

IT USUALLY BEGINS AT HOME

BY Frank van Dun

My grandfather (1882-1960) worked as a mechanic at the plant where the beautiful Minerva cars were produced. He was active in the Belgian Labourers' Party, the predecessor of the Belgian Socialist Party. In Wilrijk, a village near Antwerp, he became a councillor for that Party and then, in the chaotic days of the Liberation, at the end of the Second World War, the interim mayor. He was a quiet, soft-spoken and above all gentle man. Whatever had landed him in politics, it certainly was not personal ambition.

Like his dad, my father (1919-1997) spent most of his active life in the ambit of the Socialist Movement although never as a politician. After the war, he began to work for the Social Providence Insurance Company (PS), a firm funded mainly by the Socialist unions. A successful profit-making business, it was the flagship of the Belgian socialist co-operative movement. Its profits were used in part for 'social works' and other charities connected with the Socialist Movement: sanatoriums, revalidation centres, and resorts for the working classes. My father was very proud to be a part of that arrangement.

When I began to question my dad about politics—I knew then already that 'we were socialists' but had no idea what that meant—he laid great stress on the fact that he was a co-operativist socialist. I gathered that he had no sympathy at all for the communists. Although he always voted for the socialist party, he did not share its assumption that it needed to get into positions of power to improve the standard of living of the working classes. As he saw it, the workers were quite capable of managing their own lives and affairs. He considered himself a self-made man.

Because of his work and his pastime—he was an amateur actor in a group called "Labourers' Art"—everything my father did was somehow connected with 'Socialism'. Yet, politics almost never was a subject at our home. During the sixties, when I was in high school, it became fashionable in the media to discuss the 'illusion of wealth' or 'the new poverty' which was the Left's pretext for expanding the welfare state. My father scoffed at the idea. What is worrisome, he said, is the illusion of poverty, the belief that one is poor because others have more. It was the only time I heard him make a 'theoretical' comment on the political scene.

My mother was even less inclined to discuss politics than my father. Political discussions tended to become acrimonious—and she did not like that. Nevertheless, she too habitually voted for the Socialist Party.

My parents made no secret of how they voted but never explained why. However, I saw no reason why I should vote differently because 'Socialism' to me was just a word for our way of life—and there was nothing wrong with that as far I could see. The idea that in voting one was not just saying what one was but doing something to other people had not occurred to me.

There was nothing divisive, partisan or sectarian about my parents' 'Socialism'. I never heard them make a desultory comment on the church or its priests, the bourgeoisie, the rich or any other group or class of people. They felt that one should judge people as individuals not as specimens.

To my parents, profit, property, money, capital, savings and the like were not dirty words. They were things that could be earned in different ways and used for different purposes, some better than others. It was obvious that they were things my parents were eager to acquire—but not at any price, not in any which way. They made it clear that life has a moral quality and that it is a moral responsibility more than anything else. Honesty, tolerance, patience, 'live and let live', 'stand on your own feet', 'never envy another for his good fortune'—those were the things on which they insisted. As for the rest, you have one life; it is up to you to make it a good one.

Already in elementary school, I had become a voracious reader. A publisher had begun to market paperback pocket books for a fixed price of 40 cents apiece. The catalogue was truly encyclopaedic, covering almost every science and every period of history. Whenever I had saved enough money, I bought one of those books, read it from cover to cover and tried to understand it as best as I could. In high school, I began to read about philosophy and politics, especially of course about socialism. I found it difficult to connect what I read with the outlook on life that I had absorbed at home but put that down to my immaturity. Nevertheless, I began to use the phrases and formulas I had picked up from my reading to explicate my thoughts and opinions. Sometimes it worked and sometimes it did not. I still had a lot to learn. I also discovered that reading was no substitute for thought. There were too many contradictions and unresolved controversies in what I read to warrant a suspension of scepticism.

In 1965, I went to the University of Ghent to study Far Eastern languages. However, I soon felt that the quality of the teaching of Japanese and Chinese in Ghent was not very good. Therefore, after a few months, I decided to enrol also in the Law Faculty, just to keep my options open. At that time, before beginning his formal legal training, a law student had to spend two years studying Latin, Roman law, history, literature, logic, ethics, psychology, and the history of thought, especially the history of thinking about law and politics. I really enjoyed those subjects, although I regretted that economics, sociology and anthropology were not in the curriculum. In the third year, instead of concentrating on law—meaning Belgian positive law—I added Philosophy to my programme. That combination eventually would bring me to focus on the philosophy of law.

