
Liberalism and the Common Good

A Hayekian Perspective on Communitarianism

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In the end, given liberty to learn, men will find out that freedom means community.

—William Aylott Orton

In recent years, a spirited exchange between certain critics and defenders of liberalism has engaged the interest of many North American political philosophers. Although the philosophical differences between the two camps should not be exaggerated, the so-called new communitarians (Gutmann 1985, 308) clearly part company with their liberal cousins over one fundamental issue: the new communitarians are convinced that liberal public philosophy is undermining the social foundations of “the good society.” Under its influence, they claim, inhabitants of contemporary liberal society have grown ever more isolated, asocial, selfish, calculating, and spiritually barren. Preoccupied by their blind pursuit of trivial and arbitrarily chosen “private goods,” modern men no longer recognize the existence of, let alone an obligation to pursue, a comprehensive common good that transcends mere personal interest.

The new communitarians include Charles Taylor, Alasdair MacIntyre, Michael Sandel, Benjamin Barber, Michael Walzer, Roberto Unger, and others. Antiliberalism

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is not new, of course; it is a critical tradition that extends back as least as far as Joseph de Maistre. The new communitarian critique of liberalism, however, may be distinguished from earlier variants in that its proponents have drawn their inspiration primarily from Aristotle and Hegel, rather than Marx, Rousseau, or Nietzsche. Following Aristotle, they conceive of political society as a “community whose primary bond is a shared understanding both of the good for man and the good of th[e] community”; and, following Hegel, they regard the “free[,] . . . rational, [and autonomous] being[s]” who people the pages of rationalist-liberal tracts as mere figments of the philosophical imagination (Gutmann 1985, 308).

The new communitarians are united by their common apprehension that our sense of community—the recognition that we are a people bound by shared values, meanings, traditions, purposes, and obligations—is being destroyed by an “atomistic” liberalism (Taylor 1985, 187–210) that trumpets the “rights” of the individual at the expense of social cohesion, fellowship, and the pursuit of the common good. Although they may offer different remedies for the social ravages allegedly wrought by the liberal creed, the new communitarians all agree that we must seek to transform the stridently individualistic “politics of rights” that presently dominates public discourse and practice into a more fraternal and morally elevated “politics of the common good” (Sandel 1984, 93; 1992, 222).

Liberals have always been suspicious of calls for “community.” Calvin, Rousseau, Marx, and Hitler have cast a long shadow on communitarian dreams. Moreover, liberals regard appeals to the common good warily because historically such rhetoric has accompanied various dangerous or oppressive sentiments—religious intolerance, nationalism, militarism, and the like. Indeed, “far from being innocent,” writes Stephen Holmes (1989), “the idea of the common good was traditionally implicated in the justification of privilege, hierarchy, and deference” (240). Ever since Aristotle distinguished between master and slave by asserting the former’s superior ability to recognize and comprehend the common good, there has been no shortage of potential rulers claiming a special insight into its nature and seeking to impose their exclusive conception of goodness or virtue on the social order.

Despite such abuse, however, few theorists, liberal or otherwise, would challenge the principle that in a free society, governmental coercion may legitimately be employed only in the service of the common good. Of course, the ambiguity of the concept “common good” (general welfare, public interest) generates seemingly intractable difficulties and lack of consensus regarding the proper application of that principle. However, the rise of the new “party of the common good” (Sandel 1992, 224), with its antiliberal rhetoric, underlines the importance of characterizing the common good if we are to preserve our liberal heritage and its institutions of freedom.

Hayek's Defense of Classical Liberalism

The social and political philosophy of F. A. Hayek yields insights into the nature of the common good in an advanced liberal society that help to clarify what is at stake in the current communitarian/liberal debate. Hayekian theory generates a precise conception of the nature of the common good in liberal society, an explication of the institutional means by which it may be realized, and a set of criteria by which we may test whether a public policy is conducive to its realization. Thus it dispels some of the fog surrounding one of political theory's most nebulous yet indispensable concepts.

Hayek fits in neither the communitarian nor the modern-liberal camp; Hayekian liberalism simultaneously supports and refutes various aspects of both the communitarian and modern-liberal perspectives. Although Hayek must certainly be considered a liberal theorist, his classical liberalism is strongly at odds with the rationalistic, rights-based liberalism espoused by the theorists who are the object of communitarian criticism. Hayek and the modern liberals do share a commitment to certain traditional liberal values—universal justice, tolerance, peace, individual liberty—but the moderns typically reject the severely circumscribed public sphere implied by Hayekian theory. Having “made . . . peace with concentrated power” (Sandel 1992, 93), the dominant liberal philosophy of our time represents a clear departure from the classical liberalism espoused by Hayek.

