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The Fatal Conceit by F. A. Hayek A Special Symposium

Editor's Introduction by Tom G. Palmer

At nearly ninety years of age, Nobel Laureate F. A. Hayek has published an important and original work, *The Fatal Conceit: The Errors of Socialism* (ed. by W. W. Bartley, III, Chicago: University of Chicago Press, and London: Routledge). In one volume, Hayek has drawn together the many strands of his distinguished career as scientist, scholar, and man of letters. Insights from decades of study in anthropology, law, economics, history, psychology, and many other fields are woven together into a compelling case against socialism and for the free society.

The work is controversial, to be sure. Not only socialists and other statists will be challenged, but even Hayek's fellow defenders of liberty. For Hayek has traced a careful pathway through the thickets of moral and social philosophy, cutting across established oppositions (nature versus convention, for example) and pointing the way toward an exciting research program for a new generation of classical liberal thinkers. He has issued a bold challenge that is already causing classical liberal thinkers to reexamine old commitments and categories.

Among the highlights of the work are his history of the evolution of liberty, property, and justice, in which he shows how "the revival of European civilisation" and the growth of the market order during the later Middle Ages "owes its origins and *raison d'être* to political anarchy," i.e., to the competition among overlapping political and legal jurisdictions. Hayek cites here the pioneering work of the French historian Jean Baechler (*The Origins of Capitalism* [Oxford: Basil Blackwell, 1975]), who has shown how competition among political jurisdictions to attract capital and population produced results as salutary as does the more widely appreciated competition among firms to attract customers.

This emphasis on the centrality to the growth of liberty and the rule of law of competition among legal and political entities is strongly corroborated by recent scholarship in economic and legal history. Economic historian E.L. Jones has argued that Europe's remarkable economic growth is attributable in large part to the plurality of competing jurisdictions, in which "Playing two authorities against one

another was a ploy made commoner by the many and overlapping jurisdictions in Europe." (*The European Miracle: Environments, Economies, and Geopolitics in the History of Europe and Asia* [Cambridge: Cambridge University Press, 1981], p. 91. See also Nathan Rosenberg and L. E. Birdzell, Jr., *How The West Grew Rich: The Economic Transformation of the Industrial World* [New York: Basic Books, 1986].)

In his magisterial *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983) legal historian Harold Berman has revealed "The source of the supremacy of law in the plurality of legal jurisdictions and legal systems within the same legal order" (p. 38) and shown how "Given plural legal systems, victims of unjust laws could run from one jurisdiction to another for relief in the name of reason and conscience." (p. 146) This competition among a plurality of sources of law is responsible for a uniquely Western institution: the rule of law, i.e., the conception of the law as an evolving body (*corpus juris*) distinct from the whims, interests, or dictates of this or that ruler.

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Another highlight of the book—and a powerful challenge to those who would follow the path he has blazed—is Hayek's recasting of the age-old opposition between law as conventional (*nomos*) and law as natural (*physis*). Here Hayek draws his inspiration from David Hume and other thinkers of the Scottish Enlightenment; as Hume argued, "though the rules of justice be *artificial* they are not arbitrary." This idea has been powerfully advanced by economist Robert Sugden in his book *The Economics of Rights, Co-operation, and Welfare* (Oxford: Basil Blackwell, 1986). Sugden shows how "if individuals pursue their own interests in a state of anarchy, order—in the form of conventions of

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behaviour that it is in each individual's interest to follow—can arise spontaneously....[A]lthough these conventions need not maximize social welfare in any meaningful sense, they will tend to become norms: people will come to believe that their behaviour ought to be regulated by convention. I argue that such beliefs represent a genuine and coherent system of morality, towards which most of us have some leanings, and for which none of us needs to apologize." (p. vii.) Sugden updates the technique of "conjectural history" using game-theory to show how conventions can solidify around naturally prominent features of human life (sometimes referred to as "Schelling points").

In a similar way Hayek has extended his analysis of competition as a discovery procedure (cf. his essay, "Competition as a Discovery Procedure" in Hayek, *New Studies in Philosophy, Politics, Economics, and the History of Ideas* [Chicago: University of Chicago Press, 1978]) to history; history is conceived as a discovery procedure. Thus, the fact that a rule, law, or tradition is conventional is no argument against its being natural; nature reveals itself through history. Hayek illuminates for us the historicity of such moral and legal rules, while avoiding the pitfall of historicism.

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The contributors to this special symposium on *The Fatal Conceit* include representatives of a number of scholarly specialities, including law, philosophy, economics, history, political science, and physics. Each has offered critical remarks intended to illuminate the central achievements or failings of Hayek's ambitious project. Some are enthusiastic in their praise; others are equally so in their condemnation. Each, however, has attempted to confront the challenge Hayek has made.

The readers of this symposium are similarly encouraged to obtain and read Hayek's work in order to judge for themselves. *The Fatal Conceit* is the first volume of a planned twenty-two volume series of *The Collected Works of Friedrich August Hayek*, to be issued in the U.S. by the University of Chicago Press and in the United Kingdom by Routledge. (German and Japanese editions are also underway, under the editorship of Alfred Bosch and Reinhold Veit, and Chiaki Nishiyama, respectively.) The Institute for Humane Studies is proud to be a supporter of this project, undertaken by W. W. Bartley, III, of the Hoover Institution at Stanford University, and encourages faculty and students alike to request that their college or university libraries subscribe to the entire series.

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The Problem of Living in Two Worlds

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Of the many interesting ideas to be found in Hayek's latest work, one strikes me as particularly worthy of comment. Indeed, it is an idea that is central to Hayek's argument.

The idea is that a part of the difficulty we face in modern society is that we must "constantly adjust our lives, our thoughts and our emotions, in order to live simultaneously within different kinds of orders according to different rules." (p. 18) We must live in two sorts of world at once. There is the micro-cosmos: the world of the family, or small community. And there is the macro-cosmos: the world of the extended order that is our civilization. The difficulty stems from the fact that our instincts fit us for life in the small society, which relies on our capacity for altruism, voluntary collaboration, and our longing for solidarity with our fellows. However, the rules that are thus appropriate in the micro-cosmos cannot serve to regulate an extended order. Yet our strongest inclination is to apply to the wider society the rules that serve the small community.

The danger in this is plain. To try to govern an extended order by rules appropriate to a community cannot succeed because we lack the knowledge. In the small community most actions aim at some determinate good. In the extended order, we cannot know the impact of our actions since what we do affects many who are distant and unknown to us. Attempts to overcome this difficulty have been attempts to marshal knowledge, and plan accordingly for particular social ends. Throughout his writings Hayek has emphasized two unhappy consequences of this. First, such attempts not only fail, but destroy the coordinating qualities of spontaneous orders: the consequence of social planning is disorder.

In a small society we can plan for the achievement of collective goals. And we can monitor individual conduct. In the extended order we must rely on abstract rules.

Second, planners faced with such chaos are led more and more to interfere with individual liberty in the attempt to eliminate the sources of discoordination.

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Hayek's latest work offers us an insight into how difficult is such a demand. Man is asked to inhabit the realm of society governed by abstract principles, when he is by inclination a member of concrete communities who would

rather be governed by his instincts. Interestingly, liberalism has long been accused of making the unwarranted assumption that man is an independent, asocial being. How else, ask liberalism's critics, can liberal theory conclude that men should adopt abstract principles of conduct? Hayek, however, here refuses to assume that man is anything but a creature motivated by the instincts that make for social solidarity. The problem is that such instincts can have no place in the extended order of the modern world.

We can see some recognition of this tension between our natural inclinations and the demands of the extended order in the work of Rousseau. Yet in his work we find no adequate solutions. While he came to recognize that there was no prospect of returning to the life of the pre-modern world—returning to the forests "to live with the bears"—he had only confused and inconsistent recommendations to make about how modern society might be governed.

What we see in Hayek's work, by contrast, is a clear assurance that the extended order of the modern world, in which we are governed by abstract rules, must be welcomed. We must do so not *because* we are abstract, asocial, independent individuals but *despite* the fact that we are not.

Hayek and the Forces of History

by James Buchanan

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In August 1982, a small group of economists from several countries made a journey to Obergurgl, high in the Austrian Alps, for a two-day conference with Professor Hayek at his long-time summer habitat. The ostensible purpose of the conference was to criticize and discuss early manuscript versions of what was then projected to be a treatise, to be entitled *The Fatal Conceit*. I reveal no secrets when I state that the participants were skeptical, even after two-days discussion, about prospects for the circulated material to be transformed into a publishable book. My first reaction, therefore, on reading *The Fatal Conceit*, as published, is to express admiration for the intellectual and physical vitality of an author who, in his upper 80's, had transformed a somewhat rambling set of sketches, with some badly expressed ideas, and little organization, into a coherent, well-constructed argument, from which anyone can learn. This reaction must be accompanied by an expression of gratitude and respect for W.W. Bartley, III, who has nobly sacrificed his own time and effort in the cause of getting the finished product in shape. Such patience and skill deserve both recognition and reward.

The central ideas were, of course, in the original manuscripts. They represent the cumulation of Hayek's thinking over a long and productive life of the mind. The extended order that is our civilization has been made possible by the cultural evolution of a set of precepts for behavior that lie between biological instinct and reason. We cannot under-

stand these norms rationally; we cannot construct them or substitute for them. The fatal conceit of socialism, in all its forms, lies in the notion that science and reason can be used to "improve" on the evolutionary product.

These ideas, which Hayek has also variously expressed in earlier writings, are subject to a central criticism that has been expressed by many scholars. Is the implication that we must remain quiescent before the forces of cultural evolution? Is there no value in attending to the rules that govern

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our interactions, one with another? Hayek admits and allows for the exercise of conjectural analysis, and hence some use of reason, in assisting in understanding why the culturally-evolved precepts may have abiding value. And he, somewhat grudgingly in this book, allows for occasional piecemeal efforts at shoring up some loose ends.

