

HAYEK'S LIBERAL LEGACY

Stephen Macedo

One of the greatest achievements of humankind is to have discerned principles and institutions that allow diverse peoples to live together in freedom, peace, and prosperity. It may be that no one in the 20th century has done more to clarify and promote the principles of ordered liberty than F.A. Hayek, the centenary of whose birth was celebrated at the Cato Institute on May 8th. I am pleased to have the opportunity to say something here about the central elements of Hayek's intellectual legacy, concentrating on what Hayek contributed to the intellectual underpinnings of the principles of a free society.

Three broad themes seem to me to qualify as central elements of Hayek's legacy. First is Hayek's critique of political utopianism, which rested on his development of the theory of spontaneous order and his closely related account of the limits of conscious human knowledge. Second is Hayek's emphasis on the interdependence of law and liberty: his classical liberal conception of the rule of law, in which what is absolutely essential to modern government is the defense of a broad law-governed sphere of individual liberty. Finally, I want to stress that in spite of Hayek's insistence on the limits of human knowledge, he displayed a profound faith in the power of ideas and institutions. Whereas the first two elements represent points of similarity with thinkers who are in important ways more conservative—such as Michael Oakshott (1962)—Hayek emerges as a figure squarely in the liberal tradition when one considers his confidence in the power of public ideas, his commitment to an ever wider extension of liberal institutions, and his faith in human progress. In conclusion, I will discuss a few of the problems with which Hayek's ideas leave us.

My aim here is not to pinpoint the originality of particular elements in Hayek's thought: I will not try to isolate those things that Hayek

Cato Journal, Vol. 19, No. 2 (Fall 1999). Copyright © Cato Institute. All rights reserved.

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thought of first. Rather, I will focus on Hayek's power and incredible influence as someone who dedicated himself for the latter half of his long life to the project of restating in persuasive terms the central elements of the theory of the free society. Overall this seems to me to be Hayek's greatest achievement. In spite of his disdain for mere "intellectuals," Hayek was himself not solely but most definitely a great public intellectual who helped spread the principles of modern freedom, and who helped propel those principles into the future with considerably greater momentum than they would have had without his influence.

The Notion of Spontaneous Order

The first aspect of modern freedom that Hayek did much to describe and clarify is the notion of spontaneous order, an idea that was first expounded by the great luminaries of the Scottish Enlightenment, Adam Smith, David Hume, and Adam Ferguson. As Ronald Hamowy describes in his essay in this volume, spontaneous orders include not only markets, but languages, moral systems, and systems of law, all of which emerge as the unintended byproduct of innumerable individual interactions, interactions that aim at particular results for individuals. Individuals pursuing their own purposes do not aim to promote an overall pattern of order, but they learn to conform with shared norms and constraints so that their interactions and exchanges will be orderly and successful (see Hayek 1960, chap. 4, and Hayek 1988, chap. 5).

Spontaneous order is the product of human action but not of human design. It is not a willed, created order. Unlike Thomas Hobbes, Hayek did not posit the need for a sovereign to create order out of chaos. And strikingly, in the last pages of his final book, *The Fatal Conceit*, Hayek (1988: 139–40) confesses that he can make no sense of the notion of a divine will that is responsible for order as we know it. The notion of God as final cause of order in the universe is portrayed by Hayek to be a piece of arrogant anthropomorphism: "The conception of a man-like or mind-like acting being appears to me rather the product of an arrogant overestimation of the capacities of a man-like mind. I cannot," he went on, "attach meaning to words that in the structure of my own thinking, or in my picture of the world, have no place that would give them meaning." "The source of order," says Hayek in this profession of agnosticism, is "not outside the physical world but one of its characteristics."

The central error of much modern thought, for Hayek, is the "hubris of reason" that characterizes "constructivist rationalism": this is the doctrine that all orders are made or designed, and that they can be

redesigned or remade at will to serve conscious purposes. Hayek emphasizes the extent of human ignorance, especially with respect to the decisions of particular individuals. People pursuing their own purposes act on the basis of local knowledge, preferences, and dispositions that they could not fully formulate to themselves, let alone disclose to some central authority. Market prices as well as social norms emerge as a result of innumerable individual decisions. Because of the inevitable importance of tacit and unconscious knowledge, markets make use of knowledge that certainly surpasses what could be gathered by a central authority intent on imposing a consciously ordered pattern (see Hayek 1948, especially “The Uses of Knowledge in Society,” and Hayek 1988, chap. 5).

