
The teleological view of the universe, of which the teleological view of man forms a part, would seem to have been destroyed by modern natural science. ... the nonteleological conception of the universe ... is exposed to grave difficulties: it seems to be impossible to give an adequate account of human ends by conceiving of them merely as posited by desires or impulses.⁸⁶

It is time to re-examine the transcendental question and to focus on the moral problem which has for so long been deprecated and avoided by economists as something inferior and not belonging to the discipline. The economists' view of society as a commodity circus where, on the econometric trapeze, a clown, *homo oeconomicus*, performs supply-demand acrobatics without a safety net and purpose, needs to be reviewed.

Economics' adaptation of modern natural law has not proved to be a very satisfying experience to those conscious of the existence of the moral problem on both the theoretical and policy levels. Present society is in no way nearer to natural harmony than in the days of Adam Smith:

Men are no longer units; they are being compulsorily coagulated into groups, and the forces of combination and regulation are producing a society very different from that which the nineteenth century Political Economy set out to interpret.⁸⁷

The return of morality into economics necessitates a resurrection of the classic idea of natural law. This revival could be assisted by an unlikely ally – a materialistically oriented civilization. It can be argued that the progress of this kind of society would be more and more dependent on the expansion of both domestic and international markets.

Evolutionists would agree that society must have had a primate horde for its predecessor, while *creationists* would have to consent that even Adam and Eve in Paradise had to face the pre-existing order of creation. From the primacy of the order among primates or the divine order, can be deduced the concept of a super-individual *good* as the supreme authority guiding the actions of individuals. In this framework, the *naturalness* of laws refers to their derivation from the objective laws of the world, from objective morality and justice. Hence, a trend towards the internationalization of national economies can proceed and the individual and the nation would benefit only if their actions, in mutuality with actions of other

⁸⁶. Strauss op cit, p 8.

⁸⁷. A Grey, 1931, *The Development of Economic Doctrine, An Introductory Survey* (Longmans, Green & Co, London) p 367.

individuals and nations, are aimed towards the good of mankind. Therefore, the progress of this materialistic civilization can become the means to the achievement of higher non-material ends of justice and fairness.⁸⁸

The individual's economic activity would no longer be interpreted as self-fulfilling and emanating from purely subjective self-interest, but as an activity with a higher objective purpose. The alleged moral neutrality of economic activity would thus disappear. The notion of *homo oeconomicus* would likewise cease to be current since, if economic action based on profit-seeking motives is repudiated, then man's life would no longer be viewed in economic isolation but as a part of a moral whole. Similarly, economic laws would be neither natural nor primary but only expressions of purposive, functional interrelationships. And, without natural law's economic freedom and free competition, there can no longer be the correct foundation for economics, since economics as means for higher ends is no longer vested in the individual. The amoral state of affairs when economics assumes the position of dominance, when the economic categories of profit and utility are placed above moral norms of right or justice, would no longer exist.⁸⁹

As we approach the end of another millennium, it would be prudent to reject the premise of modern natural law and to reflect on reinstating the ideas of classic natural law as the guiding principles in the pursuit of the progress of economic doctrine. The words of Sir Thomas Browne (1605-1682) are of poignant interest:

Let not the Law of thy Country be the non ultra of thy Honesty; nor think that always good enough which the Law will make good. ... Live by old Ethicks and the classical Rules of Honesty. Put no new names or notions upon Authentic Virtues and Vices. Think not that Morality is Ambulatory; that Vices in one age are not Vices in another; or that Virtues, which are under the everlasting Seal of right Reason, may be Stamped by Opinion. And therefore, though vicious times invert the opinions of things, and set up new Ethicks against Virtue, yet hold thou unto old Morality; and rather than follow a multitude to do evil, stand like *Pompey's* Pillar conspicuous by thyself, and single in Integrity.⁹⁰

⁸⁸ See for example, F Oppenheimer, 1910, *Theorie der reinen und politischen Ökonomie* (Georg Reimer Verlag) pp 700-706.

⁸⁹ Rommen op cit, pp 202-203.

⁹⁰ T Browne, 1716, "Christian Morals," in *Religio Medici and Other Writings by Sir Thomas Browne*, with an Introduction by Prof C H Herford ([1934] J M Dent & Sons Ltd, London) [Everyman's Library, vol 92] p 238, Sect XI and Sect XII.

***Giving Content to Abstraction:
A reinterpretation and re-evaluation of Hayek's notion of
spontaneous order***

JOHN C W TOUCHIE*

Introduction

This paper attempts to reinterpret and re-evaluate F A Hayek's notion of spontaneous order. It does this through a shift of emphasis, moving away from a genealogical way of viewing this concept, and towards an examination of the contrast made between spontaneous and organizational order, and this contrast's relationship to significant issues of conduct governance. The paper demonstrates that Hayek's notion of spontaneous order can be distinguished from organizational order, and that the basis of this distinction is intimately related to arguments concerning the nature of abstraction. The discussion centres around an emphasis placed upon the significance of the reference properties of governance systems, with the argument being that the degree of abstraction is a property of decisive importance for distinguishing between, and analyzing the capacities of, different methods of conduct governance.

The paper then casts a critical glance at the treatment of F A Hayek's spontaneous order thesis in Alan Haworth's book, *Anti-Libertarianism: Markets, Philosophy and Myth* (1994). In his work Haworth dissects the arguments of some of the leading writers of libertarianism and argues that libertarianism is not much more than a statement of faith (or as the back jacket of the book fittingly puts it, a "market romance"). Hayek is included in this work because Haworth views him as a "guru for libertarians", ie "almost always hostile to state and government" (Haworth 1994, 120). Though Haworth recognizes that "Hayek thinks that government intervention is sometimes justified, his view is that in reality, it is hardly ever justified" (Haworth 1994, 120). Thus, Hayek's inclusion comes about because of his alleged political and moral prescriptions.

Anti-Libertarianism presents a starkly political interpretation of Hayek. I want to argue against this. I will try to show that interpreting Hayek on political lines ignores certain points of fundamental importance, points which can only be appreciated if one shifts the focus from one of political issues to one concerned

* *I am grateful to Beverley Brown, Neil MacCormick and Karen Touchie for discussions, encouragement and advice. The usual caveat applies.*

with the properties of conduct governance mechanisms. It is because the political interpretation of Hayek's work is such a popular one,¹ and because Haworth's misconceptions are so widely held and frequently repeated, that his erroneous critiques become of interest. In examining the strands of Haworth's analysis, and his examination of what he terms "the spontaneous order thesis", I hope to demonstrate that the spontaneous order thesis is based on Hayek's interest in conduct governance mechanisms, as opposed to being predicated on a particular political ideology; that spontaneous order can be distinguished from organizational order; and that such a distinction is both a possibility and a practical necessity when considering issues of conduct governance. In the conclusion I present some final thoughts as to why I believe Hayek's political and normative conclusions are not simply the expression of a political preference.

There are a couple of points to note before proceeding to the main body of the paper. First, it should be stated from the outset that my intention in this paper is to shift the focus of discussions about spontaneous order onto its relationship to issues of conduct governance, and away from what might be called its genealogical aspects. This examination of the causal origins of order is not the central concern of this paper, and in relation to discussions of conduct governance I will be arguing that such a perspective is both inappropriate and misleading. From the standpoint adopted in this paper, not everything that evolves is a spontaneous order. Furthermore, when one wishes to investigate issues in conduct governance, such a belief is both mistaken and pernicious.

Associated with this are serious reservations as to the applicability, as typically defined, of Hayek's notion of order to issues in social theory more generally. The goal of this paper in this regard is to lessen some of these reservations by restating this thesis in a form which is more amenable to social theoretical investigations.

Finally, and in line with this goal, it should be emphasized that this paper focuses on the *contrast* between spontaneous order and what Hayek terms "organizational" forms of order. In stressing this contrast, the paper attempts a shift in perspective, away from the order of actions that Hayek refers to as spontaneous or organizational, and onto the properties of the governance mechanisms which underlie such a characterization. This shift allows one to see clearly that it is the contrast between the two forms of order that is of significance for legal theory. Moreover, the distinction between the two types of ordering principle is in turn related to the central argument of this paper, this being that it is the *degree of*

¹ Some notable examples include Kukathas (1989), Gray (1986), Rowland (1987), Tomlinson (1990), and Thomson (1991).

abstraction of the references of a governance system embedded within a social order that lies at the heart of the definition of spontaneous order. The degree of abstraction is essential to the distinction between spontaneous and organizational ordering forms. Furthermore, it is the way that abstraction is conceptualized and operationalized that is essential to defining the properties of conduct governance mechanisms.

