

# Ludwig von Mises and Natural Law: A Comment on Professor Gonce

by Murray N. Rothbard

*Department of Social Sciences  
Polytechnic Institute of New York*

In an article on Ludwig von Mises,<sup>1</sup> Professor R. A. Gonce has performed a remarkable feat: for he has ascribed to a writer who has had nothing but scorn for natural law, a system of economics grounded on such an ethical philosophy – and as a corollary, he has attributed a fusion of the *is* and the *ought* to one of the most uncompromising champions of Max Weber's stern call for *Wertfreiheit* in the social sciences.

## I

Before turning to Professor Gonce's attempt to prove his surprising contention, let us examine a few of the numerous examples of Mises' hostility to natural law or to any fusion of the *ought* and the *is*.

Throughout his extensive writings, Ludwig von Mises makes crystal clear his adherence to the ethics and the political philosophy of Jeremy Bentham and of utilitarianism, a philosophy which, whether we cleave to it or not, is at diametrically opposite poles from the philosophy of natural law. Thus, Mises writes:

The teachings of utilitarian philosophy and classical economics [with which Mises makes clear that he agrees] have nothing at all to do with the doctrine of natural right. With them the only point that matters is social utility. They recommend popular government, private property, tolerance, and freedom not because they are natural and just, but because they are beneficial. . . . Bentham, the radical, shouted: "*Natural rights* is simple nonsense, natural and imperscriptible rights, rhetorical nonsense." . . . Accordingly, in investigating what ought to be right he does not care about preconceived ideas concerning God's or nature's plans and intentions, forever hidden to mortal men; he is intent upon discovering what best serves the promotion of human welfare and happiness. . . . The Utilitarians do not combat arbitrary government and privileges because they are against natural law but because they are detrimental to prosperity. . . . In rejecting the illusory notions of natural law and human equality modern biology only repeated what the utilitarian champions of liberalism and democracy long before had taught in a much more persuasive way.<sup>2</sup>

In several chapters on "value", Mises offers a virtually running attack on the concept of natural law and of the idea that science or reason can know the good. Thus: "It is useless to emphasize that nature is the ultimate arbiter of what is right and what is wrong. Nature does not clearly reveal its plans and intentions to man. Thus the appeal to natural law does not settle the dispute. It merely substitutes dissent concerning the interpretation of natural law for dissenting judgments of value. Utilitarianism, on the other hand, does not deal at all with ultimate ends and judgments of value. It invariably refers only to means."<sup>3</sup> And: "The science of law has nothing to say *de lege ferenda*, i.e., about the laws as they ought to be. . . . There is no such thing as a normative science, a science of what ought to be."<sup>4</sup> And again: "However a man may shine as a well informed expert, his judgments of value remain personal and subjective."<sup>5</sup> And further: "The characteristic mark of ultimate ends is that they depend entirely on each individual's personal and subjective judgment, which cannot be examined, measured, still less corrected by any other person. Each individual is the only and final arbiter in matters concerning his own satisfaction and happiness."<sup>6</sup>

Finally, Mises writes:

Various schools of thought parading under the pompous names of philosophy of law and political science indulge in futile and empty brooding over the delimitation of the functions of government. . . . They misconstrue their own arbitrary value judgments derived from intuition as the voice of the Almighty or the nature of things.

There is, however, no such thing as natural law and a perennial standard of what is just and what is unjust. Nature is alien to the idea of right and wrong. . . . The notion of right and wrong is a human device, a utilitarian precept to make social cooperation under the division of labor possible.<sup>7</sup>

All of this, of course, is the polar opposite of any natural law philosophy.

## II

Given Ludwig von Mises' ardent utilitarianism and his consistently harsh hostility to the concept of natural law, let us now see how Professor Gonce tries to justify his attempt to ground Mises' economic system in the "ideology" of a natural law philosophy.

