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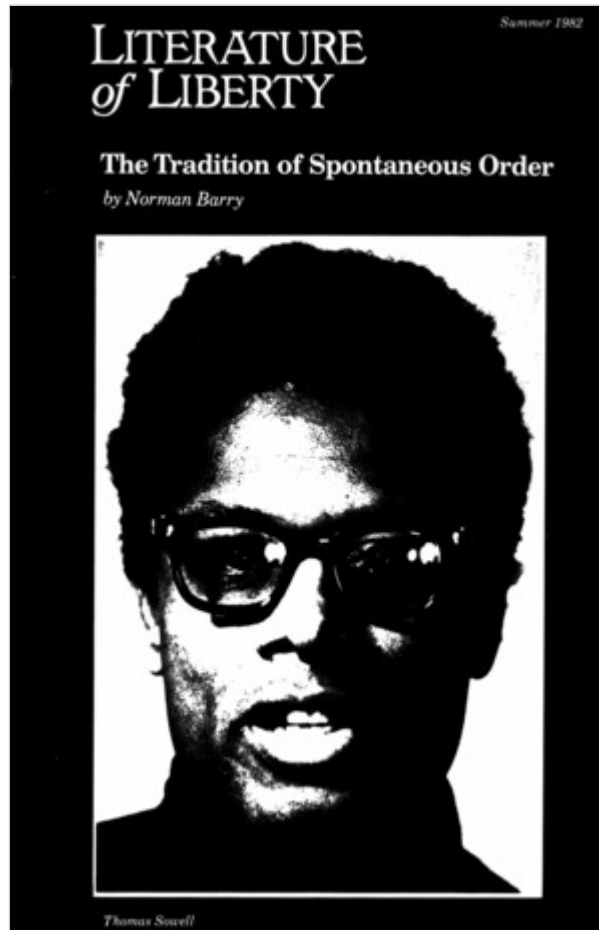
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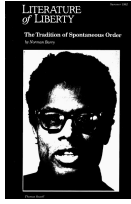
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## Editorial

“Wherever we see a well ordered arrangement of things or men we instinctively assume that someone has intentionally placed them in that way.”

Michael Polanyi

*The Logic of Liberty*

“The effectiveness with which knowledge is transmitted and coordinated through social processes depends upon the actual characteristics of those specific processes. . . . Emphasis on the characteristics of social processes implies a systemic analysis of social causation, in contrast to individual or intentional analysis of why things happen as they do. . . .the (systemic) outcome does *not* depend on the individual agent's subjectively pursuing the end result of the system.”

Thomas Sowell

*Knowledge and Decisions*

“By pursuing his own interest he frequently promotes that of society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good.”

Adam Smith

*The Wealth of Nations*

Since the dawn of history intellectuals, with varying degrees of success, have been trying to explain the nature and meaning of society and suggesting ways to improve the social order. For the most part until the Scottish Enlightenment of the Eighteenth Century, the thrust of these investigations was intentionalist. That is, social order was seen to be the result of some being's conscious design, whether man's or God's. There were exceptions, but as Hayek points out, “Neither the Greeks of the fifth century B.C. nor their successors for the next two thousand years developed a systematic social theory which explicitly dealt with these unintended consequences of human action or accounted for the manner in which an order or regularity could form itself among those actions which none of the acting persons had intended.”

During the Age of Enlightenment, modern social theory was born. This non-intentionalist or systemic theory flourished mainly among the Scottish intellectuals such as Adam Ferguson, David Hume, Josiah Tucker, and, most famously, Adam Smith. For the first time there was a thorough investigation of the unintended consequences of human action. These consequences were seen to be not only often benign but also absolutely necessary for mankind to attain any semblance of civilized social order.

Institutions and institutional processes were rendered intelligible not by attributing them to human or divine purpose but by what were later to be called by Robert Nozick “invisible hand” explanations.

Although not usually thought of as such, a price is such an “invisible hand” institution. No one enters an exchange to produce a price, but nevertheless an exchange ratio or a price emerges from the transaction. Not being the result of anyone's intention a price can be rendered meaningful only by an invisible hand explanation. Prices are both unintended and benign. They lead in turn to the spontaneous evolution of money which encourages a further division of labor, both of which, like prices, are unintended and undesigned social institutions. These along with other undesigned institutions, such as the Common Law, mesh together to produce a spontaneous social order or what Hayek has called a “catallaxy.” The rules that emerge from institutions such as markets and from the Common Law can then be discovered, studied, and implemented by man to establish the Rule of Law. But as can be seen, the rules are not imposed from without to create order, but rather are immanent in the emergent social processes that, as if led by an invisible hand, themselves lead to orderly social institutions which in turn lead to an even wider social interdependence and coordination.

The emergence of money and (when left alone to do so) a free banking system, such as existed in Scotland, constitute one of the clearest object lessons in spontaneous order theory. The recent work of Lawrence H. White in rediscovering and presenting the work of nineteenth-century British monetary theorists Samuel Bailey, Lord King, Henry Parnell, and Thomas Hodgskin should serve as a model to those wishing to learn how spontaneous orders both emerge and maintain themselves. (See White's dissertation, *Free Banking in Britain: Theory, Experience and Debate, 1800–1845*, UCLA, 1982.)

At first glance one might possibly get the idea that spontaneous order theorists believe that no deliberate planning takes place in the course of achieving social order. Clearly this is not the case. The best theoretical explanations of the need for both constructed and unintended institutions is to be found in the following: (1) Ronald Coase's classic article, “The Nature of the Firm,” shows how pockets of planning (firms) permeate the price system. He quotes the master of luminous prose and distinguished economist, Sir Denis Robertson, to underscore his own point about intentional planning at times superceding yet also fitting together with the price system. Robertson likens firms to “islands of conscious power in this ocean of unconscious cooperation like lumps of butter coagulating in a pail of buttermilk.” (2) Michael Polanyi's *Logic of Liberty* demonstrates the tension yet at the same time the complementarity between what he calls corporate or hierarchical orders and spontaneous orders. (3) Israel M. Kirzner shows in his *Competition and Entrepreneurship* that spontaneous is not the same thing as automatic if by automatic one means instantaneous and mechanical adjustment. On the contrary, the entrepreneur must perceive changes and adjust the use of resources not only to the new present conditions but also to what he sees as likely conditions in the future. Here again the conscious deliberate plans of entrepreneurs interact with the unintended effects of others' expectations, plans, and actions. (4) Location theory tells us that we

can expect people to be led to arrange themselves in relation to one another according to certain functions they will perform for others through the division of labor. As Jane Jacobs demonstrates in her *The Economy of Cities*, the unintended effects of such self-arrangements are the emergence and development of what we know as cities. (5) The capital theory developed by the Austrians from Carl Menger through Mises, Richard von Strigl, and Hayek is yet another example of the interaction of deliberation and spontaneity. Just as no one sets out to produce a price, neither does one attempt to create a macro-economic structure of production, yet in building his own plant he unwittingly contributes a new element in what Ludwig Lachmann in his *Capital and Its Structure* calls a lattice-work structure of heterogeneous yet interconnected and complementary capital goods.

Adam Smith's explanation of the division of labor is by most accounts cited as the first significant step in modern social theory. Perhaps Carl Menger's evolutionary explanation of money deserves to be ranked beside Smith's, although in many ways Menger was rediscovering and rearticulating for a new generation a set of theoretical insights that for several decades had languished or had been superceded and pushed aside by intentionalist social explanations of one sort or another.

Surely it must follow that the second great step in modern social theory after Smith's explanation of the division of labor was Hayek's contention that the central problem in social and economic theory is that knowledge is fragmented and dispersed unevenly among the members of society, i.e. the division of knowledge. How, then, can this knowledge of time and circumstance—including their expectations about the future—which by definition can be known only by the individual members of society—how can this knowledge be utilized in such a way so as to lead to a coherent and viable social order?

Hayek is not alone in addressing this question over the decades since he first encountered the problem during the debate in the 1930s concerning the impossibility of economic calculation under a regime of socialism, and when he succinctly articulated the problem in his classic 1945 article “The Use of Knowledge in Society.” The same question has also captured the attention of some of the leading contemporary economists and social theorists, such as Michael Polanyi, Ronald Coase, Karl Popper, G.L.S. Shackle, James Buchanan, Alan Coddington, George Stigler, Harold Demsetz, Axel Leijonhufvud, Armen Alchian, Robert Nozick, Israel Kirzner, Ludwig Lachmann, Brian Loasby, and most recently Thomas Sowell in his remarkable 1980 work, *Knowledge and Decisions*.

With the publication of Sowell's book, Hayek's trilogy *Law, Legislation and Liberty*, Norman Barry's *Hayek's Social and Economic Philosophy*, George Shackle's *Epistemics and Economics*, and Brian Loasby's *Choice, Complexity, and Ignorance*, the reissuance of Michael Polanyi's *The Logic of Liberty*, the spontaneous order tradition has again been thrust into the midst of the academic debate. This time the economics and sociology of knowledge are at the cutting edge of the tradition's return. There is much work yet to be done in this field of research, but as the work of Hayek, Sowell, and others demonstrates, there are many aspects of society (most of the

interesting aspects) that can be understood and explained only through the use of invisible hand explanations.



Michael Polanyi (1882-1976)

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## Bibliographical Essay

### The Tradition Of Spontaneous Order

by Norman Barry

*University College, Buckingham*

#### Introduction: The Recent Revival Of Spontaneous Order

The theory of spontaneous order has a long tradition in the history of social thought, yet it would be true to say that, until the last decade, it was all but eclipsed in the social science of the twentieth century. For much of this period the idea of spontaneous order—that most of those things of general benefit in a social system are the product of spontaneous forces that are beyond the direct control of man—was swamped by the various doctrines of (to use Friedrich A. Hayek's phrase in *Law, Legislation and Liberty*) 'constructivistic rationalism.'<sup>1</sup> No doubt the attraction of this rival notion of rationalism stems partly from the success of the physical sciences with their familiar methods of control, exact prediction, and experimentation. It is these methods which have an irresistible appeal to that *hubris* in man which associates the benefits of civilization not with spontaneous orderings but with conscious direction towards preconceived ends. It is particularly unfortunate that the effect of constructivistic rationalism should have been mainly felt in economics. This is unfortunate not merely because attempts to direct economics have repeatedly failed but also because the discipline of economics has developed most fully the theory of spontaneous order.

The last ten years have seen a rehabilitation of the *economic* philosophy of classical liberalism; indeed Hayek, its major contemporary exponent, was awarded the Nobel Prize for Economic Science in 1974. But the necessary accompaniment of that economic theory, the philosophy of law and social institutions, has been largely ignored by the social science establishment. This oversight has occurred despite the fact that, for example, the bulk of Hayek's own work in the last thirty years has consisted of a theoretical reconstruction of the *social* philosophy of classical liberalism and despite the fact that he has himself stressed that a knowledge of economic principles of resource allocation alone is quite inadequate for the understanding of the order of a free society. Indeed, the contemporary concern with specialization in the social sciences is itself an important barrier to the acceptance of the doctrine of spontaneous evolution precisely because this theory straddles so many of the artificial boundaries between academic disciplines.

## The Main Elements In The Theory Of Spontaneous Order

The simplest way of expressing the major thesis of the theory of spontaneous order is to say that it is concerned with those regularities in society, or orders of events, which are neither (1) the product of deliberate human contrivance (such as a statutory code of law or a *dirigiste* economic plan) nor (2) akin to *purely natural* phenomena (such as the weather, which exists quite independently of human intervention). While the words *conventional* and *natural* refer, respectively, to these two regularities, the ‘third realm,’ that of *social* regularities, consists of those institutions and practices which are the result of human action but not the result of some specific human intention.<sup>2</sup>

### ‘Invisible Hand’ Social Patterns & Methodological Individualism

Despite the complexity of the social world, which seems to preclude the existence of regularities which can be established by empirical observation, there is a hypothetical order which can be reconstructed out of the attitudes, actions, and opinions of individuals and which has considerable explanatory power. What is important about the theory of spontaneous order is that the institutions and practices it investigates reveal well-structured social patterns, which appear to be a product of some omniscient designing mind yet which are in reality the spontaneous co-ordinated outcomes of the actions of, possibly, millions of individuals who had no intention of effecting such overall *aggregate* orders. The explanations of such social patterns have been, from Adam Smith onwards, commonly known as ‘invisible hand’ explanations since they refer to that process by which “man is led to promote an end which was no part of his intention.”<sup>3</sup> It is a major contention of the theory of spontaneous order that the aggregate structures it investigates are the outcomes of the actions of *individuals*. In this sense spontaneous order is firmly within the tradition of methodological individualism.

### Spontaneous Order & ‘Reason’

The role of ‘reason’ is crucially important here because the theorists of spontaneous order are commonly associated with the anti-rationalist tradition in social thought. However, this does not mean that the doctrine turns upon any kind of irrationalism, or that the persistence and continuity of social systems is a product of divine intervention or some other extraterrestrial force which is invulnerable to rational explanation. Rather, the position is that originally formulated by David Hume. Hume argued that a pure and unaided human reason is incapable of determining *a priori* those moral and legal norms which are required for the servicing of a social order. In addition, Hume maintained that tradition, experience, and general uniformities in human nature themselves contain the guidelines for appropriate social conduct. In other words, so far from being irrationalist, the Humean argument is that rationality should be used to “whittle down” the exaggerated claims made on behalf of reason by the Enlightenment *philosophes*. The danger here, however, is that the doctrine of spontaneous evolution may collapse into a certain kind of relativism: the elimination of the role of reason from making universal statements about the appropriate structure



of a social order may well tempt the social theorist into accepting a given structure of rules merely because it is the product of traditional processes.

The ‘rationalism’ to which the theory of spontaneous order is in intellectual opposition precedes the Enlightenment and perhaps is most starkly expressed in seventeenth-century natural law doctrines. In Thomas Hobbes' model of society, for example, a simple ‘natural’ reason is deemed to be capable of constructing those rules which are universally appropriate for order and continuity. It is assumed that this reason can only conceive of a legal order in terms of rules emanating from a determinate sovereign at the head of a hierarchical system. That hidden wisdom immanent in a dispersed and evolutionary system is therefore systematically ignored in the pursuit of a statute or code structure. That other seventeenth-century natural law theorists took a more generous view of human nature, and hence produced rule structures more amenable to liberty and rights, does not alter the fact of their common anti-traditionalist and rationalist epistemology.

The theory of spontaneous order, then, is concerned with those ‘natural processes’ which are not the product of reason or intention. The classic example is the free market economy in which the co-ordination of the aims and purposes of countless actors, who cannot know the aims and purposes of more than a handful of their fellow-citizens, is achieved by the mechanism of prices. A change in the price of a commodity is simply a signal which feeds back information into the system enabling actors to ‘automatically’ produce that spontaneous co-ordination which *appears* to be the product of an omniscient mind. The repeated crises in *dirigiste* systems are in essence crises of information since the abolition of the market leaves the central planner bereft of that economic knowledge which is required for harmony. There is no greater example of the *hubris* of the constructivist than in this failure to envisage order in a natural process (which is not of a directly physical kind). As Hayek says in “Principles of a Liberal Social Order”:

Much of the opposition to a system of freedom under general laws arises from the inability to conceive of an effective co-ordination of human activities without deliberate organization by a commanding intelligence. One of the achievements of economic theory has been to explain how such a mutual adjustment of the spontaneous activities of individuals is brought about by the market, provided that there is a known delimitation of the sphere of control of each individual.<sup>4</sup>

## Spontaneous Order & ‘Law’

Following on from this account of reason to explain spontaneous orders is a related account of ‘law.’ There are terminological problems here because theorists of spontaneous order do not always use the term ‘natural law’ to describe those general rules that govern a free society precisely because the phrase has, as we have already observed, rationalistic overtones. The ‘natural’ law of spontaneous order theory refers to regularities in the social world brought about by men generating and adapting those rules appropriate to their circumstances. Thus law properly so-called is neither (1) the dictate of pure reason in which the structure of a legal order is designed independently of experience, nor is it (2) the positive law of, say, the Command School in which all

law is deliberately created by an act of will. The theory of spontaneous order claims that in both deductivist natural law and positive law, legal structures are likely to be less regularized and more arbitrary and capricious. This capriciousness arises precisely because, to the extent that these legal structures ignore existing legal orders, they depend on a supermind both taking account of all possible human circumstances and devising appropriate rules from first principles. Rules appropriate for a spontaneous order, by contrast, are more likely to be discovered than deliberately created.

There is, of course, implicit in all the writers in this tradition the notion of an ethical payoff: that is, we are likely to enjoy beneficial consequences by cultivating spontaneous, natural mechanisms and by treating the claims of an unaided reason with some skepticism. Well-being, in other words, is the product of a special kind of *accident*. This is a quasi-utilitarian argument used to counter the more conventional utilitarian thesis that the public good can be rationalistically summed up from the preferences of individuals and directly promoted by centralized positive law. The theory of spontaneous order claims that the very complexities of social affairs mean that such a rationalistic project is almost certain to be self-defeating, even if one could assume the existence of benevolent and well-intentioned legislators. As Adam Smith put it: "I have never known much good done by those who affected to trade for the public good."<sup>5</sup>

## Two Senses Of Spontaneous Order: Noncoercive Emergent Patterns Vs. 'Survival Of The Fittest'

One important issue has a bearing on the explanatory power of the doctrine of spontaneous order. This centers on the fact that the theory has two interrelated meanings, which the writers under discussion do not clearly distinguish. In one sense we speak of a spontaneous order to refer to a complex aggregate structure which is formed out of the uncoerced actions of individuals, whereas in another sense we speak of the *evolutionary growth* of laws and institutions through a kind of Darwinian 'survival of the fittest' process (and the biological analogy is not inappropriate). In both these meanings we are describing social structures that are similar in not being of conscious design and which emerge independently of our wills, but the explanations are significantly different.<sup>6</sup> One version shows how institutions and practices can *emerge* in a causal-genetic manner while the other shows how they in fact *survive*.

We can perhaps illustrate this difference in the meanings of spontaneous order by comparing a market order with a legal order. Now the invisible hand explanation of the emergence of a market order is highly plausible because there is a mechanism, the price system, to bring about the requisite co-ordination. However, it is not obviously the case that there is an equivalent mechanism to produce that legal and political order which is required for the co-ordination of individual actions. Thus the legal system that a community has may have *survived* yet not necessarily be conducive to the hypothetical order of classical liberalism. Evolutionary undesigned processes may very well produce dead-ends, and the escape from these dead-ends would involve

more expansive use of reason than that conventionally associated with the doctrine of spontaneous order.

## Scholasticism And The Market As Spontaneous Order

Hayek has always claimed that his explanation of a more or less self-correcting social system continues a long tradition. While acknowledging it is absurd even to speculate on the beginnings of a tradition, Hayek often refers to the original Spanish schoolmen as the founders of the theory of spontaneous order.

### The ‘School Of Salamanca’: Scholastic Economic Thought & The Market

At one time the received wisdom concerning scholasticism was that this rationalistic moral philosophy, which stressed virtue and, for example, condemned usury, was incapable of generating a theory which traced systematically the social regularities that emerge from the pursuit of self-interest. But in the last thirty years or so the story has been substantially rewritten so that a more accurate interpretation of the scholastic general doctrine would see it as anticipating later individualistic theories. This is true of its economic theory, for a close analysis of it reveals a commitment to, and a clear understanding of, the theory of subjective value, of economic competition, and the quantity theory of money, among other things. The scholastic economic philosophy reached its apogee in sixteenth-century Spain where the theologian-economists of the ‘School of Salamanca’ developed the first *general* theory of value, embracing both goods and money, and accommodated traditional Catholic natural law teaching to an economic doctrine more appropriate to the needs of a developing commercial society.

Such is the similarity between scholastic thought and late nineteenth-century economic theory that it would not be inaccurate to say that there is a continuous stream of subjectivist economics that runs from the thirteenth-century to Carl Menger and the Austrian School of economics, and that the obsession with an objectivist labor costs theory of value in ‘classical’ economics was a quite unnecessary and time-consuming detour. In his *History of Economic Analysis*, Joseph Schumpeter, who was one of the first writers to recapture scholastic economics for the modern world, wrote that all that was missing from the scholastic doctrine was the concept of the margin.<sup>7</sup> It was also Schumpeter who saw that the Catholic natural law philosophy was basically utilitarian and concerned with justifying human institutions, such as property, on public interest grounds, and that the concept of ‘reason’ for the later schoolmen was ‘sociological’ rather than abstract. Reason's object was to trace out regularities that are revealed when men are left to their natural inclinations.

In addition to Schumpeter, the work of Raymond de Roover and Marjorie Grice-Hutchinson has pioneered in rehabilitating scholastic economics.<sup>8</sup> From their work it is clear that, although there were elements of cost of production theories in scholastic economics, the dominant view (which can be traced from Aristotle to St. Augustine through to St. Thomas Aquinas) interpreted the value of a good not as something that inhered in the thing itself but as a product of ‘common estimation’ or subjective

opinion, and of the thing's perceived scarcity. Thus the 'just' price was the competitive price that emerged from the interaction of subjective supply and demand. As Diego de Covarrabias (1512–1572) put it: “The value of an article does not depend on its essential nature but on the estimation of men, even if that estimation be foolish. Thus in the Indies, wheat is dearer than in Spain because men esteem it more highly, though the nature of the wheat is the same in both places.”<sup>9</sup> The 'ethical' element in the theory related not to a moralistic idea that price ought to equal labor cost but to the argument that the 'just' price would emerge only under conditions of more or less perfect competition (the schoolmen were in fact strident critics of monopoly), and where there is no deceit, fraud, or force. One reason why the schoolmen were reluctant to embrace a cost of production theory rather than a subjectivist theory was that it would actually give merchants an excuse to raise prices above their market-clearing level and would therefore exploit consumers.

## Molina: The Market & Natural Law Ethics

The earliest exponents of subjectivism were Buridan (1300–1358), Saravia de la Calle (c. 1540) and Domingo de Soto (1495–1560); but the clearest expositor of the competitive view was the Portuguese Jesuit Luis de Molina (1535–1600). Molina, of the School of Salamanca, also showed an advanced analytical understanding of competition.<sup>10</sup> The achievement of those writers was to mitigate the moralizing element in Catholic social science and to show that the customary practices of trade were not against 'nature.'

The School of Salamanca was similarly successful in breaking out of moral theology in its theory of money. While Jean Bodin (1530–1596), the French political theorist, is normally credited with the first formulation of the quantity theory, it is now clear that this originated with the Spanish schoolmen. Influenced by the rise in the price level in Spain brought about by the influx of gold and silver from the New World, the Dominican Martin de Azpilcueta (1493–1587), wrote in 1556 that “money is worth more where and when it is scarce than where and when it is abundant.”<sup>11</sup> Once again, however, it was Molina who systematically placed the explanation of the value of money within the general theory of value and developed a theory of foreign exchange that anticipated the purchasing power parity doctrine. An important consequence of this latter point was that profits on exchange dealings between foreign currencies were adjudged to be not usurious and therefore not contrary to natural law. Molina also showed that the value of money was necessarily inconstant and that to “control it would do a great deal of harm to the republic”;<sup>12</sup> therefore its value ought to be left to vary freely.

