

Hayek and the Scots on Liberty

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Abstract

I trace the influence of a group of Scottish political and moral philosophers on F. A. Hayek's thinking on liberty and classical liberalism. David Hume is the most notable; the list also includes Adam Ferguson, Dugald Stewart, and Adam Smith. In many cases, we have Hayek's own words on these moral philosophers' influence. I look at the Scots through Hayek's eyes to understand their influence on him. My purpose is to present this important strand of classical liberal thought and its influence on Hayek's own political and legal framework for liberty.

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I. Introduction

If one were to trace the intellectual influences on F. A. Hayek's economic analysis, one would look first to Carl Menger, Friedrich von Wieser, and Ludwig von Mises. Menger was the founder of the Austrian School of economics in which Hayek's intellectual development occurred (Hayek 1973b). Wieser was his teacher. And Mises was a dominant influence in economics in 1920s Vienna.

Hayek was certainly also well-steeped in British classical political economy. The first lecture of *Prices and Production* is an excursion through classical economic thinking on the relationship between money and prices (Hayek 1935).¹ On technical economic issues, however, the Austrian influence is strongest.

Not so for Hayek's legal and political theory. Here, Hayek was heavily influenced by eighteenth-century writers in the British Isles, such as Adam Ferguson, Dugald Stewart, David Hume, Adam Smith,

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¹ Ebenstein (2001, pp. 247–48) details Hayek's work in the history of monetary theory.

and Edmund Burke. Scotsmen dominated discourse in this area.² Hume was a major influence on Hayek.³ Menger certainly influenced Hayek's thinking on social and political philosophy as well, an influence that I detail later on.

In this paper, I trace the Scottish influence on Hayek's thinking. In many cases, we have Hayek's own words. I look at the Scots through Hayek's eyes to understand their influence on him. My purpose is to present this important strand of classical liberal thought and its influence on the Hayekian political and legal framework for liberty. Except in passing, I will not contrast it with other approaches. Related articles in this issue will develop alternative philosophies of liberty.

II. Hayek on Hume⁴

In a 1963 lecture, Hayek offered an appreciation of Hume in the form of a public lecture at the University of Freiburg. Hayek told a German audience of Hume's primacy over Kant for liberty, a difficult idea to sell. In Hayek's view, Hume's chief contribution was that he produced "above all a theory of the growth of human institutions which became the basis of his case for liberty and the foundation of the work of the great Scottish moral philosophers, of Adam Ferguson, Adam Smith and Dugald Stewart, who are today recognized as the chief ancestors of modern evolutionary anthropology" (Hayek 1963, p. 111).

Hume began with his well-known theory of morals as "artifacts." By that, he meant that our moral beliefs "are not natural in the sense of innate, nor a deliberate invention of human reason" (Hayek 1963, p. 111). Rules of justice are necessitated by scarcity and by the selfishness of men. The rules are not consciously created, but are, in the words of another Scotsman, Adam Ferguson, "the result of human action, but not the execution of any human design" (Ferguson quoted in Hayek 1967b, p. 96, n. 1). The rules are indispensable for the development of modern civil society, but are neither inevitable nor the product of reason. They might never be discovered, and hence complex society might never evolve.

² Hayek (1963, p. 107) noted that "the English ideas of the time . . . were mainly expounded by Scotsmen." Burke was, of course, an Irishman.

³ Ebenstein (2001, p. 249) states that Hayek quoted Hume more than anyone else in his major works.

⁴ The Hume quotations in Hayek are from *A Treatise of Human Nature*.

The “narrow bounds of human understanding,” as Hume would phrase it, or the “inevitable weakness” of men’s minds, in Hayek’s preferred phrasing, would, in the absence of fixed rules, lead to chaos. Or, in Hume’s words, “this would produce an infinite confusion in human society, and the avidity and partiality of men would quickly bring disorder into the world, if not restrained by some general and inflexible principles” (Hayek 1963, p. 115).

