

# Spontaneous Order and the Collective Individual: Hayek, Socialism, and Public Choice

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## *Abstract:*

Austrians tend to agree with the public choice school about human nature. This is rooted in their particular application of methodological individualism, which finds its origin in Ludwig von Mises' *Human Action*. F. A. Hayek explored evolution of culture and discovery of knowledge, leading him to a model of an evolving mind and person, as well as culture and society. Hayek's own ideas evolved over time, and sometimes (arguably) strayed from the conclusions of his mentor Mises.

The pure methodological individualism of the Mises school fails to allow for Hayekian evolution. The public choice school relies upon this strict methodological individualism and therefore also falls down when Hayekian insights are included. The social evolution that Hayek talks about allows for a breaking out from the pure self-interested action of the individual of the Misesian and public choice school assumptions. The conclusions of the Austrian school must be modified to take account of Hayek's understanding of evolving social orders. Markets based purely on private property are not necessary for economic efficiency; bureaucracy, corruption, rent-seeking, and power-seeking are not the only possible outcomes from public ownership.

## Introduction

In David Prychitko's *Why Economists Disagree*, William Waters presents "Social Economics: A Solidarist Perspective." Much of what he says will strike a chord with Austrian economists. "A realistic explication of the nature of the economy focuses," Waters writes, on the "mechanism of change," which is a result of the creative activity of the people making up that economy. Austrians would also agree that economists should model the "creative person as opposed to the utility maximizing one." Austrians would not agree with the solidarist model in other respects, for example its origin for human nature in the historical period (cite solidarist position in article). The foundational debate between early Austrian thinkers and the German historical school was over this issue,

Waters (1998: 180-181) describes a 'hard core' of main line economics.<sup>1</sup> It is, in the main, shared by 'bourgeois' economic theory, including mainstream neoclassical, neo-Keynesian (although Waters argues that Keynes himself might be exempt), and Austrian theory. The 'hard core' named by Waters includes four parts: (1) "the law of nature", which is the self-regulation of the economy; (2) "the individual," as the basic unit of the economy which is subject to the law of nature as she pursues her own self-interest; (3) "certainty," and (4) "contracts," or property law.

The individual, who is subject to the law of nature via her self-interest, Waters explains, is considered not to be disruptive to the economy, but kept in check through competition, and informed by "the impersonal forces of the market." Austrians clearly agree with these first two parts of the core. The last part is the assumption of property law

and voluntary transactions using negotiated contracts. The third aspect of the ‘hard core’—which may be the one least adhered to by Austrians—is that of the certainty of economists and their models (though surely every economist must hold to it to some degree, or why would they bother with their craft?). Waters describes the hubris of mainstream economists:

By the great powers of reason, economic scientists are able to understand the workings of the economy. They have correct knowledge of its relevant features. Uncertainty is ruled out, allowing economic theorists to develop determinate models and for the discipline to be acclaimed a science.

These economists simply omit variables, Waters argues, such as Keynes’ exogenous investment variable for investment that make prediction impossible. However, Austrians may concede uncertainty more often, and claim to predict with determinateness less frequently, than other free market economists. However, they still (and perhaps must, as economists) assume that they are correct about the major features of the economy; and as ‘bourgeois’ economists, they are confident in the regularity of the response by self-interested individuals. They take as given that the individual is subject to the “law of nature.”

Austrians models also frequently leave out of consideration features that introduce uncertainty into their models. For example, the potential for speculative frenzy, fads, nationalistic sentiment, and other emotional (or irrational) reactions are frequently omitted in favor of reliance on the assumption of rational choice. Austrians see

economics as a science because they see humans as predictable: they will make the choice most in their own self-interest, and hence e.g., predictably choose the lower price, greater quantity, and so forth.<sup>2</sup> It is this that makes economics a science, and means that conclusions can be drawn.

On the other hand, Waters explains, *solidarists* do not see the economy as self-regulating based on self-interest. Institutions in historical context produce culture and affect how people react. It is unlikely that most Austrians will concede the rest of the solidarist perspective, but there may be something that can be learned from seeing the similarities, and the root of their divergence.<sup>3</sup> Is it correct to treat the individual in isolation? Where do individual preferences come from? How do people make choices?

## The Collective Individual

James Buchanan (1982), co-founder of the “public choice” school, which Austrians tend to consider a cousin school (Boettke, 2002), argued that individuals do not act on “independently existing functions.” Buchanan, like Mises, (1935) and Hayek (1935; 1945) before him, stressed this point within an argument about the planned economy, using it to illustrate the impossible task facing a would-be economic planner. His argument is worth quoting extensively:

I want to argue that the “order” of the market emerges only from the process of voluntary exchange among the participating individuals. The

“order” is, itself, defined as the outcome of the process that generates it. The “it,” the allocation-distribution result, does not, and cannot, exist independently of the trading process. Absent this process, there is and can be no “order.”...

Individuals do not act so as to maximize utilities described in *independently-existing functions*. They confront genuine choices, and the sequence of decisions taken may be conceptualized, ex post (after the choices), in terms of “as if” functions that are maximized. But these “as if” functions are, themselves, generated in the choosing process, not separately from such process. If viewed in this perspective, there is no means by which even the most idealized omniscient designer could duplicate the results of voluntary interchange. The potential participants *do not know until they enter the process* what their own choices will be. From this it follows that it is logically impossible for an omniscient designer to know, unless, of course, we are to preclude individual freedom of will. (italics in original)

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If individuals do not know what they will choose until they enter the exchange process, the choice is a social one. The individual is not deciding in isolation, but as part of a social exchange—a social interaction. People decide things socially all the time—as couples (from what to have for dinner to whether to buy a house), in small groups (e.g.,

families, friends, clubs), and democratically or otherwise in large groups. Furthermore, the individual is a social construction. This is obvious to sociologists and psychologists, but economists tend to overlook the importance of this fact.

A recent blog debate occurred among economists arguing for and against the inclusion of culture by economists, who take methodological individualism as their starting point. In a post called “Why Culture is a Lousy Explanation,” Frances Woolley quotes economist Eric Crampton as saying methodological individualism is “the first rule of the microeconomists club,” and then quotes from Stigler and Becker (1977), which makes the case that all preferences are fundamentally the same; then argues that:

The Becker-Stigler view does not imply that culture or preferences are unimportant. Rather, it is rallying cry for economic imperialists, a call for economists to take culture, preferences, and all of the other phenomena ignored by previous generations, and explain them using the tools of rational choice theory.

