

And as I have argued elsewhere, because the state necessarily commits aggression, the consistent libertarian, in opposing aggression, is also an anarchist.<sup>34</sup> ☞

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<sup>34</sup>See Stephan Kinsella, "What it Means to be an Anarcho-Capitalist," *LewRockwell.com* (Jan. 20, 2004); also Jan Narveson, "The Anarchist's Case," in *Respecting Persons in Theory and Practice* (Lanham, Md.: Rowman & Littlefield, 2002).

## Classical Natural Law and Libertarian Theory

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*Carlo Lottieri*

### NATURAL RIGHTS AND LIVING LAW: TOWARD AN INTEGRATION OF ROTHBARD AND LEONI

If libertarianism wishes to give up modern political categories, it has to think about law in a different way. Murray N. Rothbard, the most important exponent of the radical libertarian school, is right when he rejects the historicism and relativism of legal realism and when—for the same reasons—he criticizes Hayek and Leoni. But unfortunately, he does not really grasp the function of the evolution into classic natural law. Furthermore, his idea of building a libertarian code is completely inconsistent with his frequent references to the Greek and Christian legal heritage.<sup>1</sup>

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<sup>1</sup>The notion of code—in despotic Prussia as well as in Napoleonic France—was connected to the needs of a sovereign power oriented to absorbing the legal order and changing any norm in a simple political decision.

In *For a New Liberty*, Rothbard points out that the history of a changing and evolving law can be useful in order to find just rules: “since we have a body of common law principles to draw on, however, the task of reason in correcting and amending the common law would be far easier than trying to construct a body of systematic legal principles *de novo* out of the thin air.”<sup>2</sup> But the relationship between common law and natural law must be seen differently. Common law is not only an interesting tool for discovering natural law: it has its specific role. Positive law needs to interact with natural law principles, but even the latter cannot be considered as self-sufficient.

Moreover, in his defense of rationality, Rothbard does not realize that law cannot be entirely read into the praxeological framework, which is axiomatic and deductive. The division of theory and history puts some disciplines into opposition with others, but above all it makes a distinction within any single field of study. Economics, for instance, is a theoretical science if considered as political economics, but a historical and empiric activity if it analyzes what happened in the past.<sup>3</sup> This is also true for legal studies, because they have a theoretical part but, at the same time, include many other aspects which are, on the contrary, historical and cannot be examined using logical and *a priori* methods.

In his methodological writings, Rothbard distinguishes between *empiricism* and *experience*, and remarks that the refusal of the first does not imply a devaluation of the second. When he criticizes Mises for his Kantian approach, he finds in human experience exactly the main source of the axioms, the fundamental truths that are the starting point of a theory based on deductive logic.<sup>4</sup> But

<sup>2</sup>Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (Lanham, Maryland: University Press of America, 1973), p. 318.

<sup>3</sup>See Ludwig von Mises, *Theory and History* (Auburn, Ala.: Mises Institute, 1985).

<sup>4</sup>See Murray N. Rothbard “In Defense of ‘Extreme Apriorism’,” *The Logic of Action One* (London: Edward Elgar, 1997), pp. 100–08. Exactly in this sense Larry Sechrest outlines that a “careful examination of Austrian thought will reveal that the praxeological method itself is fundamentally empirical.” See Larry J. Sechrest, “Praxeology, Economics, and Law: Issues and Implications,”

before the law, Rothbard seems to minimize the contextual and non-theoretical dimension of a large part of legal controversies and especially of positive law.

Using the Thomist framework, in this essay I will emphasize the importance of the *lex naturalis*, at the same time highlighting a *lex humana* deeply rooted in the complexity of different ages and societies, related to the subjectivity and specificity of opinions which cannot be fruitfully examined by a praxeological approach. Many problems, and even some inconsistencies of Rothbardian theory are a consequence of it.

Moreover, the way Rothbard deals with the arguments of causality and liability shows an inadequate understanding of the anthropology of the Austrian School, which moves from a study of human action (intentional and rational) and not by a simple behaviorist analysis.

In integrating Rothbardian libertarianism with positive law, an important contribution comes from Bruno Leoni, who in *Freedom and the Law* and other writings developed an original contribution to classical liberalism. The Italian scholar can help to improve some parts of Rothbard’s libertarian theory of law. If the author of *The Ethics of Liberty* is much more grounded in natural law and even less naïve before *Wertfreiheit*,<sup>5</sup> Leoni can correct some limits of the Rothbardian approach and its incapacity to perceive the specificity of law: a practical and largely empirical science, historically situated and essentially oriented to finding reasonable solutions for very specific cases.