First, Gonce states that Mises "knows" Greek philosophy and natural law philosophy and "refers to" and "cites" Aristotle, Seneca, Cicero, Fichte, Kant, Leibniz, *et al.* Surely, it is hardly necessary to be reminded that "knowing" and "citing" someone does not imply agreement with that person's doctrines; using the same method, we might "demonstrate" that Mises' frequent references to Karl Marx in his writings imply that he "knows" and hence agrees with Marxism. *How* then does Mises cite these natural law philosophers? Looking up Gonce's notes to Mises, we find that his major reference to Mises' "citations" is precisely the first Mises paragraph we have

noted above, in which Mises is highly *critical* of the natural law concept. Gonce states that Mises "notes that the liberal movement of the 18th and 19th centuries 'drew a great part of its strength from the doctrine of natural law.'" But what Gonce fails to add is that Mises then goes on to give the almost bitter denunciation of natural law that we have cited above.<sup>8</sup>

What of Gonce's other references to Mises' alleged "citations" and hence implied support to natural law? One turns out to be an attack on natural law which ends in our quote from Mises above to the effect that the concept of natural law is "useless."<sup>9</sup> In another Gonce reference, Mises indeed cites Epicurus, but as a precursor, *not* of natural law but of utilitarianism.<sup>10</sup> In another, Mises uses the term "the laws of nature" not in the sense of natural law philosophy but simply as the scientific laws of the universe.<sup>11</sup> In still another, Mises does refer to the "social philosophy of eighteenth-century rationalism," but *not* in the sense of natural law; again, he is referring only to the utilitarian advantages which the "scientific theory" of that rationalism along with classical economics demonstrates for peaceful social cooperation and the division of labor.<sup>12</sup> Again, in another reference, Mises' discussion of "liberal philosophy" deals with the utilitarian insight of the harmony of self-interest in a free-market society rather than with any concept of natural law.<sup>13</sup>

Gonce has several supporting references to Mises' book *Socialism*. But in the first, we find Mises indeed discussing natural law and Rationalism but only to attack them at length. Both the Fichtean theory of natural law and the social contract theory of natural law are attacked in force. ("The doctrine of natural law has erred . . ."; "Law, says the rationalist, has arisen from contracts; we say that Law is a settlement, an end to strife . . ."; "At the basis of both hypotheses lies the natural law view of the 'right that is born with us'. . . . We can no longer accept these views. . . . To us the idea of a human nature which differs fundamentally from the nature of all other living creatures seems strange indeed"; etc.<sup>14</sup>) In the second Gonce citation to *Socialism*, Mises is indeed discussing the individualist social philosophy of the Enlightenment, but again he is dealing with the utilitarian idea of the harmony of interests in society; in fact, he here attacks Kant's variant of natural law philosophy.<sup>15</sup> The same is true of Mises' third reference to classical political economy and the individualism of the eighteenth century; here he is dealing with the utilitarian "social function" of private property, and even cites the great utilitarian and anti-natural lawyer Bentham.<sup>16</sup> The next reference is a lengthy attack by Mises on Christian social philosophy and Christian Socialism; his reference to classical liberalism here is to the "rational enlightenment which dealt a death blow to the regime of the old Church. . . . It awakened forces which shook the foundations of the inert traditionalism on which Church and creed rested." Whatever this is, it is surely not an expression of a natural law position.<sup>17</sup> Next, Mises indeed discusses natural rights, but only to attack the socialist assertions of "basic economic rights" and "these alleged natural Rights of Man." In the same

section, he dismisses the classical liberal assertions of natural law and natural rights as insufficient, ceremonial, and not really legal or constitutional principles at all.<sup>18</sup> In the final Gonce citation, Mises does deal with natural law, but only to attack it once more. Here he denounces natural law, its theories "with regard to the inalienable right of human beings to self-determination," and its grounding in "the natural and inborn rights of man" as an argument for democracy. He also writes caustically that "the poverty of the natural law argument is exposed most clearly when it deals with the principle of equality."<sup>19</sup> We might add that Mises again "cites" Fichte and other natural law philosophers, but only to attack them: "It is vain to ponder over the just delimitation of the tasks of government from any preconceived standard of perennial values. It is no less impermissible to deduce the proper tasks of government from the very notions of governments, state, law and justice. It was precisely this that was absurd in the speculations of medieval scholasticism, of Fichte, Schelling, and Hegel, and of German *Begriffsjurisprudenz*."<sup>20</sup>