In attempting such a shift in perspective, it is perhaps inevitable that other perspectives on Hayek's spontaneous order thesis are given short shrift. In particular, two of the most influential studies of Hayek's work, John Gray's *Hayek on Liberty* (1986), and Chandran Kukathas' *Hayek and Modern Liberalism* (1989), receive only a brief mention.² The primary reasons for this, as discussed at greater length in the main body of the paper, are that (a) for the most part both Gray and Kukathas adopt a genealogical perspective on spontaneous order, and (b) they show little interest in developing the contrast between spontaneous and organizational forms of order, and pay little attention to the implications of this contrast for issues of conduct governance. In fact, the focus of these two authors is almost exclusively on spontaneous order, with their discussion proceeding as if the differences between the two forms of order were obvious. Yet if there is one thing that the discussions of this distinction in the literature on Hayek have demonstrated, it is that these differences are not obvious, nor well understood.

The reasons, then, for not addressing or building upon Gray's or Kukathas' insights in this paper are that they devote little time to the difference between spontaneous and organizational order and pay little attention to the properties of conduct governance mechanisms which form the basis of such a distinction.³ In essence, their discussions take place in a mechanism vacuum, in which the term "spontaneous" has only a vague meaning. And this is not the only difficulty. Flowing from this, and in a sense based on their lack of insight into the mechanisms which support the distinction between spontaneous and non-

² There are other surveys of Hayek's work which merit a mention, including Barry (1979) and Butler (1983).

³ There are two excellent short surveys of Hayek's legal theorizing – Ogus (1989) and Thomson (1991) – though each has its own flaws. Consider the latter: Thomson's view that Hayek has strong functionalist tendencies is indeed accurate, but his critique from a Habermasian perspective which implicitly assumes that a strong line can be drawn between issues of functionality and issues of meaning is itself open to objection. For what is probably the most comprehensive development of this point, see Millikan (1984; 1993), and for similar views, see Dennett (1987; 1995). For an objection to Ogus' criticisms of Hayek's theorizing, see chapters six and eight of Touchie (1997).

spontaneous order, is a tendency to view too wide a range of evolved phenomena as being spontaneous orders. Hence Gray's suggestion that it might be profitable to model totalitarian forms of government as spontaneous orders⁴ – even though Hayek viewed totalitarian forms of government as prime examples of mechanisms governing what he calls organizational order, ie non-spontaneous order. Or, similarly, Kukathas' comment that Hayek has the “tendency to call anything grown and unplanned a spontaneous order” (Kukathas 1989, 202) – even though Hayek warns that the “spontaneous character” of an order must be distinguished from the spontaneous character of its origin (Hayek 1973, 46). It is, in the final analysis, this lack of understanding of the essential characteristics of the concept of spontaneous order, particularly when contrasted to non-spontaneous order, coupled with their lack of insight into the mechanisms which are essential to supporting each type of order, which renders their analyses suspect, perhaps even misleading, and ultimately of little value to the work at hand.

A Summary of Hayek's Theory of Spontaneous Order

At this point that it might be helpful to produce a rough outline of Hayek's notion of spontaneous order, whilst at the same time highlighting certain definitional and epistemological prerequisites for an accurate understanding of the thesis. So what is the spontaneous order thesis? Consider Hayek's comments on the matter. The spontaneous order thesis is concerned with:

... the old insight, well known to economics, that our values and institutions are determined not simply by preceding causes but as part of a process of unconscious self-organisation of a structure or pattern ... This insight was only the first of a growing family of theories that account for the formation of complex structures in terms of processes transcending our capacity to observe all the several circumstances operating in the determination of their particular manifestations. (Hayek 1988, 9).

As Hayek points out, there has been an enormous growth of research into “the evolutionary formation of such highly complex self-maintaining orders”,⁵ under various names “such as autopoiesis, cybernetics, homeostasis, spontaneous order,

⁴ See the discussion in Gray's *Hayek on Liberty* (1986, 120-121).

⁵ For examples of “self-maintaining orders”, see Hayek's *Law, Legislation and Liberty*, vol I, *Rules and Order* (1973, 35-54) and *The Fatal Conceit* (1988, *passim*).

self-organisation, synergetics, systems theory, and so on ...” (Hayek 1988, 9).⁶ The spontaneous order thesis is thus concerned with *how* and *why* things are ordered. It focuses on the mechanisms behind that which appears as orderly.

Hayek’s specific thesis is that there are two fundamental types of ordered systems: spontaneous and organizational. Basically, organizational orders are systems which exhibit order based on a high degree of conscious purpose and control. Spontaneous orders, on the other hand, are systems the ordering of which exhibits a lower degree, or lack, of conscious purpose. Such spontaneous orders have not necessarily been designed with a conscious purpose in mind, and their ordering does not manifest anyone’s particular purpose. An example of a spontaneous order would no doubt be useful.⁷ Imagine you are at a dinner party, and people are interacting as people do at such events. If one observes carefully, one might discern numerous patterns of behaviour. One individual might conform to a pattern of talking very loudly. Another might continually stare at their shoes. Now, some of these regularities of action might be connected only to these particular individuals. Such idiosyncratic patterns are not of much interest for the spontaneous order thesis. There are, however, two types of regularities which *are* of interest. First are patterns which are more homogeneous across individuals. I will not look at these for the moment, but will return to these when I examine the *rules* of a spontaneous order. Second, there are patterns which are social (ie interpersonal). These patterns *between* individuals are one way in which social interactions might be thought to be orderly (ordered). These social regularities of action constitute an emergent⁸ system which is generated by the individual interactions with, and mutual adjustment to, the actions of others. What is created, then, is a situation where numerous inter-personal (social) patterns (regularities) of conduct exist even though it was not necessarily the intention of any of the

⁶ One might also refer to Hayek’s discussion in *Law, Legislation and Liberty*, vol III, *The Political Order of a Free People* (1979, 158-159).

⁷ Hayek provides many of his own; see, for example, his discussions in *The Counter-Revolution of Science* (1979a, 141-152), *Studies in Philosophy, Politics and Economics* (1967, 66-81), *The Fatal Conceit* (1988, 11-28), and, in particular, *Law, Legislation and Liberty*, vol I, *Rules and Order* (1973, 35-54).

⁸ For more on this notion, see for example P M Churchland (1988, 12-13).

individuals involved that such social patterns should emerge.⁹ Such an emergent system of patterns – of regularities – constitutes a spontaneous order (of actions).

Up to now I think the discussion has been relatively straightforward. However, for Hayek there is a crucial distinction between the *rules* that individuals are following and the overall *pattern of action* which is generated by rule-following. The implications of this difference are often not appreciated. What, then, constitutes a rule of a social order in the above discussion? The answer to this is ambiguous. It could be that *each* of the *social* regularities of action is a rule of a social order (of action). Or – and this is the usage Hayek employs¹⁰ – it could refer to the common set of rules of conduct obeyed by all (or most) of the individuals. Hayek's usage, then, is as follows: an *order* refers to a *system* of social patterns of action (regularities of action), while a *rule of an order* refers to a *regularity of conduct* obeyed by most of the individual members of some such system.¹¹ Hopefully it is clear that these two things are not identical. A social order is a phenomenon produced by the combination of the actions of many individuals. A rule of an order is a rule of conduct which is obeyed by most of the members of a particular group.¹²

⁹ It is of decisive importance to Hayek's social theory that one recognize the possibility of emergent social phenomena. Indeed, "if social phenomena showed no order except in so far as they were consciously designed, there would be no room for a theoretical science of society and there would be, as is often maintained, only problems of psychology" (Hayek 1979a, 69) for "social theory begins with – and has an object only because of – the discovery that there existed orderly structures which are the product of the action of many [individuals] but are not the result of human design" (Hayek 1973, 37).

¹⁰ As in Hayek (1973, 96-97).

¹¹ This is not to claim that such rule systems are *uniquely* related to particular orders of actions. As Hayek notes, "it is at least conceivable that the same overall order of actions may be produced by different sets of rules of individual conduct" (1967, 68). This being said, however, it should be noted that for particular orders of actions, the term "a rule of the order" refers to a regularity that is generally obeyed by most individuals of that system. The importance of this qualification emerges when one turns attention to legal forms of order.

¹² It would be a mistake to think that just because a conceptual distinction has been introduced, between rules and orders of action, that there are no theoretical difficulties associated with sustaining this distinction, or that there are not significant conceptual issues to be addressed when one turns to a discussion of the notion of rules and rule-
(continued...)

So what makes a social order a spontaneous order? Is it that the resultant order is governed by rules which have been generated “spontaneously”? This cannot be true, for Hayek states that even where rules are dictated in advance the order that results could be a spontaneous order (Hayek 1973, 45-46). Instead, I would argue that whether or not a social order is spontaneous depends on two inter-related criteria: the specificity/abstractness of the rules governing the order, and the connection of these rules to the intentions, goals and values of the individuals acting within that order. Once the implications of this way of viewing the spontaneous/organizational dichotomy have been grasped – and there are many implications, some of them of elusive subtlety – the relationship between spontaneous and organizational order, and between the rules of the two types of order, becomes relatively straightforward.

