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F. A. Hayek's Defense of the Market Distribution of Income

William Voegeli
Loyola University Chicago

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F.A. HAYEK'S DEFENSE OF THE
MARKET DISTRIBUTION OF INCOME

by

William J. Voegeli, Jr.

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University of Chicago in Partial Fulfillment
of the Requirements for the Degree of

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VITA

The author, William John Voegeli, Jr., was born November 21, 1954, in Aurora, Illinois.

He attended public school in Lombard, Illinois, and graduated from Wheaton North High School in 1972.

In September, 1972, he entered Illinois State University, and in December, 1975, received the degree of Bachelor of Science with a major in Economics.

In September, 1978, he was granted an assistantship in political science at Loyola University of Chicago. He received the Schmitt Dissertation Fellowship for the year 1981-1982. He has published "A Critique of the Pro-Choice Argument" in The Review of Politics 43 (October 1981).

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CHAPTER ONE

INEQUALITY AND THE CASE AGAINST CAPITALISM

George Gilder begins his book Wealth and Poverty by noting the fact that although socialism has fewer friends and less persuasive defenses than at any time in this century, capitalism has not enjoyed a corresponding increase in public esteem.¹ Despite the disenchantment with the most readily available alternative, those who practice capitalism and those who preach it remain on the defensive. It is of little use for the defenders of capitalism to point out the staggering productivity of market economies. Marx acknowledged this fact in 1848, then asserted that capitalism's dynamism only increased the urgency of going beyond it.² Nor does the assertion by capitalism's defenders that civil liberties have never lasted for long in any society with a centralized economy satisfy the market's critics. Arthur Okun acknowledges this claim, but does not regard it as decisive.³

¹George Gilder, Wealth and Poverty (New York: Basic Books, 1981), p. 3.

²Karl Marx and Friedrich Engels, The Communist Manifesto, in Karl Marx: Selected Writings, ed. David McLellan (Oxford: Oxford University Press, 1977), pp. 224-225.

³Arthur Okun, Equality and Efficiency: The Big Trade-off (Washington, D.C.: The Brookings Institution, 1975), pp. 38-40.

What is the source of this continuing rejection of the market economy? Though capitalism is a lightning rod for a number of resentments, the most significant vulnerability of capitalism, the aspect that elicits both stern intellectual critiques and popular resentment, is economic inequality. Bertrand de Jouvenel summarizes the situation neatly: "High living" --owing a yacht, for instance--is considered doubly evil by modern moral sensibilities. It is evil in itself, ostentatious and decadent. It is even worse that the yacht could be sold to alleviate "low living," such as a shortage of penicillin for ghetto children.⁴ The case against capitalism can be presented in many ways; the statistics detailing who gets what lend themselves to innumerable refinements.⁵ But the moral rejection of inequality is a fundamental fact.

The efforts by capitalism's defenders to come to grips with this fact have not been notably successful. The most direct response has been to attack modern egalitarian sentiments. If the distribution of wealth under capitalism offended modern moral sensibilities, the problem was with those sensibilities, not capitalism. Social Darwinism stands as

⁴Bertrand de Jouvenel, The Ethics of Redistribution (Cambridge: Cambridge University Press, 1952), p. 22.

⁵Okun, pp. 68-69.

the most extreme version of this point of view. In its formulation, the workings of the market economy not only do not offend, but perfectly embody, the deepest moral imperatives. The poor, far from being victims or simply unfortunate, are fully deserving of their lot.⁶ More recent capitalist distribution ethics have been less ambitious. Milton Friedman's is based on the rights of private property: "To each according to what he and the instruments he owns produces."⁷ Robert Nozick's rule, "From each as they [sic] choose, to each as they [sic] are chosen," stresses the paramount importance of unfettered exchange.⁸

But the capitalist morality, whether founded on the survival of the fittest, or private property, or free exchange, has not been able to supplant the moral revulsion of extreme inequality. Over the last century, defenders of the market's inequalities have steadily lost ground to those who want to limit those inequalities. Child labor laws, social security, progressive income taxes--all reflect this trend. More importantly, they reinforce it. Egalitarians can offer

⁶See Richard Hofstadter, Social Darwinism in American Thought, revised ed. (Boston: Beacon Press, 1955), pp. 3-11.

⁷Milton Friedman, Capitalism and Freedom (Chicago: University of Chicago Press, 1962), pp. 161-162.

⁸Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), p. 160.

these long-established correctives as proof that interfering with the market's distribution is not ruinous, contrary to conservatives' claims.⁹ Since the past remedies have been well-received, and since the remaining inequalities still grate, further egalitarian policies are called for. Conservative defenders of the market are left in an untenable position. If they advocate discarding the welfare state and returning to laissez-faire capitalism, they can look forward to the political success of a Barry Goldwater or an Alf Landon. But if they accept the premises underlaying the welfare state, conservatives implicitly agree to debate the issues of political economy in egalitarian terms. So it is difficult for defenders of capitalism to influence, much less direct, policy without violating the integrity of their principles.

Margaret Thatcher and Ronald Reagan have recently performed this balancing act well enough to win high office as unabashed advocates of the free market. Yet their victories cannot be construed as signs that capitalism is no longer politically vulnerable. If there is a distinctive aspect to the opinions of the newly triumphant conservatives, it is an emphasis on the inefficiency of the present government

⁹"Conservative" will be used throughout in the modern American sense, designating the desire to promote laissez-faire, unless otherwise noted.

programs. Promises to ferret out waste and fraud have never had wider appeal, as even the most generous taxpayers came to sense that the benefits to the poor and to society of an expensive welfare state are inordinately small. Whether or not conservatives can find major superfluities in the government remains an open question. But whether they prove to be skillful accountants or not, these efforts reveal the distinct limitations of the conservatives' mandate. If the salient opinion of modern conservatism is that whatever government undertakes it should do efficiently, conservatism doesn't mean much. Others can make the same claim. Further, unless skilled managers are all of the same political party, one party's efforts to realize efficiency are likely to be as successful as another's.

So capitalism remains morally and politically precarious. It has an abiding capacity to engender great disparities of wealth and poverty; as long as "to each as he is chosen" is the rule of distribution, carrying with it the near certainty that some will not be chosen at all, we may expect these disparities to recur. Nor does the widespread aversion to capitalism's inequalities show signs of disappearing.

Given the continuing popular distaste for drastic differences in living standards under capitalism, the problem

for those who make the egalitarian argument is to frame it in such a way as to reveal clearly the connections between popular egalitarian sentiments and a program for redistributing income. We now turn to recent reformulations of the egalitarian argument, both because these arguments themselves are challenges to capitalism, and because they are a vehicle capable of derailing the nascent revival of capitalism's political fortunes.

The chief problem for egalitarians in liberal democracies is to explain what it means to be for equality. Herbert J. Gans distinguishes the support for more equality from that for total equality. The latter, he says, is a spurious issue--completely unattainable, and a straw man created by the Right to discredit any movement toward greater equality.¹⁰ Redistribution is not an end in itself, but a means to the realization of a society in which people would have greater power to shape their own lives. As Michael Harrington writes:

The socialist aim, at least in its serious formulations, has never been the impossible goal of guaranteeing everyone the right to win in a competitive rat race; it has been to abolish the rat race altogether. The formula, "From each according to his

¹⁰ Herbert J. Gans, More Equality (New York: Random House, 1968; Vintage Press, 1974), pp. 66-68.

ability, to each according to his need," insists upon, even glories in, human differences--inequalities, if you will--once they no longer rationalize a system of invidious competition. Socialists want to move toward equality, in order to transcend it.¹¹

Michael Walzer's article, "In Defense of Equality," describes what the attainment and transcending of equality might involve.¹² Walzer begins by taking issue with Irving Kristol, who attributes the inequalities of the market economy to "the tyranny of the bell-shaped curve." Human "talents and abilities" tend to distribute themselves along the famous bell-shaped curve, some people having meager talents, some a great deal, most people being in-between. Income is distributed along a similar curve, and to the extent that one's location in the talent distribution corresponds to one's spot on the income curve, the system has a "rough fairness."¹³ Some would question how close that correspondence really is, but Walzer makes a more fundamental complaint.

¹¹Michael Harrington, "The Welfare State and its Neo-Conservative Critics," in The New Conservatives: A Critique from the Left, ed. Lewis A. Coser and Irving Howe (New York: Quadrangle, 1974), endnote, p. 322.

¹²Michael Walzer, "In Defense of Equality," in Coser and Howe, pp. 107-123.

¹³Irving Kristol, Two Cheers for Capitalism (New York: Basic Books, 1978), p. 184.

There is no reason to think that "human talents and abilities" in fact distribute themselves along a single curve, although income necessarily does. Consider the range and varieties of human capacities: intelligence, physical strength, agility and grace, artistic creativity, mechanical skill, leadership, endurance, memory, psychological insight, the capacity for hard work--even moral strength, sensitivity, the ability to express compassion.¹⁴

Each of these qualities is distributed, no doubt, along a bell-shaped curve, but there is no reason to believe that any particular one is the key to explaining income distribution, though some are more closely correlated to that curve than others. But Walzer mentions an additional quality--the ability to make money. While this talent involves the others, it is not simply the sum of them. Rather, money-making is the talent to organize one's other qualities in response to economic circumstances. It too is distributed along a bell-shaped curve, and it correlates very closely to the income distribution curve. (Luck accounts for any differences.) Walzer notes that this narrow skill has broad consequences: the ability to acquire everything one could want.¹⁵

The problem here is not with money-making, but money itself. Insisting that some other quality should be the key

¹⁴Walzer, p. 109.

¹⁵Ibid., pp. 109-110.

to obtaining money would still leave certain people with everything and others with nothing, and no talent seems so decisive that it should be that consequential. A morally superior arrangement would involve allocating particular goods to people with corresponding needs, rather than allocating all goods on the basis of any narrow skill:

Consider the case of medical care: surely it should not be distributed to individuals because they are wealthy, intelligent, or righteous, but only because they are sick. Now, over any given period of time, it may be true that some men and women won't require any medical treatment, a very large number will have to have some moderate degree of attention, and a few will have to have intensive care. If that is so, then we must hope for the appearance of another bell-shaped curve. Not just any bell will do. It must be the right one, echoing what might be called the susceptibility-to-sickness curve.¹⁶

Egalitarianism, says Walzer, is natural in the sense that it desires that social goods should go where they are needed and appreciated--sick people should get doctors, music lovers music, naturalists open space, etc. He calls this approach "the doctrine of right reasons." Distribution based solely on money-making, intelligence, beauty, or any other one thing, is perverse because it allocates on the basis of wrong reasons. "What socialists want is a society in which wealth is no longer convertible into social goods with which

¹⁶ Ibid., pp. 110-111.

it has no intrinsic connection.¹⁷ Since it is in the nature of money to be convertible outside its sphere, any attempt to implement the doctrine of right reasons, such as national health insurance, will be subverted by the tyranny of money. (The possessors of money will be able to buy health care beyond their needs, straining the resources of the system that delivers it to the truly needy.) Therefore, money itself must be distributed "more or less equally" to protect "legitimate distribution processes."¹⁸

Walzer's is hardly the last word on the subject of economic equality, but it is a compelling and fresh statement of the Left's position. According to Milton Friedman, one of capitalism's most prominent defenders, "In some intellectual circles the desirability of equality of outcome has become an article of religious faith: everyone should finish the race at the same time."¹⁹ But Walzer, presumably a member of the intellectual circles Friedman has in mind, seems very undoc-trinaire in his willingness to argue his case down to the most basic premises. If Walzer's thoughtfulness were unique, perhaps Friedman's charge could be sustained. But this does

¹⁷ Ibid., p. 116.

¹⁸ Ibid., pp. 112-117.

¹⁹ Milton and Rose Friedman, Free to Choose (New York: Harcourt, Brace, Jovanovich, 1979), p. 134.

not appear to be the case. David Spitz makes a point similar to Walzer's: Equality as a moral principle does not require the elimination of differences among men, but the justification of those differences in terms of the truly necessary and just. Spitz calls this "Equality of consideration." It puts the burden of proof on the defenders of inequalities, rather than the egalitarians.²⁰ R.H. Tawney stressed the same point fifty years ago:

While [men] differ profoundly as individuals in capacity and character, they are equally entitled as human beings to consideration and respect,... The well-being of a society is likely to be increased if it so plans its organization that, whether their powers are great or small, all its members may be equally enabled to make the best of such powers as they possess.²¹

So, while there may be egalitarians who blindly embrace certain doctrines, even as there are unreflective adherents of every faith, the suggestion that egalitarianism itself is characteristically and thoroughly dogmatic seems unwarranted. Nor does the conservative effort to dismiss the egalitarian argument as the result of a major misunderstanding between equality of opportunity and equality of result stand up.²²

²⁰David Spitz, "A Grammar of Equality," in Coser and Howe, pp. 148-149.

²¹R.H. Tawney, Equality (New York: Harcourt, Brace, 1931), p. 34.

²²Friedman, Free to Choose, p. 132.

In the first place, to say egalitarians wants total equality of results is a straw man, as already noted. In the second place, the reasons why egalitarians desire greater equality are not going to be met by equal opportunity. Removing artificial barriers to wealth does nothing but assure the opportunity for narrow talents to command the broadest range of goods. The doctrine of right reasons can hardly be satisfied simply by eliminating the worst reasons for allocating wealth, such as skin color. Christopher Jencks points out that in a certain sense, America has already achieved equality of opportunity. His studies have shown that the degree of income inequality between two adult brothers is likely to be the same as between any two men chosen at random. Since no program can reasonably hope to provide more equality of opportunity to children at large than what is provided children of the same family, it would appear that if reduction of economic inequality is truly a social good, we will have to pursue it directly, not through the mediate goal of equalizing opportunity.²³

Furthermore, equality of opportunity is not a satisfactory substitute for the attainment of greater economic equality, because it is not clear to what extent the one is

²³Christopher Jencks et al, Inequality: A Reassessment of the Effect of Family and Schooling in America (New York: Basic Books, 1972), pp. 7-8.

different from the other. If the true meaning of equal opportunity is the removal of conventions that impede certain groups, then equal opportunity can be effectively severed from economic egalitarianism. But if equality of opportunity does not merely negate artificial barriers to advancement, but positively secures the factual prerequisites by which individuals may use all their natural abilities, the task of equalizing opportunity is subsumed to a large degree by the reduction of economic inequality.²⁴ Even the guarantee of equal access to such essential determinants of a life's course as nutrition, health care, and education, may not fully equalize opportunity. Natural inequalities are "cumulative and self-reinforcing;" the gains and the losses of the father are visited on the son.²⁵ If accidents of birth are not to resurface as a source of inequality, equalizing opportunity is not something a society can do just once, but will be an ongoing effort virtually indistinguishable from the enactment of the egalitarian agenda.²⁶

²⁴Tawney, p. 125.

²⁵Spitz, pp. 132-133.

²⁶See John Rawls, A Theory of Justice (Cambridge: Belknap Press, 1971), pp. 65-90.

Finally, the Left insists that the most radical inequality of opportunity is to be found in the self-reinforcing concentration of power and wealth in modern capitalistic societies. Unequal opportunity is not some appendage to capitalism, but intrinsic to a system where the insular ruling class uses power to secure its wealth and wealth to secure its power.²⁷ Equality of opportunity could be an attribute of a market economy consisting of shopowners and craftsmen. But it is incompatible with the logic of corporate capitalism where millions of lives are altered by the decisions of a very few people.

To repeat, economic inequality is the chief source of capitalism's vulnerability. The widespread disaffection for the contract between indecent high living and indecent low living is the material cause. But, as we have seen, a more sophisticated critique of the free market continues, and its fashioners await the chance to shape popular resentment into a politically consequential force. Whether the egalitarian brief against capitalism is sound or not, it is deserving of serious attention, both for its political implications and its capacity to perpetuate capitalism's defensive posture as a morally illegitimate system.

²⁷Tawney, pp. 71-72

It receives such attention in the writings of Friedrich A. von Hayek. Though an economist by profession, whose pursuit of this career resulted in a Nobel prize in 1974, and who has insisted he attaches greater importance to his economic work than any other,²⁸ Hayek has developed a defense of capitalism over the past thirty-five years. This defense is not primarily that of an economist but of a political theorist. Hayek's argument on behalf of the market economy rests on a theory of the proper role of government, the true nature of law, and on society's capacity to order itself spontaneously. Hayek is widely acknowledged as one of the most compelling defenders of the free market. His political works have greatly increased the rhetorical vocabulary of capitalism's advocates, and been enthusiastically received by them.²⁹

Hayek has given lengthy, careful attention to the egalitarian indictment of capitalism, and clearly considers it to be an issue of great importance. If we carefully examine Hayek's defense of capitalism, with special emphasis on his treatment of capitalism's distribution of wealth, we

²⁸Friedrich A. Hayek, The Road To Serfdom (Chicago: University of Chicago Press, 1944), p. x.