Because of the importance of decentralized decisionmaking in spontaneous orders, interventions into economic and social systems often have unintended consequences, consequences that are often quite the reverse of what is intended. Examples are not hard to generate. Metropolitan areas around the country continue to suffer the debilitating consequences of well-meaning government interventions that have had the unintended effect of undermining many of the most attractive features of older cities, including informal neighborly interactions and lively public places. It might seem that suburban sprawl and the decline of older urban neighborhoods are the natural consequences of the economic progress made by many of those ethnic groups who had once inhabited urban ghettos. However, the unintended consequences of government policy have played a major role in producing the urban blight and suburban sprawl whose costs are only now being adequately assayed.

Consider the variety of ways in which governments tried to promote home ownership, create green spaces, and discourage urban crowding. As Edward Banfield ([1974] 1990) pointed out in his classic study, *The Unheavenly City*, the fact that the federal gasoline tax was devoted to highway construction helped subsidize the residential migration out of cities. In addition, the home mortgage tax deduction provides an incentive to build and occupy larger homes. Richard Moe and Carter Wilkie (1997) have emphasized the extent to which Federal Housing Administration policies with respect to mortgage guarantees have further encouraged the construction of suburban subdivisions at the expense of the renovation of older urban neighborhoods. FHA mortgage guarantee programs reflected a strong preference for predictable and stable housing values, which are most easily achieved in new and uniform suburban subdivisions. The FHA has in this way contributed to urban blight and suburban sprawl. More than that, all of these policies have encouraged the movement of middle class

people out of cities, which has greatly exacerbated class and racial divisions in our society.

Zoning laws have also contributed to undermining informal interactions in cities and suburbs. Zoning laws require homes to be pushed back from the street, minimum housing lot sizes, and the segregation of businesses and residences. They also typically require that businesses surround themselves with belts of parking lots and green spaces. Such laws discourage walking and informal neighborly interaction. They place a premium on automobile use, and further encourage economic segregation (Kuntsler 1998).

My point here is not that all regulation of property use is necessarily a bad idea, but that interventions in complex, evolving social systems are fraught with peril. Among the great complaints of our time is the decline of neighborhoods and neighborliness, of informal social ties, voluntary cooperation, and mutual aid. There is no doubt in my mind that well-intended but misguided government interventions have had a significant deleterious impact on the quality of civil society in metropolitan areas: without intending it, governments have positively encouraged urban decline and class and racial division.¹

Hayek's Attack on Social Justice

The socialists' dream that central economic planning could supplant free markets turned out to be a catastrophic nightmare, a "fatal conceit" as Hayek put it in the title of his final book. No one has or could have sufficient knowledge to plan an economy, make production decisions, or efficiently allocate resources. Free competition in the market is a far more effective way to coordinate prices and production because markets take account of dispersed knowledge.

There was an additional way in which Hayek regarded the moral aspirations of not simply socialists but also social democrats as deeply mistaken. Hayek argued that to talk of "social justice" is absurd, and to try and promote a just distribution of economic rewards is utterly misguided. The reason is that economic rewards are part of a vast unplanned system. No person or entity distributes awards. The pattern of rewards that results from market exchanges is the consequence of innumerable individual decisions, and these results are often quite arbitrary. Success or failure in the market may depend partly on effort, skill, and merit, but they often depend crucially on luck and unforeseeable events, and the actions of other people in far-flung corners of the globe (see Hayek 1978).

¹I explore these ideas at greater length in a book manuscript in progress on liberalism, civil society, and public policy.

One of Hayek's central and distinctive claims is that the notion of distributive justice makes no sense: The call for social justice anthropomorphizes what is in reality an impersonal market order. No one is responsible for the overall pattern of distribution that the market produces. We must accept the outcome of the market order, moreover, or else risk upsetting a system that on the whole provides the best chance of satisfying people's expectations overall.