So, for Hume, as for Thomas Hobbes, pursuit of individual self-interest, unconstrained by rules, leads to disorder, or in the Hobbesian formulation, the “war of all against all.” For Hobbes, only a rationally constructed order, in the form of a Leviathan government, can produce an order. In Hume’s analysis, men stumble upon an order.⁵

Hume wrote that “the necessity of human nature” gives rise to “three fundamental laws of nature.” These are “the stability of possession, of its transference by consent, and of the performance of promises” (Hayek 1963 [quoting Hume], p. 113). The laws of nature are not the product of government, but antecedent to it; but once established, “government would naturally be supposed to derive its obligation from those laws of nature” (Hayek 1963, p. 114). As a matter of history, Pipes (1999) confirms the priority of property over government. Hume was also a historian, the author of the *History of England*, which “did probably as much to spread Whig liberalism throughout Europe in the eighteenth century as Macaulay’s *History* did in the nineteenth” (Hayek 1963, p. 110). He had a historical basis for his assertion of the historical priority of the “three fundamental laws of nature.”

Hayek establishes Hume’s accomplishment in presenting an evolutionary theory of morals and legal institutions, and observes that “Hume may be called a precursor to Darwin in the field of ethics” (Hayek 1963, p. 111). “Precursor” is not quite right. As Hayek (1967c, p. 265) noted, “the idea of evolution [was] a commonplace in the social sciences of the nineteenth century long before Darwin.” Economists have not learned evolution from Darwin; Darwin learned it from economists.

Hayek (1963, p. 119) described “Hume’s doctrine as the theory of the growth of an order which provided the basis of his argument for freedom.” Hayek (1963, p. 109) credited Hume with giving us

⁵ I borrow here from Ferguson’s full formulation of his proposition: “Nations stumble upon establishments, which indeed are the result of human action, but not the execution of any human design.”

“probably the only comprehensive statement of the legal and political philosophy which later became known as liberalism.” That is a strong statement. Many would look to J. S. Mill’s *On Liberty* for at least the political case for liberty. As Bruce Caldwell (2004, p. 297, n. 9) observes, however, “Hayek had reservations about Mill.” Hayek was particularly uneasy about Mill’s ideas on social justice.

Ten years later, in an essay (“Liberalism” in translation) for the Italian *Enciclopedia del Novicento*, Hayek revisited the importance of the Scottish moral philosophers in the emergence of liberalism. They contributed to the “Whig doctrine of government limited by general rules of law and severe restrictions on the powers of the executive branch” (Hayek 1978, p. 124). “Hume not only laid in his philosophical work the foundation of the liberal theory of law, but in his *History of England* (1754–62) also provided an interpretation of English history as the gradual emergence of the Rule of Law which made the conception known far beyond the limits of Britain” (Hayek 1978, p. 124).

Several issues in Hume’s philosophy need to be addressed, if not definitively resolved. First, was Hume a utilitarian? Second, what is the role of self-interest in Hume’s morals? Third, was Hume an anti-rationalist? Fourth, does Hume belong in the natural law tradition? Particularly in Hayek’s rendering of Hume’s ideas, they are all legitimate questions.

Hayek quotes a lengthy passage from Hume’s *A Treatise of Human Nature* to support his view that Hume was not an act utilitarian but a rule utilitarian (though employing different terminology).⁶ The passage ends, “But, however single acts of justice may be contrary, either to public or private interest, it is certain that the whole of the scheme is highly conducive, or indeed, absolutely requisite, both to the support of society and the wellbeing of every individual” (Hayek 1963, pp. 115–16). Hayek himself was comfortable with a rule-utilitarian justification for his own theory of law.⁷ As in his presentation of Hume’s views, Hayek focused much more, in his own analysis, on the origin of institutions rather than their justification.

⁶ Macleod (1981, p. 75) offers an even stronger assessment. “Hume’s theory of justice . . . is indeed a veritable prototype of the kind of theory now dubbed ‘rule utilitarian.’”

⁷ Ebenstein (2001, p. 249 and p. 383, n. 27). In the note, Ebenstein cites a number of secondary sources in support of this view, as well as references to Hayek. I will cite just Hayek (1976b, p. 132): “*The Good Society is one in which the chances of anyone selected at random are likely to be as great as possible.*”

Like Hume, he presumed that an understanding of the benefits made possible by an evolved order would be accepted as its justification. That presumption is not a conflation of *ought* and *is*, but a basic rule-utilitarian justification. Or perhaps not, as I will question shortly.