Of course, to say that important elements of modern value theory were contained in scholastic theory does not make these economists classical liberals. Although the just price was the market price there is ample justification in natural law for the suspension of the market and for the public regulation of prices, especially in famines and emergencies. De Roover concedes that since scholastic doctrine authorizes interference with the market to protect buyers and sellers this could license a wholesale suspension of the competitive system.<sup>13</sup> Certainly, scholastic economic theory was too closely linked with ethics and natural law to produce a systematic

theory of the *self-regulating* market order. In her later work, Marjorie Grice-Hutchinson claims that a theory of the general harmony of the market order was absent from the sixteenth-century Spanish scholastics and does not appear until 1665 with the work of Francisco Centani.<sup>14</sup>

It is important to note, however, that two eminent scholars, Schumpeter and Hayek, both regard Molina's social theory as a natural law doctrine which looks forward *not* to seventeenth-century rationalism but to the theory of spontaneous order. Molina's economics is an investigation of *nature*, in the sense of there being sequences of events which would occur “*if they were allowed to work themselves out without further disturbance.*”<sup>15</sup> Here the maxims of natural law appear to be less the dictates of an unaided reason than the implications of a benign nature.

## The Rise Of The Common Law

It is with the emergence of the common law in England that the scholastic hints at an anti-rationalistic natural law are transformed into a substantive jurisprudence. The outstanding figure here is Sir Matthew Hale (1609–1676); for in his argument for the common law he specifically claimed that it possessed a greater inner wisdom and rationality than the anti-traditionalist and *a priori* theories of law precisely because it accommodated facts and circumstances unavailable to the unaided reason. In explicating this argument, he inaugurated a tradition of jurisprudence which we normally associate with Adam Smith and Edmund Burke and, in the present day, Hayek. The major contention of these writers is that genuine law is, in some sense or other, discovered rather than made.

Hale's important argument against rationalism in the law is in the form of a reply to Hobbes' *Dialogue of the Common Laws* and is conveniently reprinted in the fifth volume of Sir William Holdsworth's *History of English Law*.<sup>16</sup> Among Hale's other works is the *History of the Common Law*, published in 1715, in which he continues the style of argument found in the reply to Hobbes.

## Hale Contra Hobbes: On Reason & Sovereignty

Hale's *Reflections* on Hobbes' system are in two parts: one dealing with the role of *reason* in the law and the other consisting of a critique of the Hobbesian version of *sovereignty*.

In the first part on *reason* and the law Hale clearly adumbrates an empirical and historical view of the law. No body of existing law can be constructed by pure abstract reasoning because the immense complexity of a legal process makes it impossible to represent its elements in a few simple maxims. The understanding of law therefore requires an ‘artificial’ reason, not the abstract syllogistic reasoning of the philosophers. Rationalism must fail because law requires the application of general principles to particular cases and this depends largely upon experience. It is because the law must be predictable and certain that there is a presumption in favor of experience and what is *known*. In anticipating an argument later made famous by Hayek, Hale maintains that because of our ignorance we are thrown back on

experience and that it is better to rely on a body of stable and known rules “though the particular reason for the institution appear not.”<sup>17</sup> Futhermore, in a conservative attack on ill-thought out legal reforms, Hale likened a social order to an organic entity which could suffer *unanticipated* damage to its component parts if pure reason were to be the criterion for innovation. This is so because the mind cannot comprehend the totality of a social order, which is itself the product of many minds. He argues that “it is a reason for me to preferre a Lawe by which a Kingdome hath been happily governed four or five hundred yeares than to adventure the happiness and Peace of a Kingdome upon Some new Theory of my owne .....”<sup>18</sup>

In his reply to Hobbes on *sovereignty* Hale wished to show that Hobbes' definition in politically absolutist terms was both inapplicable to English conditions and inexpedient. While he admits that only the king and parliament can make law “properly so-called,” the courts “have great weight and authority in expounding, declaring and publishing what the law of this kingdom is.....”<sup>19</sup> The concession to the sovereignty thesis is more apparent than real for his observation that only the king and parliament may make new laws is immediately qualified by a long argument to show that this power is limited by natural law and expediency. He explicitly ties in the ‘law’ with traditional liberty and property and maintains that the “obligation of Naturall Justice bindes Princes and Governors.” The greatest flaw in the sovereignty model is that it sees law exclusively in terms of enactment.

In fact, it is almost certainly the case that Hale misunderstood Hobbes' argument about sovereignty. Hale meant by the sovereign the power of the king, and it was easy for him to show, that the king was limited by morality and the existing law. However, Hobbes meant by his sovereignty theory that in any legal system there must be a supreme body, which could *logically* take any form, which is the author of all law, and which itself cannot be bound or limited by any law. Thus to speak of an unlimited sovereign in this sense as being subject to natural law would be self-contradictory.

Indeed, the concept of ‘parliamentary sovereignty’ did develop in this way and this poses problems for anti-constructivist, evolutionary theories of law: for it is the unplanned emergence of an all-powerful parliament which in Britain has done so much to undermine the common law itself. While it would be absurd to censure Hale on this score it is important to note the implications of extreme versions of his traditionalism. For extreme traditionalism may well commit the social theorist to the acceptance of institutions that have survived a particular historical process merely because they have survived, even though ‘reason’ may indicate their inappropriateness for the liberal order.

## Private Vices, Public Benefits

### Mandeville: Self-Interest & The Invisible Hand

Bernard Mandeville (1670–1733) is often regarded as a major precursor of the ideas in law, economics, and social philosophy of what came to be known as the ‘Scottish Enlightenment.’ However, he presented his social theories in the guise of an outrageous demonstration of the social benefits that accrue from vicious and self-



interested motivations. He argued that prosperity was inconsistent with the traditional moral virtues and that all human action, despite displays of altruistic affectations, was purely self-regarding. From psychological assumptions not unlike those of Hobbes, he produced a social theory which included elements of *laissez-faire* economics, an early outline of the division of labor and, according to Hayek, early versions of the invisible hand explanation of an equilibrating economic system and the theory of the spontaneous evolution of rules and institutions. While writers such as Hume and Smith were eager to refute his ethical doctrines they were more influenced than they were prepared to admit by his general social theory.

## Mandeville's 'Fable Of The Bees': Passions & Interests

*The Fable of the Bees: or, Private Vices, Public Benefits* was originally published as a poem, *The Grumbling Hive: or, Knaves Turned Honest*, in 1705. At the time of the poem's publication a fierce campaign was under way to rid England of vice, luxury, sin, and corruption, and to encourage the selfless pursuit of virtue and the public good. Hence Mandeville's claim that prosperity depended upon the pursuit of those very vices:

Thus every part was full of vice  
Yet the whole mass a paradise

and his argument that the actions of the meanest and vilest contributed something to well-being,

The worst of all the multitude  
Did something for the common good

seemed particularly outrageous to an audience that associated the public interest with the virtue of self-sacrifice.

In 1714 the poem was republished as *The Fable of the Bees* with an additional essay and detailed prose commentaries on its various aspects. Successive editions, with new material, were published throughout the 1720s; the final edition to appear in Mandeville's lifetime was published in 1732.<sup>20</sup> Whatever particular interpretation is made of his social theory its revolutionary significance lay in Mandeville's argument that the 'passions' of men were not disruptive and harmful and that order did not require the suppression of man's natural instincts but only the channeling of them in an appropriate framework. The recognition of the value of the passions was an essential step in the development of the social philosophy of capitalism. Although, unlike later writers, Mandeville did not reject the traditional view that virtue involved self-sacrifice and the suppression of the baser instincts, he thought that not only were most men incapable of that virtue but also that its successful pursuit would quickly produce poverty and misery. Since commerce depended on 'selfishness' it was incompatible with virtue.

Mandeville started from the assumption of the basic constancy of human nature: men were egoistic and did not naturally follow that morality which others thought

necessary for social order. He argued that behind overt acts of altruism, charity, and selfless promotion of the ends of the public, could be found purely selfish motivations. Morality was therefore a contrivance “broached by skillful politicians, to render men useful to each other as well as tractable.”<sup>21</sup>

However, the pursuit of the natural vices paradoxically leads to progress because it increases consumption and encourages the development of the division of labor (“..... what a number of people, how many different trades, and what a variety of skills and tools must be employed to have the most ordinary Yorkshire cloth”). The habit of ‘luxury,’ condemned by many because it led to increased and allegedly ‘unnecessary’ foreign imports was thought by Mandeville to be quite harmless and in his refutation of the ‘bullionists’ he produced an early version of the automatically-equilibrating tendency inherent in free international trade: “Buying is bartering, and no nation can buy goods of others that has none of her own to purchase with. . . .”<sup>22</sup>

## Mandeville's Role In Spontaneous Order Theory

It is not, however, the ethics or the economics which have suggested to twentieth-century social theorists that Mandeville's work is in the tradition of spontaneous order. Hayek, for example, regards the social theory that Mandeville constructs from the postulate of self-interest as being simply one exemplification of a general theory which explains how a coherent aggregate structure can emerge accidentally from the actions of individuals (be they altruistic or egoistic).

It is true that there are many passages in *The Fable of the Bees* which suggest both (1) that aggregate structures can emerge in an unintended manner and (2) that enduring laws and institutions are a product of evolution rather than design. Mandeville's discussion of free trade would be an example of the first point. As regards the second point, Hayek claims that Mandeville explains laws as the product of experience and wisdom rather than unaided reason:

there are very few, that are the work of one man, or of one generation; the greatest part of them are the product, the joint labour of several ages.<sup>23</sup>

There is also evidence that Mandeville saw that the task of social theory was to reconstruct those ‘concatenated events’ which are not visible to the ‘short-sighted vulgar’ who, “in the chain of causes can seldom see further than one link.”

However, the thesis that Mandeville was a precursor of Adam Smith has been seriously challenged. Jacob Viner<sup>24</sup> has argued that his social theory is not one that celebrates spontaneous order but, on the contrary, stresses artifice and contrivance in the explanation of social regularity. Furthermore, Viner claims, the reliance on individualism and economic self-interest as the decisive forces in the generation of wealth were as characteristic of mercantilist thought as they were of Adam Smith's, and Mandeville was in principle a mercantilist because of his belief that it is by *political* methods that the baser instincts of men are channeled to the advantage of the public. This view is reinforced in Thomas Horne's recent study<sup>25</sup> in which he claims that there is no genuine theory of spontaneity in Mandeville, that there are no



theoretical limits on the extent of government activity, and that the doctrine of *laissez faire* was meant to apply only to the property-owning classes.

It is undoubtedly the case that many quotations from *The Fable* can be produced which seem to indicate that social regularity depends upon the cunning of politicians and it is certainly true that Viner trades heavily on Mandeville's claim that order is the product of that "dextrous management by which the skillful politician might turn private vices into public benefit."<sup>26</sup> In addition, frequent assertions by Mandeville of man's 'natural unsociability' imply that order must be constructed by art, and reveal a Hobbesian strain which does not fit at all well with the Hayekian interpretation. However, much may turn on how we interpret Mandeville's language, and Maurice Goldsmith may be right in his claim that the phrase 'skillful politician' is not meant to represent a 'person' but rather a *system* which does operate in a more or less self-regulating manner.<sup>27</sup> But he does agree that the system is not entirely self-regulating and that it could be altered by deliberate human action. Whatever the 'true' interpretation of Mandeville is, it is the case that later writers, whose claims to classical liberal orthodoxy are better substantiated, were undoubtedly influenced by his way of thinking, even though not all were prepared to admit this.

## Josiah Tucker (1712–1799)

Along with Mandeville, Josiah Tucker, the Dean of Gloucester, is often regarded as a precursor of Adam Smith (although he was a close contemporary his major economic writings<sup>28</sup> preceded the publication of *The Wealth of Nations*). But again the genuineness of his contribution to spontaneous order has been questioned. Many writers have commented on certain mercantilist and statist elements that persist in Tucker's writings and Viner claims that, despite the fact of the translation of his economic works into French by Turgot, "... the notion that Smith was appreciably influenced by Tucker, via the physiocrats, can be regarded only as a blind stab in the dark."<sup>29</sup> Nevertheless, his description of the main features of the commercial *order* and his enthusiastic portrayal of those accidental benefits that accrue from the operation of self-interest outweigh those constructivistic elements which his social thought undoubtedly contains.

## Tucker's Mix Of Constructivist And Spontaneous Approaches

Skeptical of the ability of government to produce public wellbeing, though lacking that instinctive, almost *a priori*, objection to interventionism that some of the classical liberals had, Tucker trusted in nature. The spontaneous passions of men could be reconciled with their long-term interests under certain conditions. Thus while 'self-love' was potentially destructive, the point was neither to extinguish nor enfeeble it "but to give it a direction, that it may promote the public interest by pursuing its own."<sup>30</sup> Reason, however, had a role in specifying those actions of government which would be required for the operation of an otherwise self-regulating commercial machine.

Self-love, benevolence, and a limited 'reason' produced that commercial method which would generate harmony without central direction. The division of labor

exemplified the commercial system for Tucker, and he showed no fear that the introduction of machinery might produce unemployment. Increases in population and the creation of artificial needs would widen the market and automatically absorb temporarily unemployed labor.

Tucker's contributions were in the main polemical applications of the commercial method to some familiar problems in an English society which was beginning to show the first signs of *the* liberal economic order. He was a fierce opponent of monopoly and those governmental regulations, such as the apprenticeship laws, that privileged certain people in the labor market. In a brilliant argument, matched only by Adam Smith in *The Wealth of Nations*, Tucker showed how a spontaneous market would clear any over-supply of labor which might emerge from the relaxation of such laws. An early advocate of free trade, he was engaged in a dispute with David Hume over the effects of free trade on the international economy. Against Hume's claim in the essay *Of Money* that free trade would tend to equalize poor and rich nations, Tucker argued that certain natural advantages would perpetuate the hegemony of the existing wealthy countries.<sup>31</sup>

Tucker's thesis was a kind of 'economic' imperialism which tried to show how the mercantilist end of the aggrandisement of state power could be achieved by liberal means. In fact, nineteenth-century anti-free trade theorists, such as Frederick List, used just these arguments to justify poorer nations raising tariff barriers. Indeed, Tucker himself was not opposed to such actions and anticipated the 'infant industries' justification for limited governmental protection. There are then constructivistic elements in Tucker.

It was because he believed that national prosperity depended on an increase in population that Tucker felt that this should be *deliberately* encouraged: hence his bizarre scheme for imposing severe penalties on bachelors. He did not in fact think that private interest always coincided with the public interest, and therefore produced a series of recommendations of *ad hoc* interventionism. This was unsystematic because, although he was an acute expositor of the philosophy of the market, he had little theoretical understanding of the nature of the legal order. Although he wrote on political philosophy he did not succeed in generating a social theory to complement his (generally) liberal economics.

## Spontaneous Order & The Scottish Enlightenment

It was the thinkers of the eighteenth-century Scottish Enlightenment—Smith, Hume, Ferguson, Dugald Stewart, and Thomas Reid—who were largely successful in integrating all these significant hints at a doctrine of spontaneous order into a general social philosophy. The most striking thing about this remarkable group of thinkers is the breadth of their interests, and Adam Smith, indeed, can be looked upon, not inaccurately, as the 'Newton of the social sciences' in his attempt to explain the natural processes of a social order in terms of universal principles. However, one important feature of the thought of the Scottish thinkers is that, although they were the major celebrants of spontaneous processes, two of them, Ferguson and Smith, showed some skepticism about the outcomes of such processes. Thus, as we shall see, they did

not regard all the unintended consequences of freedom as being necessarily beneficial. Commercial prosperity, they feared, might be bought at the cost of civic virtue.

## David Hume (1711–1776)

Although easily the most distinguished philosopher of the Scottish Enlightenment, Hume did not write a systematic treatise on social theory even though he wrote widely in this area. His contributions can be found in his two major philosophical works, *A Treatise on Human Nature* (Book III), first published in 1737, *Enquiry Concerning the Principles of Morals* (1751), and volumes of essays published in 1741, 1782, and 1748. It is not surprising that a philosopher who was so skeptical about the foundations of human knowledge should deny that moral political principles can be determined by reason. But while Hume sometimes spoke dramatically of the impotence of reason in human affairs (“it is not contrary to reason to prefer the destruction of the world to the scratching of my finger”), and maintained that morality was a matter of passion and feeling, he did not suggest that ethical and political judgments were arbitrary. That there is a uniformity in human nature led Hume to speculate profitably on that structure of general rules which is consonant with those regularities that characterize man and society. Further, Hume was a rigorous critic of any contractual basis for society, depending as it does on a rationalist conception of natural law. In common with his contemporaries, he located the origins of law and government in certain natural propensities in man.

An important consequence flowed from Hume's belief in the uniformity of human nature. He stressed that any suggestions for the improvement of man must rest not on a utopian ‘reformation of the manners of mankind’ but on observation and experience of those rules that best serve men's more or less unchanging needs. The ‘facts’ that give rise to *essential* rules of conduct are scarcity, limited altruism, and an ever-present desire in men to forego long-run advantages in favor of immediate satisfactions. It is because of these unchanging circumstances that humans establish artificial rules of justice by reflecting on the *utility* that these rules produce in the enforcement of property rights. In Hume's words, they preserve the “stability of possession, of its transference by consent and the performance of promises.”<sup>32</sup>

It is important to note that these rules, which establish the connection between individual and public interest, emerge *spontaneously*. Hume is insistent that those things which are for the public benefit are not a product of rationalist calculation. The happiness of a community is not promoted by trying to instill a passion for the public good in people but by animating them with a “spirit of avarice and industry, art and luxury” so that the same result comes about indirectly. The rules of justice themselves are for the public good undoubtedly, but they emerge in an evolutionary manner from the actions of individuals who have only self-interest in mind. He says that “those rules, by which property, right and obligation are determined. . . have all of them a direct and evident tendency to public good” but that it is “self-love which is their real origin.”<sup>33</sup> Thus a system develops which is in *everyone's* interest “though it be not intended for that purpose by the inventors.”

## Adam Ferguson (1723–1816)

As a contributor to the tradition of spontaneous order, Adam Ferguson is noted mainly for his *An Essay on the History of Civil Society* (1767), but he was very much a ‘system-builder’ and the other elements in his social philosophy, covering ethics, jurisprudence, and economics, are contained in his *Institutes of Moral Philosophy* (1769) and the two-volume *Principles of Moral and Political Science* (1792). Often quoted with approval by Hayek as an early exponent of the antirationalist explanation of social order, Ferguson's defense of the liberal order of commercial society is less enthusiastic than others. In addition, his often moralistic celebration of an ethics of ‘virtue’ and public spirit, derived from classical antiquity, provides some contrast with the familiar morality of enlightened self-interest. Indeed, he denied that Mandeville's postulate of self-interest was sufficient to hold a society together. He feared that the individualist ethics of ambition and enterprise and the social system of the division of labor might so dilute patriotism that despotism would threaten commercial orders. Ferguson maintained this fear while not denying that liberty was associated with the commercial order and prosperity with the division of labor.

Consistent with the Scottish tradition, Ferguson sought to explain the social state by reference to nature and instinct, rather than reason and artifice. There is no state of nature out of which isolated individuals armed only with their reason contrive their way into society via a contract. On the contrary: “Mankind has always wandered or settled, agreed or quarrelled in troops and companies.”<sup>34</sup> Society has always been coterminous with man, and its bonds arise “from the instincts, not the speculations of men.” Again, ethics do not emanate from reason but from the facts of nature: that men naturally seek self-preservation, they desire to improve themselves, and are capable of benevolence. It was Ferguson's aim to link an evolutionary and quasi-historical explanation of society with a universalistic and naturalistic ethics.

### Ferguson's Conjectural History As Spontaneous Order

Ferguson's descriptive sociology was a hypothetical reconstruction of the natural evolution of society from a ‘rude’ to a ‘polished’ state. He distinguished three sorts of social order: ‘savage,’ which is scarcely a society at all, with no property and little inequality; ‘barbaric,’ which is characterized by the natural emergence of property, inequality, and elementary political institutions; and ‘polished,’ which is the order of the commercial society, with specialized social roles, manufacturing industry in addition to agriculture, and the division of labor.

The emergence of the commercial society, then, is spontaneous and undesigned, coming about through man's natural adjustment to circumstances. Government and law, for example, are needed to protect property, and the forms of political rule depend on experience and instinct rather than reason, since “no constitution is formed by concert, no government is copied from a plan.” And, in a phrase made famous by Hayek, Ferguson declared that:

Every step and every movement of the multitude, even in what are termed enlightened ages, are made with equal blindness to the future; and nations stumble upon

establishments, which are indeed the result of human action, but not the execution of any human design.<sup>35</sup>

Yet there is a curious mixture in Ferguson; his thought includes not only a voluntaristic ethic that stresses activity and benevolence (and which is favorably disposed to conflict as a mainspring of human action) but also a recognition of the fact that men are in general governed by self-interest and that the public interest is better promoted by each person caring for his own welfare. This would reinforce Hayek's view that the theory of spontaneous order does not *necessarily* depend on a self-interest axiom of human nature but only on the idea that aggregate and orderly social structures can be traced from the actions of individuals who had no intention of bringing them about. It is important to note, however, that Ferguson was obsessively concerned with the idea that the commercial system was inadequate precisely because it unintentionally attenuated those *social* values, such as the public spirit and the military ethic, which were evident in earlier and ruder forms of society.

## Adam Smith (1723–1790)

### Smith's Systematic Social Science: Economic & Legal Order

Smith was the most systematic *social* theorist of the Scottish Enlightenment. His *Wealth of Nations* (1776) is a type of 'general equilibrium' theory of economic society in which a self-regulating system of spontaneous order is reconstructed out of the basic impulses in human nature. Although it explores the implications of *self-love* for the maintenance of an economic system there is no real inconsistency between this and his earlier treatise on ethics, *The Theory of Moral Sentiments* (1759), in which a much wider range of human motivations is analyzed. It is true that the *Wealth of Nations* is less sanguine about the beneficial effects of natural liberty, and therefore it sanctions a not inconsiderable number of interventionist actions, but there is little difference in the principles of human nature that underlie it and *The Theory of Moral Sentiments*.

Smith had promised a general treatise on law and government but did not live to complete this; however, two reports of his *Lectures on Jurisprudence* were discovered after his death, and these contain elements of a general theory of law. Although many of Smith's ideas were not original to him, he constructed a novel theory of how a social order might be maintained through the operation of natural forces, with little in the way of artificial direction and control. There is, however, a minor revolution presently going on in Smithian scholarship, largely concerned with downgrading the elements of spontaneity and automatic adjustment hitherto thought to be characteristics of his social theory and 'recapturing' his work for the eighteenth century. The criticism is that previous commentators have tended to look at Smith's work through nineteenth-century *laissez-faire* spectacles rather than see him in the context of eighteenth-century politics.<sup>36</sup> While perhaps a slightly more statist Smith has emerged from this analysis it does not affect the judgment that his work forms a land-mark in the history of the theory of spontaneous order.

## Smith's Invisible Hand And Natural Liberty

In common with his contemporaries Smith sought an explanation of social order which economized on reason. Smith puts this point graphically with his explanation of the emergence of the division of labor: this is not

originally the effect of any human wisdom, which foresees and intends the general opulence to which it gives occasion. It is the necessary, though very slow and gradual consequence of a certain propensity in human nature which has in view no such extensive utility: the propensity to truck, barter and exchange one thing for another.<sup>37</sup>

The anti-intentionalist aspect of Smith's approach is clear from his emphasis on 'natural liberty': allowing this to operate produces benign consequences in contrast to those that come from artifice. In the *Theory of Moral Sentiments* he argues fiercely against that 'spirit of system' of the rationalist philosophers which arrogantly presupposes that the happiness of human beings can be arranged, independently of experience, according to a predetermined plan. He says that rationalists forget that "in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it."<sup>38</sup> In a number of passages in the *Wealth of Nations* he argues that the centralized legislator will not have the knowledge at his disposal that individuals have of their 'local situations' and it is this which is maximized in their pursuit of natural liberty. That 'invisible hand' that co-ordinates human action under the system of natural liberty is as much a metaphor to describe how a society responds to the problem of ignorance as it is a metaphor to explain how the public good can be a product of self-regarding action.