Some of us who share much of Hayek's vision cannot take the ultimate step here, which seems to require a faith in the beneficent working of the evolutionary process. Let us acknowledge, with Hayek, that our civil order may crumble from an over-extension of ill-advised attempts at rational reconstruction of our rules. But those of us who are what Hayek classifies here as rules rationalists (along with John Locke) find our whole *raison d'être*, as political economists-cum-social philosophers in the conviction that humankind can, indeed, construct, maintain, and improve the procedural framework within which the spontaneous order of the market can be allowed to emerge. Hayek does not pay sufficient attention to the necessary distinction between the choice among processes, among rules, among constitutions, and the choice among end-states that may emerge within these sets of constraints. His generalization of the understanding of the spontaneous order of the market to the evolution of the institutions that constrain this order must, I think, ultimately be rejected. Adam Smith did not make this generalization. He recognized that the spontaneous order of the market required the requisite structure of "laws and institutions." Nonetheless, Hayek, both in this book and in earlier writings, has forced us to think about and to defend even the limited "constructivism" that he would apply to describe our efforts.

Since the conference at Obergurgl, Hayek (and/or Bartley) has very substantially modified and improved an element of his argument that did seem to represent a departure from earlier emphases in his work. I refer to the direct relationship between the evolved norms that make the extended order possible and the size of the population that may be sustained. Hayek is surely correct in pointing out, and in stressing, that without the rules that describe the working of the modern capitalist economy, many of us now alive could not exist. This argument is a powerful one, and here Hayek has wisely limited discussion to variations on this theme. He does not in this book elabo-

rate on what some of us sensed to be a potential flaw in the earlier drafts, which was to extend the argument to say explicitly that population size, as such, is the criterion of evolutionary success.

Socialism was based on a fatal conceit, which Hayek has done much to expose. The socialist god is dead, thanks in some part to Hayek's own efforts, along with direct observations of failure. But the resurgence of mercantilism requires a somewhat different counter attack. There remains the failure to understand the working of the spontaneous order of the marketplace; and this failure is exploited by those who seek to secure differential gains through the agencies of politics. Modern rent seekers are under no delusion about the "social good." They do not abide by the precepts of honesty, fairness, respect for the rule of law, etc. that are necessary for our civilization to survive. Are we to accept their behavior as a temporary aberration which cannot be changed by conscious effort, or are we to use the combined forces of scientific analysis and moral argument to defeat them?

Despite his earlier denial, is Hayek, after all, a conservative?

A Liberal Utopia

by Frank J. Tipler

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The *Fatal Conceit*, the first of a projected 22 volume set of Friedrich A. Hayek's collected works, is a magnificent summary of the fundamental ideas underlying his lifelong opposition to the errors of socialism, to the ridiculously conceited idea that a social order intentionally planned in a single human mind (or in at most a few minds) can be superior to the spontaneously evolved market order, an order that integrates in the only possible way the knowledge contained in the minds of the entire human race. Chapters 2 and 3 contain the best available short history of the development of the market order, showing how free trade and the production of goods unhindered by the state were responsible for the birth and growth not merely of western civilization, but also of every civilization—for example, ancient Egyptian, Meso-American, Chinese, Greek—of which we have knowledge. Further, the growth was stopped in all known civilizations, and replaced by stasis or collapse, not by processes inherent in the free market, but rather by government intervention preventing by one means or another the voluntary exchange of goods and ideas. So why is classical liberalism not universally accepted? Why has there instead been throughout most of this century a reactionary movement toward socialism, that most primitive of social orders?

There are several reasons, which Hayek discusses at length in *The Fatal Conceit*, but let me here concentrate on one, emphasized by Hayek and possibly the most important: the static world-view of the overwhelming majority of intellectuals now and throughout history. Change is not seen as a basic explanatory category, but rather pictured as an illusion. Aristotle and most of the later Greek philosophers champi-

oned a static cosmos, in which all time was cyclic. As a consequence, they could not imagine a biological organism or a civilization arising by evolution. Any order in their view simply had to be eternally present. Modern intellectuals are forced by an enormous amount of empirical evidence to accept the fact of evolution as the mechanism that generated the order found in biological organisms, but they revert to stasis whenever possible. This is seen even in physics: the cosmology invented by the socialist Albert Einstein was a forever unchanging (in the large) *static* universe, and the cosmology defended by the socialist Fred Hoyle (invented after the evidence for the expansion of the universe became overwhelming) was a steady state universe, a cosmology as close to unchanging as the evidence would permit. Socialist economists base their work on *equilibrium* analysis in which the essential temporal aspects of the market order are eliminated. The equations upon which the entire argument for the possibility of a planned society are based are *static* algebraic equations for the products in terms of the factors of production. The very possibility of new products, and new ways of producing them, is left out of the mathematics. Even the socialist utopias, the ideal socialist societies, are static perfections, as was Plato's *Republic*. Once Marx's classless society is reached, no further evolution is possible or necessary.

A liberal utopia—something Hayek has repeatedly urged us to develop—must in contrast be an evolving society, a society in which continuous change (in the economy; in the peaceful relationships between people; and even in the nature of people, liberalism being non-racist by definition) is fundamental. The *only* constant in a liberal utopia is liberty: the unchanging right of all individuals to exercise sole dominion over their own lives, living in whatever manner they choose, provided only that they do not forcibly interfere with the equal right of others to live in whatever manner they choose. Since a liberal utopia makes use of enormously more knowledge than can be coded in a single human brain, or in a single supercomputer, it is utterly impossible to describe in detail how such a society would evolve.

But all real societies are constrained by the laws of physics. These laws, and only these laws, limit a liberal utopia. Much nonsense has been written on the physical limits to economic growth by physicists who are ignorant of economics. A correct analysis of the physical limits to growth is possible only if one appreciates Hayek's insight that what the economic system produces is not material things, but immaterial knowledge:

traders and merchants...[are] engaged in something like the transformation of the non-material in altering the value of goods. How could the power of things to satisfy human needs change without a change in their quantity? It remains hard for many to accept that quantitative increases of available supplies of physical means of subsistence and enjoyment should depend less on the visible transformation of physical substances into other physical substances than on the shifting about of objects which thereby change their relevant magnitudes and values. (pp. 90, 92)

So the only ultimate physical limits to economic growth are the limits imposed by physics on the growth of knowledge. What is "knowledge"? We don't know how to frame a precise definition, but roughly speaking, "knowledge" is

"information"—in the sense a physicist or computer scientist uses that word—that has been "tested" by experience. We don't know how to define "tested" (this is why we can't give a precise definition of "knowledge"), but we don't need to know what "tested" means in order to derive the limits to the growth of knowledge: since knowledge is a form of information, the physical limits on information processing are also

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Information processing is constrained by the first and second laws of thermodynamics. These laws imply that the maximum amount of information that can be processed at a given temperature T is $I = E/(kT \ln 2)$ where E is the energy available for processing, $(\ln 2)$ is the natural logarithm of 2, and k is Boltzmann's constant. Now any temperature T we can use is greater than the temperature of the background radiation, which is 3 degrees on the Kelvin scale, and if we limit ourselves to operations on Earth, the greatest available energy is $E = Mc^2$, where M is the mass of the Earth. Thus an absolute upper bound to knowledge and hence economic growth on Earth in the present epoch is 10^{64} bits. By comparison, an upper bound to the information coded in the present economic system is 10^{25} bits. One can derive a number of upper bounds on the total amount of knowledge and on the rate of growth of knowledge (see sections 3.7 and 10.6 of my book with John D. Barrow, *The Anthropic Cosmological Principle* [Oxford: Oxford University Press, 1986], hereafter *ACP*, for details). The importance of these limits is that they are enormously greater than the limits to growth incorrectly obtained by the physicists ignorant of economics. Since only the free market can establish money values, and since the free market has not given us an average money equivalent of knowledge in bits (such a quantity is probably as meaningful as the Marxist average labor cost), it is impossible to convert the above estimates into ultimate limits of wealth measured in dollars. However, if it is possible to increase our wealth on Earth by the same percentage that it is possible to increase the energy efficiency of our computers—not unreasonable, considering that the computer industry will generate a greater and greater percentage of the total wealth in the future—then it is possible to increase the total wealth of the earth-bound human race by a factor of *one hundred billion* before running into the limits to growth imposed by physics. These numbers show that, contrary to the claims of the limits-to-growth statisticians, there are no immediate physical barriers to a liberal utopia, in which change is marked by ever-increasing wealth. These numbers also support the conclusion of chapter 8 of *The Fatal Conceit*: "...there is no danger whatever that, in any foreseeable future with which we can be concerned, the population of the world as a whole will outgrow its raw material resources...(p. 125)".

But a true utopia is concerned with the ultimate future, not merely with the immediate future. A liberal utopia must picture not just progress over the next hundred or thousand years, but unlimited progress until the end of time itself! I thus disagree with Hayek's view that market forces will stop population growth before the human population can run out of raw materials. Market forces could and would stop

population growth if it became necessary; but I don't think it will ever be necessary (except regionally, which as Hayek points out, may be necessary even now). Rather, I think one must also apply to the long-term development of civilization Hayek's brilliant insight: "*It is not the present number of lives that evolution will tend to maximise but the prospective stream of future lives*". (Hayek's italics; *The Fatal Conceit*, p. 132.) Thus, provided that the laws of physics permit it, evolution will tend, in the long run, to increase the number of lives without limit. Since, if life remains on this single planet for all future time, the number of lives must be limited, and worse, in the very far future life must inevitably die out (since information processing has an upper finite bound; see section 3.7 of *ACP* for details), it follows from Hayek's own evolution principle that it is highly likely our civilization will expand beyond our planet at some point in the future. A liberal utopia simply cannot be forever restricted to a single planet. A single planet is finite, whereas a liberal utopia *must* envisage total knowledge and wealth increasing without limit. It can be shown (see section 10.6 of *ACP* for details) that it is physically possible for a space-based civilization to expand its knowledge, total wealth, and number of lives without limit, literally to infinity at the end of time. A true liberal utopia is physically possible, and a consequence of Hayek's melioristic world-view.