Was Hume's theory of justice based on self-interest? Self-interest suggests a deliberateness and consciousness of reason at odds with Hume's analysis. In Hayek's words, Hume "stresses that in all his references to utility he 'only presuppose[s] those reflections to be formed at once which in fact arise insensibly and by degrees'" (Hayek 1963, pp. 113–14). Man may offer a utilitarian justification for existing institutions, but their existence did not come into being as a consequence of conscious, self-interested reasoning. More importantly, men adhere to the rules even when they do not benefit them in a particular instance. "Single acts of justice may be contrary, either to public or to private interest" (Hayek 1963, p. 115). The rules are beneficial overall, but not in every instance. That justification comports with rule utilitarianism.

Hayek at one point described Hume as an "anti-rationalist" (Hayek 1963, p. 108). He later recanted that characterization, substituting Popper's terminology of "critical rationalism" (Hayek 1967c, p. 263). Quoting another author, Hayek stated his ideas more clearly: Hume "'turned against the enlightenment its own weapons' and undertook 'to whittle down the claims of reason by the use of rational analysis'" (Hayek 1963, pp. 106–07). As Hayek (1973a, p. 29) put it years later, "the so-called anti-rationalists insist that to make reason as effective as possible requires an insight into the limitations of the powers of conscious reason." And he went on to say that "if the desire to make reason as effective as possible is what is meant by rationalism, I am myself a rationalist." *A fortiori*, Hume was a rationalist in Hayek's limited sense. But certainly not in the sense of René Descartes, Hobbes, or other figures traditionally labeled rationalists.

Hayek argued that the meaning of "reason" changed during the Enlightenment. "Reason was for the rationalist no longer a capacity to recognize the truth when he found it expressed, but a capacity to arrive at truth by deductive reasoning from explicit premises" (Hayek 1963, p. 107). Reason was thus transformed from a capacity of the mind to apprehend truth into an ability to engage in long trains of

reasoning from premises to conclusion.⁸ Reason as a capacity to apprehend reality (good and evil in context) “came to mean a capacity to construct such rules by deduction from explicit premises” (Hayek 1973a, p. 21).

The problem with modern rationalism for Hayek the philosopher and Hayek the economist is straightforward: “complete rationality of action in the Cartesian sense demands complete knowledge of all the relevant facts,” he writes. A societal engineer, like an actual engineer, “needs all the data and full power to control or manipulate them.” But “the success of action in society depends on more particular facts than anyone can possibly know. And our whole civilization in consequence rests, and must rest, on our *believing* much that we cannot *know* to be true in the Cartesian sense” (Hayek 1973a, p. 12).

For Hayek, Hume’s great achievement was to develop an evolutionary theory of human institutions. Rules were artifacts that men may stumble upon. From rules, order grew up. “Hume is indeed one of the few social theorists who are clearly aware of the connection between the rules men obey and the order which is formed as a result,” Hayek wrote (1963, p. 112). It is surely no accident that the title of the first volume of Hayek’s three-volume work, *Law, Legislation and Liberty*, is *Rules and Order*.

The essential building block, however, was Hume’s concept of the limits of reason. His epistemology undergirds his theory of institutions and his argument for liberty. So, too, with Hayek, the leading “Scottish” moral philosopher of the twentieth century.

III. Natural Law

Now I come to perhaps the most controversial issue: Did Hume belong in the natural law tradition? And did Hayek belong in that tradition? Van Dun (1994) argues emphatically yes. He begins by presenting what he sees as the core of natural law thinking: “the conviction that laws serve a purpose and can be judged according to their fitness with respect to this purpose.” The purpose of law “is to make social life possible,” he writes.

He continues by arguing that society is a “precondition” for human beings to achieve their own goals. Thus, “society and

⁸ “By reason, however, I do not think is meant here that faculty of the understanding which forms long trains of thought and deductive proofs, but certain definite principles of action from which spring all virtues and whatever is necessary for the proper moulding of morals.” John Locke, from *Essays on the Law of Nature*, quoted in Hayek (1963, p. 107, n. 2).

therefore law is understood as something that ought to be.” He continues, “as I read Hayek this core of natural thinking is present in his works” (van Dun 1994, p. 269). Van Dun (1994, pp. 269–70) contrasts the natural law core with that of legal positivism, which “has consistently denied that the reason for the validity of laws is to be found in nature. The validity of laws derives from the authority of those who make, apply and/or enforce them.”