Hayek shares the sense of John Rawls (1971) and other social democrats that market outcomes are arbitrary from a moral point of view: they conform to no moral standard. But Hayek insists that we must accept and live with the contingency of market outcomes in order to garner the benefits of the market. As he puts it,

We do cry out against the injustice when a succession of calamities befalls one family while another steadily prospers, when a meritorious effort is frustrated by some unforeseeable accident, and particularly if of many people whose endeavors seem equally great, some succeed brilliantly while others utterly fail. It is certainly tragic to see the failure of the most meritorious efforts of parents to bring up their children, of young men to build a career, or of an explorer or scientist pursuing a brilliant idea. And we will protest against such a fate although we do not know anyone who is to blame for it, or any way in which such disappointments can be prevented [Hayek 1978: 68–69].

Hayek argued that these observations apply to markets in general: market outcomes are often morally arbitrary, but no one is to blame. “‘Social justice’ is necessarily empty and meaningless,” because no one determines the relative incomes of people, and no one can prevent their incomes from being “partly dependent on accident” (Hayek 1978: 68–69).

Socialists err in refusing to accept the necessary contingency of distributive patterns. Hayek, on the other hand, opposes attempts to impose distributive patterns not out of a belief in natural rights to property but rather based on the nature of a spontaneous order that serves to maximize the fulfillment of people's expectations as a whole.

Hayek's attack on the notion of social justice is at best only partially successful. He is certainly right that the law of unintended consequences counsels skepticism about comprehensive attempts to control and plan complex social and economic systems. Socialism does indeed appear to be impossible, at least insofar as it is understood as the aspiration to a comprehensively planned economy. Hayek is correct to assert, moreover, that no one is responsible for the pattern of economic distribution that results from the market.

Nevertheless, as Judith Shklar (1990) argued against Hayek, the notion of social justice is not founded on the error that some person

or entity is responsible for bringing about distributive inequalities. Rather, it is founded on the notion that we can collectively intervene if we choose to do so, through democratic means. And our interventions need not, of course, take the form of comprehensive economic planning, but may take the form of more modest efforts to promote universal access to certain basic benefits (such as health care, education, unemployment insurance, housing, and perhaps a minimum income). If we decide not to intervene collectively to equalize income or even simply to provide a basic safety net, Shklar rightly argued that we need some positive justification. It is not up to us how the market allocates rewards, but it is up to us how we respond to that allocation. While Hayek's development of the idea of spontaneous order is important and successful, his attempt to explode the "myth of social justice" is less so.²

Let me add that various forms of egalitarian social justice may still be a bad idea—depending on how it is formulated and implemented it may undermine the character of aid recipients, for example—but it is not a bad idea for Hayek's main reason, which is that the very notion of social justice is an absurdity.

The Rule of Law

The second major element of Hayek's legacy is his classical liberal conception of the rule of law. The law of property, contract, and torts provides a system of impartial rules that serve as a framework within which individuals and voluntary groups can pursue their own divergent ends and purposes, their own conception of what constitutes a good life. The rule of law so understood is central to any account of freedom in modern mass societies, and Hayek's exposition is probably the most important and influential version produced in the 20th century.³ Like other thinkers who sought to systematize an account of the rule of law at mid-century—thinkers such as Lon Fuller (1969) and Michael Oakeshott (1984)—Hayek wanted to emphasize the essential nature of the rule of law as a bulwark of liberty. All of these thinkers insist that the rule of law system is noninstrumental or purposeless (see Macedo 1985). A well-ordered system of law does not prescribe to individuals what they should do, but rather tells them how to do whatever they wish to do. The rule of law prescribes "adverbial" conditions on self-chosen actions, as Oakeshott put it.

²See the valuable discussion of this and other problems in Hayek's thinking in Kukathas (1989).

³Hayek's most extensive exposition is in *Law, Legislation, and Liberty*, especially volume 1, *Rules and Order* (Hayek 1973).

A free society ordered by the rule of law does not, according to Hayek and other classical liberals, need a hierarchy of ends or purposes. Generally applicable standing rules—like the rules of the road—help individuals avoid collisions and avoid conflicts over scarce resources, and allow people to make legally binding commitments to one another. And, like the rules of the road, the rule of law for its classical liberal defenders does not prescribe a destination but rather a way for individuals to get where they want to go. An ordered system of individual liberty is simply inconceivable in a modern mass society without a rule of law that incorporates the elements Hayek describes.

