

Comment on Timothy Sandefur's "Some Problems with Spontaneous Order"

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Timothy Sandefur's critique of F. A. Hayek's social thought ("Some Problems with Spontaneous Order," *The Independent Review* 14, no. 1 [summer 2009]: 5–25) falls into two main parts: first, a critique of Hayek's distinction between spontaneous orders and made orders and, second, a critique of his ethical theory. Although Sandefur makes some legitimate criticisms of Hayek's ethical framework, his overall criticism is vitiated by his misunderstanding of what constitutes a spontaneous order.

Sandefur offers seven significant examples of where he believes Hayek's distinction between a spontaneous order and a made order breaks down.

1. Students spontaneously create paths between buildings on a new campus: Do we interrupt the operation of a spontaneous order when we pour concrete to make sidewalks, once the paths have appeared? (p. 8).
2. If a corporate CEO provides "a single, universal, health care plan for employees," isn't he acting in the same way as a constructivist rationalist who designs a similar plan for a country? Or is he simply a participant in a spontaneous order? (pp. 8–9).

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3. Citing Judge Richard Posner, Sandefur asks: How can Hayek oppose rational constructivism yet admire the U.S. Constitution, a “written plan formulated by a committee of experts and thus apparently a constructed order”? (p. 9).
4. Nineteenth-century Shaker communities and analogous experiments were products of extreme constructivism. Yet when taken as a whole, these experiments were part of a spontaneous order, so “the distinction between spontaneous order and rationalist constructivism depends on how one defines the frame of reference” (p. 10).
5. The tradition of holding our hands up when a “robber sticks a gun in our face . . . forms a kind of spontaneous order” so that its distinction from coercion is undermined (p. 20). Slavery may be a similar example (p. 12).
6. The previous point is underscored by the additional examples of the “businesses that sell refreshments to people standing in line at the post office on April 15 and the market for accounting firms that help people finish their taxes at the last minute,” both of which “are spontaneous orders even though they have sprung from . . . taxation” (p. 21).
7. Sandefur also criticizes Hayek’s treatment of common law (pp. 10–11). I have little problem with this critique, not because the concept of spontaneous order is flawed, but rather because the common law is more complex than simply being a spontaneous order. The other six criticisms, however, rest on a misunderstanding of Hayek’s ideas.

Spontaneous Order and Organization

Sandefur never gives a careful description of Hayek’s concept of a spontaneous order. I will do so. A spontaneous order, such as his basic example of the market, is most advantageous to a society when three conditions exist. First, there is irreducible complexity in the sense that we do not know most of the relevant information in a system and that this information is subject to frequent, unannounced change. Second, all of the participants in the system have equal status in the sense that all may pursue whatever goals they want, even mutually contradictory ones. Third, in pursuing these goals, all are subject to the same abstract and purely procedural rules.

Hayek contrasts a spontaneous order with an organization, which works best when the relevant knowledge is known, participants stand in a hierarchical relationship based on their function in attaining a known goal, and all rules are determined by their utility in achieving this goal. The classic example is a business organization operating in the market. Hayek does not oppose the deliberate construction of organizations except when they seek to impose themselves under conditions better suited to a spontaneous order, as described in the preceding paragraph.

Central to this distinction is that whereas an organization can be described teleologically, a spontaneous order cannot. In a spontaneous order, participants can create organizations to pursue contradictory goals without undermining the

overarching framework. In fact, by doing so they may contribute to the framework's vitality because a spontaneous order is always a discovery process in which information is discovered and evaluated within a feedback system to which every participant contributes in greater or lesser degree. Hence, more individually selected projects can be pursued successfully within a spontaneous order than by any other known means. Hayek emphasizes, however, that the organizations in spontaneous orders pursue their specific goals in a framework of procedural rules that apply equally to all participants.

The "Tough Cases"

Example 1. The concrete-pouring example suggests that Sandefur does not understand Hayek's concepts because this example does not describe a spontaneous order in Hayek's sense. Hardly any discovery process is involved. The buildings are not moving around; the entrances do not shift as students prefer one classroom to another. Once the initial pattern has been established, no future discoveries will be made. The sidewalks poured after the paths have been trod simply protect the most frequently taken routes against wear and tear.

Examples 2, 4, and 6. Both the corporate CEO and the Shakers are creating organizations in the context of a spontaneous order. These actions are no more problematic than those of any organization in a spontaneous order. Sandefur seeks to allay this criticism by arguing that the concept of spontaneous order is neutral with respect to the existence of coercion: "The business that sells refreshments to people standing in line at the post office on April 15 and the market for accounting firms that help people finish their taxes at the last minute are spontaneous orders even though they have sprung from . . . taxation" (p. 21).

This claim reflects a misunderstanding. Sandefur here describes only organizational tasks: providing refreshments and last-minute services. These tasks are "spontaneous" only in the sense that the needs they meet were not being met at one time, so entrepreneurs saw the possibilities and moved to supply the unsatisfied demands, and some of these entrepreneurial ventures succeeded. Such actions do not differ from other entrepreneurial attempts to satisfy a potential demand. The specific cause of the demand, whether it be an earthquake that leads to a demand for shelters or a tax law that leads to a demand for accountants, is not a part of the order.

Example 3. The U.S. Constitution in almost every feature established goal-neutral procedures by which anyone may seek a political goal. Freedom of speech says nothing about what will be advocated. Freedom of assembly says nothing about what people will seek by assembling. Regularly scheduled elections say nothing about who will run or what the candidate's platform will be. And so on. These rules enable people to use their own knowledge in pursuit of their own goals in ways open to all, which is *not* what Hayek means by constructivism. Exempting certain issues, such as aspects of slavery, from this goal-neutral generality led to serious problems, especially

after the Dred Scott decision. Moreover, the Constitution has tended to become increasingly procedural and thus increasingly far removed from being an example of constructivism.

Example 5. This case does not exemplify a spontaneous order, either. First, a hierarchy clearly exists: the person being held up is not free to pursue his own ends except as subordinated to the robber's ends. Second, there is no process of continual adaptation to shifting and uncertain knowledge. The knowledge is certain: the robber has a gun. The victim's response is to reduce uncertainty as far as possible so as to avoid being shot. That such a response has evolved is not enough to make it a spontaneous order because evolution and adaptation are ubiquitous. Only a certain *kind* of evolution and adaptation gives rise to a spontaneous order.

In general, Sandefur's misunderstanding arises from his view of constructivist rationalism as the opposite of spontaneous order. In a Hayekian perspective, however, the true opposite is *instrumental organization*. Constructivist rationalism may be seen when the principles of instrumental organization are applied in contexts where spontaneous orders would better serve people's ends.

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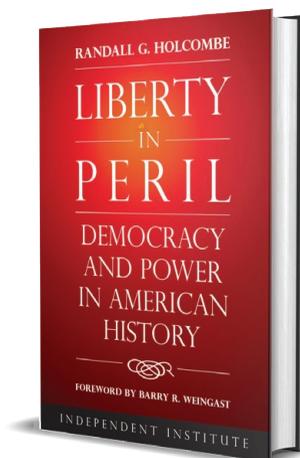
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