²⁹George C. Roche III, "The Relevance of Friedrich A. Hayek," in Essays on Hayek, ed. Fritz Machlup, with a foreword by Milton Friedman (New York: New York University Press, 1976), pp. 10-11.

will be in a better position to assess the degree to which capitalism is discredited by egalitarian arguments and sentiments. This examination of Hayek's defense of the market will contribute ultimately to an understanding of the market's defensibility. We will first consider such key concepts in Hayek's argument as freedom, progress, law, order, and government's proper role, examining how they contribute to Hayek's rebuttal of egalitarianism. Then we will consider the implications of Hayek's arguments in terms of social cohesion and moral order, to see if, in the attempt to refute the egalitarian critique, Hayek has adopted otherwise dubious positions. Finally, this thesis will review the debate over capitalism's distribution processes in light of Hayek's contribution.

CHAPTER TWO

FREEDOM AND PROGRESS

Friedrich Hayek's defense of the market economy's distribution of income starts from the sober acknowledgment that that distribution does indeed offend modern notions of decency. By declining to pursue the tempting but unsatisfactory course of insisting that people must somehow adjust their consciences to modern realities, Hayek prepares to enter the issue of income distribution at the truly central point. Hayek even admits that his own sense of justice is not entirely comfortable with all of capitalism's results:

The results of . . . remuneration according to the value of the product must appear as highly unjust from the point of view of distributive justice. It will rarely correspond to what we regard as the subjective merit of a performance. That the speculator who by chance has guessed correctly may earn a fortune in a few hours while the life-long efforts of an inventor who has been anticipated by another by a few days remains [sic] unremunerated, or that the hard work of the peasant who clings to his soil barely brings him enough to keep going, while a man who enjoys writing detective stories thereby earns enough to afford a luxurious life, will appear unjust to most people. I understand the dissatisfaction produced by the daily observation of such cases and honour the feeling which calls for distributive justice. If it were a question of whether fate or some omnipotent and omniscient power should reward people according to the

principles of commutative or according to the principles of distributive justice, we should probably all choose the latter.³⁰

Except for the (characteristically) dispassionate language, one might suppose the foregoing to be a passage from an indictment of capitalism for its endemic injustice. We get the first hint of how Hayek plans to dissociate himself from egalitarianism when he makes his approval of distributive justice conditional upon distribution by "fate or some omnipotent and omniscient power." In fact, there are no such powers, says Hayek, and the entire egalitarian argument is based on the premise that we can do something about the distribution of income, rather than accepting it as fated. By this caveat, Hayek indicates that he will insist on comparing the market to real alternatives, not to ideal ones that might tacitly presuppose omniscience for their operation. The course of Hayek's argument will be to insist that despite the defects of its income distribution, the market is, on balance, superior to the available alternatives, correctly perceived. Capitalism is desirable for Hayek, as democracy was desirable for Winston Churchill, largely because the alternatives are all inferior. To analyze Hayek's argument, then, is to discern Hayek's characterization of capitalism and his view of the alternatives to capitalism, and to see why he prefers the former.

³⁰F.A. Hayek, Studies in Philosophy, Politics, and Economics (Chicago: University of Chicago Press, 1967), p. 257.

The ultimate concern of Hayek's political philosophy, towards which everything else in it is directed, is progress. Progress, he feels, is the essence of civilization; sometimes he uses the two words almost interchangeably. "The preservation of the kind of civilization that we know depends on the operation of forces which, under favorable conditions, produce progress."³¹ According to C.S. Lewis, "Progress means getting nearer to the place where you want to be."³² Hayek's notion of progress is emphatically different, lacking any teleological imperative. It is by "living in and for the future [that] human intelligence proves itself. Progress is movement for movement's sake . . ."³³

Hayek's view of progress rests on two premises. First, individuals have an infinite array of desires and interests. Any attempt to speak of a society progressing involves the reduction of the goals of each member of society to some broad general desires. Hayek feels this consolidation is unwarranted. Individuals' goals have a concreteness that makes

³¹F.A. Hayek, The Constitution of Liberty (Chicago: University of Chicago Press, 1960), pp. 39-40.

³²C.S. Lewis, Mere Christianity (New York: Macmillan, 1943; Macmillan Paperbacks, 1960), p. 36.

³³Hayek, Constitution, p. 41.

movement towards them meaningful, while talk of "society's goals" is always hopelessly amorphous.³⁴ Hayek complains that this particularistic emphasis on what individuals want is interpreted, often and wrongly, as an endorsement of crass selfishness. Hayek insists that he does not profess any sort of egoism. Emphatically included in the goals individuals will want to pursue are the altruistic or charitable, which do not benefit them except by the satisfaction they derive from helping others.³⁵

The second premise of Hayek's understanding of progress is that each individual knows more about what he wants and dislikes, what he can and cannot do, than anyone else. Hayek refers to this phenomenon as the "division of knowledge," and considers it as least as important to the understanding of social processes as the far more famous division of labor. The problem of the division of knowledge, from the point of view of a social scientists, is to find out how millions of people can interact in a complex society when each one of them only knows a little bit about the desires of others, the possibilities open to him, the chances of a

³⁴ Ibid., p. 40 and note 4, p. 429.

³⁵ Ibid., pp. 78-80

venture's success, etc.³⁶ From the perspective of the legislator, who wants to formulate beneficial government policies, the division of knowledge constitutes a boundary to what the government is able to do or what it needs to do. Policies that presuppose gathering and digesting comprehensive data about the functioning of society are definitely suspect. Such efforts will never come near "the knowledge of particular circumstances of time and place," possessed by each individual. Such knowledge is terribly useful and greatly diffused. Everyone has a body of knowledge which no other person possesses entirely, so everyone is able to make unique contributions and calculations.³⁷ This dispersion of knowledge is crucial to Hayek's point of view:

It is impossible for any man to survey more than a limited field, to be aware of the urgency of more than a limited number of needs. . . . This is the fundamental fact on which the whole philosophy of individualism [Hayek's philosophy] is based.³⁸

Hayek's stress on the division of knowledge gives his treatment of liberty a unique coloring. According to Hayek:

³⁶F.A. Hayek, Individualism and Economic Order (Chicago: University of Chicago Press, 1947), p. 50.

³⁷Ibid., pp. 80-81.

³⁸Hayek, Road to Serfdom, p. 59.

The case for individual liberty rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends. . . . If there were omniscient men, if we could know not only all that affects the attainment of our present wishes but also our future wants and desires, there would be little case for liberty.³⁹

By asserting that liberty has little intrinsic importance, Hayek takes a different approach than other defenders of capitalism. Milton Friedman, for example, calls freedom the "ultimate goal in judging social arrangements."⁴⁰ Some students of Hayek have failed to note his pragmatic approach to liberty, and treated him as a classical liberal whose views are the same as Friedman's.⁴¹ This error may be attributable to the fact that Hayek's writings often appeal to an assumed concern for liberty; his first and most famous book, The Road to Serfdom, did not try to argue that Hitler was evil because he had stifled progress--Hayek proceeded on the understanding that Naziism was repugnant to his audience. Nonetheless, when Hayek speaks directly of freedom, he always stresses its role in furthering progress.

³⁹ Hayek, Constitution, p. 29.

⁴⁰ Friedman, Capitalism and Freedom, p. 12.

⁴¹ See Gottfried Dietze, "Hayek on the Rule of Law," in Machlup, p. 114. See also Morris M. Wilhelm, "The Political Thought of Friedrich A. Hayek," Political Studies 20 (June 1972): 169.

But how does freedom facilitate progress? The answer, in brief, is that it transforms the division of knowledge from a cause of chaos in a large society to a source of order. If we tried to organize society from the center, the sheer volume of things we could not know, changes we could not anticipate, would frustrate us at every turn. By allowing individuals to pursue various enterprises, based on their own assessments of the prospects for these efforts, we remove the necessity for centralized direction of society. As Hayek says:

We want the individual to have liberty because only if he can decide what to do can he also use all his unique combination of information, skills and capacities which nobody else can fully appreciate. To enable the individual to fulfil his own potential we must also allow him to act on his own estimates of the various chances and probabilities. Since we do not know what he knows, we cannot decide whether his decisions were justified; nor can we know whether his success or failure was due to his efforts and foresight, or to good luck.⁴²

By liberty, Hayek refers to "that condition in which coercion of some by others is reduced to a minimum."⁴³ Coercion, in turn, is "such control of the environment of a person by another that, in order to avoid a greater evil, he is forced to act, not according to a coherent plan of his own but to serve the ends of another."⁴⁴ Does this mean that if my

⁴²Hayek, Studies, p. 233.

⁴³Hayek, Constitution, p. 11.

⁴⁴Ibid., pp. 20-21.

employer will not give me the raise I desire, forcing me to abandon the coherent plan I had to buy a new car, that he has coerced me and deprived me of my freedom? No, says Hayek. He elaborates his definition, saying that liberty culminates in the assurance of a sphere of unfettered action wherein each citizen is immune to interference by others. An indispensable part of that sphere is the right to own private property and dispose of it as one chooses.⁴⁵ A tight-fisted employer does not transgress my sphere, does not coerce me, as a thief certainly does. Moreover, while the employer may force me to make the unpleasant choice to find other employment, this is not comparable to acting on pain of injury or death.⁴⁶ Finally, according to Hayek, liberty does not mean the ability to do whatever one desires. The fact of coercion cannot be equated with circumstances of limited funds, talents, or resources, though both may prevent the realization of some personal goal.⁴⁷

A state devoid of coercion would be the ideal, but because of man's demonstrated propensity to act against others, the realistic goal calls for minimizing coercion, not eliminating it. Minimizing coercion requires the

⁴⁵ Ibid., pp. 137-143.

⁴⁶ Ibid.

⁴⁷ Ibid., pp. 16-17.

existence of a government which possesses coercive powers itself, and uses them to dissuade individuals bent on transgressing the protected sphere of others. If this government is to diminish rather than exacerbate the problem of coercion, the scope of its powers must be clearly limited. "The limitation of all coercion to the enforcement of general rules of just conduct was the fundamental principle of classical liberalism, or, I would almost say, its definition of liberty."⁴⁸ (Hayek considers his own views consonant with those of classical liberalism.) The "general rules of just conduct" will be considered in the discussion of Hayek's philosophy of law in Chapter Three. In Chapter Four we will study the nature of the limitations Hayek would place on government. For the time being, we will regard Hayek's notion of a free society as being similar to the nightwatchman state. In such a society each citizen has legal status as a protected member of the community, immunity from arbitrary arrest, the right to work at whatever he decides to do, the right to movement as he chooses, and the right to own property.⁴⁹

⁴⁸F.A. Hayek, New Studies in Philosophy, Politics, Economics, and the History of Ideas (Chicago: University of Chicago Press, 1978), p. 109.

⁴⁹Hayek, Constitution, p. 20.

The leading characteristic of a free society that makes the division of knowledge a source of social order rather than an obstacle to it is the price system in a competitive market economy. The price system reflects how much people want things and how easily they are acquired. Knowledge of the price of a good or service obviates the need for trying to find out who wants what, where it can be obtained, how it can be delivered, and so on.⁵⁰ Adam Smith announced that the division of labor was the chief cause of the wealth of nations.⁵¹ But Hayek feels the Smith's venerable pin factory example misleadingly suggests that the most important division of labor goes on within a single firm, when in fact the division of labor among firms is the real source of prosperity. The passage to modern society is the story of prices rather than rules coming to direct productive activities. As this change took place, says Hayek, societies grew more prosperous. Everyone in society, not just the rulers, was able to ascertain and act upon the facts that might produce wealth, so it was pursued more energetically and more flexibly. It became worthwhile to specialize

⁵⁰ Hayek, Individualism, pp. 85-86.

⁵¹ Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, ed. Edwin Cannan, with an Introduction by Max Lerner (New York: Modern Library, 1937), pp. 3-12.

in the production of certain goods, concentrating on gaining knowledge about the demand for these things and the way to supply them. The general prosperity, he concludes, is a result of the greatly increased opportunities individuals have to achieve financial success.⁵²

The price system is the leading example of the capacity of a society to spontaneously order itself. A small group, such as a tribe or a village, is simple enough that most of the social processes can be directed by a central authority. But the expansion of the scope of civilization to include profitable interaction among a larger number of people required that this authority be superseded. Hayek thinks that the initial desire to limit government can be traced to the simple desire to reduce the chances of being bullied or coerced. But the discovery that a diminution of government set loose forces that spontaneously generated a desirable social order was the beginning of the modern attachment to liberty.⁵³ The very idea of social, as opposed to tribal, order carries with it the process of reconciling diverse wants and knowledge. In a social order, Hayek says:

⁵² Hayek, New Studies, pp. 62-63.

⁵³ Hayek, Studies, pp. 161-162.

Individuals are able, on the basis of their own respective peculiar knowledge, to form expectations concerning the conduct of others, which are proved correct by making possible a successful mutual adjustment of the actions of these individuals.⁵⁴

Though Hayek is conspicuous among contemporary political theorists in extolling the spontaneous order, he regards himself as being only a disciple of the 18th century philosophers, such as Mandeville, Hume, Josiah Tucker, Montesquieu, Adam Ferguson, and Smith, who reacted against the "constructive rationalism" associated with Cartesian philosophy by emphasizing the degree to which society could spontaneously order itself. Smith's "invisible hand" may have been an excessive claim that the spontaneously generated order was always the best possible. But, Hayek says, Smith was like all the others in seeing that society progressed when "less effective" institutions or practices were displaced by those more effective at the "reconciliation of diverse interests."⁵⁵ Bernard de Mandeville was not the most penetrating of these thinkers, but he was the first to grasp the key insight:

His main contention became simply that in the complex order of society the results of men's actions were very different from what they had intended, and that the individuals, in pursuing their own ends, whether

⁵⁴ Hayek, New Studies, p. 9. (Italics mine.)

⁵⁵ Hayek, Studies, pp. 99-101.

selfish or altruistic, produced useful results for others which they did not anticipate or perhaps even know; and finally that the whole order of society, and even all that we call culture, was the result of individual strivings which had no such end in view, but were channeled to serve such ends by institutions, practices, and rules which also had never been deliberately invented but had grown up by the survival of what proved successful.⁵⁶

The price system is a noteworthy example of society's capacity to order itself spontaneously, but it is not the only one. The existence and growth of language is an even more profound demonstration of man's capacity to create useful means of mutual accommodation without any pre-existing master plan.⁵⁷ Hayek offers language and the price system as proof of the excessive rigidity of the dichotomy between nature and convention that he traces back to the ancient Greeks.⁵⁸ Hayek claims that David Hume outlined a middle category to be applied to spontaneous developments such as the price system or language, that were neither instinctive nor contrived. These social phenomena were the results of human action but not of human design, and as such should be

⁵⁶ Hayek, New Studies, p. 253.

⁵⁷ Hayek, Studies, p. 72.

⁵⁸ Hayek, New Studies, pp. 4-6. See also Hayek, Studies, pp. 96-98, and Joseph Cropsey, "Conservatism and Liberalism," in Left, Right, and Center, ed. Robert A Goldwin (Chicago: Rand McNally, 1967), p. 44.

accorded a quasi-natural status, and not derided as arbitrary arrangements subject to change whenever we might like.⁵⁹

The spontaneous order makes government intervention in the economy to achieve the production and distribution of goods unnecessary. The more telling assertion is the government intervention in the spontaneous order is positively harmful. Hayek writes:

The reason why . . . isolated commands requiring specific actions by members of the spontaneous order can never improve but must disrupt that order is that they will refer to a part of a system of interdependent actions determined by information and guided by purposes known only to the several acting persons but not to the directing authority. The spontaneous order arises from each element balancing all the various factors operating on it and by adjusting all its various actions to each other, a balance which will be destroyed if some of the actions are determined by another agency on the basis of different knowledge and in the service of different ends.⁶⁰

Where societies are spontaneously ordered, the intrusion of centralized commands upon them does not solidify order, but creates uncertainty and confusion. People try to adjust to the new set of circumstances without knowing if they are permanent or temporary, or whether or not more central orders will follow.⁶¹

⁵⁹ Hayek, New Studies, pp. 4-6.

⁶⁰ F.A. Hayek, Law Legislation, and Liberty, 3 vols. (Chicago: University of Chicago Press, 1976), vol. 1: Rules and Order, p. 51.

⁶¹ Hayek, Constitution, pp. 150-161.