Van Dun’s statement of the core of natural law theory comports with other statements. Following Frederick Copleston’s analysis,⁹ Murray Rothbard (1982, p. 6) states that “for the Thomist or natural law theorist, the general law of morality for man is a special case of the system of natural law governing all entities of the world, each with its own nature and its own ends.” O’Driscoll (2012, p. 193) summarizes natural law theorizing in the social sciences as the proposition that it is natural because it refers to the nature of man, and lawful because it governs the order that men evolve.

Hayek was ambivalent about natural law theory and made few references to it in his work, even where there were obvious affinities. He acknowledged that “the earlier theorists of the law of nature” embodied the concept of reason of “the older tradition.” That was passed on to “the great common lawyers, especially Sir Edward Coke and Matthew Hale” (Hayek 1963, p. 107).

One of the few favorable references to natural law theory appears in a footnote in the first volume of *Law, Legislation and Liberty* (Hayek 1973a, pp. 169–70, n. 8). “Many of the earlier theorists of natural law had come close to an insight into this relation between the rules of law and the order of actions which it serves.” There follows a supporting quotation from Roscoe Pound. Then Hayek continues: “The medieval conception of social order was, however, still largely one of the particular status of different individuals or classes and only some of the late Spanish schoolmen approached the conception of an abstract order based on a uniform law for all.”

Hayek acknowledges that the Spanish Jesuits of the sixteenth century had a very advanced analysis of economic and social phenomena. They came to view what is natural as what is *not* designed by human will. But Hayek believed that later natural law reasoning became corrupted by what Hayek depicts as a false conception of reason. “The conception of natural law was thereby

⁹ Rothbard (1982, p. 5) refers to Father Copleston as “the eminent historian of philosophy.”

turned into that of a 'law of reason' and thus almost the opposite of what it had meant," he writes (1973a, p. 21).

In my conversations with Hayek about linkages of his work to natural law, he demurred that there were too many traditions within natural law and it meant too many different things. He made the same point in *Constitution of Liberty* (1960, p. 236). I suspect, but have no proof, that for Hayek, natural law was too Catholic and came with too much intellectual baggage.

Notwithstanding all these issues, van Dun makes an affirmative case that Hayek (and perhaps Mises) belongs in the natural law tradition. For instance, in the context of the socialist calculation debate, he observes that for Mises and Hayek "socialism is condemned because it is not in accordance with the nature of the thing it purports to be concerned about" (van Dun 1994, p. 274). He views that position as the product of characteristic natural law reasoning. Perhaps I am predisposed to his argument because it makes a case that I long suspected to be true. For whatever reason, Hayek hid an essentially natural law position behind utilitarian rhetoric.

What is surprising, however, is van Dun's argument for Hume as the source of Hayek's natural law thinking. "If Hayek has a contribution to make to natural law, the most obvious place to look for it is Hume's theory of natural law, which Hayek has openly and repeatedly praised as the first true philosophy of his own brand of liberalism," writes van Dun (1994, p. 276). To make his case, van Dun (1994, p. 276) quotes from a passage from Hume's *Treatise*, also cited by Hayek: "The sense of justice cannot be derived from nature, but arises artificially, tho' necessarily from education and human conventions." Van Dun adds that "this concept of something that is at once artificial and necessary is basic to Hume's theory of natural law. Van Dun (1994, p. 277) then quotes a longer passage:

Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may properly be said to be natural as any thing that proceeds immediately from original principles, without intervention of thought and reflection. Tho' the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.

Van Dun presents us with a broad definition of the core of natural law theory, in which the purpose of law is “to make social life possible.” He then suggests that Hume’s theory of law fits into that tradition. I leave it to the reader to decide if the quoted passage makes the argument. I read it as appealing to natural law theorists by saying his theory is compatible with that tradition.

In correspondence, Douglas Rasmussen questions whether Hume’s view of reality allows for talk of a nature. Teleology of some kind (though not necessarily design) seems inherent to any notion of natural law. In a letter to Francis Hutcheson,¹⁰ quoted in Rasmussen (1990, p. 123), Hume argues against a teleological view of man:

I cannot agree to your Sense of *Natural*. ‘Tis founded on final Causes; which is a Consideration, that appears to me pretty uncertain and unphilosophical. For pray, what is the End of Man? Is he created for Happiness or Virtue? For this Life or for the next? For himself or for his Maker? Your definition of *Natural* depends on solving these Questions, which are endless, & quite wide of my Purpose.

