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Book Reviews

Boudewijn Bouckaert and Annette Godart-Van Der Kroon, Editors (2000) *Hayek Revisited* (Northhampton, MA: Edward Elgar). 157 + xxi pp. 1-85898-449-1.

Hayek Revisited, published under the auspices of The Locke Institute, contains eleven papers (plus an Introduction by Boudewijn Bouckaert, Annette Godart-Van Der Kroon, and Martin De Vliegere) that were prepared for four conferences sponsored by the Belgian-Dutch Ludwig Von Mises Institute during 1993–1996. The papers are organized into three categories: “Spontaneous Order, Ethics, and Freedom,” “Farewell to the Welfare State?,” and “Europe: Widening or Deepening?” The book is not a study of Hayek’s theories, as such, but an attempt to extend and apply those ideas. The majority of the authors are philosophers of law; consequently, the papers generally center on questions concerning the nature of law, liberal conceptions of legitimacy, and role of the state. Given the volume’s emphasis, it will be of interest to economists who wish to peek into questions that Hayekian legal theorists have been asking. The book may more directly appeal to a broader multidisciplinary audience interested in the kinds of constitutional, normative, and legal questions inspired by the breadth and depth of Hayek’s *oeuvre*. Perhaps the central observation to be made about the book is its demonstration of the power of Hayekian ideas to inform liberal sensibilities and of the fertility of those ideas for studying difficult and complex problems. The implicit message in the book is that Hayek, rather than providing settled answers, actually leaves the playing field wide and deep enough to sustain a vigorous research program. Readers seeking a linear extension of Hayekian ideas to some definitive end-point will be disappointed by *Hayek Revisited*.

Hayek’s emphasis on the “twin ideas of evolution and of the spontaneous formation of an order” (Hayek 1978:250) forms the central motif of the six papers in Part I. With the exception of Ulrich Witt’s paper on business cycle theory, they all tackle, directly or indirectly, the problem of normative criteria in assessing spontaneous orders. Kurt Leube’s “Hayek’s Spontaneous Order and the Ethics of Free Markets” identifies the early influence on Hayek of the legal positivist Hans Kelsen and Hayek’s subsequent rejection of Kelsen’s theories.¹ Leube argues that Hayek’s “incidental work for the introduction for *Collectivist Economic Planning*” set the stage for “Economics and Knowledge” of 1936 and the “conscious breakthrough [of] a unified vision” (pp. 6–7) that enabled him to explore the implications of the knowledge problem for catallactic theory and subsequently for legal theory. According to Leube, Hayek’s key insight was to conceive of the social order as an evolutionary process animated by a discovery procedure that “not only makes use of this existing knowledge, but also permanently generates new knowledge” via social interactions among autonomous agents (p. 7).² Hayek’s interest in the *division* of knowledge is well known, but his treatment of the *production* of knowledge in society was largely implicit. Leube is on firm ground in raising this latter element, but in only briefly mentioning the knowledge generating capacities of social orders, he passes up an opportunity to develop a

skein of thought arguably critical for explaining how spontaneous orders function and the mechanisms that produce their emergent characteristics. Leube focuses on the undesigned emergence of rules of conduct and rejects the idea that these rules provide a moral basis for “distributive justice.”

Paul Cliteur’s “Spontaneous Order, Natural Law, and Legal Positivism in the work of F.A. Hayek,” attempts to connect Hayek’s legal philosophy to natural law doctrine. This interesting exercise claims that Hayek was “*a kind* of natural lawyer” (p. 27). Cliteur defines what he means by “natural law” and then examines whether Hayek’s views are consistent with those criteria. The ensuing discussion is informative and thoughtful, but the argument Cliteur wishes to maintain is, in the end, a hard sell given Hayek’s explicit distancing from natural law theory. All the same, there is a real issue here because, as Cliteur observes, natural law provides normative criteria whereas Hayek’s evolutionary theory doesn’t. The problem of evolutionary “dead ends” is a problem Hayek was aware of, and so linking Hayek to natural law doctrine presents Cliteur with a possible solution to a lingering lacuna in Hayek’s legal theory. However, how various philosophical doctrines (such as natural law theory) might solve these questions provides only part of an answer. From a more explicit social science perspective, evolutionary sorting mechanisms in market theory have reasonably well defined characteristics that assist in examining normative issues, partly because the framework of rules (e.g., those governing voluntary exchange) are “given.” In legal theory, however, it is the framework itself that requires scientific analysis if normative criteria for law is to be garnered at all. It seems that the relative clarity of catallactic theory gives way to murkier waters at the level of broader social theory in which a larger array of interacting structures are studied, some of which, such as market orders, are relatively undesigned and others, such as modern states, are “constructed.”

In “Rules and Order,” Dieter Schmidtchen uses game theory to examine the emergence of rules that produce an evolutionarily stable strategy. If spontaneous rules satisfy that condition, they are efficient in that an order is generated in which outcomes reflect a “matching of intentions and expectations.” (p. 35). According to Schmidtchen, this provides a normative criterion for evaluating putative “evolutionary failures” and may assist, on that account, in analyzing marginal legislative interventions to correct those aberrations.