But the production and consumption of goods and services is not the only aspect of social life that orders itself spontaneously. In the longer run, the very existence of society depends upon the spontaneous emergence of needed values and institutions. While Hayek denies that a society as such can progress, since it is not an entity that can have goals, in the process of changing to meet the changing desires of its members, a society--that is, the whole array of regularities that constitutes the public life of a society--will evolve. This evolution is the most important instance of the coordination of individual and social orderliness; individual desires elicit complementary actions by others, and those actions that do the best job of satisfying the wants come to characterize the social order. Whether or not particular aspects of a social order persist depends on their contribution to the vitality of the group. When certain values or institutions are in conflict at the margin, the people of the society must gravitate towards one or the other. Those practices that contribute to the long-term continuity and growth of a social order will become more common, while groups that choose practices uncondusive to such continuity will disappear, taking their distinctive social characteristics with them.⁶²

⁶²Hayek, Studies, p. 77. See also Hayek, New Studies, pp. 19-20.

Hayek is at pains to deny that his ideas of social evolution resemble what he regards as the excesses of Social Darwinism. Hayek's concern is with the evolution of a civilization's customs and institutions.⁶³ According to Hayek, Social Darwinism erred by concentrating on the natural selection of individuals, and on innate rather than acquired characteristics.⁶⁴ Hayek says that culture evolves as unsuccessful groups immitate successful ones, or are assimilated by them.⁶⁵ So subtle is this process that it is not even necessary that the qualities that cause a particular group to thrive be known to its members, new or old. Without intending to, they will embrace these practices in the process of socialization. (Hayek's most important book, The Constitution of Liberty, is dedicated to "the unknown civilization that is growing in America.")

From a foundation that incorporates the intrinsic desirability of progress, the ineluctable division of knowledge, and the necessity of freedom for making the latter spontaneously generate the former, Hayek proceeds to dispute the egalitarian indictment of the market. He will do so by

⁶³ Hayek, New Studies, pp. 67-68.

⁶⁴ Hayek, Rules and Order, p. 23.

⁶⁵ Ibid., note 7, p. 169.

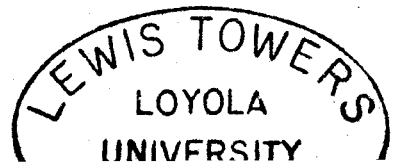
insisting that the groups for whom the Left is especially solicitous--the poor and the working classes--are better off under the market than they are after the reforms proposed by its critics. The restrictions on the market cause a loss in economic vitality that affects the entire society, including the poor, adversely. They also distort values, encouraging beliefs and practices that are harmful to the whole society, including, and perhaps especially, the poor. As Hayek states:

Men can be allowed to act on their own knowledge and for their own purposes only if the reward they obtain is dependent in part on circumstances which they can neither control nor foresee. And if they are to be allowed to be guided in their actions by their own moral beliefs, it cannot also be required that the aggregate effects of their respective actions on the different people should correspond to some ideal of distributive justice. In this sense freedom is inseparable from rewards which often have no connection with merit and are therefore felt to be unjust.⁶⁶

Hayek stresses that rearranging the results of the market economy on behalf of the poor is likely to prove harmful to them in the long run. He goes so far as to say that the main benefits of freedom are not in exercising it, but in living in a society where freedom constantly engenders progress in ways that could not have been foreseen or planned.⁶⁷

⁶⁶ F.A. Hayek, Law, Legislation, and Liberty, vol. 2: The Mirage of Social Justice, p. 120.

⁶⁷ Hayek, Constitution, pp. 31-32.



For example, an affluent class is able to experiment with new forms of living and consumption which may "catch on;" if so, new sectors of the economy will emerge, providing new jobs, and products once considered luxuries, like cars and televisions, will become ubiquitous. Conversely, says Hayek, if the advances now pioneered by the affluent were, as a matter of policy withheld until they were universally available, most would never be realized at all.⁶⁸ Progress requires ample scope for the exploration of the odd but intriguing possibilities, for serendipity, for following hunches, and no comprehensive government program can allow these things the latitude to be found among free men pursuing private visions. According to Hayek, redistribution may make the poor better off in the short run, but the long-term consequences of stifling the creativity of the more affluent classes limits the chances the poor have of escaping poverty.⁶⁹ The prerequisite for any distribution is a vibrant economy, but this requires entrepreneurs who will endure great risks, and who will come forth only if they might achieve great rewards. Confiscate such rewards and there will be less risk-taking and fewer breakthroughs in new goods and services.⁷⁰

⁶⁸ Ibid., pp. 42-44

⁶⁹ Ibid., pp. 48-49.

⁷⁰ Hayek, New Studies, pp. 64-65.

In the market things are produced by those who can do so cheaply, since the incentives to take markets away from expensive producers are strong. In many cases the results of the market's operation are unsatisfactory and we feel that simple changes could correct the situation. But such efforts reveal that it is extremely difficult for the government to do just one thing. The political and administrative logic of the situation draws the government into a broad-ranging and protracted effort, that may result in one thing being done better than it would have been done by the market, and a thousand things being done worse.⁷¹ For example, rent control, public housing, and slum clearance are all activities that begin with modest and laudable aims, but which, once begun, are almost impossible to stop or contain because of the political expectations they engender. Rent control continues long after a housing crisis is over, and public housing and slum clearance involve many more beneficiaries than originally planned, including many who are economically self-sufficient but politically powerful.⁷² "While we used to suffer from social evils, we now suffer from the remedies for them."⁷³

⁷¹Ibid., p. 185.

⁷²Hayek, Constitution, pp. 343-349.

⁷³Ibid., p. 304.

Even in the extreme case of people who work in jobs that are both low-paid and unpleasant, Hayek contends that their lot is better than it would be under available alternatives, as opposed to ideal ones. It is not a social injustice that people who hold unpleasant jobs make much less than those with interesting and enjoyable ones. Salaries reflect the value the market places on the work performed by the salaried employee. The odiousness of the job affects this equation only to the extent that it encourages those who can to seek other jobs, reducing the supply of laborers, and putting upward pressure on the wage. The important thing is that people who clean sewers have more alternatives to gain higher pay or seek other employment than they would in other systems, where the cost of good intentions that might ameliorate the worker's lot is an unwieldy, stagnant economy that, at the very least, greatly complicates his efforts to better his own position.⁷⁴

The sort of egalitarianism that Hayek favors is the type endorsed by most of the defenders of the market. Equality, to Hayek, means the absence of legal privileges or government-secured advantages. It means the negative enforcement of equal opportunity, the removal of artificial obstacles to anyone's career, but not the positive effort to try to

⁷⁴Hayek, Mirage, pp. 91-93.

equalize everyone's "starting point."⁷⁵ The unavoidable fact is that the conjunction of equality before the law and unequal natural endowments results in unequal social and economic conditions. Inequality of wealth and prestige inevitably accompanies freedom in a society of unique individuals.⁷⁶ To try to reverse this fact of nature requires extensive and constant government action on behalf of every individual--a role for government antithetical to freedom.⁷⁷

Hayek sees a second difficulty with the effort to realize the egalitarian vision. In a market economy, people receive economic rewards for the ruthlessly pragmatic reason that they have satisfied some desire. No moral judgment on whether they were morally deserving of their wealth is implied by these transactions, beyond the belief that sellers of goods or services are entitled to the price their buyers have voluntarily agreed to. Some people will engage in after-the-fact rationalizations, claiming that differences in industriousness or foresight explain and justify the differences between the rich and poor. Hayek insists that this moral judgment is wrongly applied to capitalism, and is not

⁷⁵ Hayek, New Studies, pp. 141-142.

⁷⁶ Hayek, Constitution, pp. 85-88.

⁷⁷ Ibid., pp. 92-93.

a part of the logic of the system:

In our society personal esteem and material success are much too closely bound together. We ought to be much more aware that if we regard a man as entitled to a high material reward that in itself does not necessarily entitle him to high esteem. And, though we are often confused on this point, it does not mean that this confusion is a necessary result of the enterprise system--or that in general the free enterprise system is more materialistic than other social orders.⁷⁸

The distinction between material entitlement and moral desert, always possible in a market economy though not always practiced, is completely untenable in a system where economic activity, including the distribution of income, is directed by a central authority. That authority must make allocation decisions according to selected criteria of desert; Hayek says that to wind up at the bottom of that distribution is not only to suffer physical deprivation but to be stigmatized as a least deserving citizen. Economic circumstances, in these economic systems, inevitably imply moral judgments.⁷⁹

In addition to the devitalization of the economy, which will harm the poor, and the corruption of the ideal of equality, which will humiliate them, departures from the market establish precedents that cannot easily be repealed. As

⁷⁸ Hayek, Studies, p. 234.

⁷⁹ Hayek, Constitution, pp. 95-99.

Hayek sees it, the fecundity of the market economy results from its participants' attitude that they must constantly strive to satisfy the desires of others as expressed through the price system. If people generally held the contrary opinion that they were entitled to a decent living, or the continuity of some previous standard of living, even if the skill they wish to exercise is no longer demanded, the economy would perform much worse. Of course, to strive is not always to succeed, since the division of knowledge prevents anyone from knowing all the obstacles and opportunities confronting him. The market, then, is "a mixed game of skill and chance," the playing of which increases everyone's chance to prosper without guaranteeing anyone a particular level of income.⁸⁰

Once we get the government involved in the process of redistributing the winnings, it is extremely difficult to continue the game. People perceive that the satisfaction of economic wants is of diminished importance to gaining wealth; what really matters is the exercise of political power. The progress of government intervention in the economy encourages, and is encouraged by, the shift in human enterprise from the economic to the political arena. More

⁸⁰ Hayek, Studies, pp. 174-175.

and more of the efforts once devoted to satisfying the demands for goods and services are now given over to lobbying, bargaining, and campaigning.⁸¹

Furthermore, Hayek believes that government intervention in the economy contributes to a false, anthropomorphic view of society. The "primitive" instinct to think of the social unit as an entity, rather than as a collection of individual entities, is reflected most clearly in the discussion of economic distribution.⁸² The call for a fairer income distribution is usually expressed in terms of distributive or social justice. Hayek objects:

There can be no distributive justice where no one distributes. Justice has meaning only as a rule of human conduct, and no conceivable rules for the conduct of individuals supplying each other with goods and services in a market economy would produce a distribution which could be meaningfully described as just or unjust.⁸³

If society were a person whose actions included parcelling out wealth, then it would be reasonable to insist that he do so in accord with certain moral precepts. But no such precepts can be formulated that would guide the interactions of millions of people, who, needless to say, do not know one

⁸¹ Hayek, New Studies, p. 64. See also F.A. Hayek, Law, Legislation, and Liberty, vol. 3: The Political Order of a Free People, p. 138.

⁸² Hayek, Rules and Order, p. 9.

⁸³ Hayek, New Studies, p. 58.

another and have no intentions vis-à-vis one another.⁸⁴

As Hayek sees it, every redistributive corrective diminishes to one extent or another the values and arrangements by which whole societies have only recently emerged from a history of poverty. Such an accomplishment deserves greater respect and fewer reforms. We can see how deep Hayek's commitment to the market and its distributive process is by considering his support of the role of the "ability to make money," derided by Walzer. It is a fact, Hayek says, that a free society of modern complexity will often favor the person who knows how to package and sell his skills over an equally skilled person who waits for those demanding his services to find him. Though this emphasis on pragmatic resourcefulness is often bitterly resented, it is entirely appropriate that it should be rewarded. The market economy does not merely use skills, it uses them in an infinite and changing variety of ways. Men contribute to others not just by having a skill, but by finding its best employment. That economic rewards should reflect this fact is both predictable and desirable.⁸⁵

⁸⁴Ibid.

⁸⁵Hayek, Constitution, pp. 80-83.

Because Hayek disavows any view of society as a collective, his discussion of the role of the ability to make money is in terms of its usefulness to individuals. Walzer takes what Hayek would probably call an anthropomorphic posture by discussing how the "system rewards" money-making abilities. Walzer's stress on the aggregate has certain paternalistic implications. We could criticize democracy along the lines Walzer uses to criticize capitalism: In a well-governed society, political power would be exercised by men and women with certain important qualities--eloquence, organizational ability, prudence, courage, and integrity, to name only some. Yet in a democracy those who possess "the vote-getting ability," a quality distinct from these others, are the ones who wind up with political power. Walzer's argument that people don't get the economy they want or ought to want from the money-makers is analagous to the claim that they don't get the polity they want or ought to want from the vote-getters. Each contention rests on the premise that the people's real preferences or best interests are known to certain people, whose acquisition of power is sufficient to do what the people want and need might well be a happy occasion.

The thrust of Walzer's argument went beyond the assertion that sharp-eyed businessmen were the most likely beneficiaries of capitalism. His larger claim was that even if

we knew the true moral desert of each individual, distributing wealth accordingly would not guarantee that human needs received the attention and the economic resources they deserved. Only the implementation of the doctrine of right reasons, where particular goods correspond to particular needs can do that. Hayek's conception of egalitarianism does not seem to extend to Walzer's doctrine. Rather, Hayek views the egalitarian effort as an attempt to make receipt correspond to the moral desert of producers, their dedication, diligence, and so forth. (See above, [pp. 17-18]). In this regard, Hayek's argument may be insufficient for meeting Walzer's important codicil to the egalitarian critique.

But we find even graver problems if we bring Hayek's insistence on comparing programs rather than ideals to bear on Walzer's argument. Hayek says that "though a great many people are dissatisfied with the existing pattern of distribution, none of them has really any clear idea of what pattern he would regard as just."⁸⁶ Walzer's idea of to each according to his needs may be clear enough, but whether his program for realizing it, protecting legitimate distributive processes such as national health insurance by distributing income more or less equally, will succeed is open to question.

⁸⁶ Hayek, New Studies, p. 58.

Even more worrisome is the prospect of harsh side-effects from the Walzer program. The disincentive effects on production that concern Hayek a great deal are not mentioned by Walzer. Arguably, that is a technicality too abstruse for a single article on the ethical ideal of economic equality. But even a short article should not argue for matching goods with needs without showing that sufficient goods of the desired types are available, or suggesting how they might be produced, or mentioning how the government should face the difficult allocative decisions if the goods are not available. These are the sort of questions Hayek's argument about comparing real alternatives raises, and the sort that Walzer's argument does not answer.

If we are to judge Hayek by this standard of real alternatives, then we cannot yet accept his contention that capitalism is the best available. The resiliency of the market economy, both as an economic system and a social structure, is still undetermined. If it can withstand a number of changes, then departures from it may not be so distressing as Hayek suggests. In Chapter Three we will consider Hayek's argument about law, which is his argument about the delicacy of the spontaneous order. In Chapter Four we will see what sort of efforts on behalf of the poor are consistent with the preservation of the spontaneous order.

CHAPTER THREE

KNOWN LAWS AND AN UNKNOWN ORDER

Hayek wishes to argue that retaining capitalism will assure every member of society a better chance to avoid poverty than altering or abolishing the market. He realizes why his task is extremely difficult; people who profit from government intervention in the economy have tangible evidence of their benefits. The recipient of the government support check, or the worker in a tariff-protected industry, is fully aware that he owes his present standard of living to a government effort. But the costs of intervening in the market economy, and the benefits of its unimpeded progress, are less easily discerned. We appreciate the jobs saved by the tariff; we don't notice the funds diverted to artificially competitive domestic goods, or the loss of the productive capacities that might have been created had we been able to buy the cheaper imported goods and devote the residual funds to other purposes.⁸⁷

The burden of Hayek's philosophical writings, then, is to remind people of the less obvious facts, to apprise them of the less tangible benefits available from the market.

⁸⁷ Hayek, Rules and Order, pp. 56-57.

Hayek must, like Tocqueville, for whom he frequently expresses his admiration, inculcate a sort of "self-interest, rightly understood." Although Hayek's teaching is particularly inaccessible, requiring a sophisticated understanding of economic cause and effect that few people possess, he is determined that his own writing should counterbalance widely held beliefs. Hayek seems to have had his own work in mind when he wrote, "There is, . . . never so much reason for the political philosopher to suspect himself of failing in his task as when he finds that his opinions are very popular."⁸⁸

We can be more precise about Hayek's view of his philosophical writings. He has written:

It is the nurturing of the spontaneous forces of freedom that truly constitutes a service to society--to that which has grown, as distinct from that which has been deliberately created--and to the further strengthening of the creative forces of the social process.⁸⁹

Assuming that Hayek hopes his writings will "truly constitute a service to society," we may conclude that the ultimate goal of his philosophy is to nurture the spontaneous order, a task which will regularly put him at odds with the more popular calls for reconstructing that order.

⁸⁸ Hayek, Constitution, p. 115.

⁸⁹ Hayek, Studies, pp. 246-247.

But if society does indeed have the capacity to order itself spontaneously, what does it mean to nurture this process, why is nurturing necessary at all, and how does it differ from the sort of outside interference that impedes progress? To understand Hayek's theory of law is to understand the nurturing of the spontaneous order, because Hayek regards the law as the most important device for "strengthening the creative forces of the social process."

