



## F. A. Hayek: The Liberal as Communitarian\*

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**Abstract.** At the heart of Friedrich A. Hayek's social philosophy is a regard for the socially-constituted nature of man: the individual is not taken to be asocial or pre-social, but rather it is recognized that society *defines* the individual. The neglect of this aspect of Hayek's work by both liberal and communitarian, as well as libertarian, writers within political philosophy has led to his position being misrepresented, for Hayek's brand of liberalism is more akin to one variant of modern communitarianism than it is to the libertarian strain of liberal thought.

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Friedrich August von Hayek (1899–1992) is generally regarded as one of the premier advocates of liberalism in the twentieth century, and rightly so. He consistently throughout his career championed the ideals of individualism and the moral requirement of a liberal political and economic order. Yet at the heart of Hayek's social philosophy is a regard for the socially-constituted nature of man: the individual is not taken to be asocial or pre-social, but rather it is recognized that society *defines* the individual. This is a point which is often neglected in considerations of Hayek's political and social philosophy. Fellow liberals may acknowledge it, but focus attention on his individualist perspective; communitarians may acknowledge it, but highlight the negative aspects of his liberalism.

It will be argued here that the positions of both liberal and communitarian, as well as libertarian, writers within political philosophy present only a selective reading of Hayek. Consider the communitarian argument. The caricatured liberal accepts the predicate of an unconstituted self, for whom social obligation is secondary to personal rights. He rejects holism and organicism in favor of atomism, positing as the basic unit of analysis an egoistic individual situated outside his social milieu: there is a divergence of agency and structure. Having thus characterized liberalism, communitarian writers center their attacks on the insufficiency of the atomic postulate, and then proceed to question the justification of the social contract, the minimal state, and the central place of right and justice (distributive and procedural) within the social order. They argue that liberal approaches to social order

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fail because they lack an ontology that would permit the construction of a moral society; liberalism fails because it cannot comprehend that justice and fairness are *social* concerns, and cannot be understood absent an acceptance of a transcendent social group consciousness.

This understanding of liberalism, however valid it may be as a characterization of a modal type, is not, however, consistent with the social philosophy espoused by Hayek.<sup>1</sup> Specifically, it will be argued here that Hayek's brand of liberalism is more akin to one variant of modern communitarianism than it is to the libertarian strain of liberal thought, which is typically the target of communitarian critics. Even communitarian terminology can be found in Hayek's work, employed to the same effect and to the same vision. For Hayek, structure shapes agency, which then transforms structure. This is not to deny Hayek's liberalism, for his *bona fides* are well-established and beyond dispute. It is merely to attempt to refute the notion, made explicit by Michael Sandel in his elucidation of the communitarian thesis, that Hayek is representative of the philosophy of "libertarian liberalism," a philosophy which denies the socially-constituted nature of man.<sup>2</sup>

### 1. The Communitarian Arguments

The modern communitarian movement<sup>3</sup> began in large part as a reaction to the egalitarian liberalism of John Rawls' 1971 *A Theory of Justice* and the libertarian liberalism of Robert Nozick's 1974 *Anarchy, State, and Utopia*, and usually begin with broadsides against Immanuel Kant. Rawls and Nozick are accused of being anti-utilitarian (to the extent that utilitarianism "denies the distinction between persons" and so seeks to establish a definition of the social good as a greater benefit, the provision of which requires individual sacrifice), focusing instead on a "rights-based ethic," which treats individuals as separate and distinct. Both also "treat every person as an end and not merely as a means," and as a result "seek principles of justice that embody it" (Sandel 1998:66–67).

Communitarians generally hold that the liberal school perceives the individual as antecedent to any social order, meaning that he is unencumbered by the influences of his community or his environment; as he is free to choose, he is also capable of situating himself as circumstances dictate.<sup>4</sup> Man as a self-determinative, self-interpretive subject is relationally prior to purposes, so the right—defined to a large degree with respect to freedom of contract—is antecedent to the good, where the good is defined as an end to be pursued. As the individual is independent of social identity and can define the ends to be pursued—can question his very belief system—the liberal concern with right must be independent of any social conception of morality or ethics, which otherwise serve to define the good.

It is with this understanding that communitarian critics of liberalism begin the onslaught, taking their cues from the ancient Greek ideals of community and the bases of order. Alasdair MacIntyre, e.g., argues that the modern conception of virtue inherent in liberalism has strayed significantly from its Greek roots.<sup>5</sup> Specifically, he regards the modern understanding as representative of a shift toward the notion of the centrality of the individual, which shift has been most profound in defining the modern ethos. For MacIntyre, contemporary society is "emotivist"—moral questions are phrased in a rhetoric designed to give expression to *personal* standards and preferences; there is no objective morality, as morality, like preference, is relative. While emotivism denies the existence of an objective

standard of moral reference, it nonetheless proceeds as if moral *language* were on the same plane as objective principles of moral *conduct*. Yet it is clear that statements of personal value are fundamentally different from statements of principle, for the latter derive from objective standards and are not subject to personal definition. To deny this is to deny any role whatever for statements respecting moral conduct, for such statements no longer have any meaning (MacIntyre 1984:19–20). This makes it impossible to *define* moral conduct, for the language cannot facilitate the expression of concepts of virtue.

To see why this is so, it is enough to concede that emotivist society gives central place to individual sentiment. The emotivist self is a moral agent in the sense that it is capable of detached judgment, i.e., it can arrive at moral judgments “from a purely universal and abstract point of view that is totally detached from all social particularity” (MacIntyre 1984:32). So to the extent that virtue is identified with sentiment, virtue is *ipso facto* divorced from any concept of the social good: it is the *personal* standard which motivates *moral* behavior. As there is no basis upon which to secure agreement as to *rules*, since the emotivist self has no value structure beyond preference, there is no basis for agreement as to *social virtues*. Virtue—which MacIntyre sees as important “in sustaining those traditions which provide both practices and individual lives with their necessary historical content” (p. 223)—becomes from the emotivist standpoint entirely instrumental.

In MacIntyre’s communitarianism, social obligation requires a rejection of emotivism and a realization that human beings are first and foremost *social* agents. This requires in turn an understanding of a transcendent *telos*:

unless there is a *telos* which transcends the limited goods of practices by constituting the good of a whole human life, the good of a human life conceived as a unity, it will *both* be the case that a certain subversive arbitrariness will invade the moral life *and* that we shall be unable to specify the context of certain virtues adequately. (MacIntyre 1984:203; emphasis in original).

The problem lies in the unit of analysis. With the individual as subject, man is independent of his social and moral relationships. The common good is then constructed from individual preferences. With the community at the center, there is formed a bond, “a shared understanding both of the good for man and of the good of that community,” so that “individuals identify their primary interests with reference to those goods” (MacIntyre 1984:250). The common good is then the community standard through which preferences may be interpreted. It is through a combination of standards and rules, framing or boundary conditions, and inherited obligations (termed by MacIntyre practices, narrative unity, and tradition) that the individual is situated within a social frame of reference, and he thus is able to evaluate his preferences in terms of the community. Without such an understanding of the way in which individuals are connected to social communities, and the way in which these connections affect choice, there can be no understanding of or regard for moral virtue. Yet it is important to remember that the good of the community is not simply the sum total of individual goods, since the community good must itself be internalized by its members. In addition, the good of each individual must be seen as comprising more than the common good.<sup>6</sup> It is the failure of liberalism to recognize and to embrace the inherent sociality of the individual as exemplified in these concepts that MacIntyre sees as its central flaw.

So for MacIntyre, while the idea of community is crucial to the ideal of the social good, moral virtue is central to the concept of community: “a community which envisages its life as directed toward a shared good which provides that community with its common tasks will need to articulate its moral life in terms *both* of the virtues *and* of law” (MacIntyre 1984:169; emphasis in original). Without a clear understanding of the place of virtue in defining social morality, it is not possible to view the individual as situated in society, or to entertain any concept of the good.

Michael Sandel, by contrast, places the emphasis on a broader notion of the social good, one influenced by Aristotle’s conception of rights as redounding from “the moral importance of the ends they serve” (Sandel 1998:11). As the community is the *subject* of human motivations, good must be antecedent to right, and society antecedent to the individual. Yet an important qualification is in order. Sandel does not suggest (as MacIntyre does) that shared values or shared understandings are sufficient to ground a theory of justice, for these values and understandings must themselves be judged in terms of moral import. The resort to a community standard as an objective moral criterion is flawed in that the criterion itself is contingent on the constitution of the community. One can only escape this trap by acknowledging that the moral criterion is independent of social preference, that the good life is somehow a transcendent value. Ends are constitutive, and so the good is a categorical imperative, not a contingent, socially-prescribed goal.

