', the shining one

[37] Hillel Steiner, "The Structure of a Set of Compossible Rights", *Journal of Philosophy*, 74, no. 12: 767–75

[38] They underlie Anselm's claim that his analysis of that greater than which is unthinkable did not contradict the Christian Trinitarian conception of God *Monologion*, chapter 79

[39] Katherin A. Rogers, *Freedom and Self-Creation: Anselmian Libertarianism* (2015); I have not used Rogers' book, as my interpretation of Anselm predates its publication and was informed mainly by my 2009-2012 correspondence with Ben Novak (which included a lot of unpublished material). Besides, I think "self-creation" is a modern, American rather than a medieval, Anselmian notion.

Human freedom is a constant theme in Joseph Ratzinger's writings, e.g., *Einführung in das Christentum* (1968, English 2004) and *Gottes Projekt* (1985, 2009, English 2022). Ratzinger (Pope Benedict XVI, *r.* 2005-2013), more than most other modern theologians, had a good ear for the contemplative theology of medieval monks

[40] J. Rufus Fears (ed.), *Selected Writings of Lord Acton*, Volume III (*Essays in Religion, Politics, and Morality*), Indianapolis, Liberty Classics, 1985, p. 613. Cf. Albert Camus, *Lettres à un ami allemand* (1960, English: *Resistance, Rebellion, and Death: Essays,* 1995): "Freedom is not made up principally of privileges; it is made

up especially of duties" (p.96). About the "general interests", Camus wrote "The welfare of the people... has always been the alibi of tyrants" (p.101)

[41] Thomas Aquinas, *Summa Theologiae*, IaIIae, Qu.96 ("Whether it belongs to the human law to repress all vices?", art.2 (*respondeo*). According to Saint Thomas, most sins are venial, i.e. forgivable, pardonable, excusable; "For this reason, human law does not prohibit every vice from which virtuous men abstain; but only the graver vices from which the majority can abstain—particularly those vices which are damaging of others, and which, if they were not prohibited, would make it impossible for human society to endure: e.g., murder, theft, etc."