We may begin to understand Hayek's theory of law by noting his definition of order:

A state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest, or at least expectations which have a good chance of proving correct.⁹⁰

Order, then, does not require uniformity, only that diversity does not overwhelm us. When Hayek says that we have experienced progress he does not mean that societies are more easily comprehensible because they are simpler. Rather, it is possible to comprehend an ever smaller portion of the social order and still pursue one's goals. The advance of civilization is characterized by an increase in the number of important operations that can be performed without thinking about them.⁹¹

⁹⁰ Hayek, Rules and Order, p. 36.

⁹¹ Hayek, Individualism, pp. 88-89.

For thousands of years groups of hunters were the highest form of social organization. Under these circumstances, says Hayek, every aspect of life was secondary to the pursuit of the common prey. The social imperatives were so strong as to erase any real individuality. It was not until the first tentative exchanges of food or tools between members of different tribal groups that the possibility of a different life was conceivable. Community membership no longer had to be the decisive fact of life, and the notion of individual goals, distinct from the community's, and to which the collective teleology might have to accede, was first realized. A new sort of social organization was possible, characterized by mutual satisfaction of individual goals rather than collective pursuit of common goals. The process of social evolution caused these new societies to displace the older, teleologically constricted ones.⁹²

The emergence of this new society made the existence of laws both possible and necessary. Possible, because having come to understand the intrinsic worth of individual goals, men perceive that a society organized by commands is unnecessary. When the pursuit of the common goal was all-important, directives by the leadership to coordinate that

⁹² Hayek, New Studies, pp. 58-62; and Hayek, Studies, p. 70.

pursuit were necessary. Now that central superintendence of social life is not necessary, the government's directives can be of a prohibitory nature, defining what can't be done, but capable of being obeyed in a variety of ways, rather than positive commands. The new society made laws necessary because the old society's source of order, central commands, had been superseded. If the ability to form plausible expectations about the whole of society based on knowledge of a part of it was to be maintained, general prohibitions would be necessary. Laws did not come forward from some grand design for society, but emerged one by one as people perceived inordinate difficulties in forming correct expectations concerning that part of society they did not know first-hand.⁹³

The emergence of this new social order culminated, after slow and painful growth, is what Hayek calls the Great Society or the Open Society. In the Great Society, "individuals are constrained only to obey the abstract rules that demarcate the domain of the means that each is allowed to use for his purposes."⁹⁴ The realization of the Great Society coincides with the complete disappearance of the

⁹³ Hayek, Constitution, pp. 149-150; and Hayek, New Studies, pp. 10-11.

⁹⁴ Hayek, Mirage, p. 144.

belief that any collective purposes exist, the attainment of which merits the use of the government's coercive powers. Hayek refers to Michael Oakeshott's terminological distinction between teleocracy and nomocracy to explain the Great Society. The Great Society, or the nomocracy, is an abstract order; it does not exist for anything, except the facilitation of the pursuit by individuals of their own goals. The teleocracy, on the other hand, treats some goals pursued by some people as exceptionally worthy, elevating them to the status of the common good, whose realization may be furthered by using the power of the state.⁹⁵

The development from absolute teleocracy to the Great Society corresponds to the change from rule by command to the Rule of Law. Hayek explains that the ultimate legislator can never limit his own powers by law, because he can always abrogate any law he has made. The Rule of Law is therefore "not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or political ideal."⁹⁶ It will be effective only to the extent that the Rule of Law is embraced by the rulers and, in turn, by the society at large. Hayek speaks of the system formed by the meta-legal

⁹⁵ Hayek, New Studies, p. 89.

⁹⁶ Hayek, Constitution, p. 206.

doctrine as follows:

Every rule of this kind will in intention be perpetual, though subject to revision in light of better insight into its interaction with other rules; and it will be valid only as a system of mutually modifying rules. These rules will achieve their intended effect of securing the formation of an abstract order of actions only through their universal application, while their application in the particular instance cannot be said to have a specific purpose distinct from the purpose of the system of rules as a whole.⁹⁷

Within such a system we may expect that particular laws will be "general rules of individual conduct, applicable to all alike in an unknown number of future instances, defining the protected domain of individuals, and therefore essentially of the nature of prohibitions rather than of specific commands."⁹⁸

The concept of Rule of Law is so important to Hayek's thought that it requires examination in some detail. The first feature of the Rule that Hayek elaborates is "isonomy," the doctrine that every law should be equally applicable to each member of society. It is an ideal that originated in ancient Greek political thought. As Hayek employs it, isonomy is a procedural guarantee of justice, valuable because a substantive rule of justice cannot be found. While we cannot tell lawmakers what qualities just laws must have, if we

⁹⁷ Hayek, Rules and Order, p. 122.

⁹⁸ Hayek, New Studies, p. 135.

insist that they themselves be subject to all the laws they enact, we can be assured that the laws will not be onerous. A government of laws, not men, is to be attained by preventing any group of governors from placing themselves above the law.⁹⁹

Even greater generality of the law is obtained by making each law applicable to all future instances, as well as to all those in the society at the time it is enacted. "The lawmaker [must] prove his belief in the justice of his pronouncements by committing himself to their universal application to an unknown number of future instances and renouncing the power of modifying their application to particular cases."¹⁰⁰ According to Hayek, freedom is enhanced when the law is concerned with general matters and the legislators are incapable of knowing how their actions will affect particular people. As the effects of legislation on particular people become a matter of legislative concern, the ability to make fair decisions is strained. Law becomes more and more a matter of helping or hurting particular persons, and its acceptance as a legitimate regulator of human affairs erodes.¹⁰¹

⁹⁹ Hayek, Constitution, pp. 154-156, 164-165.

¹⁰⁰ Hayek, New Studies, p. 99.

¹⁰¹ Hayek, Road to Serfdom, pp. 76-79.

In addition to being general, law must be negative. Justice consists of general prohibitions on the sort of means that any citizen may employ to achieve his goals. It does not entail positive commands telling us what ends to pursue.¹⁰² Liberty is similarly negative. We should strive for a condition in which "all is permitted that is not prohibited by general rules," rather than one where "all is prohibited that is not explicitly permitted."¹⁰³

Hayek feels that in modern society the negative view of law is the road not taken. Most laws at present do not take the forms of prohibitions to the citizenry, but instruction from the legislature to the civil servants, explaining what goals are to be pursued and how. In Hayek's view, the chief threat to liberty in our age is the growth of administrative discretion over citizens and their property. The government too often equates policy with law, legalizing any efforts to accomplish its chosen purposes, even if the resulting government actions are unequal, biased, and erratic.¹⁰⁴ We must distinguish that nurturing by the government of the

¹⁰² Hayek, Studies, p. 167.

¹⁰³ Hayek, Constitution, p. 19.

¹⁰⁴ Ibid., pp. 207-219.

spontaneous order, which facilitates individuals' efforts to act upon their particular body of knowledge, from government interference in the spontaneous order. Hayek says the distinction between oiling a mechanism and rebuilding it is comparable.¹⁰⁵

The third feature of Hayek's theory of law is the guarantee to each citizen of a protected sphere of activity. Hayek places himself in the long tradition of classical liberalism calling for the maximum extension of the protected sphere consistent with equally large spheres for all citizens. Each citizen should be guaranteed his life, liberty, and property, and assured that claims resulting from valid contracts will be recoverable.¹⁰⁶ Since no security exists in a "war of all against all," the government must have a monopoly of legal physical force to secure the private spheres of the citizens. But the government's power cannot legitimately extend to violations of the realm of private action it exists to defend. Government restrictions on actions that do not affect others, such as religious practices, are unjustified.¹⁰⁷

¹⁰⁵ Hayek, Mirage, p. 129.

¹⁰⁶ Hayek, Studies, p. 167.

¹⁰⁷ Hayek, Constitution, pp. 20-21; and Hayek, Rules and Order, p. 101, and note 10, p. 170.

"The essence of a free society," says Hayek, "is that the private individual is not one of the resources which government administers, and that a free person can count on using a known domain of personal resources on the basis of his knowledge and for his purposes."¹⁰⁸ The belief that the tendency of modern life is to treat the individual exactly as a resource at the government's disposal is the theme of Hayek's first and most famous political work, The Road to Serfdom, written in 1944. Its thesis is that economic planning is the first step on the road to serfdom, to a totalitarian society. Written at a time when Hitler was threatening free societies, and economic planning, the determination of certain allocative and productivities by government, was advocated by some as the appropriate program for the post-War era, the book was extremely controversial. Hayek argued that it was almost impossible to introduce a limited amount of planning into a free economy. If the government tries to confine itself to certain basic decisions it will find that some of the consequences vitiate its goals or are otherwise unacceptable, requiring further and more detailed government planning.¹⁰⁹

¹⁰⁸ Hayek, New Studies, p. 99.

¹⁰⁹ Hayek, Road to Serfdom, p. 105.

Part of the danger of the planning lies in the characters of those who are drawn to the government of a planned economy. Hayek feels that planning appeals to all single-minded enthusiasts for a particular scheme or project. Their certainty about the desirability of their pet project makes them enthusiasts for a system where government power and funds might be available to promote it. The fact that a planned economy cannot further more than a handful of these schemes does not discourage such people; on the contrary, it spurs them on to more intense intra-governmental skirmishing over budgets and authority.¹¹⁰ At the broader level of mass support, the planned economy is popular because it feeds on the resentment of successful men and failure of the market to achieve certain ideals. "It is easier for people to agree on a negative program . . . than on any positive task."¹¹¹ As long as the planners can promote their system as something other than capitalism, they will be assured of popular support.

A further difficulty with planning is that it is incompatible with the Rule of Law. The attainment of pre-selected goals of economic production or distribution

¹¹⁰ Ibid., pp. 52-55.

¹¹¹ Ibid., pp. 138-139.

requires governments to vary their demands on the citizenry from time to time and person to person. Uniform laws applied to an indefinite number of contingencies will leave too much discretion to the people--any number of economic facts might emerge, many of them very different from those the government desires. Steering the economy back towards the selected results will require unremitting efforts by the government; and, because a legislature lacks the expertise or institutional capacity to superintend a modern economy, the planning and supervision of economic activity is delegated to bureaucracies empowered with vast discretionary authority. The government must have this authority if it is to plan, and if it has such authority the legal environment may change so rapidly that individuals cannot make or pursue their own plans.¹¹²

So the government may become increasingly petty, erratic, and burdensome. Is the necessary culmination of this development vicious totalitarianism? Some of Hayek's critics have argued that Serfidom's thesis is guilty of simple determinism. Cultural and political factors have too great an effect on the course of a nation's history to

¹¹² Ibid., pp. 61-71.

attribute every modern dictatorship to planning.¹¹³ Hayek insists that planning does indeed engender totalitarianism, but that this culmination may require generations. The principle consequence of planning is that the people's attachment to freedom is slowly lost by attrition. The government's activism produces a psychological change in the people that makes further government encroachment acceptable, and the ultimate attainment of total government power unremarkable.¹¹⁴

Planning was nowhere embraced to the extent its supporters, such as Wassily Leontief, had hoped.¹¹⁵ What we have instead, says Hayek, is "interventionist chaos," as removed from pure capitalism as it is from central planning.¹¹⁶ The vague aspiration that guides this chaos is that we can have the spontaneous order and remake it too. It is in just such a polity that government intervention is likely to increase without limit.¹¹⁷

¹¹³ See, for example, Barbara Wooton, Freedom Under Planning, (Chapel Hill: University of North Carolina Press, 1945), pp. 28-29.

¹¹⁴ Hayek, Studies, p. 224.

¹¹⁵ Hayek, New Studies, pp. 232-242.

¹¹⁶ Hayek, Individualism, p. 136.

¹¹⁷ Hayek, Mirage, pp. 142-143

Hayek sometimes seems to regard democracy as the spontaneous order's worst friend.¹¹⁸ Perhaps a benevolent dictator, fully appreciative of the market's capacities, would do the best job nurturing the spontaneous order. But Hayek is aware of the dangers of this arrangement, and remains a democrat, albeit a concerned and unenthusiastic one. He does accept democracy as a mechanism for the resolution of conflict without resorting to violence, and he retains some hope, despite his observations of democracy's flaws, that the experience of self-government might promote a certain caution and prudence in the citizens' approach to public affairs.¹¹⁹

We have noted that Hayek values liberty only because it is conducive to progress. Similarly, Hayek supports democracy only to the extent that it promotes freedom. The governing majority is capable, he feels, of measures inimical to liberty. In the short-run they may be a threat only to those outside the majority. But over time a democracy can extinguish liberty throughout a whole society. If democrats arrogate to themselves the power to shape every aspect of social life, innovation will disappear. A society that

¹¹⁸ Ibid.

¹¹⁹ Hayek, Constitution, pp. 107-109.

changes only as the majority approves will stagnate, and in such a society liberty is superfluous and will be regarded as such.¹²⁰

Hayek insists on distinguishing support for liberty from support for democracy. The opposite of a free society is, he says, totalitarianism, where every aspect of life is subject to government superintendence, and where people have "rights" only to the extent that government neglects to regulate some actions. The opposite of democracy is authoritarianism, in which the people have no voice in determining who governs and how. However strong the support liberty and democracy give to each other, it is important to understand that their coincidence is not inevitable. A democracy could degenerate into a totalitarian society, and, to the extent that such an occurrence is likely, the liberty of the people might be less vulnerable under an authoritarian government.¹²¹ Even the word "democracy" worries Hayek; he would prefer his neologism, "demarchy," to stress the people's rule rather than their power. The rule of the people is more consistent with the insistence that they obey certain canons of justice

¹²⁰ Ibid., pp. 103-107, and 109-115.

¹²¹ Hayek, Studies, p. 161.

than is the stressing, or glorifying, of the raw power they possess.¹²²

The fear that democracy has become an ever greater menace to liberty assumes a prominent place in Hayek's recent work. He is especially concerned that the separation of powers has proven inadequate for the prevention of the rise of unlimited democracy. Whatever security is provided by the existence of separate judicial and executive branches is more than erased by the possession by the legislature of two quite different powers, the writing of laws and the making of government policy. The same governmental body charged with formulating rules of just conduct applicable to all persons for the indefinite future is also empowered to direct the government's resources towards the realization of policy goals of its own choice. The problem, as Hayek sees it, is that when the perservation of established laws conflicts with the attainment of policy goals, the former is routinely sacrificed to the latter.¹²³ This may be done by constant legislative action, or it may come about as a result of the legislature delegating the discretionary authority to pursue policy goals to a bureaucracy, a process American political

¹²² Hayek, New Studies, pp. 93-94.

¹²³ Ibid., pp. 98-101.

scientist Theodore Lowi describes as "policy without law."¹²⁴

As a measure of his concern, perhaps his desperation, about the erosion of the protected sphere formed by known and certain laws, Hayek has argued that the institutions of modern democracies need to be altered to provide further separation of powers. Hayek proposes the creation of a new legislative body. The presently constituted legislatures would continue making policy and directing the government's resources. The new legislature would assume the powers for writing laws that actually inform the citizen what he may not legally do. Though popularly elected, this legislature would be relatively immune to democratic pressures to alter the law, because legislators would serve for fifteen years and be ineligible for re-election.¹²⁵ The judiciary would resolve disputes over the jurisdictional boundary between the law and policy legislature, as well as deciding whether a proposed policy contravenes the law.¹²⁶ Hayek does not expect that his plan will ever be put into action, but he

¹²⁴Theodore J. Lowi, The End of Liberalism: The Second Republic of the United States, 2nd ed. (New York: W.W. Norton & Company), pp. 92-125.

¹²⁵Hayek, New Studies, pp. 102-104

¹²⁶Hayek Political Order, pp. 120-121.

feels that it serves as a way to illuminate the need for distinguishing policy-making from law-making.¹²⁷

Hayek's desire for greater separation of powers has more behind it than the desire that form should follow function in government. Something needs to be done to compensate for the type of pressures brought to bear on modern governments. The disease of democracy is the interest-group domination of representative assemblies; the policies that emerge are inevitably bundles of favors for different groups. Because the modern legislature possesses so much power there is no demand that it is not expected to satisfy. Concern about writing good and equitable laws plays no part as coalitions are stapled together.¹²⁸ Hayek says there is no constituency lobbying for the Rule of Law:

The almost exclusive concern of the representatives with government rather than legislation is a consequence of the fact that they know that their re-election depends chiefly on the record of their party in government and not on legislation. It is the voters' satisfaction with the immediate effects of governmental measures, not their judgment of the effect of alterations in the law, noticeable only in the long run, which they will express at the polls.¹²⁹

¹²⁷ Hayek, New Studies, p. 118.

¹²⁸ Hayek, Political Order, pp. 1-19.

¹²⁹ Ibid., p. 29.

