



## SPONTANEOUS SOCIAL ORDER AND LIBERALISM

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*Abstract*

*Focusing on the ideas of order and social order, this essay offers an analysis of how Hayek's social theory of spontaneous order may relate to his political theory of liberalism. It is suggested that a moral justification of liberalism may flow from the qualities or virtues that are inextricably connected with a spontaneous social order. This justification is Hayekian, though it is not Hayek's.*

### Introduction

The thought of Friedrich A. Hayek spans several decades and incorporates interrelated theories of economics, society, law, and politics. Hayek is vague, however, on a specific and important question: How does his theory of society, understood as a theory of spontaneous social order, relate to his political liberalism? To pose this question is to consider whether Hayek's social theory plays a role in justifying his political theory. Even as one recognizes the features of both theories, it is unclear how the social theory provides the grounds for the political. Hayek seeks to combat a view of society, typically labeled "rationalist constructivist," that posits that beneficial social patterns must arise from some rational intention, purposeful agreement, or design. Against this outlook, Hayek counters with his theory of spontaneous order, and in so doing he also delineates a liberal theory of politics.

Are there any properties of spontaneous order that would provide a normative and theoretical justification of Hayek's liberal rule of law? A positive response requires focus on a much neglected question: How ought we to conceive of

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a spontaneous order? Setting aside the evolutionary process by which laws or rules may evolve, this question concerns the very nature of a spontaneous order, or *cosmos*,<sup>1</sup> and whether there is some means of linking a feature of a spontaneous order to the political doctrine of the rule of law. There is, no doubt, a practical connection in the simple fact that the law of liberalism generates a spontaneous order. In this essay, however, I suggest that there is also a normative and theoretical justification that links the very idea of a spontaneous social order to a political theory of liberalism. The linkage is not Hayek's, but it is Hayekian. To delineate it, I summarize Hayek's account of law, noting several justifications, both practical and theoretical, that have been invoked to defend Hayekian liberalism. In the subsequent section, I offer some general considerations on the notion of order, followed by a section in which I discuss the idea of social order. In the fourth and concluding section, I describe Hayek's account of spontaneous social order and demonstrate how one might construe a moral justification of liberalism from it. In particular, I suggest that certain individual qualities or virtues are inextricably connected with a spontaneous order and that these generate a deeper moral justification of Hayekian liberalism.

### I. Social Theory, Political Theory

Hayek's version of liberalism, as described in both *The Constitution of Liberty* and his 1966 essay, "The Principles of a Liberal Social Order,"

[D]erives from the discovery of a self-generating or spontaneous order in social affairs . . . an order which made it possible to utilize the knowledge and skill of all members of society to a much greater extent than would be possible in any order created by central direction.<sup>2</sup>

The essential features of this liberalism are determined by four specific properties of its legal rules: they apply to individual actions and not to states of affairs, they are typically prohibitions on certain kinds of actions, they establish a "protected domain" in which one is shielded from the interference of others, and they are universalizable. Hayek draws notable consequences from these rules, all of which support his account of spontaneous order.<sup>3</sup> For example, the liberal rule of law permits individuals to utilize their own knowledge for their own purposes. As individuals interact within legal constraints there emerges a social order (or "order of action") more complex than a deliberate arrangement could achieve. Within this order, there is no predetermined purpose or goal, no specified hierar-

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<sup>1</sup> FRIEDRICH A. HAYEK, *NEW STUDIES IN PHILOSOPHY, POLITICS, ECONOMICS, AND THE HISTORY OF IDEAS* 73 (1978). The distinction between the evolution of laws and the emergence of a *cosmos*, may also be understood in terms of the difference between an order of rules and an order of action: for example, a spontaneous order of action may emerge from rules which themselves may be evolutionary products or artifices. *See id.* at 7475.

<sup>2</sup> FRIEDRICH A. HAYEK, *STUDIES IN PHILOSOPHY, POLITICS, AND ECONOMICS* 162 (1967) [hereinafter HAYEK, *STUDIES IN PHILOSOPHY*]; *see also* FRIEDRICH A. HAYEK, *THE CONSTITUTION OF LIBERTY* (1960) (among Hayek's main works expounding on his views of liberalism).