Studying Law was a frustrating experience. The rampant positivism that pervaded every part of the curriculum repelled me. How could a professor teach us with a straight face that a verdict or a legal rule that was 'incompatible with every known principle of law' nevertheless was 'law' merely because some judge or legislature had declared that it was? What sort of 'science' was it that requested a supine deference to 'the powers that be' from its practitioners?

I also could not swallow the seeming arbitrariness of the 'progressive ideology' that then was claiming the exclusive right to set the programme for legislative reform. For example, many people were demanding that marriage be reduced to a simple contract

of services that either party could terminate unilaterally. In almost the same breath, those people were insisting that an employer could end a labour contract only under exceptional circumstances to be specified by the legislature. Instead of solid principles of law, there were just hollow and contradictory formulas, for example about preserving 'freedom of speech', regulating 'commercial speech' and outlawing 'hate speech'. It seemed that law was primarily an exercise in codifying and streamlining prevalent prejudices. A science of justice it was not.

At the University, I found myself surrounded by leftist intellectuals. I was drawn to them because of my family background and my self-identification as a Socialist. However, most of what they were saying was sheer nonsense. I recognised the phrases and the formulas from the books I had read but discovered that behind the rhetoric and the revolutionary posturing there was nothing but emotion, frustration or ambition, and often not even that. I ran into old friends from high school who had never claimed to be Socialists before but now saw themselves as the vanguard of the Revolution. One of them went rhapsodic over Mao Ze Dong's 'success in bringing billions of Chinese together in one close-knit family!' Few members of the two faculties in which I was enrolled—Law and Philosophy—were willing to criticise those fashionable views, if they were not all too willing to go along with them. I also had my first encounter with 'militant science'. One member of the Philosophy Department actively campaigned for making contraceptives, especially 'the pill', widely available. Part of his message was that 'scientific studies have shown that the availability of the pill has no noticeable effect on the attitude of young girls toward sex.' In private conversation, he confided that only a complete idiot would believe that.

To my dismay, I found that argumentation was not meant to separate truth and falsehood, valid and fallacious reasoning. Its ostensible purpose was to identify the 'progressives', who were beyond criticism because their motives supposedly were pure and noble, and the 'reactionaries', who were beneath criticism because they were alleged to be advocates of the sinister interests of the ruling classes. Apparently, facts, logic and even plain common sense were to be the first victims of the coming Glorious Revolution.

At one time, I resolved to write a vindication of 'Socialism'—the outlook on life I had absorbed from my parents—and a refutation of the utopian babble that passed for intellectual criticism at the university. However, I soon found that Socialism as a distinct intellectual tradition had little to do with the points of view and the values with which I had been brought up. I realised that how my parents voted and identified themselves 'politically' had little, if anything, to do with what they valued and believed. That turned out to be true of most people I knew.

Eventually, I discovered that if any label fitted my education it was 'Classical Liberalism', not 'Socialism'. It was not a painful discovery, because my attachment was to the substance of my education, not to the label that somehow had been stuck on it. However, the discovery made me realise that I had to understand a lot more about economics than I did. When I asked people where to begin the study of economics, two and only two names were suggested: Karl Marx and Paul Samuelson. I read both, but I had already decided that I would not buy into anything they had on offer until they satisfied my personal test.

That test was based on a simple syllogism: Economics is about human beings; I am a human being and so is everybody I know. Therefore, economics is about me and the people I know. It followed that if a book on economics systematically or glaringly got it wrong about me and the people I knew, it would not be acceptable. Both Marx and Samuelson failed the test and I was left empty-handed.

Then, shortly after I had graduated from law school, I stumbled upon Friedrich Hayek's 'The Uses of Knowledge in Society' and instantly knew I had struck gold. Very soon, I was reading everything by Hayek that I could get my hands on. From Hayek, I moved on to Mises and then to Rothbard. However, by the time I got to Rothbard many things had happened.