This economic imperialism is widespread. It originates in classical liberalism founded upon Smith's invisible hand; it is pure self-interest, devoid of Smith's “moral sentiment” and Great Society. For Adam Smith, each individual “stands at all times in need of the cooperation and assistance of great multitudes” (1976 [1776], 26). This cooperation, the rational self-interest story goes, is provided by the free market through competition; and the information and incentives conveyed by market institutions ensure that the individual provides what others need, and does so fairly efficiently, so long as competition is robust

and healthy. Austrians emphasize the importance of local knowledge and the role of prices in conveying it; others focus on the importance both of competition and individual responsibility and self-interest. All these 'bourgeois economists' have taken to an extreme the market focus in their models.

Right at the historical hour of the collapse of communism—1991—an article, “Death to *Homo Economicus*?” makes the case (Merquior, 1991: 353) that the big names in economics were “resolved to be wholly dissolved of” this model of self-interested economic man, and the idea of a science driven by his predictable rational choice, and that economic man's “detractors are gravely mistaken about him.”

A decade and half later, Hands (2007) argues that “rational choice theory is the discipline’s core theory and provides the cornerstone for all of economic analysis,” but that “it is necessary to go beyond individual behavior. One also needs to specify the mode of interaction of the agents: the institutional structures and/or rules that frame and constrain the way the agents interact.”<sup>4</sup> Self-interested methodological individualism plus the institutional context of economic interactions is not enough if it still fails to consider the reality of the social embeddedness of the individual, and the culture in which interactions take place.<sup>5</sup>

In reply to Woolley's blog post, Cameron Murray (2013), posting as ‘rumplestatskin’ on the Australian blog MacroBusiness, argues (“When Culture is the Best Explanation”) that culture cannot be boiled down to individual rational choice (something that Eric Crampton misses completely in his reply<sup>6</sup>).<sup>7</sup> Although economists deny culture because it is not falsifiable, the post argues, they assume the equally non-falsifiable claim that all choice and preferences are based on individual utility functions.<sup>8</sup>

Culture can be seen as “the way we understand the meaning of signals,” but economists do not normally incorporate this in their models:

Sociologists ... widely adopt models that allow for learnt behaviours of individuals through interaction with others ... from epidemics, to racial segregation, to power in exchange networks, to evolving strategies in the prisoner’s dilemma.

... The methodological individualism so fondly embraced by the econ crowd embraces the concept of utility, but stops short of answering the far more important question – where does our utility function come from if not our environment and our interactions with others?

The individual is not a separate being from his surroundings, but rather has a deeply connected symbiotic relationship with it.<sup>9</sup> Interactions between people, network effects, and customs and habits that come from social interaction are critical to understanding individual action. The individual should not be seen as the origin of his or her own preferences, since these preferences are rooted in this social network before they are taken up by the individual.

Austrians take preferences as given, and rarely cite any specific preferences that can be taken as universally desired, other than the preference of quantity (preferring more to less of whatever good the individual desires). Although “the removal of felt uneasiness” sounds much like the preferences: life to death, health to sickness,



nourishment to starvation, abundance to poverty, according to Mises (1949) even the preferences of life to death and health to sickness is not assumed, since economics should be concerned only with whether a certain means is able to achieve the desired ends of those proposing it.

It is possible to create a dynamic model where the actions of individuals drive the system but the individual is affected by other individuals in the prior period.<sup>10</sup> However, in this case the action should probably not then be described as “rooted [solely] in the action of the individual,” since it would be rooted in a more complex interactive web of relationships, particularly if the individual does not choose what action to take until the moment the action is taken. In this case, given that the individual is affected until that moment by the actions of others around them, it is the action of all individuals involved (in whatever system of democratic or anarchic choice, voluntary or not) that drives the system.

Although Austrians (e.g., Lachmann, 1978: 56) try to distance themselves from mainstream neoclassical economists like Vilfredo Pareto, who wrote that the individual “can disappear, provided that he leaves us this photograph of his tastes,” the Austrian economist only adds a few assumptions, such as entrepreneurial ‘alertness’, fallibility, creativity, etc., to this picture. This modifies how the individual qua individual acts; but it still does not account for how he is affected by those around him, individually and as part of a social order (nation, race, class, interest group, etc).

Austrians discuss the importance and the evolutionary nature of civil society.<sup>11</sup> Hence, they may assert that they do model the effects of both formal and informal institutions on the individual (especially on incentives to produce and consume). Peter

Boettke (1990: 27) replies to Geoffrey Hodgson's criticism of Austrian economics on this count, saying:

The social, institutional, or sophisticated individualism [of Austrian economics], as opposed to the atomistic individualism of mainstream economics, does not deny that social customs affect individual behavior...social customs are mediated through the actions of individuals.

The two-way interaction recognized by Austrians means that spontaneous orders such as language and custom are seen to emerge from the interaction of individuals, and in turn to affect them. Boettke quotes Mises, who concedes man is "a social being," and who argues that the "evolution of reason, language, and cooperation is the outcome of the same process; they were inseparably and necessarily linked together."

Yet, Austrians explicitly exclude these social orders (race, class, etc.) from their models as part of their rejection of aggregation and collectivism, and their explicit focus on the individual as the source of all economic choice. So the question becomes how the social order should be incorporated into the model, and how it would change the expected outcomes of policy choices, including public provision, power-seeking and rent-seeking, vote versus exit, and public choice predictions.

## Rational Social Choice

The assumption of rational individual choice, and public choice model assumptions, may be significantly altered by the recognition that many decisions are based upon unconscious action conforming to habit (Dahlsten, 2010). Much of Austrian theory can remain intact, even if rational individual behavior does not. For an example of the way an Austrian model changes when the rational choice assumption is relaxed, consider Lachmann's radical subjectivism and uncertainty.