A Fatal Concession

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The *Fatal Conceit* is an exciting and stimulating book, which pithily restates many of Hayek's earlier arguments and adds new and connecting ideas. It is also a hard-nosed critique of the rationalistic conceit referred to in the title, and in this regard it brooks no other nonsense than a few half-hearted concessions to religion at the end. Since Hayek undoubtedly meant these to be a sort of Humean teaser, it would be ungrateful not to let oneself tease, and I am happy to oblige—speaking as one agnostic to another.

Hayek's train of reasoning is, in brief, as follows. Religious beliefs "are not true—or verifiable or testable—in the same sense as are scientific statements, and ... are certainly not the result of rational argumentation" (p. 137). As a consequence—I take it—he feels "as little entitled to assert as to deny the existence of what others call God, for I must admit that I just do not know what this word is supposed to mean" (p. 139). However, far too often this sort of rational assessment of religious belief has led intellectuals to assess

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in similar terms the role of religion in the development of society and thus to debunk its importance. According to Hayek, this move is another installment of rationalistic hubris, and the fatality here is an understanding of the role religion has played in bolstering those rules of conduct that made possible an extended, and expanding, social order. Often such rules have appeared incomprehensible and unjustifiable when inquired into by rational methods, but religion has substituted like a charm, as it were, thus securing a long-term beneficial order. This line of argument leads Hayek the agnostic to offer a conciliatory handshake over the garden fence to the neighbor, whose habitual religiosity helps keep up the good work—albeit out of beliefs that can only be characterized as "symbolic truths," and that only "as a gesture of appreciation" (p. 137).

While the habitual Christianity and Judaism of the suburbs richly deserve this sort of condescension, especially if one could discern a stronger vein of irony in it, we are here in danger of being drawn into an idyl that may blind us to some harsher and more pervasive aspects of the role of religion in society.

In a different context Hayek maintains that, "Mere existence cannot confer a right or moral claim on anyone against any other" (p. 152). However, exactly the opposite idea has been central to most forms of the religion which, I take it, Hayek particularly would credit with support for the extended order: simply by being created one is entitled to the assistance of the creator's other creatures. And more often than not the idea has been that such rights, claims, or entitlements should be honored collectively through political arrangements. Today leaders of virtually every strand of Christianity present at the heart of their gospel the "Mirage of Social Justice" - but here produced by a conceit of eternal reason. More often than not the whole litany is presented in the sort of hollow rights-terms Hayek so aptly unmasks, making the case even less acceptable as a supplication.

When Hayek suggests that "the only religions that have survived are those which support property and the family" (p. 137), he is greatly at variance with the truth. The dominant strands of Christianity—to say nothing of several other "main monotheistic" beliefs (p. 136)—are not friends of the system of several property at the core of Hayek's extended

order of humanity. He cannot simply confine his criticism to the abominations that go under the name of "liberation theology"; he will have to include most "social" statements that issue from the Vatican—or its travel department, from Anglican synods, from Presbyterian general assemblies, and so forth. He will there find forms of welfarism so unctuous that they are likely to survive a great deal longer than the declared socialism which he has fought so well for so long.

As for the family, Hayek is probably right in a different sense than the one intended here, but one more in keeping with his general thesis. Rather than lending support to "the" family, it would seem that most forms of Christianity and reform Judaism are lending feeble and unprincipled comfort to what may be a fundamental transformation of family patterns in developed societies. As divorce, re-marriage, single parenting, etc. have developed on a large scale—to a large extent in response to market forces—the various confessions have spinelessly shed one principle after another to stay in the popularity-ratings. To the extent that this may smooth the transition, if such it is, this religious support is of course welcome. But don't let the perhaps benign effects of this and similar pieces of clerical opportunism blind us to the over-all pattern of the social role of religion in modern society.

The fact is that the major monotheistic religions are—deeply and inherently—morally promiscuous. Sometimes they have played the supporting role in the development of the great order of humanity that Hayek ascribes to them; more often they have not. At the moment most Christian confessions, at least, are as far removed from his ideals of individual freedom through spontaneous order and spontane-

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ous order through individual freedom, as is any left-over socialist, as it were; and he should have no more patience with the sanctimonious conceit of the former than he has with the latter.

Hopefully it is superfluous to point out that this admonition does not entail a rationalistic debunking of any and every role for religion in the development of the abstract social order. That is a matter for judgement, and no conceit.

The Evolution of Order and the Role of the Individual

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In *The Fatal Conceit* Hayek summarizes important parts of what might be called his legacy. Although the main message is not unfamiliar to readers of the monumental series of works Hayek has published over the past half century, the new volume presents in its first chapters a comprehensive theoretical underpinning of the central notions of cultural evolution and group selection. In the later parts, it investigates some instructive applications to present day phenomena and problems. The following remarks focus on the suggested theoretical underpinnings.

As a plea for intellectual modesty and for acknowledgement of the wisdom that cultural evolution has accumulated in existing morals, traditions, and institutions, I would therefore strongly recommend The Fatal Conceit as a required reading. After it has been read I would have to admit, however, that the book is not very helpful in giving clear advice as to how to act, in particular if one subscribes to an individualistic position, in view of the ongoing cultural evolution.

Man's inherited instincts, Hayek explains, imply an innate morality that conforms to the conditions of the primitive, small group prevailing in human phylogenesis. In more recent times, rules of human conduct, morals, and traditions have gradually emerged in the extended order of higher cultures. People have learnt to follow these rules without necessarily understanding their meaning. As a result of learning, the evolution of such rules is a matter of nurture rather than of nature. Indeed, Hayek suggests a theory of cultural evolution in which "group selection" plays a key-role.

Groups, however they come to adopt rules that allow for superior forms of social and economic interactions (provided that they are able to maintain those rules by some kind of social learning mechanism), are capable of growing due to more successful procreation and integration of outsiders. A growing population fosters specialization and division of labor which favor, in turn, groups with superior rules. By the same token, groups not adopting appropriate rules by being inventive or simply imitative, or groups unable to suppress the propagation of inferior rules of conduct, will decline. Natural selection is seen here to operate not only on competing species but also on competing groups of the human species.

Being based on cultural rather than genetic transmission, the process of group selection is comparatively fast. In view of its long history it may therefore be argued, as Hayek does,

that under the pressure of group selection human society has adapted to the demands of an extended order by an efficient, but also highly sophisticated and complex system of rules of conduct. In fact, Hayek holds that the rules from which law, trade, and civilization originate are too complex a system to be able to be reproduced by some single brain. Rational reconstruction and human design of social and economic interaction are far from reaching the level of complexity and efficiency of mankind's collective trial-and-error process from which morals, traditions, and habits have grown.

It seems thus only logical to warn against the overestimation of the power of human intelligence and calculating reason that is found in what Hayek calls "constructivism," a particular variant of rationalism. He rightly states that this attitude is still characteristic of the "progressive" intellectual who may often have been inclined to assume it because of the extraordinary success of human intelligence in natural science and technology. In fact, many of my colleagues are prone to sympathize with constructivist attitudes in advocating certain political measures and institutional reforms. Some even justify their very existence as social scientists by the

guidance in improving institutions they believe they are able to provide.

As a plea for intellectual modesty and for acknowledgement of the wisdom that cultural evolution has accumulated in existing morals, traditions, and institutions, I would therefore strongly recommend *The Fatal Conceit* as a required reading. After it has been read I would have to admit, however, that the book is not very helpful in giving clear advice as to how to act, in particular if one subscribes to an individualistic position, in view of the ongoing cultural evolution. The reason, in my view, is that the notion of cultural evolution in general, and the possible role of the reasoning individual in it in particular (including even the role of the author himself), are still somewhat vague.

Hayek correctly points out that cultural evolution is Lamarckian rather than Darwinian. This means that the evolving entity—in the present context the group or (better) the set of rules practiced within a group—is able to change under the influence of experience. People are capable of modifying rules or inventing new ones. This may be a result of reasoning and deliberate experimentation or merely of blind chance. Following the idea of group selection, what matters is only whether or not the modification leads to superior adaptation to the prevailing conditions. Hence, deliberate, possibly scientifically founded reflection that aims at modifying established rules and institutions cannot be rejected *per se*.

On closer examination it appears that Hayek indeed relies on an additional criterion: whether or not a proposed modification presupposes availability of knowledge and coordinating power that is not actually feasible. This argument appertains to the conjectured outcome of natural group selection. Inconsistent proposals, it would claim, which do not even promise to achieve what has been reached by the rules they are supposed to replace, cannot survive.

A certain tension seems to exist between the impersonal forces of group selection and the collective nature of the resulting morals, traditions, and rules, on the one hand (as the later Hayek emphasizes), and the individualistic creed that he formulated earlier, following the tradition of the Austrian School on the other.

I agree with Hayek that this is a sound criterion that, had it been applied, would have helped to prevent disastrous constructivist experiments. But as an empirical conjecture the argument is simply not true. In an environment in which competing groups are equally weak or weakened, rule changes can be enforced and survive for hundreds and thousands of years even though they entail strong deteriorations for some or even most of the group members. History has seen many such incidents and Hayek himself refers to several of them in his book. Thus, reasoning and rational evaluation of changes in rules and institutions, suggested for whatever motives, seem most important in order to save society from the potentially very harmful hard test of group selection.

This assessment highlights a significant role that the social scientist as well as the individual can play in cultural evolution. Unfortunately, the criterion (of consistency with decentralized information processing requirements) that constrains this critical role is only one and, moreover, a very general one. It is presumably not of much help in evaluating many of the small scale changes that are nowadays proposed *en masse* by a political process that has become professionalized. I would contend, however, that further criteria can be arrived at from careful historical and empirical investigations into the factors that have been decisive for success in group selection and competition between cultures and economic systems.

Presumably, this is quite in the Hayekian spirit. We should not be surprised, however, if we also gain insights into rather paradoxical, anti-intuitive peculiarities of cultural evolution that are due to what are known in biology as occupancy and status quo effects of selection, effects that might explain many of the puzzling seemingly unsystematic features in human history.

