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Seminar on Freedom and Autonomy

## Freedom, Liberty, Autonomy

‘Freedom’, ‘liberty’ and ‘autonomy’ are controversial, contested words, often used interchangeably, yet laden with radically different connotations. In this lecture, I shall use them as labels to distinguish three different concepts. Most European languages have only one word to translate both ‘freedom’ and ‘liberty’, e.g., ‘libertà’ (Italian), ‘liberté’ (French), ‘libertad’ (Spanish), ‘Freiheit’ (German), ‘frihet’ (Swedish), and ‘vrijheid’ (Dutch). Moreover, many English and American writers use ‘freedom’ and ‘liberty’ as if they were synonyms.<sup>1</sup> Looking at the etymological references (which can be found in most good dictionaries) for these words, we find, however, that ‘freedom’ and ‘liberty’ point to different contexts of life and action. Understanding the differences between those contexts is the key to eliminating the terminological confusion often encountered in discussions of freedom and liberty.

My interest in this is that of a philosopher of law. However, the distinctions made in this lecture are relevant also for other disciplines concerned with cognition of the human world, most notably economics.

### WORDS

#### Freedom

With slight variations, ‘freedom’ and ‘free’ occur in many Germanic languages.<sup>2</sup> The etymology of ‘free’ goes back to the old-Indian word ‘priya’, *dear, loved*. So do the etymologies of ‘friend’ and words

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<sup>1</sup> Nevertheless, more or less subtle differences should be noted. There is no adjective that corresponds to ‘liberty’ as ‘free’ corresponds to ‘freedom’: a liberal person is not the same as a free person. Being free is different from being at liberty or having the liberty. I may be free to vote because I have no obligations that would make it impossible for me to go to the ballot, but even so, I may not be at liberty to vote either because voting is compulsory or because I am not registered as a voter.

<sup>2</sup> E.g., German ‘Freiheit’, ‘frei’; Dutch ‘vrijheid’, ‘vrij’; and Swedish ‘frihet’, ‘fri’.

meaning *peace*.<sup>3</sup> Significantly, ‘*priya*’ always implied a personal, even intimate relation of identity, kinship or friendship, or property — in short, a person's “own sphere of life”.<sup>4</sup>

In the Romanic languages, ‘*priya*’ seems to have survived by means of the Latin forms ‘*privus*’ (*exceptional, standing apart, own*), ‘*privare*’ (*to set free*), ‘*privatus*’ (*belonging to an individual person, not belonging to a public office or institution*), and the like. Thus, we have expressions such as ‘private property’, ‘private person’, and ‘private conversation’. Here the meaning is “closed, not accessible to others”, “not burdened with externally imposed obligations, not subject to external interferences” — in particular, “not public”, i.e., “not subject to regulation or interference by the state”. In his private sphere, a person is free. There is an obvious link with the most common meaning of the word ‘free’ in modern English: *pure, without defect or contamination, unburdened*. Thus, we say, e.g., that a tablecloth is free of stains, a salad free of traces of pesticide, a dog free of worms, a published paper free of bias, a car free of defects, a person free of debt or free of infection. Except in ironic or sarcastic speech, we do not say that something is free of good things, e.g., that a person is free of health, free of love, or free of freedom.

A word of caution is in order with respect to expressions such as “a bachelor is free of marital obligations”, and “I am not free to go to the cinema tonight because I have other obligations”. An obligation may certainly be a burden, but it is not an impurity or imperfection. A person's being free of obligations means primarily that he is free to undertake obligations. Although freely undertaken obligations are self-imposed restrictions, they are also an expression of one's freedom. Here we have the difference between *having obligations* (or *being obligated*) and *being obliged*. Strictly speaking, one cannot be obligated by the actions of another; and one cannot be obliged by one's own actions. One's obligations always arise from one's own acts or decisions; but one is obliged by the actions of others. E.g., one is obliged by another's unilateral acts of kindness (“I am obliged by your hospitality”) but also by another's acts of power, extortion, and the like (“I am obliged to pay taxes”). It would be a contradiction in terms to say that I am under an obligation to pay taxes, because a tax

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<sup>3</sup> Friend: German ‘*Freund*’, Dutch ‘*vriend*’. Peace: German ‘*Frieden*’, Dutch, ‘*vrede*’, Swedish ‘*fred*’. The English ‘*peace*’ derives from the Latin ‘*pax*’ (cf. verbs *pacisci*, *pacere*, participle *pactum*), which identifies a condition of non-belligerence with particular methods of bringing it about: non-aggression agreement, treaty, subjection (e.g., “Caesar brought peace to Gallia”), effective deterrence (e.g., “The walls of our city ensure our peace”). Thus, according to this etymology, ‘*peace*’ does not denote a condition of friendliness, let alone love; it primarily denotes a cessation of hostilities or hostile threats.

<sup>4</sup> In Dutch, the verb ‘*vrijen*’ (same stem as ‘*vrij*’, *free*) means *to make love, to be engaged to marry*.

is, by definition, a burden imposed by others. Obviously, agreeing to *pay* a tax does not mean that the tax itself is a self-imposed burden.

## **Liberty**

The only readily available translation of the Germanic words ‘freedom’, ‘Freiheit’, etcetera, into French, Italian or Spanish is some form or other of the Latin ‘libertas’. ‘Libertas’ literally means “the status of a descendant” (from the Latin, *liber*, *liberi*, *children*, *descendants*). The descendants eventually accede to the social position of their parents and predecessors, with full rights and obligations of membership in their particular group, tribe or society. Thus, ‘libertas’ refers not to the human person as such, but to membership and status in an organized group. The members of the group enjoy its ‘libertas’, while others, servants (slaves) and visitors do not. In former times, even the wives of members were often denied the status of *libertas*.

