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The Will and the Conversion of Augustine of Hippo

Roman Law before there was a concept of the Will

In my book *The Origins of Collective Decision Making* (2015), I found it necessary to look back to a time before either majority voting or consensus decision making existed. Collective decision-making was a social practice independently of its reflection in law, so I traced practices familiar to me from personal experience back to their origins in Anglo-Saxon England, after the departure of the Romans but before the Norman Conquest. English law developed sometimes in advance of custom and practice in decision making, sometimes behind, but it was always possible to find written documentation of the practices of the various kinds of groups which made collective decisions in the past. As a result, I could see in clear relief the conditions which made collective decision making by voting or consensus both possible and necessary.

Likewise, Marx wrote *Capital* by beginning from a form of life that pre-dated capital and provided the preconditions for it, namely, bourgeois society, the social marketplace. Bourgeois society had existed in the interstices of pre-capitalist social formations before it was subsumed under capital. Bourgeois society provided both a conceptual and historical basis for capital, the subject matter of *Capital*.

The subject matter here is the Will, a concept which is crucial to present day jurisprudence, psychology, sociology and political science. In short, coming from whatever angle, the study of human freedom is the study of the Will. But this concept has not always existed.

Volition itself, the function of the Will, has existed for as long as human beings, and I do not intend to complicate this study by tracing the development of the natural will in non-human nature and in human evolution. That is not my object here. The Will, as I am concerned with it here, is the concept of the Will in philosophy, religion, and legal theory. The concept of the Will does not figure in everyday discourse, but it does exist in those ideological formations which concern themselves with the norms of everyday life and the changes in the way we all live, i.e., law, religion, political science, etc. Consequently, I look back to determine when the Will first appeared as a *concept* in religion, philosophy and science, and identify the historical conditions that made such a concept possible and necessary.

I found that the ancient Greeks, Aristotle in particular, did not have a concept of the Will. The first appearance of the Will occurs with Augustine of Hippo, around 391 AD. Accordingly, I must begin with early Roman law, prior to Augustine's conversion to Christianity.

A caveat is in order. Just as I was not a medievalist when I wrote *Origins* (2015), I am not an aficionado of Roman law or Christian theology. I am content to rely on secondary sources, and readers are invited to consult their own bookshelf if my observations are insufficient. As Marx himself said in the *Grundrisse*: "it is not necessary to write the real history of the relations of production" (Marx, 1857, p. 460). That is, my task is to construct a *genealogy* of the concept of the Will, for which I need to know just how and where the concept of the Will was born, what needs it answered to and what conditions made it possible.

Early Roman law

Looked at from our own time, it is hard to grasp how a highly developed legal system could, even in its early days, regulate a vast empire with a diversity of cultural groups under its rule, with many great cities and elaborate infrastructure, without a concept of the Will. A despotism, perhaps — but surely not a society with its own self-governing civil life. And yet early Roman law worked quite well, in its own terms, without any concept of the Will. From our perspective, however, it often appears profoundly unjust.

Roman law did not need a concept of the Will because it governed action *juridically*, not psychologically. *Juridical* here refers to what belongs to the normative ordering of social relations, not to subjective rights, moral guilt, or inner intention — all of which are more modern conceptions. And the norms of social life can be determined by the state without reference to the mind.

Roman life was governed by a rich system of publicly recognised norms regulating status, roles, obligations, and the permissible forms of action of every person. This system was called *ius*. *Ius* did not include concepts of moral blame or a theory of intention. Mental states did not figure in *ius* at all. Roman jurists were strikingly uninterested in what was going on "inside" a person's head. They asked instead: *under what form of action did this act fall?* and judged it according to entirely objective criteria. In particular, was the act appropriate to the status and role of the actor in the relevant circumstances? *Ius* pre-existed the judicial institutions which would in later times formulate law and issue judgments according to written legislation.

Depending on whether one was a free person or a slave, a citizen or a non-citizen, a *paterfamilias* or a dependent (so long as one was regarded as sane) one's actions and commands carried weight just insofar as they accorded with one's status. Outside those conditions, it mattered neither who one was nor what one intended; intention simply had no juridical relevance. Any action outside the bounds of what was appropriate for a person of one's status would be punished under early Roman law.

Roman law did recognise deceit (*dolus*), negligence (*culpa*), and accident (*casus*), but judgments on these matters were still made entirely through normative classifications of conduct, including speech, and made no reference to internal states of mind such as intention.