Furthermore, by extending our interest to the creative side of the process of cultural evolution—to the root reasons of variety in morals, tradition, and rules—we may be able to understand better the other important role played by the aims and desires of the individual in cultural evolution. On further examination, a certain tension seems to exist between the impersonal forces of group selection and the collective nature of the resulting morals, traditions, and rules, on the one hand (as the later Hayek emphasizes), and the individu-

alistic creed that he formulated earlier, following the tradition of the Austrian School (see, e.g. his 1948 book *Individualism and Economic Order*), on the other. Hayek offers little to help us resolve this tension. As far as compliance to morals, traditions, and group rules are concerned, our theoretical knowledge may not suffice at present to understand fully the phenomena from the point of view of methodological individualism. But the ongoing discussion of

various social dilemmas at least indicates where the problems lie.

With respect to the more philosophical questions of free will, liberty, and the primacy of subjective values and longings, things are less clear. Man is certainly constrained by principles of group selection. But his imaginative mind gives him the freedom to pursue his own ends, if not under established morals, traditions, and rules, then by inventing possibilities for change and by attempting to realize them

In my view, there is a very close relationship, indeed, between free will and inventiveness, a relationship that is central to many of the forces of cultural evolution, both constructive and destructive. Thus, we are referred back to the other important (critical) role played by the individual; it seems that the two roles may be in rivalry. We may face a kind of meta-dilemma here. In any case, it appears to me that this issue deserves deeper reflection by anyone advancing an evolutionary theory of society and economy.

Who'll Be Persuaded?

by Robert Higgs

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Imagine someone coming upon this subject for the first time. From Hayek's *The Fatal Conceit* the novice might well gain the impression that the future of economic and political life on earth will turn on the outcome of a debate between, on the one hand, Hayek virtually alone, and on the other hand, an enormous number of half-witted socialist intellectuals. The previously untutored reader might well conclude that our present world order teeters on a thin edge separating capitalism with its clearly defined and enforced private property rights ("the market order...prevailing in the greater part of the modern world" [p. 84]) from socialism with its full-fledged centrally planned command economy. The reader would learn that although socialism has been an "obvious economic failure" [p. 85] wherever it has been tried, most Western intellectuals remain under socialist illusions, and their continued espousal of this

destructive system creates a serious threat to the well-being of us all: the slightest slip toward socialism could plunge the people of the earth into massive famine and poverty.

I exaggerate, but not much. Despite its occasional qualifications and concessions to the complexities of reality, Hayek's exposition comes distressingly close to my caricature. The character of his rhetoric is unfortunate in several respects.

Most importantly, he simply ignores the most significant debates now occurring in political economy. From reading Hayek, one would never know that public choice had been invented. Neither Buchanan nor Tullock nor any of their followers gets a single mention. Nor does Hayek show any awareness of public choice problems. He proceeds as if socialist intellectuals, by faulty arguments and inexcusable obstinacy, have led the world astray. Presumably, by exploding these arguments Hayek expects to keep us away from the precipice. In Hayek's world, political actors seem always to be at odds over how to operate *the whole system*. There are no special-interest groups, no vote-maximizing congressmen, no public-good problems, no free riders, no prisoner's dilemmas, no issues of constitutional revision or meta-constitutional ideology. Hayek makes only a single mention of the sociology of knowledge, which is to dismiss it along with the whole of sociology as "socialist science" proceeding "in sovereign disregard of knowledge gained by established disciplines that have long studied such grown structures as law, language, and the market" [p. 51]. The sheer ignorance embodied in that single observation is disconcerting—what were Weber, Durkheim and Pareto doing? Such an ill-informed outburst raises questions about the reliability of many other freestanding pronouncements by Hayek.

In fact, Hayek distinguishes himself by indulgence in hyperbole. Besides characterizing all those who disagree with him as "socialists," he declares that "an atavistic longing after the life of the noble savage is the main source of the collectivist tradition" [p. 19]; that Aristotle's "doctrines came to dominate philosophical and religious thinking for the next two thousand years" [p. 46]; that Rousseau's thought has "during the past two centuries... shaken our civilisation" [p. 50]; that money is "of all things the least understood" [p. 101]; that using the word "society" to describe such diverse groupings as nations, associations, tribes, and so forth "almost always contains a concealed desire to model [the world-wide market system] on the intimate fellowship for which our emotions long" [p. 113]; that John Stuart Mill "probably led more intellectuals into socialism than any other single person" [p. 149]. When these glittering generalizations have any content at all and are not manifestly false, one wonders: How does Hayek know?

The exposition is also marred by a few outright factual errors and a larger number of questionable deductions. An example of factual error is Hayek's apparent acceptance of the claim that "political anarchy" prevailed in Europe during the late Middle Ages [pp. 33, 45]. In fact, a pluralistic legal order existed in which multiple jurisdictions held sway—canon law, urban law, manorial law, king's law, folk law, merchant's law. It was anything but anarchical. An example of logical error is Hayek's claim that "if civilisation has resulted from unwanted gradual changes in morality, then ... no universally valid system of ethics can ever be known to us" [p. 20]. Indeed, Hayek makes frequent claims about what

can or cannot be known to us. How does he know these limitations while we do not? Ironically, one is reminded of Marx, who single-handedly hauled his own thought above the superstructure while everyone else's thought remained intrinsically incapable of this glorious transcendence.

Not only does Hayek ignore the structural and political issues studied by public choice scholars; he also ignores the issues emphasized by the intellectuals who have most successfully challenged the claims of pro-market scholars during the twentieth century. I refer, of course, not to socialists but to the mainstream economists and others who have embraced the concept of "market failure" in its many guises. According to this school, actual markets are beset by deviations from the ideal of Pareto optimality because of externalities, increasing returns to scale, monopoly power, public goods, and insufficiencies of information. Except for presenting his familiar ideas about the nature of the information problem as it is solved by the market process, Hayek makes no explicit attempt to refute the errors of this influen-

In Hayek's world, political actors seem always to be at odds over how to operate the whole system. There are no special-interest groups, no vote-maximizing congressmen, no public-good problems, no free riders, no prisoner's dilemmas, no issues of constitutional revision or meta-constitutional ideology.

tial school of blackboard economists. He might easily have done so, for recent decades have witnessed fundamentally important efforts in theory and empirical research having to do with transaction costs and property rights, and these efforts have gone far to discredit the market-failure interpretation. Hayek makes passing mention of Coase, citing the classic papers on the nature of the firm and on social cost, but confines his remarks about recent studies in property-right economics to little more than a page, much of which is taken up by an attack on copyrights and patents [pp. 36-37].

In sum, despite the many insights it offers—most of which appeared in Hayek's earlier works—Hayek's *The Fatal Conceit* fails because of its rhetoric. It does not face up to the nature of the world we live in, a world of more or less mixed economies with not a single case even approximating the ideal market system of private property rights and very few cases approaching the ideal socialist system of central planning. I do not expect Hayek's argument to win over anyone not already in great sympathy with it: the argument simply does not meet the opponents' claims on their own grounds. Nor does it exploit the fundamental developments of analysis by friends of the market during the past few decades. Instead, Hayek has chosen to take still another whack at the intellectually dead horse of central planning and to rail against all those impudent enough to think that reason should be brought to bear to understand and, in some cases, to challenge certain received traditions and morality.

Conjectural History and Beyond

by *Jesús Huerta de Soto*

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Professor Hayek states on page 20 of his work *The Fatal Conceit* that “reluctant as we may be to accept this, no universally valid system of ethics can ever be known to us.” In this brief comment we aim to criticize this claim on the part of Professor Hayek and, in turn, to expound a theory of the compatibility of three different levels of approach to the study of this same human reality.

A first level of approach would be constituted by what Hayek, following Hume, terms “conjectural history” (p. 69). Conjectural history consists in interpreting the processes of evolution and in analysing their results (customs, morals, laws and institutions). This first area of research has its origin in the tradition that begins with Montesquieu and Hume and culminates in Hayek’s most significant works, and especially in *The Fatal Conceit*. This level of approach is highly multidisciplinary and must include studies from

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sociology, political science, anthropology, etc. In short, this approach to the study of human reality is the first to have sprung up in the history of scientific thought, and it aims to explain the evolution and emergence of “real or positive law.” The main risk facing the researcher in this area lies in how easy it is to commit errors when it comes to interpreting the phenomena of historical evolution, especially when an erroneous theory is used, either implicitly or explicitly, in this process of interpretation.

The second level of approach to the study of human reality emerges much later in time, with the appearance of economic science towards the end of the eighteenth century and culminating in the contributions of the Austrian school of economics, which focuses its scientific research program on the formal study of the spontaneous and dynamic processes resulting from human interaction. This level consists, therefore, in the development of a formal theory of the social processes, or if you prefer, in the attempt to rationalise these social processes in a detailed manner. This second field of research gives rise to praxeology (a formal theory of social processes), which has its beginnings with Menger, continues with Mises and is even developed by Hayek himself in his earlier works and more recently by the members of the Neo-Austrian school. In Montesquieu’s terminology this second level of approach would aim to discover in a rational way the

laws of nature in the social field. The main risk in this second level of approach (constituted by economic science) lies in what Hayek terms constructivism, as it is extremely easy for the economist to fall into the error of not restricting himself to interpreting and studying the social process logically and formally, but instead falling into the fatal conceit of believing it possible and advisable to use this knowledge to rebuild and design Society *ex novo*.

Finally, the third level of approach would consist in the development of a formal theory of social ethics. This level of approach is precisely what Hayek appears to deny in the quotation included at the outset of this commentary. Yet we believe that, just as we can progress in the rationalization of the social processes (economics), it is possible to carry out a certain formal rationalization of social ethics. We would therefore be engaged in the discovery and justification of “natural law,” thereby following the tradition of Locke, which has found continuation today in such authors as Nozick and Rothbard. Naturally, as was the case with economics, the main risk in this third level of approach lies in constructivism. However, this should not lead us to give up directly attempts to rationalize a formal theory of social ethics, insofar as it lies within our scope. Thus, one has the levels of real or positive law, the law of nature, and natural law, understood (respectively) by conjectural history, praxeology, and the formal theory of ethics. Each level is

complementary to the others; each also has its dangers (theoretical error for the first level, constructivism for the second and third). In this respect, an important practical rule may be to be on one’s guard whenever the rationalist conclusions of the second and third level seem to be in open contradiction with the conclusions of the first level (conjectural history). In this case, one will have to take the utmost care not to fall into constructivism.