Brusquely dismissing what he calls Mises' "denial" that he is "using natural law thought" and that he is instead a utilitarian, Gonce asserts that "the reality of the argument constituting his system overwhelms his denial." Gonce then adds that "the magistral principle in his system is that natural laws do exist."<sup>21</sup> In support of this astonishing claim, Gonce cites four references in Mises' writings. But the first deals with "laws of nature" only in the sense of scientific laws of reality; an example Mises gives is the Ricardian law of comparative advantage. In no sense is this connected with the natural law philosophy that Gonce is attributing to Mises throughout, which, as Gonce's own account of natural law makes clear, deeply involves a philosophy of ethics that grounds the *ought* on the *is*.<sup>22</sup> In the second reference Gonce makes the very same error. Again, Mises is referring to the scientific laws of the world around us.<sup>23</sup> In his third reference, Gonce makes yet the same error, and this time Mises clearly sets forth his view of scientific "law" and the "laws of nature" in a way that should have put Gonce's misunderstanding to rest:

In speaking of the laws of nature we have in mind the fact that there prevails an inexorable interconnectedness of physical and biological phenomena and that acting man must submit to this regularity if he wants to succeed. In speaking of the laws of human action we refer to the fact that such an inexorable interconnectedness of phenomena is present also in the field of human action as such and that acting man must recognize this regularity too if he wants to succeed. The reality of the laws of praxeology is revealed to man by the same signs that reveal the reality of natural law, namely, the fact that his power to attain his ends is restricted and conditioned. In the absence of laws man would either be omnipotent . . . or he could not act at all.

These laws of the universe must not be confused with the man-made laws of the country and with man-made moral precepts. The laws of the

universe about which physics, biology, and praxeology provide knowledge are independent of the human will, they are primary ontological facts rigidly restricting man's power to act.<sup>24</sup>

To confuse scientific laws of reality with the natural law philosophy of ethics, as Gonce does, is surely intolerable. Or does Professor Gonce really hold that to believe in the existence of scientific laws of nature and reality is an "ideology"? Does he believe that man is omnipotent and unrestricted and can, e.g., fly by flapping his arms? Yet Mises has attempted in his system to develop "praxeology," a structure of economic laws that he believes has the same status as the scientific laws of reality. One does not have to hold that he has succeeded in this mighty task to affirm that he has not incorporated a natural law ethical philosophy into the base of his system.

Gonce's final support for natural law philosophy as a "magistral principle" in Mises' system is the very sustained attack on natural law that we have cited above! To repeat, this is the section in which Mises proclaims that "it is useless to emphasize that nature is the ultimate arbiter of what is right and what is wrong," in which he derides natural law ethics as "interpretation of the inner voice," in which he asserts that "there is no such thing as a normative science, a science of what ought to be," and in which he explicitly upholds the contrasting philosophy of utilitarianism, which "does not deal at all with ultimate ends and judgments of value" and which holds that "social utility is the only standard of justice."<sup>25</sup>

Gonce then proceeds to give an exposition of the Misesian system, during which he makes several more attempts to demonstrate its groundwork in natural law philosophy. First, Gonce maintains that Mises "accepts Epicurean ethics," an ethics that "must be grounded in the 'nature of man,' not in intuition." Gonce's evidence is twofold. First, that Mises holds that Epicurus inaugurated the "spiritual, moral and intellectual emancipation of mankind." Very true, but only because Epicurus was supposed to have led to utilitarianism, not natural law. For Mises proceeds to extol the idea that "law and legality, the moral code and social institutions . . . are of human origins, and the only yardstick that must be applied to them is that of expediency with regard to human welfare." He goes on to side with the utilitarians as against the natural law precept of *fiat justitia, pereat mundus*. Again, Gonce's own reference cuts against, rather than for, Mises' alleged groundwork in natural law.<sup>26</sup>

