



HAYEKIAN LIBERALISM EXPRESSED IN SPEECH MADE US RICH AND FREE

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We liberals such as Hayek, liberals in the old and true sense, miss the main source of liberalism's enriching goodness.

We tend to think that the liberal order is mainly founded on its black-letter laws, its constitution, its "rules of the game," in the unhappy phrase of the economist and Nobel laureate Douglass North.¹ We devise legal tricks to constrain people, and think of institutions therefore as wordless budget constraints in the style of orthodox, Samuelsonian economics. Hayek fell into such a thought

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¹ Douglass C. North, *Institutions, Institutional Change and Economic Performance* 3 (Cambridge 1990); Douglass C. North, *Institutions*, 5 *Journal of Economic Perspectives* 97, 98 (Winter 1991).

from time to time, though he often thought his way out of it. His master Ludwig von Mises vacillated as well.

But as Donald Trump's régime vividly reminds us, laws and constitutions, whether black-letter explicit or English-ly tacit, live on the lips of people. Judges, for example. Or attorney's general. Or entrepreneurs.

Such a claim will sound to some of you mushy and feminine. You wish to be tough and Hobbesian, and want to follow the master's claim that "the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power." "Covenants, without the sword, are but words, and of no strength to secure a man."² Game theorists in economics despise talk as "cheap."

Confident though they are in their no-language lemma, political scientists like Barry Weingast, Hobbes, and the game theorists of Samuelsonian economics are mistaken that words are too weak and have no strength.³ Consider your own motivations, for example, or the motivations of Barry himself, to be a serious and courageous scholar, or for you to be an honest and professional lawyer, or a true and just friend.⁴

And soft and feminine or not, the proposition that words matter, though are not sufficient if not backed by ethics – as against a backing by the Leviathan's monopoly of violence – has the special merit of being true. I do not think that law or the economy could work for another ten minutes without what linguists call "pragmatic" agreements, which are merely one form of ethics, honoring self and others and the transcendent. They are not rules of the game, mere

² Thomas Hobbes, *Leviathan* 71, 87 (Dent 1914).

³ See Barry Weingast, *Exposing the Neoclassical Fallacy: McCloskey on Ideas and the Great Enrichment*, 64 *Scandinavian Economic History Review* 189, 196 (2016).

⁴ See Deirdre Nansen McCloskey, *Neo-Institutionalism is Not Yet a Scientific Success: A Reply to Barry Weingast*, 65 *Scandinavian Economic History Review* 116, 119 (2017).

budget constraints. They are the creative dance of humans: “O body swayed to music, o brightening glance. / How can we know the dancer from the dance?”

In the morning before the Hayek Lecture I went in search of a computer mouse on 6th Avenue. The hotel told me to go uptown a bit to find a stationery store on the left. I stopped in a hardware store. “We sell nails and hammers, not computers,” said the owner. His friend chatting with him was more kindly helpful: “Go to 14th and turn left, second store.” I caught the mouse in the end, with the cooperation of a half-dozen New Yorkers. That is, in my experience now and on earlier occasions, New Yorkers, contrary to the cynical clichés, or indeed the black-letter law governing their behavior, are sweetly helpful even to Chicagoans, at least when they are not making gentle fun of people from the sticks. It is a dance of language and human engagement.

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Does it matter? Yes. Here in detail is one way of showing it.⁵

A quarter of labor income is earned by persuasion, that is, from merely bourgeois and feminine persuasion—not orders or information or compulsion or law but persuasion, changing minds—“sweet talk,” you might say. The Indo-European root behind both Latin (*per*)*suadeo* and the Germanic words for “sweet” is the same (Dutch *soet*, for example), to be contrasted with “convince,” from Latin *vincere* for “conquer.”

One thinks immediately of advertising, but advertising is a tiny part of the total. Advertising, which is commercial free speech,

⁵ The showing was first in Arjo Klamer and Deirdre Nansen McCloskey, *One Quarter of GDP is Persuasion*, 85 *American Economic Review* 191 (1995). I keep thinking on it, as in Deirdre Nansen McCloskey, *A Kirznerian Economic History of the Modern World*, in Warren Brice Palmer, ed., 3 *The Annual Proceedings of the Wealth and Well-Being of Nations* 45 (Beloit: Upton Forum 2010-11).

enrages the clerisy because the clerisy doesn't like the tasteless stuff bought by *hoi polloi*, not one bit. It has been saying since Veblen and Galbraith and Vance Packard that The Many are in the grips of a tiny group of advertisers, who fool them into buying. So the purchases of Coke and gas grills and automobiles are the result of hidden persuasion or, to use a favorite word of the clerisy, an amazingly efficacious "manipulation."