On the other hand, Hayek's devotion to individual liberty, the free society, and the rule of law distinguishes him from the communitarians, for whom neither liberty nor justice necessarily has the highest value. Moreover, neither the modern liberals nor the communitarians share Hayek's respect for the ordering function of the market mechanism; indeed, both groups exhibit a certain antipathy toward market-governed exchange. This may explain why both camps give short shrift to Hayek's views even though Hayekian liberalism rests on precisely the sort of social theory that the communitarians claim liberal theory both sorely lacks and requires.

Indeed, the major communitarian criticisms of liberalism simply do not apply to Hayekian theory. Communitarians maintain, for instance, that liberalism ignores or discounts the influence of social factors on the formation of individual identity and purpose and that this flawed conception of selfhood undermines its validity. Unlike contractarian and rights-based theories, however, Hayek's defense of the liberal political order is free from the ahistorical rationalism criticized by both Hayek and the new communitarians and is, as mentioned, firmly grounded in a comprehensive social theory. For Hayek, individualism and individual liberty depend on a thoroughgoing immersion in social reality. As one commentator put it, for Hayek, “individualism *is* a social theory” (Kukathas 1989, 216).

In short, Hayek's defense of the liberal order meets the communitarian challenge on communitarian terms. Hayekian liberalism neither presupposes the existence of human "atoms," entails the destruction of human community, nor denies the existence of a transpersonal common good. In fact, the liberal Hayek is as concerned as the communitarians to revive a "politics of the common good." If Hayek is right, however—if individual liberty is both the product of a liberal society and the source of that society's continuing progressive evolution—then personal liberty and the pursuit of the common good are not only compatible but, in a sense, inseparable.

Hayek on Social Life, Law, and the Common Good

Although the communitarian/liberal debate raises many issues that may fruitfully be explored from the Hayekian perspective, I shall consider specifically the following: Does liberal society possess a common good distinct from the private goods of its members? If so, how may that good be identified and realized? What are the nature and function of law and justice within the liberal community? Will our need for justice really become less pressing as our communitarian sympathies expand (as certain communitarians argue)? To answer such questions, I shall examine Hayek's views on the nature of law and the common good, as well as the relation between them, in advanced liberal society.

Liberal Society Is a Spontaneous Order

Because Hayek's political prescriptions are inseparable from his general theory of the nature and operation of complex social formations—the theory of spontaneous order—this must be our point of departure. According to Hayek, Western liberal society is the unintended outcome of the widespread observance of certain "nonrational" traditions—rules, practices, and values—that prevailed not because anyone foresaw the consequences of observing them but because groups that observed them proved more successful than other groups. Once this order had come into existence, however, one could retrospectively investigate its structure and principles of operation. The result of these investigations, first undertaken by the philosophers of the Scottish Enlightenment and significantly extended and developed by Carl Menger and his followers in the Austrian school, was the formulation of what Hayek terms the theory of spontaneous order.

A spontaneous order is a self-generating and self-maintaining order, an abstract, purpose-independent pattern (system, structure) of stable and predictable relations that emerges as an unintended consequence of the regular, rule-governed behavior of the individual elements forming it.¹ An example of a spontaneous ordering process in the physical realm may help us understand how such forces function in the social realm. To induce the formation of a crystal, one must create the conditions in which the individual elements will arrange themselves so that the overall structure of a crystal

will emerge. One cannot deliberately arrange the several elements to produce the desired formation. In the appropriate conditions, however, each rule-governed element, adapting itself to its initial position and particular circumstances, will arrange itself in a way consistent with the formation of the relatively more complex structure. Hayek sees liberal society as such a spontaneous order.

The character of the spontaneous order of liberal society may be seen more clearly in contrast with a second type of social order also found in modern society—organization, or “made order.” An organization is an end-dependent order created by the *deliberate arrangement* of its several elements according to the conscious intention of a designing mind.² An example from the physical world is a watch or a computer microchip, in which each component is deliberately positioned in accordance with the maker’s knowledge and purpose. Because someone constructs an organization by putting its elements in their places or directing their movements in order to fulfill a particular purpose, organization is an ordering technique indispensable for achieving known aims.