Lachmann's analysis led to a theoretical hole known as the "Lachmann problem" (Lewin, 2013: 14): "Action is by definition goal oriented... But if outcomes are radically uncertain why are people not debilitated? How is action possible in a radically uncertain world?" The social context of the individual provides an answer: people are products of their society (they make decisions within a social context, within the *act* of exchange) and are creatures of habit; this makes them more predictable, and explains how they are able to take actions in conditions of such radical uncertainty.

According to Austrian theory (Mises, 1949), action is taken by the individual "for the removal of *felt* uneasiness;" this "uneasiness" must be the product of the individual's existing situation in the given society. Marxists, market socialists, and other heterodox economic schools have stressed this point, and suggested that culture (e.g., consumerism) and possibly even human nature might be transformed under different (e.g., less profit- and self-interest- driven) economic institutions.

Is the individual really considered creative by Austrians? Certainly the Lachmann branch attempts to reconcile entrepreneurial creativity with the purely rational, self-interested individual, but is the person seen truly as a well-rounded non-economic-man? Given the assumptions of the 'hard core' based on self-interested individuals responding

to incentives in a system of private property, which allows for economic prediction, one can recognize (or interpret) the history of the development of capitalism, from a system of self-interested individuals to a society of self-interested exchange – not only in the form of private competition, but also in the form of rent-seeking.

Waters (1998: 182) quotes Briefs, who argues that development of, “the dominant liberal societies in the Western world [advance] from self-interested individualism to a society of competing vested-interested groups to one dominated and ruled by the strongest of the groups.” Briefs argues that this is part of a logical, and therefore inevitable, historical progression. From today’s vested-interest pluralism, historical logic will propel us to “totalism” because “a society of competing self-interest groups is unstable.”

This analysis sounds much like Marx, but it also comports well with Austrian analysis, at least the latter portion.<sup>12</sup> If institutions emerge from society, as Austrians argue that they do, what drives individuals to create institutions that allow them to seek rents (individually) rather than to compete? Greed may drive this, if it is easier to ask for handouts than to work. What drives interest groups to form (in place of individual action)? This may be a social phenomenon or may be due to competition and collective action concerns.

But is this rent-seeking inevitable? Could there be another possible form of public sector economic activity? Could there be, for example, democratically decentralised public exchange, of a non-rent-seeking, non-planned, sort? Aside from institutional constraints, what forces drive rent-seeking? A culture of self-interest may be critical to rent-seeking, and it may also be encouraged by the collection of individuals into groups,

as interest groups may have more power to obtain rents than individuals acting alone. These combined forces—self-interest and collective action in small interest groups— together may propel a society along a certain path, which may then build its own momentum.

As Gus Dizerega reminds us:<sup>13</sup>

Libertarian theorists, especially modern ones, ignore millennia of philosophy and well over 100 years of scientific research demonstrating beyond reasonable doubt that we are intricately interwoven with one another and with our environment. Almost every libertarian emphasizes every individual's ultimate isolation and 'autonomy.' That is why their social ideal is the contract, an enforceable agreement often made between complete strangers who remain strangers.

Our autonomy is quite real, but it is real in the same sense that a coin really has heads. It is half of the picture. Autonomy is one side of a coin whose other side is relationship.

Zwolinski (2008) explains how others understood the appeals to separateness, arguing that it is the moral worth of the individual which should matter.<sup>14</sup> The “decision procedure” of the utilitarian focuses on the aggregate of many completely separate individuals. Zwolinski (2008: 149) calls attention to the fact that this decision procedure ignores the moral value of the person, counting them merely as a number. The decision

procedure also omits the person as more than a completely separate individual, as a part of a larger web of persons.<sup>15</sup>

The interaction between persons, their existence as not completely separate, but actually interacting people, made up of the many interactions of the past, and inside a context in relation to each other, means that we should not make a utilitarian decision based solely on the supposed (static) utility of the calculated preferences of completely separate individuals, or we will lose this web of social interchange—we will devalue, and ultimately corrode, our culture. The more weight we give to analysis based solely upon the separate utility functions and preferences of isolated individuals (analysis based upon a static model), the more we risk devaluing the culture and dynamic society which we create through interaction.

The way that we affect culture with institutional choice, and the way that economists and utilitarians of any discipline omit this effect, is illustrated by a study on the effect of being a torturer. Nolen Gertz (2009) shows the gap in utilitarian accounts of the use of torture: the utilitarian view on torture only considers utils gained by society for good (the information, assuming it is for the common good) and utils lost by the tortured person—it ignores the effect on the torturer and on society.<sup>16</sup>

Even if a utilitarian analysis considers in general terms the externality of torture on society (in terms of general distaste), it cannot take into account (for we cannot even know) the full effect *on the torturer*, or the myriad ways in which this affects society whenever that person who has become a torturer interacts with others, when torture use becomes known by others, who become accomplices by knowing of it, and the

compounding effects this has throughout society; the fact of torture, having to actively do it, having to accept it, and so on.

Similarly, we count the utility with cost/benefit, looking at the productive gains of division of labor, and the cost of having to work, but what effect does hiring and firing have upon our lives? What impact is there on a society when people are made to act as boss and worker? The isolation and division required for the market to function affects the community, and produces the culture of capitalist nations; and of course commercialism further affects our personalities and preferences;<sup>17</sup> and these in turn may affect how we grow and develop as individuals and as societies.

Markets produce the ‘work ethic’ and the ‘productivist’ culture and mentality (for good and/or ill), which is so prominent in the United States especially. A change to culture has the potential to reduce the benefits of the wealth we produce in the country by skewing its production or by reducing leisure time or other (non-materialistic) values not valued sufficiently by prices in the economy, as well as alter the choices made by groups and the manner in which they interact with each other.

As Nell (2013) points out, the markets reflect the preferences of the wealthy more than those of the poor because the poor are less *able* to demonstrate their preferences; and markets also reflect preferences of those who *choose* to earn more and spend more over those who choose otherwise. Markets magnify these winning preferences and this affects the culture; those who are unable to demonstrate their desires through the market but nevertheless *have* desires and preferences, are left voiceless.

The heavily weighted demonstration in markets of the most ‘productive’ assures that the preferences of those favouring nonmarket consumption are crowded out by the

preferences favouring markets. This affects the culture, including traditions and habits, affects the environment in which people act as well as the atmosphere within which decisions are made by individuals and groups.