## **Autonomy**

‘Autonomy’ is a composition of two Greek words (‘autos’ and ‘nomos’). The literal meaning is *self-rule*. Its antonym is ‘heteronomy’, *living under the rule of another*, or more generally, *under a rule that is not of one's own making*. Thus, assuming that we ought to respect the laws of logic, mathematics or physics, we would say that these laws do not impede our autonomy (because they are not imposed by others). However, under the more-general definition, such laws would be incompatible with our autonomy (because they are not of our own making). The two definitions are sometimes conflated, when it is assumed that the laws of logic, mathematics and physics are imposed by some personal or personified being, e.g., God or Nature. Some people object to the idea of a natural law of persons because it too stands for a respectable order (in this case of human affairs) that is either imposed by another, God, or in any case not of our own making.

Nowadays, ‘autonomy’ is used primarily to refer to collectives. Regions, peoples, communities, nations, etcetera, demand and occasionally achieve autonomy, their own rule-making, legislative authority and government. Often, and somewhat remarkably, these demands for autonomy stop short of independence. An autonomous region in a state is still part of that state and subject to its authority in a number of vital matters, e.g., foreign policy, military defence, monetary policy, social security, public health. The state is independent (sovereign), but the region is only autonomous (and therefore not sovereign). In other words, in common usage today, ‘autonomy’ suggests at best *partial* autonomy, not *full* autonomy.

## HUMAN BEINGS, NATURAL AND OTHER PERSONS

Although we use expressions such as “free as a bird”, “a free seat”, “a free society”, “an autonomous region”, “the autonomy of the courts”, and so on, we are primarily interested in *our* freedom, *our* liberty and *our* autonomy — the freedom, liberty and autonomy of human or natural persons. The proper subjects of studies such as law, economics, ethics, education, and the like are human persons and their interpersonal relations.

Natural persons are people like you and me, capable of things only human persons are capable of. Examples are asking and answering questions, including questions about *why* they believe something and *how* they know something; making, listening to and understanding arguments, promises, jokes and stories; drawing conclusions from hypothetical and counterfactual premises; considering the relevance of purported evidence; lying and pretending. Other examples are being sarcastic, appreciating irony, understanding things that have no physical or phenomenological existence (e.g., mathematical structures), claiming and waiving rights, taking on obligations, acting out of a sense of duty or love (*caritas*), and the like. These things are comprehended under the traditional definition of man as a rational animal, i.e., a biologically animal being capable of acting purposefully on rational considerations. In this context, ‘rational’ means *involving the intellectual faculties*, especially *speech* (Greek: *logos*; Latin: *ratio*).

‘Rational’ certainly does not mean *infallibly correct* or even *reasonable*. People are fallible; they can be unreasonable — but only because they are rational beings. It would be a category mistake to discuss the reasonableness or unreasonableness of non-rational things such as dogs, trees, rocks, clouds or storms, even foetuses, babies or people afflicted with severe forms of dementia. It would also be category mistake to talk about the rights, duties or obligations of such things, or to assume that they can be judges, claimants or defendants in disputes, buyers or sellers in the market place, or teachers or pupils. If babies had no future as persons, if people suffering from senile dementia had no personal history, there would be no reason to treat them differently from any other non-rational object. If we were not rational beings, questions about our reasonableness or unreasonableness, our rights, duties and obligations, would not arise at all. Who would ask them?

The word ‘person’ is used with many meanings, and “rational human being” is only one of them. For example, we often talk about supernatural persons (e.g., God, the Devil) and artificial persons. Among the latter, there are fictional characters (Hamlet, Don Quixote, Mickey Mouse) and legal persons (political and other corporations, their subdivisions, and official positions within them, e.g., the

State, a Province, a Member of Parliament, a Mayor, a Prefect, a Citizen). When we discuss the rights and duties of the Prime Minister of the Government, we talk about artificial persons, not about the natural persons who happen to occupy the posts of “Prime Minister” or “Member of the Government”. The rights and duties of artificial persons such as the “Prime Minister” and the “Government”, the “Chief Executive Officer” and the “Company”, the “Chief of Staff” and the “Army”, the “Pope” and the “Church”, etcetera, cannot be natural or real rights or natural duties. They are necessarily artificial, conventional, nominal things, as they have to be determined with reference to the appropriate statutory or constitutional texts; they may differ significantly from one artificial person to another, even when these are identified with the same name or title.

We should not conclude from these speech habits that there are three species of the single genus “person”: natural, supernatural, artificial. While natural persons and supernatural persons exemplify the genus “person”, sharing the attribute of *rationality* but differing with respect to the attribute of *being an animal*, so-called artificial persons are neither rational nor animal. They are, in fact, not persons at all but means or tools of human action. They are therefore to be distinguished from other tools — not from other persons, whether natural or supernatural.

It stands to reason that we should pay close attention to these different notions of “person”, if we want to have a sensible discussion of personal freedom, liberty or autonomy. This is particularly important given that it usually (but not always) takes human persons to act the part of an artificial person. Especially in legal, political and economic discourse, the human actor is often confused (sometimes deliberately) with the part he plays in some game or organisation. For example, it is now quite common<sup>5</sup> to talk about “the rights of citizens” as if they were “human rights” — a practice that makes it easy to pretend that the legally (artificially) imposed burdens of citizenship are natural human obligations. However, already Aristotle asked whether it is possible to be a good man while being a good citizen.