Teleology need not involve a belief in design. It did not for Aristotle. According to Randall (1960, p. 235), for Aristotle natural ends are “principles of intelligibility.” Contrary to Hume’s suggestion in the previous quoted passage, arguments about final cause do not assume that one’s end is subordinated to another’s purposes (Randall 1960, p. 229).¹¹

My main problem with van Dun’s argument is the suggestion that Hayek needed Hume for a natural law theory. Hayek was raised at least nominally a Catholic in a Catholic country. He may have lost his faith at a young age, but he was undoubtedly exposed to classic natural law reasoning (Ebenstein 2001, pp. 13–14). When Hayek does mention natural law theorists, he references Spanish schoolmen, such as Luis Molina, not Hume. Hayek knew natural law theory, but not from Hume.

¹⁰ Just to add to the complexity of the intellectual tapestry, Hutcheson was Smith’s teacher. Schumpeter (1954, pp. 182–83) argued that “the skeleton of Smith’s analysis hails from the scholastics and natural-law philosophers . . . [and] “it was taught to him by his teacher Hutcheson.”

¹¹ My thanks to Doug Rasmussen for clarifying this distinction, and for the Randall reference.

Hayek did not need Hume for natural law theorizing. That is surely not what he learned from Hume. Again, what Hayek most importantly absorbed from Hume was his epistemology and its application to the theory of institutions and law. Having been educated as a scientist in the early twentieth century, Hayek would have found the evolutionary reasoning congenial. Hayek was predisposed to the arguments of the Scottish philosophers.

Ebenstein (2001, p. 383, n. 31) quotes from a 1975 interview of Hayek in *Reason* magazine: “Hume has come closer to a critique of rationalism than any other author I kn[o]w. Again and again I’ve found in Hume statements of ideas which I had already independently arrived at. I am impressed especially with Hume’s account of the formation of social institutions of all kinds.” That observation at once buttresses my interpretation of Hume’s influence on Hayek as chiefly in his epistemology and his theory of social institutions.

Still, despite all the misgivings already noted, I am reluctant to dismiss completely van Dun’s interpretation of Hume; I say that despite the prevailing wisdom that Hume was a rule utilitarian. Joseph Schumpeter is known for linking Enlightenment thinkers to the natural law tradition and uncovering the natural law roots of “modern” philosophy and social science (including economics). Schumpeter (1954, p. 125) lists Hume as among “eighteenth century philosophers of natural law.” Erik Angner (2007) argues that Hayek was influenced by the natural law tradition, and contends that Smith, Hume, and others influenced his thinking. In his review of Angner, Caldwell (2009) disputes that interpretation. The origins of Hume’s philosophy deserve to be reconsidered.

Caldwell deals extensively with Hayek’s views on evolution, but only briefly with the Scottish connection. He notes that we find references to the Scottish philosophers in Hayek’s 1945 lecture, “Individualism: True and False” (Hayek 1948, pp. 1–32). Caldwell (2004, p. 306) observes that Hayek mentioned the tradition in his 1933 inaugural lecture at the London School of Economics. Caldwell (2004, p. 295, n. 7) detects an increased emphasis in later works on evolution. I think Caldwell (2004, p. 296) is more on the mark when he says that in his later works, “Hayek’s description of the Scottish tradition is a *terminological movement* . . . toward a language that emphasizes spontaneous and evolutionary adaptive orders” (emphasis added). In his later work, Hayek homed in on evolutionary

explanation of orders and adapted his language accordingly. But the evolutionary theme goes back to his early works.

IV. Adam Smith

Why did Hayek not rely more on Adam Smith? Hayek (1976a) provided an answer in a short essay, “Adam Smith’s Message in Today’s Language.” He tells us that in forty years of lecturing, he always found the lectures on Smith “particularly difficult to give.” Why? “By the time one comes to him one has shown that most of the decisive insights into technical issues that today constitute the backbone of economic theory . . . had been gained a generation before him, and that he did not always fully appreciate the importance of this earlier work.”

Hayek in particular knew of the contributions of the School of Salamanca and the late Spanish scholastics, who did pioneering work on value theory and pricing. He supervised the PhD thesis of Marjorie Grice-Hutchinson on the monetary theory of that school. On value theory, Smith was retrograde. Yet, Hayek (1976a) continues, “like other economists, I strongly felt and wanted to convey that he was much the greatest of them all, not only in influence but also in penetration and clear recognition of the central problem of the science.”