Cliteur and Schmidtchen both attempt to repair foundational problems in evolutionary theory but do so in very different ways. In emphasizing a strong “traditionalist” and “conservative” strain in Hayek, Cliteur finds a basis to support his contention of Hayek as a “natural lawyer.” But Leonard Liggio’s paper, “Law and Legislation in Hayek’s Legal Philosophy,” appropriately highlights Hayek’s rejection of conservatism and his distancing from democratic principles. Phillip Nemo in “Hayek and the Tradition of Moral Philosophy” also addresses the question of normative criteria for evolutionary theory: “If morals are no longer transcendent, if they are historical products, then we no longer have true criteria for values” (p. 65). This exposes Hayek to the charge of “relativism.” Nemo’s rebuttal highlights the fact that moral values are always relative to something else and that, in any case, we lack the epistemological Archimedean lever to establish certitude. Nemo (p. 66) argues, however, that “we are nonetheless not ‘lost’ in our moral life” and that “refusing idealistic, dogmatic morals does not imply accepting relativism, historicism or Marxism.” Nemo sensibly holds

that we can accept values as “transcendent” provided our “objective analysis of social cooperation” sustains them and “criticize those values for which we have . . . reasons” to do so. As Hayek was at pains to suggest in word and deed, accepting spontaneous order does not imply suspending a critical stance.

Ulrich Witt's paper, “The Hayekian Puzzle: Spontaneous Order and the Business Cycle,”³ argues that Hayek's evolutionary approach of his later years and his business cycle theory of the 1920's and 30's are incompatible. Witt argues that the former, with its emphasis on the dynamics of learning and expectations formation, is at odds with the cycle theory's general equilibrium approach. In making his argument, Witt resurfaces the well-traveled “Hayek I vs. Hayek II” bifurcation, suggesting that after 1937 “Hayek's thoughts about business cycle theory were indeed in a crisis” (p. 76). But the evidence adduced here is far from compelling, notwithstanding that Hayek's interests obviously broadened around that time. The particular analytical model available to the early Hayek served as a useful entry for developing a business cycle model. But it was only Hayek's starting point. This particular platform has proven to be insufficient for analyzing the kinds of issues we (and Hayek) would identify with “the knowledge problem,” including those concerning learning and expectations. Hayek was aware of this and to his credit did not cling to a general equilibrium model as the questions he sought to address changed. If there was a “crisis,” it was not so much in Hayek's own development as in the sluggishness of others to keep pace with him. Witt's suggestion to cast aside Austrian business cycle theory and replace it with a more general evolutionary and dynamic theory of economics (which is only very broadly outlined in the paper) sets a rather optimistic tone for advances which unfortunately are still in their early stages of development. Witt's paper is a useful reminder that Hayekian ideas should contribute to that development.

Part II of *Hayek Revisited* contains three papers that develop arguments concerning the role of the State. One of the more provocative papers in the volume is Frank Van Dun's wide-ranging “Philosophical States and the Illusions of Citizenship: Reflections on the Neutral State” in which he subjects the theory and practice statism to a vigorous denouement. His central point is that human society is anterior to the state and separable from it, and that they function on different bases and generate different outcomes. The paper's specific theme concerns the question of “neutrality” with respect to honoring and protecting a domain of interaction in which agents exercise their “personal morality” (“a personal commitment . . . of what makes one's life good” [p. 104, n. 3]). He argues that neutrality is a characteristic of the law produced through voluntary interactions but neutrality is impossible under statism.⁴

Van Dun's natural law perspective holds that modern conceptions of the state (mainly deriving from Plato, Hobbes, Rousseau, and Marx) place it above society and the laws of private society, making it a form of “organized lawlessness.” Statism is premised on the belief that in “natural society” (i.e., the spontaneous order), “man plus man equals war” (p. 94).⁵ “This,” Van Dun emphasizes, “is perhaps the most basic axiom of statism” (p. 94), and one that denies the existence of a social order in which “people learn to develop rules and conventions for living *with* and *alongside* one another” (p. 102). Social rules, he argues, serve the “requirements of life” (p. 102)), while the state, which “has no advantage other than force” (p. 103), cannot be viewed as “part of a just order” (p. 102). According to Van

Dun, this has grave consequences because “the rise of the state has made it possible for an ever increasing number of persons to accomplish their ends without regard for law” (p. 102). This leads to a “perverse dynamic of social destruction” (p. 103) that inhibits the functioning of voluntary social interactions and compresses the exercise of personal morality.

This lively paper simply and regrettably ends with Van Dun’s “deep sense of uneasiness about the present form of organized lawlessness” (p. 104), and so we are left to wonder how that uneasiness might be alleviated. An early step would perhaps involve more precisely differentiating between society and state, given that what we observe in reality are structures that have emerged both spontaneously and by design. Van Dun’s argument is based on such distinctions, but his treatment is more suggestive than complete. Van Dun works from a natural law perspective that he implicitly connects to a Hayekian social order (*cosmos*) *already* functioning on the basis of voluntary interactions and rules of property. That such interactions have the capacity and are likely to generate more complex arrangements is not in dispute, although Van Dun is certainly correct to emphasize that this is all too often forgotten or rejected. Yet, his treatment would benefit from a more thoroughly developed description of this evolutionary process and, in particular, a rebuttal to the claim that such processes will generate statist impasses or dead-ends.