Consider these two criteria, by way of an example. Imagine a dinner party, similar to the above, but different in that all the individuals present were given general rules to obey before the interactions began (ie “be courteous to all you meet”, etc). In this situation, the *rules* which the individuals obey are not of “spontaneous” origin, but the *patterns* which emerge from the various interactions and mutual adjustments *could* be constitutive of a spontaneous order.¹³ Now, how

^{12.} (...continued)

following. For instance, how do you know someone is following a rule (and not merely acting contingently, without regularity, in an incidental way that cannot be described by a rule)? And further, how do you know they are following it *correctly*? It would seem that discussions of rules and rule-following presuppose that there exists a framework that allows one to (a) pick out what distinguishes a rule from its exceptions, and (b) say whether one is following a rule correctly or not. But what is the nature of this framework? Where does it come from? And what is its content? The answers to these questions will not be discussed here, but are instead the topics on an ongoing research project I am engaged in at the moment.

^{13.} This illustrates one unfortunate aspect of Hayek social theory: his terminology. The use of the term “spontaneous” is particularly unfortunate. It seems that “spontaneous” can refer either to the spontaneity of the actions of the individuals involved or to that fact that a system has arisen or evolved spontaneously. Many commentators (Haworth included) have made the mistake of considering it to mean the latter, or of not defining what it is that differentiates a spontaneous from a non-spontaneous system. Given the ambiguous nature of the term “spontaneous”, this confusion is perhaps understandable. In the context of the terms “spontaneous” and “order” even Hayek seems to recognize that it has caused difficulties for his readers:

[i]t was largely the growth of cybernetics and the related subjects of

(continued...)

is one to predict whether or not the resultant order would be spontaneous or organizational? I would argue that the rules themselves have certain properties that, when combined with individuals trying to conform to them, have the capacity to transform the order of actions that results from obeying these rules from a spontaneous order to one of organizational order, and that these properties are those of the two criteria introduced above. The argument, then, is this: *if* the rules that were handed out to the interacting individuals were to become more specific and refer to more and more specific actions, and *if* individuals were assumed to be striving to conform to these rules, *then* the system of actions which formed from following these rules would gradually result in a transition from a spontaneous order to an organizational order. This transition, if it is to occur, would depend upon two factors: the degree of abstractness of the rules the individuals are obeying, and the connection of these rules to the goals and values underlying the order. To put it crudely, a rule of spontaneous order is abstract enough (in the sense elaborated below) if it allows individuals to obey the rule and at the same time to achieve their own goals. A rule of organizational order is *relatively* less abstract and restricts to a *greater degree* the ability of an individual to follow their own goals.¹⁴

The Meaning of “Abstract”

To flesh out the distinction between the two types of order it is probably necessary to give the reader a couple of warnings concerning terminology. Just as the term “spontaneous” in spontaneous order is apt to be misinterpreted, so is the term “abstract” as used in the discussion above. An “abstract” rule does *not* refer merely to the mode of expression of a rule. Expression is insufficient to define what is

^{13.} (...continued)

information and system theory which persuaded me that expression[s] other than those which I habitually used may be more readily comprehensible to the contemporary reader. Though I still like and occasionally use the term ‘spontaneous order’, I agree that ‘self-generating order’ or ‘self-organizing structures’ are sometimes more precise and unambiguous and therefore frequently use them instead of the former term. Similarly, instead of ‘order’, in conformity with today’s predominant usage, I occasionally now use ‘system’. (Hayek 1979, xii)

^{14.} It is perhaps worth noting that a command (a particular type of rule of an organizational order) is even more restrictive than a rule of organizational order, and produces a situation in which in many cases obedient individuals would merely be implementing the goals of the commander.

meant by abstract, for the most detailed particulars can be defined in abstract terms.¹⁵ Instead, “abstract” refers to the scope of a rule. *That is, “abstract” refers to the spatio-temporal reference of a rule.* This means that the more space and time which is governed by a rule, the more abstract the rule. “Abstract” in this sense refers to the rule’s *content*, and not to its form. “Abstract, general rules” refer to rules which are relatively less space-time specific than rules which are particularistic and concrete. That is, the conditions they describe could occur in a larger set of space-time locations. What distinguishes rules of spontaneous order from rules of organizational order is their generality of reference to time and space. The rules of organizational order are specific and particular precisely because they refer to more specific space-times than do rules of spontaneous order. An example might be useful. Consider three rules picking out particular things: a bottle of orange juice, a bottle of juice and a bottle. For the above definition of “abstract”, the rule picking out a bottle of orange juice is more space-time specific than the one referring to a bottle of juice, and the rule picking out a bottle of juice is more space-time specific than the bottle rule. What this means is that the set “bottle of orange juice” occupies a smaller space-time location than does the set “bottle of juice”.¹⁶ Of course, all three seem to be unlimited in the time and space to which they refer and hence all three could be called “abstract” rules.¹⁷ But *relatively* speaking, if a rule is operating in a particular environment, the relationships concerning the relative degree of specificity will then hold.

Objections to the Interpretation of this Paper

The discussion above assumes that the best way of characterizing the difference between spontaneous and organizational order is through a consideration of the properties that govern an order. It is possible, however, to characterize spontaneous order in a different way. Indeed, Hayek’s dichotomization of order, into spontaneous and organizational forms, is readily interpretable as a distinction applying to the different ways in which such order comes into existence. This

¹⁵. As noted by Hayek (1976, 35).

¹⁶. It might be noted that although this example describes references with respect to objects, the argument also applies to actions, relations etc, in so far as the addition of detail implies that a reference governs a smaller set of phenomena than it would without that detail.

¹⁷. This “unlimited” reference is, I think, more apparent than real, however, for there are in most cases restrictions – at a minimum, implicit ones – that limit the scope of reference of system of rules. In a legal context, see the discussion in Fuller (1969, 106-118; 1968, 63-167).

genealogical perspective argues that there are three ways one can dichotomize order in spheres other than the social. First, one can point to order which seems to result from “forces of nature”. Hayek’s references to the order found in crystals, and in magnetic fields, are examples of this form. At the other extreme, one can talk about order imposed on the external world by the actions of a conscious, purposive, agent. This can be referred to as order brought into existence by “conscious design”. In between these two extremes lies a third form of order, order brought about by “the accumulation of design through evolution”. One could point to an evolved organism as an example of order that belongs to this third form.

It is important to note that there is in some senses a hierarchy of ordering principles underlying the discussion above. What this means is that both order from “conscious design” and order through “the accumulation of design through evolution” implicitly presuppose, to varying degrees, the existence of order resulting from “forces of nature”, and that order from “conscious design” also presupposes, to varying degrees, the existence of order resulting from “the accumulation of design through evolution”. This is not to say, of course, that order based on “conscious design” has no effects on both of these other forms of order – a difficult issue to which I shall return momentarily.

When considering social order, interest in order based on “forces of nature” fades very much into the background, though it is, of course, presupposed to exist in any such discussion. In social theory, the ordering principles of interest are primarily order resulting from “the accumulation of design through evolution”, and that which results from “conscious design”.

The difficulties with a genealogical interpretation of spontaneous order emerge when we ask the question of the relationship between these three sources of order and Hayek’s spontaneous/organizational order dichotomy. It seems clear that order based on “forces of nature” would be classified as spontaneous order, while at the other extreme it seems reasonable to argue that order through “conscious design” would be associated with organizational order. Unfortunately, the latter association is not what Hayek has in mind, for he explicitly states that a spontaneous order can at least in one sense be consciously designed. To be more precise, he states that the *governance mechanism* for a spontaneous order, but *not* the spontaneous order of actions itself, can be consciously designed. What exactly does this imply?

There are three implications that are of some importance. First comes the insight that it is possible to consciously design the pre-conditions for a spontaneous order to come into existence and be preserved. Second comes the idea that there is an important distinction to be made between the mechanism governing a spontaneous order and the spontaneous order itself. Third is the implication that

there is something about the *properties* of a governance mechanism that is crucial to the existence and preservation of a spontaneous order.

All of this leads to the conclusion that if we want to distinguish between spontaneous and non-spontaneous forms of order, we should turn our attention to the properties of the governance mechanisms and seek to discover what it is about them that is supportive or incompatible with the existence and preservation of spontaneous order.