To a Marshallian/Austrian economist the peculiarly American attribution of gigantic power to thirty-second television spots is puzzling. If advertising had the powers attributed to it by the clerisy, then unlimited fortunes could be had for the mere writing. Yet advertising is less than 2 percent of gross domestic product, and much of it is uncontroversially informative: shop signs, entries on web pages, ads in trade magazines aimed at highly sophisticated buyers. When Packard in 1957 published his attack on commercial free speech, *The Hidden Persuaders*, he thought he would lose his friends on Madison Avenue. But they were delighted. An account-executive friend would come up and say things like, "Vance, before your book I had a hard time convincing my clients that advertising worked. Now they think it's magic."

How big, then, is sweet talk, and its evil twin, veiled threats of dismissal? Here's one way to find out. Take a list of detailed categories of employment and make a guess based on common sense as to the percentage of the time in each that is spent on persuasion. For example, read down the roughly 250 occupations listed in "Employed Civilians by Occupation" (table 602) in the *Statistical Abstract of the U.S.* (2007, for the year 2005: these things change slowly) looking for the jobs that involve a good deal of sweet-talking, or on the contrary the jobs without any.⁶ The 125,000 "appraisers and

⁶ U.S. Census Bureau, *Statistical Abstract of the United States: 2007* at 388 (Government Printing Office 2006).

assessors of real estate” are not, in an honest economy, open to human persuasion, as any American knows who has had a house appraised. The 243,000 firefighters also just do their jobs, with little talk—although one sees here the depth of sweet talk in a modern economy, or for that matter a non-modern economy, because of course a firefighter in a burning building actually does a good deal of talking, and sometimes engages in urgent persuasion. The 121,000 aircraft pilots and flight engineers persuade us to keep our seat belts fastened until the plane arrives at the gate and the seat-belt sign is turned off. That’s a very small part of their job, but think of the supervisory roles they often assume as captains, and the sweet talk needed to keep the crew cooperating, and the numerous disasters attributable to cultural differences in talking persuasively to the control tower. The straight talk common to the West is often seen as impolite in the East, and there are documented cases of crashes caused by squeamishness about appearing to be too abrupt in speech. The 1,491,000 construction laborers are not known for persuasive language, except in the old days when a pretty girl walked by, such as Dil in the movie “The Crying Game.” But anyone who has actually worked in such a job knows the necessity of getting cooperation from your work mates, persuading the boss that all is well, being a regular guy or gal. It’s sweet talk. But set such jobs aside.

Out of the 142 million civilians employed in 2005 it seems reasonable to assign 100 percent of the time of the 1,031,000 lawyers and judges to persuading, preparing to persuade, or being an audience for persuasion; and likewise that of the 154,000 public relations specialists and the large number of “social, recreational, and religious workers,” such as counselors, social workers, clergy—a total of 2,138,000 of them persuading people how to live. All right: as low as 90 percent—but very high.

Managers and supervisors of various sorts are the biggest category to which it seems reasonable to assign a lower but still high figure, say, 75 percent of income earned from sweet talk. In a free society the workers cannot be peremptorily ordered about and beaten with knouts if they do not respond. They need to be

persuaded. What the U.S. Census Bureau styles “managerial occupations,” such as George Halvorson, once chairman and CEO of Kaiser Permanente, or Daniel R. McCloskey, once senior national accounts manager for Illy Coffee North America, are a massive 14.7 million, fully 10 percent of the labor force. The “first-line supervisors” scattered over all sectors (construction, personal services, gambling)—whom I suppose similarly to be earning 75 percent of their income from persuasion—add another 5.5 million. Add a further 380,000 for personal financial advisors, plus the 150,000 editors and (merely) 89,000 news analysts, reporters, and correspondents—bearing in mind the explosion, since 2005/2007 and thus not included in these figures, of bloggers and other self-employed journalists vying for attention with their own sweet talk. Journalists mostly imagine themselves to be doing straight reporting, but it doesn’t take much rhetorical education to realize that they must select their facts persuasively and report them interestingly in sweet words. Likewise, the enormous category of salespeople (13.4 million, which excludes the 3.1 million cashiers), though also present to prevent shoplifting, can reasonably be accounted as 75-percent sweet talkers. “The dress is you, dear.” It may even be true. In my experience, actually, it usually is. After the strange suspicions about rhetoric initiated by the hard men of the 17th century we exaggerate the amount of lying that salespeople engage in, at any rate in a society that values ethical behavior in such matters.

Among 50-percent persuaders we can count loan councilors and officers (429,000: as with judges in courts of law, they are often professional audiences for persuasion, saying yes or no after listening to your sweet talk and gathering your information); human resources, training, and labor relations occupations (660,000: “Mr. Babbitt, I just don’t think you have much of a future at Acme”); writers and authors (we are merely 178,000, but again think of the tens of thousands of people who work at it in blogs and writers’ groups without publication, though also without payment that would figure in national income); claims adjusters and investigators (303,000); and, a big category, the 8,114,000 educational, training, and

library occupations, such as college professors (we are 1.2 million alone) and nursery-school teachers.