## **FREEDOM AND THE NATURAL PERSON**

As we have seen, ‘free’ refers to the pure, natural state or the proper condition of something. Thus, my personal freedom is, literally, my natural condition *as a person*. In this sense, freedom, applied to persons, is properly called a natural right — indeed, the first, most fundamental natural right of a natural person.

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<sup>5</sup> Cf. the *Universal Declaration of Human Rights*, adopted by the United Nations in Paris in 1948.

To fully appreciate the relevance and the proper scope of this statement, we should take note of a distinction between two senses of the expression ‘freedom of a person’.

### ***Real versus effective freedom***

There is a sense in which it is undeniable that human persons *are* free. This sense is usually identified as the doctrine of free will.<sup>6</sup> Anybody who denies that human persons are free (have free will) can easily be forced, by the logic of his denial, to admit one of two things:

- 1) Either he admits that *he* has free will and that his denial of free will only applies to *other* people. This is obviously an arrogant and foolish claim.
- 2) Or he admits that his denial of free will applies also to himself. He then states that his denial of free will is not based on due consideration of the evidence and careful analysis of relevant arguments but is instead caused by something else apart from himself. Now, either that something else is rational or it is not.
  - a. If it is rational, then he is invoking a superhuman or, in any case, a non-human intelligence (say, a god or demon); and while denying free will to humans, he affirms it for non-human beings. He effectively says that although human beings have no free will, they are nevertheless creatures of free will.
  - b. If the cause of his denial of free will is not rational, then he implicitly denies that there is any logic to his denial of free will. It would be a merely physical or psychotic effect of chemical, electromagnetic or other physical forces and events affecting his body or brain. It would be like a sneeze or a groan of pain — in which case, there would be no point in questioning or criticizing it, or in taking it as a manifestation of his or any other intellect. In fact, he would not be saying anything at all. It would be mere inexplicable coincidence that the sounds he makes resemble a meaningful statement.

Thus, the only denial of free will that makes sense amounts to the claim that we humans are merely puppets manipulated or “possessed” by one or other god or demon. That claim is common in animistic, pagan, magical world views, but not in religious world views per se. For example, free will is an essential human characteristic in the Biblical religions of Jews and Christians.<sup>7</sup> Indeed, one may be forgiven for suspecting that that is an important — perhaps the only — reason

<sup>6</sup> Unfortunately, not all human *beings* are human *persons*; not all human beings have free will. Some are incapable of functioning as persons because of some genetic defect, an accident, a medical intervention that went wrong, or a wilfully damaging act (torture, poisoning, exposure to radiation, and the like) that destroyed all or most of their natural endowment of rational faculties.

for the eagerness with which some Western intellectuals wish to deny free will.

That human persons are undeniably free means that they are undeniably capable of acting on their reasons. It does not mean that everything they do is a free act. Sneezing, blushing, stumbling, throwing up, blinking, writhing in pain and the like are not free acts — even though *pretending* or *simulating* doing any of such things is a free act.<sup>8</sup> Moreover, circumstances may severely restrict your freedom of action, e.g., when your foot is stuck between the roots of a tree, or when somebody else chains you to a wall. Having free will does not necessarily mean being able to act according to your will.<sup>9</sup>

Your freedom that is defined by your having free will, I call your “real freedom”. It cannot be taken away from you without destroying you as a person. You would have to be killed, or your brain would have to be damaged accidentally, surgically or by the administration of drugs, so that you would be incapable of functioning as a

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<sup>7</sup> Already in the first book of the Bible, Genesis, the point is made that the defining characteristic of man is his ability to question and disobey the authority of God. Man is, in an admittedly imperfect way “like God”, a rational, thinking, questioning person. Moreover, as soon as this characteristic manifested itself, it became imperative for God to redefine his relationship to man: he expelled him from his house, thereby releasing him from his subjection to God’s direct rule, and gave him the world, on the understanding that both sides would honour the other’s rights to his domain. Thus, the Biblical religion is a religion of covenants or mutual respect between two parties, equal under the law yet definitely unequal with respect to the degree of perfection of their personal qualities. This model of interpersonal relations is of the greatest significance for the Western ideas of law and justice. Short of manifest incapacity to function as a person, one human being’s superiority or inferiority relative to another’s skills, talents or social position makes no difference in law — even if it makes a huge *moral*, *social* or *economic* difference. That is why the Biblical religion of the Jews and Christians is called a religion of the Law. It is a law that pertains essentially to human persons, yet is not made by any human person. It is a logical consequence the coexistence of self-consciously rational persons.

<sup>8</sup> Although the word ‘psychology’ literally means the study of the psyche (soul, mind), in particular the phenomena of self-consciousness, some people re-define psychology as “the study of behaviour” (e.g., Hans Crombag, *Integendeel — Over psychologie en recht, misdaad en straf*; Amsterdam: Uitgeverij Contact, 2010, p.25). Objectionable as it is in itself, this re-definition moreover obliterates the distinction between purposeful human action and behaviour (something that can be observed not only regarding humans and higher animals but also regarding lower organisms and even dead matter, e.g., flatworms, cells, or comets). However, the reality of the distinction between human behaviour and human action — or, as the Scholastics put it, between *actiones hominum* and *actiones humanae* — is affirmed by even the most radical behaviourist “psychologists” when they painstakingly set up, explain, justify or criticise the experiments they perform in their laboratories. They study their own and their colleagues’ methods and interpretations — not their “behaviours”.