Hayek’s work is especially praiseworthy for its contributions both in the second level (economic theory) and in the first level (the theory of evolution and the critique of constructivism). However, we feel that it could have been enriched even further if Professor Hayek had, on a supplementary basis, applied his ample wisdom to the third level (the theory of social ethics).

Evolutionary Functionalism

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In this, the first volume of his collected words, the central elements of Hayek’s system of ideas are freshly summarized and restated. More clearly and insistently than ever before, Hayek demonstrates that socialism is above all an *intellectual* error in that it presupposes an epistemological impossibility—the centralization of dispersed social knowledge in the planning authorities. This new volume of Hayek’s is invaluable in that it illuminates the function of markets as devices for economizing on the most radical and invaluable of scarcities—that of human knowledge.

In addition to this seminal insight of Hayek’s, the book develops two themes that have come increasingly to preoccupy him in recent years. The first is the importance of traditional morality as a condition of a stable market order and the threat to it posed by modern rationalism. This is a concern Hayek has in common with many of the Scottish thinkers and with today’s neoconservative theorists, but it consorts badly with his admiration for Mandeville and with his observation that much traditional morality (such as that theorized by Aristotle) is anti-market. The second theme is cultural evolution, in which Hayek argues for a sort of natural selection of traditions (including religious traditions) whereby the “fittest” are selected out and prevail, with the test of fitness being the carrying capacity of a tradition as measured by the number of people it can support. Hayek is surely right to point out that it was capitalism that created the proletariat inasmuch as without capitalist productivity the huge increase in proletarian numbers could not have occurred. For myself, however, I remain wholly unconvinced by the version of evolutionary functionalism that this argument invokes. It detects in human history a persistent mechanism where I can see only singularities and contingencies and has many unfortunate echoes of Spencer. With reference to the selection of religions, for example, it has typically been the capture of state power rather than any Darwinian proactive advantage that has accounted for the triumph and longevity of the dominant faiths. Again, the vast populations of communist states are able to subsist, perhaps indefinitely, as parasites on the world’s surviving market economies. None of this (with its anti-Malthusian implication that there cannot be overpopulation) is at all persuasive. In this part of his argument, Hayek has followed Spencer in seeking to ground the institution of the market in a larger synthetic philosophy that has some of the characteristics of the scientism he has elsewhere brilliantly criticized.

Notwithstanding these critical reservations, this volume is to be welcomed for its freshness and vigor and is significant in inaugurating a most notable collection of Hayek’s works.

Spontaneous Order in Hayek’s

The Fatal Conceit

by *Tyler Cowen*

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Hayek’s most recent work, *The Fatal Conceit*, suggests conflicting interpretations of the concept of “spontaneous order.” Spontaneous order has traditionally referred to institutions that are the result of human action but not of human design, such as money or language. Classical liberals often portray spontaneous order as a voluntarist or market-based concept that stands in opposition to coercive central planning. The question arises, however, whether we should consider public sector institutions as part of the spontaneous order.

Hayek appears to want to have his cake and eat it too. On the one hand, he continually refers to socialism and central planning as elements external to the spontaneous order; socialism attempts to impose the discipline of planning upon an order that is too complex to be effectively directed by conscious engineering.

On the other hand, Hayek (p. 37) stresses the importance of institutions based upon deliberate organization as a part of the spontaneous order. Such institutions include “firms and associations, as well as...administrative bodies”. Although many elements of these structures are planned, they “have a place only within an even more comprehensive spontaneous order” (p. 37). Hayek’s prose is not unambiguous here, but from reading this passage and many others in *The Fatal Conceit*, one might take Hayek to be suggesting that the state has evolved within society and is part of a broader spontaneous order.

It would surely be strange if a theory of the importance of unintended consequences excluded the public sector from participation in evolutionary feedback mechanisms.

Social sciences such as anthropology, political science, and public choice economics imply that governmental structures have evolved within the context of a broader spontaneous order. It would surely be strange if a theory of the importance of unintended consequences excluded the public sector from participation in evolutionary feedback mechanisms. While many governmental structures were consciously planned, the evolutionary, unplanned elements appear no less important. Consider, for instance, the evolution of the committee system in Congress or the American two-party system. Neither institution was designed according to a master plan, yet both are an integral part of our government.

We can attempt to resolve the tension in Hayek’s theory of spontaneous order in a number of different ways, each of

which raises further questions. We might argue, for instance, that Hayek is not fully consistent and that only the market is a spontaneous order; the state, qua state, is the product of rationalist or "constructivist" planning. I believe, however, that this view is empirically false, for reasons briefly noted above. In addition, this is probably not the correct interpretation of Hayek, as it leads to libertarian or anarchistic conclusions that Hayek unequivocally rejects.

Another possibility is that Hayek means to draw a distinction in kind between "government" and "socialism". Western style mixed-economy governments may be part of the spontaneous order but totalitarian regimes, such as Stalinist Russia or Pol Pot's Cambodia, are not. Even if such a distinction can be defended, it leads only to a rather obvious and unoriginal condemnation of totalitarianism. Hayek appears to be saying more than merely regurgitating Mises's critique of the total command economy.

A third way of resolving the tension in Hayek's thought is to accept the state, in all its manifestations, as part of a spontaneous order that encompasses all aspects of social life. Current governments have evolved within this spontaneous order, although we need not believe that they are necessarily benign. We may believe, however, that the historical successes enjoyed by Western society give us valuable information about the desirability of the underlying institutional structure. (I do not think that Hayek's argument relies upon any [false] analogy with the theory of group selection in population biology, as some critics have alleged. It is an empirical fact that successful socioeconomic systems, such as the Roman Empire, the European democracies, and America have spread their influence. In Asian history, the most successful cultures of antiquity were also the most influential, e.g., China and India.) Such successes include large populations, maintaining a high standard of living and education, and producing and spreading cultural products.

One can thus read Hayek as having produced a sophisticated "historicist" defense of Western civilization. Although this historicism may not be inconsistent with the desire of classical liberals to expand the scope of the market economy, Hayek's theory of spontaneous order does not itself imply a fundamental critique of existing government interventions. Such interventions have evolved as part of a spontaneous order (just as markets have evolved) and are part of the most successful socioeconomic systems the world has seen to date.

Some passages in Hayek's words are inconsistent with the historicist interpretation of *The Fatal Conceit*. I am thus offering only a possible reading of Hayek, not an account of what he "really meant". Like many other great thinkers (Mill, Hume, Marx, and Quine, to name a few) Hayek's thought is riddled with tensions and problems, some of which border on outright inconsistencies. The reader's attempt to wrestle with such tensions is precisely what makes Hayek's work so rewarding; like many of Hayek's earlier works, *The Fatal Conceit* should be a source of inspiration for future scholars.

Hayek's work is drained of much of its richness if we try to defeat or eliminate these tensions by interpreting Hayek in either purely libertarian or conservative fashion. Libertarians wish to rely upon the results of market evolution but do not rely upon evolution in general to produce the proper mix between market and state. In contrast, conservatives give evolution a large place in deciding the proper mix of state

and private sector activities but are more willing than libertarians to interfere with market evolution. Hayek's theory of spontaneous order, as it currently stands, does not allow us to easily endorse one kind of evolution and reject the other. *The Fatal Conceit* thus shows how subtly the presuppositions behind either conservatism or libertarianism can be used to support the *other* doctrine; perhaps this is the greatest contribution in Hayek's new book.

Is the Great Society in "Ideological Disequilibrium"?

by Hartmut Kliemt

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Friedrich August von Hayek has again drawn our attention to the fact that collectivist notions that once were adequate to understand and to guide life in small groups of hunter-gatherers may seriously distort our views of the great society. This puts freedom itself at risk because "ill-considered notions of what is reasonable, right and good may change the facts and the circumstances in which we live..." (p. 27). This raises two questions that might merit further exploration. First, how could our "ill-considered" small group notions survive the experience of living in a great society for an extended period of time? Second, can there be a more adequate conviction system or ideology that supports the maintenance of the institutions of the great society and at the same time is itself supported by common experience in this society?

It does not seem completely convincing to answer the first question simply by pointing out that the biological evolution of human instincts could not keep up with cultural evolution. Our ideas may be influenced by our instincts. But they are also shaped by our experience. We are no helpless victims of our natural inclinations. We can learn; we can modify our behavioral dispositions in the course of time. As Hayek himself insists, traditions shape our view of the world. If common experience of individuals who are living in a great society would not reinforce collectivist views somehow then they certainly would have been gradually weeded out. There must be something in the structure of a great society itself that systematically supports ideas which eventually undermine the basis of that society.

As Hayek himself notes, "the structures of the extended order are made up...of many, often overlapping, sub-orders within which old instinctual responses, such as solidarity and altruism, continue to retain some importance by assisting voluntary collaboration" (p. 18). In a great society individuals can successfully pursue their ends most of the time only by way of membership in subgroups like clubs, the family, or the firm. The success of these subgroups will in general be furthered considerably if they can command feelings of solidarity, altruism, or loyalty among their members. Therefore, in the market for subgroup membership within the great society there will be a high premium on individuals who react in collectivist ways. This provides an incentive to nourish old instinctual responses assisting voluntary collabo-

ration.

Voluntary collaboration is easier to achieve in smaller groups than in larger ones. Therefore, as David Hume (cf. book III, chap. 7 of the *Treatise of Human Nature*) was already well aware, ordered large-scale interaction among human beings must be supported by a structure of permanently interacting small groups. In turn, small group values will be supported by the very processes that create and maintain the extended order as an unintended side-effect. Due to our natural inclination to apply feelings derived from our experiences in one area to all phenomena that are sufficiently similar, we will extend our experience in subgroups to the extended order itself, and thus tend to think about it in collectivist terms too. Our instinctual responses are reinforced rather than extinguished by cultural evolution in diverse subgroups of the great society.