With MacIntyre, Sandel considers the liberal notion of the individual (the “unencumbered self”)—as purposeful, rational, deliberative, and independent—to be at the core of what he perceives as a perverse juxtaposition of right and good. Specifically, he opposes the philosophy of “deontological liberalism,” which holds (1) that “society. . . is best arranged when it is governed by principles that do not *themselves* presuppose any particular conception of the good,” and (2) that these principles “conform to the concept of *right*, a moral category given prior to the good and independent of it ” (Sandel 1998:1; emphasis in original). This is somewhat different from Rawls’ use of the term. Rawls defines a deontological theory as “one that either does not specify the good independently from the right, or does not interpret the right as maximizing the good,” so that such approaches do not “characterize the rightness of institutions and acts independently from their consequences” (Rawls 1971:30). In any event, deontological liberalism is non-act-consequentialist—“certain categorical duties and prohibitions. . . take unqualified precedence over other moral and practical concerns”—and non-teleological—there is no presupposition of “any final human purposes or ends” (Sandel 1998:3).<sup>7</sup> It is here that the conflict arises.

In Sandel’s view, the “unencumbered self” at the center of the liberal position can feel a communal spirit only in the sense that he is free to associate with whomever he desires. This suggests that the moral choices of the individual arise from personal preferences and not from social attachments or the pressure of socially-prescribed behavioral norms; ends can be ranked, their relative value determined not by any perfectionist standard, but by own beliefs respecting moral choice. Objective, moral judgment has no place in such a rational order, as the right itself is paramount. Rights (such that promote freedom of choice) take precedence over the common good, and the principles necessary for the elucidation of those rights—typically subsumed under the banner of justice—are independent of any notion of the good. Since each member of the society is free to exercise his rights as he

sees fit (subject to the proviso that this exercise does not pose a burden to or deny the rights of others), the ends should be interpreted neutrally.<sup>8</sup> But the question arises, what of the *morality* of preferences? As Sandel argues, because (on the liberal argument) the individual has been situated relationally prior to his ends, rights become more significant than their moral content. As choice takes precedence over what is chosen, the individual is removed from any commitment to a larger conception of the good. In effect, a concern for basic individual liberties is granted precedence over moral obligation and moral virtue; rights need no justification beyond their inviolability. Thus, on the liberal model, nothing has any hold on the individual beyond the satisfaction of his own immediate wants (the good redounds to expressions of personal utility), and so nothing in his external relations can serve as binding constraints on these desires.<sup>9</sup>

By insisting on an entirely subjective self, given only to voluntary associations and so not bound to any social ends, liberalism (at least in the Rawlsian sense, the form explicitly condemned by Sandel) denies that the individual can be in any way shaped or influenced by his social ties or by shared moral understandings; the unencumbered self is by definition completely purposeful in *choosing* ends (so the end becomes the *object* of free choice), a profoundly Kantian notion.<sup>10</sup> Where ties of community and beneficence exist, they are made without reference to any antecedent value structure, the result of a choice among competing aims. But Sandel believes more is required:

What is denied to the unencumbered self is the possibility of membership in any community bound by moral ties antecedent to choice; he cannot belong to any community where the self *itself* could be at stake. Such a community—call it constitutive as against merely cooperative—would engage the identity as well as the interests of the participants, and so implicate its members in a citizenship more thoroughgoing than the unencumbered self can know. (Sandel 1984:87).

Sandel does therefore allow that liberalism can indeed support a theory of community, and even follows Rawls in identifying two: the instrumental (private society) and the sentimental (cooperative society). The instrumental community arises from cooperative arrangements designed in pursuit of selfish aims; it “is not held together by a public conviction that its basic arrangements are just and good in themselves, but by the calculations of everyone. . . that any practicable changes would reduce the stock of means whereby they pursue their personal ends” (Rawls 1971:522). The sentimental community (which Rawls favors), by contrast, allows the individuals comprising it to cooperate through a realization of mutual or shared benefit; those who constitute the community possess “shared final ends and. . . value their common institutions and activities as good in themselves” (p. 522). The sentimentalist approach to community precludes pure egoism, all the while sustaining the centrality of self. While the individual *can* make sacrifices for the benefit of others, he is under no obligation (as a matter of justice) to do so.

Yet while liberal theories of justice *can* support community, neither of these approaches suffices as the basis of the *communitarian* community, as they lack the necessary ontology. To the instrumentalist, “the good of community consists solely in the advantages individuals derive from co-operating in pursuit of their egoistic ends”; it is “wholly *external* to the aims

and interests of the individuals who comprise it.” To the sentimentalist, the individual is antecedent, and so “the good of community. . . consists not only in the direct benefits of social co-operation but also in the quality of motivations and ties of sentiment that may attend this co-operation”; it “is partly *internal* to the subjects, in that it reaches the feelings and sentiments of those engaged in a co-operative scheme” (Sandel 1998:148–149; emphasis in original).

Still, Sandel finds both conceptions wanting as both require the “antecedent individuation of the subject.” His alternative views the community as both subject and object of motivations; it would retain Rawls’ sentimentality, but would be radically different in that the idea of community “would describe not just a *feeling* but a mode of self-understanding partly constitutive of the agent’s identity,” so that identity follows from community (Sandel 1998:150; emphasis in original).<sup>11</sup> Sandel thus argues that a theory of community must extend beyond an understanding of the social nature of the aims and value-structure of the individual members; the self and the ends pursued cannot be understood in isolation, as the former defines the latter. The community serves to inculcate in its members a respect for these standards of behavior and conduct, to forge a sense of obligation. It is not enough to accept that each member of a community is governed by feelings of a shared morality or shared sentiments, i.e., to insist that the popular will be indicative of community morality. A theory of community must also accept as a first condition that each individual *identifies himself with, and is only realized through*, his community relationships and the sense of moral obligation this embodies, i.e., that he perceives his *individual* identity in terms of the *social* identity; in G. W. F. Hegel’s felicitous phrase, “[w]hen I promote my end, I promote the universal, and the universal in turn promotes my end” (Hegel 1821:187). In a sense, then, one cannot *choose* whether to belong, since then the community would be little more than the object of personal sentiment. Rather, the community itself defines choice, the “sense of community” being reflective of individual identity (Sandel 1998:150). One embarks on a journey of discovery, of self-knowledge, through which one succeeds in gauging one’s constituent nature. The concept of community therefore becomes intimately tied to the very values of each individual comprising the society.

Thus the self is never truly unencumbered, for each member of the society must have knowledge of the existing social arrangements and institutional structures, and each must be cognizant of both his individual desires and the means to their attainment. This “encumbered self” is ultimately a moral creature, obligated to pursue ends not of his own choosing, ends grounded in virtue and stipulated by culture and tradition.<sup>12</sup>

In sum, communitarians base their attacks on individualist theories of justice on the ontological foundations of those theories. They aim to replace the “thin” self of libertarianism with a “thick,” socially-embedded self. For some, such as MacIntyre, the community or society in which the individual functions, not the individual himself, determines in large measure his constitution. They do not deny that “individuals matter.” Rather they stress that it is the social setting which identifies the individual and induces feelings of community and self. For others, such as Sandel, the right cannot be judged absent a moral judgment of the good. The moral claims of community cannot of themselves *declare* an end to be good, for then the end itself is derivative from preferences. Morality must be understood as distinct from preference, whether the preference of the individual or the preference of

the community; it cannot be seen as derivative, but must be viewed as prior to any such judgment. In general, the communitarian message is that ends define conduct, but they are not themselves the objects of choice. As subject, the community is the basis of individual identity; as object, the individual is bound to the motives of the community. Thus the community (in terms of the social collective and the moral conscience) is not a mere voluntary association, but is a constitutive force defining individual purpose and existence. As Sandel phrases it:

To imagine a person incapable of constitutive attachments such as these is not to conceive an ideally free and rational agent, but to imagine a person wholly without character, without moral depth. For to have character is to know that I move in a history I neither summon nor command, which carries consequences nonetheless for my choices and conduct. (Sandel 1984:90).

## 2. Hayek: Individualism Within the Social Complex

The above attack on liberalism is taken to be encompassing of *all* variants, including egalitarian liberalism (the focus of the attack) and libertarian liberalism as well (the latter represented by Nozick, Ludwig von Mises,<sup>13</sup> and Murray Rothbard). The question, of course, is whether there can be a *communitarian* liberalism, a philosophy of individualism that explicitly accounts for a transcendent morality. In what follows, it will be shown that Hayek actually articulated just such a social philosophy, supplementing deontological ethics with a critical social ontology which communitarians insist is a necessary component of moral theory. The blanket condemnation of liberalism thus simply cannot be applied to Hayek, as he explicitly accounts for the very elements communitarians regard as essential.