<sup>9</sup> One of Schopenhauer’s famous aphorisms is, “You can do what you want, but you cannot want what you want.” As criticism of the free-will doctrine, it fails because it is merely a play on the ambiguity of the verb ‘to want’, which can mean either *to feel desire* or *to will*. As a person, you most certainly can often do what you will, and you can will or not will what you want.

person. However, your ability or opportunity to exercise your real freedom can be restricted even without interference with the freedom of your will. Your abilities and opportunities *to exercise your free will*, I call your “effective freedom” or “freedom of action”. Discussions about freedom among lawyers, economists, and moral philosophers are far more likely to be about effective freedom than real freedom. However, a person's real freedom is the presupposition of all talk about his effective freedom. Attempts to build up sciences of human actions and interactions that neglect this real freedom of human persons are therefore inherently defective. For one thing, science itself would be unthinkable if the actions involved in “doing science” were not based on and subject to competent logical, rational judgements but were instead involuntary responses to physical stimuli. What would be the point of criticising, refuting or drawing attention to an error in an involuntary response?

### **Freedom and the natural law of persons**

Note that one person's real freedom does not interfere with another's. The reason is simple: any one person is different, distinct and separate from any other. Thus, the rights one person derives from his freedom do not diminish the rights another derives from her freedom. This follows from the fact that natural or human persons are natural things, well defined by objective, natural boundaries and relations of identity. For example, it is possible, always in principle and nearly always in practice, to determine whether this is my body or yours, whether these are my words or deeds and not somebody else's, whether this is my or another person's land (or maybe nobody's land), and so on.

Another way of putting this is to say that natural persons constitute a natural order of things. When and where interpersonal differences, distinctions and separations are respected, human affairs are in order; otherwise, there is disorder. When disorder is caused by personal actions, we commonly speak of injustice. Thus, destroying a person, treating a person as a non-person; praising or blaming, rewarding or punishing one person for what another has said or done; taking what belongs to another, and the like — these acts do violence to a person's integrity and are all universally acknowledged to be acts against justice. This association of the ideas of a natural order of persons, on the one hand, and justice, on the other hand, is not merely contingent. It is in fact a matter of logic. Let us see why this is so.

The natural order of persons is traditionally known as the natural law (of persons) — specifically, the natural law of conviviality.<sup>10</sup> It is called ‘law’ because human persons undeniably *ought* to respect each other as persons. A full explanation of why this is undeniable lies

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<sup>10</sup> Cf. Latin ‘convivere’, literally *to live together*.



outside the scope of this lecture.<sup>11</sup> The explanation relies on the peculiar logic of self-referential arguments, which in some cases allows one to conclude in an a-priori manner that a proposition that might be true if were not proposed cannot be true once it is proposed — consider, for example, the logical status of “All Cretans lie all the time”, if the statement were made by a Cretan. Denying the requirement of mutual respect for persons as persons amounts to placing oneself outside the order of human persons, thereby waiving any claims to have one's rights respected by others. It is like saying, “I shall treat you as a mute animal; you may treat me likewise.” Now, it is certainly possible to *say* such a thing, but it is impossible to prove argumentatively that it is right, let alone that it is a position every person *ought* to endorse. Now, a statement that no person can logically deny to be right no person ought to deny. *Among persons*, it is an unassailable truth. Its truth is not diminished by the fact — and unfortunately it is a fact — that many people ignore it. For the mark of a truth is not that everybody believes or recognises it but, precisely, that everybody ought to believe and recognise it on the strength of the arguments and the evidence adduced in support of it.

The binding character of the natural law, i.e., the respectability of the natural order of persons, is therefore argumentatively provable. Or, as the ancient authors put it, it is a matter of “right reason”. It is sometimes alleged that arguments for natural law involve the “naturalistic fallacy” of deriving *ought* from *is*, or value from fact. That allegation is false, because in this case, the fact from which the argument starts is *us* — in other words, it is a self-referential argument about beings who are capable of arguing. Now, argumentation implies the validity of normative propositions (e.g., respect for truth and facts, respect for the laws of logic, also respect for the opponent as another person). Moreover, it implies the acceptance of the validity of those propositions by the arguers: you simply cannot argue with someone who cannot or will not distinguish between truth and falsity, sound and fallacious reasoning, another human being and a monkey. Binding norms are prerequisites of every argument. In the case of the argument for natural law, the conditions of argumentation are part of the facts that the argument is about. Hence, there is no “naturalistic fallacy”.

Because the natural law is an order of persons who share the same nature as rational beings, hence have the peculiar capacity called “free will”, it is a relation of freedom among likes — a relation among free and equal persons. Indeed, for a long time, the commitment to freedom among equals was regarded as the cardinal virtue of the practice

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<sup>11</sup> See my “Argumentation Ethics and the Philosophy of Freedom,” *Libertarian Papers* 1, 19 (2009). On the question of how to filter out statements of natural law from a general and formal logic of law, see my “The Logic of Law,” *Libertarian Papers* 1, 36 (2009).

of law. The practical, operative principle of natural-law justice (or jurisprudence) was the requirement that this relation be maintained and, if necessary, restored to the fullest extent possible. That is why, “law” could be considered a genuine science: both its theoretical and practical principles were objectively verifiable.