By a natural occurrence of events, Smith means what happens when the normal course of events is allowed to proceed without some deliberate human intervention. The behavior of a market is an obvious example of such natural phenomena. The self-regulating properties of the market are not a product of a designing mind but are a natural product of the price mechanism. Now from certain uniformities of human nature, including of course the natural desire to 'better ourselves,' it can be deduced what will happen when government action disturbs this self-regulating process. Thus Smith shows how apprenticeship laws, restraints on international trade, the privileges of corporations, etc., all disturb, but cannot entirely suppress, natural economic tendencies. The spontaneous order of the market is brought about by the *interdependency* of its constituent parts and any intervention with this order is simply self-defeating: "No regulation of commerce can increase the quantity of industry in any part of society beyond what its capital can maintain. It can only divert a part of it into a direction which it might otherwise not have gone."<sup>39</sup>

Smith's celebration of the market in no way revealed an admiration for the merchants as a 'class': Smith's criticism of them is well-known. The order emerges despite the intentions of merchants, who are as eager as anyone else to seek advantage through state action which is disruptive of that order.



## The Limits To Smith's Spontaneous Order

The system of natural liberty, however, can only work in the context of a form of interventionism; that of the enforcement of the strict rules of justice. Nature, while the source of unintended benefits for mankind, also accommodates those impulses which, if unregulated, turn self-love into an anti-social selfishness. For Smith justice is basically *commutative*, imposing negative obligations on people to refrain from violating the natural liberty of others and requiring the enforcement of contracts. While a society may subsist without the sentiment of benevolence, it cannot survive without the enforcement of justice: the rules of which are the minimum requirements of the market society.

While Smith certainly does not believe that natural processes alone can be relied on to generate a legal order, or in the rationalist notion of natural law that validates 'anarcho-capitalism,' he does have a theory of the spontaneous emergence of those legal rules which are to be enforced by the state. This is contained mainly in his (reported) writings on jurisprudence. His legal theory is based on the idea that law is not the artificial command of a sovereign but the formalized expression of *natural* justice. The content of this natural justice is that which would be determined by the hypothetical impartial spectator, informed by tradition and experience. The mechanism for producing that desired harmony between positive law and natural justice is the common law: and Smith's jurisprudence contains a typically antirationalist defense of judge-made law against statute. However, while the common law needs to be supplemented by statute (one reason being the need to control the judges), the standard for statute law should be natural reason and not the will of the legislator. Although, it is not clear whether 'natural reason' refers to merely conventional standards or represents a more universal naturalistic morality.

Yet in Smith the spontaneity of a social order appears not to be the same as that of an economic system governed by natural liberty. His explanation of the *evolution* of a social and political order has a historicist, almost deterministic, and fatalist aspect which has been seized on by some contemporary critics as evidence of a disjuncture between his economics and politics. In his tracing of a conjectural history of society's development through four stages, the initial periods of Hunters and Shepherds, through to Agriculture and culminating in Commerce, he implies not merely that social institutions are to be explained independently of specific intentions but that there is a certain inevitability about the course of events. He actually says that there is a "fatal dissolution that awaits every state and constitution whatever."<sup>40</sup> This raises the possibility that the explanation of spontaneous order in the non-economic sphere may slip unintentionally into a kind of determinism.

Furthermore, Smith is certainly not happy with certain of the unintended consequences of the market order that he detected, and their presence justified, in his mind, certain constructivistic interventions by government. Attention has recently been focussed on those passages in *The Wealth of Nations*<sup>41</sup> which suggest that the specialization of the division of labor renders large numbers of the population stupid, inactive, and 'alienated' from the system of natural liberty; and also progressively incapable of mastering those requisites for the making of moral judgment which are

described in *The Theory of Moral Sentiments*. It is this concern that underlies his belief in a state system of education. It is, in fact quite easy to compile a sizeable list of ad hoc interventions which Smith authorizes, and this indicates that he did not think the outcomes of the system of natural liberty were *automatically* benign.

As with other great systems of ideas it is possible to read almost anything into Smith's works. What cannot be denied, however, is the fact that they constitute the first detailed statement of the theory that a society is a system of interrelated parts which exhibits a natural tendency to equilibrium if left undisturbed. It is this insight that makes a social science possible and which, in a normative sense, enables the mind to hypothetically construct the likely consequences of arresting or diverting these natural processes. In the light of this discovery the offence of 'inconsistency' seems less heinous than some recent critics of Smith have implied.

## Between Smith And Menger

It is commonly thought that after Smith the theory of spontaneous order went into a decline until the rise of Austrian economics and social science in the last decades of the nineteenth century: that the cautious consequentialism of Hume and Smith was replaced by the activist utilitarianism of Bentham and the two Mills, which authorized government to directly promote social well-being by coercive law (that law itself was a product of command and will rather than evolution). However, this interpretation would be misleading since there were other writers during this period who continued the individualist tradition. The most important were the writers in the French *laissez-faire* school and Herbert Spencer.

## Bastiat And De Molinari

The leading figures in France were Frederic Bastiat (1801–1850) and Gustave de Molinari (1819–1912). One reason why they have not been taken as seriously as they deserve as theorists of spontaneous order is that they contributed little in the way of original theory to economics. Bastiat is largely known as a brilliant economic journalist and tireless exposé of statist and protectionist fallacies, and de Molinari as a relentless advocate of the logic of *laissez-faire* towards a version of free market (and lawful) anarchy.

Although, for example, Hayek's admiration of Bastiat extends only to his feats as a polemicist, he is worth further study because his novelty lay not in economic theory but in general social philosophy; in the theory of law and government. One reason why Hayek pays no attention to this is that, although Bastiat comes up with a theory of limited government and an explanation of the ultimate *harmony* that automatically results from the free play of economic forces, the foundation for this conclusion is rather different from others in the tradition that Hayek admires.

In a word Bastiat was a *rationalist*; he deduced his theory of limited government and economic harmony directly from an abstract theory of natural law and natural rights. While he was indefatigable in his demonstrations of the beneficial consequences that inevitably flow from freedom and exposure of the dis-coordinating actions of



government, his ultimate justification for liberty lay in an essentialist concept of man abstracted from time and place. In his work on jurisprudence, *The Law*, Bastiat espouses an individualist view of law and justice that derives not from those natural propensities and passions, as in Hume and Smith, but from reason, and ultimately God: “Each person has a natural right—from God—to defend his person, his liberty and his property.”<sup>42</sup> It is just this that the anti-rationalists reject on the ground that ‘nature’ does not furnish us with a permanent and universal standard of conduct independently of experience. This means that whereas Bastiat deduced the relationship between the individual and government axiomatically from the first principle of liberty—that each man has the right to protect his life, liberty and property—the evolutionary approach suggests that the ideal working of a social system is too complex to be captured in a simple formula, that no abstract system of rules can be rationally devised which can accommodate all future unknown cases.

## Herbert Spencer

In the writings of Herbert Spencer there are obvious indications of an evolutionary approach. For although in his early work *Social Statics* (1851) he appears to have deduced the system of *laissez faire* from a doctrine of natural rights, couched in the form of the Law of Equal Freedom, the idea of the spontaneous evolution of rules and institutions came to dominate his social thought. In his *Social Statics, The Man versus the State* (1881), and his sociological writings there are numerous examples of his commitment to a form of reasoning we associate with spontaneous order. He stresses that societies develop (from militant to industrial) without design and according to laws which operate independently of man's will; that a market allocation, specialization, and the division of labor spontaneously develop to man's advantage; that reformers mistakenly treat a society as a ‘manufacture’ which can be manipulated by rationalist planners when it is in fact a ‘growth’; and that proper social science requires an exploration of the long-term and unintended consequences of human action. Furthermore his normative ethics were of a complex consequentialist kind. The Law of Equal Freedom was justified because it was consistent with the *long-run* happiness of men: what he objected to was that constructivistic rationalist utilitarianism which tried to measure the *immediate* effects of rules and policies. It was a fundamental tenet of Spencer that the complexity of a social order precludes this kind of calculation.

It is curious why Hayek should pay so little attention to Spencer's social science and philosophy. What is even more remarkable is that the influence of evolution had a corrosive effect on both their systems. For if the criterion of social value is *survival* in an evolutionary process, what can be said against those institutions which, although they may embody anti-liberal values, have survived? Spencer was faced with this problem during his lifetime because of the rise and *political* success of socialist institutions and measures which he claimed belonged to a pre-industrial stage of social evolution. As we shall see below, Hayek is faced with the problem that undesigned institutions may develop in a number of different ways, including anti-liberal ways.

## Carl Menger (1840–1921)

Carl Menger is associated primarily with Jevons and Walras for his rediscovery of the subjectivist theory of value and the principle of marginal utility in his first published work of economic theory (1871). But his contribution to the theory of spontaneous order is contained in his methodological work, *Problems in Sociology and Economics* (1883). In this he attacked the methodology of the ‘younger historical school’ of German economists and tried to found a ‘causal-genetic’ *theory* of society in which the regularity and predictability of institutions is theoretically reconstructed out of the actions of individuals. Menger in fact called his procedure the ‘compositive’ method: this holds that while it is meaningful to talk of social ‘aggregates,’ the behavior of such aggregates is explicable only in individualist terms.

Menger's methodology consists of two parts. The first part describes those timeless generalities called ‘exact’ laws (such as the law of demand) which do not refer to any actual empirical phenomena but which enable us to organize social knowledge. The second part, which is more important from the point of view of the theory of spontaneous order, describes those empirical regularities that, although they are necessarily less precise than the exact laws, are capable of a theoretical and ahistorical explanation.

What Menger wished to do was to refute what is now called ‘historicism,’ i.e., the idea that the laws of social science consist of observed historical regularities; normally, in the German historical school, these were purported regularities of holistic (and irreducible) entities, such as the ‘national economy.’ Menger had no objection to the *proper* historical method, which was the study of unique individual events; his criticism was directed at the attempt to construe empirical laws as sequences of such historical events. For Menger ‘empirical’ laws were not historical generalizations but hypothetical constructions derived from regularities in individual behavior. This anti-inductivism is a striking feature of the social science of the Austrian economists and social philosophers. For them the immense complexity of the social and economic world means that the theorist must proceed by the way of ‘abstraction’ rather than description.

The institutions that social science explains by the method of abstraction are money, languages, markets, and law. They are examples of what Menger calls *organic* phenomena because they are the results of natural processes. These *organic* institutions are to be contrasted with *pragmatic* institutions, which are the product of human deliberation and will. In common with the eighteenth-century thinkers Menger comments on how the organic institutions serve the common welfare without being the product of a common will. In a revealing passage he wrote:

Language, religion, law, even the state itself, and to mention a few economic social phenomena, the phenomena of markets, of competition, of money, and numerous other social structures are already met with in epochs of history where we cannot properly speak of purposeful activity of the community as such directed at establishing them.<sup>43</sup>

Menger's most significant example is his explanation of money. He was struck by the fact that, since people only exchange to procure goods that they need, it seems implausible that selfinterest would produce a 'public' institution such as money, which is clearly not required for their *immediate* needs. Menger points out that many social philosophers were driven by this paradox to claim that money was the product of some specific agreement or contract, or positive act of legislation by the state.

Against this rationalist explanation Menger argues that, although money can and has come about in this way, the institution can be accounted for by natural process. In an original barter economy it will be apparent that some goods are exchangeable for a greater range of goods than many others and people will naturally exchange their less marketable goods for these, even though they do not immediately need them, to satisfy more conveniently their future wants: "the economic interest of the economic individuals, therefore, with increased knowledge of their *individual* interests, without any agreement, without legislative compulsion, *even without any consideration of public interest*, leads them to turn over their wares for more marketable ones. . . "44 (italics in original). The process will automatically produce a good that has the familiar properties of money.

However, all the economic agents could never simultaneously possess the knowledge of the advantages of the money good. The emergence of money is a gradual process and is in fact set in train originally by a small number of individuals perspicacious enough to see its advantages. It was not the intention of those economic agents to produce something for the public's advantage but this is what occurs.

The interesting thing about Menger's discussion of spontaneous order, however, is that he does not emphasize the *value* of undesigned institutions in quite the same way as other thinkers in the same tradition and does not assume that they are necessarily superior to pragmatic ones. It is true that in *Appendix VIII* of his *Problems* he specifically contrasts evolving law with statute law and draws out the advantages of the former in what has become the orthodox fashion, but he then goes on to discuss some important qualifications. He is particularly concerned that the organic view should not be interpreted to mean that rules which have developed in an undesigned manner should necessarily be regarded as superior to made or contrived law. It is not the origin of the law that determines its value but its usefulness. He says that the "common law has proved harmful to the common good often enough. . . and legislation has just as often changed common law in a way benefiting the common good."45

Menger is then highly skeptical of the notion that the common law contains some 'higher wisdom' which is immune from rational criticism. The fact that institutions had emerged organically is not a reason for approving of them any more than their pragmatic origin is a reason for condemnation. There is a tendency in some writers in the literature of spontaneous order to regard certain institutions as functional merely because they have survived an evolutionary process, but this conviction is absent in Menger.

## F.A. Hayek

Of all the twentieth-century theorists of spontaneous order, Friedrich A. Hayek (b. 1899) has contributed most to the intellectual reproduction of Adam Smith's vision of a self-correcting social order which requires little direction and control. Throughout the great variety of his works<sup>46</sup> he has stressed the importance of spontaneous processes and the impossibility of predicting the future growth of a social order. The whole of his social philosophy may be described as an assault on the exaggerated claims made for 'reason' and a justification for the view that we must adopt an attitude of humility towards natural processes and "submit to conventions which are not the result of intelligent design, whose justification in the particular instant may not be recognizable, and which will. . . often appear unintelligible and irrational."<sup>47</sup>

While Hayek has been a rigorous critic of 'scientism,' the belief that the methods of the physical sciences can be readily applied to the study of society, with their concomitant advantages of prediction and control, he does not deny that a social system is governed by 'laws.' There are, for example, laws of economics; these consist of, to use Lord Robbins' phrase, "those necessities to which human action is subject." In Hayek's opinion, many of the mistakes of rationalist planning stem from attempts to resist the operation of the basic principles of scarcity, supply and demand and so on, and well-established laws of human behavior. A genuine social science, then, would describe how men adjust to certain inevitable laws and stress how little they can, or need to, control their societies.

## Knowledge And Society

In his description of a self-regulating system Hayek's major achievement has been to show that the advantages of decentralized decision-making in a market stem from the fact that this is the only device that man has discovered for coping with the universal facts of ignorance and uncertainty. It is because the social world does not consist of physical objects governed by simple laws of causality, but is a 'kaleidic' world inhabited by individuals with minds, whose the inner recesses are inaccessible to the external observer, that knowledge is not 'fixed' and available to a single person or institution.<sup>48</sup>

## Co-ordinating Dispersed Knowledge: Rationale For Market & Liberty

The problem of knowledge arises because the 'facts' of a social and economic system are dispersed throughout the minds of thousands, possibly millions of actors; therefore this knowledge has to be co-ordinated if we are to exploit it for the benefit of man. This division of knowledge, which characterizes any social process with a degree of complexity, is, in Hayek's opinion, as important as the division of labor as a mechanism to explain progress; the co-ordination of this diffused knowledge via a market process allows us to utilize a much greater amount of knowledge than under known alternative systems. Thus, whereas Adam Smith and his successors saw the market and law as co-ordinating the *self-interested* actions of agents so as to produce

an unintended beneficial outcome, Hayek speaks of the co-ordination of the actions of necessarily *ignorant* people. Thus the theory of spontaneous order does not depend for its truth on the so-called 'egoistic' behavior assumptions of traditional economic theory because there remain universal co-ordination problems whether people are selfish or altruistic in their impulses. Nevertheless, one should not ignore the importance of 'vulgar' motivations in the economic nexus; the interdependent parts of an economic system are normally held together by self-interest.

The justification for individual liberty is then largely instrumental in that the case for freedom "rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends."<sup>49</sup> It is not that the theory of spontaneous order precludes planning as such; it is that only planning by individuals in decentralized markets will tend towards an optimal use of knowledge. The central planner has only that knowledge available to him, which is less than that which is co-ordinated among all the agents in a market process. Furthermore, because the future is unknowable, a system that relies on liberty allows for the accidental and spontaneous. Hayek's main objection to the rationalist theory of liberty is that the rationalist associates the growth of knowledge with predictability and control; but those things which can be predicted and controlled comprise only a small part of social and economic experience.

In Hayek's epistemology, *scientific* knowledge of society is knowledge of spontaneously formed orders: the knowledge that we do have of *made* orders cannot be genuine scientific knowledge. Thus much of contemporary sociology and political science is not scientific knowledge but rather contemporary history because those subjects deal with phenomena which are the product of will and intention: the only social phenomena which are explicable by scientific, causal-genetic laws are markets and legal systems.

## Ambiguity In Explaining Legal Orders: Spontaneous Order Vs. Relativistic Evolution

It is my intention to show that while Hayek's attempt to explain the spontaneous order of the market is largely successful, and indeed contains some of the most brilliant insights into the nature of economic processes since Adam Smith, his attempt to account for the legal order in similar terms is less successful. This is largely because he blends two subtly different types of explanation: one concerned with the formation of spontaneous orders, and one concerned with the evolution of rules and institutions by natural selection. Hayek himself speaks of the 'twin ideas' of evolution and of the spontaneous formation of an order without indicating that there might be an important difference between the two. But the emphasis on evolution and the *cultural transmission* of rules and practices introduces a note of historical relativism which does not always harmonize with the universalistic liberal rationalism characterizing his explanation of the formation of economic orders.

## The Free Exchange System

### ‘Catallaxy’ Vs. ‘Economy’ Market Co-ordination Vs. Neoclassical Equilibrium

The word that Hayek uses to describe a spontaneous market order is *catallaxy*; and a *catallaxy* is contrasted with an *economy*. An economy is a social practice defined in terms of the pursuit of a ‘unitary hierarchy of ends,’ where knowledge of how to achieve these ends is given. A single firm (or a household) is an economy and may be evaluated with the methods of an engineering type of science for its success in achieving prescribed goals, or common purposes. However, a *catallaxy* is a network of many firms and households and has no specific purpose of its own: it is that which results naturally from the interaction of firms and households through the exchange process: “the order of the market rests not on common purposes but on reciprocity; that is, on the reconciliation of different purposes for the mutual benefit of the participants.”<sup>50</sup>

According to Hayek, the mistake of orthodox neoclassical theory is to treat a *catallaxy* as if it were an economy. This is because of the neoclassical emphasis on static equilibrium. This is an example of rationalism because it is assumed that an ‘efficient’ economic order, in the conventional sense of there being a state of affairs in which it is impossible to switch a resource from one use to another and receive a net benefit, can be designed without a market process to signal information about tastes, costs, and so on. However, this assumes perfect information, whereas the real world is characterized by ignorance, change, and uncertainty, so that knowledge cannot be ‘objectified’ and made to serve given ends. All we can expect is a tendency towards equilibrium as the actions of individuals are co-ordinated through the mechanism of prices. Thus Hayek extends subjectivism beyond the theory of value to the theory of market process.

This theory, that there is a tendency to equilibrium in a decentralized exchange system is of course an empirical theory, which may be falsified. It is logically possible that there may be such endogenous ‘shocks’ to the system that the plans of the participants may not harmonize. Indeed, there are extreme ‘subjectivists’ who do not merely reject the neoclassical orthodoxy concerning static equilibrium, but also suggest that, because of the divergence of ‘expectations,’ future profitable opportunities may not be exploited so that there is not even a tendency for the actions of economic agents to be co-ordinated. In the work of G.L.S. Shackle and Ludwig Lachmann there is the implication that the spontaneous emergence of an *order* may be only a chance phenomenon, rather than a theoretical property of an interdependent economic system. In other words, the market does not co-ordinate expectations in the way that it co-ordinates knowledge.<sup>51</sup> In Hayek's early work on the theory of market process, his main concern was with the disequilibrating effect of certain exogenous factors, such as governmental control of money, which dis-coordinated the actions of economic agents; he did not consider seriously the possibility of the presence of ignorance and uncertainty producing spontaneous disorder. Further, although Hayek presented his theory as an empirical one, he did not indicate under what circumstances it might be



falsified. The assumption was that a *catallaxy* was tending towards equilibrium rather than being moved away by endogenous factors.

## Co-ordinating Market Knowledge: Competition & Entrepreneurship

However, it should be argued that there are certain identifiable causal factors at work which bring about this tendency, namely *competition* and *entrepreneurship*; and here, Hayek's important suggestions have been taken up by other writers.<sup>52</sup> His argument is that in the standard general equilibrium model competition does not exist, since, if there is an equilibrium, competition has ceased and opportunities for further trade are exhausted. What is not considered in the general equilibrium model is how this stable state of affairs comes about, or what mechanisms produced this optimum. Hayek's theory maintains that in an uncertain world, the 'discovery procedure' of competition spontaneously co-ordinates decentralized information and thus brings about a tendency towards equilibrium.<sup>53</sup> That array of 'correct' prices proposed by orthodox theory is an illusion; in reality prices are always to some extent 'incorrect' and therefore always suggestive of some reallocation of resources through the competitive process.

It is here that the role of the entrepreneur becomes important because the co-ordination process depends upon the existence of entrepreneurship as a special activity. The concept of entrepreneurship can perhaps be better explained by reference to 'prediction.' Since the general equilibrium model assumes knowledge of tastes, costs, and so on, the implication is that it is possible to predict mechanically what an efficient allocation of resources would be. If this were so, then entrepreneurship would be redundant.

However, in a world of uncertainty, where the future is unknowable, a predictable outcome is an epistemological absurdity. The entrepreneur, albeit guided by self-interest, accidentally plays a socially beneficial role in co-ordinating economic knowledge to produce an outcome which *looks as if* it had been designed and predicted by an omniscient legislator, but clearly could not have been.<sup>54</sup>

In this view of a competitive process such market imperfections as monopoly are not therefore aberrations which can be legislated away so as to eliminate an alleged 'welfare loss' but may well be necessary elements in the emergence of a spontaneous order. It may be the case that the monopoly reflects superior efficiency, or that without the prospect of monopoly gains a particular good would not be produced at all. In these cases there *is* entrepreneurial activity. In any event, as long as there are no governmental barriers to entry the monopolist operates under some constraint so that rather than eliminate monopoly by law and artificially create some abstract concept of 'perfect competition,' it is better to let natural competitive processes operate. It is Hayek's claim that 'natural' monopolies are extremely rare, and that most monopolies are the product of deliberate government intervention; where they do exist, the market itself is a natural process which generates its own corrective devices.

The most important feature of the price system is that it economizes on knowledge. Each participant has to know little of the whole system for the co-ordination to be successful since its signals “enable individual producers to watch merely the movement of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement.”[55](#)

## Disruptions Of Catallaxy

How then does Hayek explain the breakdowns of this *economical* order? In short, he maintains that most of the disorder in the market system that we experience is a result of mistaken interventionist measures which distort natural self-correcting processes that are at work in the system. Thus the theoretical study of economic processes must emphasize those institutional structures which are disruptive of a spontaneous order. Later, of course, Hayek was to develop a theory of society which suggests how dis-coordinating institutions may be rectified, but in his writings as an economist he took institutions as given and made certain economic inferences from them. In this sense only is his economic theory independent of his general social theory.