Clearly, the rule of law helps underpin the notion of spontaneous order. The rule of law allows individuals to adapt to changing circumstances, to use their local knowledge, pursue their individual purposes, and engage in exchanges and voluntary cooperative relations with other people. Society as a whole adapts to changing conditions in this way without anyone directing the process from above. We count on government to enforce the rights of ownership and legally binding contracts, and to punish breaches of the law. But the rule of law crucially depends upon getting governments to respect the private rights of individuals, to refrain from arbitrary exercises of power. The free society requires (according to the classical liberals) government agencies to enforce the law, and to abide by the limits of a higher, constitutional law. Clearly, therefore, the central features of Hayek's version of classical liberalism—spontaneous order, the rule of law, individual liberty, and limited government—are all closely intertwined.

It was extremely important for Hayek to be clear about the nature of law properly so-called—an evolved system of enabling rules. Hayek—once again like Oakeshott and Fuller—sharply distinguishes this freedom-facilitating notion of the rule of law from the principles of an organization or enterprise, which acts in a concerted way for specific purposes. The rule of law properly speaking is to be distinguished from government policies designed and promulgated for the pursuit of particular aims, or to provide specific services. In order to sharpen this distinction in practice, Hayek argues that the universal rules of just conduct that compose the rule of law should be made by a distinctive legislative body, and that body should be constituted so as to be independent of partial interests and of most of politics as we know it. For this legislative body Hayek proposes 15-year terms and no reeligibility for office (see Hayek 1973).

Hayek's distinction between law and legislation, and his insistence on the indispensability of law to modern freedom, do not of course allow us to sharply define the limits of what government may do: which public services may be provided, how extensive a safety net

should exist, and so on. All of those political interventions could be developed fairly extensively while respecting the integrity of the rule of law, while remaining far short of any comprehensive effort to plan the society as a whole (as socialism attempted to do), and while remaining cognizant of the dangers of unintended consequences.

Social Evolution

The notions of spontaneous order and the rule of law are the core of Hayek's theory of the free society. These institutions allow individuals to draw on dispersed knowledge, pursue their purposes, and adjust to circumstances in their own way. And these institutions allow society as a whole to engage in unplanned evolutionary progress. The free society is capable of flexibly adapting to changing circumstances. Hayek (1988: 74) argues that free institutions have been selected by a process of evolutionary adaptation because they are successful: successful social adaptation helps "make the group strong," and permits it to "prevail over others."

This raises an important question: What constitutes a successful society and how do we discern and justify the criteria of success? Hayek often emphasizes that progress occurs through a process of evolution according to which those societies that are relatively successful will tend to favor successful social norms that foster adaptation to change and support growing populations. Even moral traditions are, Hayek (1988: 10) argues, the product of cultural evolution rather than the deliverance of reason.

The emphasis on evolutionary change raises important questions that Hayek never adequately addresses: What are the standards by which we judge the evolutionary process? Given the limits of human knowledge, can we even presume to judge the outcomes of the process of social evolution as a whole? How can we do so if moral standards are themselves, as Hayek emphasizes, the product of evolution? Are there articulable and rationally defensible moral standards beyond the evolutionary dynamic, standards that give us critical leverage over the evolutionary process and allow us to pass judgments on outcomes? Or does Hayek's critique of constructivist rationalism mean that we must not presume to judge the results of the evolutionary process? Are there, indeed, any features of the system that should not evolve? Are there principles of justice that we should protect against change, or is the evolutionary process as a whole—like the pattern of economic distribution—morally arbitrary?

These questions are important, for there are times when Hayek sounds like a moral skeptic who believes that the moral values selected

by social evolution should be adhered to even though they appear as no more than “unreasoned prejudice,” and that evolved moral traditions “outstrip the capacities of reason” (Hayek 1988, chap. 4).⁴

Power of Public Ideas

Here then is where I come to the third element in Hayek's legacy, which is his confidence in the power of public ideas—a confidence that is ultimately at odds with a blind faith in social evolution. Hayek's vision of the free society is, indeed, infused by an implicit set of moral standards, judgments about many aspects of the social system as a whole.