The purpose-independent spontaneous order of liberal society consists of both individuals and organizations—business corporations, governmental institutions, and voluntary associations of all kinds deliberately created to pursue particular ends. The coordination of the activities of the individuals and organizations within society, however, comes about through the spontaneous ordering processes generated and governed by the observance and enforcement of certain types of rules. I shall discuss the attributes and function of law later. For now, notice that the operation of spontaneous ordering processes depends crucially on the observance of *certain kinds of rules* by the individual elements, because not all rule-following behavior will result in the formation and maintenance of a complex spontaneous order.

The Constitution of the Common Good

Every society exhibits an orderly pattern of activities—otherwise, “none of us would be able to go about our affairs or satisfy our most elementary needs” (Evans-Pritchard 1951, 49). Hayek emphasizes that we pursue our aims within a comprehensive order of abstract social relations that most of us take more or less for granted. Although we

1. Hayek (1973) defines the concept of order as 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” (36). The relations that structure a spontaneous social order include such abstract social relations as buyer and seller; lessor and lessee; lender and borrower; producer and consumer; judge and litigant; and so on.

2. According to Hayek, his conceptions of spontaneous order and organization are more or less equivalent to Michael Oakeshott’s conceptions of the “nomocratic,” purpose-independent “civil association” (*societas*) and the “teleocratic,” end-dependent “enterprise association” (*universitas*). For further discussion of Oakeshott-Hayek comparisons, see Rowley 1998, 417–18.

may not be consciously aware of the existence of this “background order,” the realization of all our plans depends on its smooth functioning.

The order to which Hayekian theory refers manifests itself as the matching, or “coincidence,” of plans and expectations among persons who are necessarily ignorant of most of the concrete circumstances prevailing throughout society and the concrete aims pursued by their (mostly unknown) fellows. Why do strangers who have no explicit knowledge of our concrete needs and wants provide the means we require to realize both our transitory ends and our enduring values? How is the evident order we experience in our daily affairs generated and maintained even though most persons are only tacitly aware of its existence and do not deliberately aim to produce it? Such questions lead one to the Hayekian notion of the common good.

This consists in securing the abstract conditions that allow the activities of millions of persons who do not and cannot know one another’s concrete circumstances and intentions to fit together rather than come into conflict. As previously mentioned, such conditions arise from the observance of certain rules—perceptual, behavioral, moral, and legal—that structure the operation of the ordering mechanism we call the “market.”

The Ordering Principle of the Market

The “market,” of course, comprises a complex of social relations, institutions, and practices. Hayek maintains that the market represents historically evolved solutions to the “central problem” any advanced society must solve: how to generate, utilize, and coordinate knowledge that *only and always* exists fragmented and dispersed among the numerous members of any complex society. The “price system” should be conceived as an evolved “medium of communicati[on]” allowing people to bypass their ignorance of most of the facts that determine the success of their actions (the concrete circumstances prevailing throughout society) and to integrate the actions of individuals and groups into a coherent overall order (Hayek 1976, 125). The ability to use abstract thought and symbols such as prices, Hayek explains, enables humans to overcome their inability to master the infinite complexity of the environment. Prices serve as an indispensable guide to action. Without this guidance, persons could not know how to employ their efforts in a manner compatible with the plans and actions of their fellows. Without the guidance of prices, human activity would have to be directed by command. But in the absence of undistorted prices that reflect the reality of current circumstances, no one can know how resources “should” be employed.

For Hayek, the cultural achievements of Western civilization reflect not superior knowledge *per se* but the evolution of a method of coordination that encourages the generation and utilization of more knowledge than any other method yet discovered. No mind or group of minds could consciously assimilate or coordinate the vast knowledge and information that daily enters the social process via the market mechanism.

Indeed, much of that knowledge cannot be consciously communicated or articulated. Knowledge, Hayek reminds us, consists not merely of explicit, systematized theories and data but also of the inarticulate “know-how” embodied in “techniques of thought,” habits, dispositions, and customs and of the fleeting local knowledge of specific times and places, whose utilization is so essential in the functioning of a complex social order. In short, Hayek contends that certain epistemological facts render the “automatic” coordination achieved via the market process far superior to any method of coordination based on conscious direction. Nonmarket ordering devices, such as governmental planning or majoritarian decision making, must necessarily restrict the knowledge employed to that possessed by a relatively few limited minds and therefore prevent that flexible adaptation to ever-changing concrete circumstances whereby the order as a whole maintains itself.