This call for a change in perspective is closely related to what is perhaps the single most important weakness of Hayek's thesis of spontaneous order, this being that it does not clearly state the relationship between the three types of order outlined above, and their relationship to spontaneous order. Related to this is a lack of attention given to the effect of order based on "conscious design" on the two other forms of order. Assume for the sake of argument that order through "the accumulation of design through evolution", be it genetic or cultural, comes about without conscious design. Is this spontaneous order? When one is referring to the spontaneous order of a living organism, one can see that there is an interdependent order that exists, with each of its constituent elements adjusted to the operations of others. It seems to make sense to describe such an order as coming into existence and being preserved through "the accumulation of design through evolution", presupposing, of course, a foundation based upon the existence of "forces of nature". But what, one might ask, of conscious adjustments that are made to this order? Are these not made through "conscious design"? And if so, do such changes transform the order into an organizational one? All of this leads to the question of the transition point between spontaneous and organizational order, which I would argue cannot be addressed simply by focusing upon the *source* of the order.¹⁸

To appreciate the limitations of a genealogical perspective, turn for the moment to the enterprise of legal governance. Hayek argues that in this case, legal mechanisms govern a spontaneous order that exists in the interconnected, and mutually adjusted, actions of the individuals that are governed by the mechanisms of the legal system. But how, one might ask, can we tell if this order of actions is spontaneous order? It might seem that what is required is an examination of the origins of the actions constituting the order. If these actions are based upon a

¹⁸ It should be noted that while consciousness itself might be order *based* upon "the accumulation of design through evolution" and "forces of nature", this does not imply that order based upon "conscious design" can somehow be *reduced* to order based on these other two forms. This negative result is, in fact, one of the primary, if implicit, arguments made in Hayek's *The Sensory Order* (1952, *passim*).

consciously chosen, centralized set of goals, then one might think that the order is one of organizational, and not spontaneous order. Yet this is misleading, for as I shall argue, it is the properties of these goals, and not necessarily the fact that they are consciously chosen or chosen in a centralized manner that is crucial to whether the order that forms is spontaneous or not. Hayek has a similar point in mind when he points out that the governance mechanism of a spontaneous order can be consciously designed. It is not, then, the fact that goals are consciously chosen, nor the fact that they are chosen in a centralized manner, that is decisive to the determination of whether or not the resultant social order is spontaneous or not. Rather, it is the properties of the goals themselves, and the properties of the governance mechanism which supports these goals, that are significant. Once again, we are led back to the view that, if we wish to understand Hayek's notion of spontaneous order as applied to social order, it is essential to turn the focus of our attention onto the properties of the mechanisms that govern conduct.

Implications

Let us return, then, to a characterization of the types of order on the basis of the degree of abstraction of the references of their governance mechanisms and examine a number of its implications. The first point to note is that the degree of abstraction of a system's references is intimately related to the flexibility of a system in adapting to changes in its environment. As I discuss at much greater length elsewhere,¹⁹ the adaptability of systems governed by relatively abstract rules is greater than that of systems that lack such rules. The intuition behind this result is that while the rules governing an organizational order are perhaps better able to implement more specific purposes, this very ability restricts their ability to adapt to changes in the environment for which these purposes are ill-suited.

The second point which flows from this way of viewing the spontaneous/organizational order dichotomy is an epistemological one. The concrete/abstract dichotomy is of decisive importance because a spontaneous order may be much more complex than an organizational order. Organizational order is "relatively simple or at least necessarily confined to such moderate degrees as the maker can still survey"; they are frequently "*concrete*" in the sense that "their existence can be intuitively perceived by inspection" of the external physical order; and finally, "having been made deliberately" or consciously "they invariably do (or at one time did) *serve a purpose* of the maker" (Hayek 1973, 38). A spontaneous order, by contrast, has "a degree of complexity" that is "not limited to what a[n

¹⁹ In Touchie (1997, ch 6).

individual] human mind can master”; “need not manifest itself to our senses but may be based on purely *abstract* relations between elements” both of which “we can only mentally reconstruct”; and “not having been made it *cannot* legitimately be said to *have a particular purpose*” (Hayek 1973, 38, italics in original). What should be emphasized in this is that the reason that a spontaneous order is capable of a high degree of complexity (relative to organizational order) is that it is governed by abstract rules that govern only select aspects of the order. Given that this is the case, and given that the complexity of a spontaneous order is the primary reason why such order must be governed by rules that only take into account select aspects of an order, it is important to realize that there are thus limitations on the degree that one can control a spontaneous order. In other words, if one wishes to achieve certain goals within a spontaneous order, while at the same time preserving the spontaneous order of actions, one must acknowledge and respect the limitations on one’s ability to achieve these goals that are implicit in the nature of the mechanism governing and supporting the order. In particular, one’s ability to implement relatively specific goals and relatively particular purposes is limited to some extent by the requirement that the rules governing a spontaneous order be relatively abstract. Thus, complexity comes at a price, and the cost of preserving the governance properties associated with spontaneous order is in terms of goals that are incompatible with its governance structure. The upshot of this is that the desire to preserve a spontaneous order implies there are goals that cannot be pursued through a resort to the governance mechanisms capable of supporting this type of order. In this regard, Hayek’s criticisms of social (distributive) justice²⁰ are but one manifestation of this more general principle.

Intertwined with all of this are the implications of adopting the perspective on spontaneous order advocated in this paper for the notions of “function” and “purpose”. Hayek claims that while one cannot assign a human purpose to a spontaneous order we can legitimately speak of the purposes of its elements²¹ and, as well, attribute a *general* sense of purposiveness to the action of the elements in the sense that “their actions tend to secure the preservation or restoration of that order” (Hayek 1973, 39). In this context, Hayek’s notion of such a general purpose might equally be referred to as one of the *functions* of these actions. It is this move

²⁰. For the most detailed statement of his position, see Hayek (1976, *passim*).

²¹. For example, it is difficult to speak of the *concrete* purposes of a language (though not of its general “purposes”, or functions), but it is not as difficult to talk of the concrete purposes of individual terms, or of the individuals using that language. It is important to remember that Hayek is using “purpose” in the sense of very concrete ends and not in the more general sense with which one might be familiar.

away from the particular purposes of individuals, and towards the general “purposes”, or functions, of systems (and social systems in particular) that is apt to cause confusion.

Characterizing the nature of an order on the basis of the degree of abstraction of the references of their governance mechanisms gives some insight into certain confusions that have arisen with respect to Hayek’s notion of “function” and “purpose”. The fact that the degree of abstraction is a matter of degree, and the related point that there are a variety of different perspectives that one might adopt on a system, each based on a different level of abstraction, must be kept in mind when turning to Hayek’s discussion of spontaneous and organizational order. In particular, there are a number of key conceptual points that should be emphasized before proceeding to an examination of what it is that Hayek means when he refers to purpose and function in the context of the concept of spontaneous and organizational order. First, it is essential to distinguish between functions and purposes at different levels of analysis, ie at a holistic level, at the level of the elements, at the level of their component systems, and so on. It is of the greatest importance not to conflate the purpose or function of a system existing at one level of analysis with a purpose/function of a system existing at another level of analysis. Thus, while one might wish, for example, to inquire into the functions of a particular legal rule, it is important not to conflate this with the functions of the system of legal rules in which it is embedded, or with the functions of a legal system more holistically considered.

This leads to a second point of no small importance. Discussions of functions and purposes presuppose the existence of a background environment that acts as a baseline for the “normal” function of the system in question. The function and purpose of a system cannot be disentangled from the environment of the system and it is, I think, meaningless to speak of the function of system without at least implicitly presupposing an environment in which such a system operates. This is not to say that any discussion of the functions of a system must spell out *in detail* the environment in which such a system operates, but rather to emphasize the point that the functioning of a system, and the functions that it performs, are inherently and inseparably tied to the environment in which it operates; further an intelligible discussion of the function of a system must invariably presuppose the existence of an environment having, at a minimum, certain *general* features that give content to the notion of function in the first place. Much confusion can be avoided by keeping in mind that a function might be well-adapted in certain environments while being mal-adapted in others.

Hayek on “Purpose” and “Function”

All of this is related to a conceptual point that is integral to Hayek’s theorizing and is continually stressed in his writing on spontaneous order: that the rules of a spontaneous order are “independent of any *common* purpose” (Hayek 1973, 50, my italics). What precisely does this mean? In this context, “purposes” refers to the goals of individuals, the constituent elements of a social order. But why, one might ask, does Hayek claim that there are no *common* purposes in a spontaneous social order? To answer this question, one has to consider Hayek’s own characterization of the governance mechanisms of the two types of order.

To Hayek, organizational order is based on *rules* of organizational order and commands.²² Commands determine “the function to be performed by each member”, “the purposes to be achieved, and certain general aspects of the methods to be employed” (Hayek 1973, 49). The rules of organizational order “depend on the place which [they have] been assigned and on the particular ends which have been indicated for [them] by the commanding authority” (Hayek 1973, 49). To be precise, we are talking of “rules which *at least to some degree* are specific to the functions assigned to particular persons” (Hayek 1973, 50, my italics). An organizational order is a “fixed structure” in which “the place of each individual ... is determined by command” and their actions are governed by rules of organizational order. To summarize, then: in an organizational order we find (a) a structure, and in particular, desired ends, determined by specific individuals, and (b) the rules that each individual obeys are conditional on the individual’s position in this structure.