Roman law was thus a technology of social cooperation, not a theory of subjectivity or a moral code. It governed what people did together, not what went on inside their own heads. In Roman law, *voluntas* referred only to *declared* intention, not to any inner mental state. Legal acts were always tied to external forms — speech, writing, witnessing. Roman law avoided the metaphysics of the Will by never making responsibility depend on inner psychology in the first place.

From a modern sensibility, this often results in what appear to be grave injustices. For example, under the *Lex Aquilia*, legislated around 287 BCE and governing wrongful damage (*damnum iniuria datum*), a person could be held fully liable for killing another's slave or animal even where there was no intention to kill, no hostility, and no negligence in the modern sense.

A standard juristic example is this: a man is throwing a spear on a training ground. Someone unexpectedly walks into its path and is killed. Under early Roman law, the thrower is liable if the act occurred in a place where others

might reasonably be present — even if he had no intent to harm, and even if the *victim* was careless.

This conception is not entirely absent from modern law. Consider contemporary road-traffic regulations. If a driver accidentally kills a pedestrian through no fault of their own, they will not face prosecution. If, however, they are drunk, unlicensed, or driving recklessly, they will be convicted of these offences irrespective of whether any injury results.

However, if you are drunk, unlicensed, or reckless and cause a death, you will almost certainly be charged with culpable driving causing death or dangerous driving causing death, under the Crimes Act 1958 (Vic). In sentencing, the seriousness of the consequences will be taken into account. In such cases, a sentence of up to twenty years' imprisonment may be imposed, comparable to the maximum sentence for murder. Hegel remarks that while guilt or innocence is subject to the judgment of Reason, punishment remains the domain of arbitrariness and custom (Hegel, 1821, §214), and it seems that this remains the case.

Early Roman society was highly structured. Every person's actions were regarded *juridically*, according to the kind of person they were and consequently, their place within the social structure, without reference to motives or intentions. Social position, generally determined at birth, defined a well-delimited scope of permissible action. Actions that exceeded those boundaries could be punished quite mercilessly. In this respect, Roman society bears some resemblance to a modern corporation, so long as one abstracts from the rights enjoyed by employees as *persons* – a concept absent from ancient Rome. All modern institutions (though not all to the same extent) are subject to the norms and laws of the broader society, over and above the norms which apply within specific activities, such as religious orders or military organisations.

The limitations of this form of administration were exposed with the Christianisation of the Roman Empire between 313 and 392 AD. It is widely accepted that Christianity triumphed because it addressed the problem of social cohesion and moral authority in a vast and increasingly unstable empire more effectively than its rivals. The majority of Rome's subjects never saw Rome nor were educated in its laws and customs. Rome had to rely on the initiative and responsibility of its subjects for the empire to function.

Unless you are an academic Behaviourist, it is clear to any person today that human behaviour cannot be understood, far less controlled, without reference to consciousness. Greek philosophy did not have a concept of consciousness at all, and the absence of such a concept is reflected in the juridical character of early Roman law. I should emphasise that my examination of the place of Will in legal and religious doctrine by no means indicates an interest in texts as such. Ancient and mediaeval society was organised by means of these conceptions, and the people of these societies lived out their lives governed by the norms *reflected* in these legal and religious doctrines.

I will examine first all the key moments when the concept of the Will was invented by Augustine upon his conversion to Christianity. To highlight what was new with Augustine's introduction of the concept of Will into Christian theology, I will examine pre-Christian conceptions of sin by reference to the texts of the Old Testament. I will then clarify the Christian concept of the Will which was to be the basis of European law and theology thereafter. I can then

follow the religious conception of sin and absolution and their place in the Roman Church and the Latin discourse in legal theory, culminating in the intervention of Martin Luther in 1517.

The conversion of Augustine of Hippo

Augustine of Hippo (354–430 AD) was born and died in Roman North Africa. He became an imperial professor of rhetoric in Milan — a public intellectual, teacher, and writer. In 386 AD, at the peak of his career, he underwent a prolonged intellectual, moral, and psychological crisis, culminating in his conversion to Christianity.

Augustine experienced a profound inner conflict: he knew what he ought to do, and in some sense he willed to do it, and yet he could not carry it out. Resolving this conundrum required the invention of the concept of the Will.