Smith belonged in the great company of Scottish moral philosophers who showed how a spontaneous order emerges from the individual efforts of men to pursue their own interests. When permitted to do so, men will serve others who are unknown to them. They do so not by learning directly what these needs are, but by responding to price signals. “The great society indeed became possible by the individual directing his own efforts not towards visible wants but towards what the signals of the market represented as the likely gain of receipts over outlays,” writes Hayek (1976a).

Hayek includes the famous passage on “the man of system” who believes society is a chess game and he can move the pieces at will. He does not consider that “in the great chess-board of human society, every single piece has a principle of motion of its own.” The great societal conflict arises when the man of system sets in motion projects in conflict with the goals of citizens. When they do, “the game will go on miserably, and human society must be at all times in the highest degree of disorder” (Hayek 1976a).

So, for Hayek, Smith’s great contribution to social science parallels that of Hume. Smith, whatever his technical shortcomings,

presented an analysis of how spontaneous order emerges as the unintended consequences of human action. And Smith analyzed how interventions by the state disturb that order. It was his “penetration and clear recognition” of that vision that made him “the greatest” economist of them all (Hayek 1976a).

Ebenstein (2001, p. 250) tells us that Hayek’s “appreciation for Smith rose over his lifetime.” A 1978 interview with Armen Alchian confirmed that. “Being brought up on the idea that the theory of value was central to economics, I didn’t fully appreciate him. I think he’s the one author for whom my appreciation has steadily grown, and is still growing” (quoted in Caldwell 2009, p. 7). That assessment is supported by Hayek’s characterization of Smith’s contribution to the emergence of liberalism in the essay of that name. “Adam Smith’s decisive contribution was the account of a self-generating order which formed itself spontaneously if the individuals were restrained by appropriate rules of law” (Hayek 1978, pp. 124–25). In his 1963 essay on Hume, Hayek credits Hume with priority over Smith in the theory of spontaneous order. In the end, however, Hayek apparently decided that Smith’s account was so compelling that he deserved equal billing with Hume.

V. Hayek

In presenting Hayek’s views on the Scottish tradition, I have already provided some of his own thinking on social evolution. In this section, I present his views more systematically. I begin by returning to Menger, who articulated his own theory of institutional evolution. He argued that a “portion” of social phenomena “is not the result of agreement of members of society or of legislation” (Menger 1963, p. 146). He continued: “Language, religion, law, even the state itself, and, to mention a few economic social phenomena, the phenomena of markets, of competition, of money, and numerous other social structures are already met with in epochs of history where we cannot properly speak of a purposeful activity of the community as such directed at establishing them” (Menger 1963, p. 146). On the same page, he then famously posed “perhaps the most noteworthy problem of the social sciences.” He asked: “*How can it be that institutions which serve the common welfare and are extremely significant for its development come into being without a common will directed toward establishing them?*”

Hayek, perhaps the most Mengerian of the Austrians, was thus exposed to evolutionary thinking in the founder of the Austrian

School. Menger's concerns were not narrowly economic, but encompassed broader social phenomena, including political and legal theory. Hayek viewed Menger's characterization of the central problem of the social sciences as a restatement of the earlier Scottish tradition (Hayek 1973a, p. 22). He repeats part of his intellectual chronology, in which Bernard Mandeville and Hume "were probably inspired more by the tradition of the English common law, especially as expounded by Mathew Hale, than by the law of nature" (Hayek 1973a, p. 22).¹² He concludes that, in recent times, "the tradition has been most fruitfully developed by cultural anthropology, at least some of whose leading figures are fully aware of this ancestry." How, then, did Hayek build on the work of this tradition?

Hayek's thinking on the evolution of social phenomena, including institutions, rules, and law, was itself an evolutionary process.¹³ To the topic, he brought not only a broad and deep knowledge of economics, but also of political and legal theory, sociology, and even anthropology. He was a consummate historian of ideas in many fields. And he was knowledgeable about history as evidenced in Hayek (1954) and other works.

In his own words, he was a "puzzler." In "Two Types of Mind," Hayek (1978, p. 52) described how, for him, puzzlement begat progress: "Whenever I saw a new light on something it was the result of a painful effort to reconstruct an argument which most competent economists would effortlessly and instantly reproduce." Over his career, he reconstructed the argument on social and economic evolution numerous times. The difficulty is in the complexity of the topic, and the necessity of an interdisciplinary approach. "Although the problem of an appropriate social order is today studied from the different angles of economics, jurisprudence, political science, sociology, and ethics, the problem is one which can be approached successfully only as a whole," writes Hayek (1973a, p. 4).