Perhaps a mere quarter of the effort of the 1,313,000 police and sheriff's patrol officers, detectives and criminal investigators, correctional officers, and private detectives is spent on persuasion, though the ones I've talked to put the figure higher. Look at the difference from one night to the next in the persuasiveness in 2014 of the police in Ferguson, Missouri.

In health care, as anyone who has worked in it knows, sweet talk is important – advocating for the patient, getting him to stay on his blood-pressure medicine, talking sweetly with other caregivers, dealing with insurance companies and hospital administrators (some of whom are included above in the managerial category). In the large category “health care practitioners and technical occupations,” we can remove from the realm of persuasion the technical occupations – x-ray technicians, medical records technicians, and so forth – although even these can't merely silently work, if they work well. The technician at the eye doctor keeps saying to you, “Good, that's right. Turn your head up a little. Good.” Sweet talk. For the physicians, dentists, nurses, speech pathologists, and so forth who actually talk to patients at some length and to each other – a total of 7,600,000 health-care talkers – it seems reasonable to say that persuading accounts for a quarter of their economic value. Perform a mental experiment: try to imagine a speech pathologist – an occupation I know well – with no persuasive skills whatever, a mere transmitter of the information that, say, a child need not be ashamed of being a stutterer considering that Winston Churchill and Margaret Drabble and Marilyn Monroe were stutterers too. Imagine how much less valuable she or he would be without sweet talk. The 353,000 paralegals and legal assistants count in the one-quarter category, too. A quarter sounds low.

The occupations mentioned, alone, without hunting in putatively non-persuasive categories such as mail carriers or bus drivers or “life, physical, and social science occupations” (within which are classed many of the persuasive economists and law

professors themselves), amount to 36,100,000 equivalent workers (that is, the number of 90-percent persuaders multiplied by 0.9, 75-percenters by 0.75, 50-percenters by 0.5, and one-quarter folks by 0.25, all added up). For 2007 (to which I am applying the 2005 job categories), that's an astonishing quarter of the income-earning private employees in the United States. It would be higher in 2019. And it would be much higher if weighted instead by dollar incomes, considering the big number of managers and supervisors (about 20 million, remember, out of the 142 million workers. Managers are, of course, highly paid compared to the people they persuade to work hard.

In short, a quarter of our labor incomes is a lower bound attributable to sweet talk. Similar calculations for 1988 and 1992, using the slightly different categories available for those years, yielded similar results. Somewhat surprisingly the weight of sweet talk in the economy does not seem to have much risen 1988/1992 to 2007—though if police and health-care workers were put in the 50-percent category, and educators in the 75 percent, as the earlier 1988/1992 calculations assumed, the share of persuasive work in 2005 would nudge up to 28.4 percent of the total. The Australian economist Gerry Antioch has redone the figures for the U.S., and for 2009 arrives at 30 percent.⁷

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The calculation could be improved with more factual and economic detail. For instance, as I just said, the workers could be weighted by salaries. The marginal product of persuasion could be considered in more detail. The occupational categories could be

⁷ Gerry Antioch, *Persuasion is Now 30 Per Cent of US GDP: Revisiting McCloskey and Klamer after a Quarter of a Century*, 1 *Economic Roundup* 1 (2013), archived at <https://perma.cc/3AL2-WZ5F>.

subdivided. The premium for better persuasion could be estimated from sales commissions or promotions. One way of backing up the estimates from the detailed occupational categories would be to do in-depth interviews, probing in each job for sweet talk—as against mere information or coercion or physical activity—by riding along in squad cars and listening and watching. The managers likewise could be shadowed. It is what the economist Ronald Coase did during the early 1930s, and discovered transaction costs. David Lodge’s novel *Nice Work* shows an English professor, Robyn Penrose, realizing that the managing director she was assigned to shadow was first and last a persuader:

It did strike [her] sometimes that Vic Wilcox stood to his subordinates in the relation of teacher to pupils. . . . She could see that he was trying to teach the other men, to coax and persuade them to look at the factory’s operations in a new way. He would have been surprised to be told it, but he used the Socratic method: he prompted the other directors and middle managers and even the foremen to identify the problems themselves and to reach by their own reasoning the solutions he had himself already determined upon. It was so deftly done that she had sometimes to temper her admiration by reminding herself that it was all directed by the profit-motive.⁸

Coercion, as against persuasion, is in most rich places less prevalent now, in some ways, than it was in the same places in the eighteenth century. True, coercion in taxation is much higher—try persuading the IRS to make a special exception for you. But slaves or some servants in husbandry were once coerced. On the other

⁸ David Lodge, *Nice Work* 219 (Penguin 1990).

hand, in olden days a self-employed yeoman farmer or even a farmhand—categories that together would describe in, say, 1800 most of the free people—was not much coerced or supervised. Silas in Robert Frost's poem "Death of the Hired Man" makes his hay load skillfully in his own way, and "He's come to help you ditch the meadow. / He has a plan. You mustn't laugh at him." So it's not clear how the long-run balance of compulsion and autonomy has changed. Yet even inside the bureaucracies of the modern state, financed by the compulsion of taxes, sweet talk figures largely, and orders and compulsion are correspondingly lower.