*Quarterly Journal of Austrian Economics* 7, no. 4 (Winter 2004): 22. In the Aristotelian-Thomist tradition, experience is a source of knowledge: we meet the world (which is common to all us) and we have experiences with a meaning. Rothbard shares this perspective when he distinguishes his position and that of Mises. For this reason, Sechrest opposes Hoppe (and Mises) because of their Kantianism and shares the Rothbardian perspective, embracing the project of “positing an empirical base for the Austrian School.” *Ibid.*, p. 23.

<sup>5</sup>See, in particular, Murray N. Rothbard, “The Symposium on Relativism: A Critique,” 1960, memo conserved in the Ludwig von Mises Archives, now in Murray N. Rothbard, *Diritto, natura e ragione. Scritti inediti versus Hayek, Mises, Strauss e Polanyi*, Roberta Modugno, ed. (Soveria Mannelli: Rubbettino, 2005), pp. 125–45.

If philosophy of law has to investigate the eternal and immutable principles of justice, juridical scholarship must find the best translation of these for the specific problems of a society. For this reason, taking Leoni seriously means imagining a meeting point of natural law doctrine and the requirements of a positive law as a reality in evolution. And, it implies an effort to transfer into the legal context the Misesian methodology and its radical separation of theory and history: the sphere of axiomatic and deductive studies (*praxeology*) and the sphere of research based on experience (*history*).

We have to remember that specific attention to the historical and evolving features of legal orders has been a crucial element of the Austrian School since its origins. In his *Investigations into the Method of the Social Sciences*, Carl Menger praises the Historical School of Jurisprudence (Gustav Hugo, Friedrich Carl von Savigny, Barthold Georg Niebuhr), whose origins he dated back to Edmund Burke. Menger also highlights the individualistic content of evolutionary law with the goal of helping the classical liberal tradition to rediscover its lost roots: "law, like language, is (at least originally) not the product in general of an activity of public authorities aimed at producing it, nor in particular is it the product of positive legislation. It is, instead, the unintended result of a higher wisdom, of the historical development of the nations."<sup>6</sup>

It is exactly in this sense that we can understand Leoni's preference for evolutionary law (Anglo-Saxon law and Roman *jus civile*): a law not oriented to preserve tradition or spontaneous order *per se*. On the contrary, Leoni thinks that a polycentric and evolutionary order is in a better position to safeguard individual rights. Rules that emerge from the interpersonal exchange of claims are tools that can effectively protect society from the rulers.

As student of English legal history, Leoni shows a strong interest in the *common law of nature* that was at the heart of Edward Coke's perspective. In fact, in that theory law does not express an anti-rationalist attitude, but on the contrary, embodies natural reason emerging in an evolutionary way. This legal culture is

<sup>6</sup>Carl Menger, *Investigations into the Method of the Social Sciences*, Francis J. Nock, trans. (New York: New York University Press, 1985), pp. 174-75.

improved by various contributions (practical, pragmatic, professional) of many people. In this way, law is the consequence of a human activity oriented towards bettering reality using intelligence and experience.

Criticizing modern legal systems, Leoni remarks that

there is far more legislation, there are far more group decisions, far more rigid choices, and far fewer "*laws written in living tables*," far fewer individual decisions, far fewer free choices in all contemporary political systems that would be necessary in order to preserve individual freedom of choice.<sup>7</sup>

Even if he never adhered to a consistent natural law theory, Leoni tried a sort of reconciliation of natural law and legal realism (positive law rightly understood), exploring the possibility of conjugating the flexibility of ancient common law and the just principles of a universal moral theory.

Leoni had a strong interest in the exploration of the libertarian potentialities of a similar perspective. In his writings, there are many elements of a radical libertarianism refusing any coercion. When some participants of the Claremont seminar about *Freedom and the Law* asked him who should choose the judges in a free society, he answered: "it is rather immaterial to establish in advance who will appoint the judges, for, in a sense, everybody could do so, as happens to a certain extent when people resort to private arbiters to settle their own quarrels."<sup>8</sup> In his opinion, the contemporary, statist system should disappear, leaving room for a competitive order of private courts. The convergence of Leoni and Rothbard is evident on many levels, because both imagine the end of the state monopoly on justice and security, with the purpose of opening the road to an institutional competition between people in charge to avoid criminal behaviors.<sup>9</sup>

<sup>7</sup>Bruno Leoni, *Freedom and the Law*, 3rd ed. (Indianapolis: Liberty Fund, 1991), p. 131; my italics.