### **Natural law and legal positivism**

The natural law poses a challenge to all non-voluntary hierarchical arrangements, in particular political societies. Political writers have always tended to downplay, even dismiss, appeals to the natural law, because they felt such appeals might undermine socially established authority and therefore the efficiency and cohesion of social organisations. They were not interested in questions of *law* (compliance with right reason) but in questions of *legality* (compliance with the rules promulgated or accepted and enforced by social or political authorities). Accordingly, they focussed on the study of the particular artefacts that we now call ‘legal systems’. So-called customary law is the ancient form of this refusal to deal with persons (and things generally) according to their objective or true nature. It substitutes customary or traditional beliefs and opinions for objective facts — custom trumps nature. In modern times, doctrines of so-called legal positivism derive their concepts of legality (“positive law”) from influential yet thoroughly subjective opinions, beliefs and practices in a particular place at a particular moment, to the extent that these inform the actions of people “in authority”. Thus, under the influence of political and legal-positivist doctrines, the word ‘law’ came to refer to the organisation of positions, functions and roles in particular societies — in a word, their legal systems. The essentially political category of official command (*lex*) displaced the natural category of the bond of speech (*ius*) as the integrative concept of thinking about order in human affairs.<sup>12</sup>

The most significant implication of this change of focus was the demotion of the human person to an accidental feature of the law (or rather, one or other legal system). In the perspective of legal positivism, human persons are relevant only to the extent that they occupy a position or perform a role or function in a legal system. They have no rights or obligations themselves; strictly speaking, only their positions, roles or functions — i.e., only artificial persons legally defined by the state — are subjects of rights and obligations. Philosophically, this is a nonsensical notion, for there can be no artificial persons unless there are natural persons — legal systems are human artefacts, human persons are not legal artefacts. Hence, legal positivism, which asserts that there is no law outside legal systems, cannot account for

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<sup>12</sup> ‘Lex’ is related to ‘legere’, to *pick or choose*; ‘ius’ to ‘iurare’, to *speak solemnly*, i.e., with commitment to what one says.

the differences between “law” and “arbitrary rule”.<sup>13</sup> Indeed, unless there is a law of natural persons, legal systems are exactly like the rules of any game, which have no connection to concepts of law, justice or personal obligation.

This brings us to the concept of liberty.

## **LIBERTY AND THE ARTIFICIAL PERSON**

Whereas the concept of freedom is central to natural-law jurisprudence (solving interpersonal conflicts within the natural order of persons), “liberty” is intimately related to problems of social organisation. Nowadays, it almost exclusively denotes full membership in a political society (a state). As such, it is closely related to, if not identical with, *citizenship*. For some time, when the nation-state was the dominant political model in Europe, it may have seemed that liberty was an inclusive concept: everybody in the state was considered a citizen entitled to the liberty of the legal system of that state. In recent decades, however, mass-immigration has challenged this presumption. Even earlier, the presumption was challenged by the demands of ethnic minorities who had ended up on the wrong side of some national border or other in the long and arbitrary process of state formation in European history. Moreover, when the natural law boundary between *law* and authoritatively imposed *legislation* broke down, the Enlightenment idea of equal liberty for all citizens gave way to the present mishmash of complicated regulations, differentiated according to age, sex, education, income, profession, and so on. All of these interlock in various ways and make it nearly impossible for any person to determine the details of his legal status (hence his “liberty”) without the help of experts to guide him through the jungle of ever-more complex, ever-changing rules and regulations. Obviously, however, none of these legislated regulations change the nature of natural persons. They leave the real freedom of natural persons intact but provide legal pretexts for impeding and restricting their effective freedom by authoritarian acts.

Citizenship is usually accorded to natural persons, but that is certainly not a logically necessary requirement. The Citizen is, in fact, an artificial person in the state in the same way that the King, Queen, Knights, Bishops, Rooks and Pawns are artificial persons in the game of chess. The rules of chess define what these artificial persons can or cannot do, regardless of whether the game is played by human chess

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<sup>13</sup> In Western states, much of so-called “private law” is still sound from the perspective of natural law. However, legal positivists do not call private law “valid” because it is sound but because it has been adopted (and adapted) by the legal authorities of the state.

players or by computers. It is the same with legal systems. It is said that the Roman emperor Caligula wanted to make his horse a Consul of Rome. From the natural-law perspective, it would be absurd to consider a horse the equal (let alone the superior) of a human person. From the perspective of legal positivism, there is no absurdity at all: the rights and duties of a Consul remain the same no matter who or what occupies the position. The modern equivalent is the emerging practice of according legal standing to automatic processes — for example, speed cameras linked to computerized systems for the administration and collection of fines; also computerized tax-withholding, and so on. We are close to a situation in which the state can require manufacturers to install electronic devices into cars that enable the authorities to regulate the speed of vehicles, even to prevent them from starting, by remote control. There is, of course, also the possibility that these systems will be “hacked” and put to “illegal use”. In the perspective of legal positivism, people are simply resources that can be regulated and managed any which way, according to the policy needs of the day.

Demands for liberty reflect the ambiguities of the notion of equal liberty for all. For example, the political philosophies of classical liberalism and libertarianism insist that liberty (a legal status) be defined to interfere the least with, and to provide the most institutional support for, the freedom of natural persons.<sup>14</sup> Here, liberty is the means and freedom for all the goal of political action. This was still the position adopted by the French National Assembly when it promulgated the *Declaration of the Rights of Man and Citizen* in 1789.<sup>15</sup> In contrast, for minorities, the demand for liberty is usually the demand for equal treatment, not for personal freedom. However, when the minority is concentrated in a particular region, its demand for liberty is more likely a demand for political autonomy or even independence for the region, not for equal treatment or freedom of natural persons.