<sup>3</sup> *See* HAYEK, *STUDIES IN PHILOSOPHY*, *supra* note 2, at 166.

chy of ends.<sup>4</sup> Thus, the idea of a substantive notion of a common good evaporates. In its place remains another ideal: that spontaneous order “provides merely the best chance for any member selected at random successfully to use his knowledge for his purposes.”<sup>5</sup>

Does Hayek’s account of spontaneous order justify the rule of law? It is not obvious that it does, even though one may well argue that there is a *practical* relation or dependence between Hayek’s social theory and political liberalism. After all, the simplest form of such practical dependence is clear: If one wants a complex (or the most complex) spontaneous order, then one must advocate some form of liberalism. But this assertion does not reveal *why* one might want a spontaneous order, or why one might opt for Hayekian liberalism. Other complementary modes of practical justification are more subtle, but advance the argument only so far. For example, one may contend (a) that a spontaneous social order promotes the coordination of dispersed and tacit knowledge and that the liberal rule of law provides the unique conditions for such an order. Or one might argue, in a more traditionalist vein, (b) that benign contingencies of history bequeathed to us the liberal form of law, which provided the conditions for the emergence of a complex spontaneous order, and that we lack the knowledge to restructure our social and political institutions (at least beyond the parameters enunciated in Hayek’s theory of law). A third argument for practical dependence might emphasize either of the above, but also point out (c) that the spontaneous order generated by the rule of law is the only means of securing certain goods or values that we all share. Only in the case of (c) do we glimpse an explicit moral reason why one should desire a spontaneous order, namely, that it secures certain goods or values. In this case, however, spontaneous order only mediates between the law of liberalism and morally desirable goods or values. Roland Kley recently expressed this view, suggesting that Hayek’s account of liberalism is instrumental in that he wants to show that the institutions of liberalism are the best means of achieving those goods desired by all, including socialists.<sup>6</sup>

What is missing in these accounts is any sustained characterization of Hayek’s social theory of spontaneous order. If one is to discover the relationship between Hayek’s political theory of law and his theory of spontaneous order, then one must consider what the very idea of spontaneous order entails. Scholars tend

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<sup>4</sup> *Id.* at 169.

<sup>5</sup> *Id.* at 163.

<sup>6</sup> ROLAND KLEY, HAYEK’S SOCIAL AND POLITICAL THOUGHT 194–211 (1994). Among commentators who have suggested that Hayek is launching a moral argument, John Gray contends that Hayek is an “indirect utilitarian” for whom a test of Kantian universalizability provides the justification for a liberal rule of law. See JOHN GRAY, HAYEK ON LIBERTY 137–38 (1989). Gerard Radnitzky suggests that Hayek believes that liberty, or the freedom of a liberal state, is intrinsically valuable. See Gerard Radnitzky, *Hayek’s Contribution to Epistemology, Ethics, and Politics*, 3 J. DES ECONOMISTES ET DES ETUDES HUMAINES 219, 219–36 (1992). Like Kley, Jeremy Shearmur also maintains that Hayek is not offering a moral argument, stating that Hayek’s overall outlook contains “incompatible strands that he never seeks to reconcile in a systematic manner.” JEREMY SHEARMUR, HAYEK AND AFTER: HAYEKIAN LIBERALISM AS A RESEARCH PROGRAMME 177 (1996).

to focus on Hayek's theory of law<sup>7</sup> probably because he does not offer a rigorous or systematic account of the notion of spontaneous order. Even those who do discuss spontaneous order tend to portray it as only an economic theory, as if market order were the only type of spontaneous order.<sup>8</sup> However, Hayek indicates that an economic catallaxy, a "special kind of spontaneous order,"<sup>9</sup> exists as part of a greater order. Even if Hayek had not drawn a distinction between the economic and the overall spontaneous order, it would be myopic to treat the general theory of spontaneous order as if it addressed only economics. Why should economic order, concerned primarily with securing the means to ends, be the only kind of coordinated order? Focusing on economics lends itself to a single-minded emphasis on the role of the price mechanism and a neglect of the manner in which markets and morals are interwoven.<sup>10</sup>

Following the evolution of Hayek's thought, it is clear that he was led to the concept of spontaneous order by earlier puzzles relating to equilibrium. In his 1936 Presidential address to the London Economics Club, Hayek discussed dispersed knowledge and offered an account of equilibrium in which the plans or expectations of individuals are compatible.<sup>11</sup> As Caldwell points out, Hayek first used the term "spontaneous order" in *The Constitution of Liberty*.<sup>12</sup> No doubt the concept of order replaced that of equilibrium in Hayek's thought, but he also extended the concept beyond the market to social phenomena.<sup>13</sup>

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<sup>7</sup> Most notable are D. Neil MacCormick, *Spontaneous Order and the Rule of Law: Some Problems*, 2 RATIO JURIS 41, 54 (1989); A.I. Ogus, *Law and Spontaneous Order: Hayek's Contribution to Legal Theory*, 16 J.L. & SOC. 393, 409 (1989); and Robert Westmoreland, *Hayek: The Rule of Law or the Law of Rules*, 17 L. & PHIL. 77, 77-109 (1998).