### 2.1. *Obligation and Duty*

On Hayek's definition, the fundamental principle of liberalism is "that in the ordering of our affairs we should make as much use as possible of the spontaneous forces of society, and resort as little as possible to coercion" (Hayek 1944:21). It is "a doctrine about what the law ought to be," and to this end seeks "to persuade the majority to observe certain principles" (Hayek 1960:103–104). Before pursuing this further, it is necessary to understand Hayek's distinction between *rules* and *orders*.<sup>14</sup> Rules are abstract principles that serve to *guide* individual behavior, but which otherwise promote no specified end;<sup>15</sup> orders are edicts designed to *compel* behavior to a preordained end. Rules frame individual action by maintaining "spheres of responsibility," identifying "certain attributes which any such action ought to possess" (Hayek 1976:14); orders coerce in an effort to promote an outcome. Rules fashion choice by limiting the possible actions one may choose to those which custom, habit, and tradition (as "informal" rules) have designated as morally correct (they in effect promote negative liberty, permitting what is not expressly prohibited).<sup>16</sup> As such, this "holding of common values, may secure. . . that a pattern or order of actions will emerge which will possess certain abstract attributes" (p. 14); the rules themselves, as they

serve “the preservation of an equally abstract order,” must be seen not as independent ends to be pursued or means to the achievement of ends, but rather “as ultimate values, indeed as the only values common to all and distinct from the particular ends of the individuals” (pp. 16–17).<sup>17</sup> The communitarian philosopher Charles Taylor actually expresses it well: “Rules operate in our lives, as patterns of reasons for action, as against merely constituting causal regularities. . . . Express rules can only function in our lives along with an articulated sense encoded in the body. It is this habitus that ‘activates’ the rules” (Taylor 1995:179–180). In like fashion, MacIntyre holds that “rule-following is an essential constituent of some of those virtues that both we ourselves and others must have,” and that a “failure to observe certain rules may be sufficient to show that one is defective in some important virtues” (MacIntyre 1999:109).<sup>18</sup> Man is an inherently social agent, acting within the confines of the community, and it is this frame to responsible action provided by rules as common values that is most important in promoting this sociality and sense of community, while at the same time respecting individuality and free choice.

Important in this regard is the Kantian notion of duty—“that action to which someone is bound”—or obligation—“the necessity of a free action under a categorical imperative of reason” (Kant 1797:15).<sup>19</sup> This is significant in that Hayek resurrects Kant’s ideal of the categorical imperative as indicative of “one criterion to which particular rules must conform in order to be just” (Hayek 1960:197). For Kant, duty (as “the unconditional ought”) unites with freedom of choice through the device of self-constraint, making the choice of *performing* one’s duty an ethical choice. In fact, in Kant’s view, ethics *connects* free choice with duty, as it provides “an end of pure reason which it represents as an end that is also objectively necessary, that is, an end that, as far as human beings are concerned, it is a duty to have.” This end—“an object of the choice”—must “be given *a priori*, independently of inclinations” (Kant 1797:146). But this still requires a determination of *ends* that are also *duties*. Kant specifies two: (1) self-perfection, the “cultivation” of understanding and will “so as to satisfy all the requirements of duty,” and (2) the happiness of others. In performing these duties, the individual acts so as to promote not only his own interest, but also the best interests of the community (pp. 150–151).

With this we return to Hayek. The concern of the liberal philosopher is “to find a set of institutions by which man could be induced, by his own choice and from the motives which determined his ordinary conduct, to contribute as much as possible to the needs of all others” (Hayek 1948:12–13). Of critical importance to Hayek’s position are the twin ideals of liberty and individual responsibility, ideals which echo the Kantian sentiment. Hayek regards it as almost axiomatic that a “free society will not function or maintain itself unless its members regard it as right that each individual occupy the position that results from his action and accept it as due to his own action” (Hayek 1960:71). Freedom is not valuable in and of itself, but has value to the extent that it provides the means to the fulfillment of our plans. Freedom aims for “the enlargement of those capacities in which man surpasses his ancestors and to which each generation must endeavor to add its share—its share in the growth of knowledge and the gradual advance of moral and aesthetic beliefs” (p. 394). As such, it follows a presumption of reasonable or rational behavior, which of necessity includes the acceptance of individual responsibility. The assignment of responsibility compels one to view his actions in the light of their consequences; it serves the function “of a convention



intended to make people observe certain rules” (p. 75). This is of such great import that Hayek maintains it as a pillar upon which liberty rests: “the argument for liberty can apply only to those who can be held responsible” (p. 77). But this responsibility itself redounds to freedom of choice.

Consider this contention further. The freedom to act, if it is to have meaning, must be broad enough to allow wrongdoing, i.e., to allow one to decide on an unpopular or even illegal course of action; it cannot be confined to “action in conformity with moral rules,” for otherwise the actions are not freely taken but are rather the result of coercion (Hayek 1960:79). For a “free society” to function, its members cannot be constrained to behave in some agreed-upon “right” fashion, but rather must be “in some measure guided by common values” or standards of judgment, described by Adam Smith as “certain general rules concerning what is fit and proper either to be done or to be avoided” (Smith 1790: Part III, Ch. 4, Sec. 7, p. 159).<sup>20</sup> Each individual in a society has a personal “scale of values” (a “protected sphere”) which gives him his identity and with which the State or the community must not interfere. The only legitimate device available then to channel behavior to more desirable ends is a sense of moral duty, “the only principle by which the bulk of mankind are capable of directing their actions” (p. 162).<sup>21</sup> It is indeed to this duty that one must look for a socially-correcting influence. One may agree with H. L. A. Hart—that “[r]ules are conceived and spoken of as imposing obligations when the general demand for conformity is insistent and the social pressure brought to bear upon those who deviate or threaten to deviate is great” (Hart 1994:86)—and as a consequence acknowledge that responsibility and a sense of moral esteem combine, with the least amount of formal coercion, to *limit* one’s free choice of actions, to restrain him through moral opprobrium from performing those activities which may have socially harmful consequences (to the extent that they impinge on the “protected spheres” of others).<sup>22</sup> Responsibility and obligation and the onus of social disapproval thus combine to compel rational action as they guide choice to the pursuit of socially-acceptable ends.<sup>23</sup>

While this may appear to be a restraint on freedom of action, it is so only to the extent that it is a *personal* or *own* restraint, one derived from an understanding and acceptance of one’s moral duty. (Hayek denies the legitimacy of *social* or *collective* responsibility.) It is in effect an evolved form of social custom, “a device that society has developed to cope with our inability to look into other people’s minds and, without resorting to coercion, to introduce order into our lives” (Hayek 1960:77). (It is significant that, in this passage, Hayek explicitly maintains that order is introduced into “our” lives, and not “their” lives, thereby suggesting that responsibility is indeed not coercive.) Our awareness of a moral duty is inherent in our constitution, part of our socially-embedded nature: “It is part of the ordinary nature of men. . . and one of the main conditions of their happiness that they make the welfare of other people their chief aim” (p. 78).<sup>24</sup> Yet the acceptance of personal responsibility and the feeling of obligation is nonetheless a free act, and not the product of a coercive state, demanding conformity to a social norm. Actions are free to be taken so long as one is willing to bear the *consequences* of those actions, including the onus of social ostracism and the potential loss of personal advantage deriving from the inability to achieve desired objectives. The important point is that personal responsibility born from moral duty is inextricably entwined with free, individual action in a liberal society.<sup>25</sup>

## 2.2. *The Social Order*

These notions of duty, responsibility, and rule-following inform Hayek's social philosophy and provide the foundation for the Good Society. Hayekian individualism<sup>26</sup> is "primarily a *theory* of society, an attempt to understand the forces which determine the social life of man" (Hayek 1948:6; emphasis in original). More importantly, it is a theory of social order predicated on an understanding of man as socially constituted, his "whole nature and character" deriving from his social existence (p. 6).<sup>27</sup> Its fulfillment requires "the universal acceptance of general principles as the means to create order in social affairs" (p. 19), its essence being "respect for the individual man *qua* man" (Hayek 1944:17). Hayek's individualism thus stands in stark contrast to atomistic approaches which isolate man from society, approaches which provide "no cohesion other than the coercive rules imposed by the state," such that "all social ties [are merely] prescriptive" (Hayek 1948:23).<sup>28</sup> It is in a sense more in line with Max Weber's (1947) concept of "social action," and Émile Durkheim's understanding of man as "a sociable animal," his consciousness deriving from "the nature of the group" of which he is part (Durkheim 1893:285, 287).<sup>29</sup> Indeed, consistent with Weber's "social relationship"—whereby individuals subjectively account for the actions of others in orienting their own actions—and Durkheim's "social solidarity"—an amorphous moral phenomenon manifested (in this case, objectified) in the law and custom—we have Hayek's conception of the necessity of the individual *voluntarily* submitting himself to social rules, "noncompulsory conventions of social intercourse. . . essential. . . in preserving the orderly working of human society" (Hayek 1948:22). (Hayek explicitly condemns the notion of solidarity "in the true sense of unitedness in the pursuit of known common goals," a position he attributes to Durkheim and other "constructivists," but does accept it as it refers to "common purpose." To accept solidarity in the "true sense" would be to acknowledge the existence of known ends, and that indeed "such a common scale of ends is necessary for the integration of the individual activities into an order," which, as we have seen, Hayek denies (Hayek 1976:111).) For all three, social relations inform custom and ultimately codified law as if through a community (or collective, as Durkheim prefers) consciousness (whether directed toward a known end or merely common purpose). In addition, as Steve Fleetwood argues, the positions of Weber and Durkheim, taken together, seem to inform Hayek's social philosophy: Weber's "voluntarism" allows that agency generates structure, while Durkheim's "reification" allows that structure constrains agency. Hayek takes the additional step of completing the circle (Fleetwood 1997:130, 147). This should not, however, be seen in any case as a movement away from individualism.<sup>30</sup> To the contrary, for Weber, Durkheim, and Hayek, it is a realization that "egoistic" individualism is an oxymoron: it is simply not possible to envisage the individual apart from his social and cultural moorings.<sup>31</sup> Of the greatest importance for the individual is not the freedom to act indiscriminately, in selfish pursuit of his own well being, but rather the "freedom some person may need in order to do things beneficial to society. This freedom we can assure to the unknown person only by giving it to all" (Hayek 1960:32).<sup>32</sup>