Gonce's second reference is Mises' alleged acceptance of an Epicurean ethics "grounded in the 'nature of man.'" It is true that Mises, in the passage in *Socialism* referred to, attacks any "absolute ethic" which is maintained "without reference to the nature of man and his life." But Gonce has completely ignored the context of Mises' discussion. Mises is concerned to combat various versions of an absolute ethic, and to counter them, not with natural law, but with a utilitarian version of a eudaemonist ethic that stresses each individual's attempt to pursue his "happiness" by advancing his

individual self-interest. In this section, Mises repeatedly links eudaemonism and utilitarianism, and indeed quotes Epicurus to utilitarian rather than to natural law effect. Mises adds: "The ethical valuation 'good' or 'evil' can be applied only in respect of ends towards which action strives. . . . Since action is never its own end, but rather the means to an end, we call an action good or evil only in respect of the consequences of the action." This is the opposite of natural law ethics, which emphatically includes evaluation of an action with regard to its nature.<sup>27</sup>

Next, Gonce declares that Mises, "exactly like Pufendorf . . . seeks to discover the nature of man by" the technique of the "imaginary construction" of Crusoe economics. While Pufendorf may have had this in mind, such is not the case with Mises. The technique of "imaginary construction" is the time-honored economic method of *ceteris paribus* analysis, since variables cannot be held constant in the real world. It has nothing to do with natural law. Again, in the passages cited by Gonce, Mises speaks not at all of the nature of man but of "a better comprehension of the problems of social cooperation" and that "in order to study interpersonal exchange it must compare it with conditions under which it is absent." Indeed, in two of the three passages cited by Gonce, Mises devotes considerable space to attacking the unwise application of the theory of the isolated individual indulged in by other economists.<sup>28</sup>

Gonce next asserts that Mises' praxeological laws of social cooperation are grounded in an ethical portrayal of the nature of man. Mises allegedly fuses the *ought* and the *is* by grounding these "plainly moral" laws on "primary ontological facts." It is true that Mises grounds praxeological laws as ontological facts, and in that way they have the same status as other scientific "laws of the universe." But are they "plainly moral"? Gonce has three supporting references. In the first, Mises writes of economic laws as scientific and universally valid, but there is not a hint of any discussion of morality.<sup>29</sup> In the second reference, Mises is saying precisely the opposite of what Gonce attributes to him. Far from claiming that economic laws are "plainly moral," Mises is here attacking at length any moral judgment by outside scientists or observers on the actions of individuals. He writes that economic science "does not presume to establish a scale of values or to make judgments of value"; he even goes so far as to attack any attempt by social science to distinguish "rational" from "irrational" action: "If we were to attempt to distinguish rational action from irrational action, we should . . . be setting ourselves up as a judge over the scales of value of our fellow men."<sup>30</sup> Gonce's final reference on this point does not deal at all with praxeological or economic laws; here Mises again repeats his adherence to utilitarianism, which does not look upon the rules of morality as absolute, but as simply rules for attaining an individual's desired ends through social cooperation.<sup>31</sup>

Gonce's next ascription of natural law to Mises is his alleged view that "the function of the state is to use positive law to enforce natural law" and

thereby become a "nightwatchman" state. But not only does Mises' adherence to the nightwatchman state not explicitly mention natural law; his whole thrust is diametrically opposed to a natural law groundwork, which would make such limitation of state functions a matter of principle. For Mises here denies any "aversion in principle" to state activity, and relies once again on utilitarian adherence to "rules of conduct whose observance is necessary to assure peaceful human cooperation."<sup>32</sup>