The present unification of policy-making and law-making results in both tasks being done poorly, says Hayek. Policies that could be directed towards prudently selected long-range goals are instead Balkanized into a list of concessions to interests. The only internal logic of such policies is that they placate factions that could terminate political careers. The law-making is inadequate because the entire process has become subordinate to mollifying groups through policy. When confronted with an issue like abortion or capital punishment, where concessions and gestures to an array of interest groups is not possible, modern legislators are helpless. Such issues require them to articulate and act upon a public philosophy, and these are skills they have lost from disuse.¹³⁰

Hayek believes that his proposal, which we might call functional bicameralism, would provide a buffer between the lawmaking assembly and the political pressures of organized interest groups. The law makers would have long terms of office and no concerns about re-election, enabling them to resist any outside pressures to do anything but write laws as fairly as they can. Even the policy-making legislature will be rescued from excessive lobbying, because the Rule

¹³⁰ Ibid., pp. 30-31.

of Law will circumscribe the policy-making process; efforts to pressure the policy legislature or the bureaucracy to ignore the law will be pointless. As an additional measure for protecting the government from interest-group pressures, Hayek would disenfranchise those who work for the government and those who receive government assistance.¹³¹

A final quality of the Rule of Law remains to be considered. We have noted that Hayek feels that true laws should be universal, in the sense of applying to every member of society and to an indefinite number of future contingencies, negative, and should describe a protected domain of activity for every citizen. Theoretically, a society could arrive at a body of law that possessed these qualities. If it did so, would any change be necessary? Would there be anything left for Hayek's law-making legislature, or any existing legislature, to do? According to Hayek, a law consonant with the Rule of Law is "subject to revision in the light of better insight into its interaction with other rules."¹³² This better insight may be the result of new intellectual apprehension, but it is more likely that the changing course of human activity in the spontaneous order

¹³¹ Ibid., pp. 115, 120.

¹³² Hayek, Rules and Order, p. 122.

will create unanticipated conflicts between lawful actions. In the resolution of these conflicts new laws are created, and these new laws should be extensions of the Rule of Law to new human endeavors or problems.¹³³

The capacity of the Rule of Law to grow incrementally to meet new contingencies is explained by the reciprocal relationship between law and a civilization's ideas of justice. The law shapes and is shaped by a civilization's ideas about what the law ought to be. Hayek writes:

It is not only in his knowledge, but also in his aims and values, that man is the creature of civilization; in the last resort, it is the relevance of these individual wishes to the perpetuation of the group or the species that will determine whether they will persist or change. It is, of course, a mistake to believe that we can draw conclusions about what our values ought to be simply because we realize that they are a product of evolution. But we cannot reasonably doubt that these values are created and altered by the same evolutionary forces that have produced our intelligence. All that we can know is the ultimate decision about what is good or bad will be made not by individual human wisdom but by the decline of groups that have adhered to the "wrong" beliefs.¹³⁴

Is it not an intolerable burden on the legislator that his decisions should affect not only the citizens of a society, but will determine the life or death of his entire society? Hayek says that legislators do not need to assume the burden of protecting their entire way of life, because

¹³³ Hayek, Studies, p. 168.

¹³⁴ Hayek, Constitution, p. 36.

the fate of a civilization depends on qualities that legislators or laws can affect but not alter. Laws do not have a purpose, even the preservation of a society; laws can only facilitate the various goals pursued by the members of a society. Laws do not exist to fashion a particular order but to nurture the spontaneous order, to guarantee that abstract order, or quality of orderliness, that makes the emergence of a concrete order with particular characteristics possible. To attempt more is beyond the legislator's capacities:

The "social goal" or "common purpose," for which society is to be organized is usually vaguely described as the "common good," the "general welfare," or the "general interest." It does not need much reflection to see that these terms have no sufficiently definite meaning to determine a particular course of action. The welfare and the happiness of millions cannot be measured on a single scale of less and more.¹³⁵

The hubris that leads some to suppose that the law can be a device for organizing an entire society in a desired way can be traced back to constructive rationalism. The source of constructive rationalism is Cartesian dualism, the belief that mind can stand outside nature, enabling man to "design the institutions of society and culture among which he lives."¹³⁶ The fact that Descartes praised Sparta because

¹³⁵ Hayek, Road to Serfdom, p. 57. See also Hayek, Rules and Order, pp. 112-115.

¹³⁶ Hayek, Rules and Order, p. 17.

its laws, "originated by a single individual, . . . all tended to a single end," is characteristic of the belief that the deliberately constructed is "necessarily superior to all mere growth."¹³⁷ The fact of the matter, Hayek insists, is that the human mind "is as much the product of the social environment" as it is a force that has "acted upon and altered social institutions."¹³⁸ What Cartesians suppose is the rational determination of social goals is rather the working out of the unique logic of a particular social order.

So, there is no common good, and even if there were, people could not sufficiently transcend their time and place to perceive it. Good governance then consists of applying our opinions, reflecting the ideals of our society, to the Rule of Law, rather than relying on human will to ascertain objects for the government to pursue. We should approach an extant body of laws as executors of an estate rather than authors of a will. As good executors we will try to carry out the expressed wishes of a written will to the best of our ability, even if it requires us to execute decisions we would not ourselves have made. If the circumstances we

¹³⁷ Hayek, New Studies, p. 255. The passage by Descartes is taken from the Discourse on Method, part II.

¹³⁸ Hayek, Rules and Order, p. 17.

confront were not anticipated by the will's author then we must seek to resolve the issue in the way most consistent with the will's provisions; we cannot impose any solution that we happen to like. The Rule of Law requires us to approach the task of governance with the same respect for precedent, the same reluctance to strike out for new destinations. According to Hayek:

The larger the groups within which we hope to live in peace, the more the common values which are enforced must be confined to abstract and general rules of conduct. The members of an Open Society have and can have in common only opinions on values but not a will on concrete ends.¹³⁹

Hayek has located his own understanding of society somewhere between the ancient alternatives of nature and convention (see above pp. 29-30). Similarly, his legal philosophy lies somewhere between legal positivism and natural law. His critique of the former is uncompromising. Hayek sees legal positivism as the greatest threat to the Rule of Law. By holding that lawfulness is a merely factual quality, requiring only the appropriate procedures by the appropriate agencies, legal positivism supports the view that any law, no matter how flagrantly it violates the sphere of personal liberty, is fully legitimate.¹⁴⁰ Legal positivism thus

¹³⁹ Hayek, New Studies, p. 88.

¹⁴⁰ Hayek, Constitution, pp. 236-239.

stands as an invitation to use the law for any purposes the legislator desires; Hayek regards it as a modern expression of constructive rationalism.¹⁴¹

In rejecting legal positivism Hayek does not embrace natural law. He regards the common law tradition as an alternative attributable to human action but not to human, or natural, design. He explains his position this way:

If we do not insist that the test of justice must enable us to build up a whole system of new rules of just conduct, but are content persistently to apply the negative test of injustice to the parts of an inherited system, the greater part of whose rules are universally accepted, we may accept the contention of positivism that there are no positive criteria of justice; yet we can still maintain that the further development of the rules of just conduct is not a matter of arbitrary will but of inner necessity, and that solutions to open problems of justice are discovered, not arbitrarily decreed.¹⁴²

By the "negative test of injustice" Hayek refers to the common law process of modifying the law by discarding new laws or new applications of old laws that are unjust by virtue of the "inner necessity" of the whole legal order.

We will postpone until later (Chapter Five) a discussion of how successful Hayek has been in navigating a course between legal positivism and natural law. For the present it

¹⁴¹ Hayek, Studies, pp. 101-104.

¹⁴² Hayek, Mirage, p. 44.

would be useful to see how Hayek applies his theory of law to a controversy impinging on the distribution of income. We will select Hayek's choice of the issue "on which the whole character of future society will depend"--progressive taxation.¹⁴³ The question of progressive taxation is not identical with that of income redistribution. A measure of progressivity in income tax rates may be instituted only to offset the regressive effects of measures like the sales tax. Similarly, income could be redistributed without resorting to a progressive tax. If a proportional income tax were high enough it could generate revenues to provide for government services to the poor, a type of redistribution. But in the main, progressive taxation is the chief means of effecting income redistribution in modern societies.¹⁴⁴

The history of progressivity is, in Hayek's eyes, the triumph of will over opinion. In the early nineteenth century progressivity was explicitly argued as a device for bringing about the redistribution of income, as well as for advancing other socialist goals. It was rejected at the time precisely because the goals of the Left were rejected, says Hayek. Around the turn of the century, a new case for progressivity was made in terms of ability to pay, or

¹⁴³ Hayek, Constitution, p. 306.

¹⁴⁴ Ibid., pp. 307-308.

equality of sacrifice. The discipline of political economy was being transformed by utility theory at the time. Its leading English exponent was Alfred Marshall, while the chief Continental economists were Carl Menger and Eugene Bohm-Bawerk, two Austrians who established a tradition of economic thought in Austria of which Hayek is the best twentieth-century representative. Utility theory holds that consumption decisions can be explained in terms of the diminishing satisfaction provided by the consumption of an additional unit of any good. It was at first thought that the theory could be the basis for interpersonal comparisons. It was the application of this form of the utility theory that led some to believe we could determine scientifically how much a person with a \$50,000 income would have to pay in taxes before he had sacrificed as much as a person with a \$25,000 income paying a given level of taxes. Later refinements of utility theory discarded the idea of utility as an objective quality inhering in money or other economic goods. Utility is now understood as a subjective quality, which removes the "scientific" justification from the equality-of-sacrifice argument--economists no longer purport

to know at what point different tax rates will inflict equal distress.¹⁴⁵

If equality of sacrifice was no longer academically respectable it was quite popular by the early twentieth century. Those who objected to progressive taxes because they wanted to preserve equality before the law were assured that equal sacrifice was the only goal in view. Those who claimed that progressivity opened the door to legislative caprice and arbitrariness were charged with "betraying a reprehensible lack of confidence in the wisdom of democratic government."¹⁴⁶ As Hayek sees it, this lack of confidence was soon fully justified; rates went from mildly to steeply progressive within a few years after the acceptance of the principle of progression. The argument for progression has come full circle, it is now defended in terms of redistribution once again.

Part of Hayek's brief against the progressive income tax is that of an economist. He says that progressivity causes only a very small net increase in the government's income, so it is not necessary for preserving government social

¹⁴⁵ Ibid., pp. 308-309. See also, Everett J. Burt, Jr., Social Perspectives in the History of Economic Thought (New York: St. Martin's Press, 1972), pp. 173-200.

¹⁴⁶ Hayek, Constitution, p. 310.

¹⁴⁷ Ibid., pp. 310-311.

programs. Nor are the poor the main beneficiaries of a progressive tax. The more numerous working class winds up with the lightest tax burden.¹⁴⁸ Progressivity does pose a great barrier to the creation of wealth. For example, people who will tolerate lean years waiting for a project to become profitable are punished if it does so suddenly, pushing them into high tax brackets. Indeed, the progressive tax places a lighter burden on the rich than it does on those who are trying to become rich, because it is new ventures that are especially dependent on sudden freshets of income. By burdening these enterprises, progressive taxes protect old money and established businesses.¹⁴⁹

But the really threatening aspect of progressive taxation, in Hayek's eyes, is its departure from the Rule of Law. It is by definition contrary to isonomy, since a progressive tax is really a series of different tax laws for different groups. The protection that isonomy affords the private domain of citizens is eliminated; freed from the worry of making their laws universal, legislators may treat the tax code as a confiscatory device. Once the principle of progressivity is accepted there is no limit

¹⁴⁸ Ibid., pp. 311-313.

¹⁴⁹ Ibid., pp. 315-321.

to which it may be imposed.¹⁵⁰ Democracies in particular are prone to carry progression to extremes, because it invites the majority to make the minority pay for government programs. As Hayek says:

Democracy has yet to learn that, in order to be just it must be guided in its action by general principles. . . . Where, as in the case of progression, the so-called principle adopted is no more than an open invitation to discrimination and, what is worse, an invitation to the majority to discriminate against a minority, the pretended principle of justice becomes the pretext for pure arbitrariness.¹⁵¹

We can extend Hayek's argument against progressive taxation, the best-established redistributive device, to the redistributive process generally. We have already seen that Hayek prizes the spontaneous order as the surest path to prosperity. Efforts to circumvent that order to see that people get what the government thinks they need or deserve have the effect of diminishing the chances that poor people have for attaining self sufficiency. The study of Hayek's theory of law establishes the additional point that there is a strong tendency for government alteration of the spontaneous order to feed on itself. The logic of the redistributive process is to render inevitable measures once considered unthinkable. Departures from the Rule of Law not only impede progress, but they establish momentum towards

¹⁵⁰ Ibid., pp. 313-315.

¹⁵¹ Ibid., p. 314.

centrally directing every aspect of social life that is all but irresistible. Not only does the steadily worsening economy elicit calls for more government measures to protect the citizenry (from the consequences of established government measures), but the steady growth of government makes each new addition to its responsibilities less objectionable.

The Hayekian response to the egalitarian critique of capitalism may be summarized as follows: 1) The question is not whether capitalism, and its concomitant distribution of income, is the best system imaginable, but whether it is the best available. It is beside the point, therefore, to dwell on the moral shortcomings of capitalism unless one can propose a feasible alternative that satisfies our moral concerns. 2) A feasible alternative to capitalism will find some way to continue capitalism's generation of wealth; otherwise, the amount of wealth to be distributed will be less than required to give everyone what they need or deserve. Hayek doubts that such an alternative is available, because of the essential roles that the division of knowledge and reward according to market value play in producing wealth. 3) A feasible alternative to capitalism will find some internal controls on its political program to keep the redistribution of wealth according to need or desert from degenerating into the satisfaction of envy or the placating of the most

numerous or powerful groups in society. Hayek doubts that any redistribution of income can proceed within the framework of the Rule of Law, and that any system eschewing the Rule of Law can find an alternative that does not subject the citizen to arbitrary, erratic, and intrusive rules of conduct.

Hayek's argument is compelling to the extent that his insistence on examining real alternatives and on the improbability of making limited changes in capitalism is compelling. Hayek's demand that we confine ourselves to real possibilities cannot be faulted. His argument that the spontaneous order nurtured by the Rule of Law is indivisible is more questionable. The first suggestion that the spontaneous order might be capable of sustaining revision comes from Hayek's own writings on what the government of a modern society may justifiably do.

CHAPTER FOUR

WHAT GOVERNMENT MAY DO

Let us suppose that everything Hayek claims for the spontaneous order is true. The free market is vastly more productive than any other arrangement. The poor are afforded a greater opportunity to escape from poverty under capitalism than in any alternative system. The progress of the spontaneous order will regularly cause unemployment in sectors of the economy; people selling skills that have become obsolete, such as carriage makers, will be unemployed. But the new demands and productive techniques that supplanted the carriage industry will create new opportunities in other sectors, such as automobile manufacturing. It is not necessary that unemployed carriage makers have comprehensive knowledge of the structural changes in the economy. The operation of the price system will make information about new job opportunities easily accessible.

Even if all this is true, are we fully prepared to accept all the consequences of the market's distribution of income? Is Hayek? He has described the market distribution of income as a mixed game of skill and luck, the playing of which increases everyone's chances of attaining economic success. But no matter how large the jackpot, some players

are going to be without skills, and others without luck. The severely handicapped and the people unable to find work despite their best efforts will lose this game of skill and chance. More successful players may decide to give some of their winnings to the least fortunate--altruism being compatible with individualism--but whether their gifts are sufficient to rescue the poor from abject misery is also, from the perspective of the poor, a matter of luck. If, as Hayek says, "the only way in which we can effectively improve [the spontaneous order] is by improving the abstract rules which guide the individuals," then the spontaneous order seems incapable of being altered in ways beneficial to the poor.¹⁵²

By taking such a position, Hayek seems to place himself in the ranks of the advocates of laissez-faire. To "allow to act" is precisely the posture one should take, presumably, towards a society capable of spontaneously ordering itself in the way most congenial to its citizens. Herman Finer's attack on The Road to Serfdom, titled Road to Reaction, was one of the earliest and most vitriolic attacks on Hayek for being just the sort of social philosopher who would accept the misery of the poor rather than government

¹⁵² Hayek, Studies, p. 92. (Italics mine.)

intervention in the market.¹⁵³

And yet, almost at the outset of The Road to Serfdom, Hayek insists that he is not an advocate of laissez-faire. He argues that the market economy has been unfortunate in having so many proponents who, unlike Hayek, understand it wholly in terms of rigid fealty to laissez-faire. The critics of capitalism, he says, have been immeasurably assisted by the existence of this strident, uncompromising argument. They do not have to construct a caricature of the case for the market, and are free to ignore more subtle and cautious arguments, such as Hayek's.¹⁵⁴

This chapter will examine the degree to which Hayek's political thought differs from the advocacy of a "minimal state." The usual definition of laissez-faire is that it is a political system where the government confines itself to the prevention of force or fraud.¹⁵⁵ Hayek believes that the defenders of the market economy must consider two other areas of government action if the market is to be preserved.