According to Hayek, then, the common good in a “great society” such as an advanced liberal society—one characterized by an extensive division of labor and knowledge and integrated by common economic, legal, and moral practices—consists in the fulfillment of the fundamental value implicitly held by all its members: the preservation of the social order as a whole, the abstract, enduring structure within which all individual and organizational activities must occur. Such a good is realized, moreover, by securing the general conditions that ensure the smooth functioning of the automatic coordination mechanism we call the market. Government has a critical role to play in securing the common good, one that is primarily juridical in nature: to maintain and develop the institutional (essentially legal) framework indispensable to the operation of the ordering process itself. It does so by enforcing certain abstract, evolved “rules of just conduct.”

Hayek seems to believe that once we recognize the function served by law in relation to the operation of the spontaneous order that is liberal society, we shall recognize our common interest in preserving a particular kind of legal framework—an abstract, purpose-independent framework that all persons and groups employ (implicitly and explicitly) in pursuing their own aims. He maintains, then, that the common good can be discerned through comprehending the nature of the liberal order and that the conditions essential to its realization can be consciously cultivated, but he denies that the common good is, properly speaking, an object of political determination.

The Common Good Is an Abstract Value

For Hayek, the common good in an advanced liberal society is necessarily an *abstract* value—the preservation of a certain abstract pattern of social relations—not the fulfillment of particular concrete ends. He contends that we can establish certain general conditions that “improve as much as possible the chances of any person chosen at random” (Hayek 1973, 114) to fulfill his or her goals and values, but we cannot simultaneously secure those abstract conditions and enact legislation designed to achieve

concrete outcomes. A purpose-independent spontaneous order (society) and an end-dependent organization (government) are conceptually and functionally distinct types of order, and they operate according to different rules and irreconcilable principles. The simultaneous application of irreconcilable principles—self-organization versus deliberate arrangement—can never produce a rational, coherent order.

One of Hayek's main concerns, then, is to repudiate any conception of the common good that entails the imposition of a preconceived *concrete* pattern of distribution on the social order. Although the intellectual poverty of socialism is now widely recognized, the moral and epistemological views that underlie socialist doctrines still inspire demands for "social justice," "industrial policy," protectionism, and so on—demands for all sorts of piecemeal interventions in the market process. For Hayek, the fulfillment of such demands can never serve the common interest. If our world is one of scarcity and if all persons benefit from the efficient use of scarce resources, then any attempt to override the results of spontaneous ordering processes or to impose a preconceived material distribution on the social order must work against the long-term common good.

Moreover, all plans to override the results of the spontaneous ordering processes in the name of an alleged common good must require persons to serve concrete ends determined by the planners. Consequently, the indispensable incentive to discover and employ one's particular knowledge—for example, the necessity to integrate oneself into the overall order by choosing one's occupation—is removed, so potentially valuable knowledge is lost to the social process.

For Hayek, the decision to promote the common good by maintaining a particular legal framework can be a conscious and rational decision—that is, we can understand the rationale and requirements of the liberal order and deliberately shape the legal framework in accordance with them. The common good itself, however, is not a product of intellectual design, "reasoned debate," or extensive political participation but is generated, one might say, by the circumstances of human existence, the permanent limits of the human mind, and the nature of the liberal order. Moreover, the abstract rules of justice that compose the liberal legal framework have this same character. We turn now to explore how, according to Hayek, the rules that government should enforce in liberal society—those that promote the common good by facilitating the aims of all persons—are determined.

The Abstract Legal Framework

Law: The Grammar of Practice

"The aim of jurisdiction," Hayek (1973) tells us, "is the maintenance of an ongoing order of actions" (98). Thus he reminds us that all law tacitly presupposes the existence of and refers to an ongoing factual order of activities—the comprehensive "background order" whose character I discussed earlier.

According to Hayek, law in the sense of enforced rules of conduct is coeval with society, for the *de facto* observance of common rules is what constitutes even the most primitive social group.³ Prevailing rules will not necessarily be recognized or explicitly treated as rules but will manifest themselves as habitual perception or behavior, as customs and conventions. Those who practice certain inherited customs may not be aware that in so doing they contribute to the maintenance of the social order; they may merely “know” that certain actions are taboo or “just not done.” Yet those who attempt to articulate the enforceable rules will have a more or less conscious awareness that the rules “refer to certain presuppositions of an ongoing order which no one has made but which nevertheless is seen to exist” (Hayek 1973, 96).