Throughout his career as a pure economist the institutional factor which has concerned Hayek most is governmental control of the monetary instrument. It is this that has generated economic *disorder* and dis-coordination by distorting the system of relative prices which would otherwise induce economic actors to produce a stable order. Furthermore, arbitrary privileges granted to trade unions by statute law suppress the natural functioning of the labor market so that resources are misallocated and involuntary unemployment generated. Before looking at these types of disorder, however, we should give some attention to that spontaneous *disorder* that Hayek himself admits may be produced by a market subject to no controls.

This occurs in the now familiar areas of public goods and externalities. These areas were little discussed at the time Hayek wrote his pioneering essays on the theory of spontaneous order.[56](#) He has, however, always argued, against the claims of anarcho-capitalists, that the market cannot spontaneously produce a police and defense system, and other ‘public goods’ which, according to public goods theory assumptions, it would pay no individual economic actors to supply. In the logically similar area of ‘external bads,’ i.e. where each individual actor in the market has every incentive to impose external costs on the community, as in the case of pollution, Hayek agrees that there may be a role for collective action.

One familiar way of preventing this latter sort of spontaneous disorder is to specify a set of appropriate property rights so that any external harm falls on an individual property holder who can then sue the instigator of the harm for damages. In this way external ‘bads’ might be internalized. While this approach is not antithetical to the Hayekian system it does imply an activist role for some authority in determining new property rules and the *deliberate* agreement of actors to follow such rules. In this, and other areas, Hayek places (in the opinion of many critics) too much reliance on the *evolution* of appropriate property rules for the competitive process:[57](#) and this is a



consequence of his refusal to consider the possibility that in some areas reason may improve on natural processes.

## Austrian Perspective On Intervention: Dis-coordination Of Economic Knowledge

The kind of disorder, however, to which Hayek has contributed much illumination is that brought about by government intervention in a *catallaxy* at the 'macro' level. Of course Hayek has never recognized a macroeconomic theory which is not reducible to individual volitions (holistic magnitudes are 'fictions,' they do not display irreducible regularities) but nevertheless his inquiries into the trade cycle focused on the behavior of a *catallaxy* as a whole.<sup>58</sup> Most of his economic theory addresses those who deny the basic proposition that an unhampered market economy (or *catallaxy*) tends towards the full employment of all resources. The most notorious of these theories is Keynesian macroeconomics, and it is to this that Hayekian economics is normally addressed, although he formulated his theory of money and the trade cycle before the publication of Keynes' *General Theory*.

In the familiar Austrian theory of the trade cycle, disequilibrium and the dis-coordination of economic knowledge is a function of misleading signals being put out to market transactors by the monetary system. An automatic co-ordination of the intentions of savers and investors, which would produce more or less full employment of all resources, is systematically disrupted by manipulated money, which leads to misallocation and therefore painful periods of readjustment. What happens is that under the fractional-reserve banking system, increased credit lowers the rate of interest on the money market below its 'natural' rate (i.e., the rate determined by the time-preferences of individuals) so that extra investments are made at longer stages of production.

In Austrian theory the structure of production<sup>59</sup> consists of a series of integrated stages with immediate consumption goods located at the nearest stages and capital goods at the farthest. This 'order' is fundamentally stable if the investment at the farthest stages are warranted by the current consumption-savings ratio of the public, since, then, savings will make available those complementary capital goods which are required to complete the structure of production. However, under the fractional-reserve banking system the structure is unstable. The long-term investments, in this system, are *malinvestments*, brought about by cheaper credit and not by a lowering of time-preferences by the public. Since individuals are consuming at the same rate as before the credit injection begins, extra earnings of labor factors will be spent on consumer goods and therefore cause a switch back to the nearest stages to meet this new demand; and therefore a shrinking of the capital structure occurs. Thus there will be temporary unemployment in the remote stages. The resulting recession must be endured while normal market processes liquidate the malinvestments brought about by misleading price signals.

While this is the standard version of the theory, the particular form in which the disorder takes place will vary according to different institutional structures. In the 1930s it was increased bank credit that produced the cycle and its effect was visible in

the form of unemployment in investment goods industries. In the contemporary world, characterized by massive government intervention, the misallocation is much more diffused throughout the whole system.<sup>60</sup> Also, today the natural readjustment process may be slower, in Britain especially, because welfare legislation, union privileges, and housing policy have all combined to increase the immobility of labor.

## Hayek On Monetary Disorder

In all this, the instability of a *catallactic* process is a function of the ‘non-neutrality’ of money. Since increases in credit do not affect all prices in a uniform manner (which is the implication of the Walrasian general equilibrium theory), disorder must occur under the orthodox banking systems of capitalist economies because changes in relative prices mislead market transactors. The question is whether such *disorder* is a necessary part of a *catallaxy* or whether it is always brought about by some exogenous agency.

Now Hayek has described money as a kind of ‘loose joint’<sup>61</sup> in a process which in other respects showed an automatic tendency towards equilibrium. The fractional-reserve system, while its elasticity of credit caused misleading price signals, had itself developed spontaneously, and therefore Hayek, in the 1930s, claimed that its abolition and replacement by a 100 per cent reserve system would create even more problems. All that was required for the self-regulating processes to work was something like the Gold Standard (or fixed rates of exchange) and the withdrawal of government from the economy: this would mitigate, if not entirely eliminate, the effects of the cycle. In practice, it was government mismanagement of the currency that caused severe maladjustment of the *catallaxy*.

Hayek gave no suggestion at this time that government should lose its monopoly over legal tender. Rather he claimed that the disequilibrating effects of this could be mitigated by institutional procedures. In recent years, however, Hayek has pioneered the idea that complete removal of government's monopoly over money is required and that competition between rival currencies, issued by banks and governments, would spontaneously generate monetary stability.<sup>62</sup> The curious feature of this proposal is its contrast with previous theorists of spontaneous economic order who had argued that the removal of government from money would produce a commodity-based money (indeed, it was a fundamental feature of the monetary theory of Ludwig von Mises that the value of a money device could ultimately be traced back to its value in use). Hayek, however, appears to think that competition between paper currencies will produce stability. He is skeptical of gold becoming usable again—for the fallacious reason, according to orthodox theory, that “there is just not enough gold about”—and makes the constructivistic proposal that countries should mutually bind themselves by formal treaty not to impede the free use of currencies issued by other countries or banks.<sup>63</sup>

Irrespective of the details of Hayek's proposed solution to the problems caused by monetary disorder, his persistent argument, over a period exceeding fifty years, that government control of money produces never-ending inflation and a consequent

disruption of economic order, has been amply borne out by events. If his social science had been limited to this alone it would constitute a major achievement.

## The Structure Of A Legal Order

### Social Cosmos: Spontaneous Order Vs. Constructivistic Rationalism

The most important aspect of the unity of Hayek's method is his attempt to explain the nature of legal and social institutions with the same intellectual tools which he used in the explanation of economic phenomena: tools that stress natural processes rather than reason and artifice. In an essay, "The Principles of a Liberal Social Order," Hayek said:

Under the enforcement of universal rules of just conduct, protecting a recognizable private domain of individuals, a spontaneous order of human activities of much greater complexity will form itself than could ever be produced by deliberate arrangement. . . [64](#)

The problem here is the explanation of the origin of the 'universal rules of just conduct.' Do they emerge spontaneously? Or is some element of constructivistic rationalism required for the explanation of these rules that service a *catallaxy*? While Hayek has always been favorable to the common law, as opposed to statute, in the *Constitution of Liberty* he did suggest that the growth and development of a *catallaxy* could take place within the context of general codes of law that define the conditions of freedom.[65](#) However, in his trilogy, *Law, Legislation and Liberty*, there is almost an exclusive emphasis on the virtues of spontaneously developing law and institutions. The explanation for this change lies in the fact that although Hayek concedes that condified law may be more certain than judge-made law, this advantage is nullified if it leads to the view that "*only* what is thus expressed in statutes should have the force of law"[66](#) (*italics in original*). Spontaneous legal orders will contain rules that have yet to be formulated in words. Hayek does not regard a social system (or *cosmos*) as completely self-regulating and self-correcting, since he recognizes a role for coercive government in the enforcement of rules and concedes that 'legislation' will be required for the correction of 'law' that may have developed in an inappropriate manner. But the task allocated to evolution in the explanation of genuine law is clearly meant to parallel that of the 'invisible hand' in the explanation of harmony in the market economy.

However, many contemporary classical liberals argue that Hayek's analogy fails: that just because 'discovered,' as opposed to 'made,' law is a product of accident this does not make it efficient law, in the sense of it providing an appropriate framework for the order of the market. The elimination of reason from the construction of the rules of an economic system would seem to commit Hayek to a certain kind of conservatism and quietism in the face of some ineluctible flow of events, despite his own personal commitment to economic liberalism and his recommendation of quite radical institutional reforms.

## Spontaneous ‘Nomos’ Vs. Rationalist Law Common Law Vs. Statute Law

In Rules and Order Hayek defines ‘order’ as

*... a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest. . .*[67](#) (italics in original)

This means that a social order is a structure of interrelated parts that displays *predictability* and *regularity* because of rules that govern its behavior. In a legal order such rules may be a product of command (and Hayek maintains that in any social system some of its rules will have to be of this type). However, his claim is that greater regularity and predictability, and therefore complexity, will exist in orders where the bulk of the rules that govern interdependency have emerged spontaneously. The point he is making here is the anti-rationalist one that rules are not the product of a mind, abstracted from experience, as in the Hobbesian model. Rather rules and society have developed, as Ferguson and the eighteenth-century writers insisted, coterminously. As a result, ‘law’ (in the sense of those rules of just conduct which govern individual relationships) differs from, and precedes, ‘legislation’ (that body of deliberate commands which is addressed to specific purposes). ‘Discovered’ law is called *nomos*[68](#) and is consistent with the order of a free society. This is because, since it is concerned with no overall purpose of its own, *nomos* enables an unknown number of individual purposes to be fulfilled. Its domain is the protection of the person, of property, and the enforcement of contracts.

In this argument Hayek is, in effect, restating some familiar themes concerning the virtue of the common law system which he himself has detected in the writings of Hale, Burke, and the European historical school of jurisprudence. However, undoubtedly a major influence on his post-*Constitution of Liberty* jurisprudence has been the late Bruno Leoni's *Freedom and the Law*.[69](#) This is perhaps the most sophisticated expression of the evolutionary theory of law; for Leoni does not merely rely on the ‘wisdom of history’ but constructs a direct analogy between law and the market. Law develops in a case by case manner during which judges fit and adapt existing law to circumstances so as to produce an overall order which, although it may not be ‘efficient’ in a technical, rationalistic sense, any more than competitive markets are ‘perfect,’ is more stable than that created by statute. Statute law may appear to be more predictable because it is written down, whereas common law (‘lawyers’ law’) may not actually be known until a judge has ‘discovered’ it, statute law is in fact much more capricious precisely because, in the modern world especially, statutes change frequently according to the whims of legislatures. Hayek's position is similar to Leoni's anti-statute approach in all important respects: because it is impossible to predict human (legislative) behavior, a structure of law which is not the result of will and cannot be known in its entirety, paradoxically, displays more regularities than a written code. Furthermore, because the future is unknowable and unpredictable, no code could be designed to cope with all possible cases. This is why judicial activity, as a form of ‘puzzle-solving,’ is essential to Hayek's jurisprudence.[70](#)

## Cultural Transmission Of Rules Of Conduct

However, Hayek adds to these not unfamiliar themes something rather more controversial. This is the argument that a spontaneous system of rules will be more efficient (than known alternatives) to the needs of what he calls the 'Great Society' precisely because it has survived an evolutionary process: a process in which not reason but *natural selection* determines which rules and institutions are appropriate.<sup>71</sup> The history of institutions consists of a kind of Darwinian struggle out of which certain rules and procedures prove to be more durable than others; and a society progresses not by designing institutions for specific purposes but by adapting those that have emerged independently of men's wills to new circumstances. Furthermore, societies progress to the extent that they 'imitate' known successful rules and practices rather than construct them in some calculating manner.<sup>72</sup>

The mechanism in this process is what Hayek calls 'cultural transmission.'<sup>73</sup> This means that the rules and institutions that we inherit are neither (1) the product of a biological causality which is traceable to genetic structures (as the extreme socio-biologists would have it) nor (2) do they emanate from an unaided reason. They are 'learnt rules' which, although they may not yet be formulated explicitly, have been transmitted through a process of cultural evolution. Since an evolutionary order is unpredictable it follows that "we will have less power over the details of such an order that we would of one which we produce by arrangement."<sup>74</sup>

The fact that we cannot fully comprehend or state such rules is not a reason for doubting their efficacy, since that efficacy itself would appear to be a function of their very survival. While Hayek wants to use this argument against a rationalistic legal positivism which erroneously supposes that all laws are mere conventions which are alterable at will, he frequently writes as if we must passively accept a given structure of rules precisely because it is undesigned. It may be true that "law existed for ages before it occurred to man that he could make or alter it."<sup>75</sup> It does not follow, however, that such law is necessarily 'efficient' or appropriate to the order of classical liberalism (which Hayek favors for reasons other than those to do with evolution). The doctrine of the cultural evolution of rules of conduct would seem to bind man in a more decisive way than, say, the 'laws' of economics, which merely indicate the necessary boundaries within which free and rational action takes place.

## Hayek's Traditionalist Evolutionism And Liberalism

It is in the epilogue to volume III of *Law, Legislation and Liberty*, "Three Sources of Human Values," that Hayek's anti-rationalism seems to collapse into an uncritical traditionalism. In merging legal and moral rules into simply those rules that have developed culturally, he says: "Tradition is not something constant but the product of a process guided not by reason but by success."<sup>76</sup> Also, the limitations of the human mind dictate that '*all progress must be based on tradition*'<sup>77</sup> (italics in original). Furthermore, not only are ethical rules relative to particular traditions, but we are incapacitated from recommending alteration, apart from minor tinkering, of such rules because, since the future is unknowable, we cannot predict the consequences of such alteration. This extreme anti-rationalism follows directly from Hayek's claim that

mind itself is explicable only in terms of cultural transmission: “all enduring structures up to the brain and society are a product of selective evolution.”<sup>78</sup> This clearly differentiates him from the rationalistic classical liberalism of, for example, Ludwig von Mises, who based a theory of *laissez-faire* economics and politics on the universal properties of the human mind.

The difficulty with Hayek's analysis is that social evolution does not necessarily culminate in the classical liberalism that he so clearly favors: there are many non-liberal institutions which have indeed survived. The period of the dominance of the open society, the market economy and minimal government may then be regarded as perhaps a chance mutation in a course of evolution which is proceeding in quite another direction, an evanescent torch in an inexorably darkening world. Yet if we are intellectually tied to tradition, and if our ‘reason’ is too fragile an instrument to recommend satisfactory alternatives, how are we to evaluate critically that statist and anti-individualist order of society which seems to have as much claim to be a product of evolution as any other social structure?

The problem is that the spontaneous formation of a market is not the same thing as the evolution of a legal system, although neither is designed. In a market there is a mechanism, the price system, which does co-ordinate the actions of economic agents to produce an efficient order (though even here the presence of externalities constitutes ‘disorder’); but there is no similar mechanism at work in a legal system. In Hayek's analysis it looks as if rules and practices are *functional* merely because they have survived rather than because they adequately service a liberal order. One striking example, from the British experience, is the constitutional rule that parliament is sovereign. This is a product of evolution yet is probably the single most important institutional cause of the undermining of the rule of law and the breakdown of the market economy in that country.

In fact, Hayek implicitly concedes part of the rationalist libertarian's argument in that much of his social philosophy does consist of rational criticism of anti-liberal and anti-individualist economic and political institutions. He admits that the common law does not automatically develop in desirable directions, and may even protect ‘class’ interests, so that it will have to be modified by legislation.<sup>79</sup> Presumably such artificial correction must be sanctioned by the principles of classical liberalism and individualism. But even here the normative principles that are used must be part of an ongoing tradition. It is epistemologically impossible to stand outside a tradition of conduct and appraise or reject it in its entirety: “Ethics is not a matter of choice. We have not designed it and cannot design it.”<sup>80</sup>

## Law And Liberty: The Problem Of Criteria To Distinguish Liberal And Non-Liberal Orders

Those modifications that have to be made to an ongoing system will normally take the form of additional rules of just conduct. Again Hayek does not offer any *substantive* criterion for the evaluation of such proposals: all that is required is that new rules be universalizable within an ongoing system. But, as is well known, this is a purely



formal criterion, so that it is possible for a variety of quite different rules to be universalized within a given structure.

Perhaps, Hayek's explanation of the emergence of a self-regulating liberal order can be 'saved' by interpreting his argument to mean that which is a product of evolution is simply what would have occurred were it not for arbitrary interventions of a constructivistic kind. However, this could lead to an un-Hayekian anarcho-capitalism in which a rationalistic natural law guarantees each individual the right to 'opt out' of the state, and this is clearly not what he has in mind. The liberal order contains an organization (*taxis*),<sup>81</sup> the state, which operates through designed law (*thesis*); and this institution is charged with specific purposes. The rationale of this organization seems to be cultural and evolutionary in that, according to Hayek, experience indicates that a form of the state is required to enforce the rules of just conduct and supply public goods.

Hayek argues that the activities of government can be constrained by the meta-legal principle of the rule of law; rules should be perfectly general, binding on everybody, not be retrospective in application, and should name no individual or group. He does not in fact place substantive limitations on the actions of political authorities but insists only that they conform to certain formal requirements. In this sense law and liberty are consistent, since general rules set boundaries within which people may choose rather than be directed to specific tasks. In Hayek's legal theory a free order would appear to be a *predictable* order: as long as a person knows in advance how a law will affect him, and can therefore plan his life so as to avoid that law, he cannot be regarded as unfree.<sup>82</sup>

This contrasts strongly with the natural rights theory of a liberal order in which the boundaries of an individual's liberty are set by the moral requirement that he should not violate the rights of others rather than by certain formal requirements of legality. Under the Hayekian view, general prohibitions which did not require any positive action on the part of individuals could reduce dramatically the range of choices open to them, but they would not, paradoxically, count as restraints on liberty. Curiously, a regime which had a number of mild commands or instructions but few general prohibitions would not count therefore as a free order. In fact, Hayek's own definition of freedom under law breaks down with his justification of conscription, since this is clearly a direct command. That such a command is predictable and perfectly general does not make it any the less destructive of personal liberty. It follows from Hayek's refusal to countenance a more substantive structure of natural law and morality, and his commitment to the outcomes of an undesigned evolutionary process, that it is difficult to distinguish between free and unfree orders. The general consensus of opinion is that Hayek's requirements of legality are necessary but not sufficient conditions for the operation of the order of classical liberalism.

## The Breakdown Of The Cosmos

One of Hayek's most important contributions to knowledge is his penetrating exposure of those intentionalist policies which have set in train a seemingly ineluctable process of disintegration of the *cosmos*, that self-regulating order of events

that once constituted western liberal society. Allied to this, and almost in defiance of his own belief in evolutionary processes, is his complex set of radical reforms which is *designed* to arrest this decline. The major causes of this disruption are attempts to regulate an economy by inflationary methods; the granting of privileges to groups, especially trade unions, by way of ‘legislation,’ which distorts the functioning of the labor market; the attempt to re-distribute income away from that impersonal allocation made by the market on the ground of an entirely subjective theory of ‘social justice’; and the tendency for law to be cast in the form of commands addressed to specific purposes rather than in the form of general rules. The combined effect of these measures is to divert a *cosmos*, in a politically-determined manner, away from its natural course (the destination of which can never be known). A ‘road to serfdom’ scenario will develop, in which ever-increasing amounts of coercion will have to be used as people naturally try to avoid the effects of the original intervention.

## Political Interventionism Vs. Market Self-Correction

In fact, the dramatic kind of disruption of a spontaneous order that Hayek predicted would follow from interventionism has not actually occurred. Western welfare states have not (yet) collapsed into tyranny and serfdom under the weight of welfarist legislation and other forms of intervention. Rather they have become immobile, stagnant, and unable to make the best use of the dispersed knowledge that characterizes an open society. This is because democratic politics, subject to few constitutional restraints, has enabled groups to secure privileges for themselves and encouraged the spread of incomes in society to be a function of political rather than economic mechanisms.<sup>83</sup> Instead of liberal democracy maximizing the public interest (i.e., the interest each person has in such things as a stable currency, the rule of law and the predictability of government action), competition for votes produces *coalitions of interest groups*, which are held together by privileges which only government can grant. Such a political order is inherently unstable because there are no natural, correcting mechanisms in it that are equivalent to those in the market. Thus instead of being an organization charged with necessary but specific purposes, government becomes a machine for the solving of all problems and the meeting of all grievances. But as Hayek points out: “It is a fact that most of the grievances of particular individuals or groups can be removed only by measures which create new grievances elsewhere.”<sup>84</sup>

Apart from monetary disturbances, the reason the market economy appears to be unstable is that continual intervention has impaired its self-correcting mechanisms. The biggest destabilizing factors here, according to Hayek, are the trade unions, which are able to prevent automatic adjustment in the labor market by keeping the price of labor above its market clearing price. They are able to do this, in many western countries, because of certain legal privileges: such as their exemption from the law of tort (in industrial disputes) and their exploitation of tolerant picketing laws. The former privilege is a breach of Hayek's ‘rule of law’ doctrine, since it prevents the application of a general rule to particular groups and could not possibly be universalized within a legal order. This privilege is a product of statute law, and it is inconceivable that such a rule would have emerged spontaneously from the common law process. Aside from the distortions caused by inflation, the existence of union



privilege and disincentives to work caused by welfare and housing policies constitute the major causes of unemployment. They are almost universally ignored by Keynesian macroeconomists, who deal only in holistic aggregates. These theorists erroneously interpret extensive unemployment as evidence of some inherent disequilibrating tendency in the system rather than as an indication of some deficiency in the adjustment process which can be traced back to a constructivistic intervention. As long as these defects remain unremedied monetary policy can have little or no permanent effect on unemployment.[85](#)

## The Myth Of Social Justice

Hayek's objections to social justice similarly turn on the misallocative effect such essentially arbitrary redistributive measures have on the equilibrating process of a *catallaxy*.[86](#) Thus his concern, here, is not with the violation of a right to legitimately acquired property which social justice entails; his argument is that coercive redistributions of income reduce the real output of a *catallaxy* by suppressing those inequalities that act as signals to attract labor and capital to their most productive uses. He maintains that in the absence of such signals labor and capital will have to be directed by government.

The argument for social justice usually turns upon an alleged distinction between production and distribution: it is assumed that there is a 'given' volume of goods and services which can be distributed according to abstract moral principles, such as 'desert,' 'need,' or 'merit,' rather than according to the principles by which the goods and services were produced in the first place. In *catallactics*, however, there is no such distinction: income is distributed according to the anticipated marginal productivity of factors and the consequence of redistributing it in any other way will be a diminution of the volume of goods and services. A person's income in a free society, then, is a function of the *value* of his services to his fellow men; it has logically nothing to do with any 'merit' or 'desert' (in a moral sense) in his actions.[87](#) Hayek argues that modern societies, which persist in using merit as a criterion of income, display remnants of the morality of the closed or intimate society. If this is so, however, it implies that these societies have not spontaneously generated a morality appropriate to the economic order of capitalism.

A *catallactic* order is a constantly changing system so that the prices paid to labor services must vary considerably over time. Any attempt to impose a pattern of earnings based on non-economic criteria on this order would spell not merely the end of economic efficiency, but would also bring about the collapse of the *cosmos*, since the enforcement of that pattern necessitates a vast increase in the law of *thesis*.