Because of its political and legalistic overtones, “liberty” is a relative concept. Unlike your freedom, you cannot take your liberty with you across the border: the liberty of an Italian in Italy is not the liberty of an Italian in Austria. Unlike freedom, which is a natural, personal property regardless of time or place, liberty is a property of a collective, a tribe, a community, a society or a state at a particular time in its history. Hence, the liberty of an Italian in Italy is not the liberty of an Austrian in Austria; and the liberty of an Italian today is

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<sup>14</sup> In contrast, the political philosophies of socialism in all its varieties insist that the freedom of individual persons be curtailed as much as is necessary to make society efficient in pursuing its goals (whatever they may be).

<sup>15</sup> Article 2: “The goal of every political association is the conservation of the natural and inalienable rights of man. These rights are freedom, property, security of person, and resistance to oppression.” (My translation)

not the liberty of an Italian, say, in the eighteen-nineties. The liberty of a citizen of the former Soviet Union did not leave much space for a person to live his natural freedom. To varying degrees, the same is true of the citizens of North Korea, the European nation-states or the European Union itself. All of them have rights and obligations decreed for them, and imposed and enforced on them, by social, political and bureaucratic authorities, regardless of their own nature as human persons, regardless of their values, preferences, plans, opinions, or knowledge. Unlike your freedom, your liberty is defined by rules specified by the opinions of others (especially, the past and current rulers of the state in which you happen to live). Thus, perhaps paradoxically, where human persons are concerned, “liberty” more often rhymes with “heteronomy” than with either “autonomy” or “freedom”.

### **AUTONOMY AND THE NON-INDIVIDUAL PERSON**

The French eighteenth-century philosopher Jean-Jacques Rousseau was acutely aware of the connection between the liberty of citizens and heteronomy. The opening paragraph of the first chapter of his famous *On The Social Contract* identifies the problem:

MAN is born free;<sup>16</sup> and everywhere he is in chains. One thinks himself the master of others, and yet remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.

The “masters” and “slaves” of which Rousseau spoke are eminently legal positions. Their legal status is defined by, hence relative to, a particular society; it is legally valid only within the confines of that society. In that sense, both masters and slaves are creatures of a rule that is imposed on them. So apparently, being in political society excludes the possibility of freedom. That is the problem.

There is, of course, a solution to this problem that is, as H.L. Mencken put it, clear, simple and wrong. That “solution” is the theory of the social contract, which assumes that the problem is solved if only membership in a political society were voluntary. Rousseau realised that reliance on contract would not do. Although freely assuming obligations is generally an exercise of freedom, only a mad-

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<sup>16</sup> Note that it would be wrong to translate the French “L’homme est né libre” as “Man is born in liberty”. The whole point of the paragraph is that man is born a natural person (hence, a rational and therefore free being), yet is also born into one or other society that defines his legal status (hence, his liberty) independently of his nature.

man would consent to obligations that imply the total and irrevocable loss of his effective freedom — and as Rousseau remarked, madness creates no right. Consequently, contracts can only have force in law<sup>17</sup> if they are compatible with the parties to it being and remaining free. However, this makes the problem even more perplexing, because being in political society requires renouncing all claims to freedom and accepting the authority of its legal system — even if one's entry into the society was voluntary.<sup>18</sup> In essence, Rousseau hit upon *the problem of voluntary slavery* (which had been dormant in Western political philosophy since the early days of the opposition against the rise of Grotian and Hobbesian contractual doctrines of political, originally royal, absolutism<sup>19</sup>). Commenting on the English Constitution, Rousseau wrote, “The people of England regards itself as free; but it is grossly mistaken; it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing. The use it makes of the short moments of liberty it enjoys shows indeed that it deserves to lose them.”<sup>20</sup>

### Autonomous citizens

Rousseau's fame as a political thinker rests on his claim that he solved the problem of the legitimacy of voluntary slavery. Indeed, at least for a while, he thought that it was possible to *legitimise* the state, which, he realised, was at its theoretical best a system of contractual slavery and in practice just plain, unilaterally imposed slavery. The concept of autonomy figured prominently in his solution. He believed that the state could be legitimised if it were possible to come up with a legal formula according to which the citizens would be equal under a law they had imposed on themselves. That formula he called “the republic”. In a republic, the citizens would

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<sup>17</sup> I.e., *natural* law, as distinct from any particular legal system.

<sup>18</sup> As Rousseau (following Hobbes) remarked, it is the prerogative of the state to draw the line between the public and the private spheres. No right to a private life (i.e., to freedom) can be legally invoked against the state: “Each man alienates, I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control; but it must also be granted that the Sovereign is sole judge of what is important.” Jean-Jacques Rousseau, *The Social Contract*, translated with an Introduction by G.D. H. Cole (London and Toronto: J.M. Dent and Sons, 1923). Book II, *Chapter IV*.

<sup>19</sup> Think of sixteenth- and seventeenth-century writers such as Etienne de la Boétie and Richard Overton.

<sup>20</sup> Jean-Jacques Rousseau, *op.cit.*, Book III, *Chapter XV*. Of course, the people living in England (as distinct from The People of England, which is an artificial, legal person) are *not* free even during parliamentary elections: they need legal permission or authorisation to vote, and they can only vote for persons that are legally permitted to be candidates. Active and passive electoral rights are liberties not freedoms; artificial rights of artificial persons, not natural rights of natural persons. By implication, democracy is not a human right; it is in fact incompatible with the natural law if it is part of a legal system that authorises “the electorate” to put itself above the natural law.

cease to be slaves because they would be their own masters, laying down their own law on themselves.