The rules that structure liberal society, then, refer to certain presuppositions and requirements of that *kind* of social order; these presuppositions and “inchoate rules” are bound up with the prevailing “sense of justice.” An analogy drawn from language may clarify this relationship. As one’s “feeling for language” enables one to recognize the appropriateness or inappropriateness of a spoken or written word without explicit knowledge of the rule applicable to the case at hand, so one’s “sense of justice” enables one to recognize an inappropriate (or unjust) rule or action without necessarily being able to articulate the rule of justice that has been violated. As the task of the grammarian is to articulate the general rule that governs a particular linguistic usage, so the task of the jurist is to “discover” the general rule that (implicitly or explicitly) governs the case at hand. The rules of both law and grammar belong to that abstract structure of rules “found” to be governing the operation of the mind.⁴

The task of the jurist, then, is not to invent good law but to bring to conscious awareness the general principle or rule that, once expressed, will be recognized as just (or at least not unjust)—which means, more or less, in conformity with the implicit rules that have customarily guided spontaneous interaction in a given society. The law that emerges from the law-finding efforts of jurists always emerges, in other words, as a result of “effort[s] to secure and improve a system of rules which are already observed” (Hayek 1973, 96). The law that structures the spontaneous order of liberal society is, according to Hayek, of this nature.

He is concerned, then, to show that evolved social phenomena such as law and language exhibit certain similarities. First, law, like grammar, refers to a factual overall order (or abstract pattern) of which actors and speakers are only tacitly aware. Second,

3. Contrary to Thomas Hobbes and others, early man did not know solitude; man always and only existed as a member of a group. “The savage is not solitary, and his instinct is . . . collectivist. . . . [In the beginning] a solitary man would have been a dead man” (Hayek 1988, 12). Both the “state of nature” and the “social contract” are myths.

4. According to Hayek, the human mind itself consists of a system of abstract rules, which govern both perception and behavior regardless of whether they have been recognized or expressed in words. Some persons may better articulate the rules that underlie personal behavior and social interaction, but such rules govern the operation of the mind whether or not they have been explicitly stated or discursively described. Hence Hayek maintains that the rules of justice are found, not made.

the legal rules whose observance generated liberal society were as little the product of rational design or deliberate invention as were the rules of grammar. They emerged through the ongoing efforts of jurists to articulate, develop, and interpret the (implicit and explicit) rules that structured a preexisting order of actions.

The development of law, in other words, always proceeds within a *given* framework of values, rules, and practices on which the integrity of the overall order depends. The task of the jurist, although certainly an intellectual one, cannot be accomplished through engaged participation in public affairs or a revival of communal affection. In resolving disputes, the judge is, in effect, asked to clarify which of the conflicting expectations will be treated as legitimate, a determination that depends on the requirements of the overall order and not on the judge's or anyone else's preferences. Justice is necessarily an impersonal virtue.

The Attributes of Law

One of Hayek's fundamental contentions is that the law whose observance generated and maintains liberal society necessarily possesses certain attributes. He further contends that all law (and legislation—deliberately constructed, or “made,” rules) enforced by government in a liberal order should possess those same attributes, because only rules of a particular type can sustain the operation of the complex social formation that is liberal society.

Hayek identifies two conceptually and functionally distinct types of legal rules that prevail in contemporary liberal society, the *nomos* (private law) and the *thesis* (public law). Hayek regards only the former as true *law*, the evolved rules of conduct that define justice and secure spontaneous order. The latter consists of the rules that govern organizational structures (especially the organization of government)—directives and commands designed to realize particular purposes determined by the director(s) of the organization. The distinction between private and public law is one between standing general rules that all must obey and specific orders to be executed by government officials. One cannot, of course, execute, or carry out, a rule of conduct.

The law, or *nomos*, the historically evolved rules whose observance formed and maintains the liberal spontaneous order, generally takes the form of negative prohibitions that delimit a private sphere within which individuals are guaranteed a free range of action protected from the arbitrary interference of others.⁵ According to Hayek, the

5. Hayek maintains that *the law*, or *nomos*, that governs the spontaneous order of liberal society exhibits the following properties: Each law is an abstract (general) rule intended to apply to unknown persons in an unforeseeable number of future circumstances; it is known, certain, and intended to be perpetual; it is the same for all persons (the ideal of “equality under the law”); it generally takes the form of a negative prohibition delimiting the protected domain (“property”) of each person; it serves to regulate the relations between private persons or between such persons and the government; it is part of a system of “mutually modifying rules”; and it possesses no specific purpose except the “purpose” of the system of rules as a whole—that is, to maintain the overall social order.

negativity of liberal rules follows from the progressive universalism of liberal morality: the gradual extension of a uniform legal code over an extended spatial area necessitated the gradual attenuation of specific positive obligations; it is impossible to fulfill a positive moral duty to assist someone if one has no personal knowledge of his concrete needs or even of his existence.

