Book Reviews


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

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

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

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

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