If the evolutionary dynamic was basic, then liberalism itself might be simply a stage in the evolutionary progression—merely a temporary and a local ideal. But surely we would not want to say, and Hayek would not say, that our confidence in the superiority of the free society to fascism and communism rests on the fact that we prevailed over these abhorrent systems in World War II and the Cold War. To say that the free society is superior because it proved itself stronger and fitter in war is to adopt the moral standards of the very tyrants we oppose. To say such a thing would be to concede that fascism, communism, and the free society ultimately share the same standards of success: the ability to prevail over others.

To avoid the moral reductionism of “survival of the fittest,” we need to bring to the surface the principles that underlie the evolutionary emphasis in Hayek's thinking. The evolution that he seeks to foster is, after all, the evolution of a spontaneous order, which is not simply an unplanned order but a freely adapting order *governed by the primacy of individual liberty*. Evolution works by allowing free individuals to adapt, but the political system should remain constantly true to certain basic values, such as the equal right to individual liberty, the security of privacy and property, and freedom of association, all of which are importantly guaranteed by an impartial and regularly administered rule of law. So the evolution Hayek favors is a constrained form of evolution: a process of peaceful and free adaptation, consistent with ordered and responsible individual liberty.

None of this is surprising because Hayek is far from being a skeptic or agnostic with respect to the question of how society as a whole should be organized. Hayek has a plan for the good society as a whole, a definite account of how its major political and economic institutions should work. The free and progressive society is a particular type of

⁴See the discussion in Kukathas (1989, chap. 5).

society. Indeed, this ideal society appears to be a universal ideal for Hayek, albeit one according to which production, employment, and spending decisions are best left to individuals.

Whereas the more conservative rule of law theorist Michael Oakeshott rejected the notion of a theoretically grounded political practice, and described politics as the “pursuit of intimations,” Hayek has a much more elaborate theory of the good society, and he is far more insistently prescriptive than was Oakeshott.

Let us sharpen this point by returning to an earlier observation: it did not simply matter *that* we should prevail over fascism in World War II. It also mattered *how* we did so, and this is something Hayek himself insisted upon.

On this score, Australian political theorist Chandran Kukathas discusses some fascinating materials in the Hayek archives: some “Notes on Propaganda” that Hayek composed early on in World War II, and a variety of letters he wrote to British officers in charge of propaganda efforts directed at the people of Germany and Austria. These revealing—but unsolicited—notes and letters contain Hayek’s thinking about how propaganda should be conducted during the war.⁵ In them, Hayek emphasizes two things: First, propaganda should be truthful and accurate (“truthful” propaganda sounds like a contradiction in terms, but so be it). The aim should be to describe the principles of liberty and democracy and to describe in sober and dispassionate terms the discreditable acts of the Nazi regime. Hayek admitted that this notion of propaganda might sound academic, but he insisted—even in the darkest hours of 1939—that the important thing was to tell the truth, to admit mistakes when they occurred, and to provide details—names and dates of people committing atrocities—to furnish overwhelming evidence of the depravity of the Nazi regime. So even with regard to wartime propaganda, Hayek urges that the free society should remain true to its own principles of truthfulness. Even in wartime, as Kukathas observes, Hayek insisted on the importance and power of honesty.

Secondly, Hayek also saw a crucial aim of wartime propaganda as that of strengthening the internal forces of German resistance to Nazism. Fostering resistance was not simply important as a way to undermine the German war machine, but also to begin the process of

⁵My account here is entirely drawn from Chandran Kukathas, “Hayek and Modern Liberalism,” unpublished paper, on file with the author. Kukathas summarizes and quotes unpublished materials that can be found in the Hayek Archive at the Hoover Institution Library, Stanford University, California: F.A. Hayek, Box 6, folders 4 and 5, especially “Some Notes on Propaganda in Germany,” Folder 4, and letters to Ogilvie, Macmillan, and Gifford, folders 4 and 5.

German reintegration into the common European civilization. Hayek opposed any sort of fatalism about the German character. In these wartime notes and in a paper he delivered in early 1944, Hayek insisted that the great danger was falling prey to fatalism about historical developments in central Europe. A common European civilization could be rebuilt if the moral ideals of liberal democracy could be restated in persuasive terms. In mankind's darkest hour, therefore, Hayek insisted that the struggle against mankind's greatest evil should be carried on in such a way as was consistent with the civilized aspiration to reinstate an ever-widening circle of peaceful cooperation and reasonableness.