<sup>8</sup>*Ibid.*, p. 129.

<sup>9</sup>The notion of polycentric order—as it has been formulated by Michael Polanyi—can be useful to appreciate the complexity of a system based on

It is also for this reason that Rothbardian libertarian theory can find in Leoni and, above all, in his understanding of law, the way to overcome its theoretical and practical difficulties.

FROM PRAXEOLOGY TO THYMOLOGY:  
THE ROLE OF POSITIVE LAW

In its daily development, law refers back to principles, but at the same time it concerns modest but not negligible disputes. Legal reasoning lives essentially in this pragmatic context and it leaves the specific topics of natural law in the background.

In Mises's thought, there is a notion that is extremely useful in helping us grasp the relationship between theory and practice in the law. In fact, in *Theory and History*, he opposes praxeology to thymology, which is in close relationship with history.<sup>10</sup> Thymology is a branch of history and "derives its knowledge from historical experience."<sup>11</sup> It stands for that set of empirical knowledge of psychological, sociological and even factual character that we use to find our way in relationships with other people. This "literary psychology" is the condition of a rational behavior: "for lack of any better tool, we must take recourse to thymology if we want to anticipate other people's future attitudes and actions."<sup>12</sup>

When Leoni returns to the legal realism tradition (to the law *in action* that Roscoe Pound opposes to the law *in books*) and remarks on a correspondence between positive law and what is foreseeable

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checks and balances and operating without a written constitution imposed by an authority. Polanyi points out that the invisible hand pushing towards a free-market order is not so different from the forces defining *common law* and scientific research. The progress of knowledge is grounded on the principles that "every proposed addition to the body of science is subjected to a regular process of scrutiny." We find a similar logic in the legal order, because *common law* "constitutes a sequence of adjustments between succeeding judges, guided by a parallel interaction between the judges and the general public." Michael Polanyi, *The Logic of Liberty* (Chicago: University of Chicago Press, 1980), pp. 163, 162.

<sup>10</sup>Following Mises, "thymology is a historical discipline." Mises, *Theory and History*, p. 313.

<sup>11</sup>Ibid., p. 272.

<sup>12</sup>Ibid., p. 313.

(often using the formula *id quod plerumque accidit*),<sup>13</sup> he highlights that the positive law is always intelligible in a thymologic perspective. In his explicit purpose of applying Misesian methodology to law, Leoni discovers a praxeological dimension (the most theoretical part, coinciding with the analysis of the individual claims and their interaction), but also another thymological dimension (entirely depending on experience, common opinions and traditions).

His idea is that positive law has a strong relationship with customs. As practical activity, law must reduce uncertainty: it is for this reason that a creditor's claim is *legal*, because generally a debtor pays back what he has received, while the thief's claim is *illegal*, because generally people do not steal. The probabilistic analysis is purely empirical, but it is not unreasonable. Our behavior is led very often by the rationality of our past experiences and by our prejudices.

In this sense, Leonian theory of the individual claim is at the same time praxeological and thymological.

It is *praxeological* because it draws in a deductive way the theoretical conditions of the exchange and the meeting of different individual claims. When, in his writings, he opposes the point of view of the legal professionals (moving from the norms) and the perspective of the philosophers (interested in the origin of the rules), his aim is to reject the positivism prevalent in legal theory. He has the project of grasping the *a priori* categories—*à la* Reinach—subtending all legal orders. When he finds in the individual claim the starting point of a juridical relation, Leoni thinks he has understood a universal datum: his "demand and supply law." If prices emerge from the meeting of the actions of people supplying and demanding, the norms are the effect of the interaction of different claims. This is a universal regularity and, on this ground, he also develops his theoretical (praxeological) remarks about the relationship between legislation and living law, certainty and law, and so on.

But—as in Mises—this positive evaluation of praxeology does not imply a negative opinion of history or of the competence of

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<sup>13</sup>Translation: "what usually happens."

lawyers. On the contrary, Leoni has the ambition of describing the distinct but connected roles of every sphere.