What had struck me in 'Austrian economics' from the very start, was its attempt to explain economic phenomena in terms of human beings as they actually are, feel, think, and act. It took into account all the limitations of their physical, intellectual, emotional and moral capabilities that are obvious to the most casual observer of human life and to anybody with the least bit of self-knowledge. Eventually, that literature's frequent references to Robinson Crusoe made me understand the importance of distinguishing clearly between a person's confrontation with impersonal nature and his confrontation with others like him.

I sensed that precisely this distinction was the main reason why I could not agree with my 'progressive' friends and teachers. For example, whereas I saw the market as a way in which people deal with others without denying their otherness, they saw it as an impersonal mechanism, which they—each one believing himself a Robinson Crusoe—had to bring under their control in order to 'humanise' it. Of course, they denied being motivated by a desire for control and power. They claimed to be mere spokespersons for Man, the vicars of Humanity on Earth. They spoke about individuals as if they were no more than 'human material', 'human resources'—particles of Nature that Man had to mould into useful tools for constructing His own world.

Although I was (and still am) an atheist, I began to suspect that the crucial issue was a religious one. On the one hand, there was the biblical religion with its clear message that the place of God is already taken, so no human being need apply. On the other hand, there was the belief that the God of the bible is dead and that consequently his place was up for grabs. Man is the true God; it is his task to remake men and women in his own image. That Religion of Man implied a clear distinction between those that should have the power to remake and those that would have to be remade. It reminded me of Hobbes' conviction that 'the Common-peoples' minds... are like clean paper, fit to receive whatsoever by Publique Authority shall be imprinted in them.' I had discovered the dark side of the Enlightenment—and the rationale for the massive public expenditures on 'education'.

I had not intended to embark on an academic career, but my philosophy teacher, Prof. Dr. Leo Apostel, suggested that I try it. At first, I did some research on the foundations of logic, mainly on Paul Lorenzen's view that the laws of logic are governed by the requirements of dialogue. It struck me that, in this perspective, logic had its foundation in a structure or distribution of rights of the participants in a

dialogue. Thus, one could generate almost any ‘logic’ one wanted merely by choosing an appropriate set of ‘dialogue rights’. On the other hand, if there were a true test of logic, then one could move from a critique of the resulting ‘logic’ to a critique of the presupposed set of dialogue rights.

It was fashionable, at that time, to maintain that there was an infinite number of ‘logics’—as evidenced, for example, by the literature on two-, three-, n- and even infinite-valued ‘logics’—all of which were said to be ‘equally valid in their own right’. Apparently, logic could be almost anything you wanted it to be. I thought that was a fallacious view. True, one might produce as many ‘formal systems’ as one wanted, and attach an interpretation to them that made use of the vocabulary of logic, but one still could subject the reasoning that went into the construction or the interpretation to a criticism based on principles of logic. Strictly speaking, logic is what such criticism appeals to, not that to which the criticism is applied. Similarly, one can produce as many ‘systems of rules’ as one wants, and attach an interpretation to them that makes use of the vocabulary of law and rights. However, one still could subject the reasoning that went into the construction or the interpretation of the system to a criticism based on principles of law and rights. Gradually, the idea took root in my mind that just as there can be science of logic, distinct from an analysis of formal systems, so too there can be a science of law that is distinct from an analysis of ‘systems of rules’.

Just at that moment, Leo Apostel suggested my name to Prof. Dr. Willy Calewaert, who was looking for an assistant, ‘a lawyer with some knowledge of philosophy’. Calewaert taught ‘Natural law’ at the University of Ghent. That was rather odd because he thought that Natural Law is nonsense and that of all the philosophers that he mentioned in his course only Machiavelli seemed to know anything about politics. However, he added, it was important that he held on to the course lest some reactionary Catholic got it. Calewaert was best known as a politician of the ultra-progressive wing of the Socialist Party. However, he had accepted Apostel’s recommendation of me, perhaps because Apostel was the leading figure in the Philosophy Department and a well-known Marxist.