And indeed, Hayek dedicates much of the rest of his long life to restating in persuasive but honest terms the principles of the free society. He does so with the conviction that the fate of freedom depends on making a critical mass of scholars, intellectuals, and ordinary people aware of the principles at the core of the liberal tradition.

So Hayek dedicates *The Road to Serfdom* to "socialists of all parties" because he regards them as well-meaning but misguided people who are wrong about the workings of a free society but who, Hayek is willing generously to presume, are as open as he is to evidence and honest argument. How striking is this generosity of spirit. Hayek is both more hopeful and more universal than typical conservatives with whom he is often compared. And he is far more generous and gentlemanly in his treatment of his opponents than is typically the case in politics nowadays, where the rule is to demonize over small differences.

As Kukathas rightly emphasizes, Hayek has provided us with a body of thought that looks forward to the extension of the principles of the free society to developing nations around the globe. He founds an international society of scholars after the war—the Mount Pelerin Society—to help realize his goals. And he plays a crucial role in inspiring others to establish and sustain many other institutions dedicated to free inquiry and rigorous scholarship about liberal principles and public policy: The Institute for Humane Studies, Liberty Fund, the Atlas Foundation, the Institute for Economic Affairs, along with similar organizations that circle the globe, and of course, the Cato Institute.

Hayek's Legacy

F.A. Hayek's legacy lies not in any sort of moral skepticism. He was no blind adherent of social evolution. Rather, he argued for the limits of human knowledge while at the same time advancing a positive

account of how human knowledge can be most effectively generated and harnessed in an extended order of free and peaceful international cooperation.

Skepticism is not, after all, the best, or even a credible, response to the great evils of the 20th century, as Hayek well knew. The essential linchpin of Hayek's thinking, it seems to me, is a sober confidence in critical human reason. Hayek's life and his inspiring success testify to a warranted confidence in our ability to articulate, defend, and extend liberal principles. It is this faith in the attractiveness of the principles of liberty honestly stated that is Hayek's greatest legacy. That legacy lives on not only in the contagious hopefulness of Hayek's best writings, but in the hearts and minds of millions who have been touched and inspired by those writings.

References

- Banfield, E.C. ([1974] 1990) *The Unheavenly City Revisited*. Prospect Heights, Ill.: Waveland Press.
- Fuller, L. (1969) *The Morality of Law*. 2nd ed. New Haven, Conn.: Yale University Press.
- Hayek, F.A. (1948) *Individualism and Economic Order*. Chicago: University of Chicago Press.
- Hayek, F.A. (1960) *The Constitution of Liberty*. London: Routledge and Kegan Paul.
- Hayek, F.A. (1973) *Law, Legislation, and Liberty*. Vol. 1. *Rules and Order*. Chicago: University of Chicago Press.
- Hayek, F.A. (1978) *Law, Legislation, and Liberty*. Vol. 2. *The Mirage of Social Justice*. Chicago: University of Chicago Press.
- Hayek, F.A. (1988) *The Fatal Conceit: The Errors of Socialism*. The Collected Works of F.A. Hayek. Vol. 1. Chicago: University of Chicago Press.
- Kukathas, C. (1989) *Hayek and Modern Liberalism*. Oxford: Oxford University Press.
- Kuntsler, J.H. (1998) *Home from Nowhere: Remaking our Everyday World for the Twenty-First Century*. New York: Simon and Schuster.
- Macedo, S. (1985) "The Public Morality of the Rule of Law: A Critique of Ronald Dworkin." *Harvard Journal of Law and Public Policy* 8(1): 79–108.
- Moe, R. and Wilkie, C. (1997) *Changing Places: Rebuilding Community in the Age of Sprawl*. New York: Henry Holt.
- Oakeshott, M. (1962) *Rationalism in Politics and Other Essays*. London: Methuen.
- Oakeshott, M. (1984) "The Rule of Law." In *On History and Other Essays*. London: Blackwell.
- Rawls, J. (1971) *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
- Shklar, J.N. (1990) *The Faces of Injustice*. New Haven, Conn.: Yale University Press.