<sup>8</sup> Gray does not make this mistake, but in his otherwise excellent work, Kley does make such an argument. See GRAY, *supra* note 6, at 195-96 and KLEY, *supra* note 6, at 36.

<sup>9</sup> 1 FRIEDRICH A. HAYEK, LAW, LEGISLATION AND LIBERTY: RULES AND ORDER 109 (1973) [hereinafter HAYEK, RULES AND ORDER].

<sup>10</sup> Steve Fleetwood is an exception. See, e.g., Steve Fleetwood, *Hayek III: The Necessity of Social Rules of Conduct*, in HAYEK: ECONOMIST AND SOCIAL PHILOSOPHER—A CRITICAL RETROSPECT 155 (Stephen F. Frowen ed., 1997). A focus on economics may also ignore what has also been referred to as the "intangible" sorts of control crucial to processes of spontaneous emergence. Geoffrey Brennan & Philip Pettit, *Hands Visible and Intangible*, 94 SYNTHESIS 209 (1993).

<sup>11</sup> The seeds of Hayek's notion of spontaneous order had germinated as early as his inaugural address at the London School of Economics: "the spontaneous interplay of the actions of individuals may produce something which is not the deliberate object of their actions but an organism in which every part performs a necessary function for the continuance of the whole . . ." Friedrich A. Hayek, *The Trend of Economic Thinking*, 40 ECONOMICA 121, 130 (1933). In his Presidential address three years later, Hayek remarked,

It appears that the concept of equilibrium merely means that the foresight of the different members of the society is in a special sense correct. It must be correct in the sense that every person's plan is based on the expectation of just those actions of other people which those other people intend to perform and that all these plans are based on the expectation of the same set of external facts, so that under certain conditions nobody will have any reason to change his plans.

FRIEDRICH A. HAYEK, INDIVIDUALISM AND ECONOMIC ORDER 42 (1948).

<sup>12</sup> BRUCE CALDWELL, HAYEK'S CHALLENGE: AN INTELLECTUAL BIOGRAPHY OF F. A. HAYEK 294 (2004) [hereinafter HAYEK'S CHALLENGE].

<sup>13</sup> A point made by Caldwell. See *id.* at 308; see also Karen Vaughn, *Hayek's Implicit Economics: Rules and the Problem of Order*, 11 REV. OF AUSTRIAN ECON. 129, 129-44 (1999); STEVE FLEETWOOD, HAYEK'S POLITICAL ECONOMY: THE SOCIO-ECONOMICS OF ORDER 141 (1995).

And yet, few scholars have studied Hayek's notion of *order*. In an essay published almost a decade after his first work on Hayek, John Gray contends that Hayek's thought "does not hold together" because his ideas "all emanate from a single conception that is at the heart of his work . . . the idea of a spontaneous order in society."<sup>14</sup> However, neither Gray nor any other Hayek scholar, with the exception of Kley, has extensively studied spontaneous order, even though Hayek's conclusions emanate from that concept. In order to do so, one must begin with the very idea of order.

## II. The Idea of Order: General Considerations

As Hayek himself admitted, "The concept of order is difficult."<sup>15</sup> In *The Sensory Order*, he noted that "An order involves elements *plus* certain relations between them."<sup>16</sup> Although an order does involve a relation among elements, one can also scrutinize the concept by its *source*, *content*, and *status*.

Hayek criticized the idea that orderly arrangements must be either born of nature or arranged through artifice. His alternative, spontaneous order, relies on the unintentional coordination of intentional action. Hayek argued that the source of an order is related to its principle. By what means is the orderly pattern generated or sustained? Is the principle of the pattern endogenous or exogenous to the order itself? One might assume, as Hayek seems to suggest,<sup>17</sup> that artificial patterns presuppose an external ordering principle, but that is not necessarily the case. The artifice manifest in the order of a battle may follow from a General's command, but if the General is part of the battle, then the ordering principle—the General's command—is internal to the order. Similarly, although one might assume that spontaneous ordering must require a principle internal to the order, that is also not necessarily the case. The pattern of a spontaneous order may emerge from a feature external to the individuals composing the order, as when a force of nature catalyzes a uniform mode of conduct. For example, in the tropics, the climate motivates certain patterns and rhythms of daily life.

