

## **F. A. Hayek on Constructivism and Ethics**

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### **Introduction**

Long before receiving his Nobel Prize, Friedrich von Hayek was well respected in the academic community. John Maynard Keynes had glowing praise for Hayek's 1944 *The Road to Serfdom*.<sup>1</sup> Milton Friedman and Paul Samuelson, antagonists on many issues, agree that Hayek's 1945 "The Use of Knowledge in Society"<sup>2</sup> was a major contribution to political-economic thought. These early works by Hayek led a writer for the *Nation* to express what must have been the view of a great many, that "because [Hayek] is among the most thoughtful and consistent supporters of a market economy . . . , those who disagree with him cannot ignore him."<sup>3</sup>

Hayek's early reputation as one of the premier defenders of the free market has remained intact through more than thirty years of further writing on political philosophy. If the praise given the early works was a critical response to thoughtfulness and consistency, that given the later works was an uncritical response to past reputation. The main object here will be to argue that after *The Road to Serfdom* and "The Use of Knowledge in Society" Hayek's writings in political philosophy contain fundamental unresolved problems. First is the inconsistency between many of Hayek's positions in ethics. In particular Hayek endorses four ethical positions that cannot all be reconciled: relativism, Institutional Social Darwinism, utilitarianism, and contractarianism. Apart from their mutual inconsistency, at least one, and perhaps as many as three, of the positions are also inconsistent with Hayek's condemnation of the broad philosophical approach he identifies as "constructivism." Secondly, the distinction between constructivist rationalism and critical rationalism, upon which Hayek bases his evaluation of ethical positions, rests on the assumption that particular positions in epistemology, ethics and politics are closely linked. Yet Hayek's own examples refute that assumption. The final problem with Hayek's political thought is that each of his four ethical positions is independently open to attack. This final problem will not be emphasized since the standard objections to the four positions are well known.

### **Constructivism**

The distinction between constructivist rationalism, which Hayek condemns,

and critical rationalism, which he endorses, recurs frequently in Hayek's later writings. As Hayek uses the term, "constructivism" refers to particular positions on each of three distinct levels of discourse: epistemology, ethics and politics. Hayek apparently believes that the views on the respective levels are somehow connected, but he never makes clear the exact nature of that connection. It might be that he wants to claim that the views on one level follow almost as certainly as logical implications from those on another, but he does not say this explicitly. What he does say is that particular views on one level make views on another level "almost inevitable."<sup>4</sup> If in fact the positions on each level do go together in the way that Hayek believes, then his concept of "constructivism" is a useful abstraction. If they do not go together, then the concept would be a poor one for two reasons. First, we would find that a significant number of important thinkers would have some, but not all, of the main characteristics of the concept. Thus the concept would be of very limited usefulness in classifying intellectual phenomena. Second, and more importantly, it would lead us to accept and reject positions for the wrong reason: namely that the positions are thought (incorrectly) to be tied to other positions.

In this section the first task will be to isolate the views Hayek associates with constructivism on each level of discourse—i.e., in epistemology, ethics and practical politics. The second task will be to present and analyze a list drawn from Hayek of men in the constructivist and anti-constructivist groups. The purpose of the analysis will be to see how many of those whom Hayek identifies as constructivist did in fact hold constructivist views on all levels of discourse. If Hayek's constructivists frequently do not hold constructivist views on all three levels, then Hayek's use of the distinction between constructivist and critical rationalism will have been shown unsound. Our sources consist mainly of five essays and the first two volumes of *Law, Legislation and Liberty*.<sup>5</sup> The first essay, "Individualism: True and False,"<sup>6</sup> was written prior to his adoption of the term "constructivism" when, instead of referring to two sorts of rationalism, he made the same distinction in terms of "rationalists" and "anti-rationalists." The essays "Kinds of Rationalism"<sup>7</sup> and "The Errors of Constructivism"<sup>8</sup> contain Hayek's most extended comments on constructivism. Finally, there are his essays "The Results of Human Action But Not of Human Design,"<sup>9</sup> and "The Legal and Political Philosophy of David Hume."<sup>10</sup>