¹⁵³ Herman Finer, Road to Reaction (Boston: Little, Brown, 1945).

¹⁵⁴ Hayek, Road to Serfdom, pp. 17-19.

¹⁵⁵ Hayek, Constitution, pp. 222-224. See also John Arthur and William H. Shaw, Justice and Economic Distribution (Englewood Cliffs, N.J.: Prentice-Hall, 1978), p. 54.

First, they must prescribe a stable monetary framework that does not leave monetary policy at the mercy of discretionary changes aimed at other policy goals. Second, they must find a policy that will protect the poor and unemployable while interfering as little as possible with progress under the market.¹⁵⁶

Hayek has grown more concerned and more pessimistic in recent years about monetary policy, specifically about the prospects for avoiding inflation. So deep are his feelings here that Hayek is driven to quote John Maynard Keynes approvingly, albeit from Keynes' early writing:

There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose, . . .¹⁵⁷

Unlike other social evils, inflation is not immediately recognized as being harmful--for many years, people may misinterpret inflation as growing prosperity. Even after the illusory nature of this "prosperity" becomes evident, the trademill logic of inflation generally directs popular opinion and the government towards trying to get ahead

¹⁵⁶ Hayek, Individualism, p. 112.

¹⁵⁷ Hayek, New Studies, p. 200, citing John Maynard Keynes, The Economic Consequences of the Peace (1919), reprinted in The Collected Writings of John Maynard Keynes (Macmillan for the Royal Economic Society, 1971), vol. II, p. 149.

of inflation, which is to say, accelerating inflation.¹⁵⁸

Hayek does offer a solution to the problem of inflation, although it is like his restructuring of democracy, heuristic rather than politically plausible. Hayek's proposal is that governments legalize the internal use of foreign currency. As matters stand, each nation's treasury faces a captive market, and therefore lacks any incentive to protect the value of its "product." But if Americans, say, could transact business with one another in francs and pounds as well as dollars, there would be a powerful incentive for the American Federal Reserve System to preserve the value of the dollar--that is, to stop inflation. The alternative is the same that faces any other enterprise producing an uncompetitive product--dissolution. According to Hayek, if international borders become irrelevant to monetary systems, Gresham's Law will be reversed. No longer will bad money drive out the good, as is the case if and only if the bad money is tied to the good at a fixed rate of exchange. With various currencies free to change value vis-a-vis one another, well-regulated currencies will drive out the ones issued indiscriminately.¹⁵⁹

¹⁵⁸ Hayek, Studies, pp. 296-297.

¹⁵⁹ Hayek, New Studies, pp. 225-227.

A more durable source of controversy is the extent to which pure capitalism should be supplemented by government aid to the poor. Unlike standardizing weights and measures or protecting the value of the currency, providing for the poor necessarily entails departures from the spontaneous order. We are no longer merely facilitating economic exchanges among citizens, but using the power of the government to see that particular economic results are attained.

Based on Hayek's elaborate case for the spontaneous order, we would expect that he would be extremely reluctant to accept any government involvement in the allocation of wealth. Yet he expresses his skepticism about the preservation of pure capitalism: "The term 'laissez faire' is a highly ambiguous and misleading description of the principles on which a [pro-market] policy is based."¹⁶⁰ For the government provision of certain services Hayek displays a remarkable enthusiasm. He finds the case for using the government's power of taxation to fund services not provided by the market "unquestionable;" there is "an overwhelming case" for the government to exercise these powers; nor "can it be seriously questioned" that goods enjoyed by all should be paid for collectively.¹⁶¹ Indeed, Hayek seems disposed to

¹⁶⁰ Hayek, Road to Serfdom, p. 81.

¹⁶¹ Hayek, Political Order, pp. 41-42.

accept every goal of the modern welfare state--aid to the poor and disabled, social insurance, education, and subsidizing certain developments. Only because he has serious objection to the method by which these goals have been pursued in the past, can we refrain from labeling Hayek a social democrat.¹⁶²

What is the basis for Hayek's support for the goals of the welfare state, and how does he reconcile such pursuits to the spontaneous order? We may begin by noting that there is no overriding imperative leading Hayek to accept government programs for the poor comparable to the concern for progress that underlays his whole case for the free market. Hayek promotes various welfare state measures for a variety of causes, according to the spontaneous order's inability to guarantee a needed measure of equity or security. One reason Hayek offers for favoring programs for the relief of poverty is that it is a way that the rest of society can protect itself from violent actions by desperate people.¹⁶³ This is not a morally attractive argument. After extensive looting in New York City in 1977, U.N. Ambassador Andrew Young suggested that the looting was

¹⁶² Hayek, Constitution, pp. 257-258.

¹⁶³ Ibid., pp. 285, 286.

justified by the poverty of the people who engaged in it.¹⁶⁴

If this view is correct, then Hayek's argument must be altered to say that we will assuage poverty not to prevent violence but to prevent justified violence. Social relief becomes a moral rather than a practical necessity. If the poor are not justified in using force to relieve their poverty, then the government "program" called for should be the prevention of force by arresting citizens who violate others' property rights. Hayek does not express an opinion on the justice of looting by the poor, and his silence on this question, along with what he does say about the need to help the poor, leaves the impression that he embraces a brutally pragmatic view of the relation between the poor and the self-sufficient: Those who are not poor have no obligation to help those who are, but are advised to do so for their own safety. As a practical matter, they should seek to spend the minimum amount necessary, whether in police protection or social relief, to pacify the poor. The poor have no right to a minimum standard of living, but possess the capacity to intimidate the rest of society. As a practical matter, they should use it to increase the likelihood of receiving the most generous welfare payments possible, and reduce the chances of police restriction. If this is

¹⁶⁴George F. Will, The Pursuit of Happiness and Other Sobering Thoughts (New York: Harper & Row, 1978), p. 212.

the true meaning of this particular tenet of Hayek's supporting welfare measures, it is deplorable. If it is not the true meaning, Hayek needs to elaborate this argument to prevent grave misinterpretations.

Hayek offers a second reason why government should not be confined to laissez-faire. Some economic goods and costs have neighborhood effects on people not party to any transactions. If the owner of the vacant lot across the street from my house decides to sell his property to someone who will turn it into an auto junkyard, then I have suffered a cost, in the enjoyment of my house, in my ability to sell it, and in the price I will receive if I do sell it. Hayek regards a spillover effect of this nature as a sufficient reason for government intervention. He would have, in this instance, a town planning commission assess the junkyard owner a surtax to reflect the cost to the neighbors of his enterprise, thereby causing the cost of his business to accurately reflect all its consequences, on his customers as well as on bystanders.¹⁶⁵

A related argument for giving the government more than minimal powers is the practical necessity of relying on the government to finance "public goods." The benefits

¹⁶⁵ Hayek, Constitution, pp. 349-353.

of certain goods, like city streets, cannot feasibly be apportioned among those who use them. Voluntary contributions for their construction and upkeep won't work either, because while everyone might be willing to pay, no one wants to be taken advantage of by people who will use the streets without paying for them. So the only practical way of getting something everybody wants and is willing to pay for is to have the government require payment through taxation.¹⁶⁶ To some extent, the alleviation of poverty is amenable to the same argument; all things being equal, people would prefer to live in a society with less poverty rather than more. Individual contributions to the poor have a negligible effect, but a tax-supported program to aid the poor has the desired consequences.¹⁶⁷

The fourth reason Hayek gives for a relatively high government profile is closely related to the nature of the Open Society. According to Hayek, we cannot really say that the emergence of the Open Society is a good thing. "The question whether, if we had to stop at our present stage of development, we would be in any significant sense better off or happier than if we had stopped a hundred or

¹⁶⁶ Hayek, Political Order, p. 44.

¹⁶⁷ Samuel Brittan, "Hayek, the New Right, and the Crisis of Social Democracy," Encounter 54 (January 1980): 35.

a thousand years ago is probably unanswerable."¹⁶⁸ The development of the Open Society is beyond morality, a profound fact we must make the best of. However, the transition to it is not always smooth, and the government may need to take actions that facilitate adjustment to the new way of life. Because the guarantee of economic security provided by extended families, tribes, or villages, is lacking from the Open Society, government will have to compensate for the absence of some of the most basic effects of that cohesion. As Hayek states:

A system which aims at tempting large numbers to leave the relative security which the membership in the small group has given would probably soon produce great discontent and violent reaction when those who have first enjoyed its benefits find themselves without help when, through no fault of their own, their capacity to earn a living ceases.¹⁶⁹

Hayek's argument for the government provision of elementary education relies on several of these claims. Education is a means of transmitting cultural values as well as knowledge. In modern society diversity among people may be so great that a common culture is not spontaneously transmitted. To prevent slow dissolution of society, the government may rightfully act to instill the rudiments of a common outlook in young people. Education is also a public

¹⁶⁸ Hayek, Constitution, p. 41.

¹⁶⁹ Hayek, Political Order, p. 55.

good, in the sense that we want to live in a society where people are literate rather than illiterate, and the only way to guarantee universal education is through public financing.¹⁷⁰

One could presumably list other areas where modern governments are now active of which Hayek would approve. But the basic point that Hayek favors government involvement in a number of areas is sufficiently clear. Hayek himself catalogs the sort of government undertakings he favors, not because these projects are without other advocates, but to separate himself from those to his right, that is, from those who insist on a smaller role for government. Given Hayek's audience, and his view of the political tendencies of the age, his more important task is to distance himself from those on his left, which he does by insisting on a different view of the appropriate means for the attainment of commonly desired ends. The existing welfare state needlessly circumvents the spontaneous order, Hayek feels. Its legitimate goals could be accomplished without government actions on behalf of every person and group in society. Part of the problem is the failure to distinguish the alleviation of poverty from the redistribution of income for the satisfaction of egalitarian sentiments. "The doctrine of the safety

¹⁷⁰ Hayek, Constitution, p. 377.

net, to catch those who fall, has been made meaningless by the doctrine of fair shares for those of us who are quite able to stand."¹⁷¹ Hayek considers the effort to provide certain kinds of assistance to all, even to those able to take care of themselves, in order to avoid making the poor feel inferior or isolated, similarly excessive, "absurd."¹⁷² Finally, a modern prosperous society can offer two types of economic security, a minimum standard of living or the preservation of a person's accustomed standard of living. According to Hayek, efforts that start out for the first destination always seem to gravitate towards the second.¹⁷³

An even worse problem than the tendency of the welfare state to overflow its banks is the stifling effect it has on experimental forms of production and consumption that are essential to progress. Hayek states:

If, instead of administering limited resources put under its control for a specific service, government uses its coercive powers to insure that men are given what some expert thinks they need; if people thus can no longer exercise any choice in some of the most important matters of their lives, such as health, employment, housing, and provision for old age, but must accept the decisions made for them by appointed authority on the basis of its evaluation of their need; if certain services become the exclusive domain of the state, and whole professions--be it medicine, education, or insurance--come to exist

¹⁷¹ Ibid., p. 285.

¹⁷² Ibid., p. 303.

¹⁷³ Hayek, Road to Serfdom, pp. 119-133.

only as unitary bureaucratic hierarchies, it will no longer be competitive experimentation but solely the decisions of authority that will determine what men shall get.¹⁷⁴

In every nation that adopted it, Hayek writes, social security went beyond requiring people to prepare for their future needs and providing for the care for the very poor to a unitary, comprehensive government system of taxation and disbursements. While such a system may be superior in the short-run by virtue of economies of scale, as competing arrangements for income security are wiped away, beneficial innovations are destroyed. The single system becomes increasingly convoluted as it changes to meet new contingencies. Eventually, only the top administrators of the program can understand it at all. One of the results is that it can then be truly said that "every knowledgeable expert" favors the existing program, and would like to see it receive more funding.¹⁷⁵ Hayek insists that the goals of the welfare state could have been provided for within the framework of the Rule of Law, but this would have required a long experimental process with a much larger role for private arrangements than is anywhere the case today.¹⁷⁶

¹⁷⁴ Hayek, Constitution, p. 261.

¹⁷⁵ Ibid., pp. 287-291.

¹⁷⁶ Hayek, New Studies, p. 145.

Hayek feels that there are other ways to prevent the welfare state from unnecessarily impinging on the spontaneous order. Hayek is not opposed to regulations to protect the environment, health standards, worker safety, or other concerns. But he wants them to be formulated and applied carefully to make sure that the benefits are greater than the costs.¹⁷⁷ Hayek also favors delegating service functions to local government as much as possible. By doing so we would engender healthy competition among local governments to provide the highest level of government protection of the quality of life for the lowest cost.¹⁷⁸ Federalism could also revive communication sentiments. The Open Society is an abstract order, but local communities are bound together by particular customs and habits. If welfare state functions were delegated to these communities, civic concern and pride would increase.¹⁷⁹

While Hayek has said that political philosophers should regard their efforts with concern if they find their ideas very popular, it is apparently the case that political philosophers should also be concerned if their ideas are universally dismissed as irrelevant anachronisms. Hayek

¹⁷⁷ Hayek, Road to Serfdom, p. 37.

¹⁷⁸ Hayek, New Studies, p. 162.

¹⁷⁹ Hayek, Political Order, pp. 146-147.

could have carried the principle of nurturing the spontaneous order to its logical conclusion, insisting that any government effort to secure a particular economic result was, like the progressive income tax, dangerous in itself, and worse as a precedent for future government policy. Had he done so his ideas would have instantly won the contempt of all those who regard as scandalous the co-existence in a society of vast wealth and vast poverty. Hayek's undogmatic words on behalf of the concerns, if not the procedures, of the welfare state do gain him a hearing for his central concerns among some of those who might otherwise dismiss him as a reactionary.¹⁸⁰

But it would appear that Hayek ought to be concerned about even the limited degree of respectability his ideas have attained among those who look askance at the market. To these people, who have particular goals they want the government to realize in society, Hayek's message seems to be an admonition to pursue these goals cautiously by minimizing the extent to which the government goes beyond the Rule of Law. In other words, while Hayek rejects teleocracy in favor of nomocracy, he realizes the teleocratic orientation of many of his contemporaries, and urges them

¹⁸⁰Lowi, End of Liberalism, p. 300.

to try to confine themselves to nomocratic means to their teloi. In doing so he appears to have vitiated a central concern of his theory, the restriction of the government's activity. If the Rule of Law can be adapted to certain departures from nomocracy, it is not clear that we should draw the line between appropriate and inappropriate government activities where Hayek does.¹⁸¹

It would seem that in making peripheral concessions to his critics, Hayek has placed his entire project in jeopardy. He has retreated from the bold but iconoclastic position that the salvation of modern society lies in discarding all anthropomorphic views of social goals. Instead, the realization of his ideals now rests on the hope that procedural restraints on the spontaneous order will be sufficient to keep teleocratic incursions on it to a minimum. It is far from clear that the procedural requirements of the Rule of Law are adequate to the task. If Hayek is quite prepared to acquiesce in the teleocratic orientation of others, then it may be that they could be clever enough to gain all their goals while following Hayek's guidelines

¹⁸¹David Micklejohn, review of vols. 1 and 2 of Law Legislation, and Liberty, in Ethics 88 (January 1978): 181.

on how to write laws.¹⁸² This state of affairs would be a hollow victory for the spontaneous order. More threateningly, it seems highly improbable that Hayek's procedural strictures are going to be embraced or preserved by men who do not share his view of society's capacity to order itself spontaneously. If Hayek fails to win assent on this larger substantive point, the effort to secure the Rule of Law is reduced to the status of a wish.

¹⁸²J.W.N. Watkins, "Philosophy," in Agenda for a Free Society: Essays on Hayek's "The Constitution of Liberty" ed. Arthur Seldon (London: Hutchinson & Co., 1961), pp. 38-40.

CHAPTER FIVE

AN ASSESSMENT OF HAYEK

We have now covered the most important elements of Hayek's political philosophy. He has confronted charges that the capitalist distribution of income is immoral by insisting that we judge capitalism in terms of the available alternatives, rather than by an absolute ideal. The alternatives to capitalism all require government intervention in the economy, Hayek argues, and government cannot possibly coordinate the simultaneous pursuit of diverse goals by millions of individuals with the speed or precision of the market. Further, Hayek claims that the historical pattern of government intervention in the economy has consistently compromised the Rule of Law; by depriving citizens of a legal order that is known, stable, certain, and equal, government intervention has imperiled liberty and made it very difficult for private citizens to formulate coherent plans for their own actions. Finally, we have seen that Hayek does favor some government steps to intervene in the economy, but makes this amendment to the body of his philosophy conditional upon the demonstrated incapacity of the market mechanism to perform certain carefully specified functions, and insists that the resulting government programs should adhere to the Rule of Law as closely as possible.