Because every order is an order *of* something, every order has a content. As noted by Hayek, this content may be expressed abstractly in terms of elements and relations. The elements of an order might be physical, numerical, symbolical, ver-

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<sup>14</sup> John Gray, *Twentieth Century: The Limits of Liberal Political Philosophy*, in AN UNCERTAIN LEGACY, ESSAYS ON THE PURSUIT OF LIBERTY 193, 194 (Edward B. McLean ed., 1997). Similarly, Roland Kley concludes that the reason "the foundations of Hayek's liberalism are so incoherent" is that the "idea of spontaneous order lacks distinctness and internal structure." See KLEY, *supra* note 6, at 227. In his early work, Gray suggested that the idea of spontaneous order included three components: lack of intentionality, the "primacy of tacit or practical knowledge," and the "natural selection of competitive traditions." See GRAY, *supra* note 6, at 33–34 (emphasis in original). While the first feature, that social institutions may arise in some unintended fashion, is indeed an essential element of spontaneous order, the second two are only implications, not essential elements.

<sup>15</sup> FRIEDRICH A. HAYEK, THE FATAL CONCEIT: THE ERRORS OF SOCIALISM 15 (1988). I was reminded of this point by Bruce Caldwell. See HAYEK'S CHALLENGE, *supra* note 12, at 309 n.28.

<sup>16</sup> FRIEDRICH A. HAYEK, THE SENSORY ORDER: AN INQUIRY INTO THE FOUNDATIONS OF THEORETICAL PSYCHOLOGY 47 (1951).

<sup>17</sup> See HAYEK, RULES AND ORDER, *supra* note 9, at 36.

bal, or human. Its relations might be temporal, spatial, causal, logical, mathematical, evaluative, hierarchical, or functional. For example, an ordering of numbers might express a mathematical relation, and an ordering of words in a poem might express a temporal relation. When an ordering principle and some originating source are applied to any set of elements, a patterned whole that may exhibit a variety of relations will emerge. The set of elements may manifest more than one ordering relation. The order of seating at a gala dinner with the Queen will reflect both spatial and hierarchical relationships among the attendees.

The content of an order may also be characterized in terms of its status. An order may be real (composed of real elements) or hypothetical. Both real and hypothetical orders may be either descriptive or normative, depending on whether they express an existing set of relations among the elements or suggest how the elements ought to be related. Interestingly, Hayek presents both descriptive and hypothetical (or ideal) accounts of the law. The *fact* that an order of actions has emerged from a liberal order of rules suggests to Hayek that greater adherence to the meta-legal doctrine of the rule of law would generate a more complex and desirable spontaneous order. One set of elements may simultaneously exhibit multiple, distinct relations, and thereby form multiple, distinct orders. This practical reality must affect any understanding of spontaneous order. Compare Marx's understanding of market relationships to that of a liberal such as Hayek. Where Marx sees disorder and anarchy, Hayek finds order. This difference could be the result of Marx's failure to understand markets. But it may also be that the ordering relations that impress Hayek do not resonate with Marx.

Milan Kundera's discussion of the nature of "coincidence" illustrates the same point.<sup>18</sup> Early in his novel *The Unbearable Lightness of Being*, Kundera describes an encounter between two lovers, Tomas and Tereza, in the hotel restaurant where Tereza works. Tereza's yearning for love motivates her awareness of the "coincidence" that Tomas appears and the music of Beethoven simultaneously begins to play on the radio.

'Co-incident' means that two events unexpectedly happen at the same time, they meet: Tomas appears in the hotel restaurant at the same time the radio is playing Beethoven. We do not even notice the great majority of such coincidences. If the seat Tomas occupied had been occupied instead by the local butcher, Tereza never would have noticed that the radio was playing Beethoven (though the meeting of Beethoven and the butcher would also have been an interesting coincidence).<sup>19</sup>

Just as the relationship between any two unexpected events may be termed a coincidence, so may any set of elements be understood as an ordered relationship. Whether or not one considers a set of elements to be ordered depends on one's in-

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<sup>18</sup> The point, as well as the illustration from Kundera, are noted more fully in, Eugene Heath, *On the Normative Implications of a Theory of Spontaneous Social Order*, in IX THE STUDY OF TIME: TIME, ORDER, CHAOS 125, 129-34 (J.T. Fraser et al. eds., 1998).