In epistemology, Hayek sometimes identifies constructivism with an attitude and sometimes with a particular method. The attitude is one of optimism with regard to the powers of human reason. Thus he says: "It is perhaps understandable that constructivist rationalists, in their pride in the great powers of human reason, should have revolted against the demand for submission to rules whose significance they do not fully understand, and which produce an order which we cannot predict in detail."<sup>11</sup> The opposite attitude, which Hayek himself endorses, views man "not as a highly rational

and intelligent but as a very irrational and fallible being. . . ."<sup>12</sup> When Hayek identifies constructivism with a particular epistemological method, the one that he picks out is Cartesian geometric deduction. According to Hayek, constructivism conceives of reason as "a capacity of the mind to arrive at the truth by a deductive process from a few obvious and undoubtable premises."<sup>13</sup>

In ethics, Hayek sees two constructivist positions: social contract theory and Benthamite utilitarianism. In regard to the former he says:

This "rationalist" approach . . . meant in effect a relapse into earlier, anthropomorphic modes of thinking. It produced a renewed propensity to ascribe the origin of all institutions of culture to invention or design. Morals, religion and law, language and writing, money and market, were thought of as having been deliberately constructed by somebody, or at least as owing whatever perfection they possessed to such design. This intentionalist or pragmatic account of history found its fullest expression in the conception of the formation of society by a social contract, first in Hobbes and then in Rousseau, who in many respects was a direct follower of Descartes. Even though their theory was not always meant as an historical account of what actually happened, it was always meant to provide a guideline for deciding whether or not existing institutions were to be approved as rational.<sup>14</sup>

In regard to the second constructivist position in ethics, Hayek claims that, "the constructivist interpretation of rules of conduct is generally known as utilitarianism." Speaking more precisely, constructivism is only characteristic of "the strict utilitarianism of Jeremy Bentham and his school" which "undertakes to judge the appropriateness of conduct by an explicit calculation of the pleasure and pain that it will cause."<sup>15</sup>

Finally, on the level of practical politics, Hayek identifies constructivism with socialist central planning. He claims that:

Rationalism in this sense is the doctrine which assumes that all institutions which benefit humanity have in the past and ought in the future to be invented in clear awareness of the desirable effects that they produce; that they are to be approved and respected only to the extent that we can show that the particular effects they will produce in any given situation are preferable to the effects another arrangement would produce; that we have it in our power so to shape our institutions that of all possible sets of results that which we prefer to all others will be realized; and that our reason should never resort to automatic or mechanical devices when conscious consideration of all factors would make preferable an outcome different from that of the spontaneous process. It is from this kind of social rationalism or constructivism that all modern socialism, planning and totalitarianism derives.<sup>16</sup>

The preceding should suffice as a documented summary of the various positions that Hayek associates with constructivism. The next step is to list and analyze those men whom Hayek identifies as either constructivist

rationalists or critical rationalists. The following table lists those explicitly mentioned by Hayek along with a citation to the source or sources of that reference.

*Men Identified as  
Constructivist Rationalists*

John Austin (S,\* p. 88;  
N,† p. 15)  
Francis Bacon (S, p. 85)  
Beccaria (S, p. 85)  
Bentham (S, p. 88)  
G. B. Chisholm (N, pp. 6,  
16-17)  
Auguste Comte (LLL,  
3:173; N, p. 14)  
Descartes (I, pp. 9-10;  
S, pp. 84-86, 94; LLL,  
3:173; N, pp. 5-6)  
Hegel (S, p. 93)  
Hévétius (S, p. 88)  
Alexander Herzen  
(N, p. 16)  
Thomas Hobbes (S, pp.  
85, 93; LLL, 1:9-10;  
N, p. 15)  
L. T. Hobhouse (N, p. 6)  
Hans Kelsen (N,  
pp. 17-18)  
Karl Marx (S, p. 93;  
N, p. 5)  
G. E. Moore (S, p. 88)  
Plato (S, p. 93)  
Hans Reichenbach  
(N, p. 16)  
Rousseau (S, p. 94; N,  
p. 6; LLL, 1:10)  
Torgny T. Segerstedt  
N, p. 6)  
B. F. Skinner (N, p. 6)  
Voltaire (N, p. 5)