Our remaining tasks are two. This Chapter will be concerned with the first, an assessment of the strengths and weaknesses of Hayek's defense of the free market. In Chapter Six we will undertake the second, putting forward certain amendments to Hayek's philosophy with the intention of strengthening his defense of the market.

We will begin by considering the strengths of Hayek's defense of capitalism. Hayek is very effective in explaining why capitalist economies are so productive. His demonstration focuses on the flexibility of the market economy, and he argues effectively that capitalism has an invaluable ability to reconcile consumers' and producers' desires and abilities. His argument makes the point that capitalism can prevent economic stagnation by creating a network of incentives and opportunities for experimentation, and by providing through the market a "feedback channel" for showing which experiments have succeeded in satisfying other people's desires. Only through such ongoing innovation can we encourage popular and beneficial experiments while frustrating the growth of useless novelties.¹⁸³

The obverse of this argument, that government direction of the economy will seriously diminish productivity, is

¹⁸³Watkins, p. 35.

equally compelling in Hayek's hands. Because the operation of the market is so swift and subtle, because its consequences are so difficult to anticipate, even the most earnest and noble government steps are certain to snare the market's processes and devitalize the economy. With his economist's ability to trace long chains of cause and effect, Hayek succeeds in showing that the harmful effects of government intervention are more profound than generally realized. The factory that is not built because of high taxes, the jobs that are not created, the entrepreneurial idea not pursued because of regulatory obstacles--Hayek is able to convey the tangibility of these losses, and thereby show the dimensions of the government's ability to damage the economy.

A second strength of Hayek's defense of capitalism is that his political analysis of the problems of government intervention in the economy is as persuasive as his discussion of the economic consequences. Hayek shows that government programs alter the political environment, creating new interests and expectations. As a consequence, the possibility of government intervention of limited scope or duration is very small; the incentives all favor continued and expanded government activity. Milton Friedman has cleverly paraphrased Adam Smith regarding the disappointments of good intentions: "An individual who intends only to serve the public interest is 'led by an invisible hand to promote'

private interests, which was no part of his intention."¹⁸⁴
 Hayek concludes flatly that the nearly inevitable result of even the noblest government programs is "the protection of certain groups against the necessity to descend from the absolute or relative material position which they have for some time enjoyed."¹⁸⁵

Hayek's development of the theory of the Rule of Law is an impressive achievement in itself, but it is also an effective antidote to this very problem, the tendency of modern politics to degenerate into the accumulation of subsidies and advantages. The Rule of Law provides an exacting procedural standard for judging, resisting, and perhaps arresting this disturbing trend. Hayek would concur with the cautious wisdom of Oakeshott:

An "umpire" who at the same time is one of the players is no umpire; "rules" about which we are not disposed to be conservative are not rules but incitements to disorder; the conjunction of dreaming and ruling generates tyranny.¹⁸⁶

The final strength of Hayek's position is his acknowledgment that while the market is good it is not perfect, and

¹⁸⁴ Friedman, Free to Choose, pp. 5-6.

¹⁸⁵ Hayek, New Studies, pp. 186-

¹⁸⁶ Ridgely Hill Pate, Russell Kirk, Friedrich Hayek, and Peter Viereck: Three Positions in Contemporary Conservative Thought (Ph.D. Dissertation, University of Texas at Austin), p. 170, citing Michael Oakeshott, Rationalism in Politics, p. 194.

government intervention, while problematic, is not doomed to failure. Consequently, Hayek argues in favor of many of the goals of the welfare state, suggesting even that his main concern is with the way government pursues social policy, rather than the pursuit itself. Hayek's amending his theories on this point may be a tactical concession. He says that the market's defenders must come to grips with the moral environment of the day, which calls for more economic equality and security than capitalism is likely to provide.¹⁸⁷ But even Hayek's pragmatism is commendable here, I think, if only for leavening what could otherwise be a narrow, dogmatic reliance on the procedures of good law.

We turn now to the examination of the weaknesses of Hayek's treatment of the question of the common good, second, his attitude towards certain self-destructive tendencies of capitalism, and third, Hayek's moral relativism. Regarding the common good, we note that Hayek has a purely additive conception of it. That is, the only conception of the common good Hayek will accept is the sum of private interests.¹⁸⁸

¹⁸⁷ Hayek, Individualism, p. 109.

¹⁸⁸ Hayek, Mirage, pp. 1-5.

The spontaneous order makes the greatest contributions "for everyone and therefore for the general welfare."¹⁸⁹ Hayek's common good is little more than a play on words; it denies the possibility of the common-ness of any good, of communal or social benefits. The additive common good is, for all practical purposes, the same as prosperity, and prosperity, as Irving Kristol has pointed out, is too weak an ideal to maintain popular allegiance to a social or economic system.¹⁹⁰

When Hayek does consider a more encompassing notion of the common good, one that calls for civic unity as regards certain pursuits, Hayek unfailingly reduces this common good to a straw man. He derides an egalitarian who has termed the goal of politics "as the removal of all sources of discontent."¹⁹¹ This is, of course, a fatuous position. But Hayek insists on treating it as the representative expression of the idea of the common good. He refuses to accept the idea that one can articulate certain general goals for a society without getting enmeshed in the determination of every facet of life. "All attempts to model the Great Society on the image of the familiar group, or to turn it into a community by directing the individual towards common

¹⁸⁹ Hayek, Rules and Order, pp. 132-133.

¹⁹⁰ Kristol, Capitalism, p. 191.

visible purposes, must produce a totalitarian society."¹⁹²
 It is one thing to say that there is a tendency for the growth of government to perpetuate itself, quite another to assert that reasonable men cannot define and pursue common goals in such a way that individual liberties are respected.¹⁹³

Hayek's misperception of the nature of the common good is accompanied by a misperception of the desire for it. Arthur Seldon describes such desires succinctly:

The risks and sanctions of the market process must receive the moral allegiance of the people. The market must be seen not only as efficient but as good and satisfying whatever canons of justice are regarded as proper.¹⁹⁴

But Hayek denies that we can apply any canons of justice to society, or even that we can gradually approach the common good by eliminating those social evils widely regarded as abhorrent.¹⁹⁵ The decent conviction that a good society cannot abide certain greivous illls is thus pushed aside. For all his acumen in discussing the workings of capitalism

¹⁹² Hayek, Mirage, p. 147. (Emphasis mine.)

¹⁹³ See E.F.M. Durbin, "Professor Hayek on Economic Planning and Political Liberty," Economic Journal 55 (December 1945): 360-365.

¹⁹⁴ Seldon, Introduction, in Seldon, pp. 11-12.

¹⁹⁵ Hayek, Mirage, p. 78.

and the consequences of circumscribing it, Hayek seems incapable of that quality of imagination that would allow him to understand the attraction of interfering in the market to correct severe problems.¹⁹⁶

Not only is Hayek's treatment of the common good, confused and perhaps unfair, a problem in itself, but it causes serious difficulties for the whole of his defense of capitalism. Having agreed that the market's defenders must accept the widespread desire for government programs that alter the market's results, Hayek has embraced the goals, if not the means, of the modern welfare state. Having made this concession Hayek tries to preserve the market order by calling for government intervention to accord with the Rule of Law as much as possible. But Hayek has no framework for telling us how much adherence to the Rule of Law is possible. In the absence of any conception of the common good, which could be used to weigh trade-offs among equality, efficiency, and liberty, Hayek provides no criteria for making policy decisions. One can thus expect that the political realization of Hayek's philosophy will not affect the modern welfare state all that much. Someone must decide to what extent following the Rule of Law is possible, and

¹⁹⁶Ronald Max Hartwell, "Capitalism and the Historians," in Machlup, p. 92.

since Hayek does not tell us, the decision seems likely to rest with those who currently administer the welfare state, and who have at least a clear picture of their goals, if not the procedural strictures they ought to serve.

Hayek's explanations of why certain welfare state programs will not endanger liberty and progress ring false due to the lack of any comprehensive framework for considering social policy. It would be more reasonable to say that sacrificing a measure of the freedom necessary for the spontaneous order to obtain a measure of security or equality is a good bargain than to pretend, as Hayek seems to do, that the right kind of welfare state does not diminish liberty. But Hayek absolutely cannot take a balancing approach because it makes progress a value comparable to others, all of which reasonable people can assess and weigh; progress remains an absolute value, beyond criticism because its future course is unknown.¹⁹⁷ So while Hayek clearly favors government activity beyond the night watchman state, it is unclear how much farther he is willing to go. The unyielding position of Milton Friedman or Robert Nozick seems, by comparison, much more lucid.¹⁹⁸ So, Hayek's efforts to promote capitalism

¹⁹⁷ Philip W. Dwyer and R. Harrison Hickman, "American Conservatism and F.A. Hayek," Modern Age 23 (Fall 1979): 387.

¹⁹⁸ Wilhelm, pp. 180-181.

while accomodating the moral resistance to it appear stymied by the absence of any device in Hayek's thought for mediating the two aims.

A second area in which Hayek's defense of the market is inadequate is his treatment of the self-destructive tendencies of capitalism. Hyperactive government may well be the greatest threat to the free market. But if certain trends within capitalism could destroy it from within, wise government policies may be the only way to secure the future of the market. Just such a trend is the reduction of competitors by attrition, until enormous corporations control vast sections of many markets. In capital-intensive industries, like steel and automobiles, the costs of an initial investment are so great that the threat from new corporations is nil, while retooling costs might be so high that smaller firms have great trouble staying off the giants. Even in less capital-intensive sectors, such as the service industries, large firms can amass marketing and research teams with formidable expertise. Clearly, it is possible for capitalism to winnow out the great majority of capitalists, and in the process to all but eliminate the competition and experimentation that justifies capitalism.

Hayek never deals fully with this problem. He seems determined to focus solely on the government threat to the

to the market. So he states, but does not really argue, that government is the chief cause of monopoly, as a result of tariffs, patents, and laws governing corporations.¹⁹⁹ He insists, notwithstanding fears to the contrary, that corporate giantism is not inimical to competition, and the potential of such firms to wield unacceptable economic and social power is exaggerated.²⁰⁰ Hayek may be right; there is an argument to be made that in the long run government regulation of monopoly is ineffective. But on an issue of this importance, about which so many people have misgivings, Hayek really should provide more guidance.

There is a second respect in which capitalism poses a threat to its own survival. This is the tendency of the experience of life under modern capitalism to lead people to develop attitudes that are inimical to the existence of capitalism. To his credit, Hayek acknowledges the problem. He points out that modern capitalism is characterized by the existence of many large corporations with thousands of employees. People who view society from the perspective of an employee are unlikely to appreciate the importance of individual entrepreneurs. They will be

¹⁹⁹ Hayek, New Studies, p. 146.

²⁰⁰ Hayek, Political Order, pp. 79-80.

receptive to political programs that enhance employees' security, while being unconcerned about taxes and regulations that stifle small businesses. Hayek laments the tendency to think of society in terms of one large organization rather than diverse competing ones. But he confines his remedy to a reiteration of the continuing importance of the entrepreneurial pathfinder, a solution of much narrower scope than the problem.²⁰¹

Indeed, others have examined this same area and found the problems of the attitudes nurtured by capitalism to be even more serious than Hayek imagines. Daniel Bell has argued that capitalism, especially in America, is beset by a huge "cultural contradiction." The "production ethic" calls for diligence, sobriety, and frugality, while the modern "consumption ethic" urges instant gratification, comfort, leisure, and self-indulgence. "One is to be 'straight' by day and a 'swinger' by night."²⁰² The resulting frustration and confusion is most severe. Equally frustrating and contradictory is the growing importance attached to "positional goods." A robust market economy may provide virtually

²⁰¹ Hayek, Constitution, pp. 118-130; and Hayek Mirage, pp. 134-135.

²⁰² Daniel Bell, The Cultural Contradictions of Capitalism (New York: Basic Books, 1976), pp. 71-72, 84.

everyone with a good education and a comfortable home, but is cannot possibly give more than a few schooling at an "elite" institution, or a house in one of the "best" neighborhoods. As capitalism has succeeded in satisfying mass demands for mass-produced consumption items, the focus of the upwardly mobile has turned towards positional goods that are intrinsically limited. The discovery of such limits has come as a shock to those who took capitalism's promise to be an ever-improving standard of living.²⁰³ Having already indicated the importance of adjusting the case for capitalism to account for the moral sentiments of the time, Hayek (and his followers) need to take these newer attitudes under serious consideration. Further, he needs to construct a defense of capitalism that is compelling enough that those who live in a market economy can see its virtues despite the vicissitudes of daily life.

The third area in which Hayek's political philosophy is vulnerable is its moral relativism. Hayek writes:

But the gravest deficiency of the older prophets [such as Moses] was their belief that the intuitively perceived ethical values, divined out of the depth of man's breast, were immutable and eternal. This prevented them from recognizing that all rules of conduct served a particular kind of order to society, and that, though such a society will find it

²⁰³Kristol, pp. 32-37. See also, Will, pp. 97-99.

necessary to enforce its rules of conduct in order to protect itself against disruption, it is not society with a given structure that creates the rules appropriate to it, but the rules which have been practised by a few and then imitated by many which created a social order of a particular kind. Tradition is not something constant but the product of a process of selection guided not by reason but by success. It changes but can rarely be deliberately changed. Cultural selection is not a rational process; it is not guided by but it creates reason.²⁰⁴

Hayek does qualify his idea of historical change in a way that staves off utter relativism. He insists that since reason is a creature of history it is impossible for reason to rise above history and pretend to apprehend standards by which to criticize tradition.²⁰⁵ Accordingly, Hayek rejects the claims of the discovery of the meaning of history by Hegel, Marx, or Comte.²⁰⁶ And he cautions that the supposition that we can think our way out of traditional moral restraints is a conceit that harbors terrible savagery; civilization requires acceptance of the products of the evolution of morals.²⁰⁷

But however cautious a relativist he may be, Hayek still denies that there is any fixed point in the moral

²⁰⁴ Hayek, Political Order, p. 166.

²⁰⁵ Hayek, New Studies, p. 20.

²⁰⁶ Hayek, Rules and Order, pp. 23-24.

²⁰⁷ Hayek, Political Order, p. 174.

universe, or any evil that time and progress may not render good. This posture is intrinsically objectionable for several reasons. First, despite his protestations about respect for tradition, Hayek finds himself denigrating the moral foundations of the West. H.B. Acton agrees that some mores will evolve in response to circumstances, but says that it is almost nihilistic for Hayek to claim that all moral precepts, even the decalogue or the Golden Rule, are subject to the same erosion.²⁰⁸ David Lewis Schaefer scoffs at the idea that the moral teachings of Moses, Plato, or Rousseau have been rendered obsolete because of their failure to appreciate "the contribution that the market economy makes to the advancement of civilization."²⁰⁹

Hayek's deliberate dissociation from the traditional understanding of morality (as distinguished from precepts of traditional morality) leaves him incapable, apparently, of understanding the moral earnestness of the opposition to capitalism. Hayek can attribute the widespread revulsion for materialism to "socialist teaching."²¹⁰ And he claims

²⁰⁸H.B. Acton, "Objectives," in Seldon, pp. 77-78.

²⁰⁹David Lewis Schaefer, review of The Political Order of a Free People, American Political Science Review 74 (March 1980): 166.

²¹⁰Hayek, Road to Serfdom, p. 130.

that the "civilizing forces of commerce," which promote such virtues as kindness and "consideration of the weak and infirm," have been overlooked.²¹¹ Hayek ought to have considered more seriously the possibility of a deeper basis for the aversion to capitalism, or that consideration of the weak might issue in efforts to enlist the government in their protection.

A second respect in which Hayek's teaching about history and our relation to it is internally flawed is his inability to make clear to what extent history is beyond deliberate human control. Hayek seems to waver, sometimes rejecting the "fatalistic" belief that you can't turn back the clock, sometimes expressing doubts that the trend towards socialism is reversible.²¹² Barbara Wooton has pointed out the anomaly of Hayek's devoting a chapter of The Road to Serfdom to "Why the Worst Get on Top," since the thesis of that book seems to be that planning is horrific no matter who gets on top.²¹³

Thirdly, Hayek's notion of historical evolution seems at variance with much of what we know about history.

²¹¹ Ibid., pp. 148-149.

²¹² Seldon, p. 11; See Hayek, Constitution, pp. 284, 304.

²¹³ Wooton, Freedom, footnote, p. 37.