He describes this interior paralysis vividly:

> I was split within myself… I was both willing and unwilling.
>
> *Confessions*, Book VIII

In a famous scene in the garden (386 AD), Augustine hears a child's voice saying *tolle lege* ("take and read"). He opens the Bible at Paul's *Epistle to the Romans* (13:13–14), which calls for the renunciation of worldly desire.

> At once, with the end of doubt, there was infused into my heart
> something like the light of full certainty.
>
> *Confessions*, Book VIII

His conversion to Christianity was consummated when he was baptised by Ambrose in 387 AD. The concept of the Will thus arose through Augustine's experience of a "conflict of motives" — a concept central to the work of Vygotsky and the Activity Theorists, to which I will return much later. At this point Augustine resigned his post and returned to North Africa. Subsequently, he wrote his epoch-making work, *De libero arbitrio* (*On Free Choice of the Will*).

Responsibility for one's actions now shifts from the juridical register to the Will as an interior self-relation.

Augustine's resolution of conflict of motives

Augustine resolved the conflict of motives not by choosing more decisively, but by relinquishing the idea that choice alone could resolve the conflict. He discovered that the conflict was not between two external options, but within the Will itself. He could both will and not will the same action. Deliberation did not resolve this; it only made the division clearer. The idea that the Will could unify itself by its own power failed.

The resolution came when Augustine ceased trying to will the good by himself and instead allowed his Will to be re-oriented. In Christian terms, this is *grace*. The conflict could not be resolved by stronger intention, or by better knowledge, or by "moral effort," but only by a reconfiguration of the Will's relation to itself. The Will can only be unified by something outside the person themself. Only God can give the grace needed to heal the Will.

It seems that the concept of Will is just as essential to the concept of *sin* as it is to legal guilt or blame. But this is not quite the case as can be confirmed by reference to the Old Testament.

Sin in the Old Testament

Like ancient Greece, early Rome was a polytheistic society. Like Judaism, Christianity was a monotheistic religion. To get an idea of how sin was understood prior to Augustine's invention of the Will, I will turn first to the Old Testament.

The Hebrew Bible certainly judged acts "objectively" like early Roman law, that is to say by their conformity to law and their consequences, but it also has *graded* culpability with explicit categories that can be mapped onto intention.

Old Testament did have concepts such as "missing the mark," that is, unintentional failure, "iniquity," generally understood as wilful wrongdoing, and "transgression and rebellion," that is, intentional defiance. But it did not have the concept of the Will.

The Torah strongly distinguishes inadvertent wrongdoing from defiant wrongdoing, a distinction which is central to later Jewish and Christian moral thinking, and it's the nearest analogue to *mens rea* before the phrase existed. The Decalogue forbids coveting, which is an inner orientation or desire without any reference to unlawful action. Wrongdoing is often treated in terms of objective violation and consequences, yet it is also internally differentiated by categories that track inadvertence, wilfulness, and outright rebellion.

The New Testament

The Christian New Testament, however, is far more focussed on interiority.

This is illustrated by Christ's Sermon on the Mount: Jesus explicitly treats lustful looking "in the heart" as already adultery. Mark 7 locates "defilement" in what comes "from within … out of the heart," listing "evil thoughts" among the defiling sources.

Wrongdoing has become increasingly readable as a matter of inward motive and intent, not merely outward form. Mental states have become the subjects of religious teaching and judgment.

Most importantly, Christianity introduced a universal conception of the moral person, according to which each individual is answerable in their own right for what they will, independently of social status, office, or role. It is easy to see how revolutionary this was in the context of early Rome. The slave, the nobleman, the citizen and so on are all *persons*, and responsibility is personal, not merely juridical, entailing obligation, guilt and merit.

Under these conditions, sooner or later the concept of Will is surely unavoidable. Actions are no longer judged objectively, simply against the normative expectations of the person according to their social rank. The Will of any individual person is now the final subject matter of normativity, irrespective of their rank.

Legal discourse after Augustine

The Latin discourse on law was mainly conducted through the institutions of the Church over the following centuries. Moreover, Church figures were generally consulted in the drafting of laws in the nation states that grew up in the aftermath of the collapse of the Roman Empire.

The commission of a sin left the person with the burden of guilt, and the state would apply penalties to maintain social order, but the Church also played a

central role in maintenance of the social order through the priestly duties of the clergy, especially confession and penance. This apparatus demanded the means of classifying inner states such as contrition, intention and deliberation about one's actions and it became formalised in canon law. Over time canon law cross-fertilised with secular legal doctrine about culpability. Over the long run, this contributes to the sharpening of mental elements in criminal liability ("guilty mind"), though the mature common-law concept of "*mens rea*" only becoming canonical in common law doctrine centuries after Augustine.