The function of *the law* is to create a secure and stable framework of expectations so that persons may know which features of their environment they may count on in making their plans. It tends to reduce conflict, establish certainty, and allow for the smoothest possible mutual coordination of activities. It also allows for the fullest use of dispersed knowledge: although each person must take the general rules into account in pursuing his own ends, he is free to act upon his particular knowledge, bound only by general negative prohibitions. For Hayek, the enforcement of *the law*, or *nomos*, constitutes the only good that all persons in liberal society can truly be said to possess in common.

A Hayekian Critique of Communitarian Justice

One of the themes that runs throughout much of the communitarian literature is that a society governed by abstract, impersonal rules—the “procedural Republic” that is the liberal order—is not only cold and harsh but morally suspect. The communitarians seem to long for something “warmer,” more personal, and more morally elevated than what abstract liberal justice can provide. They long for a community whose laws reflect the “shared self-understandings” of the members of various groups, laws that take into account the particular characteristics and social affiliations that constitute a person’s identity, laws indifferent to neither the “real problems of concrete men” (Crowley 1989, v) nor the intrinsic moral worth of their actions and ends. They suggest that a society governed by general, impersonal rules that subordinate a person’s substantive “good” to some abstract “right” and disregard the concrete and contingent character of social reality is somehow unworthy of a truly human existence.⁶

Certain communitarians argue, in short, that liberal justice—the strict application of universal rules to persons who vary widely in personal and social characteristics and circumstances—is unjust. Because individuals are not “uniform atoms,” they must be judged not in accordance with an abstract and universal standard but in accordance with the “standards of behavior applicable to their . . . situation, . . . [standards that] vary with [their] circumstances” (Crowley 1989, 244, 253). The only conception of

6. The communitarian conception of “shared self-understandings” is problematic, to say the least. Members of the most antisocial groups (the Ku Klux Klan, for instance) certainly share a self-understanding, as do members of all economic special-interest groups (farmers, teachers, doctors, etc.). Why the political claims of such groups should be privileged is unclear; the gratification of the special “sinister” interests has long been regarded as inimical to the general welfare.

justice worthy of the name is one that dictates an acknowledgment of man's historical particularity and a concern for his substantive needs.

The communitarian wish for a personal justice, which takes account of both the intrinsic moral worth and substantive outcomes of particular actions, is irreconcilable with the maintenance of the complex spontaneous order that constitutes an advanced liberal society. A legal framework consisting of particular laws for particular persons or groups, by which legislators seek to bring about specific outcomes, is the very antithesis of the rule of law—the foundation and core value of the liberal order. And the communitarian polemic is characterized by a curious and disturbing inattention to the concrete institutional manifestations a renewed “communal” spirit might assume and to the consequences that would flow from the abandonment of the abstract liberal legal framework.⁷

More particularly, the communitarians seem completely oblivious to what Hayek has called the “role of law in an ordering mechanism,” which I have attempted to describe; they do not seem to recognize that the sort of personal and outcome-based justice they crave would undermine the legal foundation of liberal society. As they typically portray themselves as moderate agents of cultural renewal and their prescriptions as “supplements” to the liberal order (Holmes 1989, 22), not replacements for it, one must assume that they are simply unaware of the radical consequences of the abandonment of abstract, universal justice in favor of personalized and particular “laws.” Abstract liberal laws are not arbitrary, mean-spirited injunctions indifferent to the human good, but the indispensable framework that sustains the overall order on which all persons rely in pursuing all their ends, crass or sublime.

The moral issue raised by the call for a “desert-based justice” is whether anyone has the right to alter the existing order fundamentally or to replace it with one of his choosing. In Hayek's view, no one has such a right (or, indeed, such an ability). Every person, he points out, is born into a given value framework and a given working social order that no one created and no one has the power or authority to alter at will. The extent to which one can deliberately reform or change existing rules is limited, both morally and pragmatically, by the reality that the “existing factual order of society exists only because people accept certain values” (Hayek 1978, 21).

All rules of conduct serve . . . a particular kind of order to society. . . .
Though such a society will find it 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 practiced by a few and then imitated by many which created a social order of a particular kind. (Hayek 1979, 166)

7. The communitarian dream has an oddly unrealistic and romantic aspect. As David Levy (1989) points out, the “new communitarians” seem curiously unaware that government is a coercive agency and not the agent of self-expression and ecstatic communal experience.