Apostel knew of my interest in the philosophy of law. He liked my position that law, properly speaking, is not a state-imposed social order but an ‘order of freedom among equals’. However, his interpretation of that sequence of words was radically different from mine. Like so many at the time, he was devoted to egalitarianism but oblivious to the enormous inequalities in the distribution of political power that the implementation of his egalitarian ideal would require. Eventually, he conceded that real socialism, even democratic socialism, was ‘really only fascism with a human face’, but, he added, that merely proves the need for continuing theoretical investigation into the true foundations of socialism. He was convinced that my interest in freedom and equality would bring me eventually to the conclusion that Marx was right. So was Calewaert, although I had told him beforehand that I was not a Marxist. “That’s alright with me,” he had answered magnanimously, “as long as you study Marx seriously, because within ten to fifteen years the whole world will be Marxist.”

Apostel defended what he called a ‘libertarian’—in my terminology, a ‘liberationist’—interpretation of Marx. He thought of freedom in the Marxist way as

being in control of one's own destiny, without fear of frustration. For him, freedom was the great promise of the final stages of communism. For me, freedom was the fact that one is ultimately responsible for one's own actions. That freedom implied the risk of frustration at every moment of one's active life. I thought it made good sense to think of it as a basic, indeed natural, human right because it was a common and, in my view, respectable property of actual human beings.

The Marxist notion of freedom obviously did not apply to actual human beings. One might think of it as referring to a property of a new species that one day in the distant future would supersede Homo Sapiens. However, I failed to see how the hypothetical properties of a non-existent species could be taken for the rights of the members of another, actually existing species. Why should one believe that the order that would exist among a non-existent species defines the law of human kind?

I dawned on me that there was something fundamentally wrong with the idea that law is essentially 'a norm', something that 'ought to be' regardless of whether it was or even could be real—something, therefore, that logically speaking 'could be anything'. I was moving fast toward a 'natural law' position. I began to think of law not as a 'norm' but as a condition of order in the human world that could be specified fully, at an appropriate level of abstraction, in terms of objective, natural properties of human beings and the world they lived in. If such a natural order could be identified, there would be an unequivocal answer to the question 'What is Law?' even if it still would be possible to argue that perhaps it was not an order that human beings ought to respect. However, such an argument would imply a defence of the thesis that human beings owed no respect to one another. Would it be possible for a self-respecting person to defend that thesis in a coherent way? Here was an opportunity for putting my interest in logic and dialogues to good use in the philosophy of law.

Another consequence of my discussions with Apostel was that I began to doubt the validity of the time-honoured definition of man as a social animal. Suppose that to be free from frustration is indeed man's fundamental right. Then it would seem to follow that one's basic right is to be shielded from the consequences of one's own actions. But who should provide the shield? Apostel agreed that it would be inconsistent to answer that others should do so. Instead, he gave the quintessential socialist answer: Society! To me, that answer begged too many questions to be taken seriously even for one moment. What society? Which society? What were societies if not organisations of particular human endeavours? Some were useful tools, some were stifling impediments, even prisons—but all of them were artificial orders, constructions, involving numerous artificial distinctions among social positions, roles and functions. Throughout history, societies had come and gone, but the human species and human nature had endured. Consequently, I thought, nature had to be the key to understanding the human condition, not some particular existing or proposed social convention. Saying that man is a social animal sounded like saying that man is a clothed animal. As if, when all is said and done, the clothes do make the man and therefore all the problems of the species will be solved once the clothes that make him perfect will have been designed.

Unfortunately, the premise of my formal schooling had been that because there were so many conventions there could not be a human nature—or if there were one, it could not be of any relevance except in those sciences for which humans are merely

physical objects or organisms. Understandably, when I began to work at the law faculty, I did not feel very comfortable. In those days, Kelsen and Hart were all the rage as far ‘the science of law’ was concerned and John Rawls had just sown the seeds of what rapidly was becoming a multinational academic fad. None of it came close to my own interests in law.

Already working for Calewaert was Boudewijn Bouckaert, who then was something of a leftist but an unusually open- and quick-minded one. In the course of our daily discussions, I found numerous opportunities to present and refine arguments that eventually eroded his faith in socialism completely. Together we began to produce what later would be called libertarian critiques of the prevalent view of law and economics.