The crucial step in his solution was that human nature be transformed, or rather that a human being's natural personality be replaced with an artificial, conventional, "legal" personality<sup>21</sup> — citizenship. The effect of that transformation should be that the state, instead of being an association of natural persons, becomes a unity of artificial persons (citizens), all of them identical to the state, hence "equal" in their relation to the state. Thus, instead of a state being moved by the particular wills of particular people (which would be tyranny), the state is supposed to be moved by the general will of the state itself — i.e., its constitution and statutes, with which all citizens identify, by definition. If the argument made sense, it would explain how a multitude of citizens can be "free and equal" — *equal* because no citizen has a right that is not also a right of every other citizen, and *free* (i.e., autonomous) because everyone of them agrees to every legal rule imposed on them by the state. In other words, the state would *formally* meet the requirements of justice. It would be an arrangement of freedom among likes — but the likes would not be natural human but artificial persons (citizens) of the same state.

The premise of Rousseau's argument was the observation, which had also been made by Plato, that political rule cannot be just or lawful among human beings.<sup>22</sup> Hence, political rule can be made legitimate only if human nature were changed to suit the requirements of the state. Human beings must be transformed into citizens.

This transformation is usually considered the task of collective political education. Think of Plato's education of the guardians of a city; Aristotle's requirement that a city be composed of interrelated

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<sup>21</sup> As Rousseau put it, man must acquire a "moral", i.e., non-physical or non-natural, personality. "He who dares to undertake the making of a people's institutions ought to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all. He must, in a word, take away from man his own resources and give him instead new ones alien to him, and incapable of being made use of without the help of other men. The more completely these natural resources are annihilated, the greater and the more lasting are those which he acquires, and the more stable and perfect the new institutions; so that if each citizen is nothing and can do nothing without the rest, and the resources acquired by the whole are equal or superior to the aggregate of the resources of all the individuals, it may be said that legislation is at the highest possible point of perfection." J.-J. Rousseau, *op.cit.*, Book II, chapter 7,

<sup>22</sup> Obviously, Plato was not concerned with the "autonomy of citizens". His political solution was one of formal unity (all the citizens being guardians of the city under the supreme and unconditional leadership of the philosopher-king), not formal consensus among equal citizens. See my "Concepts of Order", in H. Bouillon & H. Kliemt (eds), *Ordered Anarchy, Jasey and His Surroundings* (Aldershot, Hampshire: Ashgate Publishing Limited, 2007), p.59-92

families sharing the same traditional culture, which they pass on to their children; Rousseau's education of the citizens of the state by its legislator<sup>23</sup>; and the modern welfare state's claim to be the highest, if not the only, educational authority. In each case, the aim is to transform natural human persons so that they fit as well as can be into the legally defined positions that make up the legal system of the state — the legitimisation of political rule is a matter of indoctrination and pervasive conditioning.<sup>24</sup>

A citizen is not oppressed by the state, because he *is* the state. The rules of the state do not oppress a citizen, because the obligation to obey those rules is part of the definition of “citizen”. Of course, Rousseau's solution of the political problem applies only to such artificial persons. It leaves the fact of oppression of some natural persons by others intact. It is, after all, no more than a formula for *legitimising* such oppression.

This explains Rousseau's so-called paradox of freedom: it is right for the state “to force people to be free”, i.e., to comply with the legal rules of the state. By such coercive action, the state forces people to rid themselves of their own, natural humanity, which is an obstacle to their artificial personality as citizens. The idea is that, to the extent that you remain a natural person, you will be inclined to resent and resist the duties and obligations imposed on you by the legal authority of the state — you will experience the state as an obstacle. So, to get rid of that experience, you need to forget that you are human and instead identify fully with the state itself — indeed, you should consider yourself the author of everything the state does. If you do so consider yourself, your life in the state will be autonomous; you will live under laws you have imposed on yourself. However, as the state is mostly other people, the tyrannical aspect of political rule will disappear only if you are confident that all your fellow citizens also identify with the state. Thus, the legitimacy of the state requires the collectivisation of a multitude of people, who should consider themselves creatures of the same collective, general will. That is why the legitimate state, as a collective of “autonomous citizens”, is really a utopian concept, and why Rousseau himself eventually came to consider it a fanciful dream, an illusion.<sup>25</sup>

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<sup>23</sup> Rousseau's *législateur* is in many ways similar to Plato's philosopher-king, except that he is not a King and does not rule. In fact, he has no formal or legal position in the state. His role, though vital, is merely moral (educational). One may compare him to the public intellectuals, whose pronouncements on radio and television and in the other mass media define the so-called “public opinion” and inform the “enlightened opinion” propagated by teachers, columnists, editorialists and other second-hand dealers in ideas (F.A. Hayek's definition of intellectuals).

<sup>24</sup> On the paradoxes of “conditioning”, see C.S. Lewis's classic *The Abolition of Man* (London: Macmillan Publishing, 1944), especially chapter 3.

<sup>25</sup> Letter to Mirabeau, 26 July, 1767, Rousseau, *Correspondance complète*, XXXIII, no. 5991. Plato, too, had argued that even an ideal “republic” would inevitably degenerate, as its contrived arrangement would erode under the constant pressure of human



## Autonomous man

People with a leftist, “progressive”, especially Marxist orientation, take this idea of autonomy-through-collectivisation of natural persons a giant step further.<sup>26</sup> They do not want identification with a particular state but with “humanity” as a whole, and beyond that, with Nature itself. This is the Marxist idea of man as “species being”, and of every man as a “universal individual” (as opposed to a “particular individual”).