No individual has the power to change [this order] fundamentally; because such change would require changes in the rules which other members of the society obey, in part unconsciously or out of sheer habit, and which, if a viable society of a different type were to be created, would have to be replaced by other rules which nobody has the power to make effective. (27)

Although liberal society, like all others, is far from perfect and ever in need of improvement and reform, the only legitimate criticism, in Hayek's view, is what he calls "immanent criticism"—criticism of "particular rules within standards set by . . . the aggregate structure of well-established rules" (Barry 1989, 279). Because the replacement of impersonal liberal standards by standards varying with persons' circumstances would destroy the liberal order, the communitarian critique of liberal justice may be less benign than is generally assumed.

"Dialogue," "Participation," and the Common Good

Hayek's conception of the common good also runs counter to that associated with another political tradition sometimes invoked by the communitarians, the neo-Aristotelian view that politics is the "process by which one both discovers and affirms oneself as a moral and social being" (Crowley 1989, 8). Those who conceive politics as an intrinsically ennobling and civilizing activity, who wish to restore the value of "participation in rule for its own sake" (Taylor 1989, 179), who believe the common good "is realized in the very process of debating its meaning" (Dobuzinski 1989, 253–54), seem to suggest that both the substantive content of law and a morally compelling hierarchy of common concrete ends can and should be determined by widespread political participation, extensive discussion, and "reasoned debate." Hayek insists, on the contrary, that no amount of "participatory self-rule" or "dialogue" can determine either the law that serves the common good or the concrete ends that all should be compelled to serve in its name.

For Hayek, the rules that structure liberal society arise not from achieving consensus or explicit agreement among rational men but from the structural requirements of the liberal order—from how society "works," or what earlier jurists referred to as the "nature of things." The lawmaker has a pointed intellectual task: to discover the rules that cohere with the overall body of accepted rules governing a working social order. This task must be undertaken by persons well versed in both jurisprudence and social theory, as well as intimately acquainted with the tacit dimensions of their society. According to Hayek, the correct rules are, in a sense, determined by the rationale and requirements of the existing order. "Dialogue" and "participation" no more assist in determining the rules appropriate to the operation of liberal society than they do in determining the rules of grammar.

Of course, discussion may facilitate the discovery of the correct rules. The growth of knowledge always depends on the interplay of many minds. In Hayek's view, the

development of law, like the development of scientific or any other knowledge, proceeds by a trial-and-error process of elimination (of wrong or unjust rules and refuted hypotheses, respectively). Any judge may err or fail in the endeavor to find or articulate the correct rule, and the opinions of peers and critics are indispensable. But this process differs from that advocated by adherents of the “dialogue and participation” school of thought.

Hayek denies that the liberal legal framework is an object of political determination. It is, in his view, an outcome of a transpersonal evolutionary process in which rules that secured the overall order and best contributed to human flourishing were selected and transmitted over time. Members of liberal society must, he argues, observe certain rules even though those rules have not been deliberately chosen by engaged participants or anyone else and their significance may not be fully transparent to the reasoning mind. The realization of the common good requires not greater participation in politics but the willingness to honor the rule of law and forgo the gratification of particular desires, including and especially the desire for a personal justice that acknowledges the particular “social roles” and “shared self-understandings” of various groups and seeks preconceived substantive outcomes.

Hayek denies the existence of a general principle by which we may objectively determine the relative importance of conflicting concrete ends. No amount of deliberation or discussion can produce agreement on the particular *concrete* manifestation our complex social order should assume if no such agreement exists at the outset. To compel persons to serve some hierarchical scale of concrete ends in the name of the “common good” can mean only that “common ends are imposed upon all that cannot be . . . more than the [arbitrary] decisions of particular wills” (Hayek 1976, 32). Thus, for Hayek, the issue of an abstract versus a concrete common good is also a moral one: whether persons have a moral obligation to submit to political decisions concerning the pursuit of substantive ends that can never be more than arbitrary commands of the politically powerful.

All we can truly have in common with our fellows in a great society, and thus the only basis for a genuine agreement regarding the common good, are certain shared *abstract* values and opinions regarding the “kind of society” in which we would like to live, as opposed to opinions about the particular manifestations it should assume. Commitment to such shared general values, not the pursuit of common concrete purposes, constitutes social cohesion in a great society. No one can possess the concrete knowledge required to justify a rational pursuit of common concrete ends. The common knowledge we do possess is confined to certain *abstract* features of our social and physical environment (we share knowledge of the *kind* of clothing we wear, the *kind* of food we eat, the *kind* of literature we enjoy, and so on). Most of the innumerable and ever-changing facts and circumstances that determine the concrete shape of our fellows’ lives in the spatially extensive contemporary liberal order are and must forever remain unknown to us.