As the social nature of man is then understood, the matter ultimately reduces to the structure of the social order itself, specifically to the method of social cohesion. The choice is between surrendering to the "blind forces of the social process and obeying the orders of

a superior,” between choice within an impartial and impersonal framework, and coercion leading ultimately to the absence of choice. To Hayek, the former provides the only means of sustaining individual freedom within the community, for while accepting the centrality of self, this method at the same time acknowledges the critical fact that actions are not taken in a vacuum. Choice is constrained, not ceded to a controlling authority. Submitting to the “anonymous and seemingly irrational forces of society” at least *allows* one a choice of acting within the limits provided by the rules, a choice that is not granted to those constrained by orders; individualism constrained by rules actually *promotes* freedom (Hayek 1948:24). It is the demand for a *constructed* morality, the product of a known intelligence that seeks to direct individual action and to define individual initiative, that Hayek sees as a surrender of individualism and freedom.

In *The Constitution of Liberty* (1960) Hayek makes the case quite forcefully. Convention and custom, those spontaneous and undesigned rules to which we voluntarily adhere, provide the pattern for the “orderliness of the world in which we live,” our shared moral values being the most significant of these. For a free society to function, there must be a conformity to such strictures (although we need not be aware that we are so conforming, as the values are often mere “unconscious patterns of conduct,” demonstrating an adherence to “firmly established habits and traditions”). Hayek in fact holds it to be “a truth, which all the great apostles of freedom outside the rationalistic school have never tired of emphasizing, that freedom has never worked without deeply ingrained moral beliefs and that coercion can be reduced to a minimum only where individuals can be expected as a rule to conform voluntarily to certain principles” (Hayek 1960:62).<sup>33</sup> It is here that one sees a distinction between rational (including, but not limited to, utilitarian) and anti-rational approaches to liberalism. To the rationalist (who views the world through the lens of the scientific tradition), custom and habit have little meaning, as institutions emerge as warranted, the result of deliberate design; this approach aims at a constructed morality suited to a known and identifiable collective purpose.<sup>34</sup> To the anti-rationalist (the moralist), tradition and collective institutional memory are essential, with purposive institutions developing spontaneously through an evolutionary selection process which is inherently tradition-bound; this approach allows that a common sense of morality develops as the outgrowth of an evolutionary process which then serves to inform action.<sup>35</sup> Yet it is only to the anti-rationalist tradition that morality has any place in informing conduct, as these institutional structures channel the baser instincts of man to the ultimate pursuit of the socially beneficial; as Herbert Simon observes, “institutions provide a stable environment for us that makes at least a modicum of rationality possible” (Simon 1983:78). The rationalist tradition, by contrast, is inherently teleological, as it perceives the question of “collective interest” as one reducible to human understanding and hence rational deliberation to an identifiable end; the result is that, as Carl Jung so eloquently states, scientific rationalism “robs the individual of his foundations and his dignity,” leading him to “become a mere abstract number in the bureau of statistics” as he is reduced to “the role of an interchangeable unit of infinitesimal importance” (Jung 1990:9). For Jung, the intrusion of scientific rationalism destroys individual moral responsibility and indeed the “moral and mental differentiation of the individual,” replacing it with an abstract notion of “public welfare” coincident with the provision of mere satisfaction (p. 8).<sup>36</sup> Morality becomes little more than an anachronism. It is indeed within this context

that one sees the profundity of Michael Polanyi's observation, that "moral rules control our whole selves rather than the exercise of our faculties, and to comply with a code of morality, custom and law, is to live by it in a far more comprehensive sense than is involved in observing certain scientific and artistic standards" (Polanyi 1962:215).<sup>37</sup>

Consider this further. Morals, Hayek maintains (following David Hume), "are not a product but a presupposition of reason, part of the ends which the instrument of our intellect has been developed to serve" (Hayek 1960:63); "ought" is not derivable from "is."<sup>38</sup> The rules governing social intercourse are the embodiment of the knowledge of a given epoch—the customs, folkways, mores, and traditions of a culture which serve to fashion habits of thought and so restrain action but which are nonetheless themselves only imperfectly understood (and so represent tacit knowledge). These moral principles thus must be (for the purposes of understanding their genesis) antecedent to the institutional structure, as they serve the function of standards of cooperative conduct and so are, in one sense at least, *ex ante* rationally determined and rationally accepted (in the sense that, in establishing the terms for the construction of the moral order, we accept these conditions as necessary, all the while being oblivious of their constitution).<sup>39</sup> While they indeed "govern our lives," nonetheless "we can say neither why they are what they are nor what they do to us: we do not know what the consequences of observing them are for us as individuals and as a group" (p. 64). They are as much a part of our nature as is language. Jung phrases it most succinctly, when (in contrast to the beliefs of the Freudian school) he states that morality, "the instinctive regulator of action," "is a function of the human soul, as old as humanity itself. Morality is not imposed from outside; we have it in ourselves from the start—not the law, but our moral nature without which the collective life of human society would be impossible" (Jung 1966:27).

These shared values (including the institutional structure) define ends, establishing bounds to agency. Tony Lawson stresses the fact that the social structure is presupposed by human agency, so that "individual agents draw upon social structure as a condition for acting, and through the action of individuals taken in total the structures are *reproduced* or *transformed*" (Lawson 1994:150; emphasis in original).<sup>40</sup> Yet as we exist *within* the bounds of these structures or principles, these rules of play, while we can effect a transformation (an evolutionary change), we cannot effect their wholesale reconstitution, nor can we entertain more than incremental alterations.<sup>41</sup>

At the level of the individual, all this is merely to say that ends are constitutive of self, and so the self must be socially embedded. The unencumbered and emotivist self has no place in Hayekian liberalism (or, for that matter, in Jungian psychology); there seems to be no real inconsistency between Hayek and MacIntyre, e.g., on the importance of practices, narrative unity, and tradition in providing the means for situating the individual socially. Yet Hayek goes even further, distancing himself from the standard liberal theology (as defined by communitarians) as he explicitly rejects teleology and the rationalist possibility that a system of morality *can* be synthesized,<sup>42</sup> for such a constructed morality implies that social interactions are mere extensions of personal preference orderings, and so are independent of the rules of the game.

Utilitarianism is a case in point. For the utilitarian, social utility derives from individual utility, which then serves to produce a rational social morality. Morality ultimately redounds

to some measure of social preference. Yet a problem arises, this being the possibility that, in maximizing *social* utility—promoting “the greatest happiness of the greatest number”—it may be necessary to restrict liberty, to disadvantage certain identifiable segments of the population; one group may be required to lose so the society can realize an even greater gain. The promotion of the social interest as the maximization of social utility can then result in an immoral outcome, as segments of the community are (however temporarily) denied the rights and freedoms enjoyed by others.<sup>43</sup> The welfare of the majority is given precedence over the rights of the individuals in the minority. So long as we allow that the addition to social utility defines morality, there is nothing to prevent such an outcome, as there is no objective moral standard by which we are to judge situations.<sup>44</sup> Utilitarianism and all other synthetic moral systems are thus actually inconsistent with morality, since morality must *inform* preference, not be the *product* of it.<sup>45</sup> The very fact of human nature *derives from*, and is not the *cause of*, our shared morality (Hayek 1960:64–65).