On balance the sweet-talking share of labor income was probably smaller before the Great Enrichment raised real income 1800 to the present by its astounding 3,000 percent. A manager did not have to be a David-Lodge teacher. He or she could simply be a tyrant. Commanding Lieutenant (not yet Captain) William Bligh of the *Bounty* is supposed to have been a case in point, "that *Bounty* bastard," as the sailors later called him in extenuation of their mutiny. (His actual fault appears to have been a discipline-wrecking indulgence toward his crew's desire to linger among the pleasures of Tahiti.) The captain even of a merchantman, still more of one of His Majesty's warships, expected instant obedience, necessary when rounding the Horn in a force-9 gale. The monastic Rule of Benedict required immediate, pride-fighting obedience. Occupations that depended on sweet talk were fewer in olden days. In future days they will be more and more numerous, until all humans will work at sweet talk, using judgment as against making things and providing services.

The result can be checked against other measures. John Wallis and Douglass North reckoned that 50 percent of American national income was Coasean transaction costs, the costs of persuasion being

part of these.⁹ Expenditures to negotiate and enforce contracts—the Wallis-North definition of transaction costs—rose from a quarter of national income in 1870 to over half in 1970. Their measure is not precisely the one wanted here. Their transactions costs also include, for example, “protective services,” such as police and prisons, some of whose income (I am claiming three-quarters of it remaining after sweet talk) is “talk” only in an inappropriately extended and sometimes physically violent sense. Literal talk is special—in particular it is cheap or free in opportunity cost, as guns and locks and walls are not—in a way that makes it analytically separate from the rest of transaction costs.

The same point can be made from another side of the national accounts, the product side. The more obviously talky parts of production amount to a good share of the total, and much of these entail persuasion rather than information or command. Out of an American domestic product of \$11,734 billion in 2004 one can sort through the categories of value added at the level of fifty or so industries, assigning rough guesses as to the percentage of sweet talk produced by each—80 percent for “management of companies,” 20 percent for “real estate rental and leasing,” 40 percent for “art and entertainment,” for example—and get up to about 17 percent of the total.¹⁰ The figure squares crudely with the income side. Anyway, persuasion is big, very big.

Not all the half of American workers who are white-collar do sweet talk for a living, but many do, and more do as office work gets less physical. Office work in the age of word processing has moved far from physical typing and filing and copying done by women, not

⁹ John Wallis and Douglass C. North, *Measuring the Transaction Sector in the American Economy*, in Stanley Engerman and Robert E. Gallman, eds., *Long-Term Factors in American Economic Growth* 98, 120 (Chicago 1986).

¹⁰ Census Bureau, *Statistical Abstract* at 430 (cited in note 6).

to speak of the earlier transition from Barnaby Bartleby the Scrivener or Scrooge's Bob Cratchit on a high stool. So, for that matter, have many blue-collar jobs come to involve sweet talk, such as warehousemen persuading each other to handle the cargo just so, and as have pink-collar jobs, such as waitresses dealing all day with talking people. Debra Ginsberg in her memoir *Waiting: The True Confessions of a Waitress* (2000) shows that the first minute of contact with the customers is a little stage show, and determines the tip.¹¹ It's not "mere" talk. It's part of the dining experience, even in a diner. A good percentage of such talkers are persuaders. The secretary shepherding a document through the company bureaucracy is often called upon to exercise sweet talk. If she can't use sweet talk, sweet or not-so-sweet, to bend the official institutions of her bureaucracy she's not doing her job. The bureaucrats and professionals who constitute most of the white-collar workforce are not themselves merchants, but they do a merchant's business of persuasion inside and outside their companies.

A thorough survey of seven thousand workers in the United States by Daniel Pink confirms the result, as reported in *To Sell Is Human: The Surprising Truth about Moving Others*. "Across a range of professions," he writes, "we are devoting roughly 24 minutes of every hour to moving others" in non-sales sweet talk, that is, without a purchase. He asked, "What percentage of your work involves convincing or persuading people to give up something they value for something you have?" and got the reply of 41 percent. "The capacity to sell isn't some unnatural adaption to the merciless world of commerce. . . . Selling is fundamentally human."¹² Humans have always made decisions on where to go next to hunt and gather, or to

¹¹ Debra Ginsberg, *Waiting: The True Confessions of a Waitress* 242 (HarperCollins 2000).

¹² Daniel H. Pink, *To Sell is Human: The Surprising Truth About Moving Others* 7 (Riverhead 2012).

which port to take the olive-oil-filled amphorae. The decisions are not always those of a tyrant in a centralized bureaucracy who won't take counsel, such as the worst of university provosts or military generals. In free societies, whether during our long past as hunter-gatherers before agriculture or during our manufacturing-and-services present, sweet talk rules.