Hayek's arguments against social justice are of a purely consequentialist kind in that they derive from the misallocative tendencies of redistributive policies and from their long-run effect on the order of liberty. While Hayek claims that expressions such as 'social justice' are linguistically meaningless, he does not extend his philosophical arguments into the *ethics* of property. He certainly gives us no guidance as to the justice or injustice of particular property holdings prior to the operation of an exchange process. Presumably his stance must be the conservative one that we ought

not to disturb the existing structure by, say, the application of a natural law rectification rule, because this would disturb a prevailing order of expectations; the consequences of such disturbance cannot, of course, be known.

## The Problem Of Controlling Government

While it is clear that political systems do not automatically develop corrective mechanisms, it is noticeable that Hayek does not want to restore the workings of the *catallaxy* and *cosmos* by rationalistic natural law limitations on what governments may actually do but, rather, to subject their behavior to strict legalistic and formalistic requirements. Thus in his complex, and somewhat unrealistic, constitutional reform proposals, he hopes to introduce a new version of the separation of powers, in which democratically elected parliaments would enact that public law which is required for government activity, while a separately-elected assembly (less subject to party politics) would be charged with the making of the general rules of just conduct.<sup>88</sup> Thus the Governmental Assembly would decide on what projects taxation would be spent, while the Legislative Assembly would determine what form the tax rules should take. There are in principle no limitations on the government's power to tax and therefore no substantive limits on government spending; of course, the free market in money will prevent government expenditure being financed by the economically damaging and dishonest method of inflation, but there is no actual limit on government spending.

Hayek is no doubt correct in identifying the main disruptive threat to the preservation of a spontaneous order as the inevitable formation, under present democratic rules, of coalitions of interests which divert the stream of income in a *catallaxy* to politically-favored groups—to the ultimate harm of all. The problem is that there is a 'public good' trap here in that no rational individual, given the normal behavioral assumptions of classical liberalism, can have any incentive to promote the public interest. This is why there must be an element of constructivistic rationalism in any explanation of the order of a free society. Men will have to design those institutions that will automatically encourage them to maximize their long-run interests.<sup>89</sup>

## Conclusion

In conclusion, it may be suggested that Hayek's theory of spontaneous order is the product of two related but distinct influences that do not always tend in the same direction. As an economic theorist, his explanation of the co-ordinating properties of the *catallaxy* trades very heavily on those mechanisms that produce order, and which can be given a rational explanation. But as a legal and social theorist, he leans, by contrast, very heavily on a conservative and traditionalist approach which, from Hale onwards, is so distrustful of reason that it instructs us to submit blindly to a flow of events over which we can have little control. But in this latter approach, reason may be so disabled that it is impossible to assess critically this flow of events. The evidence suggests, however, that there is no necessary tendency to equilibrium in a legal order, in which case spontaneous evolution will have to be arrested and diverted under the authority of 'reason.' But such is the force of Hayek's anti-rationalism that it

tells just as much against a rationalist justification of the capitalist order of classical liberalism (which is largely derived from a moral order that enshrines an abstract and universalist structure of individual rights) as it does against the familiar varieties of rationalistic collectivism. Hayek's claim, following Hume, to 'whittle down' the claims of reason may have succeeded all too well in that his belief in spontaneous evolution, and his formalistic criteria for the evaluation of government activity, may well inhibit the search for those ground rules which are required for the servicing a free society. In some ways, his evolutionary gloss on the theory of spontaneous order distinguishes him from other writers in that tradition (for example, Menger) who do not preclude the use of reason in the critical evaluation of the outcomes of an undesigned process.

## Footnotes

For a full citation of books quoted in these notes see the following *Bibliography*.

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## I

### Economic Theory

Elsewhere in this issue (“Law, Politics, and Freedom) the reader will find summarized Prof. Norman Barry's “A Defence of Liberalism against Politics,” in which our bibliographical essayist posits economic spontaneous order as a vital defining characteristic of liberalism: “that a natural economic order would emerge if individuals were left to pursue their private purposes. . . .” It is appropriate that this issue featuring Prof. Barry's essay on “The Tradition of Spontaneous Order” should open its summary section with Don Lavoie's paper on the related topic of the market as an ‘invisible hand’ mechanism for conveying inarticulate knowledge—an idea indebted in no small measure to the late Michael Polanyi's notion of “the tacit dimension” or “personal knowledge.”

Polanyi (1891–1976) was one of the pioneering investigators of how “spontaneous order,” involving “polycentric mutual adjustment”—any system's ecological self-regulation through ‘feedback’—was a vital precondition of health and progress not only in economics but also in science, art, and society. All these dimensions of human life require individual freedom to innovate and respond; hence freedom is a precondition of the spontaneous order, and as Polanyi noted, the free market is the exemplar of such an ‘invisible hand’ coordination:

The other ordering principle is much more elusive. So elusive, that Adam Smith who first made clear its operations in respect to commercial activities has called it an ‘invisible hand.’ The difficulty of appreciating its functions has been a constant menace to the maintenance of a free society; it has lent plausibility to the aspirations for directing industrial production centrally without the use of the market and also to the closely allied demands for the central direction of all scientific research.

(“Pure and Applied Science and Their Appropriate Forms of Organization.”)

Several of the other summaries in “Economic Theory” repeat the theme of spontaneous order in either major or minor key. See particularly Littlechild-Owen, Ekelund-Hebert, and Bornemann.

Those interested in pursuing other developments of the spontaneous order tradition may consult Prof. Barry's *Bibliography*, especially Polanyi's “The Determinants of Social Action” and “Pure and Applied Science. . . .” together with the Langford-Potat volume *Intellect and Hope: Essays in the Thought of Michael Polanyi*. Other informative sources for spontaneous order mentioned in the Bibliography include: Bertalanffy, Koestler, Koestler-Smythies, Bronowski, and Bateson.

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## The Market & Inarticulate Knowledge

Don Lavoie

Department of Economics, George Mason University

“The Market as a Procedure for the Discovery and Conveyance of Inarticulate Knowledge.” Paper Presented at the Liberty Fund Conference on Thomas Sowell's *Knowledge and Decisions*. Savannah, Georgia; April, 1982.

The author elaborates on the spontaneous order argument of Friedrich Hayek (with the aid of Michael Polanyi's concept of inarticulate knowledge in *Personal Knowledge*) that the market is a procedure for discovering and conveying the dispersed knowledge of market participants. With the notable exception of Thomas Sowell's study, *Knowledge and Decisions* (1980), contemporary economic literature has not appreciated the inarticulate nature of the knowledge which the market communicates.

Professor Sowell's appreciation of Hayek's insight into the function of the competitive market system as a knowledge-dispersal mechanism derived from his reading of Hayek's 1945 seminal essay, “The Use of Knowledge in Society.” That essay, in turn, developed out of Hayek's attempt to answer such “market socialists” as Fred Taylor and Oskar Lange in the socialist “Calculation Debate” in the 1930s. The market socialists claimed that a socialist Central Planning Board (CPB) could achieve the allocative efficiency and beneficial results of competitive capitalist markets without relying on the private property rights institutions and free market price system that underlie free exchange. The market-socialist model, built as it is on the assumption of complete and articulate knowledge available to central planners, is an excellent foil for the market model of communicating inarticulate knowledge through the price mechanism.

Market-socialist theory and models claim to have overcome Hayek's critique of the Lange-type market-socialist models of the 1930s. But even if the central planners had the use of a super-computer capable of co-ordinating the myriads of quantities and prices available, they could not duplicate the efficiency of the free market since the relevant market knowledge is inarticulate. “The producers know more than they can explicitly communicate to others. While the market marshalls this dispersed knowledge without requiring its articulation, all these market-socialist models necessarily require the full articulation of the localized knowledge to the CPB during the ‘dialogue.’”

Lavoie discusses the philosophy of knowledge implied in saying that “We know more than we can articulate.” He gives a critique of the ‘objectivist’ epistemological belief that denies any legitimacy to knowledge that is not fully articulated. The thought of Whitehead, Sowell, Hayek, Polanyi, and Gödel's mathematical response to the *Entscheidungsproblem* is surveyed to show that no fully formalized system can

possibly be 'complete', and that the 'certitude' and 'rigor' of any such system have to be established from outside the formal framework itself. Polanyi and Hayek (both modern exponents of the related idea of a spontaneous order which evolves without articulate, conscious purpose by invisible hand processes) have shown from such examples as the child's ability to speak that inarticulate knowledge (such as the "unconscious" rules of grammar and syntax) underlies all articulated knowledge.

Lavoie concludes by outlining the particular role which inarticulate knowledge plays in the market process. In effect, the price system is a telecommunications device for conveying knowledge which market participants would be unable to articulate.

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## An Austrian Model Of Price Adjustment

S.C. Littlechild and G. Owen

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“An Austrian Model of the Entrepreneurial Market Process.” *Journal of Economic Theory* 23 (1980): 361–379.

Mainstream neoclassical economics gives a central role to the concept of equilibrium, but neglects the *process* by which such equilibrium is reached, and so lacks an adequate theory of price adjustment. By contrast, the Austrian school of economics—Mises, Hayek, and Kirzner—subsumes an adequate theory of price adjustment under the theory of the market process, which plays a more important role than the concept of equilibrium.

The Austrians also differ from the neoclassicals on the nature of disequilibrium. In the standard Walrasian view, disequilibrium is overcome by a single uniform price throughout the market when supply equals demand. By contrast, the Austrians stress that, because market participants are not fully aware of each other's activities, a homogeneous good may trade at different prices at different parts of the market. The Austrian approach to the price adjustment process next examines how entrepreneurial alertness on the part of market participants leads to a uniform price which is the equilibrium price.

This challenging Austrian approach is not widely known among economic theorists because Austrian models have not yet been represented in mathematical terms. The authors seek to fill this vacuum and develop a simple mathematical model of the market process and prove two theorems on the convergence of market prices. The model embodies two distinctive features of the Austrian approach: (1) it assumes a dispersed “division of knowledge” among market participants in society; and (2) over time entrepreneurial alertness allows people to learn new knowledge or discover opportunities and thus create price adjustments. The Austrian model is developed with a discussion of the arbitrage process, the discovery mechanism, and the nature of the market process.

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## Subjective Value: Plato, Bentham, & Smith

S. Todd Lowry

Dept. of Economics, Washington and Lee University

“The Roots of Hedonism: An Ancient Analysis of Quantity and Time.” *History of Political Economy* 13 (Winter 1981): 812–823.

Benthamite utilitarianism championed the “spirit of quantitative rationality and subjective individualism” as a touchstone for developing 19th-century classical economic theory. The later marginal utility revolution pursued this same spirit. It is wrong to assume, however, that the “hedonic calculus” arose only after observing the growth of commercial activity in the wake of the eighteenth century. Actually, the theory of quantitative subjective value was forged by the ancient Greeks “with little reference to exchange or commercial values.” Plato's dialogue *Protagoras* presents this early analysis. Lowry discusses the *Protagoras'* theory and the context in which the Greeks developed this analysis of quantitative subjective value. It seems likely that Adam Smith and Jeremy Bentham were indebted to the Epicurean and Platonic discussions on this and related topics.

Plato's dialogue *Protagoras* presents a debate between a youthful Socrates and the famous Sophist Protagoras of Abdera, who was instructed by the famous Atomist philosopher Democritus of Abdera. The opening of the dialogue—presenting Protagoras' views on the origins of civil society from the god-given gifts of justice and *aidos* (fellow-feeling)—anticipates Adam Smith's *Theory of Moral Sentiments* and its doctrine of sympathy, shame, and conscience as the origins of human society. Near the end of the dialogue, the theme of the teachability of *arete* (virtue or excellence) leads to an analysis of pleasure and pain. The idea of subjective pleasure and pain as a measure of well-being coincides with the subjective relativism presented in Plato's *Theaetetus* in which Protagoras' theory of knowledge is discussed. The *Protagoras* presents, in the framework of a theory of moral choice, the hedonic calculus along utilitarian, consequentialist lines and the subjective evaluation of good. It seems clear that Bentham's *Principles of Morals and Legislation* derives its principle of the greatest happiness or pleasure of the greatest number from Plato.

Lowry identifies the setting of Protagoras' hedonic analysis as a materialist formulation of the economics of successful weighing of the important choices in Greek life (particularly efficiency in military, political, and agricultural pursuits). Two rival versions of this theory of choice contend for the laurel. Plato promoted the idea that “reason, primarily the reason of an authoritarian sovereign, should acquire the force of moral law”—in the name of efficiency. By contrast, Atomists like Epicurus (and possibly Protagoras) came closer to the democratic notion of *arete* (which stressed cooperation, compassion, and the feminine). As non-authoritarians they supported democratic principles and the doctrine of sympathy and fellow-feeling as a basis of social cohesion. Thus “the development of a materialist quantitative value



formulation of the basis for choices in the pursuit of efficiency and success” had wide and diverse social implications.

The Atomist-Protagoras-Sophist individualist and participatory tradition—in contrast with Platonic authoritarianism—presented its theory of the innate attraction between atoms as the root of natural mutual sympathy and social cohesion.

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## John Taylor: Labor & Liberty

Duncan Macleod

Fellow of St. Catherine's College and Lecturer in History at the University of Oxford

“The Political Economy of John Taylor of Caroline.” *Journal of American Studies* 14 (December 1980): 387–406.

John Taylor of Caroline has chiefly been studied onesidedly, either for his oppositional ideology during the 1780s and 1790s, for his negative fear of power, privilege, and corruption, or for his agrarianism. In fact Taylor's thought rested upon twin interacting foundations of “physical” powers (agricultural prossperity) and moral, metaphysical, or political powers (republican liberty). This joint commitment was exemplified in two books: *Arator, Being a Series of Agricultural Essays, Practical and Political* (1803) and *An Inquiry* (1814). Both works are complementary: In the defense of republican liberty political action was primary; although in the promotion of agricultural prosperity it was but a means to an end, the end was as dear to Taylor as republican liberty itself. Macleod concentrates on elaborating Taylor's neglected “physical” world, that is, his economics.

Taylor was committed, like the French physiocrats, to agriculture, but he was economically more committed to a labor theory of value. “Physiocrats might wish to free economic endeavour from state direction but they were not anti-statist in their orientation: their analysis derived from the need to generate a more substantial and secure governmental revenue. Taylor, on the other hand, was anti-statist and wished to avoid the generation of a revenue which he considered must inevitably become a fund for corruption extracted from the true producers of wealth.” Wealth, he believed, should be retained by those individuals whose labor produced it: “national prosperity and liberty are safe, endangered or lost, in proportion as individuals retain, or governments acquire, the investiture or disposition of the earnings of industry.”

Although Taylor borrowed from mercantilist ideas (as in his identification of the agricultural interest with the national interest), he fused these and other ideas into his own personal amalgam. He was not a scientific political economist, and his analysis of the labor theory of value was more often normative than analytical. But he came closest of the early Americans to a qualified Ricardianism merged with the ideology of 18th-century whiggery and its notions of natural property won by honest labor, talents, and industry rather than by state coercion and corruption. Taylor's antagonism to state granted monopolies or to a military establishment was a blend of his opposition ideology (from which he defined any “transfer of property by law” as “aristocracy” and privilege) and his strict labor theory of value since government expenditures fell ultimately on the back of honest labor. This is seen from an analysis of tariffs and the public debt. Taylor doubted the benefits of state-promoted

commercial growth and used the labor theory as a moral weapon to preserve an old social order.

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## Competition, Property Rights, & The State

Robert B. Ekelund, Jr. and Robert F. Hébert

Auburn University

“The Proto-History of Franchise Bidding.” *Southern Economic Journal* 48 (October 1981): 464–474.

The authors present a provisional historical analysis of franchise bidding (governmental granting to privileged parties of exclusive franchise for providing “public utilities” and “public goods” on the basis of competitive bids) as a way of untangling the distinct meanings of competition and the distinct institutional forms of property that give rise to these different meanings of competition. By clarifying the history of ideas concerning competition in franchise bidding, we will be better able to evaluate Harold Demsetz' and others' advocacy of franchise bidding. They view it as a substitute for a political commission's regulation of public utilities and a more efficient way of providing public goods. The historical analysis suggests, however, that franchise bidding, which is based on ultimate governmental control over what could be private property, merely substitutes one form of regulation for another.

Competition denotes two radically distinct notions of economic rivalry based on different structures of property rights. Private property rights gives rise to competition in Adam Smith's free market sense of allowing every seller an equal right to serve customers and allowing every buyer the freedom to choose goods from the seller he prefers. On the other hand, when the State (rather than private persons) is the lawful owner of the property right it franchises, it allows “competition” only in the sense of a contest among sellers to obtain an exclusive, monopoly right to serve buyers who have no right to choose their sellers.

Historically considered, these two opposed notions of competition were articulated, respectively, by Richard Cantillon and Bernard de Belidor. Cantillon's notion of competition centered on entrepreneurs who competed, in the framework of a free market and private property, to satisfy consumer demand at their own risk. Belidor inaugurated the “French System” of governmentally granted exclusive franchises to maximize state revenues as a form of rent seeking. In 1605, the French economist Vauban influenced Louis XIV and his minister Colbert to favor governmentally sponsored franchise bidding. Geographically the two opposed concepts of competition found their respective homes in England (politically and economically freer and more decentralized) and France.

The authors discuss the normative, philosophical background to the 18th-century differing doctrines of competition. The free market notion of competition posited the “natural identity of interests thesis” which maintained that egoistically motivated market participants harmonize their interest of their own accord through a spontaneous order which fuses individual and general interests. The more

interventionist notion of competition denied a natural harmony of egoisms, and sought the involvement of the legislator to bring about “the artificial identification of interests.” Jeremy Bentham and Edwin Chadwick, who sought concentration of ownership and control of property rights in the hands of the central state to achieve harmony of interests, are the intellectual forerunners of Demsetz' espousal of governmentally sponsored franchise bidding.

Nineteenth-century theoretical extensions and refinements in franchise bidding are analyzed in the writings of Bentham, Chadwick, Mill, Sidwick, and Marshall. Finally, the paradoxical transformation of competition as a *process* (as understood in the Austrian tradition of Carl Menger) into the more recent neoclassical view of competition as a theoretical situation is discussed. Paradoxically, Demsetz casts his analysis of competitive franchise bidding in the static mold of orthodox, neoclassical theory.

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## Mercantilism: Monopoly Revenues & Regulation

Robert B. Ekelund, Jr. and Robert D. Tollison

Auburn University

“Mercantilism as a Rent-Seeking Society.” in *Mercantilism as a Rent-Seeking Society: Economic Regulation in Historical Perspective*. College Station: Texas A & M University Press, 1981, Chapter 1.

The prevailing paradigm about mercantilism (1500–1776) views it as either a web of economic fallacies and statist “central tendencies” or as a very sensible idea for a historical period which sought to consolidate state power. Heckscher's *Mercantilism* (1934) spans both variants of this paradigm. But a new paradigm is now needed to explain mercantilism in the light of the insights advanced by the Buchanan-Tullock public choice approach and by the “economics of regulation” approach. The older paradigm emphasizes certain regulatory implications flowing from a balance-of-trade and specie-accumulation objective, which, in turn, hastened the objective of creating the nation-state. The newer paradigm challenges this interpretation: The exact reverse is, in fact, the case: “the balance-of-trade objective was nothing more than the by-product of the interplay of numerous self-interested parties who were seeking rents from monopolization in these early nation-states.”



By rent seeking the authors mean seeking revenues by buying and selling monopoly and cartel (guild) privileges. The “supply of and demand for monopoly rights through the machinery of the state is seen as the essence of mercantilism.” The government interest group found that such revenues supplemented its tax revenues. Merchants and others (on the “demand side”) sought such monopoly rights to escape competition and thus earn monopoly “rents.”

The rent-seeking model is more useful in explaining developments in the mercantile economies than the usual specie-accumulation interpretation. The rent-seeking paradigm accounts for the emergence and decline of the social order of mercantilism in England and France in terms of individual behavior motivated by seeking “rent” in the face of varying institutional constraints rather than in terms of the irrationality or error in the social order of mercantilism. Mercantilism is viewed as an inclusive system of economic regulation, which was designed by the give-and-take of interest groups contending within specific institutional frameworks (such constraints as property rights, the degree of competition for political power, and the rule of law) to provide revenues for the nation-state and monopoly rents for successful projectors of monopoly schemes. The varying institutional frameworks (such as the differing structures of property rights, the degree of political competition, and the development of the rule of law) helped determine the incentives which led away from regulation to the free market in England, but not in France.

The precursors of this new “polinomic history”—the paradigm that combines positive economics and politics in its focus—include Adam Smith (with his emphasis on economic motivation and class interests in accounting for human choice), Frederic C. Lane (who investigated organized violence and its effects upon the economic motives and behavior of Renaissance governments in exacting tribute from merchants for protection), and the analysis of public choice and the economics of regulation. A detailed bibliography contains a useful survey of such sources for the new paradigm of rent seeking. The authors are convinced that a cogent explanation of the rise or fall of mercantilism and the origins of a more laissez-faire social order must appreciate the role of institutions in the course of economic history. Centralized political administration and weak private property rights, making for an effective system of rent seeking, may overregulate and retard the emergence of a free market as happened in France in contrast to the more liberal political economy of England.



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## Romantics Vs. Marx On Political Economy

Cheyney C. Ryan

University of Oregon

“The Fiends of Commerce: Romantic and Marxist Criticisms of Political Economy.”  
*History of Political Economy* 13 (Spring 1981): 80–94.

Marxism and Romanticism stand as essentially alien doctrines, opposed in sensibility and style, scornful of each other's excesses, and insensitive to their common concerns. Recent years, however, have witnessed a renewed interest among social theorists in understanding the ties between these two outlooks. Prof. Ryan's article examines some areas of difference and agreement among Romantics and Marxists within the realm of economic theory. His point of departure is the critique of classical political economy.

George Bernard Shaw made the comment that, compared with the scorn which Ruskin heaped on classical economics and capitalism in general, Marx's criticisms read like the “platitudes of a rural dean.” Like Marx, the Romantic critics perceived that the failings of classical theory lay not merely in its facts and figures, but in its guiding assumptions about human nature and society, the questions it asked, and the type of answers it provided.

Romantics called the whole enterprise of political economy into question by casting doubt on its fundamental conception—the notion of ‘human nature.’ They did so in a variety of ways. First of all, the Romantic emphasis on the uniqueness of each individual and his capacity to construct his own reality, both inward and outward, formed an implicit challenge to any general theory of human nature with its reduction of individual activity to common and invariant passions.

Romantics specifically objected to political economy's view of man—not only because it described him as an asocial, selfish animal—but because it positively promoted antisocial tendencies as the very basis of its theories of politics and morality. The reductionist urge in political economy led theorists to explain all human actions by considerations of profit and loss. This, the Romantics felt, produced an inadequate and perverted picture of the object under study.

Marxist analysis shared the Romantic distrust, if not outright rejection, of the concept of human nature which formed the focal point of classical theory. Marx's attack on this theory is both an internal and external critique. He points to contradictions within the theory itself and then holds the theory up to scientific standards largely external to it.

For Prof. Ryan, Marx's originality as an economist lay in his insight that all economic processes have a political character, since all social life is permeated by force,

coercion, and the struggle for power. In failing to appreciate the political character of economic relations, the classical economists, Marx believed, failed to grasp the true nature of their object of inquiry. By regarding economic forms as dictated by the facts of human nature, they took as timeless and “natural” what were actually the expressions of quite specific and changeable social relationships. “Change the social relationships,” Marx wrote, “and you change the ‘essence of man’ along with them.” This rejection of human nature theory was clearly anticipated in the works of Romantic theorists.