Finally, Gonce claims that since Mises' "sociology is a natural law philosophy," the latter begins with the conception of a "natural economy," which Mises simply "renames" as the "pure" or "unhampered" market economy. In Gonce's reference, however, far from simply "renaming" natural economy, Mises criticizes that concept at length. He interprets the concept as a theistic or deistic view of the phenomena of the universe as emanating from "the decrees of Providence" and as "evidence of the paternal care of the Creator of the universe." Mises leaves no doubt of his rejection of such concepts. In a later passage, Mises heaps further scorn on the concept of the "natural" as being harmonious. He writes that "men have prattled about the blissful conditions their ancestors enjoyed in the original 'state of nature.'" He speaks of the "myths" and "fables" of the "natural" as being good and beneficial. In contrast, Mises states, "nature does not generate peace and good will. The characteristic mark of the "state of nature" is irreconcilable conflict." Only the division of labor "removes the natural conflict of interests."<sup>33</sup>

We conclude that in each and every one of the references which Gonce cites in support of his contention that Mises upholds and grounds himself on the natural law philosophy, and indeed uses it as his "magistral principle," not a single reference bears out Gonce's position. In every one of his citations, Mises either explicitly denounces natural law philosophy with considerable bitterness and hostility, or he merely affirms a belief in scientific laws of reality; this is scarcely a natural law ethic, and can hardly be used to uphold Gonce's claim that Mises' economic system is grounded in natural law "ideology." We are forced to conclude that either Professor Gonce has willfully distorted Mises' position to support his own "ideological" dislike of Mises' classical liberal views, or that he is woefully ignorant of the polar difference between natural law and its mortal enemy, utilitarianism.

### III

There is no point in engaging here in a detailed critique of the numerous distortions in Professor Gonce's exposition of Mises' economic system. Two glaring errors, however, may be mentioned briefly. First, Gonce asserts that Mises "assumes" perfect competition in product and factor markets, assumes "perfect knowledge" (at least for Crusoe), and ignores "the problem of transaction costs." And yet one of the great contributions to micro-

economics by Mises and his follower F. A. Hayek is precisely their total rejection of the concept of perfect competition and of the whole static equilibrium model in which that concept is embedded. Mises and Hayek offer an entirely different, alternative view of competition as a market process, in which individuals, possessing necessarily "imperfect" information, attempt to improve themselves to learn more about supply and demand conditions, and to try to learn about and grasp market opportunities ahead of their competitors.<sup>34</sup>

Secondly, Gonce makes the astonishing assertion that Mises holds that "money, banks, and credit . . . contain no seeds of instability," and further claims that Mises' trade cycle theory "shows that the free market mechanism will automatically adjust prices to preclude serious trade cycles." Yet Mises' theory of money and the trade cycle is the precise opposite: for Mises maintains that the banks, by expanding the supply of money and credit, generate and are responsible for the trade cycle. Far from the free market "automatically adjusting prices," the continuing inflationary intervention by the banking system into the market distorts its signals and generates often severe trade cycles. Mises interprets the recession or depression period as the painful but necessary method by which the free market liquidates the distortions of the bank-generated boom and returns the market to consumer sovereignty.<sup>35,36</sup>

Thus, Professor Gonce has taken a writer distinguished for his opposition to the idea of perfect competition and for his banking theory of the business cycle, and construed him in precisely the opposite fashion. That he has done so demonstrates that Gonce is no more capable of comprehending a writer's economic theory than he is his social philosophy. The fact that Gonce's article was published in a distinguished economic journal says much about the parlous state of the discipline.