<sup>19</sup> MILAN KUNDERA, *THE UNBEARABLE LIGHTNESS OF BEING* 51 (Michael Henry Heim trans., 1984).

terests. The identification of order is inherently teleological, because the very recognition of order is necessarily a function of an interest or purpose. Tereza is interested in romance. Tomas fits the bill, but the local butcher does not. Similarly, in society, one may be interested in some patterns but not others. These considerations suggest that the idea of order is less about the things ordered than our conceptions of them. This conclusion is essential to Hayek's methodological point: that because social facts rest on human conceptions, social orders depend upon inventive discernment. "We shall first have to invent the pattern before we can discover its presence."<sup>20</sup>

### III. From Order to Social Order

But what are these patterns of order? Hayek observes that "order" is a feature of every kind of society.<sup>21</sup> Every society manifests an "order," but the particular form of that order may differ from society to society. This is a factual claim ("Every society *S* exhibits some order *o*"), and is consistent with the idea that order is generated either spontaneously or by command. But it does not require that the attributed concept, *order*, be purely descriptive. On the other hand, even if the order of a particular society is manifested or recognized in relation to some purpose or *telos*, the order itself need not have any normative properties or even implications. However, what if a particular type of order—a spontaneous order!—featured some normatively valuable property, implication, or consequence? If there is a theoretical or conceptual link between Hayek's social and political theories, then spontaneous order must reveal one of these normative features.

Since Hayek does not offer a single or systematic account of the idea of order, one must reconstruct his idea of order from his writings. In *The Sensory Order* he makes the uncontroversial suggestion that order involves a relation among elements. In his 1967 essay, *Notes on the Evolution of Systems of Rules of Conduct*, Hayek affirmed that the elements of social order are actions, stating that "social order" refers to "the structure of the actions of all the members of a group."<sup>22</sup> Hayek understood that an inquiry into social phenomena is a study of human actions, not an account of physical motion, and that social order consists of human action. In fact, social sciences study the problems that appear when "some sort of order arises as a result of individual action but without being designed by any individual."<sup>23</sup> This is consistent with both Hayek's account of individualism and his belief that social phenomena must be studied via "our understanding of individual actions directed toward other people and guided by their expected behavior."<sup>24</sup>

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<sup>20</sup> HAYEK, *STUDIES IN PHILOSOPHY*, *supra* note 2, at 24; *see also* FRIEDRICH A. HAYEK, *THE COUNTER-REVOLUTION OF SCIENCE: STUDIES ON THE ABUSE OF REASON* (1952) [hereinafter HAYEK, *COUNTER-REVOLUTION*].

<sup>21</sup> Friedrich A. Hayek, *Kinds of Order in Society*, 3 *NEW INDIVIDUALIST REV.* No. 2, 3 (1964).

<sup>22</sup> HAYEK, *STUDIES IN PHILOSOPHY*, *supra* note 2, at 66 n.1.

<sup>23</sup> HAYEK, *COUNTER-REVOLUTION*, *supra* note 20, at 69.

<sup>24</sup> HAYEK, *INDIVIDUALISM AND ECONOMIC ORDER*, *supra* note 11, at 6 (1948).

But Hayek offers another definition of “order,” stating that a social phenomenon “is an order in which things behave in the same way because they mean the same thing to man.” He offers the example of a footpath that emerges as individuals walk through what was once “wild broken country.”<sup>25</sup> However, the emerging footpath is not itself an unintentional order. An order is not a particular thing, though it may be an arrangement of elements *within* a particular thing. A particular thing, event, or object may manifest the properties of an order. But the thing is not itself an order. Rather, an order is a state of affairs or facts.

And this brings us precisely to Hayek’s definition 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 [any] 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.*<sup>26</sup>

Therefore, according to Hayek, an order is a “state of affairs” in which the relations between a subset of elements constituting a whole provide a basis for expectations concerning the whole, a basis sound enough that those expectations “have a good chance” of proving correct. This account appeals to reliability: An order is a state of affairs that allows one to form reliable expectations about the status of elements not yet, or not currently, experienced.<sup>27</sup> Existing within this state of affairs, but not identical to it, are elements located in time and space, including physical objects, individuals, actions, expressions of ideas, and so on. The relations of these elements constitute a condition of the order of a state of affairs.

How should one construe these *relations*? Every relation between two things – even two physical things – is an abstraction, not a physical thing. For example, a physical property may be attached to an object, but a relation between two objects (or *n* objects) is not attached to either (or to any) object. Nonetheless, these relational properties are a condition of an order. But is an order defined by the *set of relations*? Or is it defined by the *expectations* generated by acquaintance with some subset of the relations? In other words, is an order:

- i. A set of relations among (multiple and various) elements; or
- ii. A set of relations among (multiple and various) elements, which set allows one to form from one’s acquaintance with a subset a set of reliable expectations about the rest; or
- iii. A set of reliable expectations about relations between (multiple and various) elements?