Unlike the Romantics, however, Marx seems to champion the scientific approach to economic study as vehemently as any of the classical theorists. For Marx, people living in a capitalist society lay in ignorance of the social forces that affect them. As a result, their individual capacity to choose may be nil in the face of the social influences that batter them. The unfreedom of those living under capitalism makes a predictive science of that society not only possible but necessary.

With the advent of communism, thought Marx, this will all change. In the words of Marx and Engels, the “domination of material conditions over individuals and suppression of individuals by chance” will be replaced by “the domination of individuals over chance and circumstances.” The social conditions which necessitate political economy will thus be dissolved. In the words of G. A. Cohen, political economy “withers away” as a truly free society comes into being.

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## Academic Economics As Ideology

Alfred H. Bornemann

“Fifty Years of Ideology: A Selective Survey of Academic Economics in the United States, 1930–1980.” *Journal of Economic Studies* 8, no. 1 (1981): 16–36.

Defining ideology as “a mixture of consciously or unconsciously accepted ideas and beliefs” that “provides the underlying support or rationalisation for fundamental features of thought and action in a society,” the author presents a detailed panorama of the prevalence of ideology and values in the allegedly value-free academic discipline of economics from the Depression to 1980 and the revival of the Austrian School.

The author debunks the notions that academic economics during this period was ideologically value-free in its selection of texts, advocacy of government intervention, hiring practices, mathematical methodology, or changing policy recommendations and ideas with the winds of fashion. Over the past half-century, academic economists have not lived up to their self-image of objective scientists practicing value-free analysis. “The question of whether they had ever been completely faithful to this position in the past lost its significance beginning in the 1930s when the line between science and policy was virtually obliterated.”

The Depression which ushered in the New Deal's unprecedented government intervention beginning in 1933 did not seem catastrophic to the sheltered seclusion of most college campuses. Alfred Marshall's neo-classical paradigm continued as the basis of lectures, discussion, and textbooks throughout the 1930s and into the immediate post-World War II months. Orthodox economists dismissed the insights of the rival institutional economics which looked upon economic behavior as “a complex web of interrelated economic, political, sociological, and psychological influences.”

The war years exposed students to militarist and nationalist propaganda consonant with the official ideology of creating a “war man” and a patriotic “military-industrial complex.” This atmosphere was favorable to the interventionist economic doctrines of John Maynard Keynes' *The General Theory of Employment, Interest and Money* (1936). “The idea of essentially costless warmaking sustained the political ideology of war” and Keynesianism extended government spending into social outlays. “The Keynesian aggregative macro-approach directed its attention to full employment defined as consisting of essentially homogeneous jobs as such. Large-scale government spending programs unencumbered by the constraints of the gold standard emphasized increasing consumer income to remedy a deficiency of aggregate demand. The accompanying expansion in government direction of the economy was taken for granted. . . .”

The new Keynesian principles gave rise to two types of economists, whom Shackle termed the “mathematicians” and the “conceptualists.” “Academic economics as a

profession of technicians engaged in structuralising, controlling, and predicting the behaviour of the economy. . . became possible with the increasing use of quantitative methods and the computer solution of complex models, optimisation objectives, and econometric equations.” The PhD program ideologically emphasized Keynesianism and quantitative methodology; it downplayed the history of economic thought. A communications problem developed when this abstruse formalism was introduced to undergraduates. The classroom saw method triumph over subject matter, and endured the tedium of formalistic lecture without discussion of underlying meaning and significance.

The post-war decades witnessed the Keynesian full employment dogmas installed as the new orthodoxy. Textbooks such as Samuelson's taught Keynesian theory to an entire generation of economists. “The Keynesian paradigm meanwhile prevailed for several decades. This faith was eventually shaken not by the intellectual evolution of theory but by the unfolding of economic disasters to which Keynesianism's nonchalance over inflation had contributed.”

“As multiplying interest groups pushed their claims on government for part of the national income, the number of economists taking positions on current questions and the politics of full employment was greater than ever before. Theoretical interest meanwhile took the form of discussions of the public interest in terms of initiating, controlling, and allocating costs and benefits.”

The predominant collectivist liberalism supporting the ideology of the mixed economy eventually met with classical liberal or libertarian challenges. Milton Friedman and the Chicago economics department played a major role in articulating a defense of the market economy. A renewed interest in the Austrian School added momentum to the market approach. “Hayek's exposition of the contribution of the individual to the optimum function of an economy as against the inefficiency of centralised bureaucratic management won a degree of attention along with his other contributions. Mises' discussion of the logical impossibility of rational socialist calculation continued to be cited. . . . His general theory, especially *Human Action* attracted a circle of ardent disciples.”

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## II

### Law, Politics, And Freedom

The following summaries treat a variety of topics concerned with legal, political, and social theory in relation to individual freedom and rights. In keeping with the spirit of Professor Norman Barry's bibliographical essay on "The Tradition of Spontaneous Order," Leon E. Trakman's two opening summaries imply the significance for legal history and theory of the spontaneous order mechanisms of the market (the evolution of Law Merchant from commercial custom and human experience) and of contract. The legal and ethical aspects of the medieval peace movement and of the natural evolution or history of just war doctrine are next summarized. Spontaneous order notions form an implicit backdrop to the next summary, Professor Barry's contrast of the theory of liberalism and political interest conflict. The remaining summaries touch on other questions of legal, philosophical, and political theory, as well as bibliography.

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## Spontaneous Order & The Law Merchant

Leon E. Trakman

Professor of Law, Dalhousie University

“The Evolution of the Law Merchant: Our Commercial Heritage.” *Journal of Maritime Law and Commerce* 12 (October 1980): 1–24; 12 (January 1981): 153–182.

International commerce has spontaneously evolved an admirable body of Law Merchant to self-regulate the merchant community by voluntary consensus, good faith, and approved custom. Trakman offers the following considerations in the analysis of Law Merchant, which he surveys from ancient and medieval times down to the modern era: (1) A merchant regime has developed which is capable of regulating international relations; (2) Within this international regime merchants have acquired their own ability to govern their affairs on the basis of good faith and reciprocity. (3) The interests of this international regime are best served by the development of a supplementary legal order which reinforces rather than displaces the self-regulating capacity of merchants. Thus obligations assumed by international merchants in their contracts should be binding upon them in law because they have so agreed and because law should enforce their agreements. Trakman's thesis is that “through custom and usage, the international community of merchants has devised a sophisticated body of institutions which, today as yesterday, should be recognized in law in the interests of efficacious dealings across national boundaries.

Nations and merchants depend upon a coherent body of trade law to allow commerce to flow freely. We need to study the illuminating history of medieval Law Merchant to grasp the utility in maintaining a system of justice based upon the actual usages of merchants engaged in international commerce. Great advantages accrue to applying a low-cost and speedy adjudicative process to business ventures across international boundaries. Political and economic rivalry makes uniform international trade law indispensable. The merchants' self-regulation through voluntary contract and evolved business practices should take precedence over government or legal regulation. Historically, contract—the agreement of the parties involved in trade—has been the guiding and unifying force in the “law” of international trade, the Law Merchant.

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## Spontaneous Order & Oil Contracts

Leon E. Trakman

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“Nonperformance in Oil Contracts.” *Oil & Gas Tax Quarterly* 29 (June 1981): 716–750.

International crude oil contracts of sale are a self-regulating device by which businessmen spontaneously order their own market needs without the need of bureaucratic legal regulation. In fact, *laws* of nonperformance acquire their foundation from business usages which have freely evolved.

Trakman studies the methods used by inside legal counsel employed by multinational oil companies to regulate the purchase and sale of crude oil across national boundaries. The study is based on interview and questionnaire studies and seeks to assess the interrelationship between commercial and legal methods of dealing with nonperformance of multinational crude oil sales. First, Prof. Trakman analyzes written contracts for the sale of crude oil to establish how these affect nonperformance obligations in multinational oil sales. Next, he evaluates how related performance difficulties are resolved through intercorporate settlements between multinational crude oil sellers and their international oil buyers. Finally, he considers the utility of adjudication and arbitration as alternative means of resolving disputes over performance.

The investigation suggests that multinational oil companies usually use their own internalized methods of regulating nonperformance through their own contracts and agreements of sale. In particular, their own inside legal counsel has devised sophisticated instruments to govern business duties. They have incorporated both business and legal controls over performance into such agreements of sale, and they have interpreted these agreements in a predetermined economic-legal context of their own choosing. Thus, nonperformance clauses have been developed in the light of *both* legal and trade environments, not through the premature recourse to external adjudicative processes. So long as multinational oil companies have been able to regulate such obligations by their own means, rules of law have subsisted as nonmandatory instruments of control in the oil industry.

The author concludes that nonperformance risks are usually dealt with very adequately by the oil parties themselves and should therefore be left principally within their domain as a matter of business and legal sense. Where a legal tribunal is charged with jurisdiction to regulate disputes over performance, that body should establish the most economic and fair allocation of nonperformance risks in the light of commercial realities, not legal suppositions.

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## The Principle Of Freedom

Lansing Pollock

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*The Freedom Principle*. Buffalo: Prometheus Books, 1981.

The basic underlying principle of political philosophy is the equal right of every moral agent to be free. This right follows from taking seriously our duty to respect autonomy. This right has strong libertarian implications, since it in general serves to make a sharp distinction between positive and negative duties. Thus, while we may have a clear negative obligation not to coerce others, we have no positive obligation to aid them. As an example, the usual justification for social security fails the test suggested by the right of everyone to equal freedom. Proponents of social security argue that, unless all workers were forced to contribute to a system of retirement insurance, some would, on their own volition, fail to make provision for retirement. This would eventually be a burden on others. Without denying the possibility which advocates of social security have conjured up, we must still reject the program they propose. One has no right to coerce everyone to save simply because if one does not, a certain bad consequence (namely, some will not save at all) might follow. Rather than have a coercive system, the present social security system should be gradually phased out in favor of voluntary plans.

Similarly, compulsory licensing laws are of doubtful moral validity. If someone wishes a certain type of treatment, it is not proper for the state to prevent him or her from securing it. To do so, once more, is to violate his or her right to equal freedom. Since, however many people wish to patronize doctors, dentists, etc. of proven reliability, it is legitimate for the state to issue certification to those who pass prescribed tests, provided that the uncertified are not forbidden to practice. Such programs should be financed by voluntary contributions, since compulsory taxation unacceptably violates rights.

Before elaborating further on the social consequences of the right to equal freedom, two points should be made clear. First, why are bad consequences not taken as a sufficient reason for preventing an act? To do so would be to adopt a form of utilitarianism. But this is unacceptable as a moral system. For one thing, there are various kinds of pleasures which are incommensurable. Exactly what sort of utilitarian pleasure should we maximize? Also, utilitarianism is sometimes inconsistent with a respect for autonomy, as it allows (or even mandates) sacrificing one moral agent for a sufficiently great good to others.

A second objection, as noted earlier, would be to deny that we have positive duties to aid others. This is not intended to deny the fact that aiding others is morally good. It is only that the person in need of aid has no moral right to compel someone else to help



him or her. Positive duties should not be legally enforceable. (One exception to this principle is the parental duty to care for minor children).

Pollock's social system differs from most libertarian approaches on the issues of property rights. The commonly advocated Lockean principle of property acquisition (that one acquires unowned property if one mixes one's labor with it) is unsatisfactory to Pollock. He believes this principle tends unduly to favor agricultural activity. Instead, the right of equal freedom mandates a different principle. Every moral agent has an equal right to the natural resources present in society. This proposal should be implemented along the lines proposed by Henry George, i.e., a tax on the unearned values of land. The proceeds should be distributed equally.

Pollock reasons that because of the need for such a distribution of natural resources and the need for a common currency and defense, a state is necessary. He concludes that the correct foreign policy for a libertarian limited state would be non-intervention.

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## The Medieval Peace Movement

Udo Heyn

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“*Pax et Justitia*: “Arms Control, Disarmament and the Legal System in the Medieval Reich.” *Peace and Change* 8 (Spring 1982): 23–36.

The medieval German *Landfrieden* or Peace of Lands movement carries important lessons for a peace movement in our time. One lesson is that there seems to be no quick institutional “fix” to arms control and peace. A total ban on arms was not necessary in this medieval “peace movement,” which tried to suppress feuding, but allowed nobles to continue to bear arms. Nor was a centralized constraint on arms sufficient to establish peace, since stability at home allowed for the conduct of Crusades and war abroad. The medieval peace movement tried to rely on arms control rather than on disarmament or armed deterrence; it was successful to the extent to which conflicts came to be resolved through the use of the legal system.

Prior to the Peace of Lands, the resort to arms was employed for “extra-judicial” self-help, as when a litigant failed to receive what he considered was his legal due. Even after edicts prohibiting all violence at certain times, the Crusades and the Investiture Conflict (resolved by Concordat of Worms, 1122) managed to keep conflict alive. It was not until medieval society began to focus less on an ideal peace and more on maintaining internal law and order that Europe witnessed a reduction in societal conflicts. By phasing out the extra-judicial but legitimate acts of self-help, the *Landfrieden* tamed the feud and eventually proscribed it altogether. At the same time, this medieval peace movement restrained ordinary crime by making punishment fit the crime, regardless of the criminal's social or kinship status.

For our own times, we ought to remember that peace cannot be pursued as an end-in-itself, but only as an adjunct of orderly and lawful societal change. The article contains copious historical and bibliographical citations.

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## Just War Theory And Resistance

Vincent J. Genovesi, S.J.

St. Joseph's University

“Just War Doctrine: A Warrant for Resistance.” *The Thomist* 45 (October 1981): 503–540.

The doctrine of the just war has a long history which may provide a moral justification for the individual's right to resist unjust wars.

In the Old Testament, the individual was justified in resisting authority in order to obey Yahweh. For St. Augustine, one was obligated to obey the king, unless his order was clearly unrighteous or contrary to God's command. For Aquinas, individuals are not bound to obey a ruler if he gained power unjustly or issued an order that is unjust. With Luther, subjects ought to obey their rulers in doubtful cases, but not when there is certainty about the injustice of the proposed cause. Vittoria concurred with this, and allowed that the individual need not assume responsibility for assessing the reasons for war before following a leader's orders. Suarez went a step further and held that in cases of “positive doubt”—for example, when there are reasons for and against the justice of a war, the individual is bound to follow the course that is more probably just.

A major advance in theorizing occurred with Hugo Grotius, who was the first in the Christian tradition to argue against engaging in war when the cause is of doubtful justice. Conscience is to be the sovereign guide of human actions, and if opinions waver about the justice of a cause, the balance should incline in the favor of peace.

Recently, the Catholic Church has affirmed the principle that citizens, and not rulers alone, have to concern themselves with the criteria of a just war. Furthermore, in February 1980, the U.S. Catholic Conference of Bishops affirmed (implicitly) that the individual has no *a priori* obligation either to support or to oppose a proposed war. In effect, the government's decision need no longer enjoy any presumption of truth or justice. The American bishops also recommended that the government extend legal immunity to selective conscientious objectors, not simply to total pacifists. So far, the government has turned a deaf ear to the bishops' recommendation.

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## Liberalism Vs. Politics

Norman P. Barry

University College, Buckingham

“A Defence of Liberalism Against Politics.” *Indian Journal of Political Science* 41 (June 1980): 171–197.

Professor Barry critiques the view, exemplified by Prof. Bernard Crick, that (1) identifies the activity of politics (reconciling conflicting interests and pressure groups) with freedom or (2) judges that such political activity is superior to the moral theory of traditional liberalism.

Barry understands liberalism as it was understood in late 18th- and early 19th-century British political and economic thought as both a normative and scientific doctrine. Normatively, liberalism maintained that there “ought to be strict limits between the private and public spheres of action, which meant that the state ought to be limited either by formal, written constitutions, or unwritten, but equally binding customary rules of behaviour; that individual actions were more important, morally and politically, than collective actions; that laws ought to be general and non-discriminatory; and that a natural economic order would emerge if individuals were left to pursue their private purposes within the framework of these general rules. The scientific side of this liberalism consisted of the basic theorems of market economics, for example, the idea that the market mechanism would allocate resources more efficiently than state intervention. A crucial element in this was the belief in methodological individualism, that is the doctrine that social processes can only be understood in terms of individual action and not in terms of metaphysical entities such as ‘classes’, ‘states’ or ‘societies’.” This version of liberalism rejects the classical utilitarian notion that there are any social ends or purposes beyond the maintenance of the system of rules within which individual transactions take place.

The writings of Professor Crick are taken by Barry as the example of the ‘political’ school, and it is argued that the liberal ideal of constitutionalism provides a better protection of individual rights than does the political process of majority voting and pressure or interest group struggles. The belief in the importance of group interests distorts the meaning of the public interest and sanctions policies that, in fact, harm that interest. Prof. Barry maintains that the identification of politics with freedom is not only logically mistaken but also conceals the fact of coercion that is a consequence of all political activity: the outcomes of political processes “must inevitably involve decisions which are uniform and coercive.”

Professor Barry's far-ranging contrast of politics and liberalism deals with the nature of politics; politics, constitutions, and law; and politics, freedom, and liberalism. The symbiotic relationship of the free market, liberty, and liberalism is stressed

throughout. Barry also underlines the normative vacuum of political formalism or rules without moral content.

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## H.L.A. Hart Vs. Natural Law

S.B. Drury

University of Calgary

“H.L.A. Hart's Minimum Content Theory of Natural Law.” *Political Theory* 9 (November 1981): 533–546.

The author wishes to clarify the “much maligned tradition of natural law in legal theory.” He contends that H.L.A. Hart has distorted important aspects of the controversy between natural law and legal positivism. Hart's “minimum content” theory does not constitute a compromise between natural law and legal positivism since Hart misinterprets the meaning of natural law.

The legal positivists' tradition holds that “legal norms can have any kind of content and be valid.” By contrast, the natural law tradition maintains: (1) the conviction that there exists a universal justice that transcends the particular expressions of justice in any given set of positive laws; (2) that the universal principles of justice are accessible to reason and are discovered, not made, by man; (3) that a positive law contrary to these universal principles is not properly speaking a law, since it lacks the moral content necessary to put us under obligation. To be valid law must have a moral content and not simply be a command with sanctions.

Hart's theory fails to be assimilated to this natural law tradition. (1) Hart's criterion of “survival” fails to qualify as the proper end or *telos* of man, because it does not refer to an optimum condition of fulfilment. (2) Because survival is morally neutral, no moral conclusions can be derived from the fact that men tend to desire to continue in existence. Hart's “content” of law (based on survival as an aim) is instrumental rather than moral. (3) Hart's minimum content theory attempts to define “viable” rather than “valid” law, and so remains thoroughly positivist. It does not approach the moral content criterion of natural law.

To be valid a law must be deserving of respect. A valid law is one which morally ought to be obeyed; the coercion such a law uses against those who disobey it would then be justified. Otherwise, the coercive power of law would hardly be distinguishable from the violence of criminals.

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## Freedom Of Assembly Vs. “Heckler's Veto”

David G. Barnum

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“Freedom of Assembly and the Hostile Audience in Anglo-American Law.” *The American Journal of Comparative Law* 29 (Winter 1981): 59–96.

Public conflict between rival factions (such as neo-Nazis and Jews) creates legal dilemmas concerning civil liberties in England and the United States. When passions are inflamed, insisting on the right to speak and assemble by some controversial groups may pose the nearly certain prospect of serious public disorder. Authorities confront the dilemma of either preserving order by preventing public demonstrations or guaranteeing the constitutional right to assemble against a hostile audience's “heckler's veto.” The author presents a comparative legal analysis of the English and American constitutional policy and practice regarding prior restraint of publically controversial speech and assembly; in addition, he surveys the legal considerations of police intervention and criminal punishment in respect to this issue. Important legal cases in England and the United States (such as the banning of a proposed Nazi march in the largely Jewish Village of Skokie, Illinois in May 1977) involving freedom of assembly issues are discussed in detail.

Under inflammatory conditions, the author believes that the constitutional right of freedom of speech may have to be temporarily subordinated to the needs of law enforcement and restoring public order. Under normal circumstances, however, the right to demonstrate should never be revoked or even curtailed simply because of threats from a hostile audience. Authorities should offer protection so that a hostile audience cannot exercise “a heckler's veto” over the right to speak and to assemble.

“The difficult issue arises when demonstrators insist on the right to express a message in public which is highly provocative.” In the United States, the Supreme Court has avoided deciding whether provocative demonstrators may be punished or prevented from doing so. At the present time, the law is sufficiently ill-defined to enable two lower courts in the Skokie litigation—the Federal District Court and the Illinois Supreme Court—to interpret the U.S. Supreme Court to mean that Nazis wearing swastikas have a constitutional right to conduct a demonstration in a Jewish community provided the demonstrators' message is nonpersonal in content.

The author's “preferable solution to the dilemma of the hostile audience” would allow the police and courts in America to decide whether the protestors' nonpersonal message had the “inherent capacity. . . to provoke a breach of the peace.” He believes the alternative of his criterion (the capacity of a message to provoke violence) would be to formulate some other independent criterion or “to establish as a matter of constitutional law that demonstrators are entitled to express any message they choose in public and be protected by the police.”

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## Proudhon: History As Conspiracy

Paul B. Crapo

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“Proudhon's Conspiratorial View of Society.” *Journal of European Studies* 11 (September 1981): 184–193.

Although a self-styled positivist who prided himself in his scientific method applied to political, social and economic theory, Pierre-Joseph Proudhon's (1809–1865) conspiratorial view of society transcended empirical evidence and links him, in its imaginative mythic force, with the romantic literary figures of the nineteenth century, such as Balzac. The author believes that Proudhon's belief in a “vaste conjuration” of government officials, capitalist bankers, and priests united to suppress the lower classes shows signs of paranoia.

Proudhon's assessments of contemporary society were stamped with an emotional, personal mythology of conspiratorial plottings of “*l'autel, le trône et le coffre-fort*.” “Starting from certain demonstrable observations (the retrograde ideology shared by the clergy, the bourgeoisie, the Orleanist/Bonapartist regime in nineteenth-century France; the coalition European monarchs formed in Vienna to contain revolutionary ferment), Proudhon was quick to posit an intricate alliance of Church, capitalists, and governments by magnifying these observations far beyond the actual facts.” This private conspiratorial mythology became a conceptual framework to organize his world-view as a political analyst. Proudhon's conspiratorial views on attempts to unify Italy and Poland (rather than allowing them to be federated groupings of autonomous units) are cited as proof that he was held in the grip of an emotional ideology resembling the romantics' reshaping of history to fit their vision.





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## Bibliography Of Political Theory

Cary J. Nederman and James Wray

York University, Toronto

“Recent Books in Political Theory: 1977–1979.” *Political Theory* 9 (February 1981): 121–142.

Supplementing an earlier bibliography by Linda Marasco and Cary J. Nederman, “Recent Books in Political Theory: 1974–1976,” *Political Theory* 5 (May, 1977): 277–287; this recent bibliography collects work on the history of contemporary issues in political theory. Going beyond the narrow limits of theory, it deals with philosophy, sociology, economics, history, and other disciplines when those fields contain material of interest to the political theorist. This bibliography covers the period from January 1977 through December 1979 in the seven languages published in Europe and the Americas.

Major topics treated are: history of political thought, Marxism, anarchism, and contemporary theory (which includes entries on liberalism and democratic theory; rights, justice, and law; political and moral issues; and introductions, methodology, and collections). The student of political and historical thought is offered hundreds of books of interest.