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The limits and patterns of human speech do of course limit and give pattern to the economy. Some conversations are impossible in humans. At the most abstract level, some sort of Chomskyan limits of deep structure might possibly apply, though it seems doubtful. Perhaps there are deals, orders, desires, plans that would be possible in a language of another species but are interestingly impossible, or at any rate difficult, in human language. Beings that were not differentiated individually, for example, would find orders naturally persuasive in a way that humans do not. Wittgenstein said that "to imagine a language is to imagine a form of life."¹³ He might as well have said that to imagine a form of life is to imagine a language. "It is easy," he remarked in the same place, "to imagine a language consisting only of orders and reports in battle." An army that is something other than a gang of Homeric heroes clashing one-on-one in single combat is a form of life that responds to particular orders issued by particular people. The phalanx on the left flank moves when the *strategos* speaks, as though it were an organism and not a collection of free citizens of Athens.

But the binding constraints are much more likely to be matters of pragmatics and socio-linguistics, formed in by the invisible hands of social life, than matters of syntax and vocabulary. I have a friend, a

¹³ Ludwig Wittgenstein, *Philosophical Investigations* 19 (Blackwell 1963) (G.E.M. Anscombe, trans.).

Dutch woman, who built a vacation home on a Greek island. She found that within Greek society it was impossible, simply impossible, for a woman to tell a male contractor what to do. Her contractor ignored her requests, and she was forced to hire *another* Greek, a man, to give the orders. Even that did not work perfectly: her indirectly transmitted order to have large waste pipes for the toilets was ignored, with the result that—as is common practice in rural Greece—her soiled toilet paper is not flushable. There's an economic effect.

The formal attempts to extract any interesting constraints that language places on economic behavior from sheer logic or even from an enriched logic of the rules which linguists call conversational implicatures has not borne fruit, and seems unlikely to. The attempt of the game theorist Ariel Rubinstein to do so shows how little can be expected even from very canny ruminations on evolutionarily stable strategies or a supposition that the equation $\psi = [\varphi(x,y) \wedge \varphi(y,z) \wedge T] \rightarrow \varphi(x,z)$ is a tautology. When Thoreau was told by an admirer of the new telegraph that “Maine could speak to Texas,” he replied, “But does Maine have anything to say to Texas?”

Yet economics still has something to say. To Texas. The great American economist and rabbi, Israel Kirzner, put his finger on what a free society achieves, from which we can understand how meaningful language works in one. “It [is] highly desirable to choose among alternative social arrangements those modes of organization that minimize [ignorance of knowledge that can be absorbed without decision and search, by the sheer noticing of it]. . . that is, those modes of organization that generate the greatest volume of spontaneous, undeliberate learning.”¹⁴ His assertion runs against the love of explicitness in modern life, the proliferation of handbooks on

¹⁴ Israel M. Kirzner, *Perception, Opportunity and Profit: Studies in the Theory of Entrepreneurship* 145, 147 (Chicago 1979).

leadership and of axiomatizations of thinking. Surely, the handbook-writer avers, we need to transmit through a conduit to the student's mind numerous bits of information, and if this can be centrally planned, all the better. Every schoolchild in France is on the same page at the same hour of the same day, thanks to the planners in Paris. But real innovation, Kirzner is saying, entails real ignorance, that is, "knowledge about which nothing is known."¹⁵

It can be put economically: *known* knowledge (shades of Donald Rumsfeld) earns its normal reward. If you know how to read a balance sheet you do not on that account alone become Warren Buffett, because so many other people know how to read a balance sheet. *Unknown* knowledge, on the other hand, generates supernormal profits. When sometime before 1211 an anonymous Florentine invented the idea of a double-entry balance sheet, then he, or his Italian imitators, could pick up the profit from the innovation, and did.¹⁶ Once the reading of balance sheets was widely known, however, the supernormal profits fell to zero.

It is still a good idea for people to learn to read balance sheets, engaging in "search" that has a known reward to the MBA graduate or law student who engages in it. The opportunity cost of such searching may be good for the society, as against a worthless search for, say, learning to read the stars astrologically. But it is not an innovation. National income does not actually fall, since learning to read balance sheets has a marginal product equal to its opportunity cost, at the margin, and therefore has intra-marginal gains ("rents" economists call them, if not the "supernormal" profit of real entrepreneurship), whereas learning to read the stars does not. The

¹⁵ Id. at 144.

¹⁶ See Iris Origo, *The Merchant of Prato: Francesco di Marco Datini, 1335-1410* 109 (Nonpareil 1957).

intra-marginal reward to routine learning sustains the national income. As a matter of fact, as an economist can persuade you in one of her maddening diagrams, it simply *is* the national income. But national income will not *rise* unless the innovation is Kirznerian.

"The ease of calculation provided by money," writes Kirzner, "is thus not merely a device for lowering transaction costs relevant to deliberate search," as the Samuelsonians and their brothers the Northian Neo-institutionalists claim.¹⁷ "It represents a social arrangement with the ability to present existing overlooked opportunities in a form most easily recognized and noticed by spontaneous learners." Thus entrepreneurship and all our joy.