The situation is quite different for spontaneous order. Rules of a spontaneous order are “independent of purpose”, or more accurately, “independent of any *common* purpose” (Hayek 1973, 50, my italics). Moreover, the rules of a spontaneous order are “the same, if not necessarily for all members, at least for whole classes of members not individually designated by name. They must be ... rules applicable to an unknown and indeterminable number of persons and instances”²³ (Hayek 1973, 50). What this means is that, in a spontaneous order,

²². A command differs from an abstract rule in that (a) it necessarily presupposes a person who has issued it and (b) it is less general and abstract (Hayek 1960, 149).

²³. That is, universal over a particular set.

rules (a) have no common ends, and (b) are not conditional on the relative position of an individual within a fixed²⁴ structure.²⁵

Hayek on “Goals” and “Values” and Their Relationship to the Spontaneous/Organizational Order Dichotomy

It is of some importance to keep in mind that Hayek’s discussion rests upon a background distinction which is crucial to his argument, but which is rarely emphasized or discussed. This is his contrast between goals (ends) and values. For the moment, consider the former, and in particular, a contrast between two distinct types of goals (two types of ends): conditional and ultimate. What is it that makes “ultimate” goals ultimate? And what differentiates them from conditional goals? In a sense, conditional goals are manifestations, at a particular point in time, of ultimate, and more encompassing, goals. Goals are conditional because they condition on particulars – particular times, places, etc.²⁶ As conditional goals become more abstract, they transition into ultimate goals, which are less dependent on the conditions of the moment, and the particular, temporary will of the individual. Note that if over a period of time one *continually* follows a conditional goal, this sequence of conditional goals might equally be viewed as an ultimate goal. That is, conditional goals transition into ultimate goals in that a conditional goal that extends over time and is repeatedly striven for can become, in effect, less conditional and can be transformed into (revealed as) an ultimate goal. In this light, conditional goals might be considered to be the consciously chosen over manifestations of ultimate goals. As such, conditional goals have a relatively brief temporal existence relative to ultimate goals.

Now consider the difference between goals and values. What is it that constitutes this difference? First, and to a matter of degree, goals seem to be the subject of choice and of consciousness, ie one *can* consciously choose between them.²⁷ One can do this, however, only because one accepts certain values

²⁴ Fixed in the sense that the position of any individual is *determined* by the authority of particular individuals; that is, the rules which govern the actions of that individual are, in important aspects, determined by an authority.

²⁵ In the sense of “fixed” by the ends of another.

²⁶ Within a Hayekian framework, they are the “particular expected effects which motivate particular actions” (Hayek 1976, 14).

²⁷ That is, a goal is “most of the time” the focus of “conscious attention” and will “normally be the result of the particular circumstances in which [one] finds [oneself] at
(continued...)

unquestioningly. Goals are dependent upon certain values in the sense that goals presuppose the existence of these values. Such values form the foundation for goals, often existing as unquestioned “givens” which are simply presumed to exist.²⁸ In other words, goals exist *within* a framework established and sustained by the continuing existence of values.

Second, and related to this, values are differentiated from goals by being temporally more enduring. This difference in the degree of abstraction from the particulars of space and time is of crucial importance, for in the same way that conditional goals transition into ultimate goals as they persist over time, so do goals shade into values as they become more enduring and more continual in exerting their effects – ie as they become more long-term, as they transition from “executable” to “a standing obligation” (Hayek 1973, 127), and as they are less and less the objects of conscious choice.

Within a Hayekian framework there are, then, a variety of differences between goals and values, most of which overlap to a certain extent and which tend to differ by a matter of degree. These differences are, however, based upon a single distinguishing property: values are, within this framework, more *abstract* than goals.²⁹ This manifests itself in a variety of ways. First, the element of conscious

²⁷. (...continued)
any moment” (Hayek 1978, 87).

²⁸. On this view, it is important to keep in mind that the fact that one *has* certain values does not imply that this came about as a matter of choice, nor does it imply that one is conscious of, or can articulate, what these values are. The fact that one has values does not imply that one consciously knows what they are.

²⁹. In this light, consider Hayek’s discussion of these two terms. Goals, he stipulates, are the “particular expected effects which motivate particular actions” (Hayek 1976, 14), and are, under these stipulative definitions, associated with “will” (or “willing”), which is “the aiming at a particular concrete result which, together with the known particular circumstances of the moment, will suffice to determine a particular action” (Hayek 1976, 13). To Hayek, willing is necessarily associated with concreteness, in that willing “*always* refers to particular actions serving particular ends” (Hayek 1978, 85, my italics). Moreover, under this notion of willing “the will ceases when the action is taken and the end (terminus) reached”, ie to Hayek “an act of will is always determined by a particular concrete *end* (terminus) and the state of willing ceases when the end is achieved” (Hayek 1978, 86).

Contrast this with his discussion of values. These are “*generalized aims*” (Hayek 1978, (continued...))

choice is more applicable to goals than it is to values. This can be taken to mean that values are often present without the choice, or even conscious knowledge, of the individual.³⁰ It is probably of more importance, however, to interpret this as meaning that, relatively speaking, purposive activity, in the sense of “acting for a purpose”, presupposes the possibility of striving for alternative goals over which one consciously chooses. Under the framework elaborated above, such goals rest upon an abstract foundation of enduring values which act as the pre-conditions for such choice. In this sense, values would not be the *object* of choice, but would instead be the abstract framework upon which the possibility of choice between goals depends. A second manifestation of the greater degree of abstraction of values is that goals, relative to values, are relatively short-term, and are in many cases achievable and hence terminate when and if they are achieved. Values, on the other hand, are continual, long-term, and ongoing.³¹

The importance of all of this emerges when one realizes that Hayek’s argument centres around the claim that there is an intimate relationship between the governance properties of rules of conduct and whether these rules serve (concrete) goals or (abstract) values. In effect, the claim is that rules serving particular goals are more concrete (in terms of the space-time specificity of their reference) than rules serving values. Why would this be the case? The general idea is that rules of organizational order work *within* certain environments presupposed by these rules. This restriction on the environments to which these rules are applicable, in addition to the restrictions which flow from the association of these rules with the (concrete) goals of specific individuals, renders them less abstract than rules of

²⁹. (...continued)

86), “generic *classes* of events, defined by certain [abstract] attributes”, existing as “a *lasting* attitude of one or more persons to a *kind* of event” (Hayek 1976, 14, my italics). They are associated with abstract “opinions”, which Hayek stipulates as “lasting or permanent disposition(s) towards (or against) *kinds* of conduct”, which “have no [particular] purpose known to those who hold them” (Hayek 1978, 85), and which are in many cases held without “any known reasons for them except that they are the traditions of the society in which they have grown up” (Hayek 1978, 85).

³⁰. As Hayek puts it, values are “largely culturally transmitted and will guide the action even of persons who are not consciously aware of them” (Hayek 1978, 87).

³¹. These (matter-of-degree) differences are for convenience summarized below:

Goals – are concrete, ie they are

- (a) the objects of choice;
- (b) short;
- (c) achievable, terminable.

Values – are abstract, ie they are

- (a) the pre-conditions for choice;
- (b) lasting, enduring;
- (c) ongoing, perpetual, not terminable.

spontaneous order. In other words, it is because rules of organizational order presuppose the existence of a delimited sphere, within which certain (concrete) goals are striven for, that they are less applicable *across* different environments and hence more concrete than rules of spontaneous order.

Why, then, do rules of spontaneous order lack “common purposes”? They do so because Hayek defines “ends” and “purposes” as being relatively concrete and person-specific (Hayek 1976, 12-14) and because rules of spontaneous order serve abstract values, and not concrete purposes.³² Organizational order is such that the rules of the order, to some degree, aim at the achievement of particular individuals’ specific goals. A spontaneous order is one in which the rules of the order, though they may be used as tools by individuals for the achievement of their own particular goals, do not aim at the achievement of particular goals.

One important implication of this is that the rules of spontaneous order will be less space-time specific than rules of organizational order. That is, under the stipulative framework Hayek sets up, it can be said that to a matter of degree, the rules of organizational order are more context-specific (as they, to some degree, presuppose particular environments and embed particular individuals’ concrete goals³³) and hence are also more space-time specific. Another implication is that in obeying the rules of an organizational order, one’s actions will be to some degree contingent upon the goals of the organization. In other words, the rules of organizational order manifest (to some degree) the context-specific goals of the organization. The rules of a spontaneous order, on the other hand, allow the individuals who are obeying them to pursue their own goals to a much greater degree.³⁴

The Importance of the Abstract/Concrete Distinction

The discussion above has attempted to spell out the differences between spontaneous and organizational order. But what, then, is the importance of such a distinction? To Hayek, all social order is a mixture of the two types of order. But

³² As Hayek puts it, the rules of spontaneous order “serve not (concrete or particular) ends but (abstract and generic) values” (Hayek 1976, 14).