## NOTES

1. R. A. Gonce, "Natural Law and Ludwig von Mises' Praxeology and Economic Science," *The Southern Economic Journal* 39 (April 1973): 490-507.
2. Ludwig von Mises, *Human Action* (1949; reprint ed., Chicago: Henry Regnery, 1966), p. 175.
3. Mises, *Theory and History* (1957; reprint ed., New Rochelle, N.Y.: Arlington House, 1969), p. 49.
4. *Ibid.*, p. 55.
5. *Ibid.*, p. 63.
6. *Ibid.*, p. 13.
7. Mises, *Human Action*, pp. 719-20.
8. Gonce, *op. cit.*, pp. 493-94; see Mises, *Human Action*, p. 174.
9. Gonce, p. 493; Mises, *Theory and History*, p. 49.
10. Gonce, p. 493; Mises, *Epistemological Problems of Economics* (Princeton, N.J.: D. Van Nostrand, 1960), p. 151.
11. Gonce, p. 493; Mises, *Epistemological Problems of Economics*, p. 199.
12. Gonce, p. 493; Mises, *Human Action*, p. 146.
13. Gonce, p. 493; Mises, *Human Action*, p. 689.

14. Gonce, p. 493; Mises, *Socialism* (new ed., New Haven, Conn.: Yale University Press, 1951), pp. 43-46.
15. Gonce, p. 493; Mises, *Socialism*, pp. 64ff.
16. Gonce, p. 493; Mises, *Socialism*, pp. 311-12.
17. Gonce, p. 493; Mises, *Socialism*, pp. 423ff.
18. Gonce, p. 494; Mises, *Socialism*, pp. 48ff.
19. Gonce, p. 494; Mises, *Socialism*, pp. 71-72, 77.
20. Mises, *Human Action*, p. 721.
21. Gonce, p. 494.
22. Mises, *Epistemological Problems of Economics*, pp. 2-3. Gonce's description of natural law philosophy is on pp. 491-93.
23. Gonce, p. 494; Mises, *Epistemological Problems of Economics*, pp. 197-200.
24. Gonce, p. 494; Mises, *Human Action*, p. 761.
25. Gonce, p. 494; Mises, *Theory and History*, pp. 44-63.
26. Gonce, p. 494; Mises, *Human Action*, p. 147.
27. Gonce, p. 495; Mises, *Socialism*, pp. 399-403.
28. Gonce, p. 498; Mises, *Human Action*, pp. 165, 205-206, 243-44.
29. Gonce, p. 499; Mises, *Epistemological Problems of Economics*, p. 17.
30. Gonce, p. 499; Mises, *Epistemological Problems of Economics*, pp. 32-35.
31. Gonce, p. 499; Mises, *The Ultimate Foundation of Economic Science* (Princeton, N.J.: D. Van Nostrand, 1964), p. 105.
32. Gonce, p. 501; Mises, *The Free and Prosperous Commonwealth* (Princeton, N.J.: D. Van Nostrand, 1962), pp. 37-38.
33. Gonce, p. 502; Mises, *Human Action*, pp. 238-39, 673.
34. Gonce, pp. 498, 502. For a work explicitly developing this alternate Misesian view of competition, entrepreneurship, and the market economy, see Israel M. Kirzner, *Competition and Entrepreneurship* (Chicago: University of Chicago Press, 1973).
35. Gonce, p. 502. The literature by Mises and his followers on the trade cycle is rich enough not to warrant numerous citations here.
36. Since Gonce is preoccupied with the "a priori" and the "empirical" in Mises, we might mention here an amusing instance in which Gonce asserts that Mises "sought to convert to an a priori status some empirical assumptions first made by earlier economists", e.g. the law of diminishing marginal physical productivity. Yet, in this respect at least, Mises was anticipated by an economist who was decidedly not a disciple, Mrs. Joan Robinson. Robinson's restatement of this law was decidedly praxeologic, or what Gonce would call "a priori": "A moment's reflection will show that what the Law of Diminishing Returns really states is that there is a limit to the extent to which one factor of production can be substituted for another, or, in other words, that the elasticity of substitution between factors is not infinite. . . . The Law of Diminishing Returns then follows from the definition of a factor of production, and requires no further proof." Joan Robinson, *The Economics of Imperfect Competition* (London: Macmillan, 1933), pp. 330-31. If factors of production do exist, then this law is not "a priori" in the strict philosophical sense, although it is prior to the data of economic history that economists usually define as "empirical."