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The Hayekian analysis that Kirzner offers is correct so far as it goes. What is missing from it, however, is language. The alertness that Kirzner thinks of as the essence of entrepreneurship involves language in its fulfillment. Unfulfilled, it is just another bright idea. The necessary, next entrepreneurial step—which Kirzner does not treat—of persuading oneself, a banker, a supplier, an employee, a customer, oneself is rhetoric all the way down. In consequence a community of free speech briefly unique to Northwestern Europe after 1700 or so, for example, "represents a social arrangement with the ability to present existing overlooked opportunities in a form most easily recognized and noticed by spontaneous learners" that Kirzner spoke of. The cultural economist Tyler Cowen has noted that there is an odd omission in Kirzner's view of entrepreneurship, namely, that it does not involve the audience for the acts of discovery. After all, it is the applause of consumers that determines which innovation, or which artistic or scientific advance, continues to

¹⁷ Kirzner, *Perception, Opportunity, and Profit* 150 (cited in note 14).

evolve. Kirzner and Immanuel Kant, Cowen notes, both sought a “law without a law” (as Kant put it) to leave a space for a creativity necessary to make sense of the modern world, and both therefore focus on the artistic “genius” or the economic “entrepreneur.”¹⁸ But “ironically Kant’s notion of genius is more consumer-oriented and more demand-oriented”¹⁹ than is that of the liberal economist Kirzner. “Kant starts first with the ‘consumer’ (i.e., audience) judgment of the product of the genius.”²⁰ What the Kirznerian argument needs is a role for the rhetor’s audience, the hermeneutics, listening.²¹ The free play of imaginative faculties that Kant and Kirzner join in admiring are neither purely objective nor purely subjective, as Cohen points out. They are, to coin a word, “conjective,” or as Cowen puts it “relative to human purpose.”

The crucial point was discovered in 2007 by Sarah Millermaier, arguing in the way of Jürgen Habermas that communication is after all a *cooperative* game.²² To put it in Cowen’s way, it is a real conversation, “communicative action” in Habermas’ words, which “specifies which validity claim a speaker is raising with his utterance, how he is raising it, and for what.”²³ I would say that a real conversation entails serious and self-conscious rhetoric and

¹⁸ See Tyler Cowen, *Entrepreneurship, Austrian Economics, and the Quarrel Between Philosophy and Poetry*, 16 Rev. Austrian Econ. 5, 12-15 (2003).

¹⁹ Id. at 12

²⁰ Id.

²¹ See Donald Lavoie, *The Discovery and Interpretation of Profit Opportunities: Culture and the Kirznerian Entrepreneur*, in Bridgette Berger ed., *The Culture of Entrepreneurship* 33, 42-46 (Institute for Contemporary Studies 1991).

²² Sarah Millermaier, *If the Bourgeoisie are So Virtuous, Why Don’t English Professors Think So? Anti-linguistic “Virtue” in an Age of Corporate Ethics* (unpublished paper for Communications 594 The Economy and Language, U. Ill. Chi., 2007) (on file with author).

²³ Jürgen Habermas, 1 *The Theory of Communicative Action* 278 (Beacon 1984) (Thomas McCarthy, trans.).

hermeneutics, the two sides of speech. What Habermas calls "strategic" speech is on the contrary a reading *through* the speech to the "underlying" interests. It is speech meant to achieve a result external to the practice (to use, as Millermaier does, the language of still another student of these matters, Alasdair MacIntyre). Millermaier observes—and here with MacIntyre and myself—that the conversation must be ethical and the ethics must be of the virtues. Therefore what I am calling "real conversation" must draw on the seven principle virtues.²⁴

Think of an academic discussion—perhaps one showing that finding out how language works in an economy will adumbrate a humanistic science of economics going far beyond the prudence-only, Benthamite-Samuelsonian routine on which economists have been grinding for so long. Imagine contrary to the urgings of Rawls or Habermas or MacIntyre or McCloskey that the main speaker is *not* trying earnestly to uncover the truth, say, or to learn from the audience by listening, really listening to it. Suppose instead that she is focused entirely on some result external to the practice of serious scientific inquiry—getting a job offer that will raise her salary at home, perhaps; or demonstrating to the admiring audience how very intelligent she is. Imagine that the audience is similarly engaged in a non-cooperative game. Such boys' game may be fun to play. But they are not serious conversations, not science—except in those cases in which the science is run on boys' rules, and even then likely to be wrecked by defections.

If speech is merely tactics in a non-cooperative game, then the only virtue in play is prudence. Every attempt to characterize speech by a well-trained Samuelsonian economist is going to reduce it to such prudent tactics. Economics is after all the pure theory of

²⁴ See generally Dierdre McCloskey, *The Bourgeois Virtues: Ethics for an Age of Commerce* (Chicago 2006).

prudence. It is natural to the rhetoric of economics since Bentham and especially since Samuelson to imagine that all behavior is reducible to that of the charmless, unloving, and above all calculating fellow, Mute Max U.