In his writing, Augustine had set out the basic principles underlying these laws.

In *Confessions* he tells of inner consent and divided willing. In *De libero arbitrio* we find that responsibility depends on will, not the outcome. And in *De civitate Dei* we learn that culpability before God depends on intention.

Sin is not defined primarily by *what happened*, but by *what was willed*.

Martin Luther

The problem with this system was that it created a certain political economy for the Roman Church which was bound to lead to corruption – the selling of indulgences for absolution.

The German Peasants' War (1524–1525) was in large measure the result of this practice. The War was a brief but massive uprising, but not a single rebellion, rather hundreds of local revolts that briefly coalesced. It extended across much of southern and central Germany, involving 300,000 peasants, and ended in catastrophic slaughter. This was the largest popular uprising in Europe before the French Revolution.

The War was triggered by demands for justice grounded in Scripture and conscience, not arbitrary priestly judgment and Church authority. It shook the Holy Roman Empire to its foundations. 100,000 peasants were killed, many massacred after surrender, entire villages destroyed and leaders were executed publicly and often cruelly.

It ended not in reform but in terror and repression. The peasants' demands were articulated most clearly in the *Twelve Articles of the Swabian Peasants* (1525): abolition of serfdom, reduction of excessive rents and tithes, communal control of land and forests, and justice according to "God's law," not arbitrary lordship.

And they appealed not to tradition, but to Scripture and conscience. They demanded not just social-political emancipation, but the inner freedom of conscience.

Martin Luther (1483–1546) famously responded to these events with his 1525 polemic against the authority of the Roman Church. He argued that the Will is not free in *matters which concern salvation* or righteousness. Left to itself, the will is *bound*, enslaved by sin. The Will cannot choose the good. According to the Scholastics, human cooperation plays a constitutive role in salvation. Against this, Luther insists that the Will is not merely impaired; it is in bondage, determined by what it loves and what it trusts.

Luther is explicitly attacking the idea of free choice and the moral-psychological model in which deliberation produces righteousness, and the notion that inner effort can heal inner division. Deliberation does not liberate the will, and moral

striving only deepens self-deception. So indulgences from the Church are also a *fraud*.

In continuity with Augustine, Luther denies that the Will can unify itself. The difference between Luther and Augustine is that for Augustine the will is divided; grace heals and reorders it. For Luther, the will is bound entirely. There is no *path* from natural will to free Will in Luther. There is only bondage. The Will can be reoriented by God's grace, but grace cannot be *earned* or dispensed by the Church. The practice was not just corrupt, but *conceptually false*. Sin could not be remitted through penance or purchased by indulgences.

Luther's famous *95 Theses* (1517) attacked the practice of indulgences directly.

> The pope cannot remit any guilt, except by declaring and confirming that it has been remitted by God**.**
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> Thesis 6
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> Every truly repentant Christian has a right to full remission of penalty and guilt, even without indulgence letters.
>
> Thesis 36
>
> Any true Christian, whether living or dead, participates in all the blessings of Christ and the Church, and God grants this without indulgence letters.
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> Thesis 37
>
> Those who believe that they can be certain of their salvation because they have indulgence letters will be eternally damned, together with their teachers.
>
> Thesis 32

The Will is real enough, determined by what is desired and who is trusted, but it is certainly not free.

Initially, peasants believed Martin Luther was on their side, but when the revolt turned violent, Luther condemned the uprising and urged princes to suppress it mercilessly. The Dissenting sects which emerged in Protestant Europe and in England, the Anabaptists, Collegians and Quakers radicalised inwardness, rejected priestly mediation and emphasised conscience, simplicity and the inner light.

Concluding

The personalism of Christianity could be made sense of only by introducing the concept of the Will. Christianity proved itself in the civilizations which arose in the wake of the Roman Empire in surviving and flourishing after the departure of the Roman troops. From the beginning, the idea of the Will confronted the problem of the conflict of motives, and scholars could not figure out how such inner conflict could be resolved. The idea that God or His earthly agents in state and church could resolve the conflict in the Will or reorient the Will towards the good became untenable in the consciousness that arose in the Reformation. But this left the Will a prisoner of the person's own desires.