This objection applies to all forms of act-consequentialism, not merely utilitarianism.<sup>46</sup> Specifically, Hayek sees in the notion of “social consciousness” the same pernicious influences evident in rationalism, extended to the social realm. The socially-conscious individual must be supposed to act with full knowledge of the social consequences of his actions, and must seek to maximize some result taken to be the “social good.” The problem, of course, is that, in *defining* social consciousness, we are still left with the prospect of relying on individual judgment and hence individual preference respecting *specific* cases. Social consciousness is therefore little more than an attempt to substitute reason for general moral rules, a prospect made infinitely more difficult because, while moral rules established by habit and custom (from “behind the veil of ignorance”) are effective as they apply to all in a dispassionate and fair manner, any attempt at *constructing* morality based on rational preference would require everyone involved to accept those preferences, with full knowledge of the consequences for themselves and for others.

The rules of morals are instrumental in the sense that they assist mainly in the achievement of other human values; however, since we only rarely can know what depends on their being followed in the particular instance, to observe them must be regarded as a value in itself, a sort of intermediate end which we must pursue without questioning its justification in the particular case (Hayek 1960:67)

The only recourse is an affirmation that shared moral rules of conduct and the acceptance of these rules by the members of the society—shared values not susceptible to deconstruction and rational demonstration—form the basis of community. In Sandel’s terminology, the community (in the strong sense) “must be constitutive of the shared self-understandings of the participants and embodied in their institutional arrangements, not simply an attribute of certain of the participants’ plans of life” (Sandel 1998:173). But this is equally expressive of Hayek’s understanding as well. While the individual is clearly at the center of the Hayekian order (as has been noted), Hayek nonetheless explicitly argues in favor of this central tenet of communitarianism, that of the socially-constituted self, whose “whole nature and character” are determined by the community of which he is a part.

Here we come to consider Hayek's understanding of "social wholes," and to motivate this discussion it is necessary to introduce some additional concepts. Wholes are structures the existence of which are not determinable from a mere analysis of their constituent parts, nor are the constituent parts readily observable. In *The Sensory Order*, Hayek offers a clear statement of the significance of this for the study of man and society. Here he maintains a distinction between objective reality (the "physical world") and our subjective apprehensions of that reality (the "phenomenal world"), holding "that it is possible to construct an order or classification of events which is different from that which our senses show us and which enables us to give a more consistent account of the behaviour of the different events in that world" (Hayek 1952:173). Science, then, is not merely a descriptive discipline, but rather is constructive, relational, and taxonomic, as it involves a constant search for classes and categories and seeks connections between and among events (p. 174).

Yet while Hayek eschews any concern with essences, as one can only relate a sense-datum to an order or class, this does not mean that he is not concerned with structure: the *objects* of knowledge may indeed be real structures existing independently of our apprehension of them. All Hayek argues is that we are capable of experiencing *only* the phenomenal world, which is at best a "first approximation" of the "true" reality—an objective order which we assume exists and underlies the phenomenal order—all the while cognizant of the fact that our ordering of these phenomena "try and approach ever more closely towards a reproduction of this objective order" through successive alterations in our classes and categories (Hayek 1952:173). Structure is not simply imposed by the imagination upon the objects of our perception, but rather the mind categorizes phenomena and then uses this material to refine further its categories (and this is part and parcel of the learning process), until the underlying structures, which themselves cannot be perceived, are nonetheless identified. In this Hayek would appear to be in agreement with the position of the transcendental realist philosopher Roy Bhaskar:<sup>47</sup>

It is through our acquired skills of perception that we come to be in a position to formulate propositions concerning the behaviour of things, to identify and describe the flux of events. But it is through our manipulative powers that, by interfering with the course of nature, (this flow of events), we are able to check the reality and study the operation of the hypothetical generative mechanisms that in the scientific imagination we picture as responsible for their behaviour (Bhaskar 1997:240–241).

For Hayek, then, social wholes (as specific examples of the above) "as such are never given to our observation but are without exception constructions of our mind." They are the categories into which we place our observations. We are capable of perceiving only the *actions* of individuals, not the *structures* within which they operate, and it is from these actions (as phenomena) that we surmise or postulate the existence of structural relationships (rules and other ordered relationships). These wholes then "refer to certain structures of relationships between some of the many things which we can observe within given spatial and temporal limits and which we select because we think that we can discern connections between them—connections which may or may not exist in fact" (Hayek 1979:96–97). Despite the fact that it is so constructed, the "social sphere" is nonetheless critical in promoting

“a certain structural connection between the parts,” with the “social wholes. . . thus maintained [being] the condition for the achievement of many of the things at which we as individuals aim, the environment which makes it possible even to conceive of most of our individual desires and which gives us the power to achieve them” (pp.145–146).<sup>48</sup>

Thus Hayek is neither instrumentalist nor sentimentalist; his community is indeed constitutive. Ends are not mere *attributes* of self; they are *constituents* of self. This can be rationalized in another sense. One of Sandel’s chief criticisms of Rawls is that the latter routinely regards “community” and “collective” as equivalent. To Sandel this is unacceptable because “community” implies situation (belonging) and so is best understood as representative of “attachments” and “participation,” while “collective” implies voluntary association and so is representative of “relationships” and “cooperation” (Sandel 1998:151–152). Yet it should be noted that Hayek goes to great lengths in justifying the use of the term “community” and in refraining from the use of the term “collective.” Community is antecedent to the self, while the collective suggests a rationally-constructed organization designed to promote sought-after ends; there is even here an implicit distinction between what Taylor (1995:190–192) defines as “mediate” and “convergent” goods (where “good” is defined in the broad sense), goods central to a shared social identification versus common goods of instrumental (ego-enhancing) value.<sup>49</sup> Hayek’s insistence on the constituted, embedded self is thus sufficient to classify him as promoting a communitarian aim. It appears, then, that the only characteristic distinguishing Hayek from Sandel is Hayek’s insistence that right (justice) take priority over any conception of the “social good.”

### 2.3. *Social and Distributive Justice*

Having established that Hayek accepts the communitarian definition of community (or do the communitarians actually come to accept the position of Hayek?), the question remains as to the meaning of this concept in respect of ascribing a “public” or “social” interest. The Good Society, as Hayek envisions it, is “one which we would choose if we knew that our initial position in it would be decided purely by chance,” i.e., from behind the veil of ignorance (Hayek 1976:132).<sup>50</sup> While the “rules of just conduct” once established can indeed change, it is not the case that they may be employed to alter the actual positions of specific persons or groups, but rather only “to improve as much as possible the chances of anyone selected at random” (pp. 129–30). Rules must be of a universal nature, not reducible to individual facts but applying equally to all. To Sandel, however, it is not enough to base arguments respecting social inequality, for example, on notions of fairness alone; one must also take into account the corrupting influences manifested in the actual conditions of poverty and opulence alike. The spirit of community depends to a great extent on a sense of mutuality and shared fate that is impossible in an atmosphere of class conflict. Yet Sandel readily admits that such proposals as might be made to alleviate the inequities in the distribution are meaningless if they rely for their legitimacy on the promotion of a free exercise of choice rather than on the promotion of a community ethic, as the remedies then are little more than palliatives, mere extensions of the liberal philosophy (Sandel 1996:330). The *interest* of the community and the *notion* of community itself are thus intimately bound.

Here the distinction between Hayek and the communitarians is clear indeed. To Hayek, the connection between the priority of the community and the affirmation of a specified community *interest* cannot be made, for the community is a relationship of shared identifications, values, and commitments, not an instrumentality designed for individual or collective purposes. For there to be a “social” interest would require an acknowledgment of the existence of both identifiable and mutually-reinforcing individual ends, and by extension a prescribed social end. This would presuppose that the community (the State) is an organic whole capable of *defining* ends; it would appear to be “a quasi-animate personality from whom everything is expected” (Jung 1990:11). This possibility Hayek denies. Any social order (of which the market is one example) “operates on the principle of a combined game of skill and chance in which the results for each individual may be as much determined by circumstances wholly beyond his control as by his skill or effort” (Hayek 1967b:172). The purpose of the State is thus the limited one of enforcing the rules of play, of “the securing of conditions in which the individuals and smaller groups will have favourable opportunities of mutually providing for their respective needs” (Hayek 1976:2). While the individuals may identify themselves through their community, they nonetheless act independently in pursuit of personal goals; the individual acts within an institutional framework that inculcates a value system which governs conduct, yet at the same time he cannot be said to be acting in concert with others to the fulfillment of a community end. The community has no end, and little legitimacy beyond the maintenance of an environment conducive to individual initiative.<sup>51</sup> The State therefore (as a manifestation of a political community) cannot legitimately employ resources to the attainment of *particular* group ends or to the promotion of “just” deserts, as these are illegitimate impositions; it must reserve concern solely to the purpose of providing “the conditions for the preservation of a spontaneous order which enables the individuals to provide for their needs in manners not known to authority” (p. 2).