Millermaier's point is that such a reduction is corrupting of real conversation. It makes impossible the mutual formation of meaning which much of our economic life is about, and depends on. We engage in polite chatting around the water cooler and are able thereby to cooperate with our colleagues.

If we engage in it obviously for that purpose, though, people catch on, and we will find it more difficult to gain cooperation. An economistic way to illustrate the point is a paper by Paul Ingram and Peter Roberts in the *American Journal of Sociology* in September, 2000, "Friendship Among Competitors in the Sydney Hotel Industry." They find that the friendships among competing hotel managers in the forty Sydney hotels in their study generated about \$268,000 Australian more of gross revenues per year per hotel—for example, through recommendations of the competing hotel when one's own hotel is fully booked—than would be generated by a hotel with friendless managers.²⁵ So far so good for Judge Posner. They add, however, "the critical caveat that the instrumental benefits of friendships are inextricably tied to the affective elements," that is, you can't successfully fake friendship.²⁶ The faithless ones get found out. Considering the depth of skill among primates in performing and detecting falsehood, this is not surprising. Both prudence and solidarity are at work. "Individuals who try to form and maintain friendships solely as a means to material gain," they write, "will fail

²⁵ Paul Ingram and Peter W. Roberts, *Friendships among Competitors in the Sydney Hotel Industry*, 106 *Am. J. Sociology* 387, 417 (2000).

²⁶ *Id.* at 420; compare John Mueller, *Capitalism, Democracy, and Ralph's Pretty Good Grocery* 39 (Princeton 1999).

to evoke trust and reciprocity."²⁷ That is, Prudence Only will not work, and so "those who would limit the intrusion of society into economy by . . . characterizing embedded relationships between buyers and suppliers as predictable outcomes of a repeated, non-cooperative game" are mistaken.²⁸

That's another reason that prices and meanings cannot be sheer, non-cooperative games. It would be like insisting that married people *only* deal with each other instrumentally, in the style of a Beckerian marriage between "M" and "F." As Millermaier observes, for another example, programs of corporate ethics that declare themselves as "using" values to achieve Mute Max U's goals will undermine the cooperative game that makes language and ethics ad science and cooperation possible.

The conundrum of language in the economy, then, cannot be solved within models of Mute Max U. To the extent that language is reduced to him it ceases to exhibit one defining characteristic of human language, which is, I hope you believe by now, *not* the mere transmission of information, but the making of meaning and the imagining of novelties. As Andrew Marvell put it in the 17th century:

The mind, that ocean where each kind
Does straight its own resemblance find;
Yet it creates, transcending these,
Far other worlds and other seas,
Annihilating all that's made
To a green thought in a green shade.

To put it another way, the Mute-Max-U model fits smoothly with a conduit metaphor, which would be good news if human

²⁷ Ingram and Roberts, 106 Am. J. Sociology at 418 (cited in note 25).

²⁸ Id.

communication were largely a matter of transmitting preformed messages between minds.²⁹ But Mute Max U does not fit at all with a rhetorical (or Wittgensteinian or Burkean or Austinian or Habermasian or MacIntyryish) theory of language. If these were just silly modern theories, amusing to the effete snobs in the Department of English but unworthy of the tough, masculine science of economics, and of eonowannabes sciences like political science or law-and-economics, then economics could go on ignoring them. But they are in fact the best thinking about what language essentially is that the 20th century offered. It would be unscientific to go on insisting that all we economists can talk about is our old, if ethically unreliable, friend, the implacably silent Mute Max U. And it would be bad for the promise of Hayekian economics.

§

In particular, how we talk about law and politics and the economy has pragmatic consequences, as I suppose no one here will deny.

In particular-particular, I concluded in a trilogy on The Bourgeois Era (2006, 2010, 2016) that liberal talk, leading after 1800 to liberalizations of status of a steadily increasing list of people, from slaves to poor men to women to colonial people to gays to whomever had a direct effect in emboldening more and more ordinary people to have a go. And go they did, inventing the railway, the modern university, the telegraph, the widow screen, the law school, the shipping container, the cardboard box, the internet. Kirzner speaks of the entrepreneur as “alert” for such innovations. But (as I have

²⁹ See generally Michael J. Reddy, *The Conduit Metaphor: A Case of Frame Conflict in Our Language about Language*, in Andrew Ortony, ed., *Metaphor and Thought* 284 (Cambridge 1979).

said to him, and now to you) having spotted the possibility of a self-wrangling mop, the entrepreneur Joy Mangano then embarked on massive sweet talk, exercisable in a liberal society of free speech.³⁰ She had to persuade, and that's what the movie *Joy* was about.