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<sup>25</sup> HAYEK, COUNTER-REVOLUTION, *supra* note 20, at 69–70.

<sup>26</sup> HAYEK, RULES AND ORDER, *supra* note 9, at 36 (emphasis in original).

<sup>27</sup> Note, in addition, that there may be multiple elements of various kinds. This consideration might seem unnecessary to a definition of order, but complex orders may require it.



Which of these is preferable? The first (i) defines an order without referring to whether the order is known. But setting aside the philosophical possibility of such a definition, it does not suit Hayek's theoretical position. According to Hayek, an order appears only when identified: "[W]e shall first have to invent the pattern before we can discover its presence."<sup>28</sup> If one is unaware of an order, it does not exist. The second (ii) unites the condition for drawing expectations with the reliability of those expectations. But relations do not constitute an order, even if they provide the basis for expectations regarding its reliability. Therefore, (iii) is the succinct and Hayekian account of order.

This account establishes only a definition of order *simpliciter*, not of social order. It does not imply that we draw every possible expectation from a subset of elements, only that the expectations that we actually draw are probably correct. A theorist may investigate how one acquires these expectations, but they need not concern an agent. For example, a shopkeeper acquainted with the preferences of his employees can form reliable expectations about other potential employees, but that merchant need not consider the origin of these expectations.

Turning from order to *social* order, Hayek offers the following definition:

Order with reference to society thus means essentially that individual action is guided by successful foresight, that people not only make effective use of their knowledge but can also foresee with a high degree of confidence what collaboration they can expect from others.<sup>29</sup>

The elements of social order are individual actions, or, more simply, *acting individuals*.<sup>30</sup> Relations that exist among these acting individuals are understood in terms of "successful foresight," presumably the equivalent of reliable expectations.

However, as Hayek recognizes, an account of social order must specify how expectations relate both to individual action (or the effective use of individual knowledge) and to collaboration. That one person may act on a reliable expectation of another's conduct does not demonstrate that this person can "make effective use of his own knowledge." Suppose that a person knowledgeable about turnips concludes that growing turnips will elicit a violent and destructive raid of his home, because marauders destroyed the homes of others who attempted to grow turnips. This person has a reliable expectation, but cannot necessarily use his knowledge effectively.

Therefore, Hayek suggests that the order of society should reveal something genuinely *social*. Expectations, however reliable, imply something social only if one stipulates that they apply to long-term interactions among numerous individuals. Thus, order in society refers not only to individual action guided by "successful foresight" but also to individuals making "effective use of their knowledge" and foreseeing "what collaboration they can expect from others." These general expectations ensue from the rule of law: liberal rules ensure that laws protect "a

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<sup>28</sup> HAYEK, COUNTER-REVOLUTION, *supra* note 20, at 24.

<sup>29</sup> See HAYEK, THE CONSTITUTION OF LIBERTY, *supra* note 2, at 160.

<sup>30</sup> One may assert that elements are individuals without any loss of meaning.

recognizable private domain of individuals,"<sup>31</sup> guaranteeing that some types of actions occur and others do not. In this framework, individuals (or combinations thereof) will act and interact in a variety of circumstances. Given the relatively rigid expectations generated by the rule of law as well as individual beliefs about particular circumstances, additional expectations will develop beyond the expectation that individuals will conform to the demands of the liberal legal order. Therefore, the total set of expectations is not identical with the laws or rules it depends on. Even if an agent *A* performs action *x* in circumstances *c* because that agent has internalized some rule *r* that requires *A* to *x* in *c*, and a spectator *S* expects that *A* will *x* in *c*, that expectation may exist not because of rule *r*, but because *A* and others similar to *A* follow *r* in *c*.

However, this account does not explain how the idea of social order is about relations among persons. If a social order consists in reliable expectations of the type just noted, those expectations must be held not by one individual but by *n*. Such expectations must manifest two forms of coherence. An individual's set of expectations is reliable insofar as the reliability of any single expectation is also compatible with that person's other expectations. However, one person's set of expectations can be reliable only if it is also compatible with the expectations of other persons. Therefore, order in society exists precisely insofar as the elements of society—acting individuals—have compatible and reliable expectations, including expectations about collaboration and the conditions for using individual knowledge. Hayek's assertion that the "matching of the intentions and expectations that determine the actions of different individuals is the form in which order manifests itself in social life" may refer to this notion of compatibility.<sup>32</sup> In operational terms, my expectation matches another person's when each of us discovers that each of our expectations proved correct. Consequently, the total set of expectations should reveal that any person's expectations are compatible with any other person's expectations.