With these observations in mind the second question concerning the gradual reform of our system of public conviction gets real bite. Theoretical enlightenment alone will not suffice to correct ill-considered collectivist notions. A system of public conviction will influence choices on a politically relevant scale only if it is rooted in the common experience of everyday life. However, as has been argued, the structure of any society—including the great society—systematically supports small group views. It seems that a state of "equilibrium" in which common experience and common opinion systematically support each other and the great society itself has not yet been reached.

Now, the great society as an unintended side-effect of small group interaction is essentially a market society too. It is a society of several property and freedom of contract. Participation in market games may lead to more adequate views of society that counteract small group experience. Mutually beneficial contracting does not presuppose common ends, aims, or values. People who live under a regime of "several property" may be seduced into accepting the view that this regime leaves clearance for "several right and wrong" too. Besides conceiving society from the point of view of collective action people eventually may also tend to think of it as a mutually beneficial outcome of implicit contracting between sovereign individuals.

Ordered large-scale interaction among human beings must be supported by a structure of permanently interacting small groups. In turn, small group values will be supported by the very processes that create and maintain the extended order as an unintended side-effect.

This suggests that a pedestrian version of some form of non-constructivist contractarianism—of the Buchanan or Nozickian types—may be the most likely candidate for a conviction system that supports the great society and at the same time is supported by common experience within this society. Then "do ut des" and "reciprocity" should eventu-

ally rank higher in our public value system than "solidarity," "love," and "giving without expected reward." This is very much in line with Hayek's high esteem of Mandeville (though less so with some of his remarks about religion, in the narrower sense of that term). It will diminish, however, to a certain extent the efficiency of those small groups on which the stability of the extended order also depends. Taking into account this trade-off, further research may be needed to determine the optimum from the point of view of maximum stability for the great society.

The Evolution of the Market

by Robert Sugden

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The market is a set of practices and institutions that co-ordinate the diverse plans of millions of individuals. These practices are not the product of human design; they have evolved spontaneously. To think that a human designer, however rational and well-intentioned, could construct anything comparable to this spontaneous order, still less improve on it, is the "fatal conceit". This has been Friedrich Hayek's message, and it is surely right.

However, anyone who presents an evolutionary explanation of the market faces a serious problem if he also wants to argue that we ought not to interfere with its workings. The market certainly is a remarkable example of unplanned order, just as an anthill or a tree is. But in what sense is it good? When we say that a human designer could not hope to improve on this order, what do we mean? Evolutionary processes select things—genes, species, institutions—that are successful at replicating themselves. If we can attribute any purpose to something that is the product of evolution, it is replication. The fact that an entity is successful at replicating itself does not seem an adequate reason for not interfering with it. The problem becomes more difficult still if we follow Hayek (and Hume) in arguing, again I think rightly, that the rules of morality are not the conclusions of our reason. Our sense of morality is itself the product of a process of evolution that has selected moral rules that are successful at replicating themselves in human populations. We seem to be left with no firm ground from which to claim that anything really is good.

In *The Fatal Conceit* Hayek offers a solution to this problem. Cultural evolution, he argues, works mainly through group selection. Different systems of rules may evolve among different groups of human beings, but natural selection will favor those groups that expand most rapidly; other groups will be "superseded" or "absorbed". Thus the ability of a system of rules to replicate itself depends on its ability to promote population growth. Hayek then argues that the rules of the market are more successful than any other known rules at promoting population growth. Here the argument is essentially that of Adam Smith: the market allows the division of labor, and through the division of labor it is possible to provide subsistence for more people. Thus natural selection favors the market. Hayek admits that no such argument can show that the market is good. But the

world can support its present population only because of the workings of the market. If we discard the rules of the market in the pursuit of a supposedly more rational or more just economic order, "we shall doom a large part of mankind to poverty and death." No one should set about dismantling the market without recognizing the price that will have to be paid.

Hayek's argument depends on the claim that group selection will favor those groups whose economies are capable of sustaining the most rapid growth of population.

Perhaps it is a mistake to think of selection operating on groups of people. What we have to explain is the survival and replication of rules, and not of people at all.

But is this true? If group A is growing faster than group B, how does A "supersede" B? I can think of two possible ways.

First, B-people might be defeated in war and either killed or forced, against their will, to adopt A-rules. But success in war is not necessarily determined by population size. Nor is it clear that market-based societies will tend to be successful in war. Armies are public goods, and military activity is normally based on hierarchies of command rather than on the decentralization of the market. A badly-functioning centrally-planned economy may be compatible with an efficient army.

Second, if the economies of the two groups are inter-linked, the growth of A might lead to a reduction in the maximum population that B's traditional practices can sustain, so that A's growth will eventually cause B to die out. For example, suppose A's economy is based on agriculture and B's on hunting. As A's population grows, more land is enclosed and so there is less game to hunt. But it is just as easy to think of examples which work the other way. Suppose B's economy is based on hiring migrant workers from A. As the population of A grows, the price of A-labour falls, and this allows the population of B to grow too.

Perhaps it is a mistake to think of selection operating on groups of people. What we have to explain is the survival and replication of rules, and not of people at all. What is crucial for the survival of a rule is that, in a situation in which the rule is generally followed by other people, each individual will choose to follow it. If it pays an individual to follow the rule even if only a few others follow it, so much the better (for the rule): this makes the rule well-equipped to spread. If a rule can spread from one group of people to another, its ability to replicate itself may not depend on its promoting population growth in any group. To use a biological analogy, many deadly viruses are successful at replicating themselves in human populations.

The point of this is not to show that the market does not promote population growth. Probably it does. But we cannot infer this from the observation that markets evolve spontaneously. If we are to explain how markets evolve spontaneously, I suggest, we should assume that individuals tend to

gravitate towards those forms of behavior that best serve their interests. What is in one person's interest, of course, depends on what other people do, so we need game theory. Once we recognize that each transaction in a market works to the benefit of those people who are parties to it—whatever unwanted consequences there may be for others—a tendency for markets to evolve does not seem surprising. Take an example. Suppose that group A has an economy based on enterprise and trade, while B's economy is based on subsistence agriculture and fishing. Some A-people see that there are gains from trade with B-people. If a few B-people enter into trade, they will do better than other people in their group; then others may start to imitate them, and the original culture of self-sufficiency will start to break down. (This is perhaps the sort of process Hayek has in mind when he speaks of "absorption".) As far as the ability of B's economy to support population is concerned, there may be losses as well as gains. (Suppose that, as a result of trade, fishing increases until the fish are driven to extinction). But the ability of market rules to spread from A to B does not depend on how the balance of gains and losses works out.

In the introduction to *The Fatal Conceit*, Hayek says: "Ethics is the last fortress in which human pride must now bow in recognition of its origins." I wonder if even Hayek has fully recognized the consequences of this disturbing and subversive thought. A little later he says that we cannot be said to have selected the rules and constraints of the market. Rather, he says, "these constraints selected us: they enabled us to survive." But perhaps the truth is that these constraints selected us because *we* enabled *them* to survive.

Evolution or Moral Realism?

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Hayek here performs the remarkable feat of compressing a lifetime of study of the free society into a short volume. As one might expect, his argument goes rapidly and requires some unravelling if it is fully to be grasped. A way of looking at the argument I have found helpful is to consider it as composed of three parts.

The first of these gives Hayek's answer to a basic choice facing all modern societies: capitalism or socialism? He succinctly and effectively summarizes a version of the calculation argument. A system of central planning cannot efficiently coordinate information, since much information exists only at the local level, in particular decisions of persons "on the scene." To transmit these decisions to the planning board is futile: once made, they are past and gone and do not indicate what action now is appropriate. The market economy, which Hayek prefers to call the extended order, does not face this problem. In it, each entrepreneur uses the data provided by the prices of goods he buys and sells to plan his decisions. No group of people need attempt to combine the various local decisions into one coordinated plan.

If Hayek is right, then for any society whose members reject economic chaos, the choice between capitalism and

socialism presents little difficulty. No matter what one "likes," only one system will work.

The calculation argument seems to me successful and of decisive significance. Hayek, following the course of his teacher Ludwig von Mises, has contributed in a major way to the overthrow of the intellectual plausibility of socialism.

But a problem at once arises. Given the truth and simplicity of the calculation argument, why are there still socialists? Hayek finds the answer in the resistance to the system of rules "required for the extended order." People living in a capitalist economy do not receive rewards according to their moral merit or lack of it. Quite the contrary, wealth and income depend on numerous factors that as they work themselves out among individuals defy ready categorization.

No doubt American society today differs greatly from eighteenth-century America and has in that sense evolved. But this hardly shows that evolution, in the sense of the partial or total replacement of one society by others better "fitted" to survive, has taken place.

However arbitrary the generation of income may seem, the success of the market order depends on permitting the price system to coordinate information, in the fashion I have just briefly described. People cannot fully exercise their "natural" tendencies to act selfishly in their own interests and altruistically to the advantage of their relatives and friends. (pp. 12 ff.) Once more, they must subject their actions to the rules of the marketplace. These rules they learn through custom and tradition.

An obstacle stands in their path. Traditional moral rules, not deduced from first principles, carry little appeal to many intellectuals. Theorists of this stripe, whom Hayek dubs "constructivist rationalists," believe that a correct account of morality need not hesitate to break with tradition. Instead, one begins with a goal that one wishes morality to achieve—e.g., happiness. Moral rules are then elaborated to secure this goal or a goal based on some other postulated "value judgment." Whatever rules cannot be shown by reason to promote one's goal carry no moral weight, traditional support to the contrary notwithstanding.