Consider two works: Hayek's *Constitution of Liberty* (1960) and *Law, Legislation and Liberty*, the trilogy that began with Hayek (1973a). Hayek (1960, p. 1) was conceived as a restatement of the "ideal of freedom which inspired modern Western civilization and whose partial realization made possible the achievements of that civilization." Soon after the first book was published, Hayek realized that he needed to provide more thoroughgoing theoretical

¹² Recall that in Hayek (1963), he acknowledges that natural law reasoning was passed on to the common law theorists.

¹³ I take this to be the gravamen of the analysis in Caldwell (2004, pp. 288–319).

underpinnings for the constitution of liberty.¹⁴ He needed to develop “three fundamental insights.” First, he needed to distinguish between spontaneous orders and organizations. Second, he needed to make the case that social justice has meaning only in an organization and not in a spontaneous order. Third, he needed to demonstrate that “the predominant model of liberal democratic institutions” will transform a free society into “a totalitarian system conducted in the service of some coalition of organized interests” (Hayek 1973a, p. 2).

Each of these insights appears in Hayek (1960) and in earlier work. Hayek (1960, p. 57) introduces the “‘anti-rationalistic’ insight” of Smith, Hume, Ferguson, and others that “institutions and morals, language and law, have evolved by a process of cumulative growth and that it is only with and within this framework that human reason has grown and can successfully operate.” Hayek (1960, p. 160) also quotes Michael Polanyi on the evolution of “‘a system of spontaneous order in society.’” This is apparently the first use of that term in Hayek’s work, though certainly not of the concept expressed by the term (Caldwell 2004, p. 294 and p. 294 n. 6).

There are scattered references to social justice in Hayek (1960, pp. 93, 385, and 387). And Hayek (1960, pp. 55–56) discusses democratic totalitarianism in the context of the supplanting of the British tradition of liberty by the French. In Hayek’s mind, however, he had not sufficiently made the case for the three propositions. In a series of papers written in the 1960s, some of them published in Hayek (1967a), Hayek developed the arguments. Hayek’s three-volume work (1973a; 1976b; 1979) was the culmination of this effort. In this paper, I focus on the first proposition and hence on Hayek (1973a). His analysis of social justice in *Law, Legislation and Liberty*, volume 2 Hayek (1976b) involves so many issues that it would require a separate paper. Finally, I view volume 3 (Hayek 1979) as an original, if not idiosyncratic, scheme for political order.

In his introduction to *Law, Legislation and Liberty*, volume 1, Hayek (1973a, p. 1) begins by restating from *Constitution of Liberty* (Hayek 1960), “Constitutionalism means limited government.” But he immediately turns to a discussion of the errors of “Cartesian rationalism,” which defines reason as logical deduction. Thus, “rational action also came to mean only such action as was determined entirely by known and demonstrable truth” (Hayek

¹⁴ “If I had known when I published *The Constitution of Liberty* that I should proceed to the task attempted in the present work, I should have reserved that title for it” (Hayek 1973a, p. 3).

1973a, p. 10). But society is only possible, and human action can only be successful, because men are “confined by rules whose purpose or origin we often do not know and of whose very existence we are often not aware” (Hayek 1973a, p. 11). The rules “have by a process of selection been evolved in the society in which [man] lives, and which are thus the product of the experience of generations” (Hayek 1973a, p. 11). Tradition, custom and tacit knowledge are as important as Cartesian reason.

The evolutionary theme is thus brought in almost from the first. It is not just the rules that are the product of evolution, but the mind itself. “Mind is as much the product of the social environment in which it has grown up and which it has not made as something that has in turn acted upon and altered these institutions” (Hayek 1973a, p. 17). He turns rationalism on its head and extends evolutionary analysis to the mind.

Hume and the other Scottish philosophers quickly make an entrance, as do such figures as the historian Friedrich Carl von Savigny and the philosopher Wilhelm von Humboldt in Germany; Sir Henry Maine in England; and Menger (Hayek 1973a, p. 22). It is a concise and complete presentation of the intellectual forbearers of Hayek. The second chapter systematically develops Hayek’s distinction between two types of order: made or constructed order and grown or spontaneous order. One finds no distinctive or novel idea in the presentation, but it is perhaps his clearest presentation of the two types of order.¹⁵

Going back to his economic papers in the 1930s, Hayek identified order or equilibrium as a situation in which there is plan coordination among individuals (O’Driscoll 1977; O’Driscoll 2013). Hayek (1973a) presents a more complex rendering of that concept of order.