*Men Identified as  
Critical Rationalists*

Lord Acton (S, p. 94)  
St. Thomas Aquinas  
(S, p. 94)  
Aristotle (S, p. 94)  
Edmund Burke  
(I,† p. 94)  
Adam Ferguson (I, p. 7;  
S, p. 99; N, p. 5;  
LLL, § 1:20)  
W. E. Gladstone  
(S, p. 85)  
David Hume (S, pp. 84,  
87; LLL, 1:20; N,  
pp. 5, 11)  
Bernard Mandeville (I,  
p. 9; S, pp. 84, 99;  
LLL, 1:20)  
Carl Menger (S, pp. 84,  
94, 99)  
Montesquieu (S, pp. 93-  
94, 99)  
Karl R. Popper (N,  
p. 11; S, p. 94)  
Adam Smith (I, p. 7;  
S, p. 99; N, p. 5)  
Alexis de Tocqueville  
(S, p. 94)  
Josiah Tucker (I, p. 7;  
S, p. 99)  
Giambattista Vico  
(I, p. 9)

*Men Identified as  
in the Middle*

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Humboldt (S, p. 94)

Immanuel Kant (S, p. 94)

John Locke (S, pp. 84, 98,  
107; N, p. 19)

John Stuart Mill (I, p. 11)

Herbert Spencer (I, p. 11)

\*"S" refers to Hayek, *Studies in Philosophy*. See note 7, *infra*.

†"N" refers to Hayek, *New Studies*. See note 8, *infra*.

‡"I" refers to Hayek, *Individualism*. See note 2, *infra*.

§"LLL" refers to Hayek, *Law, Legislation and Liberty*. See note 4, *infra*.

Though in general Hayek's analysis of Adam Smith and Bentham may be sound, it is worth noting that it was the constructivist rationalist Bentham who chastised the critical rationalist Smith for failing to recognize just how far the invisible hand could reach. Bentham's "In Defense of Usury"<sup>17</sup> makes a consistent case against Smith's advocacy of government-imposed interest rate ceilings. It may be argued, however, that in the context of their life work, the positions of Smith and Bentham on usury are not of great import.

Of rather more significance for evaluating Hayek's categories are Hegel and Marx, to whom we now turn. Friedrich Hegel and Karl Marx are identified as constructivists. But they certainly did not believe that all human society was the result of conscious design. Indeed, one of the main features of their systems was the necessary historical evolution of human institutions. It is in this crucial respect that Giambattista Vico has been viewed by some as a precursor of Hegel and Marx. Thus Maximilien Rubel claims that "it is in authors like Vico, Ferguson, and Mandeville that Marx seems to have found, in diverse and contradictory forms, the constituent elements of a Promethean vision of history."<sup>18</sup> If, as Hayek claims, Vico, Ferguson and Mandeville are critical rationalists, then it is inconsistent to identify Hegel and Marx as constructivist rationalists. But a consideration of these men reveals something more important than Hayek's inconsistency. What it reveals is that there is no inevitable connection between a belief in invisible-hand processes and a sympathy for the open society. Men from all points on the political spectrum have emphasized the explanatory importance of the undesigned, historical evolution of institutions. Normative approval of such a process does not imply approval of *laissez faire*.<sup>19</sup>

According to Hayek, Karl Popper is par excellence a critical rationalist. In fact, Popper does not share the pessimism toward the power of human reason which Hayek identifies as characteristic of critical rationalism. Recall the passage from Hayek on such pessimism and then reconsider the following passage on the same subject from Popper:

*Man can know: thus he can be free.* This is the formula which explains the link between epistemological optimism and the ideas of liberalism. This link is paralleled by the opposite link. Disbelief in the power of human reason, in man's power to discern truth, is almost invariably linked with distrust of man. Thus epistemological pessimism is linked, historically, with a doctrine of human depravity, and it tends to lead to the demand for the establishment of powerful traditions and the entrenchment of a powerful authority which would save man from his folly and his wickedness.<sup>20</sup>

Note that Popper and Hayek agree that there is a connection between politics and pessimism toward reason. But while Hayek sees such pessimism leading to classical liberalism, Popper connects it with authoritarianism. This is not sufficient to label Popper a constructivist rationalist, since on the level of practical politics he *does* meet Hayek's definition for critical rationalism (and perhaps also on the level of ethics). Instead, we claim that, as was true with Hegel and Marx, Popper fits neatly into *neither* of the categories. Thus what is questioned is not Hayek's categorization so much as the categories themselves.

So far, only individuals who have been explicitly classified by Hayek as either critical or constructivist rationalists have been discussed. But for Hayek's classification scheme the most embarrassing case is John Locke, a man who is never definitely labelled as either constructivist or critical.<sup>21</sup> Locke is almost universally recognized as one of the intellectual founding fathers of the open society,<sup>22</sup> yet he has one of the characteristics that Hayek identifies as clearly constructivist: his theory is one of social contract. So, like Hegel, Marx and Popper, Locke does not easily fit into either of Hayek's categories. This difficulty, of course, applies equally well to the social contract disciples of Locke, most notably Thomas Jefferson and Robert Nozick.<sup>23</sup>

When we add to the men discussed in the last few paragraphs all of those whom Hayek himself admits do not fall neatly into his categories (Spencer, Mill, Kant and Humboldt), then the obvious conclusion is that Hayek's categories are of little value because they wrongly presuppose that particular positions in epistemology, ethics and politics coincide. In fairness, it should be noted that the fallacy of making too simple a connection between epistemology, ethics and politics is not unique to Hayek. According to Alan Gewirth a similar fallacy is committed by such notable figures as Bertrand Russell, John Dewey, Jacques Maritain and Reinhold Niebuhr.<sup>24</sup>

### Hayek's Ethics

In the preceding section it was shown that Hayek's categories of "constructivist" and "critical" rationalism are of little use because they wrongly presuppose that there is a connection between beliefs on the different levels of discourse, when in fact no such logical or historical connection exists. In

this section attention will be focused on what Hayek has to say on just one of the levels—the ethical. Here we face an embarrassment of riches: Hayek adopts four distinct and mutually inconsistent positions in ethics, at least one of which he elsewhere condemns as constructivist. Since this is a strong and damaging claim, it will be documented by fairly extensive quotation from Hayek's works. The four ethical positions which Hayek endorses are those of relativism, Social Darwinism, utilitarianism, and social contract theory.

*Hayek the Relativist.* Hayek's pessimism toward the powers of reason and his respect for the historical evolution of institutions have already been noted. One ethical position that would be compatible with these views would be to claim that one is absolutely certain, through religious revelation, intuition or some other nonrational force, that one's own institutions are superior to all others. Alternatively, it would not be inconsistent with either Hayek's pessimism or his respect for traditions, to argue that all institutions can be evaluated only in relation to the values and other institutions of particular cultures. What follows is part of Hayek's endorsement of this sort of ethical relativism:

When we say that all criticism of rules must be immanent criticism, we mean that the test by which we can judge the appropriateness of a particular rule will always be some other rule which for the purpose in hand we regard as unquestioned. The great body of rules which in this sense is tacitly accepted determines the aim which the rules being questioned must also support; and this aim, as we have seen, is not any particular event but the maintenance or restoration of an order of actions which the rules tend to bring about more or less successfully. The ultimate test is thus not consistency of the rules but compatibility of the actions of different persons which they permit or require. It may at first seem puzzling that something that is the product of tradition should be capable of being both the object and the standard of criticism. But we do not maintain that all tradition as such is sacred and exempt from criticism, but merely that the basis of criticism of any one product of tradition must always be other products of tradition which we either cannot or do not want to question; in other words, that particular aspects of culture can be critically examined only within the context of that culture. We can never reduce a system of rules or all values as a whole to a purposive construction, but must always stop with our criticism at something that has no better ground for existence than that it is the accepted basis of the particular tradition. Thus we can always examine a part of the whole only in terms of that whole which we cannot entirely reconstruct and the greater part of which we must accept unexamined. As it might also be expressed: we can always only tinker with parts of a given whole but never entirely redesign it.<sup>25</sup>

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The much discussed question of "moral relativity" is thus clearly connected with the fact that all moral (and legal) rules serve an existing factual order which no individual has the power to change fundamen-

tally; 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. There can, therefore, be no absolute system of morals independent of the kind of social order in which a person lives, and the obligation incumbent upon us, to follow certain rules derives from the benefits we owe to the order in which we live.<sup>26</sup>

Few thinkers have been satisfied with a position of ethical relativism. Most want to be able to say that Idi Amin's bloodbath was wrong, not just relative to the arbitrarily preferred values of Western culture, but absolutely.

*Hayek the Social Darwinist.* Hayek's "Institutional Social Darwinism" may be compatible with his relativism if it is viewed as a purely descriptive (non-normative) doctrine. Hayek claims that: "The error of Social Darwinism was that it concentrated on the selection of individuals rather than on that of institutions and practices, and on the selection of innate rather than on culturally transmitted capacities of the individuals."<sup>27</sup> His own version of Social Darwinism is aptly summarized in the following paragraph:

These rules of conduct have thus not developed as the recognized conditions for the achievement of a known purpose, but have evolved because the groups who practised them were more successful and displaced others. They were rules which, given the kind of environment in which man lived, secured that a greater number of the groups or individuals would survive. The problem of conducting himself successfully in a world only partially known to man was thus solved by adhering to rules which had served him well but which he did not and could not *know* to be true in the Cartesian sense.<sup>28</sup>

Hayek's relativism would perhaps be more palatable if it could be shown that the institutions of free, civilized societies have had greater survival value than those of unfree barbaric ones. The institutions of Athens were presumably freer than those of Sparta, yet Athens was defeated. Few would argue that the Huns conquered the Romans because their institutions were freer or more civilized. Consider a third example. The Mongols conquered China, but did not complete their conquest of the tribes of Northern Europe. If good institutions pay off in terms of survival, then the inference has to be that the institutions of the European tribes were superior to those of the Mongols which were in turn superior to those of the Chinese. The inference is implausible on its face. However, far more likely is the explanation that the Mongols defeated the Chinese because of superior military technique and gave up on the European tribes because the Europeans were such a sorry lot that they were not worth the effort. The superior institutions of the Chinese produced material goods that attracted the Mongol looters while the inferior institutions of the European tribes created little beyond subsistence. So the superior culture of China was conquered, while the European tribes survived.<sup>29</sup> A single principle for the natural selection of



societies is hard to isolate, but the ability and will to wield force seems at least as important as free rules of conduct. Societies with relatively free and just institutions may or may not be the ones with the ability and the will to defend themselves.