According to Hayek, "The growth of what we call civilization is due to this principle of a person's responsibility for his actions and their consequences, and the freedom to pursue his own ends without having to obey the leader of the band to which he belongs."²¹⁴ Individual freedom certainly explains in part the growth of civilization. But there is no evidence to suggest that absolute monarchy, or voo doo, or trial by torture declined as principles of social organization because they were practiced by groups who gradually gave way to groups not organized along these lines.²¹⁵ Nor is it fair for Hayek to portray capitalism as spontaneously emergent while attributing anti-capitalist sentiments to the manipulations of intellectuals. Milton Fisk argues that many reform movements or revolutions flare up in history as if by spontaneous combustion, while capitalism has often been propped up by deliberately chosen policies.²¹⁶ Hayek clearly seems to have mistaken an aspect of the process of historical change for the whole of it.

²¹⁴ Hayek, New Studies, p. 299.

²¹⁵ Jacob Viner, "Hayek on Freedom and Coercion," Southern Economic Journal 27 (January 1961): 235.

²¹⁶ Milton Fisk, review of Rules and Order, Philosophical Review 85 (July 1976): 429-432.

Apart from these inherent difficulties of Hayek's relativism, showing careless scholarship or implausible moral reasoning, Hayek's relativism is destructive of his larger attempt at defending capitalism. It is so in the general sense in which any thinker's relativism tends to cut the ground from under him, trivializing any points he is trying to advance. For example, by arguing that longevity bestows legitimacy on institutions, Hayek leaves his theory vulnerable to being used to justify egalitarianism. If Hayek's ideal is progress attained through unplanned experimentation, he would seem to be defending most of the welfare state as currently administered, which has, by now, a long history of incremental adaptation.²¹⁷ Hayek has compromised his own ability to criticize egalitarianism or advocate capitalism.

More specifically, Hayek's relativism limits his ability to put forward a moral defense of the market. Hayek understands the need for such a defense of the market clearly enough. He points out that the benefits of government intervention are usually far more tangible than its costs, and the shortcomings of capitalism are generally more visible

²¹⁷ Eugene F. Miller, "Hayek's Critique of Reason," Modern Age 20 (Fall 1976): 392-393; Samuel Brittan, "Hayek, the New Right, and the Crisis of Social Democracy," Encounter 54 (January 1980): 33-35.

than its virtues. If capitalism is defended on the basis of its results, Hayek concludes, it will lose every time, because these results are so difficult to perceive. Therefore, Hayek insists that the only effective defense of capitalism must be in terms of principle. Only by conveying the importance of principles such as the protected sphere for individual liberty can the market win the allegiance of the people.²¹⁸ But of course, those thoroughly familiar with Hayek's philosophy will realize that the principles that he appeals to are products of a certain type of civilization, and constantly subject to revision. They will be accepted as a sufficient defense of the market only by those who do not know, as Hayek's followers do, that progress is the essence of civilization, and no moral principle is immune to progress. Hayek is, in effect, calling for a principled defense of a system whose leading feature, according to him, is that it is unfettered by any immutable and eternal ethical principles.

The charitable interpretation of this anomaly is that Hayek is confused. The more plausible explanation is that his moral defense of capitalism is Hayek's Noble Lie, the

²¹⁸ Hayek, Constitution, pp. 67-68; Hayek, Rules and Order, pp. 56-57.

only device for reconciling the multitude to an economic system they cannot understand. This effort has paradoxical consequences. We have seen that Hayek is tempted to regard as artificial what appears to be genuine and spontaneous-- the moral revulsion against the inequalities of capitalism. It now seems that he wishes to pass off as genuine moral attitudes he himself believes to be confused. This is hardly a reassuring start for the moral defense of capitalism. It promises a future of ever more elaborate deception, trying to deny real sentiments and defend inculcated ones. Whether those who engage in such an enterprise are in a position to make a moral defense of anything is an open question.

CHAPTER SIX

CAPITALISM AND THE COMMON GOOD

On the basis of our examination in the last chapter we may put forward two conclusions. First, Hayek's project--the justification of the market in terms consonant with moral sensibilities of our times--is worth doing. A prosperous economy is a prerequisite for rescuing millions from poverty, and there is no substitute for the market mechanism in promoting and maintaining prosperity. Furthermore, capitalism is so closely related to the Rule of Law that it is impossible to follow the latter without substantially protecting the former. The second conclusion is that Hayek has not successfully completed this project. His argument on behalf of a modified capitalism is neither clear nor convincing; Hayek has not reconciled his defense of the market with his acceptance of government alterations of it. Hayek's lack of conviction seems to have worn off on his effort to provide a moral justification for capitalism, which is especially unpersuasive.

This chapter will suggest a different approach to the construction of a defense of the market. The argument here will rely heavily, though not exclusively, on the political

thought of Bertrand de Jouvenel, contained in his books, Sovereignty and The Ethics of Redistribution. Jouvenel's political writings are neither so voluminous nor as systematic as Hayek's; he grants that their purpose is "suggestive rather than didactic."²¹⁹ But Jouvenel provides an illuminating contrast with Hayek--because their perspectives are similar in many ways, the remaining differences are often important.

For example, Jouvenel shares Hayek's fundamental insight about the nature of social organization. Jouvenel sees modern social life as a "web of infinite complexity," far more intricate than what Hayek would call face-to-face society.²²⁰ Consequently, Jouvenel is as dubious as Hayek regarding the possibility of social reform based on comprehensive knowledge of society. Jouvenel writes:

[I do] not believe that it is possible even for the most powerful intelligence to envisage in advance all future possibilities of . . . co-operation, and [I] cannot for that reason take the view that it needs to be built up in successive stages from a single organising centre. The cause of its enrichment [I find] is the unfailing supply²²¹ of fresh initiatives taken independently; . . .

²¹⁹ Bertrand de Jouvenel, Sovereignty: An Inquiry Into the Political Good, translated by J.F. Huntington (Chicago: University of Chicago Press, 1957), p. 295.

²²⁰ Ibid., p. 2.

²²¹ Ibid., pp. 10-11.

Jouvenel resembles Hayek again when he notes "the miracle of society," the fact that the absence of a central organizing force does not render social life chaotic; dependent as we are on the behavior of innumerable strangers, we can proceed with great confidence that their behavior will meet our expectations.²²² Unlike Hayek, however, who attributes this miracle to society's capacity for spontaneous order, Jouvenel says that the basis of modern social life is the "institutionalization of trust." Society coheres if it maintains a common code of behavior and a mutually accepted moral outlook. Uncertainty about the feelings, thoughts, and actions of others is the source of estrangement in modern life that causes citizens to feel like aliens in their own country, and causes social life to crumble.²²³ And unlike Hayek, Jouvenel feels that modern society is particularly in need of reassurance and stability regarding these basic qualities. The more rapidly the material circumstances of life change the more desperately men need a durable touchstone for security and confidence.²²⁴

²²²Ibid., pp. 115-116.

²²³Ibid.

²²⁴Ibid., p. 104.

Because Jouvanel shares Hayek's opinion about the complexity of modern society, he shares some of Hayek's misgivings about the pursuit of the common good. "It is not the office of the public authority to pursue personal goods of individuals," Jouvanel writes; government cannot know what these goods are, and cannot pursue them without trampling liberty.²²⁵ But because Jouvanel sees a perishable foundation of social life, he takes a position on the common good different from Hayek. Jouvanel says that the common good will consist in, and require the defense of, certain fundamental conditions essential to the continued existence of society. These include the protection of a nation's territorial integrity, and the preservation of the material and moral bases of social life. Jouvanel summarizes these goals by saying that the common good of any society is the social bond itself. Wise politics is permeated by the knowledge of the precariousness of social order, and the need to attend constantly to its defense and preservation.²²⁶

Jouvanel's conception of the common good corrects a major defect in Hayek's theory. If we think of the maintenance of the conditions of social life as the overarching

²²⁵ Ibid., pp. 109-112.

²²⁶ Ibid., pp. 112-114, 123-129.

common good, we must break with Hayek in his treatment of spontaneously generated progress as an absolute value. Jouvanel's common good makes the free market a feature of the good society, but does not grant pre-eminence to it. In our efforts to preserve our society we will carefully consider the market's contribution to generating wealth and preserving freedom. Society cannot cohere when these qualities are absent or disappearing. But society also needs to redress glaring inequalities, and to be able to satisfy itself that it has treated its weakest members humanely, and these requirements of the common good may necessitate curtailing the free market. The common good, then, provides the framework that we need to undertake the modifications of capitalism which Hayek, and many others, have called for. Reasonable people will disagree about whether particular trade-offs promote the common good. But the idea itself will focus and guide public policy debates in a way that Hayek's incomplete theory cannot.

It is true, as Hayek and Jouvanel recognize, that the common good can be made a pretext for incursions on liberty, both petty and terrifying. Perfect reassurance cannot be given on this point. But Jouvanel's conception of the common good ought to lend itself to the reasonable distinction between matters that endanger the social order

and those that do not. The common good is no less dependent on reasonableness within the political order than other conceptual frameworks for politics. Hayek's hopes for the modification of capitalism are, as we have seen, heavily dependent on the good sense of the governors. But Jouvenel does not allow his political thought to be paralyzed by the possibility that his ideas will be abused by unreasonable people. So where Jouvenel agrees with Hayek that absolute social justice, in a society of modern complexity, is impossible, Jouvenel does not go on to say, as Hayek does, that the whole idea of social justice is therefore a mirage. According to Jouvenel, justice is in one sense "a quality of human will." Rather than blandly accepting whatever social arrangements emerge as social life develops, we must try to see that "the whole ceaseless process of change should be increasingly permeated by the quality of social justice in our individual wills."²²⁷ So while there might not be social justice, there will be social injustice if we callously accept any arrangements that, as Hayek would say, emerge spontaneously. The victims of this injustice will include not only the poor but the whole society as a moral entity.

²²⁷ Ibid., pp. 164-165.

Hayek's very different stand on the common good is based on a political perception that is not only different from Jouvenel's, but flawed in a fundamental way. Hayek is greatly concerned about the preservation of the abstract quality of order. So far is he from a concern for particular political orders that he states that the culmination of politics, in his view, would be the decline of nationalism and the emergence of a world society.²²⁸ But Hayek has to admit that all human history to date has been in particular, "factual" orders, rather than in the experience of the sheer abstract quality of order.²²⁹ This acknowledgment undercuts his attempts to formulate a purely procedural guide to politics, because his procedural strictures will be subject to varying applications according to the requirements of different political orders.²³⁰

Jouvenel, by contrast, deals directly with the fact of different political orders. "To consider groups as secondary phenomena resulting from a synthesis of individuals is a wrong approach; they should be regarded as

²²⁸ Hayek, Studies, pp. 163-164; Hayek, Individualism, pp. 28-29.

²²⁹ Hayek, Mirage, pp. 56-59.

²³⁰ Richard Vernon, The 'Great Society' and the "open Society": Liberalism in Hayek and Popper," Canadian Journal of Political Science 9 (June 1976): 265-271.

primary phenomena of human existence."²³¹ The origins of groups are in authority, and this quality of authority is anything but abstract, says Jouvenel. Authority begins in the "natural ascendancy" of certain men, of the sort that can be seen to emerge spontaneously in times of emergency, such as a fire or accident.²³² This leadership is the quality that creates and maintains groups, "the efficient cause of voluntary organizations."²³³ As the organizations grow in size and complexity, authority becomes institutionalized, and the maintenance of existing social orders becomes the task of politics.²³⁴

One upshot of these differences is that Jouvenel's political theory is capable of giving a helpful account of the fact of occasional political crises that threaten a regime's existence while Hayek's philosophy is not beneficial on this point. Hayek's political philosophy is tailored for a political order where all great issues have already been resolved, and the problem is to preserve and enhance a

²³¹Jouvenel, Sovereignty, p. 56.

²³²Ibid., p. 32.

²³³Ibid., pp. 28-31.

²³⁴Ibid., pp. 19-20.

functioning system. Jouvanel calls the type of authority needed here the office of adjustment, and says that it must superintend the incremental adjustments necessary to maintain the contours of social life. But Jouvanel speaks of another type of authority that has no analogue in Hayek's thought, the office of leadership. Every society periodically confronts profound crises that pose imminent dangers to the nation. The office of adjustment cannot cope with such a challenge, and the office of leadership must confront the crisis by organizing a great, vital, public endeavor, such as a war or social reformation. These offices are not to be understood as formal branches of government, but as qualities of the political order itself, a nation's ordinary and extraordinary understanding of its own existence. By confining himself to the shallows of politics, Hayek is unable to appreciate the intensity of the feelings or actions that regard the preservation of a venerable way of life.²³⁵

We conclude this discussion of the common good by saying that it, and Jouvanel's position generally, provide a centripetal force in political theory, capable of overcoming the dangerous centrifugal tendencies of Hayek's thought. Jouvanel asserts that political science is a moral

²³⁵ Ibid., pp. 40-55.

science. The intercourse of humans in society requires a "common stock of beliefs and a similar structure of feelings." Men can live in society because they share a "common moral language," he says, and if this language breaks apart, society will dissolve also.²³⁶ Hayek, for all his concern about liberty, does not attach much importance to the inculcation of a devotion to liberty among the people or the governors. If Hayek is right about people being preoccupied with private interests, such a teaching is especially important if liberty is to endure.²³⁷

The common good also appears to remedy the second main defect of Hayek's theory, the consideration of the self-destructive tendencies of capitalism. Because it provides a framework where we can consider trade-offs in the public interest, the idea of the common good can structure discussions about anti-trust policy. Again, the common good will not be the last word on deciding at what point corporate power must be checked by government power. But it can be a starting point, framing the discussion in terms of what qualities we need from the market in maintaining the material foundations of society, so that we can proceed to ascertain whether a particular economic structure satisfies or

²³⁶ Ibid., pp. 303-304.

²³⁷ Wilhelm, p. 181.

frustrates that need. Further, by placing the case for capitalism in the context of the larger concern for the preservation of the social order, the common good provides a basis for resolving the cultural contradictions of capitalism. Rather than considering consumption and production sui generis, and tolerating growing discontinuities between the two halves of the economic process, the common good relates them both to a larger purpose. In so doing it facilitates public and private efforts to adapt the economic processes to the common moral language, and to prevent excesses where the economy transgresses the collective moral vision.

The final shortcoming of Hayek's theory is its moral relativism, and this is the most difficult to dispute. Hayek's position that moral opinions are subjective and cannot be legitimately imposed on others is probably the facet of his thought most congenial to modern sensibilities. Hayek claims to have been influenced by David Hume more strongly than by any other philosopher, and Hume's epistemological barriers have certainly kept many people besides Hayek from believing in objective moral standards.²³⁸

From what we have seen of Jouvenel so far, his theories may appear ill-suited to a refutation of moral relativism. If the common good is the social bond itself,

²³⁸Hayek, New Studies, p. 264.

different societies will require different common goods. In light of this, Jouvenel's moral criteria seem to vary as much as Hayek's. But this interpretation is at odds with the tenor of Jouvenel's thought. I do not understand Jouvenel to be saying that the common good is good simply because it is common--that the preservation of Naziism is good in the context of Nazi Germany. Rather, it seems that the common good must indeed be good for Jouvenel, must accord with the development of what is best in human nature. Regarding the subject of economic policy, for example, Jouvenel insists that the good life is not a "buyer's spree," an attitude he finds in the arguments of opponents and defenders of capitalism. Civil life requires a correct understanding of the limited importance of economics, he says. The purpose of economic activity is not the indefinite increase of private luxury, "gnawing the income bone," but the facilitation of more important goals. Economic activity ought to conduce to increasing the sociability of men, and improving their moral, intellectual, and aesthetic character.²³⁹

It does not appear, then, that Jouvenel's common good necessarily leads us into moral relativism. It is not without difficulties, particularly in terms of reconciling

²³⁹ Jouvenel, Ethics, pp. 45-48, 53-55.

universal needs of men with the requirements of particular nations with particular customs. To attach too much importance to the latter raises the prospect of de facto relativism, while to insistently stress the former could lead to brittle absolutism. The common good is not, to repeat, a panacea. But it does provide a basis for the resolution of the problem confronted by Hayek, the adjustment of the market processes to the prevailing notions of fairness. Hayek's cautionary remarks about the consequences of disturbing the market order are instructive, but become useful guides only within the context of the ongoing effort to promote the good life for man within stable political orders.

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APPROVAL SHEET

The thesis submitted by William J. Voegeli, Jr., has been read and approved by the following committee:

Dr. James Wiser, Director
Associate Professor, Political Science, Loyola

Dr. Richard Hartigan
Professor, Political Science, Loyola

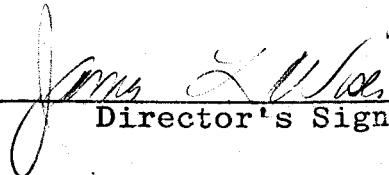
Dr. John Williams
Assistant Professor, Political Science, Loyola

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval by the Committee with reference to content and form.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

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Date



Director's Signature