## The Enlightened Individual and Collective Choice

Marxists and other socialist thinkers have made the argument that enlightened human nature might allow humanity to leave behind self-interest, which would lead both market and non-market solutions to a different outcome. Many economists in the early part of the 20<sup>th</sup> century believed that this might be possible. For example Barbara Wootton (1935) took for granted that collective decision-making (for example for central planning, but the same would apply to public programmes within a mixed economy) only works well if personal and sectional interests (self-interest) is subordinated to the interests of the whole society.

In her book, *Plan or No Plan*, Wootton (1935: 322) writes of the “peculiarities of the peasant mentality,” and the related problem that “factory labour of to-day is recruited from the peasant of yesterday,” explaining that for the peasant the resources “are the property of the persons (and even in collective farms of groups of persons) who are directly interested in the sale of these products.” The problem with this is that “The cooperation of these persons can indeed be won on certain terms, but the price of its winning is that the sectional interests of these persons should make their mark on the very content of the plan itself.”



Assumptions about self-interest underlie much of economic analysis: what if voters slowly begin to vote for the true common good instead of for their own pet projects; bureaucrats become true “civil servants;” representatives suddenly care more about doing what is right, and not about their personal payoff?<sup>18</sup> This would result in the end of ‘public choice’ economics, and much of Austrian analysis.

Marx’s vision of the transition from socialism to communism involved a raising of awareness, or consciousness, not only among the proletariat but across all society. This would allow the people to take the reins of production, and would bring abundance, an end to crime, and the dissolution of the then-unnecessary state.<sup>19</sup> Once in power, Lenin continued the work: the state – which as a workers’ state involved bureaucracy but no longer exploitation – needed to be ‘fought’ by raising the consciousness of the people. Combating bureaucracy was the way to bring communism and the withering away of the state. Lenin said, “We can fight bureaucracy to the bitter end, to a complete victory, only when the whole population participates in the work of government.”<sup>20</sup>

This was a fight against self-interest within each individual, to allow the people to work cooperatively, putting the common interest first. Stalin argued that, “With all the more persistence must we rouse the vast masses of the workers and peasants to the task of criticism *from below*, of control *from below*, as the principal antidote to bureaucracy.”<sup>21</sup> Criticism was widely used in the Soviet Union to combat the bourgeois mindset and bureaucracy, but it was even more famously used in China, especially during the Cultural Revolution.

According to Mao, the way to combat bureaucracy was to bring all people into the process, all levels of production from the top to the bottom without any being 'superior' to

any other, and encourage all the people toward enlightened thinking. Self-criticism was used to correct deviations from this enlightened position.<sup>22</sup> Deviations could be “in either direction” and criticism could help to reveal the error and correct it: for example, in one story of self-criticism management had eaten worse, not better, than the workers, but they learned that it was still wrong for them to eat different food, and self-criticism revealed that they were eating worse because they had poorly managed the factory’s food supply.<sup>23</sup>

By finding the administrative failure through criticisms the bureaucracy could be combated. However, what if the supply failure was not the fault of management? Self-criticism may help bureaucrats become civil-servants, and help them better coordinate services by putting common interests above sectional ones, but can it put an end to calculation and knowledge problems? Some aspects of bureaucracy cannot be overcome through willpower and right thinking. Although an enlightened mindset might allow criticism of a worker's effort or an administrator's style of management, it could only do so when they deviated from the party line—from the collective action being pursued. And this collective action must already have a way to provide for the people, which when planned in advance may not fulfill the wishes and desires of the people the way that a decentralized, exchange-based system can.

Self-criticism and enlightened thinking may offer a way to perfect a task already set out beforehand, but what about discovering new tasks and styles? This sort of criticism could not be used to question the hierarchical nature of planning, or the content of production plans, or the propagandistic nature of newspapers. It is used to strengthen the existing system, perfect a unified vision, and facilitate action to bring it about according to a prearranged plan. If this prearranged plan is undesirable, self-criticism can

only do so much—and in practice, it may do more harm than good, which is why it has such a bad reputation.

However, if the failure of the experiments with socialism were due to their imposition upon a society (Boettke EX, Coyne) and cultural change and learning must co-evolve with institutional change, a form of self-criticism might encourage change that could facilitate public service and efficient use of public resources, changing the expectations in models regarding rent-seeking, bureaucracy, crowding out, and more broadly the efficiency of public and private ownership.

Could enlightened thinking also improve a spontaneously ordered public-resource-using collective action project? The socialist theory is that the “tragedy of the commons” problem need not plague production under common ownership. It could be combated so long as the workers were made to feel ownership over the common property, and that in turn they were given true democratic control. The democracy and equality granted the people would help to foster this feeling of control.

## Culture: Spontaneous Order, Stickiness, and Rent-Seeking

Tullock (2005) argues that ideology is critical to good lawmaking, and ideology can foster rent-seeking within lawmaking. Zywicki (2007: 34) quotes Tullock's argument that there has been an “evolution of contract and tort law...toward a redistributivist ideology.”<sup>24</sup> Tullock argues that judges use faulty economic reasoning; Austrians would

likely agree with Tullock about their faulty nature.<sup>25</sup> Zywicki (2007: 42-43) explains how rent-seeking entered the common law system.<sup>26</sup>

Tullock argues that ideology has a role in determining whether common law is driven by rent-seeking or by wealth-maximizing goals. Similarly, whether individuals are self-interested or hold social considerations (the common good) higher than personal ends might determine whether or not (or to what extent) a spontaneously ordered use of public funds will be driven by rent-seeking. Austrians argue that individuals are always driven by interest; and the more crucial consideration affecting the outcome, in addition to the incentives of institutions, is whether policy is created endogenously (evolving within the society) or imposed from the outside.

Hayek (1979) argued that the common law system produced superior results to civil law because it emerged spontaneously, whereas civil law was a top-down legal system imposed upon a society. Tullock (2005) models the development of the common law system as rent-seeking parties pleading for favors, and argues that this is unlikely to produce socially beneficial results. Just as rent-seeking pressures within the legislative decision-making process lead to rent-dissipation with random results, the development of the common law system is unlikely to lead to an efficient outcome.