Hayek's criticism of the constructivists seems to me well taken. The alternative foundations for morality he considers, custom and "rationalism," however, seem far from exhaustive. He never so much as mentions in the book what one would have thought the most obvious position: the rules of morality are based on moral judgments that are true. If, e.g., slavery is wrong, this seems *prima facie* to rest on a "true moral fact," not merely the description of a tradition in our society banning slavery. This moral principle, and others like it, are in this view statements about the world, neither mere habits nor the exfoliations of misguided constructivists intent upon an arbitrary aim.

I have not argued that moral realism is correct; and the subject in any case is large and complex. But I cannot conceal my disappointment that Hayek omits this position from his discussion. His comments imply without argument its falsity.

Further, one wonders why Hayek considers Descartes to be

a rationalist of the "bad" sort, so far as morality is concerned (p. 48). Descartes argued in the *Discourse on Method* in a way rather like that of Hayek himself, that one ought to observe faithfully the laws and customs of one's country. Also, Hayek's indictment of G. E. Moore as a constructivist, because of his influence on the Bloomsbury set (p. 58), ignores the argument of *Principia Ethica*. Moore contends in that work that because in practice the consequences of a break with custom are impossible to calculate, one ought almost always to adhere to the rules in force in society. This "constructivist" argues in a very "Hayekian" manner.

Hayek's view of morality as traditional makes up the second part of the book's argument. But a deeper question yet remains. If traditional morality has arrived at the "right"

rules to maintain the market economy in being, then, Hayek argues, one ought to prefer it to constructivism. But how has tradition achieved the remarkable feat of coming up with the correct values? The proper understanding of the way the market works is, after all, a discovery of modern economics, not part of the inherited wisdom of the past.

Hayek finds the answer in evolution. According to modern biology, animals evolve by means of natural selection. Those animals better able to reproduce than their competitors gradually supplant them. The result, given sufficient time, is the development of a new species; as the process goes on, greater and greater differences will develop.

Human beings, Hayek thinks, still stand under the rule of natural selection. Cultural adaptation has however replaced biological change as the "subject" on which natural selection operates. Societies capable of supporting large populations will "win out" against those that cannot. Since the extended order is the society able to support more growth in population than any other, this system, and the moral rules upon which its existence depends, has risen to preeminence in the contemporary world. It is natural selection, then, that explains how tradition has come up with the proper rules.

Hayek discusses in a valuable and insightful way the benefits of population growth and the errors of the Malthusian theory of population (pp. 122 ff.). His account of social evolution, however, fails badly. He does not show, in the first place, that societies compete with each other for survival in a way like that of animals according to Darwinian theory. No doubt American society today differs greatly from eighteenth-century America and has in that sense evolved. But this hardly shows that evolution, in the sense of the partial or total replacement of one society by others better "fitted" to survive, has taken place.

Hayek's understanding of biological evolution also seems questionable. Evolutionary change takes place through animals with 'superior' adaptations leaving more descendants than their competitors. It isn't a case of the "more animals, the better": it is differential reproduction, not

absolute numbers, that determines evolutionary success.

Also, it does not follow from the fact that a market economy can support more people *at a higher standard of prosperity* than any other type of system that a society with a large population needs to have a market economy. What about Russia and China?

Though I disagree with substantial parts of Hayek's argument, his book seems to me deserving of very careful study. A reader will gain from it an understanding of how the world looks to a thinker of rare originality and power.

Hayek's Humean Heritage

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Systematicity seems to come in two forms. The first is apparent—correction, used to apparent—to every schoolboy who studies geometry. Here systematicity can be most quickly recognized analogically, as conforming to architecture: there is a foundation on which everything else rests and is built up out of, middle stories and, of course, a top floor. In its second variety, systematicity lies in a certain thread or threads that are pervasive within a particular body of thought. In philosophy and the moral sciences generally, it is this latter form that is apposite. And, indeed, it is in just this sense that the oeuvre of F. A. Hayek can be said to be systematic.

Certainly there is at least one thread of Kantianism,¹ a thread to be found in Hayek's analysis of "the primacy of the abstract," that winds its way through Hayek's epistemology, philosophy of mind,² and moral, legal, social, and political philosophy. Nevertheless, a greater appreciation of the sys-

With the publication of The Fatal Conceit, a work that contains Hayek's most complete treatment of moral philosophy, the pervasive Humean character of Hayek's work becomes even more apparent.

tematic character of Hayek's thought, especially in the moral sciences, can be gleaned by focusing on the inheritance left to Hayek by David Hume. Certain features of this inheritance, for example, Hume's analysis of justice, are transparent in Hayek's writing from *The Constitution of Liberty* to *Law, Legislation and Liberty*. However, with the publication of *The Fatal Conceit*, a work that contains Hayek's most complete treatment of moral philosophy, the pervasive Humean character of Hayek's work becomes even more apparent.

Hayek's theory of morals turns on three positions. First, that the maintenance of our civilization hinges on following a traditional code of morals that includes private property

and the family as values of capital importance. Second, that a justification of the whole system of traditional morals, or any other system of morals for that matter, is impossible. Third, as a corollary of the second point, all justification of any norm must be in terms of other norms embedded in traditional practices.

More abstractly, Hayek's theory of morals can be seen as a critique of the whole project of producing a valid transcendental system of morals, that is, as being an attack on those systems of morals that attempt to take a higher ground and preclude any appeal to the moral practices of one's current social order. And in so contending, Hayek is maintaining that custom has a certain kind of authority in moral matters. Furthermore, not only does this anti-transcendentalism pervade Hayek's moral theory, but it is ubiquitous in Hayek's philosophical positions in general, and it is probably the most important systematic thread to be found in his work. And it is just this character of Hayek's thought that finds its most acute expression in Hume.

In "Of Moral Prejudices," an essay of capital importance in understanding Hume, and an essay almost uniformly ignored, Hume remarks,

There is a Set of Men lately sprung up amongst us, who endeavour to distinguish themselves by ridiculing every Thing, that has hitherto appear'd sacred and venerable in the eyes of Mankind. Reason, Sobriety, Honour, Friendship, Marriage, are the perpetual Subjects of their insipid Raillery....Were the Schemes of these Anti-reformers to take Place, all the Bonds of Society must be broke[.]³

After this remarkable passage, Hume then goes on to decry "that grave philosophic Endeavour after Perfection, which under the pretext of reforming Prejudices and Errors, strikes at all the most endearing Sentiments of the Heart[.]" For Hume, there is an authority in prejudice (or custom) that is denied to reason. Although "Reason first appears in possession of the throne, prescribing laws, and imposing maxims, with an absolute sway and authority,"⁴ we must realize, Hume argues in his *Treatise of Human Nature* (bk. I, pt. IV),⁵ that "Reason as King" leads either to incoherence or an unacknowledged use of prejudice or custom in order to avoid that incoherence. Coherent and consistent philosophical reflection requires, in the moral domain and elsewhere, that we begin our theorizing by accepting the prejudices or customs of what Hume calls "common life" as true, and only reject them in the light of other such customs.

On Hume's view, then, there is a certain "internal" framework in which all analysis and all justification *must* take place. And it is for this reason (*pace* Jonathan Harrison), that Hume has no truck with moral scepticism.

At least two important similarities between Hayek and Hume are now visible. First, for both of them, a traditional system of morals, containing certain values, is necessary to the peace and order of a free society. Second, and more important for the purposes of this brief note, Hume and Hayek both reject transcendental approaches to philosophy and the moral sciences.

In closing, I would like to suggest that one result of rejecting the transcendental turn, in the manner in which Hume and Hayek do, is that the gordian knot of the "is-ought" problem can be untied, for one can theorize norms, in the only way I believe they can be theorized, as being

One result of rejecting the transcendental turn, in the manner in which Hume and Hayek do, is that the gordian knot of the "is-ought" problem can be untied.

constitutive of certain kinds of practices. Of course, this would require showing, as I think is true, that Hume was not arguing that one could not derive an ought from an is, and showing that although Hayek claims that he is following Hume in asserting that one cannot derive an ought from an is, he is not following Hume on this score (since Hume does not hold that), nor is it a position that Hayek himself really believes! Ultimately, Hume was spawning a revolution in moral theory, and Hayek is one of few contemporary Humeans in this regard; but this must be argued for on another occasion.

Notes

¹I say Kantianism rather than Kant because it is far from clear that Hayek ever read Kant in any detail.

²Cf. S.D. Warner and C.S. Bailey, "The Primacy of the Abstract: From Theoretical Psychology to Neuroscience," paper presented at the International Neutral Network Society meeting, September 7, 1988.

³In *Essays: Moral, Political, and Literary*, ed. by Eugene Miller, rev. ed. (Indianapolis: Liberty Classics, 1987), pp. 538-39.

⁴David Hume, *A Treatise of Human Nature*, bk 1, pt 4 sec. 1.

⁵And also much more clearly in the final section of his *An Enquiry Concerning Human Understanding*. Indeed, when Hume rejects his *Treatise* because of his faulty style, I believe he has the opaque argument against transcendental philosophy foremost in mind.

Bridging the Gap Between Evolution and Natural Law

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Reading Hayek's work *The Fatal Conceit* should evoke for each honest and open-minded reader a great intellectual experience. For page after page, Hayek shows his rare ability to bring together theories and arguments from various scientific research fields—such as economics, history, ethics, biology, law, and epistemology—and to assemble them in one consistent intellectual framework concerning the understanding of human evolution and progress. Indeed, students already acquainted with the former works of this intellectual giant will not be surprised by dramatic innovations in the theories of the author.

The Fatal Conceit contrasts two broadly defined intellec-

tual approaches concerning the structuring of human society: constructivist rationalism and a critical rationalist evolutionism. The contention that this opposition is both crucial and basic was already set forth in Hayek's three-volume work *Law, Legislation and Liberty*. Nevertheless, *The Fatal Conceit* is more than a summary. More than in any other work, Hayek succeeds in reordering intellectual antagonisms in different fields along the above mentioned lines. Hayek is able, for example, to show the intellectual (and even emotional) link between primitive group-morality, classical Greek philosophy, modern rationalist constructivism, and attitudes among the majority of the members of the intellectual class in non-socialist countries. Making such links is daring and provocative, but they are forged in this work from extensive research in intellectual, political, and economic history. There is no need to emphasize the usefulness of these intellectual affiliations as a tool in the intellectual debate with the enemies of a free society. By understanding

Only an evolutionist approach makes us able to understand why relative freedom and growing wealth was historically possible in societies lacking an explicit liberal ideological framework.

their attitudes, their feelings, their frustrations, their ignorance and, above all, the grounds of their ignorance, we will be better able to engage them in debate.