³³ Though as Hayek admits, “in most complex types of organizations ... little more than the assignment of particular function and the general aim will be determined by command of the supreme authority” (Hayek 1976, 50).

³⁴ One implication of all of this is that rules of spontaneous orders can be considered the *means* to different ends (ie the ends of those *using*, or following, the rules) whereas rules of organizational order will necessarily *embed* particular ends.

– and this is the decisive point – one cannot mix the two types of order in any proportion which is desired.³⁵ They are, in a sense, mutually exclusive. The argument presented here is that Hayek emphasizes the difference between the two types of order by emphasizing the abstract/concrete nature of the rules of an order. Why does he do this? The reason, it seems, is that Hayek is concerned with the *results* of following rules of different degrees of abstraction. Hayek's argument, briefly put, is that the order which results from following rules of organizational order is less diverse, less complex, less amenable to the possibility of objective judgment, and less likely to be able to fulfil the goals of the largest number of individuals. In Kantian terms, then, the ideal Hayekian society would be one in which everyone followed *their own* goals and values (ie one in which an individual pursued their own ends, observed their own values, while being governed by the same rules as everyone else). To put Hayek's fundamental concern another way (and very crudely): the important point is the number of people following their own goals and values in society. The fewer people following their own goals and values there are, the more a social order approaches an organizational order. The more people following their own goals and values there are, the more a social order tends towards a spontaneous order. Yet another way of looking at it would be to ask the following questions: (1) am I a means to someone else's ends and values? and (2) if so, am I achieving my own ends and respecting my own values at the *same* time?³⁶ In a spontaneous order, even if one is a means to someone else's ends, one has sufficient latitude to simultaneously achieve one's own goals and respect one's own values. In an organizational order, on the other hand, individuals other than the organizational goal-dictators achieve their own ends and values to a lesser degree; Hayek's main concern, then, is to maximize the chance that individuals with their own goals and values, which might not be known to anyone else, are able to achieve or respect them to the greatest possible extent.

The differences between the two types of order assume even more importance when one realizes that the above discussion is intimately related to Hayek's legal theory and in particular to the Hayekian notion of what it is that gives a governance mechanism its "legal quality". In an argument strikingly similar to Lon Fuller's, a Hayekian would argue that law is a mechanism concerned with regularizing

³⁵ As in Hayek (1973, 46).

³⁶ This is, of course, similar to one of Kant's elaborations of the "categorical imperative", as presented in his *Foundations of the Metaphysics of Morals* (1959, 47) and *Critique of Practical Reason* (1949, 87), and discussed at some length in Paton's study, *The Categorical Imperative* (1948, 165-179).

expectations and conduct,³⁷ and that it is this function – in contrast to arguments that emphasize the centrality of “authorization” – that distinguishes legal mechanisms from other governance mechanisms. Moreover, a regularization perspective leads one to make two related arguments, which I pursue at greater length elsewhere.³⁸ First comes the claim that one of the primary functions of legal mechanisms is to regularize conduct by filtering out particularity and concrete goals. Second comes the related argument that to regularize conduct, both the individuals obeying the law *and* the law-makers themselves must subject their conduct to the governance of rules.³⁹ Both of these arguments are based on the underlying idea that in a complex, *Gesellschaft*-type society, individuals must resort to governance by abstract rules if the regularity required by the other members of that society is to be generated and sustained. The rationale behind these two arguments is that legal mechanisms aim at regularizing conduct, and they strive for this by filtering out particularity, both in the goals that guide individual conduct, and in the activities of those who partake in the enterprise of subjecting individual conduct to the governance of rules.

None of this should be taken to imply that Hayek is arguing that individuals are not, or should not be, guided by concrete goals, nor that concretes are unimportant or irrelevant to issues of conduct governance. Instead, the argument is that abstraction is an essential element of conduct governance in complex societies, and that this being the case implies certain restrictions on the incorporation of concretes into conduct governance mechanisms. It is not, then, that concretes are unimportant, for Hayek is at pains to stress the importance of concrete knowledge, and the central role it plays within society.⁴⁰ Rather, what Hayek *can* be seen as arguing is that in some cases individuals have what can be thought of as a form of privileged access to their own concrete goals,⁴¹ but that this privileged access does

³⁷. As emphasized in Hayek’s later legal theorizing and, in particular, *Law, Legislation and Liberty*, vol I, *Rules and Order* (1973, 94-123 and specifically 112-115).

³⁸. See Touchie (1997).

³⁹. In the law-maker’s case, to the governance of the rules constituting Fuller’s “inner morality of law”. For more on this see Fuller’s *The Morality of Law* (1969).

⁴⁰. See, for example, his economic arguments in *Individualism and Economic Order* (1948) concerning the central role played by such forms of knowledge.

⁴¹. Note that this does *not* claim that individuals’ access to their own goals is somehow “transparent”, “unmediated”, or infallible. Nor does it imply that there is no interpretation required for one to “figure out” what their own beliefs are. Rather, the point being made is that if individuals have a different, and in some cases, closer,

(continued...)

not extend to the concrete goals of others. The implication of this for conduct governance is that individuals following their own goals are in a sense better positioned to integrate these goals into a framework of abstract rules based on values than would be the case in a scenario in which their conduct were guided by the goals of others. The claim is, then, that if individuals are forced to make reference to the concrete goals of others, this implies that in certain cases these individuals will have a greater difficulty in acting autonomously and in conformity with general rules based on general values.⁴² This implication is of some importance, for it feeds into the argument that if the rules governing interactions in a complex society become more concrete and function so as to implement the concrete goals of specific groups, spontaneous order becomes transformed into organizational order, and in the process a *Gesellschaft*-type society would change into a less diverse and less complex societal form. It is precisely this transformation which Hayek opposes.⁴³ Small wonder, then, that the distinction between the concrete and the abstract is of such importance to Hayek, for this distinction provides the basis for his legal theory, for distinguishing between legal mechanisms and alternative forms of governance, and provides an insight into a method whereby the complexity of a *Gesellschaft*-type society might be sustained.

Some Criticisms: Is the Spontaneous Order Thesis a Façade Masking a Libertarian Political Agenda?

The justification for spending so much time elaborating Hayek's spontaneous order thesis is twofold. First, and perhaps most obviously, this thesis might be unfamiliar to the reader. Second, one of the goals of this paper is to examine and critique the analysis put forward in Alan Haworth's recent book, *Anti-Libertarianism: Markets, Philosophy and Myth*, with the aim of relating the issues raised in this discussion to the wider concerns of this paper. As Haworth's analysis rests in large part on his

⁴¹ (...continued)

connection to their own goals than to the goals of others (who in turn can have a different relation to their own goals), then this should be taken into account by any conduct governance mechanism which aims to regularize individuals' conduct in a social context.

⁴² For if the values were general enough to allow individuals to pursue their own goals rather than the goals of others, individuals would not have to refer to others for their goals.

⁴³ This idea is repeated throughout his work. See, for example, *The Road to Serfdom* (1944), and his discussion in *Law, Legislation and Liberty*, vol II, *The Mirage of Social Justice* (1976, 133-152).

objections to the spontaneous order thesis, it seems appropriate to spell out in some detail the implications of this idea. I have contended that the difference between the two orders manifests itself in a variety of ways, such as the abstractness of the rules governing each order, the presence or absence of conscious purposes from the order, and so on. Haworth attacks the adequacy of all of these criteria. He claims that they are not adequate to distinguish the two types of order, and that in specific cases the thesis lacks any substantial content at all. Now, it should be said that Haworth does find much to recommend this thesis in *general*, particularly as it applies to the evolution of morality (Haworth 1994, 118-119). However, this does not imply that Haworth's analysis is predominantly positive. Indeed, much of the chapter on Hayek focuses on the weaknesses of the spontaneous order thesis.

Haworth begins by focusing on explicitly political issues. He wants to understand the relationship between the spontaneous order thesis, libertarian ethics, and competing economic theories. In particular, one question to be considered is whether "the spontaneous order thesis logically entails the overtly libertarian moral prescriptions Hayek recommends" (Haworth 1994, 121). What are Haworth's arguments against the proposition that the spontaneous order thesis entails Hayek's "libertarian" prescriptions? First, he argues that in cases of interest, the spontaneous order thesis tells us nothing about how to act or about when to rely on spontaneous order and when to resort to organizational order (Haworth 1994, 122). Is this argument correct? Perhaps not, for consider the following: spontaneous order, as Haworth correctly points out, has no (intention-dependent) purpose, but it does (or can be said to) perform numerous functions.⁴⁴ Hayek's point is that spontaneous order can, in certain environments, fulfil certain functions better than organizational order. The question is why. Hayek argues that in certain circumstances this is the case because of the dispersed, fragmented and perspectivist nature of knowledge.⁴⁵ Consider an example. Hayek claims that in many cases markets (to Hayek, a particular example of spontaneous order) and market mechanisms are better at coordinating fragmented knowledge than are

⁴⁴. The use of the term "functions" should not be taken to imply that these functions, nor the order considered holistically, are *functional* or *dysfunctional*. That is, no judgment of the *value* of these functions should be read into this usage. A spontaneous order can act as a means to one's ends, and it is in this sense that it can perform numerous "functions".