This result must be based on self-interested parties – people pleading for favors for themselves or their interest groups; if instead the people are more interested in the common good, if the culture expects people to seek the common good and the public conversation is dedicated to discovering the common good, the result may be one of discovery (emergence) of this good, rather than (emergence of) rent-seeking.

Austrian economists have argued that money emerges from barter, and the market economy is a spontaneous order, whereas a planned economy is imposed upon the people. The political process may also be a spontaneous order in a democracy. Such a spontaneous order would likely be inefficient as it would be captured by rent-seeking by legislators interested only in their own constituency, or interest groups seeking their own interests, rather than the common good.<sup>27</sup> Legislative decisions may emerge through a process similar to an auction, with legislators ‘bidding’ for certain legislation. Hence, the way for a spontaneous order to produce good results must be either for sectional interests to lead to good results (given the institutions) or for the parties to not seek sectional interests.

Boettke, Coyne and Leeson (2008: 342-3) argue that rent-seeking is in some cases “caused” by imposed institutions, citing British colonial rule in Kenya that “substituted explicit contracts for the tacit norms governing land usage in practice.” The contracts “did not codify an existing” practice but were instead in “direct conflict” with existing practices, which meant that the existing institutions governing land were disrupted and:

the long-term viability of the common land was destroyed. ...this destruction undermined the existing Maasai social structure that enabled cooperative agriculture and created a situation of rampant conflict among formerly cooperative agents that manifested itself in the form of rent-seeking activities.

Spontaneous orders must also emerge from endogenous choices by the people involved, rather than imposed upon a society from without. Boettke, Coyne and Leeson (2008: 333) cite the “important work by Elinor Ostrom,” which they say:

highlighted the importance and success of endogenously emergent institutional solutions to a range of coordination problems, as well as the potential for unintended, undesirable outcomes when political authorities artificially construct institutional solutions to these problems.

Boettke etc argue that “the endogenous emergence of the institution points to its desirability as seen from indigenous inhabitants’ point of view.”<sup>28</sup> To the extent that this is true, it means that endogenously emerging public programmes that co-evolve with the culture should be more efficient and better managed than ones for example imposed by an external body, such as the World Bank or the European Union. Similarly, a more local government body's programmes, emerging from the local culture rather than a more distant government, might perform better for this reason. Austrians argue for the efficiency of decentralisation in part because of knowledge problems—a distant government will not know the needs and resources of each local community—an argument in fact closely related to the issue of culture and emergent law and legislation.

Public programmes and uses of public monies can emerge in the same way that common law, currency, language, and other social tools emerge. Austrians argue that the expectations, habits, and culture around the legal institutions are as important as the institutions themselves, or perhaps more important. For example, Boettke, Coyne and

Leeson (2008: 339-40) describe the emergence and ‘stickiness’ of the culture surrounding the common law system of merchant law, *lex mercatoria*, as even more important perhaps than the protection of property rights for traders:

The contractual arrangements and procedures for dispute settlement that emerged endogenously as flexible solutions to obstacles confronting international traders under the *lex mercatoria* strongly reflected the evolved practices, norms, and customs of the traders... These institutions have exhibited tremendous stickiness and, while continually evolving remain the institutions that govern most international commerce in the modern world.

Because the institutions emerged from evolved customs of traders they have persisted and the culture continues to govern trade today. Customs, expectations, and culture do more than competition and property laws (‘exit’) can do alone. Similarly, the customs, expectations and culture around *public* transactions and provision may do more than the *political* rules and competition (‘vote’) alone can do. The same arguments about the emergent culture governing private property institutions, and facilitating market cooperation, apply equally to public property institutions, if such a culture is allowed to develop and facilitate democratic cooperation.

Rent-seeking may occur in spontaneous orders such as common law and democratic legislatures, or these orders may offer beneficial frameworks for institutional evolution. Austrians may argue that this will depend on how the orders come into being

(whether they emerge endogenously or are imposed from without); that is, they argue that it is critical whether these orders co-evolve with culture, so that they self-regulate.

Marxists may argue that their efficiency and effectiveness depends on whether people have enlightened consciousness or whether they are self-interested.

For some kinds of spontaneously ordered institutions, these may be the same thing. A legislative process that has a culture that leads the voters and legislators to seek the common good and exclude rent-seeking, enlightened (non-self-interested) consciousness is part of this culture. Perhaps Austrians and Marxists actually agree that a decentralized, enlightened, democratic system that emerges from the culture of the people is most likely to serve those people well.

### Rent-Seeking, Group-selection and Common Law Evolution

Rent-seeking is only wasteful if the activities of government won through the process of lobbying is wasteful and cannot be allocated in more efficient way, but this determination relies on values that exist outside of pure economic reasoning (Pasour, 1987)

Hayek wrote extensively on cultural evolution, formulating a model of group selection which has been widely discussed and criticized (Angner, xxxx; Steele, xxxx). Some have argued that his model is incomplete because it omits the effect of political and ideological factors upon its evolution. For example (Hardos et al) “ propose to endogenize the role of the philosopher by tentatively modeling ideological change as change in the sympathetic gradient.”



Thus the main function exercised by experts is to modify the degree of sympathy towards members of other races, nations, professions, entrepreneurs and so forth. We thus posit that sympathy is potentially a very powerful factor of social and cultural evolution.

Hayek did concede the importance of ideology, and modeled the spontaneous order (in a system without central planning) of politics, which (like Hardos et al) he saw as driven by rent- and power- seeking by self-interested agents, within institutions that may either facilitate or limit such self-interested actions. Steele (1987: 180) argues that Hayek's model of cultural group selection is inconsistent and clashes with his model of common law selection. He points out that Hayek praises the common law tradition "in which precedents are regarded as embodying general principles, which are then applied to new situations as they arise," and that Hayek concedes that sometimes "legislation must step in" when consequences of common law rulings are seen as "undesirable."

Hayek often suggests that we should make changes in particular details of our customs, morals, and laws, in the light of our appreciation of the way in which these changes will enhance the working of the whole system. Nowhere does he seem to recognize that such a mode of conscious adaptation is incompatible with cultural group selection.

... Neither the evolution by accumulation of precedents nor the legislative intervention can be squared with cultural group selection; in both cases the

law is changed according to individuals' conscious awareness of what is desirable. In neither case is there any automatic selective check on the wisdom of the decisions, much less any check that operates by enabling some groups to prevail over others.