At the time, I was not aware of the existence of a Libertarian Movement. That changed when another colleague, the sociologist Willy van Poucke, surprised me with the announcement that ‘apparently, you are no longer alone’. He had seen a small display of books by Hayek and a few other authors—all of them with ‘Liberty’ or ‘Freedom’ in the title—in an optician’s shop. The books were there because the shop was part of a chain owned by Fred Dekkers. Together with Hubert Jongen, Fred had assembled a small circle of Dutch speaking Randian anti-statists and free market enthusiasts. Because of Van Poucke’s chance remark, I got to know Dekkers and Jongen personally. I also discovered the writings of Murray Rothbard, the most creative and prolific intellectual light of the American Libertarian Movement. I found his *Man, Economy, and State*, his *Power and Market*, and *For a New Liberty* enormously helpful and stimulating. I also read Ayn Rand but did not think that her ‘philosophy’ added much to my understanding.

I did not feel at ease with the arguments of the Chicago School of economics and the Public Choice School, which were prominent in the American Libertarian literature. I also did not feel at ease with the Law & Economics Movement that was emerging at the time. When an invitation came to join a European branch of that Movement, Bouckaert accepted it, but I did not. I felt that those approaches had embraced an irreparably faulty methodology, sacrificing realism to formalism, substituting the derivation of implications of mathematical models for the painstaking analysis of what people actually do, why they do it and what effects it produces in the human world.

In particular, I thought those models expressed the desire for a technology of want-satisfaction rather than for an understanding of how order in the human world is possible. Consequently, I became apprehensive about the technocratic illusions that were being propagated under the banner of the emerging neo-liberalism. I did not think the schemes for ‘human resources management’ that the neo-liberals were peddling to the politicians, bureaucrats and managers of large corporations in the public, the commercial or the non-profit sector were more compatible with human realities than were those of the leftist ideologues. I distrusted the neo-liberal “free market” with its centrally organised structures of incentives, even if they were presented as “property rights” and “rights of contract”. I thought that, as long as I had not sufficiently worked out my own philosophy of law, it would be imprudent to get involved with ‘movements’ that I instinctively felt were wrong. True, they often came

up with policy recommendations that I could accept, but their manipulative, Hobbesian flavour remained an insurmountable obstacle.

When it became clear to Calewaert that my dissertation would not be a vindication of Marx, he withdrew his support. I realised that my position at the university rapidly was becoming precarious and that there was a chance that there never would be a written testimony to my intellectual efforts. I decided on a gamble. Putting aside the research notes that I had assembled in the previous eight years, I wrote my dissertation in a period of six weeks in December 1981 and January 1982. I worked round the clock, producing one hand-written chapter a week, which I left with the typist on Saturday and took home again for a single revision a week later. The result was *The Fundamental Principle of Law*. It was a defence of individual sovereignty as the sole principle of law that was consistent with the assumption that men and women are finite, limited beings in a finite, limited world and the sole principle the respectability of which could be defended in a rational dialogue.

It was not an elegant book, but it said what I had wanted to say. The writing may have been hasty but the thinking on which it was based had taken a long time to mature. Except for a few details and marginal issues, I still stand behind its positions and arguments.

I sent a complimentary copy to Prof. Dr. Rudolf Böhm, who had been one of my philosophy professors. I knew that he would not agree with it—he was an early exponent of the now fashionable 'green left'—but I also knew that he could hardly disagree with the philosophical premise of my entire argument: that human persons are finite beings. A week later, he called me to his office. As he handed the book back to me (he did not want to keep it!), he said: 'It is a strong book, but I can tell you one thing: do not expect any critical response, it will be ignored completely.' I did not discover what he had meant that until a few weeks later when Apostel sent me a forty-page hand-written commentary. Near the end, there was a revealing passage: 'I agree with the premises,' Apostel wrote 'and I agree with the reasoning, but I do not agree with the conclusions'. He also agreed when I replied that his comment indicated that perhaps his problems were greater than mine.

The book did not save my position at the university of Ghent. As Böhm had predicted, it was largely ignored—but not completely. Bouckaert made good use of it. Andreas Kinneging, a Dutch liberal (now a conservative) political philosopher, compared it favourably to Rothbard's *The Ethics of Liberty*, which also had appeared in 1982. Notwithstanding my misgivings about labels, I got used to, and did not mind, being labelled a libertarian.

My parents were proud of my work, although they thought that it primarily meant that I would now vote for the Liberal Party. I do not think they took me seriously when I said that I would not vote for any party, but they believed me when I said that not a word in my thesis contradicted any principle they had taught me.

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