⁴⁵. This is a dominant and enduring theme in Hayek's work, and is emphasized in his 1937 paper "Economics and Knowledge" (1948, 33-56), and in later works, particularly *The Constitution of Liberty* (1960, 22-38), *Law, Legislation and Liberty* (1973, 11-17; 1976, 1-30; 1979, 67-70), and *The Fatal Conceit* (1988, 6-105).

organizational orders. Haworth seems to be of the view that Hayek is claiming that this coordination advantage exists in *all* circumstances and situations. This leads to Haworth's criticism that Hayek does not give an indication of when to rely on spontaneous order and when to rely on organizational order and, in the particular case of interest, when to use the market mechanism and when to resort to alternatives. Is this correct? And does Hayek almost always recommend the use of the market mechanism? I think not. It is important to point out that he commends organizational structures in many cases. Hayek is at pains, however, to stress his reservations concerning the *coercive* use of governmental organization. A resort to mechanisms supporting organizational order is one thing when goals are agreed upon and individuals strive in harmony to achieve these ends. It is quite another thing if there is disagreement about the ends to be pursued, with the result being that some have to be forced to accept the choices of others. The important issue in this context is the compatibility of the governance mechanism to its environment or, put differently, between the match between the properties of a governance mechanism and its ability to implement desired goals or support certain values.

None of this implies that Hayek does not advocate the use of alternative mechanisms, including governmental forms, in some situations, including coercive ones. But the resort to a particular governance mechanism must take into account the limitations of the recommended mechanism in different environments. The same applies to recommendations for the use of market mechanisms. Hayek, and many other economists as well, *would* recommend the use of organizational ordering when there is what economists term a *market failure*. Some reasons why markets might be an inappropriate mechanism might include inadequate definitions of property rights (including non-excludable and indivisible goods, externalities, etc) and the market mechanism's weakness in coordinating actions which, by necessity, must be rapid and of a high degree of precision. Haworth claims that "the number and magnitude of the problems which quite clearly do demand collective action and planned intervention is much greater than Hayek suggests. (AIDS, war and pollution are examples)" (Haworth 1994, 122). This would seem to imply that Hayek suggests that these are inappropriate areas for government action. Unfortunately, this is not the case. Hayek states quite clearly that in cases of "epidemics" (Hayek 1979, 44), "pollution" (Hayek 1979, 43), and "war" (Hayek 1960, 54), government action is desirable. Why is this so? As Hayek puts it, market mechanisms are effective in environments where "the producers of particular goods and services will be able to determine who will benefit from them and who will pay for their cost" (Hayek 1979, 43). If this condition does not hold, markets would be rather ineffective. Epidemics, pollution and national defence are examples of instances where "it is either technically impossible, or would be prohibitively costly, to confine certain services to particular persons, so that [therefore] these

services can be provided only for all (or at least will be provided more cheaply and effectively if they are provided for all)” (Hayek 1979, 44). Furthermore, in times of war what is required is a mechanism that can deliver rapid and precisely coordinated centralized actions, and markets have difficulties achieving this. It would be a mistake, then, to claim that Hayek advocates market mechanisms as appropriate for all environments, just as it would be erroneous to claim that he is “almost always” hostile to government. Such an error seems to indicate that Haworth has mistaken Hayek for a “typical” libertarian, and has failed to discern that there is an argument based upon the properties of governance mechanisms underlying his seemingly political prescriptions. There is, however, another, more fundamental, source of Haworth’s errors. One only begins to discern exactly what this is when one turns to Haworth’s analysis of the difference between the rules governing spontaneous and organizational orders.

Can Abstract and Particular Rules be Distinguished?

Haworth analyzes Hayek’s notion of rules and the difference between “general, abstract” rules and “specific and particular” ones. In criticizing Hayek’s notions, Haworth makes what I consider to be a rather bizarre claim: that “there can be *no such thing* as a class of ‘specific and particular’ rules with which to contrast the abstract and general” (Haworth 1994, 124). What exactly is the argument here?

Hayek’s argument is that an abstract rule is defined by “a classical juridical formula” under which a rule “must apply to an unknown number of future instances” (Haworth 1994, 123, quoting Hayek, 1976, 35). It is not enough, then, for a rule to be merely *expressed* in abstract terms (Hayek uses the example of a rule referring to fingerprints to make this point). Rather, it is the *scope* of the *reference* of the rule which is decisive. Haworth argues that the “unknown number of future instances” criterion is insufficient to distinguish abstract from particular rules. He claims that there cannot be a specific and particular set of rules because “even classes which only contain one member – in fact and so far as we know, that is – potentially contain more” (Haworth 1994, 124). Hence, even “very specific rules ... ‘apply to an unknown number of future instances’ and match the juridical formula Hayek cites” (Haworth 1994, 124). And what does Haworth have to say of rules that specify a single member at a particular time and place? How do *they* potentially contain more members? Haworth argues that “if time is cyclical and history repeats itself infinitely right down to the last detail”, there would be an “infinite number” of future members (Haworth 1994, 124).

What is one to make of this argument? As Haworth puts it, “[this] speculation may be fanciful, but that is neither here nor there. It is sufficient to demonstrate that Hayek’s thesis is, in at least one way, empty. Since it has to be true of *all* rules

that they are ‘applicable to an unknown and indeterminate number of persons and instances’, it follows that there can be *no such thing* as a class of ‘specific and particular’ rules with which to contrast to the abstract and general” (Haworth 1994, 124).

This argument is simply bad reasoning. What Haworth *can* claim is that *if* history is in fact cyclical, *then* it will be true that all rules *which are external to this cycle* are infinitely referential. If, however, the rules are themselves internal to each particular time cycle, it is not at all obvious that they refer to other time periods.⁴⁶ And all of this applies *solely* to life on *this* “possible world”. If, on the other hand, it is not the case that history is cyclical, Haworth’s claim of infinite referentiality is not demonstrated but merely asserted. The general point is this: just because in one “possible world” rules *might* be infinitely referential does *not* imply that in *our* particular world they are. Unless, of course, demonstrations of the cyclicity of *our* history and refutations of the criticisms above are forthcoming.

A more substantial criticism of Haworth’s argument is as follows. Haworth seems determined to demonstrate that it is conceivable that a rule can always, in principle, refer to multiple cases. His argument goes to great lengths to construct “alternative” worlds within which the content of a rule and its limited applicability in our particular world would be extended. Haworth’s argument, then, lives in a conceptually removed sphere, where so long as a rule *might* refer to multiple cases, no matter how improbable they may be, it is to be referred to as “abstract”. The idea underlying such an argument seems to be that for something to be a rule, it *must* refer to multiple future cases, and hence there can be no such thing as a particularistic rule. It is as if the very notion of a “rule” requires it to be “abstract” and that this is the same thing as asserting that the rule governs more than one case.

The question that demands to be asked at this point is whether Haworth’s arguments are at all relevant to issues of conduct governance. There are two points to consider. First, it is arguable that the argument Haworth constructs is fatally flawed because it ignores the fact that “abstract” and “particular” are *relative* terms, and hence some rules might be abstract relative to other, more particularistic, ones, depending upon how much space-time each refers to. Even if

⁴⁶ Imagine that history *is* cyclical and that one is considering a fingerprint rule which uniquely picks out a single individual. Why should it be the case that a fingerprint rule *which exists now* should be the one which refers to a particular individual in the future? If *everything* repeats itself down to the smallest detail, does that not imply that the *rules* repeat as well (and hence that a rule at time *t*₀ refers to a world at *t*₀, while a rule at *t*₁ refers to a world at *t*₁, unless it were explicitly stated as otherwise in the rule).

history is cyclical, and even if a rule would refer to multiple cases in notional worlds, this does not imply that a *relative* characterization of the degree of abstractness of a rule is invalid or impossible. Furthermore, and as I have been arguing, it is this type of characterization of the notion of the “abstract” – as a *relative* attribute, contrasted with “particular” – and not the one underlying Haworth’s discussion, that is of decisive importance for issues of conduct governance.