Such is the burden of the last book in the trilogy, *Bourgeois Equality: How Ideas, Not Capital or Institutions, Enriched the World* (2016). I finally fully realized that ideas for commercially tested betterments rested on a liberal conviction that people are equal and deserve to have a go. "Fair go," the Australians say. Or as the blessed Adam Smith said, we need "the obvious and simple system of natural liberty," namely, "the liberal plan" as he explicitly called it] of "[social] equality, [economic] liberty, and [legal] justice."³¹ And all of it relies on a context of sweet talk, he said, too, of ethics, of ideology, of rhetoric – not on the mere laws in the books.

Having a go in sweet talk had a real and big economic effect, which was as tough and masculine as one could wish. The result I show in that book and the second in the trilogy, *Bourgeois Dignity: Why Economics Can't Explain the Modern World* (2010), was the revaluation of the bourgeoisie and a rise of income per head in real terms after 1800, as I said, of 1,000 or 3,000 or even 10,000 percent. Travel by air. Hip replacements. Unprecedented, it was not the consequence of the rule of law, which had been commonplace. It did not come, as Barry Weingast with Douglass North claimed, through changes in law in 1689 or any other recent time. The rule of law and the institutions of law are of course necessary, such as property rights and a contract law. But England had these in full before the time of Edward I. What is ignored in much of recent thinking in neo-institutionalism is that such laws and institutions are ubiquitous in

³⁰ See generally McCloskey, *A Kirznerian Economic History of the Modern World* at 46 (cited in note 5).

³¹ Adam Smith, 2 *An Inquiry into the Nature and Causes of the Wealth of Nations* 664 (Liberty Classics 1981).

human societies. — or else they are not societies but as Hobbes said “such a war, as is of every man, against every man.” Or as the prophet Micah (7.2,3) complained in the late 8th century B.C.E (note the date, and stop thinking that the rule of law is recent), implying that there had been better times, “The good man is perished out of the earth: and there is none upright among men: they all lie in wait for blood; they hunt every man his brother with a net. That they may do evil with both hands earnestly, the prince asketh and the judge asketh for a reward.” Every ordered community since Moses or Solon or Sargon the Great or the First Emperor of China has enforced property rights and prevented people from hunting their brothers with nets.

What then did change? Why after 1600 did the Dutch and after 1700 the English and after 1750 the Scots and after 1800 the Americans and the rest then well and truly have a go, with commence innovating at rates that yielded 3,000 percent?

What changed was the coming of our beloved liberal idea, that all men are created equal (not women; nor my slaves at for the nonce at Monticello). The English Leveller Richard Rumbold articulated the principle in 1685 on the scaffold: “I am sure there was no man born marked of God above another; for none comes into the world with a saddle on his back, neither any booted and spurred to ride him.”³² The positive version was equally famously articulated in 1792 by Wilhelm von Humboldt: “The true end of The Person [*Mensch*, and implied: every man and woman] is the highest and most harmonious development of his powers to a complete and

³² Richard Rumbold, 9 *A Complete Collection of State Trials* 881 (T.C. Hansard 1816). It is irritating that Jefferson a few days before his death—at which unlike Washington he did *not* liberate his slaves—used without attribution Rumbold’s metaphor of the saddle and rider.

consistent whole. Liberty is the grand and indispensable condition which the possibility of such a development presupposes.”³³

It is the opposite of the various hierarchies of compulsion which, alas, we are remaking daily in the 80,000 pages of new compelled regulations issued each year in *The Federal Register*. As New York University’s Richard Epstein, wrote in 2009, liberalism “can be neatly summarized in four words: aggression no, exchange yes.”³⁴ As David Boaz puts it at the outset of *The Libertarian Mind*, “In a sense, there have always been but two political philosophies: liberty and power.”³⁵ A book for Yale, in press, collecting essays of mine on the theme is called *Why Liberalism?* Why indeed. It is the old stuff of liberalism, as old as the 18th century in which it was invented. So original am I. Our friends on the left, by contrast, are not “liberals” but Rousseau-esque statist, devoted to pushing people around according to the general will and *The Federal Register*.

The scientific discovery I am putting before you, then, is the Hayekian theme on his best days that the idea of liberalism, the political philosophy of having an innocent go on a massive scale, summoning thereby human creative action in material and organizational betterments, carried out with sweet talk on all sides – not capital accumulation or any notable change in the institutions of property or contract – enriched the world.

³³ The first sentence of chapter 2 of *The Spheres and Duties of Government* (published only in 1851, after his death, because of its liberal content, and swiftly then translated into English). Wilhelm von Humboldt, *The Sphere and Duties of Government* 11 (John Chapman 1854) (Joseph Coulthard, trans.).

³⁴ Richard A. Epstein, foreword to Bruno Leoni, *Law, Liberty, and the Competitive Market* ix, xiii (Transaction Publishers 2009).

³⁵ David Boaz, *The Libertarian Mind: A Manifesto for Freedom* 39 (Simon & Schuster 2015).

It's one more reason to care about free speech, the speech that runs the economy every day and gives us real conversation and real discovery.