Hayek's inconsistency with regard to the conscious adoption of rules creates an opening for two very different readings and potential extensions of his model. On the one hand it is possible to extend the purely free market, rational actors model, in which the spontaneous emergence of rules comes from some selection process, either group-selection or individual selection. On the other hand, there is the possibility of a model in which the actors do not necessarily act in their 'rational' self-interest, on an individual level, but instead cooperate and choose rules consciously within a democratic or other collective action model.

Groups make decisions, and then there is a selection process that acts on these groups. These groups might include nations, towns, political groups, social and sporting groups, anarchic cooperatives, families, schools, work-related groups, labour unions, clubs, and various interest groups. This evolutionary cultural selection could go on simultaneously with market-based selection in the economic order or with a planned economic order (without selection) if the economic and social orders are distinct (see Camplin, 2013).

As individuals can choose where to put their fidelity, they act as consumers or workers and use exit not only to express disapproval but to choose—to invest their

resources only where they prefer. These cultural and social groups are joined voluntarily<sup>29</sup> and therefore make up the broader “market” of voluntary exchanges referred to by Rothbard and other Austrians. Selection of cultural groups, and exit of people from one to the next, is equivalent to choosing a government voluntarily. It is similar to choosing the gated community in which you want to live, or entering a contract binding you to a social group.

Individuals can “vote with their feet” or, similar to brand loyalty, vote with their commitment to groups of their choice. As Austrians point out, in the world of voluntary exchanges, exit is how we vote: in the market, people vote with their dollars; in the social order, people vote with their loyalty to a particular social or cultural group or ideology. The state itself only has the power which we give it, and is built more out of ideas than any physical or real, material substance—just as money is made out of trust not (any longer) precious metal, so too is the state built on agreement. As La Boétie (1942 [1576]) reminds us “states of any kind — democratic or otherwise — can maintain their claim to authority only so long as most of their subjects continue to act in ways that reinforce that claim.” Society is not merely made up of institutions: it is made up of a collective idea, or consciousness.

For an example of the importance of this, consider the power of the state. The people give the state power. “How does [the state] have any power over you except through you?” The people can take that power away: “resolve to serve no more, and you are at once freed,” or they can change the meaning of that power. This process is, in fact, going on all the time, as society and culture evolve. Anarchists like David Graeber (e.g., 2004) as well as mutualists (and other individualist anarchists at times) point out.

Focusing on this process is far superior to attempting political revolution and the forceful imposition of a new order, as Austrians are well aware.

The groups upon which selection acts may be many and inter-related, coexisting within a larger social order (many layered orders must exist within society at once). There may exist many such groups within a society at many levels; these groups all interact and cooperate and compete, and some groups survive; exit as well as vote affect them as people migrate from one group to the next based on whether the group offers them what they need and want. Steele (1987: 180?) points out that according to Hayek's own arguments, the common law tradition should actually not be praised as a spontaneous order benefiting from group-selection because in fact conscious choices have been used to modify the legal rules selected; based on Hayek's arguments, existing common law should not be respected for its emergence and survival as he claims.<sup>30</sup>

Feldmann (xxxx: 3-4) argues that this interpretation is wrong, as Hayek did recognize that the deliberate changing of rules is part of the evolutionary process, and that historically spontaneous and deliberate parts 'constantly interacted' during the selection process. Gick and Gick (xxxx) also argued that Steele's interpretation might be wrong, or at least that Hayek's model *can* be interpreted differently. If it is seen not as describing complete systems (such as the common law legal system or economy of a country) winning or losing, but as the evolution of culture through the competition of cultural groups within that society, which evolve as people join or leave them. The battle of ideas and subcultures contributes to the overall evolution of the wider society:

Hayek's ideas on group selection follow current thoughts on cultural selection: A group that becomes extinct does not require physical death of the individuals. The extinction of a group in the cultural sense simply means that all group members became members of different groups by adopting all their - different - rules.

Hayek describes the history of human society, from early tribal society through the modern age, as an evolutionary process of cultural group selection, and describes a co-evolution of reason and tradition, and social embeddedness of the mind. In Boettke's words (1990: 74), Hayek argued that "our reason developed because we followed certain rules, not that we followed certain rules because of our reason."

Hayek argues that reason developed because we followed certain rules. So reason comes from institutional context (or historical/material conditions). If reason depends upon institutions and reason is necessary for Mises' 'human action' and economic law, then economic laws are in fact contingent and not universal, as Austrians normally assume.

In fact, this sounds very much like Marx's model, and the model of the German historical school that Austrians debated against in the early years of the school: it took until the modern capitalist society, with 'rule of law' and contract, and widespread exchange, for 'reason' as such to develop, and for economic laws based on rational self-interest to come into play. Replace the word 'reason' with the (analogous) phrase 'bourgeois economic

laws' and you have a Marxist interpretation of history. In short, human rationality, or human nature, depends upon the selection of institutions—a historicist model.

Hayek says reason developed because we followed certain rules, not the other way around; so, human nature and the way we respond to incentives, our culture, our social evolution, are all based on our choice of institutions, and co-evolve with them. This opens the way for the development of human nature, more enlightened and less self-interested, to co-evolve with changing institutions.

Boettke (1990:74) also describes Hayek's understanding of the social nature of humanity.

“Social inquiry must begin with a recognition of the social embeddedness of the mind.”

The person, who is affected, even molded, by culture and society, responds to cultural change by changing the way she responds to institutional incentives. Hence, human nature can be affected by a more “enlightened consciousness,” both in the private sector and in public sector organisations, democratic procedures, and other public arenas.

## Conclusion

Democracy, just like competition, is a process. It is a spontaneous order and has the potential to be as evolutionary and dynamic as the market process—both have the potential, and both require the freedom and flexibility to reach that potential.<sup>31</sup> Many orders co-evolve within a given society; group selection helps to shape the orders, and the individual cultures are part of and affect an overall culture.<sup>32</sup>

If Hayek's group selection model, with its conscious and unconscious elements, is understood as the process by which cultural evolutionary change takes place, it may also provide a framework for analysing the co-evolution of culture and institutions and the place that ideology, values, and the public dialogue have in it. This may be the process that helps a society move away from rent-seeking, overcome bureaucracy, and reduce self-interested responses in general.