Consider in this regard the notions of “social justice” and “distributive justice.” To Hayek, “only situations which have been created by human will can be called just or unjust,” and so justice “always implies that some person or persons ought, or ought not, to have performed some action” (Hayek 1976:33).<sup>52</sup> But “social justice” has come to be defined by extension “as an attribute which the ‘actions’ of society, or the ‘treatment’ of individuals and groups by society, ought to possess” (p. 62), and thus “presupposes that people are guided by specific directions and not by rules of just individual conduct” (p. 69). It is employed solely in an effort “to evaluate the effects of the existing institutions of society” (p. 63). Social justice is animated by a desire to arrive at a measure of social utility as aggregated individual utilities, and then to identify from this aggregate a social morality. But this is clearly illegitimate, for, as mentioned above in terms of utilitarianism, it denies the embeddedness of the self, and the subordination of preferences to morality. Justice can only apply to the correctness of *conduct*, of *actions*, not to the appearance of *consequences*; so long as actions are just, the unforeseen consequences of those actions cannot be interpreted as just or unjust. As an inherently *individual* notion, justice applies solely in respect of adherence to the rules governing *individual* conduct; only *individuals* are capable of acting purposefully, for only individuals are goal-directed. Society, by contrast, is neither constructed nor purposive, and so its outcomes are neither intentional nor foreseeable;<sup>53</sup> the very idea of a “social result” has no meaning. While one may question the legitimacy of the process itself and so



characterize the *arrangements* as “unjust,” one cannot legitimately so label the *outcomes* of the process once begun (Hayek 1967b:171).<sup>54</sup>

Fairness and equality have meaning only in so far as justice is applied consistently and equitably. Social justice, by contrast, has a teleological component, absent from Hayek’s procedural justice. Implicit in the design of social justice is “a hierarchy of ends, . . . a complete ethical code in which all the different human values are allotted their due place.” But as an end is (in Kant’s phrase) “an object of choice,” the existence of such a hierarchy implies that there exists “a comprehensive scale of values in which every need of every person is given its place” (Hayek 1944:57–58), an obvious impossibility in even the most utopian social complex (an ideal state in which predictability is perfect and certainty is achieved) but nonetheless a necessary condition to the advancement of the utilitarian order. The lack of “a comprehensive scale of values” giving rise to “a complete ethical code” argues against the consequentialism required of social justice, and by extension calls into question the very idea of a purposive society. As Hayek denies that society is purposive, he must ultimately reject the notion of social justice.<sup>55</sup>

The same objection applies to distributive justice. The promotion of a pattern of distribution requires the governing authority to extend its mandate beyond the enforcement of general rules to the promotion of a prescribed end. Nicholas Rescher puts it succinctly enough in suggesting that “[t]he task of a theory of distributive justice is to provide the machinery in terms of which one can assess the relative merits or demerits of a distribution, the ‘assessment’ in question being made from the moral or ethical point of view” (Rescher 1966:7). To be viable, such a concept must allow a ranking of alternative distributions from among which we may choose, and this is where the problem arises. Distributive justice, to have any validity, demands an *ideal* as the basis for judgments of outcomes. But under *actual* conditions, this cannot be forthcoming absent an imposition by authority. The establishment of a system dedicated to the furtherance of distributive justice is therefore coercive insofar as it *imposes* a given *pattern* of distribution; social ends then supersede individual ends. In contrast to Michael Walzer’s assertion—that, by its very nature, “[h]uman society is a distributive community,” as “we come together to share, divide, and exchange” (Walzer 1983:3)—for Hayek the only equality that the State can be justified in promoting is equality before the law, and such patterned arrangements as required by distributive justice clearly violate this mandate. Justice resides not in the *pattern* of distribution, but rather in the *mechanism generating* the distribution. Any action taken to “correct” the distribution must be discriminatory, allocating reward not on the basis of value but on the basis of merit. But it is from *value* that obligation arises: “What determines our responsibility is the advantage we derive from what others offer us, not their merit in providing it” (Hayek 1960:97).

Consider the case of social insurance. Sandel criticizes the American system as relying too heavily on voluntarism, and too little on a sense of community obligation: the impetus in the organization of the program was not an appeal to the structure of community so much as it was an effort to secure access to the political and economic systems (Sandel 1996:282–283). Hayek’s concern, by way of contrast, accounts for community *and* voluntarism. Protection for the vicissitudes of life Hayek regards as an obvious “duty of the community” (Hayek 1960:285). To the extent that individuals perceive this duty and undertake to make provision for their own welfare, there is no problem. Yet it is obvious that not all will be able or be

willing to so provide, and so it becomes “the recognized duty of the public” to “compel” such contributions, the justification being that, in failing to do so, those who opted out would eventually “become a charge to the public” (p. 286).<sup>56</sup> The communal interest in the security afforded by a “safety net” outweighs parochial concerns respecting the sanctity of individual choice.<sup>57</sup> The criterion Hayek maintains is as follows:

Wherever communal action can mitigate disasters against which the individual can neither attempt to guard himself nor make provision for the consequences, such communal action should undoubtedly be taken. (Hayek 1944:134).

Thus we see the apparatus of a social institution engaged in the promotion of a community ethic (something which Sandel and Walzer and others trumpet).<sup>58</sup> Yet this role itself is limited, confined to the mere *facilitation* of the development of an institutional structure dedicated to the maintenance of such arrangements, and even then State involvement is to be temporary, to see the process through the transition. The State has the catalytic function of securing the climate for the promotion of social insurance; it is not, however, justified in establishing a permanent central authority to this end, as this compulsory membership requires a degree of coercion beyond the performance of duty.<sup>59</sup>

### 3. Which Community?

One aspect of the above discussion requires further elaboration. To motivate this exercise, consider the following from Jung:

All the highest achievements of virtue, as well as the blackest villainies, are individual. The larger a community is, and the more the sum total of collective factors peculiar to every large community rests on conservative prejudices detrimental to individuality, the more will the individual be morally and spiritually crushed, and, as a result, the one source of moral and spiritual progress for society is choked up. . . . It is a notorious fact that the morality of society as a whole is in inverse ratio to its size; for the greater the aggregation of individuals, the more the individual factors are blotted out, and with them morality, which rests entirely on the moral sense of the individual and the freedom necessary for this. (Jung 1966:152–153).

With this sentiment Hayek appears to be in agreement, so long as the nature of the morality in question is understood. According to Hayek, the Great Society is an outgrowth of earlier tribal societies, and the moral sentiments underlying it derive from these pre-industrial arrangements. The problem, however, lies in the fact that the Great Society is no mere *extension* of the tribal society, and so the common sense of loyalty found in the latter is irrelevant to the moral order of the former. The attempt to extend tribal morality, with its “parochial sentiments,” to a more extended, complex social order, means a diminishing of the scope of the common sense of morality: while “tribal” morality holds that “the enforceable duties towards all are to be the same,” and so “the duties towards none can be

greater than the duties towards all,” this ethos is clearly not extendable to the modern social order (Hayek 1976:146).

Yet such sentiments continue to hold sway, and the dilemma of the modern industrial culture is that man has yet to free himself from those earlier “deeply ingrained instincts to let himself be guided in action by perceived needs” (Hayek 1976:146). An early expositor of the communitarian message, John Dewey, laments that the development of modern capitalism, in uprooting the stable social relations that had developed in pre-industrial society, destroyed “the loyalties which once held individuals, which gave them support, direction and unity of outlook on life” (Dewey 1999:26).<sup>60</sup> With this notion Hayek takes exception, as such a position ignores the fact that the evolution of economic relationships led to a commensurate alteration of the moral fabric of society. Hayek in fact regards those who hold views such as Dewey’s as engaged in “a vain attempt to impose upon the Open Society the morals of the tribal society” (Hayek 1976:147).<sup>61</sup> Even modern communitarians recognize that the pluralistic nature of modern society reduces the influence of “tribal” morality; as MacIntyre proclaims, while “versions of the traditional scheme of the virtues survive,” it is nonetheless the case that the separate and disparate voices “are all too easily interpreted and misinterpreted in terms of the pluralism which threatens to submerge us all” (MacIntyre 1984:226).

MacIntyre, of course, sees salvation in a return to the Aristotelian virtues, wherein society accepts an ideal of the good life towards which we all must strive.<sup>62</sup> For MacIntyre, “my good as a man is one and the same as the good of those others with whom I am bound up in human community. There is no way of my pursuing my good which is necessarily antagonistic to you pursuing yours because *the* good is neither mine peculiarly nor yours peculiarly—goods are not private property” (MacIntyre 1984:229). As a result, for the communitarian at least, the situation as described by Jung simply cannot come to pass: the social morality and the moral sense of the individual are co-extensive, and form the basis of a truly just and free society.