It is open to question whether Hayek's doctrine of Institutional Social Darwinism is rightly classed as a doctrine of ethics at all. For Hayek explicitly says that "the frequent attempts made to use the conception of evolution, not merely as an explanation of the rise of rules of conduct, but as the basis of a prescriptive science of ethics, also have no foundation in the legitimate theory of evolution, but belong to those extrapolations of observed tendencies as 'laws of evolution' for which there is no justification."<sup>30</sup> But Hayek himself slides into a normative interpretation of his Institutional Social Darwinism. According to Hayek, evolution will result in the spontaneous order of which he approves: "rules of just conduct, like the order of actions they make possible, will in the first instance be the product of spontaneous growth."<sup>31</sup>

If institutional natural selection screens societies largely on the basis of their willingness and ability to wield force, then the existence of free societies cannot be *explained* on the basis of natural selection. Neither, if barbaric societies continue to survive, can free societies be *justified* on the basis of natural selection.

*Hayek the Utilitarian.* Hayek occasionally endorses a third sort of ethical position, utilitarianism. Here rules and institutions are not judged relative to cultures nor checked for their survival value, but rather evaluated for the good that they do for the members of the society. Hayek's most explicit endorsement of this sort of utilitarianism was made in the following passage:

Utilitarianism appears in its first and legitimate form in the work of the same David Hume who was so emphatic that "reason itself is utterly impotent" to create moral rules, but who at the same time insisted that the obedience to moral and legal rules which nobody had invented or designed for that purpose was essential for the successful pursuit of men's aims in society. He showed that certain abstract rules of conduct came to prevail because those groups who adopted them became as a result more effective in maintaining themselves. What he stressed in this respect was above all the superiority of an order which will result when each member obeys the same abstract rules, even without understanding their significance, compared with a condition in which each individual action was decided on the grounds of expediency, i.e., by explicitly considering all the concrete consequences of a particular action. Hume is not concerned with any recognizable utility of the particular action, but only with the utility of a universal application of certain abstract rules including those particular instances in which the immediate known results of obeying the rules are not desirable. His reason for this is that human intelligence is quite insufficient to comprehend all the details of the complex human society, and it is this inadequacy of our reason to

arrange such an order in detail which forces us to be content with abstract rules; and further that no single human intelligence is capable of inventing the most appropriate abstract rules because those rules which have evolved in the process of growth of society embody the experience of many more trials and errors than any individual mind could acquire.<sup>32</sup>

What might be called “moderate utilitarianism” also is endorsed in what remains Hayek’s best work in political philosophy, *The Constitution of Liberty*:

It is true enough that the justification of any particular rule of law must be its usefulness—even though this usefulness may not be demonstrable by rational argument but known only because the rule has in practice proved itself more convenient than any other. But, generally speaking, only the rule as a whole must be so justified, not its every application.<sup>34</sup>

Hayek’s “moderate utilitarianism” appears closely akin to rule utilitarianism, so it is relevant to record his recent comments on this brand of the position:

No system of generic or rule utilitarianism could treat all rules as fully determined by utilities known to the acting person, because the effects of any rule will depend not only on its being always observed but also on the other rules observed by the acting persons and on the rules being followed by all the other members of the society. To judge the utility of any one rule would therefore always presuppose that some other rules were taken as given and generally observed and not determined by any known utility, so that among the determinants of the utility of any one rule there would always be other rules which could not be justified by their utility. Rule-utilitarianism consistently pursued could therefore never give an adequate justification of the whole system of rules and must always include determinants other than the known utility of particular rules.<sup>35</sup>

Thus Hayek appears to have shifted from approval of moderate utilitarianism to condemnation of *all* utilitarianism.

*Hayek the Contractarian.* When Hayek condemns utilitarianism as constructivist it is not altogether clear whether this condemnation applies to all utilitarianism or just to that of the Benthamite-act variety. At least when judged on the criterion of optimism about the powers of reason, even Hayek’s moderate utilitarianism is more constructivist than his relativism or his Social Darwinism. But whatever we conclude about his utilitarianism, the final position that Hayek endorses is clearly of the sort that he elsewhere condemns as constructivist. The position that Hayek endorses in the second volume of *Law, Legislation and Liberty* is the Rawlsian version of social contract theory. In his preface Hayek claims that the differences between him and Rawls are “more verbal than substantive.”<sup>36</sup> The extent of Hayek’s

endorsement of Rawls may perhaps best be illustrated by the following line near the end of Hayek's second volume:

*The conclusion to which our considerations lead is thus that we should regard as the most desirable order of society one which we would choose if we knew that our initial position in it would be decided purely by chance (such as the fact of our being born into a particular family).<sup>37</sup>*

As anyone familiar with *A Theory of Justice* will recognize this is vintage Rawls in a cask marked "Hayek"; but recall what it is that Hayek is endorsing here. Rawls explicitly states that:

*My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant.<sup>38</sup>*

As noted in an earlier section of this paper, Hayek condemns as constructivist the

*intentionalist or pragmatic account of history [which] found its fullest expression in the conception of the formation of society by a social contract, first in Hobbes and then in Rousseau, who in many respects was a direct follower of Descartes. Even though their theory was not always meant as a historical account of what actually happened, it was always meant to provide a guideline for deciding whether or not existing institutions were to be approved of as rational.<sup>39</sup>*

If Hayek has shifted his position from the first volume to the second of what was meant to be a unified work, then surely he owes us a few lines explaining why. As it is, we are left with a major, unresolved inconsistency.

### Conclusion

Even in his early writings, Hayek emphasized the limitations of the individual human mind. His argument in "The Use of Knowledge in Society" was that no individual (or planning committee) could possibly comprehend the vast array of information about production possibilities (supply) and consumer valuations of products (demand) that is automatically summarized in market prices. The essay claims that the free market is the most efficient system for producing what people want at minimum cost but makes no claims that the free market is thereby morally preferred.

Hayek's problems arise when he goes beyond claims that can be evaluated within economic science. The human mind, Hayek says, is not just limited in its ability to synthesize a vast array of concrete facts, it is also limited in its ability to give a deductively sound ground to ethics. Yet here is where the tension develops, for he also wants to give a reasoned moral defense of the free market. He is an intellectual skeptic who wants to give political philosophy a secure intellectual foundation. It is thus not too surprising that what results is confused and contradictory.

## NOTES

I am grateful to Alan Gewirth and Burt Louden for useful comments. Some of the same points made here are discussed in an independently written paper by John N. Gray entitled "F. A. Hayek on Law, Liberty and Justice in a Liberal Society," (first draft, August 1979); revised and published under the title "F. A. Hayek on Liberty and Tradition," *Journal of Libertarian Studies* 4, no. 2 (Spring 1980): 119-37. Also relevant are the papers by Eugene F. Miller and Tibor Machan in Robert L. Cunningham, ed., *Liberty and the Rule of Law* (College Station, Texas: Texas A & M University Press, 1979). The final draft of this paper was written while I was a member of a Reason Foundation seminar supported by the Liberty Fund.