Gerd Habermann’s “The Emergence of the Welfare State: Endogenous Rationality or Exogenous Political Rent-Seeking?” complements Van Dunn’s paper in that it highlights the emergence of the modern welfare state in Germany, finding the proximate causes to be Bismarck’s regime and especially two “total wars.” Habermann identifies three kinds of rent-seeking as mechanisms that install, promote, and solidify the welfare state: first, “approval democracy” by which votes and benefits are exchanges; second, the activities of pressure groups; and third, dependency on the “rule of experts” to advise the government or serve as bureaucratic regulators. This covers familiar territory, but Habermann also points out the dynamic role of “borderline cases” (p. 122) in social legislation that incrementally extend the scope of intervention.⁶ Habermann, in sketching what a “welfare state utopia” is likely to look like (and it is, indeed, a grim and depressing picture), briefly entertains suggestions for stopping the development of the welfare state. He settles on a constitutional approach as a way to limit taxation and to otherwise rein in the state or “prevent democratic arbitrariness” (p. 124) but rejects libertarian-inspired approaches that would eliminate the state’s enforcement powers. Although he has “little hope” in the “privatization of coercive measures,” Habermann does not explain why “the old problems [would] continue to exist under new names” (p. 124) if such measures were implemented.

Hartmut Kliemt in his “Rule of Law and the Welfare State” argues that *any* state which operates under the rule of law will necessarily have redistributive and regulatory functions. Even under a Nozickian minimalist state, Kliemt holds that redistributive taxation is necessary; otherwise, an “ultra-minimal state with the monopoly of power” protects “only those who can buy into the protective scheme.” According to this view, the “rule of law” is treated as a public good that by definition must be supplied coercively by the state, although Kliemt provides no analysis of the circumstances under which actual voluntary interactions have addressed or could address such questions or of their efficiency in doing so

relative to the state's efforts. What concerns Kliemt is that the application of classical liberal *general rules* does not by itself prevent "undesirable" rent-seeking activities and various redistributive "excesses," although Kliemt neglects to discuss these maladies in sufficient detail. He does suggest, however, that "inter-jurisdictional competition" may be the best approach to overcome them. But the framework that is alluded to in the paper and for which an "Outline of a Constitution for Constitutional Competition" is presented (p. 114), seems more compatible with the European Union than with a federation based on classical liberal tenets.

Part III of *Hayek Revisited* picks up the ball at the point that Kliemt sets it down. The papers by Frank Vibert ("European Constitutionalism") and Bruno S. Frey & Reiner Eichenberger ("Towards a New Kind of Eurofederalism") look into the kinds of constitutional and structural issues concerning the European Union that Kliemt alludes to. Vibert argues that the "pan-European political order" (p. 129) requires a constitutional discussion informed by classical liberal principles, the purpose of which is to bring forth a European Constitution. Frey and Eichenberger, on the other hand, draw on the economic theory of federalism to investigate a decentralized, federal system composed of overlapping and competing jurisdictions, in which "exit should be as unconstrained as possible" (p. 142). Their discussion of the hypothetical costs and benefits of such a system does not, however, address how this system might be realized. While Vibert's paper is more strategically oriented, and despite the cogency of its argument for liberal principles, the stark reality is that the EU (without or with a constitution) still represents a centralization of authority, especially at the current time in economic affairs, that seems alarming and inconsistent with the liberal principles he favors.

Notes

1. See, for example, Hayek (1960), chapter 16 and elsewhere. Hayek also refers to Kelsen's legal positivism in each volume of *Law, Legislation and Liberty*.
2. In attributing this to the "Logic of Choice," Leube introduces a terminological ambiguity in that Hayek identified this concept with the tautologies of "formal equilibrium analysis" that abstracted from "propositions about the acquisition of knowledge" (Hayek 1936:33).
3. Previously published in the *Scottish Journal of Political Economy*, 1997 (44/1), pp. 44–58.
4. "By 'statism,'" Van Dun says, "I mean the idea that the state is at once a necessary condition for the existence of society and the form of its perfection" (p. 90).
5. Van Dun uses "war" in its "broad, original sense of *confusion, disorder*" (p. 106, n. 18).
6. For a more complete analysis of the dynamics of interventionism, see Ikeda (1997).

References

- Hayek, F. A. [1948 (1936)] "Economics and Knowledge." In: *Individualism and Economic Order*, pp. 33–56. Chicago: University of Chicago Press.
Hayek, F. A. (1960) *The Constitution of Liberty*. Chicago: University of Chicago Press.
Ikeda, S. (1997) *Dynamics of the Mixed Economy: Toward A Theory of Interventionism*. New York: Routledge.

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