Second comes the point that the central issue for questions of conduct governance *is* the scope of the space-time reference of a rule in *our* world, and hence Haworth’s almost exclusively “academic” concerns are of little, if any, importance or relevance. This is not to say that when considering the applicability of a rule into the future, one does not consider a variety of notional worlds in which the rule might be applicable. Rather, it is to argue that the existence of our world in a sense rules out as irrelevant certain highly unlikely possibilities, and that this exclusion is both essential and unavoidable when trying to judge the scope of applicability of a rule. Conduct governance as a practical art focuses on the *number* and *type* of the references which could be made by rules, and the success and intelligibility of this enterprise hinges upon the *degree of possibility* of events occurring in an already existing environment. That an environment is not a given but to some degree exists as expectation alone does not imply that all expectations are equally probable, nor that all possibilities should be given equal weight when arriving at a judgment. Nor does it imply that the degree of possibility is irrelevant to issues of conduct governance. Haworth’s argument seems to overlook both of these points.

Although I have been rather critical of Haworth’s interpretation, I would agree with him that Hayek’s “classical juridical” criterion is a rather poor one, as it seems to obscure more than it clarifies. Consider an example. Imagine one was considering a rule governing behaviour solely over the next week. Is this an example of a rule which governs an “unknown number of future instances”, even though it is in effect for a known time? This would depend, it seems, on the content of the rule and the environment to which it was referring. Hayek’s characterization is, I think, an inadequate one for determining whether a rule is abstract or particular, for such a characterization requires a consideration of its content and the environment to which it is applied. Of course, one could claim that almost all rules which govern future interactions *might* be instantiated an unknown number of times, but when considering issues of conduct governance the decisive question concerning the *actual* range of applicability of rules can only be decided by turning to an examination of their content in a given environment.

The question of primary importance at the moment is whether the damage inflicted by Hayek's inadequate characterization of what it is that distinguishes abstract from particularistic rules is fatal to the enterprise of constructing a Hayekian social theory. I would argue that it is not, but that it is probably wise to abandon Hayek's inadequate definition of "abstract" for one which is compatible with the body of his work and which is more coherent with the foundations of his social theory. This would be a definition under which the abstractness of a rule refers to the scope of its reference, and not necessarily to the mode of its expression and thus specific, particular, rules *can* be held in contradistinction to abstract, general rules as a matter of degree.

Further Misconceptions

Haworth tries to make an argument that a distinction cannot be made between a spontaneous and a "made" order. First, he claims that Hayek's argument is that an order which has spontaneously evolved is based on rules of a general and abstract character, whereas a "made" order is based on commands (Haworth 1994, 124-125). Next, he points out that one difference between a rule which has spontaneously evolved⁴⁷ and a command is that only the latter is issued intentionally, with a purpose (Haworth 1994, 125). Finally, he tries to show that a spontaneously evolved rule can simultaneously be a command. Unfortunately, whether Haworth's demonstration is correct or not is quite beside the point, for he has made two mistakes which completely undermine his argument in terms of a critique of Hayek's notion of spontaneous order.

First, and most importantly, Hayek does *not* claim that the difference between spontaneous and organizational order rests on the difference between abstract, general rules and commands. He in fact says that it rests on the distinction between *rules* of spontaneous and organizational orders. Rules of organizational order are not identical with commands, for commands are, relatively, more specific and particular. Nor does Hayek claim that one can distinguish between spontaneous and organizational order using the difference between abstract, general rules and commands. Haworth himself brings out this fact when he quotes Hayek as saying "[r]ules of organization are necessarily subsidiary to commands, filling in the gaps left by the commands" (Haworth 1994, 125; from Hayek 1973, 49), and hence are *different* from commands. Thus, Haworth's point is neither here nor there. It is irrelevant.

⁴⁷ This is Haworth's usage.

Second, Hayek does not equate a rule which has “spontaneously evolved” with a rule of spontaneous order.⁴⁸ As Hayek puts it, “while the rules on which a spontaneous order rests, may also be of spontaneous origin, this need not always be the case” (Hayek 1973, 45). In fact, “it is at least conceivable that the formation of a spontaneous order relies entirely on rules that were deliberately made” (Hayek 1973, 45). Thus, “[t]he spontaneous character of the resulting order must therefore be distinguished from the spontaneous origin of the rules on which it rests, and it is possible that an order which would still have to be described as spontaneous rests on rules which are entirely the result of deliberate design” (Hayek 1973, 46). Haworth has conflated the spontaneous nature of the rules governing an order with the spontaneous nature of the order. In Hayek’s conceptual framework, it is the order of actions which is, or is not, spontaneous. Moreover, it is the properties of the rules governing an order, and *not* merely their origin, which differentiates a spontaneous order from an organizational order. Once again, Haworth is arguing against a position which Hayek does not hold. And once again, Haworth’s point is irrelevant to Hayek’s spontaneous order thesis.

Conclusion

Substantive issues are at stake when considering Haworth’s arguments concerning the impossibility of distinguishing spontaneous from organizational order. It can be claimed, without exaggeration, that without the framework of ideas that underlie

⁴⁸. Though many discussions of Hayek seem to assume this is in fact the case. See, for example, Kukathas’ discussion, where he seems to be assuming that the distinction between spontaneous and organizational order as applied to social institutions lies in whether or not the institution can be considered a “spontaneous development” (1989, 103-105); or McCormick’s critique of Hayek’s notion of social justice (1989), where similar thoughts are expressed. Gray’s discussion of spontaneous order (Gray 1986) leads me to believe that he makes a similar error. Gray’s work is notable for its *lack* of any discussion of the differences between organizational and spontaneous order. Instead, he focuses almost exclusively on instances of “spontaneously” evolved order. Moreover, he argues that it might be useful to consider certain “spontaneously evolved” institutions as examples of *spontaneous* order even though this contradicts Hayek’s claim that they are instead instances of *organizational* order (Gray 1986, 120-121). That the rules governing spontaneous and organizational order might be different, and that this might constitute the decisive difference between the two forms of order, never enters the discussion. Instead, his comments seem to revolve around the idea that “spontaneously” evolved order is equivalent to spontaneous order, and that it is this genealogical difference which is sufficient to distinguish the two types of order.

this distinction, both Hayek's political and legal theory becomes incoherent. As argued above, this dichotomy rests in large part on the difference between abstract, general rules and specific, particular ones. And how important is this distinction? As I have mentioned here, and discussed at greater lengths elsewhere, this dichotomy provides the basis for much of Hayek's legal theory, and is intimately related to the nature of the power/authority structure of society. It is not surprising, therefore, that Hayek is so concerned to defend his spontaneous order thesis and his views on abstract and particular rules.

There is another fundamental point at play here. Much of Hayek's economic, political and legal theory is based on the idea that knowledge is fragmented.⁴⁹ An extremely interesting question is *why* this might be the case. The reason is both obvious and profound. Organisms exist *in* space and *over* time, and there are certain limitations imposed on organisms by temporal and spatial separation (ie we can not be everywhere at the same time; the fact that something exists in a certain space-time implies something else cannot; performance takes place at particular points in space and time; etc). If one applies this insight to knowledge, one can see that access to some knowledge might be time-space specific, that is, it could not be known unless one were in some particular time-space relation to it, and, if one tried to know it, one would instead know something *different*.⁵⁰ The implications of this insight are many and varied, and form the foundation upon which a Hayekian social theory is based. In general terms, it can be argued that the central problem that Hayek sets out to address is how individuals and societies adapt to the restrictions imposed by an existence *in* space and *through* time. From the narrower perspective of conduct governance, the significant implication is that there must be a *compatible* match made between the governance properties of a mechanism, and the "knowledge environment" in which it operates.

Many of Hayek's prescriptions can be better understood once one realizes that this is the question Hayek is addressing. For instance, consider Hayek's views on market mechanisms. Hayek argues that markets exhibit a high degree of spontaneous order. But Hayek is arguing more than this. He is not merely claiming that an economy *is* a spontaneous order but also that it *should* be (or that we should strive to make it so). And why should it be a spontaneous order? The argument is that a dependence on a high degree of spontaneous order is necessary *if* one wants

⁴⁹. As is pointed out in the analyses of both Gray (1986, 134-136) and Kukathas (1989, 10-12).

⁵⁰. For example, my knowledge of my emotions from my perspective is quite different from knowledge of my emotions from the perspective of another person related in a different spatio-temporal way to them.

to sustain the diverse and interconnected relationships which constitute a “complex” society *because* of the fragmentation and division of knowledge (and goals). This fragmentation arises because of the limitations inherent in a space-time existence. It is the desire for a “complex” civilization, widely-ranging in time and space, and the belief that it can only be sustained by allowing individuals to use decentralized judgment, that leads Hayek to condemn measures of centralized control. In fact, if Hayek believed that a organizational mechanisms could generate the same results, he would not argue against them.⁵¹ But Hayek does not hold this belief. Instead, he argues at great length that these types of mechanisms cannot sustain the complexity with which we have become accustomed in a modern civilization. Based on this, it is, I think, a mistake to claim that Hayek’s social theory and its consequent recommendations are not simply the expression of a political preference. Rather, it would be more accurate to say that his political views are instead an expression of his social theory.

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⁵¹ See, for example, his statement in *The Fatal Conceit* (Hayek 1988, 6-7).