By “order” we shall throughout describe *a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal parts of the whole to form correct expectations concerning the rest, or at least expectations which have a good chance of proving correct.*

¹⁵ Already in Hayek (1968) there appear the Greek words *taxis* and *kosmos* for made and grown order.

Once one goes beyond the surface, plan coordination and order among individuals becomes complex quickly—at least, if one takes the differences among individuals, including their knowledge, seriously. The actions of each individual affect the expectations of all others. To deal with this problem, O'Driscoll and Mario Rizzo (1985) introduce the concept of “pattern coordination.” Two professors meet regularly at a predetermined time and place to discuss their book project. They are coordinated as to time, place, and broad subject: the typical or repetitive aspects of their meetings. They cannot possibly predict the exact content of their discussions: the unique aspects of their meetings. (Were they able to predict the unique aspects, there would be no point in meeting.) They are coordinated with respect to the typical, but there remains an “open-endedness” to their plans that allows for change. There is an order that allows for spontaneous change, and growth of a new order (O'Driscoll and Rizzo 1985, pp. 85–86).

That conception seems akin to Hayek's description of an acquaintance with some parts of the whole, which provides a basis for forming expectations about the rest. O'Driscoll and Rizzo (1985) would render the known parts as the typical features, and the unknown as the unique features.

What, then, makes an order “spontaneous?” One needs to multiply the actors and endow them with many diverse goals. Their interactions may produce an order, but the order has no single purpose. The order of the market is the most familiar one in an economic context. “Not having been made it *cannot* legitimately be said to *have a particular purpose*, although our awareness of its existence may be extremely important for our successful pursuit of a great variety of different purposes,” writes Hayek (1973a, p. 38).

Society itself is a spontaneous order. That order depends on rules, many of which are also spontaneously generated. That includes the law itself, as Hume adduced. Law precedes government. In a passage echoing Hume, Hayek speculates that the spontaneous order of society may exist without government, but the need for “an organized apparatus” to enforce law would likely lead to the emergence of government. Government's chief role is the enforcement of the rules governing society, both of which precede government (Hayek 1973a, p. 47).

Freedom is the overarching principle that governs the relationship between men and their government. Freedom is the guarantor that men will retain the maximum scope to pursue their

own goals in their own ways. The great danger to freedom is expedient compromises for an apparent short-term gain. “If the choice between freedom and coercion is thus treated as a matter of expediency, freedom is bound to be sacrificed in almost every instance” (Hayek 1973a, p. 57). He continues:

That freedom can be preserved only if it is treated as a supreme principle which must not be sacrificed for particular advantages was fully understood by the leading liberal thinkers of the nineteenth century, one of whom even described liberalism as “the system of principles.” Such is the chief burden of their warnings concerning “What is seen and what is not seen in political economy” and about “pragmatism that contrary to the intentions of its representatives inexorably leads to socialism.”¹⁶

Hume wrote of society’s need for “some general and inflexible principles.” Hayek raised freedom to the “supreme principle.” In his trilogy, Hayek advances the conception of the Scottish philosophers, their Whig allies in politics, the common law tradition, the later contributions of German historians, and, of course, Menger. Hayek (1973a) provides the most complete and systematic theoretical case for his view of liberty. Some of his ideas on the limitations of knowledge and the emergence of order were developed in his economic work. As noted, Hayek’s analysis of order as plan coordination was first developed there. His uniting economic analysis with legal and moral theories was a distinctively Hayekian contribution. His economic analysis of order buttressed his analysis of rules and order in his work on political and legal theory.

He built on the work of Hume and others, but went beyond them. For Hayek, Hume provided the epistemology of liberty and a theory of the growth of human institutions. Hayek provided a comprehensive social science of liberty, uniting economic, political, and legal arguments. As the last quotation suggests, *Law, Legislation and Liberty* provides a principled case for liberty.

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¹⁶ Hayek (1973a, p. 57). There are footnotes for each quotation to, respectively, Benjamin Constant, Frederic Bastiat, and Carl Menger.

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