This is a very rough account, deserving further elaboration. But does it suffer from a fundamental circularity? One might object that it is circular to assert that a social order is simply the set of reliable expectations<sup>33</sup> held by the individuals within it. The order is defined by reliable expectations and reliable expectations are identified as those held by individuals "within that order." But this objection merely takes advantage of imprecise language. Hayek rejects the idea that one must define a whole in order to describe a social order: "[T]he wholes about which we speak exist only if, and to the extent to which, the theory is correct which we have formed . . ."<sup>34</sup> In other words, one may inquire into the order of a putative whole. For example, a whole can be defined by criteria not invoked by the notion of order. One may evaluate the order of a whole defined by social, political, or

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<sup>31</sup> HAYEK, *STUDIES IN PHILOSOPHY*, *supra* note 2, at 162.

<sup>32</sup> HAYEK, *RULES AND ORDER*, *supra* note 9, at 36.

<sup>33</sup> Including those that establish a protected domain and delineate modes of cooperation.

<sup>34</sup> HAYEK, *COUNTER-REVOLUTION*, *supra* note 20, at 98.

geographic criteria. This is not circular and does not require one to deny that the order of a society may extend beyond the social, political, or geographic criteria used to identify the society.

#### IV. Spontaneous Social Order and Liberalism

We now can infer some characteristics of spontaneous social order and link them (albeit schematically) to Hayek's ideal of liberalism. Hayek's account of social order relies on compatible and reliable expectations. It is consistent with the patterns of a simple society, consisting of a few persons known to one another, each bearing a limited set of desires and dispositions and acting within and along a limited range of objects and avenues. However, it is also compatible with the sort of complex society achievable only via the spontaneous order that emerges from the rule of law. What distinguishes a spontaneous social order from other forms of social order? According to Hayek, spontaneous order generates the "maximal coincidence of individual expectations."<sup>35</sup> This "maximal coincidence" may refer not only to the sheer number of compatible expectations but also to their overall complexity. Not only are numerous reliable expectations operating, but also the overall set of expectations is complex. Perhaps there are relations among relations (expectations about expectations) of distinct types.<sup>36</sup> Hayek contends that "the central concept of liberalism is that under the enforcement of universal rules of just conduct . . . a spontaneous order of human activities of much greater complexity will form itself than could ever be produced by deliberate arrangement . . ."<sup>37</sup> If his argument is true, how does it provide any moral justification for the liberal rule of law?

Reviewing its general features, one notes that no explicit ordering principle either generates or sustains a complex set of reliable expectations. The order of society may include expectations about non-economic spheres like family, religion, or the purely social, outside the market order. If prices sustain certain market patterns, what generates or sustains the compatibility of expectations outside the ordering force of prices? What ensures that those expectations are compatible with the expectations generated by markets? These questions have yet to be answered, but even so one can, nonetheless, locate a moral property in the idea of spontaneous order. If Hayek's social theory provides a theoretical ground for his political theory, it does so at the level of the content of expectations.

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<sup>35</sup> HAYEK, RULES AND ORDER, *supra* note 9, at 107.

<sup>36</sup> Hayek, *Kinds of Order in Society*, *supra* note 21, at 4. In another essay, *The Theory of Complex Phenomena*, Hayek does suggest that the complexity of an order is determined by the number of "elements" necessary to realize it: "But there seems to exist a fairly easy and adequate way to measure the degree of complexity of different kinds of abstract patterns. The minimum number of elements of which an instance of the pattern must consist in order to exhibit all the characteristic attributes of the class of patterns in question appears to provide an unambiguous criterion." HAYEK, COUNTER-REVOLUTION, *supra* note 20, at 25. If *element* is understood in the sense in which it is used in defining "order," then this statement is incomplete.

<sup>37</sup> HAYEK, COUNTER-REVOLUTION, *supra* note 20, at 162.

Hayek suggests that the virtue of spontaneous orders is their complexity, relatively greater than all alternatives. Of what moral significance is this complexity? If the spontaneous orders are to supply a theoretical or moral justification for the liberal ideal of the rule of law, a moral value must attach to some property of spontaneous orders. In other words, the concept of spontaneous order can justify a liberal regime only if one (a) appeals to a moral feature implied by the content of the expectations constituting an order, or (b) adopts a neutral stance that both disregards the content of those expectations and holds that a spontaneous order coordinates the pursuit of the most general, shared moral ends. As noted above, Kley pursues the second option, arguing that the Hayekian social order provides the only conditions in which peace, the general welfare, and the resolution of conflict can be achieved.<sup>38</sup> But if the alternative strategy (a) is successful, then the idea of spontaneous order may itself justify liberalism.