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<sup>1</sup>"Social Economics" in *Why Economists Disagree*, Prychitko: 180-181.

<sup>2</sup>Austrians also, unhelpfully, explain away non-selfish (altruistic) behavior as self-interested, by redefining preferences to accommodate it.

<sup>3</sup>There is no law or unchangeable nature, and how society develops and how it is studied and interpreted depends upon the historical choices made by the society. The non-rational person replaces the self-interested individual; this person should be respected, and should be capable of interest in the common good. Cooperation replaces competition for most purposes. Uncertainty is recognized; and economics is

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seen as a moral science not a hard science. Finally, the person is seen to have more basic rights more than private property rights and right to contract.

<sup>4</sup>Hands(2007: 5-6) argues that “much of economics is about the behavior of aggregate variables (unemployment rates, inflation rates, growth rates, etc.) ... rational choice theory is the discipline’s core theory and provides the cornerstone for all of economic analysis. With respect to macro, Keynesian economics in the 1940s and 1950s was a macro theory without micro-foundations – the aggregate relationships employed in Keynesian analysis could not be explained by, or reduced to, the self-interested actions of individual agents. For a time, during the heyday of Keynesian theory, economists were willing to allow this breach of methodological etiquette to pass, but eventually the lack of rational choice grounding became one of the reasons the profession turned away from Keynesian theory (and toward new classical macroeconomics which clear neoclassical foundations). Regarding market and other social phenomena, rational choice theory is certainly not all there is to economic analysis. If one wants to explain social phenomena – market phenomena or any other – it is necessary to go beyond individual behavior. One also needs to specify the mode of interaction of the agents: the institutional structures and/or rules that frame and constrain the way the agents interact.” (Hands, 2007: 5-6)

<sup>5</sup>One's position – their context – matters as much as more narrowly defined institutional parameters and rules. The level of conscious cooperation between individuals and among groups is as important as their financial success or attainment. Social awareness, or enlightenment, is as important as a given individual's class or social place. A sense of community, or social democracy – is more important than purely the economic level of the people; vague frame of reference is what makes the outcome more than just institutions, or rational choice.

<sup>6</sup><http://offsettingbehaviour.blogspot.co.uk/2013/04/culture-and-agents.html>

<sup>7</sup>MacroBusiness, Rumpelstiltskin, Featured Article in Economics  
<http://www.macrobusiness.com.au/2013/04/when-culture-is-the-best-explanation/>

<sup>8</sup>He defines culture as “the total learnt cooperative behaviours of a society, which includes the way members of that society draw meaning from the behaviour of others,” and society as “the relevant group – such as country, State, club, school, workplace, or family.”

<sup>9</sup>Just like bees and the flowers they pollinate, the individual and society are dependent upon each other, and their interaction helps to pass along information and spread the individual’s unique contributions (ideas, genes, etc.) far and wide so that they may come into contact with others in the society, and in so doing facilitate evolution, transformation, reproduction, and growth.

<sup>10</sup>Complex adaptive systems models can offer this, see Nell (2010b).

<sup>11</sup>For example, Austrians predicted that a top-down imposition of new institutions, no matter how well-designed, may backfire when they are not culturally accepted (Coyne, 2008). On the other hand, even unwritten legal frameworks may function well if they are accepted by the people because they conform to tradition (Hayek, 1979: 107-108).

<sup>12</sup>Hayek (1944) includes probably the first, or at least most famous, argument of this sort, in his 1944 book *The Road to Serfdom*, which might be seen as a ‘warning’ (or dystopian analysis). In it he presents road by which Britain could end up as a highly concentrated peacetime war-socialist economy and society, similar to a fascist or Stalinist one: once a certain core part of the economy was run by planners, the rest would inevitably follow, and society would be dragged along with it.

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The phenomenon of rent-seeking taking hold in a market economy has been studied by the public choice school (**Bukhanan, xx**) and the **Austrian school (Boettke, xx)**. Nell (2012) relates the collapse of the planned economy into rent-seeking (in Russia) with the consolidation of a market economy, making the case that the rent-seeking unstable equilibrium is reached in both cases—they are merely two sides of the same coin.

<sup>13</sup><http://dizerega.com/2013/04/24/what-libertarians-can-add-to-american-life-if-they-take-the-time-to-understand-their-principles/>

<sup>14</sup>Zwolinski (2008: 149): “The sorts of concerns discussed by Brink and McKerlie miss what is essential to appeals to separateness. In general, both Brink and McKerlie try to build too much into such appeals: McKerlie by supposing that separateness, to be effective, must constitute an argument against all balancing as such, and Brink, by supposing that it must support assigning lexical priority to the claims of the worst-off individual. If the understanding of separateness defended here is correct, questions such as these about balancing harms and benefits among individuals are relevant, but secondary in importance to the question of the basic moral status of individuals under the theory.”

**From Zwolinski, “The Separateness of Persons and Liberal Theory,”**

**Matthew Zwolinski (2008) argues that it is a certain kind of respect for the individual that determines the nature of the liberal society.**

**“Respecting the moral status of individuals, such critics argue, entails giving them a certain primacy or inviolability in a theory, refusing to subordinate them for the sake of the greater good.”**

<sup>15</sup>He points to the value of the individual and describes the utilitarian “decision procedure,” which disregards the actual individual, focusing solely on the cost-benefit calculation:

“Because it is utility itself that utilitarians focus on, rather than the repository in which it is stored, the utilitarian decision procedure would be the same whether society was composed of one person or of one million. Once the moral status of persons is so eliminated, so is the most basic objection to a whole host of intuitively objectionable trade-offs, and the door is open to coercion and injustice of all kinds. (emphasis added)”

<sup>16</sup>Gertz, Nolen, What's Wrong with the Torturer? (May 4, 2009). Available at SSRN: <http://ssrn.com/abstract=1399115> or <http://dx.doi.org/10.2139/ssrn.1399115>

<sup>17</sup> (see Nell, 2013 for more on the effect on preferences)

<sup>18</sup>Because the choices people make are affected by the formal and informal institutions in question, the assumptions we make about public and private sector efficiency may be based on a historically contingent nature; this was Marx’s argument. Could Marx have been right about this? Because culture cannot change overnight, it may be that these choices are predictable in broad outlines for the effect of immediate changes to institutions (i.e., when a policy change is pushed through forcefully). However, over the longer term the cultural and social changes may mean that the old assumptions no longer apply to the same degree – and eventually cease to offer any predictive power.