But as we know, large societies are indeed pluralistic, comprised of smaller groupings, each with its own mission and perceived loyalties; pluralism is the result of an inability to arrive at a transcendent *telos*. Even MacIntyre recognizes this fact, seeing in the expansive concept of *Volk* a misconceived attempt to extend community and kinship loyalties to the nation as a whole (MacIntyre 1999:132–133). The alternative to a reliance on the ancient virtues as the basis of community morality, in Hayek’s view, is to acknowledge that a *new* morality has indeed emerged, one consistent with the complexity of the new social order. To accept this is to understand that equality “is possible only under a system in which individual actions are restricted merely by formal rules rather than guided by their known effects” (Hayek 1976:147). Society in the large is fundamentally different from society in the small, yet the evolution of the complex order has proceeded ahead of the evolution of the social ethics demanded of it. In Hayek’s estimation, the imposition of “moral rules which can be justified only by a rational insight into the principles on which this order is based,” is the sole alternative to a system predicated on “the unreflected ‘natural’ emotions deeply grounded on millennia of life in the small horde” (p. 147).<sup>63</sup>

This is anathema to MacIntyre and other communitarians, who feel as though, as the basis for moral belief has shifted from the virtues to rules, the individuals within the society

have become disengaged. The rules themselves, and not the underlying moral sentiments, come to be viewed as virtuous; he even invokes the name of Adam Smith who, in contrast to Kant, “did in fact allow for one moral area in which rules will not supply us with what we need: there are always borderline cases in which we do not know how to apply the relevant rule and in which niceness of feeling must therefore guide us” (MacIntyre 1984:236). The communitarian critique centers on just these “inherited instincts,” these tribal morals, as examples of the virtues made anachronistic by the move to the Open Society but which must be resurrected if the moral society is to flourish.

Yet Hayek understands that the complexity of modern society militates against any attempt at resurrecting a community end, such as is required of a return to the Aristotelian virtues that serve to define the common good, since all such attempts “to turn it [the modern social order] into a community by directing the individuals towards common visible purposes, must produce a totalitarian society” (Hayek 1976:147). In small social groupings, the problem of moral cohesion does not arise because of the closeness of the members and the unity of purpose. Yet this small-group solidarity—the striving for a common purpose—is inapplicable to the dynamics of the new, incompletely-evolved social order. Shared identifications, values, and commitments, sentiments which had in the tribal societies become virtues in themselves, no longer are adequate as the basis for community. It is just as evident that they persist in the absence of a clear and demonstrated alternative. What is needed, in Hayek’s opinion, is time “to learn the rules of the market,” and to leave behind the “intuitive craving for a more humane and personal morals corresponding to . . . inherited instincts” (p. 146).

Of significance here is the idea of *directing* interests towards a *community* purpose. This should not be interpreted as a denial of a common sense of *morality*—or even Smith’s “niceness of feeling”—for the realization of a duty to adhere to common rules of behavior is the outgrowth of just such a morality. Rather, it is a rejection of the idea of desert. The extended, Great Society cannot promote a specific concept of the good, some agreed-upon common end, for this alone is incapable of serving as a basis for the coalescing of interests in a social complex. It must instead content itself with abstract rules respecting conduct. The moral component is essential; in the modern society, one cannot justify pursuit of a common end through mere reference to a common purpose.

#### 4. Concluding Remarks

To summarize, to the extent that communitarianism is a social philosophy that identifies the individual as socially constituted, Hayek is indeed a communitarian in the broad sense of that term (and no less so than are Weber and Durkheim). This is enough to sustain the objection to his being associated without qualification with the libertarian strain of liberalism, the egoistic or *laissez-faire* variant which perceives society as individually-constituted, and not constituting. For Hayek, the individual is a product of society, and social relationships are critical in molding feelings of community and belonging, as well as instilling a moral vision; doubtless also Hayek would find little disagreement with Jung’s claim that “the value of a community depends on the spiritual and moral stature of the individuals composing it” (Jung 1990:18). The genius of Hayek’s contribution lies in his understanding that agency

and structure are interdependent, “that the structures possessing a kind of order will exist because the elements do what is necessary to secure the persistence of that order” (Hayek 1967a:77).

More significantly, Hayek clearly affirms a social ontology lacking in many other liberal theories, a qualification many of his communitarian critics and others (typically philosophers) who have commented on his social theory are loathe to assert.<sup>64</sup> Hayek is thus (as one communitarian writer notes of Wilhelm von Humboldt, for whom Hayek expresses the highest regard) “fully aware of the (ontological) social embedding of human agents but, at the same time, prizes liberty and individual differences very highly” (Taylor 1995:185). This is most clear in Hayek’s essay, “Why I Am Not a Conservative,” appended as a postscript to *The Constitution of Liberty*. Hayek acknowledges that, despite its emphasis on stasis, continuity, and order in social affairs (and the need for any alteration in the social order to be supervised), conservatism displays “an understanding of the meaning of spontaneously grown institutions such as language, law, morals, and conventions,” an appreciation for “which the liberals might have profited” (Hayek 1960:400). As Michael Oakeshott frames it, those disposed to conservatism “know the value of a rule which imposes orderliness without directing enterprise, a rule which concentrates duty so that room is left for delight” (Oakeshott 1991:435). Hayek’s objection to conservatism centers on its lack of “an understanding of the general forces by which the efforts of society are co-ordinated” (Hayek 1960:401), which understanding is provided in classical liberalism. Hayek nonetheless goes so far as to identify his own philosophy as lying “midway between the socialist and the conservative” (p. 406), a philosophy which Gray defines as embodying the conservative view of limited rationality and “the Scottish Enlightenment’s conception of man as the creature (and not creator) of social life” (Gray 1998:130).<sup>65</sup> In addition, Hayek’s repeated and favorable references to Edmund Burke highlight his openness to if not complete acceptance of conservative principles.<sup>66</sup> So in the end Hayek promotes a type of institutionalism consistent with his individualist perspective, a form of conservatism tempered by liberal principles. This alone is sufficient to deny the charge that Hayek’s brand of liberalism (and its association with an institutionalist objective) is a mere version of sentimentalism or instrumentalism, a charge which has merit when applied, for instance, to the libertarianism of Mises, or at worse a species of Romanticism.<sup>67</sup> One also in this regard sees Hayek’s break with libertarianism.

Yet despite some obvious similarities, Hayek parts company with the communitarians who define themselves as such in two critical areas. First, he eschews any devotion to methodological collectivism, finding it antithetical to the communitarianism he seeks to justify. While subjectivists and methodological individualists proceed “from our knowledge of the inside of these social complexes, the knowledge of the individual attitudes which form the elements of their structures,” by contrast methodological collectivism “treats social phenomena not as something of which the human mind is a part and the principles of whose organization we can reconstruct from the familiar parts, but as if they were objects directly perceived by us as wholes” (Hayek 1979:93–94). As Hayek interprets it, methodological collectivism suggests that “all members of society become merely instruments of the single directing mind and... all the spontaneous social forces to which the growth of the mind is due are destroyed” (p. 162). This is essentially a reaffirmation of the position of Jung:

“A collective attitude naturally presupposes this same collective psyche in others. . . This disregard for individuality obviously means the suffocation of the single individual, as a consequence of which the element of differentiation is obliterated from the community” (Jung 1966:152). Yet at the same time the philosophy of Hayek cannot really be understood as methodological individualism if only because of the central importance he gives to rules as social mechanisms. In actuality, one may identify in Hayek’s position elements of what Joseph Agassi (1960) refers to as institutionalist-individualism, a stance which “accords with the classical individualistic idea that social phenomena are but the interactions between individuals,” while “it adds to these factors of interaction the existing inter-personal means of co-ordination as well as individuals’ ability to use, reform, or abolish them, on their own decision and responsibility” (Agassi 1960:267).<sup>68</sup>

Secondly, there is Hayek’s insistence on the primacy of justice in respect of individual liberty, a claim many communitarians feel is antithetical to the concept of community. Hayek’s conception is more broadly conceived than is typically acknowledged, for the concept of right, the guarantee of which is seen as the defining characteristic of the liberal polity, is itself a common good. The question then centers on the practical matter of the role of government in directing the polity to the fulfillment of some larger goal. To Hayek, there is no legitimate claim to the interference with individuals in the free engagement in what can be defined as market activity. Where the State or any collective attempts to promote or even to define social ends instead of restricting its functions to the delimiting of a sphere of action, the result is an unwarranted abridgment of individual freedom, leading to coercion and tyranny. One sees here the influence of Humboldt, who sees in the “too extensive solicitude on the part of the State. . . the necessary deterioration of the moral character,” so that in seeking to extend its reach, the State succeeds only in “limiting the sphere of morality” (Humboldt 1791/2:20). Certainly Hayek is willing to concede a place for State action. In general terms, he acknowledges a government role in activities designed “to provide a favorable framework for individual decisions,” such as would “supply means which individuals can use for their own purposes,” as well as actions dedicated to “the enforcement of the general rules of law” (Hayek 1960:223). After the fashion of John Stuart Mill, Hayek envisions government activity in other areas, with the proviso that its involvement be “on the same terms as the citizens” (p. 223).