For this reason, his theory is largely thymological when he remarks that, if it is true – as Mises says – that “thymology tells no more than that man is driven by various innate instincts, various passions, and various ideas,”<sup>14</sup> then it is evident that norms are accepted when they satisfy the claims, the principles and the desires largely shared in a specific society; and the law professionals are exactly well-informed about this peculiar and “local” environment. When Leoni emphasizes the qualities of the *ius civile* and the ancient common law, he aims to highlight the role of the lawyers and of all the people engaged in the solution to specific and concrete disputes.

#### *Positive Law and History*

This is a very important point in a large part of the philosophical tradition. The main Greek and medieval thinkers were clear about the link between natural law (universal) and the contingent (historically defined and, *lato sensu*, subjective) dimension of situations that we can understand only in specific contexts, as result of the cross of individual preferences.

In Aristotle, for instance, it is clear that there are some universal principles judging every positive law. This passage is very outspoken at this regard:

Universal law is the law of nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles’s Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she says that it was just by nature.

Not of to-day or yesterday it is,  
But lives eternal: none can date its birth.<sup>15</sup>

<sup>14</sup>Mises, *Theory and History*, p. 313.

<sup>15</sup>Aristotle, *Rhetoric*, 1373b.

At the same time, Aristotle holds the opinion that “there are two kinds of right and wrong conduct towards others, one provided for by written ordinances, the other by unwritten.” In the second group, a class “springs from exceptional goodness or badness” and it is related to honor, gratitude, friendship, and so on. But the other “makes up for the defects of a community’s written code of law. This is what we call equity.” This Aristotelian notion of *equity* is very important. And, at the same time, we have to perceive the relationship between this idea of equity (“the sort of justice which goes beyond the written law”)<sup>16</sup> and the idea of *phronesis*, as prudence and practical wisdom.

Equity and *phronesis* do not destroy the universal natural law, but they give us a way to understand how it can be possible to arrange some (difficult) situations. We can build a bridge from the natural law and the positive law of our – imperfect – relationship with the others. The perception of the human limits and the complexity of the world push us to appreciate the knowledge preserved by a complex system of legal notions, as developed through centuries of legal history.

For Aristotle, it was clear that a purely deductive method would not suffice to satisfy our exigencies.

Aquinas’s lesson moves in the same direction, as is clear in his distinguishing between Natural Law (*Lex naturalis*) and Human Law (*Lex humana*). If the moral principles of natural law are unchangeable and can be rationally investigated by moving from some solid axioms, human law is the consequence of cultural and historic contingencies. As *Summa Theologiae* says, “the natural law contains certain universal precepts which are everlasting, whereas human law contains certain particular precepts according to various emergencies.” At the same time, “nothing can be absolutely unchangeable in things that are subject to change. And, therefore, human law cannot be altogether unchangeable.”<sup>17</sup>

<sup>16</sup>*Ibid.*, 1374a.

<sup>17</sup>Saint Thomas Aquinas, *On Law, Morality, and Politics*, William P. Baumgarth and Richard J. Regan, eds. (Indianapolis-Cambridge: Hackett Publishing Company, 1988), p. 77.

Aquinas adds that “custom has the force of law, abolishes law, and is the interpreter of law.”<sup>18</sup> He accepts customary law because it has the approval of individuals: “because, by the very fact that they tolerate it, they seem to approve of that which is introduced by custom.”<sup>19</sup> This law that is dissolved in custom is not natural law, because Aquinas does not believe we can accept a legal order that has historically emerged if it is against justice; but historical evolution modifies positive law and even opens room for different interpretations.<sup>20</sup>

#### *Law and Interpretation*

In positive law, there is an essential function of interpretation, because there is always a distance between the norm and the cases in point. As Giorgio Agamben explains, “in the case of law, the application of a norm is no way contained within the norm and cannot be derived from it; otherwise, there would have been the need to create the grand edifice of trial law. Just as between language and world, so between the norm and its application there is no external nexus that allows one to be derived immediately from the other.”<sup>21</sup>

What’s the meaning of this? Using general rules in concrete and specific situations always implies a decision, and (at least hypothetically) an arbitrary power. The difference between the *law in the books* and the *law in action* is largely a consequence of this.

In many writings, Chaim Perelman remarks that legal logic is:

<sup>18</sup>Ibid., p. 80.

<sup>19</sup>Ibid., p. 81. As Anthony Lysska has pointed out, Aquinas “was aware of cultural diversity regarding mores.” Anthony J. Lysska, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction* (Oxford: Clarendon Press, 1996), p. 112.