Regardless of how disinterested, just, intelligent, and altruistic we may be, we can never rationally design a nonarbitrary hierarchy of concrete ends that all persons should pursue, for those ends depend on concrete facts and circumstances that no human mind or group of minds can grasp. Should I buy a Bible or a loaf of bread? It depends on my needs, values, and desires, on the decisions of all the other persons in society (reflected in relative prices), and on prevailing concrete circumstances (relative scarcities). The most appropriate *concrete* pattern can only be continually rediscovered as persons employ their knowledge to adapt to the concrete circumstances encountered within their local environments. Such knowledge emerges only if persons are permitted to pursue self-chosen objectives. For Hayek, the “best” concrete pattern arises from the most comprehensive utilization of all the knowledge of particular conditions dispersed throughout a society, knowledge unavailable as a whole to anyone.

According to Hayek, abstract liberal rules prevailed precisely because they serve to bypass both the limits of the human mind and the need to reach consensus on concrete goals before taking action. By ignoring these epistemological considerations, one misunderstands the “whole rationale” (Hayek 1976, 9) of a liberal society, that is, a free society in which persons may choose the ends they will pursue. Hayek’s fundamental objection to any conception of the common good that seeks to employ the power of government to achieve particular concrete goals is that any such scheme must inhibit the generation and employment of knowledge, especially the knowledge of concrete circumstances known only and perhaps only tacitly to the countless individuals who compose a society of any degree of complexity. If the common good entails the effective functioning of the overall order and is meant to foster the long-term well-being of every person and the preservation and growth of civilization, then, Hayek argues, any scheme that inhibits the utilization of such knowledge cannot be in the general interest.

Hayek (1960) argues that “all institutions of freedom [law, markets, money, morals] are adaptations to [the] fundamental fact of ignorance” (30), to the irremediable limits of the human mind. If somehow we could know the “best” concrete manifestation for a “good society” to assume, the case for liberal institutions would collapse. If omniscient human beings could direct each person’s activities toward his own and others’ best fulfillment, we would not require the trial-and-error process whereby we *discover* the pursuits that fulfill our values (and what, in fact, those values are). Human fulfillment—the good of all—cannot be predetermined by “participatory self-rule.”

Peace and the Common Good

I conclude by drawing attention to the relationship between the common good as Hayek conceives it and that “currently most neglected” (Kukathas 1989, 222) value in political philosophy—peace. One cannot exaggerate the value classical liberals of the Hayekian stripe place on securing the conditions that allow persons with widely vary-

ing purposes and values to live in harmony. Indeed, for Hayek (1976), the “greatest discovery mankind ever made” was the “method of collaboration” (that is, market-governed exchange) that enables people to live together “in peace and to their mutual advantage without having to agree on common concrete ends” (3, 136). If the members of liberal society all value the peaceful reconciliation of mutually conflicting purposes, then, Hayek argues, government’s responsibility to secure the general welfare entails maintaining the only mechanism that permits such reconciliation—the abstract market mechanism.

Because no one can know the relative importance of the innumerable particular ends pursued by the inhabitants of an advanced society, any endeavor to impose some concrete conception of the common good on the social order can be no more than an attempt to compel many persons to serve purposes in which they are not the least interested and of which they may not approve; the result must surely be perpetual social discord and an unbearable politicization of social life. However great our aspirations for solidarity or community, Hayek (1988) maintains, social cohesion within our complex “extended order of cooperation” (134) cannot be achieved by the common pursuit of known visible purposes without dramatically altering the character of our social order and repudiating most of the values—the inviolability of the person, individual freedom, justice—responsible for its existence. On the other hand, he has shown that the reconciliation of individuality and community, of creative exploration and social stability, of individual rights and common good, does lie within our grasp.

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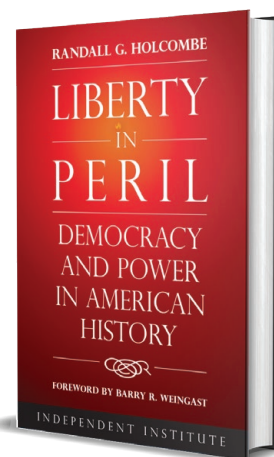
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