To supplement these *Political Theory* bibliographies of books, the reader may find useful Cary J. Nederman's “A Bibliography of Articles in Political Theory, 1974–1978,” in an earlier issue of *Political Theory* 7 (November 1979): 563–580, which in turn supplemented the “Bibliography of Political Theory Articles: 1970–1973,” which appeared in *Political Theory* 2 (November 1974): 468–478.

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### III

## Social Science Paradigms And Ideology

Evolving social paradigms and the distorting role of ideology are thematic undercurrents in the following set of summaries. In the first summary, historian William H. McNeill forecasts the growing importance that the developmental and subjectivist paradigm will play over the next twenty years of social science scholarship. The theme of ideology is introduced in Prof. Kendall's following analysis of the truth-distorting consequences of ideology. Ideology is next charged against the 'new' history by Keane and Femia on the respective grounds of Quentin Skinner's alleged positivist or objectivist epistemology and his extreme 'historicism.' Montesquieu's religious ideology is analyzed by Masterston and set against Montesquieu's scientific and deterministic sociology. Needleman and Jung offer analysis of existentialism and phenomenology to illuminate the importance of the Cartesian subject-object split in modern thought and political theory. This same question informs McNeill's, Kendall's, Femia's, and Keane's methodological discussion of current paradigms of social theorizing.

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## The Developmental Paradigm Of Social Science

William H. McNeill

Dept. of History, University of Chicago

“Trends of Scholarship in the Social Sciences, 1980–2000.” In *A Rededication to Scholarship: Papers Presented at the Dedication of the New Central Library, University of Cincinnati*. Edited by James K. Robinson. Cincinnati: The University of Cincinnati Press, 1980, pp. 35–45.

In what direction are the social sciences tending to develop under the sway of newly emerging paradigm shifts? In the 30–40 years following World War II, the dominant paradigm, shared by such ascendant idea-clusters as Freudian psychology and Keynesian economics, was the “systematic” approach (systematic in the sense of seeking propositions universally applicable to human personalities and economic relations, respectively). Opposed to this systematic approach is the developmental emphasis: “the idea that time really matters in a deep and fundamental sense, so that what is possible at one moment in an evolving network of relationships is not possible before—or after.” The evolution of the system as a whole is affected in ways unforeseeable by human action in the present.

Among the more “developmental” sciences—anthropology, sociology, history, and political science—some succumbed during the 1920s and 1930s to a scientific cult of fact-gathering and the “inductive method,” but this positivistic anti-theoretical faith has been dimmed since World War II by three kinds of developmental awarenesses: (1) Our subjective mind and sensibilities make “facts” relativistic to the observer and undermine the quest for an unattainable scientific certainty; (2) The time dimension and our ability to understand human experience affect the way we observe as well as our conclusions; (3) The evolving vocabularies which social scientists use as observers powerfully affect what they see. These developmental perspectives seem more congenial than the statistical and mathematical aspiration to the “systematic” quest for universal truths and prognostication.

Methodological debate between systematizers and the developmental sciences seems likely to become “a major axis of growth” for the rest of this century. A second possible line of development would involve an effort to bring the social sciences in contact with the implications of man's biological nature. In particular the biological model of ecology may be useful for thinking about humans and their social relationships. In an ecological fashion, idea systems react to their environment, stabilize in new “niches” to form an equilibrium maintained by our symbolic culture within a larger ecological context.

Social science can never emancipate itself from ideology—the idea structure compatible with and sustaining some social structure. We should be aware, however, that the concepts of the social sciences that we accept and believe in will be a crucial

factor in defining and determining ourselves and our society's future. It may be possible, through a natural competition for survival among ideas, that liberal, pluralist societies which tolerate diverse ideas can better grow and adjust to altered conditions.

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## Ideology, Relativism, & Truth

George A. Kendall

“Ideology: An Essay in Definition.” *Philosophy Today* 25 (Fall 1981): 262–276.

Ideology, often used as a smear word against rival schools of thought, is poorly understood. This contributes to the problems of epistemological relativism (that is, the claim that all knowledge is relative) in the study of man and society, problems discussed in the sociology of knowledge. To understand ideology we must first define it clearly. The author inquires into existing usages of the term “ideology” to clarify its definition and answer the objections of relativism. Kendall's ideas are parallel to the work of Paul Ricoeur's hermeneutical philosophy. One of his targets is answering the Marxist “critique of ideologies,” which contributes a negative emancipation from interest-motivated ideologizing without restoring us to a right relationship with being.

Four basic usages of “ideology” occur in the writings of social scientists: (1) Most textbook definitions are vague and all-inclusive definitions of ideology as the sum total of the ideational or mental components in society. Even in this crude understanding, we find the contrast between “subjective” mental activity in contrast with some more “objective” type of cognition. (2) The Marxist perspective contrasts ideology as thought that is non-autonomous defense of class interests with a concern for truth. (3) Mannheim contrasts ideological with utopian thought. Utopian thought imagines possibilities which may be actualized but are suppressed by current social institutions and so transcends limits which ideology imposes on human possibilities. (4) A final usage is illustrated in Daniel Bell's “end-of-ideology” school, which contrasts an allegedly unknowable and subjective “absolute” truth or ultimate end (ideology) with the objective cognition represented by the pragmatic approach concerned with means, solutions to technical problems, rather than ends.

Two dimensions of a formal definition emerge from these four usages: (1) Ideology as cognition in which the perception of boundaries or limits (hence possibilities) in reality is distorted; and (2) Ideology as subjective cognition. These formal criteria are clarified and explored by the author, and he finally reaches a more adequate definition: “Since truth is the adequation of the intellect to the object, and an object is an object by virtue of its form, ideology, negatively, is thought not oriented to truth, and positively, is thought grounded in a hatred of truth.”

This refined definition of ideology is next applied to two problems of the sociology of knowledge: the problem of relativism of knowledge and the problems of the relation of the truth of an idea to its genesis.

Mannheim intended the sociology of knowledge to function as a critique of ideology, but his positivistic background made him unable to defend his own thought from the charge of being itself ideological. The author asserts that his approach, by cognitively

and ontologically defining the distinguishing criteria of truth and ideology, makes his analysis non-relative and testable.

In one sense the genesis of an idea is unrelated to its truth. But in the case of an ideological scholar, who does not ground his ideas on their correspondence with reality but with other commitments, the truth or falseness of an idea he commits himself to is accidental rather than essential. In such ideological cases, we get at an idea's essence only if we see it as an effort to distort the truth (the intellect's representation or intention of the form of the object) and search for its ideological genesis.

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## The 'New' History's Presuppositions

John Keane

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“On the ‘New’ History: Quentin Skinner's Proposal for a New History of Political Ideology.” *Telos* 47 (Spring 1981): 174–183.

Quentin Skinner, author of *The Foundations of Political Thought*, 2 vols. (Cambridge, 1978), exemplifies the so-called “new history” of political ideology. Keane maintains that the entire new history project is feeble in its interpretative presuppositions and conservative in its uncritical, antiquarian consequences.

One central but fatal presupposition of the new history project may be termed the intentionality claim: historical interpretation is judged synonymous with explications of what past authors were self-consciously intending in their utterances. This intentionality claim pre-supposes two debatable points. First, it is a fantastic claim, in the light of self-deception and depth psychology, that agents always have privileged access to their own intentional utterances. Next, the subjectivist new history eclipses the semantic autonomy of texts.

The new historians' task is to interpret a past that reproduces the immediately given intentions of actors within their context of an ensemble of conventions of political argumentation. This embraces a positivist copy model of interpretation which presupposes the very objectivism the new historians decry. There can be no “presuppositionless” understanding of the speech and actions of others. We can understand the past, however, by what may be called a “negotiation model of historical interpretation.” The positivist presupposition of selfless researchers who are removed from their “object” of interpretation fails to consider that “subject” and “object” must be conjoined by an initial shared linguistic universe if interpretation is to be possible. Interpreters co-determine or “negotiate” the meaning of past utterances. The meaning of texts always goes beyond the author's intentions owing to unintended consequences and multiple interpretations.

Skinner's history of political ideology “unwittingly celebrates the power of the past over the present. It prefers antiquarian explication over critical evaluation.” But the past is rife with “power, interest and self-deception.” As historians we must be critical and not remain bogged simply considering an author's intention rather than questioning his relation to hegemony, oppression, and ideological self-deception.

More favorable interpretations of Skinner's *Foundations* are: the reviews by Judith Shklar and Julian Franklin in *Political Theory* 7 (November 1979): 549–558; and the comments by J. G. A. Pocock in *Canadian Journal of Political and Social Theory* 3 (Fall 1979): 95–113.

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## Historicism & The History Of Ideas

Joseph V. Femia

University of Liverpool

“An Historicist Critique of ‘Revisionist’ Methods for Studying the History of Ideas.”  
*History and Theory* 20, no. 2 (1981): 113–134.

What are the correct procedures to adopt to arrive at an understanding of a past work of philosophy or political thought? During the past decade, a “revisionist school” within the field of intellectual history—whose nucleus includes Quentin Skinner, J.G.A. Pocock, and John Dunn—have attacked traditional approaches to the history of ideas, decrying a “lack of historicity in the treatment of linguistic artifacts” (writings) from the past. In particular, this revisionist school excoriates the prevalent notion that “the whole point of studying ‘great’ works of philosophy is to extract the ‘timeless elements’ or ‘dateless ideas’ with universal (and therefore contemporary) application.

The revisionists argue that in order to understand a historical text, we must recover the historical context and particularity of the author's intended meaning. They claim that in the sphere of political-social reality, thought has (1) no universal truth, (2) no independence of its cultural-linguistic context, (3) no significance for the present, (4) and no meaning beyond its author's intentions. Although this ‘intentional’ approach is a variant of classic historicism, it goes far beyond this type of historicism. A study of Antonio Gramsci's historicism shows that only the first claim is entailed by historicism or justifiable in its own terms. The revisionists' program would prevent us from understanding our own political ideas as they are founded upon our philosophical traditions.

Professor Femia challenges the revisionists' critique and methodology from Gramsci's “absolute historicism” perspective. Concentrating on an analysis of Skinner's famous article, “Meaning and Understanding in the History of Ideas” (*History and Theory* 8 (1969): 3–53), Femia dissects the fallacies which he discerns in the revisionist approach to the history of ideas. Following Gramsci, he argues that: (1) ideas may enshrine much that is of permanent value, even though they are themselves untrue or obsolete; (2) thinkers do indeed work within intellectual traditions, which, *to some extent*, transcend particular historical-linguistic contexts; (3) all history is “contemporary history,” dictated by the interests of the historian; study of the past is valuable only insofar as it casts light on present problems and needs; and (4) it is neither necessary nor desirable, from historicist perspective, to understand a body of thought purely or even primarily in terms of the author's conscious designs.

The author presents an analysis of historicism from Vico through Dilthey and the nineteenth century to Gramsci and contemporary writers, and places Skinner in an “extreme variant” of this tradition, since Skinner sees all statements as inescapably bound up in their unique historical-linguist context which they cannot transcend



without anachronism. Past ideas cannot, in effect, transcend translation into the language of disparate cultures. But if history is a series of disconnected events, what is history? The revisionists' error derives from a positivist theory of knowledge which rests on a complete disjunction of subject and knowledge, as if facts impinge upon passive consciousness which has no activity of its own.

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## Mentalities As Cultural History

Patrick H. Hutton

University of Vermont

“The History of Mentalities: The New Map of Cultural History.” *History and Theory* 20, no. 3 (1981): 237–259.

The “history of mentalities,” a field of intellectual history, considers the attitudes of ordinary people towards everyday life, including ideas concerning childhood, sexuality, family, time, and death. This approach is closely identified with the French *Annales* school. But whereas the *Annales* historians concentrate on the material factors conditioning man (economic, social, and environmental influences), the historians who investigate mentalities examine the psychological realities underpinning human conceptions of intimate relationships and basic habits of mind.

The history of mentalities has parallels with the history of ideas and culture. Idealist cultural historians, such as Burckhardt and Huizinga, saw problems of culture as problems of world-views and their interpretation within the social and political contexts. This idealist approach to cultural history lost its appeal since its methodology arbitrarily limited it to studying high culture, and tended to view the common man as a passive recipient of ideals forged elsewhere. By contrast, the history of mentalities went beyond the idealist historians to consider the culture of the common man. This newer approach shifted the focus from world-views to the “structures” through which such conceptions are conveyed (such forms that regularize mental activities: customs, rituals, linguistic codes, aesthetic images). Describing these structures of ideas helps to map the mental universe which characterizes a particular culture. This new focus is on the history of mind rather than the history of ideas.

Historians who first developed guidelines for the history of mentalities were Lucien Febre and Marc Bloch (founders of the *Annales* School in the 1920s) who were concerned with collective systems of belief. Later, Philippe Ariès and Norbert Elias identified and developed theories on early childhood. Finally, Michel Foucault, who was most thoroughgoing in applying structuralist methods, considered the psychology of social deviants and nonconformists.

This mode of interpretation provides a way of examining those aspects of life and cultural history which the linear approach cannot address, such as the pressure of conformity, the sense of accelerating time, and the preoccupation with self. It provides a perspective on the civilizing process. What is called progress might, from the mentalities perspective, be easily labeled control. Thus political liberty was won at the price of a pronounced psycho-social discipline. Paradoxically, man as creator creates structures which limit his capacity for free expression.

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## Foucault's History: Power/Knowledge

Michael S. Roth

“Foucault's History of the Present.” *History and Theory* 20 (1981): 32–46.

In *The Birth of the Clinic*, *The Order of Things*, and *Discipline and Punish*, Michel Foucault writes a “history of the present” by showing the connections between the “archaeology of knowledge” and criticism.

In *The Birth of the Clinic*, Foucault is principally concerned with the changes in human perception evident at the end of the eighteenth century and the relation of these changes to the fundamental “structures” of experience. Underlying the history of medicine is the moral and political attempt to link the development of science with the development of bourgeois freedom.

In *The Order of Things*, he cites “archaeology” as a method of uncovering the fundamental paradigms of cultures and their systems of thought.

Finally, in *Discipline and Punish*, Foucault considers discourse a domain of power relations and thus establishes a link between knowledge and power. A “history of the present” is a self-conscious field of power relations and political struggle.

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## Montesquieu's Faith In Rights And Liberty

Michael P. Masterson

University of Dundee

“Rights, Relativism, and Religious Faith in Montesquieu.” *Political Studies* 29 (June 1981): 204–216.

Credited with refounding sociology, Montesquieu (1689–1755) is also admired for his doctrine on the institutional context of liberty. “In his character of libertarian he supported his attitude to liberty with a doctrine of natural law and a rather undeveloped doctrine of natural rights.” Masterson discusses the tensions between these two strands of Montesquieu's thinking, “the scientific strand which attempts to analyse, explain and predict human behaviour and the prescriptive stand which declares human duties and fights for human rights.”

Montesquieu believed in natural law and rights, notably the right to liberty. Yet he advanced physical explanations of individual behavior and a mixture of physical and social explanations of cultural differences in moral and aesthetic attitudes, religious belief, and the capacity to sustain liberty. Such explanations conflict with the assertion that human beings can know and follow universal natural laws. Despite his explanations of religious beliefs, Montesquieu resolved the intellectual and emotional tensions between his doctrines by recourse to his own religious beliefs—for a working knowledge of moral principles—and the notion of a freely acting, immaterial soul, although his science seems to leave it almost no room for action.

Montesquieu was not always a strong individualist since he was deeply religious in the fundamentals of his thought. He stressed God's laws rather than any secularized version of the rights of man. There can be no doubt, however, about his commitment to liberty or of his readiness to criticize political and legal institutions from the point of view of freedom, as he did in the *Persian Letters* and *The Spirit of the Laws*. Opposed to servitude, Montesquieu viewed liberty as the foundation of happiness. He believed that political liberty depended on divisions of power between individuals, institutions, and social classes, but his scientific theories stressed the difficulties of reforming society and institutions. When thinking as a physical or social scientist, Montesquieu was a causalist and relativist and thus at odds with his role of moral critic advancing ideas of natural law, right, and natural liberty. He, nevertheless, was sincerely opposed to that form of determinism known as “Spinozism” and sought to escape its logic through religious faith and the notion of an immaterial soul giving free will and the capacity to act either morally or immorally. Only religious faith protected Montesquieu's moral doctrines from eradication by his own deterministic science. Montesquieu's science limited the range of human knowledge and of man's ability to choose: this effectively implied the impossibility of a critical morality of natural duty and right. His own scientific causalist and relativistic views on the social origins of religion should, logically, have undermined his faith, but he arbitrarily

exempted Christianity from his scientific explanations. Likewise, his religiously based belief in an immaterial soul allowed him to assert free will even against the unbearable consequences of his scientific principles.

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## Existentialism: Nature & Freedom

Jacob Needleman

Department of Philosophy, San Francisco State University; Director of the  
Center for the Study of New Religious Movements in America

“Man's Nature and Natural Man.” In *Consciousness and Tradition*. New York: The Crossroad Publishing Co., 1982, pp. 12–22.

Existentialists claim that man's freedom consists in the fact that man has no nature: “man's essence is to determine his essence, man's nature is to choose his nature, man is condemned to absolute freedom.” This stance is opposed to those philosophic and religious thinkers who believe that man has a determinate essence to which he must conform his will and understanding if he is not to go against the grain of his purpose in the universe. But “if man has no nature, what can he hope for?”

The existentialists are correct in their critique of the modern materialist world view of natural science, which arose with the mind-body split of Descartes and the “pure corporeality” of Galileo. Methodologically, the modern scientific world view sought to banish the self out of the world in order to investigate the world. It equated the real with what is knowable. “And since our ideal of knowledge came to be mathematics, it was not too long before we began to suspect that this self, or subject, since it was not mathematically knowable in any full sense, was not entirely real. At most, it was merely the pale knowing subject, very much a ghost in a universe of blind, purposeless, homogeneous corporeality.” The existentialists are right in their revolt which asserts against scientific materialism the full reality “of the free, conscious, vital, purposing self.”

The existentialists, however, attack Descartes while remaining strictly within his fold. Epistemologically, they are “nothing less than Cartesian anti-Cartesians.” For existentialists, consciousness, mind, “is not viewed as something which intends an object; consciousness *is* this intention.” They, in effect, agree with the subject-object split of the Cartesians, merely stressing more the claims of the creativity and constituting nature of consciousness over the inert passivity of objects. In the existentialist perspective, “A man's life is like a ship that can and does constantly change not only its destination, but its flag, its crew, its captain, its origin, and its cargo as it sails through the mathematically structured blind sea of the Cartesian *res extensa*.” Man's consciousness, or his intentionality creatively fashions, with complete freedom, whatever reality he chooses. Whereas the Cartesian scientist denies the reality of the passenger (consciousness), the existentialist denies the reality of the surrounding ocean (objects). “Man is a purposing being in a purposeless universe. . . .” His imagination may creatively picture life in the ocean, but he is crossing a “truly dead sea.”

But in admitting the shortcomings of the existentialist, we need not return to “some shopworn, naive idea of natural man, bestial, evil, ontologically fixed. Nor need we revive a view of human nature “that either fails to see man's animality or else buries him in it to such a degree that his consciousness and reason are at best only minor epiphenomena.” Needleman's thesis holds that from the point of view of mature religion, the existentialist is right in holding that “natural man has no nature,” but this “natural man is not free. On the contrary, he is a slave.” If we replace the existentialist's world view (in which consciousness exists wholly outside the pale of the rest of reality) with a more coherent world view that sets the processes of thought, desire, and sensation within a vast, ordered, and organic whole, then we see that “freedom would presumably manifest itself not by change, but by permanence” in the sense of a determinate structure of self and universe organically interrelated.

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## Phenomenology And The Social Sciences

Hwa Yol Jung

Duquesne University

“Preface” and “The Nature of Phenomenological Thinking.” In *The Crisis of Political Understanding: A Phenomenological Perspective in the Conduct of Political Inquiry*. Pittsburgh: Duquesne University Press, 1979, pp. xiii-xvii, 1–13.

Phenomenology—a new paradigm in man's understanding of himself as both knower and actor—has come of age in the social sciences, long after its founding fathers (Martin Heidegger, Edmund Husserl, and Maurice Merleau-Ponty) have spelled out its revolutionary implications for philosophy. Since the seminal publication of Alfred Schutz' *Der sinnhafte Aufbau der sozialen Welt* in 1932 (which was translated as *The Phenomenology of the Social World* in 1967), it has taken four decades for phenomenology to reach its maturity in the social sciences. The 1973 publication of *Phenomenology and the Social Sciences* edited by Maurice Natanson in two volumes represents this new direction and turning point in contemporary philosophy of the social sciences. Adding to this phenomenological momentum was the inauguration in 1978 of *Human Studies: A Journal for Philosophy and the Social Sciences*, edited by George Psathas. Jung's present volume is the first systematic treatise on the phenomenological philosophy of political science.

Jung's study is a critique of political theorizing in contemporary political science. Treating phenomenology as reflexive, self-conscious thinking that seeks the “origin” of knowledge or truth in the everyday, experiential life-world (*Lebenswelt*), the author seeks an alternative way of theorizing to the prevailing theories of politics which have been dominated by ontological objectivism and epistemological scientism—particularly by political behaviorism. The model Jung develops is the phenomenological thought of Merleau-Ponty, “a ceaseless *interrogation* on an inseparable link between *existence* and *meaning* in all their ramifications.”

Phenomenology is a response to the crisis of political understanding due largely to the failure of the paradigm of objectivist scientism to take into account the subjectivist, experiential dimensions in political inquiry. Husserl's *Crisis of European Sciences and Transcendental Phenomenology* identified the roots of this crisis as the fact-minded, meaningless epistemology of positivism and naturalistic objectivism. Phenomenology, by contrast, is a “movement” focused on a critique of human knowledge, an inquiry into the limits and possibilities of human cognition in terms of experiential evidence. In Socratic fashion it conceives of philosophy as a perpetual beginning in wonder, and it seeks knowledge (*episteme*) by plunging into the world of *doxa*, or everyday experience.

The crisis of humanity is foremost the crisis of thinking. Adolf Eichmann's horrendous callousness reveals the “banality of evil” as *thoughtlessness*. To remedy



this crisis, phenomenology cultivates thinking as the spirit of questioning in accord with the natural order of things. We can discriminate authentic thinking (what Heidegger called “meditative thinking”) from inauthentic thinking (“calculative thinking”). Inauthentic thinking is characteristic of technocratic, instrumental thinking whose roots stretch back to Plato, Descartes, Galileo, and Hegel. Inauthentic thinking, unlike meditative thinking, divorces the intentional subject from the object of knowing. Such an objectivism is a ‘scientism’ since it claims that the human or social sciences can be studied in the same way as the natural sciences, that is, through causal explanations and prediction. Phenomenology, however, aims at a “reflective liberation” by being self-critical. This self-scrutiny, or practicing the phenomenological “reduction” (*epoche*) is not escapism; it seeks to be a bridge between the solitude of radical reflection and the community of human action. Truth, as implied in the Delphic motto “Know thyself,” dwells in the self-examination undertaken when we reflect upon our own thinking—even political thinking. We need to withdraw from political activity in order to engage in the most political and searching of activities: reflexive thinking.

Jung provides an extensive bibliography on phenomenological political thinking and discusses phenomenological ontology, the critique of behavioralism, scientific positivism, and “the cybernetic model of man in political science,” together with analyses of C.B. Macpherson and Leo Strauss.