<sup>20</sup>In the latest development of his theory, Leoni introduced an interesting notion when he spoke about the *a-legal* claims (in Italian, *pretese agiuridiche*). Thus, we have not only *legal* and *illegal* claims, but also some claims not completely accepted today, that in the future might be considered lawful and legitimate. See Bruno Leoni, “Appunti di filosofia del diritto,” in *Il diritto come pretesa* (Macerata: Liberilibri, 2004), p. 200.

<sup>21</sup>Giorgio Agamben, *State of Exception* (Chicago: The University of Chicago Press, 2005), p. 40.

a very elaborated, individual case of practical reasoning, which is not a formal demonstration, but an argumentation aiming to persuade and convince those whom it addresses that such a choice, decision or attitude is preferable to concurrent choices, decisions and attitudes.

Perelman adds: “what characterizes an argumentation is its non-constraining character.”<sup>22</sup> So, legal reasoning “is not presented as a formally valid deduction from non-temporal truths,” because “reasons considered good at one period of time or in one milieu are not in another; they are socially and culturally conditioned as are the convictions and the aspirations of the audience they must convince.”<sup>23</sup>

In spite of his disputable skepticism, Perelman is right when he points out that positive law is a “practical” activity, because it is a case-solving operation and often emerges from a transaction of different interests. To a large extent, law is not a science: it is a technique oriented to solving specific problems, because lawyers and judges do not search for the truth, but only the *legal* truth.

#### *Law and Intentionality*

If we analyze liability and causality in Rothbard, we have to recall the fundamental principles of the Austrian tradition.

In a recent article, Hans-Hermann Hoppe criticized his mentor and highlighted how it is contradictory to focus attention on the birth of property (with the homesteading of land) and then to exclude it, accepting a strict liability theory whose positivist and behaviorist origins are evident. Hoppe remarks that “homesteading implies intent,” a subjective element; on the contrary, Rothbard’s theory of causation and liability ignores this aspect.<sup>24</sup> Austrian School scholars emphasize the role of intentionality as a

<sup>22</sup>Chaim Perelman, *Justice, Law and Argument. Essays on Moral and Legal Reasoning*, with an Introduction by Harold J. Berman (Dordrecht: Reidel, 1980), p. 129.

<sup>23</sup>Ibid., p. 131.

<sup>24</sup>For Hoppe, in Rothbard there is “a strict liability theory.” Hans-Hermann Hoppe, “Property, Causality, and Liability,” *Quarterly Journal of Austrian Economics* 7, no. 4 (Winter 2004): 88–89.

crucial element at the moment of the origin of private property and of its negation (theft, aggression, etc.).

Not all physical invasions imply liability and, to the contrary, some actions are liable even if there is no physical invasion. In economics, Rothbard was perfectly aware of this and was always very critical of economic schools with positivistic leanings. In 1985, in the Preface to *Theory and History* by Mises, he attacks mainstream positivism, remarking that “to become truly scientific like physics and the other natural sciences, then, economics must shun such concepts as purposes, goals and learning: it must abandon man’s mind and write only of mere events.”<sup>25</sup> But the main mistake of the American scholar is in analyzing *only simple events*, avoiding the problem of *intentionality* and *subjective liability*, and the consequent need to understand a specific action – made by a particular person, in that one moment and context.

Hoppe is right when he notes a contradiction in Rothbard between this theory of strict liability and the defense of homesteading, which implies another vision of ethics and a different anthropology. When Rothbard condemns as aggression the act of a man claiming and occupying a land previously “homesteaded” by other people, his arguments call for a well-defined idea of morality that it is not consistent with that oversimplified and behaviorist theory of causality and liability.

#### AN ARISTOTELIAN-THOMIST LIBERTARIANISM

For all these reasons, the Thomist distinction between natural law and human law is fundamental, especially if by *lex humana* we do not conceive of the state law, but our ever-imperfect translation, into norms, of our aspiration to live in a just society. As Paul Sigmund correctly remarked, “*human law* is the application to *specific circumstances* of the precepts of reason contained in the natural law.”<sup>26</sup> This mediation is always unsatisfying, but at the same time necessary.

<sup>25</sup>Murray N. Rothbard, “Preface” to Mises, *Theory and History*, p. iii.

<sup>26</sup>Paul E. Sigmund, *Natural Law in Political Thought* (Cambridge Mass.: Winthrop, 1971), p. 39; the italics are mine.