Man will not be truly free, according to Marx, unless he defines the conditions of his own existence. This ideal has also been referred to as the ideal of *the autonomous or unconditioned life* — a life with no strings attached. All your needs are provided for, while you can fulfil every desire or fancy that strikes you. As Marx famously put it, you can do what you want, while society takes care of general production.<sup>27</sup>

Note that we are not supposed to read this as “*You* can do what you want, while *others* take care of general production.” That would be an old-order motto of privileged aristocrats living at the expense of their serfs. No, we have to understand it in a way that makes sense only if the distinction between oneself and others does *not* make sense — if all of us are, so to speak, the same, if we identify with society, with the human species as a whole, and ultimately with everything. For if all men identify with the same thing, they all identify with each other. If that condition were realized, no man could have rights *against* any other, for exactly the same reason that a man cannot have rights against himself. Of course, the condition cannot be realized. In practice, communism and production are an odd couple. Instructed by his friend, the industrialist Friedrich Engels, Marx came to realize this. In an often-overlooked essay, “On Authority”, they argued that, on entering a factory, one should abandon every hope of autonomy and submit to the rigours of the

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nature: changing human nature in a controlled way is an impossible task. Who would guard the guardians?

<sup>26</sup> Progressivism has its intellectual and ideological origins in the radical, revolutionary branch of eighteenth-century thought. In this context, ‘revolutionary’ must be understood in its literal sense: a revolution is not just a political rebellion; it is an act or series of acts that puts everything on its head. Thus, if one knows the conventional, commonsensical view of the world in the eighteenth century, one need only negate each component of it to discover the contents of revolutionary, progressive ideology. Property, family, religion, money, the division of labour, law, custom, the ethics of life, the Church, God — all of these were pillars of the established order that had to be wrecked if the revolution was to succeed, as all of them imply obligations that prevent a person from being “autonomous”.

<sup>27</sup> “[I]n communist society, where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as I have a mind...” (Quoted from R. Freedman, *Marx on Economics* (Harmondsworth, Middlesex: Pelican Books, orig. 1961, 1976), p.234.

forces of production — even in a communist society. Considering, the wide range of social, economic and cultural phenomena covered by the label “forces of production”, that leaves little room for autonomy.

Perhaps the most familiar instantiation of this radical concept of autonomy is the modern doctrine of “human rights”, which in effect states that everyone has right to all desirable things (property, freedom, voting rights, healthcare, education, culture, decent housing, paid holidays, tourism, and what not). However, as most of these are rights to scarce things, the practical implementation of the doctrine amounts to invasive political regulation and rationing of goods, subsidies and privileges to particular groups by Western-style democratic welfare states.

### **The free person versus the autonomous person**

“Radical autonomy” may promise to make one the master of one's conditions of existence, but it does not deliver on that promise. Instead, it puts everybody in opposition to unfathomable abstractions like “society”, “humanity” or “Nature”. The paradoxes of this concept of autonomy should not surprise us. What else could we expect from an idea that turns on the identification of a physically well-defined natural individual with a non-physical, ill-defined collective whole – the identification of the finite and the infinite? Because the radical concept of personal autonomy is antithetical to there being a “given law” that binds a person regardless of his consent or agreement, one person's autonomy cannot be not limited by any other person's autonomy, or indeed, any other autonomous force (whether Society, Nature, the Cosmos, or God). Hence, personal autonomy, in this strong sense of the word, is conceptually possible only if every person is presumed to be identical with every other person, or even with everything else. Because that relation of identity does not and cannot exist among real persons, autonomy is a practical impossibility, a chimera. Radical personal autonomy collapses ultimately in antinomy.

Freedom, in contrast, is a real, actual property of every natural person. To respect one's own and every other person's freedom — to respect the natural law of persons — is, therefore, an implication of every person's rational obligation to respect and recognize the truth.

## **CONCLUSION**

Although the words ‘freedom’, ‘liberty’ and ‘autonomy’ are often used interchangeably, we should not overlook the very real differences between the concepts of freedom, liberty and autonomy that I

have tried to clarify in this lecture. Let me summarize the main differences in the following definitions.

Freedom is a natural property of human beings — the property that makes them persons as distinct from specimens of just another animal species. Within the domain of human persons, it is an objective universal, on a par with speech and the intellectual faculties. It defines the natural-law condition of freedom among likes.

Liberty, in contrast, is the legal status of a member of an organised group or society. It is not a property of a natural person but of a position in a group or society. It applies not to natural but to artificial persons (e.g., citizens). Consequently, it is a relative notion in the same sense that citizenship is a relative concept.

Autonomy, taken in the literal sense, is not something a real, natural, finite person can have. It makes sense only as a form of liberty, but it does not simply require identification with one's position in society. It requires identification with society (or even with humanity or with the cosmos) as a whole.

Because the social sciences deal, for the most part, with artificial entities (societies and the social positions they define) on the assumption that they constitute a reality (“social reality”), they are often biased in their insistence on *socializing* human, natural persons. Against this tendency, it is necessary to oppose the natural-law view and its insistence on *humanising* social constructs. That means giving priority to the universal natural law over and above all particular “social laws”. Societies come and go; so do social theories and ideologies. The one constant is human nature. In the nature of things, human freedom trumps any legislated liberty as much as it trumps the chimera of radical autonomy. While claiming that Man is the measure of all things may sound down-to-earth, the reality is that this can only mean that some men presume to be the measure of everybody else.