Of course, such a justification is Hayekian, though not explicitly Hayek's. It presupposes that an illiberal political regime cannot generate the complex set of expectations constituting a spontaneous order. But its chief claim is that the content (or types of content) of at least some of the expectations of a spontaneous social order have a moral status that justifies liberalism. What are the properties or implications of the relevant expectations? Setting aside trivial and non-moral expectations, surely some expectations about the actions of others are reliable precisely because they are expectations about regular conduct. However, if expectations derive their reliability from the reliability of conduct, perhaps the conduct is reliable because it flows from qualities, traits, or dispositions common to the agents of an order. In other words, some expectations about the conduct of others may derive their reliability from qualities or dispositions of moral value and significance. Reliable expectations about the actions of others depend on the fact that others will act regularly and predictably. Yet the discrete decisions of others, undertaken in well-defined circumstances, cannot produce a regularity of conduct generative of such expectations. Rather, the predictability of another's actions implies something more than mere decision-making; it suggests the possession of underlying dispositions and qualities, some of which surely are virtues. One need not argue that all reliable expectations trace to qualities or dispositions, or that all qualities or dispositions are moral virtues. It is sufficient to show (i) that a subset of the reliable expectations generated in a spontaneous order implies the existence of underlying traits, (ii) that some of these traits are, if not virtues, at least morally significant, and (iii) that these traits are inextricably intertwined with the expectations generated in a spontaneous order.

What is crucial, of course, is that these qualities and dispositions are either unique to the complex social order of liberalism, or at least difficult to achieve or maintain in an illiberal regime. If such qualities exist, they may be qualities of ei-

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<sup>38</sup> See KLEY, *supra* note 6, at 194-99. Kley writes that "other non-instrumental, genuinely moral considerations are required to justify liberties, rights, and further institutions of a distinctly liberal complexion." *Id.* at 199.

ther capacity or content. The feature of liberal agency often understood as autonomy or self-determination is a quality of capacity. A quality of content refers to some specific disposition or trait that underlies, or motivates, the very actions from which others may form reliable expectations. Hayek occasionally refers to each type of quality. His most normatively engaged work, *The Road to Serfdom*, demonstrates a link between moral traits and the liberal political order. For example, he maintains that a spontaneous order leaves the “individual conscience free to apply its own rules . . . .”<sup>39</sup> And he notes as well that a liberal order will ensure the survival of traits like initiative, independence, self-reliance, tolerance, and “respect for custom and tradition.”<sup>40</sup> Traits such as initiative and self-reliance are capacity qualities because they constitute the inclination, readiness, or competence to do, undertake, or perform a variety of tasks and endeavors.

But Hayek is also interested in substantive traits, especially those of modern western civilization. Thus, in his foreword to *The Road to Serfdom*, Hayek states that one of the “main points” of the work is that “the most important change which extensive government control produces is a psychological change, an alteration in the character of the people.”<sup>41</sup> He refers to the “individualist tradition” that emerged after the Renaissance and remarks that it has come under siege.<sup>42</sup> Along with Hayek’s traditionalist account of individualism (articulated most explicitly in *Individualism: True and False*), this is evidence of Hayek’s moral interests and his perception that certain moral qualities are linked to the spontaneous order of liberalism.

Of course, a complete account of this sort of Hayekian justification of liberalism must demonstrate not only that specific traits of capacity depend on spontaneous order but that some specific substantive traits do so as well. Although this explanation has not been completed here, it seems clear that the argument itself is compatible with Hayek’s description of himself as an “Old Whig,” willing to allow some intervention into the marketplace, including a guarantee of a minimum income. It is also consistent with his traditionalism. Expectations in a spontaneous order emerge within historical and social circumstances. Although some moral qualities of capacity (such as initiative and independence) are essential to a spontaneous order, other substantive traits, such as those of modern western individualism, may be manifestations of a traditional inheritance that reflects the social order of a particular time and place. Therefore, this justification of Hayekian liberalism is loyal to both the ideals of liberalism and the traditions of an historical order.

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<sup>39</sup> FRIEDRICH A. HAYEK, *THE ROAD TO SERFDOM* 146 (reprint ed. 1956) (1944).

<sup>40</sup> *Id.* at 215.

<sup>41</sup> *Id.* at xiv.

<sup>42</sup> *Id.* at 20.