This intellectual manifesto of critical rationalist evolutionism elicits further questions and problems. The evolutionist approach set forth in *The Fatal Conceit* has made contemporary classical liberalism a richer resource for understanding our own history. The evolutionist scheme allows us to understand the gradual achievement of the traditions and rules underlying the extended order of the market. In other words, only an evolutionist approach makes us able to understand why relative freedom and growing wealth was historically possible in societies lacking an explicit liberal ideological framework.

In this respect Hayek's contribution to the liberal intellectual tradition is unique and seminal. He has demonstrated why and how rules and institutions that fostered liberty were preserved in societies whose general belief system was a-liberal, not to say anti-liberal. By elaborating this thesis Hayek has enlarged liberalism, adding to it a genuine historical dimension. The evolutionist approach suggests that liberalism is more than an ideology articulated at a given moment in intellectual history and followed up by certain political and economic successes.

By pointing to the abilities of mankind to develop institutions and traditions, which are as distinct from instinct as they are from purposeful and deliberate construction, evolutionism links liberalism and the market economy with the basic characteristics of man-as-such. In other words, the freedom espoused and defended by liberalism is more than the outcome of a certain set of opinions. It is the outcome of

man-as-cultural-being. To put it more explicitly, critical rationalist evolutionism leads to the equation of liberalism, cultural propensities and civilization, while the negation of liberalism is tantamount to the end of civilization and the death of cultural man.

This fundamental message, presented so forcefully in *The Fatal Conceit*, suggests that it might be possible to complete liberalism (already enlarged by Hayek with the addition of a historical dimension) with an ethic that transcends evolutionism without contradicting it. It is often argued that evolutionism as such is philosophically flawed because it is based on the naturalistic fallacy. Hayek, being well aware of this argument and mentioning it explicitly (see p. 27), refutes this argument by arguing that his version of evolutionism does not entail that all the results of whatever tradition are ethically justifiable. His contention is only (but certainly) that many results that one cannot disapprove *ex post* without being utterly immoral or unreasonable (e.g., prosperity, more freedom, and opportunities for population growth), are due to the development of traditions that were not ethically and

Hayek has demonstrated why and how rules and institutions that fostered liberty were preserved in societies whose general belief system was a-liberal, not to say anti-liberal.

deliberately justified *ex ante* by their initiators.

One need not contradict this moderate version of evolutionism by supposing that man is able to select, to maintain, or to refine certain traditions and institutions—perhaps initiated for other reasons—because of the ethical value of their effects. Nor is it contradictory to the Hayekian theory to suggest that it is intellectually possible to elaborate an ethical theory in which the intrinsic ethical value of historically selected rules and institutions is linked with the cultural propensities of man as part of human nature. The establishment of such relationships opens the possibility of bridging the still-existing gap within the liberal tradition between the evolutionist approach (based on conjectural history and economic analysis) and the non-constructivist version of natural-law theory (based on ethical argumentation about human nature).

In this respect *The Fatal Conceit* is more than a brilliant summary of a lifelong career dedicated to science, freedom, and intellectual honesty. *The Fatal Conceit* is at the same time a program for the further development and refinement of liberalism. In this way *The Fatal Conceit* is also an invitation to the younger generation of intellectuals who are committed to freedom to continue the work of this great master.

Spontaneous Order, Cooperation, and Theft by Bruce L. Benson

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Every time I read something new by F. A. Hayek I find that he has developed and clarified vague ideas I have been wrestling with, and extended those ideas to new levels in their logical evolution. *The Fatal Conceit* is no exception. I noticed the close link between religion and the establishment of rules of obligation, for instance,¹ but I failed to recognize the vital role religion played as the “guardian of tradition.” Hayek recognized and explains it in *The Fatal Conceit*.

This book is obviously another in a long series of important books by F. A. Hayek, for me and for anyone who wishes to understand how civilization and order actually have developed. Without doubt, it will stimulate a series of follow-up writings by those who agree with him and those who do not. To illustrate, I shall sketch four specific issues that might attract further discussion and/or clarification.

First, Hayek correctly notes that socialists fail to perceive the indispensable role of rules of obligation (e.g., private property, contract) in shaping and preserving the extended order. Rather, he suggests, socialists believe that the attitudes and emotions that are appropriate to behavior in small groups (e.g., solidarity, altruism) should also be sufficient to shape an extended order. This argument may imply that rules of obligation are not necessary for order within small groups, but that is not so. Order among small primitive kinship groups involved well established systems of individual rights and private property, for example.² And customary rules of obligation even characterize relationships between the immediate members of a family. Lon Fuller describes customary law as a “language of interaction” and notes that

Hayek's discussion may be somewhat misleading if one concludes that small groups do not require traditional rules of obligation.

there is a spectrum of interactions ranging from intimacy (e.g., family relations) through relationships between friendly strangers (e.g., commercial relationships) to hostility.³ The entire spectrum involves rules of obligation but those rules vary considerably depending on the nature of the interactions involved. Nonetheless, “the family could not function without ... tacit guidelines to interaction; if every interaction had to be oriented afresh and *ad hoc*, no group like the family could succeed in the discharge of its shared tasks.”⁴ These tacit guidelines clearly include individual rights and responsibilities. Thus, Hayek's discussion may be somewhat misleading if one concludes that small groups do not require traditional rules of obligation.

Second, Hayek asks how the rules of obligation necessary for the extended order could be passed on from generation to generation, and suggests the paramount role of religion as an answer.⁵ Undoubtedly, he is correct, but there is another factor that is at least as important, if not more so—the ever present self-interest motive. Individuals require incentives to become involved in the legal process. Incentives can be negative (e.g., the use of government coercion or the fear of supernatural punishment through religion) or positive. Voluntary recognition of law and reciprocal arrangements for law enforcement are likely to arise only when substantial benefits from doing so can be internalized by individuals. Protection of personal property and individual rights is a positive inducement to recognize the rules of obligation and participate in the process of justice in customary law

While establishment and enforcement of customary rules of obligation promote order, the adversarial nature of government law, pitting group against group, promotes disorder. The belief that the true function of government can be changed to one that promotes “social welfare” is simply one more aspect of The Fatal Conceit.

systems. Indeed, the participatory character of law enforcement in customary law systems explains, to a large extent, why private property rights were the basic rules of obligation.⁶ Individuals' incentives to recognize the law and participate in its enforcement would not have been nearly so strong under any other arrangement⁷ (e.g., communal ownership, altruism), regardless of the nature of religious sanctions. Over one hundred utopian communes, many religion-based, established legal systems in the United States during the nineteenth century, for example. They failed because they suppressed the private property rights that would have provided the basis for recognition of such law.⁸

Third, the fallacies Hayek identifies in the socialists' “logic” actually characterize a much larger group. Anyone who believes that government can improve on the market order, including modern “liberals” and conservatives, implicitly accepts the socialist logic. Thus, Hayek's attack is more broadly against those who support a strong central government, many of whom would vehemently deny a socialist label.

Fourth, suppose that socialists accepted Hayek's argument that order results from spontaneous evolution of traditions and practices, and that relatively efficient traditions and practices tend to be adopted. They might then note that the traditions and practices associated with a strong central government have clearly evolved to limit and in many ways replace the market system, so it follows that government is a relatively efficient source of order! This “extension” of Hayek's argument is wrong, of course, but it is not countered in *The Fatal Conceit*. One way to illustrate its fallacy is to note that the institutions of government have a very different purpose than the institutions that develop to support the evolving traditions and practices of the extended order. The purpose of those traditions and their accompanying institutions was to facilitate voluntary interaction. The purpose of government is to facilitate (or prevent) involuntary transfers.⁹

The first function of kingships in England, for example, was warfare. As the kings developed other functions such as internal law-making and law-enforcement the purpose was clearly to transfer wealth between groups within the kingdom, and in particular to those with political (i.e., military) power, including the king.¹⁰ The earliest royal changes in English customary laws created fines and the royal right to confiscate property, for instance, and the earliest royal judges were tax collectors since “justice” was a major revenue source. Modern institutions of government evolved from those established by kings to facilitate transfers, so the fact that government has taken over to the extent it has, even as Western democracies evolved from kingships, does not reflect the superior efficiency of government in making and enforcing laws to facilitate interaction. Rather, it reflects

government's increasing efficiency in facilitating transfers to those with political power. Now it is vested interest groups that benefit from the transfers rather than kings and their supporters, but the basic function of government is the same. Indeed, while establishment and enforcement of customary rules of obligation promote order, the adversarial nature of government law, pitting group against group, promotes disorder. The belief that the true function of government can be changed to one that promotes “social welfare” is simply one more aspect of the *The Fatal Conceit*.

Notes

¹Bruce L. Benson, “Enforcement of Private Property Rights in Primitive Societies: Law Without Government,” *The Journal of Libertarian Studies* 9 (Winter 1988): forthcoming; and *Liberty and Justice: Alternatives to Government Production of Law and Order* (San Francisco: Pacific Research Institute, forthcoming).

²*Ibid.*

³Lon Fuller, *The Principles of Social Order* (Durham, NC: Duke University Press, 1981) p. 239.

⁴*Ibid.*, p. 241.

⁵*The Fatal Conceit*, Chapter 9.

⁶Benson, “The Spontaneous Evolution of Commercial Law,” *Southern Economic Journal* 55 (January 1989): forthcoming; and “Enforcement of Private Property Rights in Primitive Societies.”

⁷*Ibid.*

⁸Benson, *Liberty and Justice*.

⁹*Ibid.*

¹⁰*Ibid.*