<sup>19</sup> There are many sources for this. See Lenin’s analysis in *The State and Revolution*, in particular the chapter *The Economic Basis of the Withering Away of the State*:

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<http://www.marxists.org/archive/lenin/works/1917/staterev/ch05.htm>

The conclusion that even basic laws preventing crime would not be necessary in the communist society is implied in all the writings on the withering away of the state and explicitly mentioned in a fair number of them. See Rudolf Schlesinger, *Soviet Legal Theory: Its Social Background and Development* (London: Oxford University Press, 1945).

<sup>20</sup> <http://www.marxists.org/archive/lenin/works/1919/rcp8th/03.htm>

<sup>21</sup> <http://www.marxists.org/reference/archive/stalin/works/1928/06/26.htm>

<sup>22</sup> It is easy to criticize others, but people are often hypocritical not because they are cruel or selfish, but because they fail to apply to themselves, or their own system, the same standard they apply to others. Self-criticism is the conscious attempt to overcome this, and ensure each person does apply the high standard to themselves, allowing for a conscious improvement, or enlightenment, of the people.

<sup>23</sup> **The Shenyang Transformer Factory-A Profile p. 723**

<sup>24</sup> While “the utilitarian judges of the nineteenth century adopted a Smithian conception of contract law, which emphasized the benefits to both individuals and society... Modern judges, by contrast, are suspicious of both the voluntariness of contractual obligations and their beneficent social consequences.”

<sup>25</sup> “Tullock argues that this judicial suspicion rests on many faulty premises of modern thinking that assume that a contractual bargain is flawed if it fails to reflect the Platonic form of a perfect contractual bargain, such as the presence of incomplete information (“ignoring the fact that the future is always uncertain”), cognitive difficulties of one of the parties (“ignoring the fact that talent is unevenly distributed across human beings”), “unconscionable” or “contrary to public policy” (“as viewed by some judge, not by the parties to the bargain”), or because of the presence of externalities (“ignoring the fact that that externalities are universal and that the very large majority of them are not Pareto relevant”).”

<sup>26</sup> “Rubin argues that during the nineteenth century (and presumably before), rule making (both common law and statutory) was dominated by individual actors acting independently, rather than by organized special interests acting collectively.<sup>64</sup> This was the case for several reasons. First, most disputes that arose were between two individuals or between an individual and a very small business. Thus, there was little benefit to be captured by a party from strategic litigation because neither party was a frequent, repeat litigant. Moreover, each individual usually stood in a reciprocal relationship with all other individuals; thus an individual or small business who is a plaintiff today was equally likely to be a defendant tomorrow, reducing the incentive to litigate for one-sided rules and favoring advocacy in favor of stable and efficient rules. Finally, Rubin argues, the structure of litigation and high costs of communication made it very difficult for groups to solve collective action problems in order to aggregate their interests into a coherent and effective litigation strategy. Thus, for much of the common law’s evolution, most litigation was between two individual parties, both with substantially equal stakes in the outcome. The result was that the common law tended toward efficiency.”- zywicki

<sup>27</sup> This is why socialists argued that rational planning should replace competition by various interests—and it was the argument of spontaneous orders leading to knowledge discovery that explained why this would not be preferable.

<sup>28</sup> This assertion is based on a simplification that is surprising, coming from Austrians. The people are not a homogenous mass, nor should the people be conflated with the state—Austrians are normally the first to stress this point. A tyrannical dictator could “emerge endogenously,” but this would not likely be desirable from the indigenous inhabitants point of view.

<sup>29</sup> They are free choices at least as far as legal and governmental obstacles Austrians include in their models are concerned. There certainly may be social mandates and bans on which groups may be involved in;

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however these are not counted by Austrians when they affect market choice, and so for comparison's sake we might categorize these as voluntary equally to free markets.

<sup>30</sup>“Hayek repeatedly insists that the merit of laws and other rules inherited from the past is that the process which selected them was independent of any human design, and that the adaptiveness of these rules rests in their total concatenation.

But if the array of inherited rules is to be modified piecemeal by conscious decisions according to perceived desirability, then even the rules that remain unmodified lose (following Hayek's argument) any claim to respect, because they have become parts of a different system of rules.”

<sup>31</sup>Democracy, just like competition, is a process. The democratic process has the potential to be as evolutionary and dynamic as the market process—both have the potential, and both require the freedom and flexibility to reach that potential. Many orders co-evolve within a given society; group selection helps to shape the orders, and people gradually become enlightened as groups cater to this underlying preference of humanity, and as they evolve and are selected, society slowly learns to govern itself, and perhaps we inch along toward the “end of history.” In this way, the “new third way” may emerge, the result of human action but not human design.

<sup>32</sup>One such culture is the culture of the way (as workers) we treat customers and (as customers) treat service workers. Customer service and the way that customer in turn treat customer service agents is determined by culture as well as institutions. Austrians argue that private property institutions, and competition and exit, lead to good customer service. There are plenty of examples of public firms providing poor customer service, including, famously, the post-office and government departments such as the Department of Motor Vehicles (DMV) in The United States (and equivalents in other market economies) and across the economy in The Soviet Union, according to many accounts (Nell, 2010b; Hilton, 2004; Kaier and Naiman, 2005). However, arguably this is changing in the United States due to the ease of new technology such as the internet: many DMVs (they are state-level departments) now offer commonly used services online, cutting away a huge amount of bureaucracy.

How we treat customer service agents is also cultural. In the United States it is considered the customer's right to be rude to sales and service staff if they do not offer us everything we expect; and (in the case of wait-staff) to tip them if they are especially friendly, or even subservient to us. In other countries this rude behaviour would be considered anti-social, and the fact that the company did not meet our expectations would be considered no excuse to treat the employee of the company in such a manner. Labour laws and the culture of respecting the rights of workers probably plays a large role in this cultural distinction.