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## IV

### The Heritage Of Liberty

*Literature of Liberty* covered a related set of articles in the preceding issue under the title "History & Liberty." With an accelerating tempo, contemporary scholarship (in the fields of history, economic thought, political theory, and social theory) has investigated and clarified the debates, beginning in the early modern era, over religious and political liberty, property theory, natural rights, class analysis, and republican ideology. Students of human liberty living today are fortunate to be the beneficiaries of these impressive new interdisciplinary researches. In the future, we can expect even more brilliant syntheses relating the value of liberty to human development.

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## Neo-Harringtonians On Power, Interest, & Virtue

Jesse R. Goodale

Columbia University

“J.G.A. Pocock's Neo-Harringtonians: A Reconsideration.” *History of Political Thought* 1 (Summer 1980): 237–259.

Historian J.G.A. Pocock has studied the intellectual tradition of civic humanism and republicanism from 15th century Italy to the American Revolution. As part of this civic humanism interpretation, Pocock analyzes writers he classifies as “neo-Harringtonians”—17th and 18th century developers of the thought of the English republican author of *Oceana*, James Harrington (1611–1677). The neo-Harringtonians, according to Pocock, posed a major challenge to England's political leadership and the type of society that was emerging under its corrupt guidance. “Pocock places at the center of this neo-Harringtonian perspective an idealization of medieval society and government as the epitome of English liberty and a corresponding concern about those social and economic trends—especially the increasingly commercial and urban character of English society—that threatened to undermine the traditional basis of English freedom. Pocock believes that this political and historical view pervaded the writings of the neo-Harringtonians and exerted a great influence on social thinking in the 18th century.

Goodale critiques various aspects of Pocock's interpretation of the neo-Harringtonians, by studying, successively, the thought of: such early Commonwealthmen (and their defence of liberty) as Henry Neville (author of *Plato Redivivus* in 1681), Andrew Fletcher (author of *Plato Redivivus* in 1681), Andrew Fletcher (author of *A Discourse of Government with Relation to Militia's* in 1697); and the neo-Harringtonian opposition to Walpole, John Trenchard and Thomas Gordon (authors of the influential *Cato's Letters* during the 1720s), and Lord Bolingbroke (1678–1751).

Goodale stresses the leitmotifs of suspicion of governmental power and privilege, the “balance” of power, and the adjustment of private vs. public interest, and the need for a civic spirit in the social, economic, and political thought of the neo-Harringtonians: “Concern over the domination of private interests operating through the political superstructure distinguished the political analysis of the neo-Harringtonians. Above all else, they were inheritors of a republican tradition who found themselves in a monarchy and, therefore, with a king and court as a permanent private interest in the government. A monarchical system seemed to be compatible with a greater degree of stability and freedom than Harrington had imagined possible. In Pocock's view, the neo-Harringtonians reacted to this fact by twisting Harrington's political concepts until they could accept and even celebrate England's limited monarchy. On the contrary, it was their adherence to Harrington's republican analysis that made these neo-Harringtonians wary of England's political system and gave to their political and

historical thought an intellectual tension that Pocock's approach to their work cannot capture.

Pocock also errs in supposing that the neo-Harringtonians viewed commerce, trade, credit and money as necessarily opposed to liberty. On the contrary, from Neville to Bolingbroke, these writers did not present a conflict between commerce and land, virtue, and liberty, but rather they described the rise of trade and commerce as an aid to the growth in the number of economically independent citizens. Pocock and Isaac Kramnick mistake “discussions of political causes of corruption and tyranny as proof of a belief in the essential corruption of commercial life.” Not commerce, but politicized and privileged governmental control over the operations of commerce (“corruption”) is the recurring target of the neo-Harringtonians.

“In his recent study of early modern political thought, Quentin Skinner describes two approaches to the question of how best to provide for the general interest. One school of thought, to which Harrington surely belonged, relies upon the effective working of political institutions to defend the general good. The other stresses that it is ‘the proper *spirit*’ of the rulers, the people and the laws which needs above all to be sustained. The special quality of the neo-Harringtonians is the tension in their thought produced by an adherence to Harrington's belief in the primacy of political institutions at the same time that their analysis of contemporary political life pushed them towards a belief that only civic virtue could ultimately protect the general interest.”

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## Religious, Social, And Political Democracy

Christopher Hill

Oxford University

“Religion and Democracy in the Puritan Revolution.” *Democracy 2* (April 1982): 39–45.

The author, an expert on the seventeenth-century English Revolution, whose works include *Milton and the English Revolution* and *Century of Revolution*, distills his researches to summarize the interconnections of religion and social-political beliefs during the “Puritan Revolution” of 1640–1660. The political implication of much of religious dissent of the common people during the Revolution was radical egalitarian democracy.

During the English Revolution, for the first time in history, an organized political party—the Levellers—put forward fully articulated theories of political democracy. It is crucially important to understand that this period expressed all politics in religious terms whether in support or attack of the constituted political authority. The seventeenth-century Church of England was the chief prop of the social and political hierarchy. Through it, political socialization and obedience was inculcated. Before 1640, James I well formulated the nexus binding together religion and social order: “No bishop, no King, no nobility.”

By challenging the status of bishops, the Puritans unwittingly but logically endorsed not only religious equality but also political equality. “Puritanism then was mainly a political movement with a revolutionary ideology, though its ideas were expressed in religious idiom.” For at least two and a half centuries before the Revolution of 1640, underground heretical movements had preached that God could speak democratically to the lower classes as well as to the privileged classes. 1640 eliminated censorship and gave voice to the pent-up insubordinate and democratic feelings of the common people. Among those dissenters, the Levellers between 1645–1647 drew the democratic and secular conclusion from this religious-political popular ferment. Gerard Winstanley, leader of the smaller group of “Diggers” or “True Levellers” likewise secularized religious liberty and equality to take on the form of proto-communism.

The 1640s free religious discussion, thus, led to a social, political democratic revolution. Rejecting the elitist anti-democratic notion of man's depravity and predestination Winstanley asserted that all men would be saved. “The possibility of a sinless society had been the dream of the heady 1640s, but the Quakers survived to bear witness to the divine spark in all men and women” after the Restoration of 1660 attempted to abolish such dangerous democratic tendencies as the denial of King, bishops, and sin.

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## The Elite's Reaction Against 'Enthusiasm'

Michael Heyd

Hebrew University

"The Reaction to Enthusiasm in the Seventeenth Century: Towards an Integrative Approach." *The Journal of Modern History* 53 (June 1981): 258–280.

Historians have devoted increasing attention to the "secularization" or "disenchantment" in religious attitudes occurring in European society during the second half of the 17th and the early 18th centuries. The reaction against religious "enthusiasm" in this period should be seen as an integral part of this broader cultural shift among the elites of Europe. "Enthusiasm" was used as a derogatory term by social, cultural, and political elites to attack individuals or groups who claimed to have direct divine inspiration, whether European millenarists, the radical sects and early Quakers in England in the Interregnum period, or the French Cévennes Prophets who came to England after the Revocation. This reaction against enthusiasm was multifaceted, affecting writing style, views on medicine, madness and melancholy, scientific paradigms, and religious attitudes, and casts light on the social and political motives behind the European elite's increasing reluctance to resort to supernatural explanations of events. The hostile reaction of the political, intellectual, scientific, and ecclesiastical establishment to the "enthusiasts" helped to shift the ideological foundations of 17th-century socio-cultural order.

Church historians, such as Ronald Knox in *Enthusiasm*, stress how the very nature of enthusiasm with its individualistic claims to private judgment questioned authority and hierarchical institutions. The "heretical Marxist" Leszek Kolakowski in *Chrétiens sans église* emphasizes the existentialist-individualist theme of a dialectical relationship between the enthusiasts (representing the party of Grace and Individual Faith) and the orthodox reaction (representing the party of Law and Organization). Enthusiasm is part of a continuing conflict between an establishment and its more individualistic non-conformist opponents.

Enthusiasm transcends religious or theological questions and involves other issues—social, political, and cultural—peculiar to the period. For example the anti-enthusiastic reaction cultivated a "sober," rationalistic literary style and discredited appeals to the imagination, passions, and high-flown rhetoric. Heyd traces the medical, literary, theological, cultural, scientific, and political filiations of the debate over enthusiasm back to Plato and Aristotle, through the Middle Ages and Renaissance, until the cultural polemics of the early modern period.

Of particular importance is the social and cultural debate over enthusiasm within the ideological context of the English Revolution. J.R. Jacob has shown, in *Robert Boyle and the English Revolution*, how Boyle "was on the one hand attracted to, and influenced by the piety and millenarian vision of the hermetic tradition, but on the

other opposed to the interpretation that the radical sects had given to it. Boyle stressed patient work, reason, and experimental philosophy as antidotes to the sectarian claims for direct inspiration, claims which he regarded as subverting the social and moral order. He similarly presented his corpuscular philosophy as an alternative to the Aristotelian and Platonic conception of autonomous and vitalist natural forces, conceptions which were used by mortalists and pantheists like Overton and Winstanley in the 1640s and 1650s, and by the Rosicrucian enthusiasts. . . in the 1660s.”

Likewise, Margaret C. Jacob, in *The Newtonians and the English Revolution* shows how the Newtonian ideology was influenced by a dialectical confrontation with and reaction against the enthusiasts. A generation earlier we see the ties between the Latitudinarian revolt against enthusiasm in the 1650s and the emergence of the new scientific ideology of the Royal Society in the 1660s.

In sum, a systematic and interdisciplinary study of the social carriers of the smear term “enthusiasm” and its variegated connotations and denotations reveals much about the social history of the reaction to enthusiasm. The elites feared enthusiasm as a challenge to their social and cultural status. These elites wished to promote the norm of the “sober, reasonable, and self-controlled person” as a way to maintain the social order and their authority. The enthusiasts, as radical and inspired critics of the existing social and intellectual order, were representatives of “anti-structure.”

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## The Levellers & Natural Law

Richard A. Gleissner

George Mason University

“The Levellers and Natural Law: The Putney Debates of 1647.” *The Journal of British Studies* 20 (Fall 1980): 74–89.

Professor Gleissner analyzes the use of natural law—the idea that man has a determinate nature which he needs to realize by the aid of reason—by the Levellers in the period following Charles I's imprisonment during the English Civil War. He seeks to relate the Levellers' understanding of the natural law concept to the traditional teaching about it. He believes that the Levellers' radical natural rights philosophy may have arisen from the assumptions about man that have been historically associated with the theory of natural law. The Putney debates reveal that the Levellers' perception of man and the world derived ultimately from the natural law writings of Plato and Aristotle transmitted to the Levellers from Aquinas and Hooker.

In late October 1647 the Levellers presented to Cromwell at Putney “An Agreement of the People,” a formal set of revolutionary social and political demands which developed out of *The Case of the Army*. The principal radical spokesmen in the debates were Colonel Thomas Rainborough and John Wildman, both of whom were familiar with the classical theory of natural law and well able to apply it to their situation. Their familiarity with natural law is evidenced from their convictions “(1) that all men share an essential structure that determines certain fundamental human inclinations or tendencies; (2) that the good for all men is the realization or fulfillment of these inclinations; (3) that norms or moral laws are derived from man's nature and his efforts to achieve authentic fulfillment. From these premises, they went on to argue for full participation in government of all freemen—even the propertyless—as a matter of justice, whereas Cromwell and Ireton continued to uphold the practical necessity of reserving the exercise of political authority to men of ‘permanent fixed interest’ in the kingdom in order to assure internal stability and peace.” The Levellers thus approached the question of a constitutional settlement as an ethical or moral one, based on the premises of natural law.

Other Levellers, Lilburne and Overton, discerned the radical potential in the natural law theory by invoking self-proprietty as the basis of universal rights. Natural law served as a bridge to the utopian traditions of the Renaissance, and such thinkers as Richard Hooker and George Buchanan seem to have contributed to the Levellers' understanding of the political uses of natural law. Gleissner surveys the parallels between natural law doctrine and Leveller statements on such topics as the origin and dissolution of government, property, right, and freedom. The Levellers transcended Cromwell's and Ireton's conservative, pragmatic, and *ad hoc* political thinking by invoking the framework of natural law morality. Any government—not just King Charles'—Wildman held to be unjust if it limited men in their natural law right to



pursue their natural end. “Always, however, the Levellers' purpose was to protect the individual's right to live a more fully human existence without hindrance” and thus proposed universal manhood suffrage within this natural rights framework. The Levellers contributed in “formulating that broad libertarian platform of the commonwealthmen so vital to a later generation of Americans.” Natural law vindicated their optimism about the natural desire of men to actualize their potentialities and to become more fully human.

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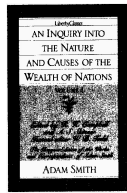
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[1.] F.A. Hayek, *Law, Legislation and Liberty*, vol. I, *Rules and Order*, (1973), pp. 8–11; vol. III, *The Political Order of a Free People*, (1979), p. xii. It is in the latter that Hayek uses the word ‘constructivistic’ rather than the more familiar ‘constructivist.’

[2.] See Hayek's essay, “The Results of Human Action but not of Human Design,” in *Studies in Philosophy: Politics and Economics* (London: Routledge and Kegan Paul, 1967), pp. 96–105; see also the important article by Edna Ullman-Margalit, “Invisible Hand Explanations,” in *Synthese* 39 (1978): 263–291.

[3.] Adam Smith, *The Wealth of Nations*, R.H. Campbell and A.S. Skinner (eds.) p. 456. The reference to the ‘invisible hand’ occurs also in Smith's *Theory of Moral Sentiments*, D.D. Raphael and A. Macfie (eds.), p. 58.

[4.] Hayek, “Principles of a Liberal Social Order,” in *Studies in Philosophy, Politics and Society*, p. 167. The only comprehensive treatment of contemporary social and economic problems from a Hayekian standpoint is Thomas Sowell's *Knowledge and Decisions* (1980).

[5.] Adam Smith, *The Wealth of Nations*, p. 456.

[6.] See Edna Ullman-Margalit, “Invisible Hand Explanations,” pp. 282–286.

[7.] Joseph Schumpeter, *A History of Economic Analysis*, p. 98.

[8.] See especially Marjorie Grice-Hutchinson, *The School of Salamanca*; Raymond de Roover, “Scholastic Economics,” in *Quarterly Journal of Economics* 69 (1955): 162–190; and “Joseph Schumpeter and Classical Economics,” in *Kyklos* 10 (1957): 115–146. See also Murray N. Rothbard, “New Light on the Prehistory of the Austrian School,” in E. Dolan (ed.) *The Foundations of Modern Austrian Economics*, pp. 52–74.

[9.] Quoted in Grice-Hutchinson, *The School of Salamanca*, p. 48.

[10.] See appendix VII in Grice Hutchinson, *The School of Salamanca*, pp. 112–115.

[11.] Quoted in Grice-Hutchinson, *The School of Salamanca*, p. 94.

[12.] Grice-Hutchinson, *The School of Salamanca*, p. 115.

[13.] De Roover, “Scholastic Economics,” p. 185.

[14.] Grice-Hutchinson *Early Economic Thought in Spain*, pp. 147–148.

[15.] Schumpeter, *A History of Economic Analysis*, p. 112.

[16.] For a concise exposition of Hale's jurisprudence see J.G.A. Pocock, *The Ancient Constitution and Feudal Law*, pp. 170–81.

[17.] Holdsworth, *A History of English Law*, vol. V, p. 505.

[18.] Holdsworth, *A History of English Law*, vol. V, p. 504.

[19.] Holdsworth, *A History of English Law*, vol. V, p. 509.

[20.] Bernard Mandeville, *The Fable of the Bees*, edited by Philip Harth (1970).

[21.] Mandeville, *The Fable of the Bees*, p. 85.

[22.] Mandeville, *The Fable of the Bees*, pp. 138–9.

[23.] Quoted in Hayek's essay "Bernard Mandeville," in *New Studies in Philosophy, Politics, Economics and the History of Ideas* (1978), p. 261.

[24.] See Jacob Viner, "An Introduction to Bernard Mandeville, *A Letter to Dion* (1732)," in *The Long View and the Short* (Glencoe: The Free Press, 1958), pp. 332–42.

[25.] Thomas Horne, *The Social and Political Thought of Bernard Mandeville* (London: Macmillan, 1978).

[26.] Mandeville, *The Fable of the Bees*, p. 371.

[27.] Maurice Goldsmith, "Public Virtues and Private Vices," *Eighteenth Century Studies* 9 (1976): 510.

[28.] Tucker's major work on political economy was the unfinished *Elements on Commerce and Theory of Taxation* (1754). See R. Schuyler (ed.), *Josiah Tucker: A Selection of His Economic and Political Writings*. For a recent biographical essay on Tucker, see G. Shelton, *Dean Tucker and Eighteenth-Century Economic and Political Thought*.

[29.] Review of Schuyler's *Josiah Tucker: A Selection from His Economic and Political Writings*, in Viner's *The Long View and the Short*, p. 407.

[30.] Josiah Tucker, *Josiah Tucker: A Selection of His Economic and Political Writings*, p. 31.

[31.] See Bernard Semmel, "The Hume-Tucker Debate and Pitt's Trade Proposals," *Economic Journal* 75 (1965), pp. 759–70.

[32.] Hume, *A Treatise of Human Nature*, Book III, p. 578.

[33.] Hume, *A Treatise of Human Nature*, pp. 528–9.

[34.] See Duncan Forbes (ed.), *Adam Ferguson: An Essay on Civil Society*, p. 16. A detailed account of Ferguson's social philosophy can be found in David Kettler, *The Social and Political Thought of Adam Ferguson* (Ohio: Ohio State University Press, 1965).

[35.] Ferguson, *An Essay on Civil Society*, p. 122.

[36.] This point of view is forcefully argued in Donald Winch, *Adam Smith's Politics* (1978). More orthodox recent treatments of Smith include T. Campbell, *Adam Smith's Science of Morals* (1971); Andrew S. Skinner, *A System of Social Science* (1979); Knud Haakonssen, *The Science of a Legislator* (1981); and E.G. West, *Adam Smith* (1969).

[37.] Smith, *The Wealth of Nations*, p. 25.

[38.] Smith, *The Theory of Moral Sentiments*, pp. 233–34.

[39.] Smith, *The Wealth of Nations*, p. 453.

[40.] Smith, *Lectures on Jurisprudence*, p. 32.

[41.] Smith, *The Wealth of Nations*, p. 788.

[42.] Frederic Bastiat, *The Law*, p. 6.

[43.] Carl Menger, *Problems of Economics and Sociology*, p. 146.

[44.] Menger, *Problems of Economics and Sociology*, p. 154.

[45.] Menger, *Problems of Economics and Sociology*, p. 233.

[46.] See following *Bibliography* for a comprehensive list of Hayek's major works.

[47.] Hayek "Individualism: True and False," in *Individualism and Economic Order*, p. 23.

[48.] See especially Hayek's *The Constitution of Liberty* (1960), chapter 2.

[49.] Hayek, *The Constitution of Liberty*, p. 29.

[50.] Hayek, *Law, Legislation and Liberty*, vol. II, *The Mirage of Social Justice*, pp. 109–110.

[51.] See Ludwig Lachmann, "From Mises to Schackle," *Journal of Economic Literature* 14 (1976): 54–62. For a sophisticated critique of the extreme 'subjectivists,' see G.P. O'Driscoll, Jr., "Spontaneous Order and the Co-ordination of Economic Activities," in Louis M. Spadaro (ed.), *New Directions in Austrian Economics*, pp. 111–142.

[52.] Hayek's views are contained in the following essays, "The Use of Knowledge in Society," and "The Meaning of Competition," at pp. 77–91 and 91–106, respectively, in *Individualism and Economic Order*. Also, Hayek's theory of the competitive process emerged from his critique of those socialists who tried to use the neoclassical equilibrium as a model for a socialist economy without private property and a decentralized market. See Hayek's three essays on "Socialist Calculation," in *Individualism and Economic Order*, pp. 119–208. Israel Kirzner has produced a sophisticated version of Hayek's pioneering ideas in *Competition and Entrepreneurship*. See also S.C. Littlechild, *The Fallacy of the Mixed Economy*.

[53.] See Hayek's "Competition as a Discovery Procedure," in *New Studies in Philosophy, Politics, Economics and the History of Ideas*, pp. 179–90.

[54.] Hayek, "The Use of Knowledge in Society," in *Individualism and Economic Order*, p. 86.

[55.] Hayek, "The Use of Knowledge in Society," in *Individualism and Economic Order*, p. 87.

[56.] For Hayek's recent thoughts on these topics, see *Law, Legislation and Liberty*, vol. III, *The Political Order of a Free People*, chapter 14.

[57.] Hayek, *Constitution of Liberty*, p. 365.

[58.] For expositions of the Austrian theory of the trade cycle see the following: F.A. Hayek, *Prices and Production* (2nd edition); Hayek, *Monetary Theory and the Trade Cycle*; G. Haberler, *Prosperity and Depression*; and G. O'Driscoll, *Economics as a Co-ordination Problem*.

[59.] See Hayek's *Prices and Production* (2nd edition), pp. 34–42.

[60.] See "The Campaign Against Keynesian Inflation," in Hayek's *New Studies in Philosophy, Politics, Economics and the History of Ideas*, p. 212.

[61.] Hayek, *The Pure Theory of Capital*, p. 408.

[62.] First suggested in 1976; see Hayek's *The Denationalisation of Money* (2nd edition).

[63.] Hayek, *The Denationalisation of Money* (2nd edition), p. 19.

[64.] Hayek, "Principles of a Liberal Social Order," in *Studies in Philosophy, Politics and Economics*, p. 162.

[65.] See, Hayek, *The Constitution of Liberty*, chapter 13.

[66.] Hayek, *Law Legislation and Liberty*, vol. II, *Rules and Order*, p. 116.

[67.] Hayek, *Law Legislation and Liberty*, vol. I, *Rules and Order*, p. 36.

- [68.] See Hayek, *Rules and Order*, chapter 5.
- [69.] Bruno Leoni, *Freedom and the Law* (1961).
- [70.] Hayek, *Rules and Order*, pp. 18–23.
- [71.] Hayek, *Constitution of Liberty*, pp. 58–61.
- [72.] See, “Rules, Perception and Intelligibility,” *Studies in Philosophy, Politics and Economics*, p. 47.
- [73.] See Hayek’s Epilogue, “Three Sources of Human Values,” *Law, Legislation and Liberty*, vol. III, *The Political Order of a Free People*, pp. 154–155.
- [74.] Hayek, *Rules and Order*, p. 41.
- [75.] Hayek, *Rules and Order*, p. 73.
- [76.] Hayek, “Three Sources of Human Values,” p. 166, (see note 73 above).
- [77.] Hayek, “Three Sources of Human Values,” p. 167.
- [78.] Hayek, “Three Sources of Human Values,” p. 158.
- [79.] Hayek, *Rules and Order*, p. 88.
- [80.] Hayek, “Three Sources of Human Values,” p. 167.
- [81.] Hayek, *Rules and Order*, pp. 48–54.
- [82.] Hayek, *The Constitution of Liberty*, pp. 207–210.
- [83.] Hayek, *The Political Order of a Free People*, p. 13.
- [84.] Hayek, *Rules and Order*, p. 144.
- [85.] See especially “The Campaign Against Keynesian Inflation,” pp. 191–217.
- [86.] See, Hayek, *Law, Legislation and Liberty*, vol. II, *The Mirage of Social Justice*, chapter 10.
- [87.] Hayek, *The Constitution of Liberty*, pp. 93–9.
- [88.] See, *The Political Order of a Free People*, chapter 17.
- [89.] For a contractarian critique of Hayek’s doctrine of evolution, see James Buchanan, “Law and the Invisible Hand,” in *Freedom in Constitutional Contract*, pp. 25–39.