1. Friedrich A. Hayek, *The Road to Serfdom* (1944; reprint ed., Chicago: The University of Chicago Press, 1969).
2. Hayek, "The Use of Knowledge in Society" reprinted in Hayek, *Individualism and Economic Order* (Chicago: Henry Regnery Co., 1972), pp. 77-91. The article first appeared in the *American Economic Review* 35, no. 4 (September 1945): 519-30.
3. George Soule, review of Hayek's *Individualism and Economic Order*, *Nation*, September 25, 1948.
4. Hayek, *Law, Legislation and Liberty*, 3 vols. (Chicago: The University of Chicago Press, 1973-79), 1: 10.
5. *Law, Legislation and Liberty*. The first volume was published in 1973 and the second in 1976. The third and final volume was published in 1979.
6. Hayek, "Individualism: True and False," reprinted in *Individualism and Economic Order*, pp. 1-32.
7. Hayek, "Kinds of Rationalism," reprinted in Hayek, *Studies in Philosophy, Politics and Economics* (New York: Simon and Schuster, 1967), chap. 5.
8. Hayek, "The Errors of Constructivism," translated from the original German and reprinted in Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas* (Chicago: The University of Chicago Press, 1978), chap. 1.
9. Hayek, "The Results of Human Action But Not of Human Design," reprinted in *Studies in Philosophy*, chap. 6.
10. Hayek, "The Legal and Political Philosophy of David Hume," reprinted in *Studies in Philosophy*, chap. 7.
11. Hayek, *Studies in Philosophy*, pp. 92-93.
12. Hayek, *Individualism*, p. 8.
13. Hayek, *Studies in Philosophy*, p. 85.
14. Hayek, *Law, Legislation and Liberty*, 1: 10.
15. *Ibid.*, 2: 17-18.
16. Hayek, *Studies in Philosophy*, p. 85.
17. Jeremy Bentham, "In Defense of Usury," in W. Stark, ed., *Jeremy Bentham's Economic Writings* (London: George Allen and Unwin, 1952), 1: 121-207.
18. As quoted in Eugene Kamenka, "Vico and Marxism," in Giorgio Tagliacozzo, ed., *Giambattista Vico, An International Symposium* (Baltimore: The Johns Hopkins Press, 1969). Kamenka doubts that Vico was a significant influence on Marx, but he does not question that their systems, though independently developed, shared an emphasis on the historical evolution of institutions. In a footnote Hayek himself admits that "the idea [of social theory as the study of the unwanted social repercussions of nearly all actions] was clearly expressed by Adam Ferguson and Adam Smith, to mention only the authors to whom Marx was unquestionably indebted," *Studies in Philosophy*, p. 100.
19. Nor does normative disapproval of such a process imply disapproval of *laissez faire*. Joseph Schumpeter thought that there is an evolutionary process at work destroying capitalism. But he saw capitalism as a creative, liberating force, so he regretted the process of its destruction. See Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, 3rd ed. (New York: Harper & Row, 1962), pp. 61-163.
20. Karl R. Popper, "On the Sources of Knowledge and Ignorance," in *Conjectures and Refutations: The Growth of Scientific Knowledge* (New York: Harper & Row, 1965), p. 6.
21. Hayek often quotes approvingly Locke's discussion of one sense of the term "reason." See *New Studies in the History of Ideas*, p. 19; and *Studies in Philosophy*, pp. 84, 98, 107. But

- Hayek also says that "even Locke could not entirely escape [constructivist rationalism's] influence," *Studies in Philosophy*, p. 107.
22. Cf., e.g., Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967); and Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
  23. Hayek wrote the preface to the first German edition of Nozick's *Anarchy, State, and Utopia*.
  24. Alan Gewirth, "Philosophy and Political Thought in the Fourteenth Century," in Francis Lee Utley, ed., *The Forward Movement of the Fourteenth Century* (Columbus, Ohio: Ohio State University Press, 1961). Gewirth's essay is a masterful exposure of the fallacy, using as illustration intellectual figures from the Renaissance.
  25. Hayek, *Law, Legislation and Liberty*, 2: 25.
  26. *Ibid.*, 2: 26-27.
  27. *Ibid.*, 1: 23.
  28. *Ibid.*, 1: 18.
  29. The Mongol counter-example was suggested to me by John Berthrong.
  30. Hayek, *Law, Legislation and Liberty*, 1: 24.
  31. *Ibid.*, 1: 100.
  32. Hayek, *Studies in Philosophy*, p. 88.
  33. Hayek, *The Constitution of Liberty* (Chicago: Henry Regnery Co., 1972). Hayek seems to recognize that in many ways the *Constitution of Liberty* is superior to his final trilogy. See his comments in the preface to the third volume of *Law, Legislation and Liberty*, pp. xii-xiii.
  34. Hayek, *Constitution of Liberty*, p. 159.
  35. Hayek, *Law, Legislation and Liberty*, 2: 20.
  36. *Ibid.*, 2: xiii.
  37. *Ibid.*, 2: 132.
  38. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
  39. Hayek, *Law, Legislation and Liberty*, 1: 10.