Rothbard and Perelman make the symmetrically opposite mistake, because neither admits the autonomy of natural law and positive law. If Perelman reduces natural law to positive law (and reason to reasonableness), Rothbard reduces positive law to natural law (and reasonableness to reason). However, we have to admit the existence of a higher and objective dimension of law (where the rational method of Rothbard is justified) and of a much more prosaic and lower level, which can obtain many advantages from the dialogical and rhetorical approach used by Perelman.

The awareness of the need to mediate between the *a priori* principles of natural law and a largely inductive knowledge of the legal experience is not always present in Rothbard. But that’s why the intellectual heritage of Leoni can be useful in the attempt to develop a libertarian legal theory aiming to protect the dignity and freedom of the individual.<sup>27</sup>

If, in Rothbard, there is the risk of ignoring the specificity of legal reasoning, Leoni remarks on the empirical features of the law and adopts a Misesian standpoint in putting into the right perspective human experience and the role it plays in the practical unfolding of our existence.

Leoni perceives the importance of the *positive law*, also in a libertarian and anti-statist perspective. The vision of what is *just by nature* has to be rooted in a particular time, embodied in specific institutions and recognizable in many different situations. But the Italian thinker was quite aware that this proposal was a return to the old tradition of natural law. In a very interesting passage, he criticizes Kelsen, saying that sociology of law is “the modern heir of the natural law.”<sup>28</sup> And he specifies his idea in this way:

<sup>27</sup>In this sense, natural law has to be ever conceived in a strict relationship with the contingency of social reality. If all were governed by destiny, there would be no room for natural law (because its normative features imply human liberty). But at the same time it is true that the ever-changing character of social relationships forces natural law to have a specific link with history.

<sup>28</sup>Bruno Leoni, *Lezioni di filosofia del diritto* (Soveria Mannelli: Rubbettino, 2004), p. 160.

contemporary sociology of law schools can be considered, in a limited sense, and without the derogatory features used by Kelsen, the “modern heirs of natural law,” exactly because they are inclined to re-evaluate in “law” the element of the “persuasions” leading the action of people, instead of the “legal order” conceived as dogmatics did.<sup>29</sup>

#### CONCLUSION

In spite of his positivism, Leoni can help us grasp the true nature of classical natural law, because he does not prospect for a “libertarian code” like the one envisioned by Rothbard, somewhat conceived on the model of the state legal systems. On the contrary, *Freedom and the Law* can be the starting-point for a more “classical” understanding of libertarian natural law actually rooted in the Aristotelian-Thomistic tradition.

In other words, in Leoni there is a wide scope for juridical research and for historical evolution, because of his belief in a *living law* in continuous and close interaction with reality. The legal order has some “essential” elements, but it changes through time, and for this reason it requires constant and challenging work to adjust rules and behavior.

If we return to the classics, we can better understand the main problems.

Thomist rationalism moves from the awareness of reason’s limits. Sigmund highlights exactly this when he says that “Aquinas’s system of natural law is and must be incomplete. He could not admit the Aristotelian possibility that nature could provide fully for man’s fulfillment.”<sup>30</sup> Rothbard himself is not far from this when he points out that a rational approach needs an understanding of the structural imperfection of our minds: “No man is omniscient or infallible—a law, by the way, of man’s nature.”<sup>31</sup> But this observation has to have significant consequences for legal theory. ☞

<sup>29</sup>Bruno Leoni, “Oscurità ed incongruenze nella dottrina kelseniana del diritto,” in *Scritti di scienza politica e teoria del diritto* (Milan: Giuffrè, 1980) p. 202.

<sup>30</sup>Sigmund, *Natural Law in Political Thought*, p. 46.

<sup>31</sup>Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), p. 11.

## Why We Have Rights

Christian Michel

Rights are the means by which we can reasonably predict human behavior. Without predictability, the existence of higher life forms would be impossible. The water source should be found at the end of the same track beaten each morning; berries which have always been edible should not suddenly become poisonous; species which have never posed a threat should not suddenly become predatory. When humans or animals experience something that goes directly against fundamental expectations, stress and anxiety ensue, even when the consequences are not life threatening. The purpose of science and of gaining personal experience is to establish a chain of cause and effect with which we can then anticipate events. We can count on the bridge to bear our weight, the plane to defy gravity, and on drugs to cure us. Science boosts our sense of confidence in the world even if, through changing our environment, it itself, in turn, creates the unexpected.

The degree of confidence we have in our predictions diminishes when we are dealing with the behavior of higher life forms. Evolution programs in freedom; indeed freedom is fundamental to evolution. If in fleeing, antelope always veered to the right, their predators

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