Yet this is the practical aspect of Hayek’s social philosophy, with which we have here not been concerned. For his part, Hayek manages to combine the best aspects of individualism and communitarianism. He thus can account for community without the metaphysics inherent in a structured communitarianism, for he simply accepts that individuals will, if left to their own devices, form the very relationships that communitarians declare to be the hallmarks of a social ethic.

## Notes

1. A similar contention is offered by Chandran Kukathas (1989). See especially Ch. 3, sec. 3.
2. As a modern liberal philosopher, Stephen Holmes, defines it, liberalism strives for “psychological security and personal independence for all, legal impartiality within a single system of laws applied equally to all, the human diversity fostered by liberty, and collective self-rule through elected government and uncensored discussion” (Holmes 1995:16)

3. Jeffrey Friedman (1994) classifies four types of communitarianism: Republican (associated with Charles Taylor), American (associated with Michael Sandel), Socialist (associated with Michael Walzer), and Pre-modern (associated with Alasdair MacIntyre).
4. Although one well-known communitarian, Michael Walzer, disagrees, arguing that “[c]ontemporary liberals are not committed to a presocial self, but only to a self capable of reflecting critically on the values that have governed its socialization” (Walzer 1990:21).
5. A devastating critique of MacIntyre can be found in Holmes (1993), where he dissects MacIntyre’s argument, showing the fundamental inconsistencies.
6. This position is explored at length in MacIntyre (1999).
7. Sandel points to Kant as the chief exponent of this position, while John Stuart Mill (among other “rule-utilitarians” as identified by Sandel) is given credit for having at least denied the second tenet: Mill allowed that the ultimate end is happiness.
8. As Walzer notes, “[t]he standard liberal argument for neutrality is an induction from social fragmentation. Since dissociated individuals will never agree on the good life, the state must allow them to live as they think best, . . . without endorsing or sponsoring any particular understanding of what ‘best’ means” (Walzer 1990:16).
9. “No commitment could grip me so deeply that I could not understand myself without it. No transformation of life purposes and plans could be so unsettling as to disrupt the contours of my identity. No project could be so essential that turning away from it would call into question the person I am. Given my independence from the values I have, I can always stand apart from them; my public identity as a moral person ‘is not affected by changes over time’ in my conception of the good” (Sandel 1998:62).
10. As Kant observes, “I can never be constrained by others *to have an end*: only I myself can *make* something my end” (Kant 1797:146; emphasis in original).
11. “For them [the individual members of the community], community describes not just what they *have* as fellow citizens but also what they *are*, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute but a constituent of their identity” (Sandel 1998:150; emphasis in original).
12. Although Sandel does admit to the need for “a conception in which the subject is empowered to participate in the constitution of its identity” (Sandel 1998:152), an admission that seems to suggest a nascent liberalism.
13. Although Mises, as we shall see below, does also reflect on man as a social being.
14. Steve Fleetwood (1995) has an especially interesting discussion of Hayek’s employment of rules. See especially Chs.7–9. See also Karen Vaughn (1999).
15. Nicholas Rescher likewise observes that “all that a family of moral rules can do is to provide general guidelines. Rule morality in this view can indeed orient and guide but cannot determine and specify action” (Rescher 1987:52).
16. Liberty “does not assure us of any particular opportunities, but leaves it to us to decide what use we shall make of the circumstances in which we find ourselves” (Hayek 1960:19). While Hayek credits T. H. Green with having elucidated the idea of negative liberty, deriving it from the work of G. W. F. Hegel, it is clearly evident in Thomas Hobbes’ *Leviathan*: “In cases where the Sovereign has prescribed no rule, there the Subject hath the liberty to do, or forbear, according to his own discretion” (Hobbes 1651:271).
17. In the words of H. L. A. Hart, rules “constitute *standards* by which particular actions may be thus critically appraised” (Hart 1994:33; emphasis in original). (This is a second edition, the first having been published in 1961.)
18. MacIntyre nonetheless is cautious of a too-strict reliance on rules in respect of conduct: “. . . no rule or set of rules by itself ever determines how to respond rightly. This is because in the case of those rules that are always to be respected. . . they are never sufficient to determine how we ought to act, while with other rules what always has to be determined is whether in this particular case they are relevant and, if so, how they are to be applied” (MacIntyre 1999:93).
19. “An imperative is a practical rule by which an action in itself contingent is *made* necessary.” It “is a rule the representation of which *makes* necessary an action that is subjectively contingent and thus represents the subject as one that must be *constrained* (necessitated) to conform with the rule.” The “categorical (unconditional) imperative is one that represents an action as objectively necessary and makes it necessary not indirectly, through the representation of some *end* that can be attained by the action, but through the

mere representation of this action itself (its form), and hence directly.” The “categorical imperative” is thus “a morally practical *law*,” which “asserts an obligation with respect to certain actions” (Kant 1797:15; emphasis in original).

20. Note Rescher: “The prospect of conflict in out-of-the-ordinary cases is the price that any set of rules—moral codes included—pays for the sort of simplicity that is essential to its capacity to function effectively in the guidance of conduct” (Rescher 1987:53).
21. The notion of socially-stabilizing custom is clearly evident in Max Weber’s sociology:
  - “The stability of merely customary action rests essentially on the fact that the person who does not adapt himself to it is subjected to both petty and major inconveniences and annoyances as long as the majority of the people he comes in contact with continue to uphold the custom and conform with it.
  - “Similarly, the stability of action in terms of self-interest rests on the fact that the person who does not orient his action to the interests of others. . . arouses their antagonism or may end up in a situation different from that which he had foreseen or wished to bring about. He thus runs the risk of damaging his own interests” (Weber 1947:123).
22. Cf. Edmund Burke, a member of Hayek’s pantheon: “When ancient opinions and rules of life are taken away, the loss cannot possibly be estimated. From that moment we have no compass to govern us; nor can we know distinctly to what port to steer” (Burke 1790:172–173).
23. Rationality means, in this instance, “no more than some degree of coherence and consistency in a person’s action, some lasting influence of knowledge or insight which, once acquired, will affect his action at a later date and in different circumstances” (Hayek 1960:77).
24. In this Hayek seems to be in agreement with Smith: “The wise and virtuous man is at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society” (Smith 1790:Part VI, Sec. ii, Ch. 3, p. 235).
25. Throughout his discussions of freedom and liberty, Hayek seems less the classical liberal than what Quentin Skinner (1998) refers to as a “neo-roman” liberal. For the neo-roman, individual liberty is not simply non-interference in personal matters, but more significantly freedom from a *condition* of restraint or dependence. Thus Thomas Hobbes and Isaiah Berlin could agree that one is as free in a commonwealth as in an absolute monarchy, as it is the *extent* of the law that matters, while for some, such as Thomas More and James Harrington, the *source* of the law is at least as important, if not more so.
26. Hayek makes a distinction between “true” and “false” individualism. “False” individualism “is the product of an exaggerated belief in the powers of individual reason and of a consequent contempt for anything which has not been consciously designed by it or is not fully intelligible to it” (Hayek 1948:8). “True” individualism, by contrast, “is a product of an acute consciousness of the limitations of the individual mind which induces an attitude of humility toward the impersonal and anonymous social processes by which individuals help to create things greater than they know” (p. 8). The “rational man” condemned by the communitarians is in reality *not* the subject of “true” individualism.
27. This is clearly at odds with the positions of Anna Galeotti and Geoffrey Hodgson, both of whom view Hayek as an “extreme” individualist. In Galeotti’s view, Hayek holds that individuals are “defined privately, independently from the body politic.” She contrasts Hayek with Rousseau, who “focuses on the importance of social cohesiveness for preserving the good political community” in his promotion of the “general will” (Galeotti 1987:164). Hodgson maintains that Hayek has a “molecular view of the modern economy,” and even goes so far as to identify his social philosophy as “a kind of totalitarian liberalism” (Hodgson 1993:185). Yet this ignores Hayek’s explicit rejection of those philosophies that postulate “the existence of isolated or self-contained individuals” (Hayek 1948:6). Given Hayek’s denial of the unencumbered self, and his depiction of rationalist individualism as a pernicious variant, such readings cannot be sustained.
  - By contrast, John Gray (1998) appears to interpret Hayek correctly, as he notes that, for Hayek, morality is “partly constitutive” of life.
28. An illuminating example of such an approach as repudiated by Hayek can be found in the *sociology* of Sigmund Freud. For Freud, society is a creation of man, established in an effort to oppose the power of the individual, “to set limits to man’s aggressive instincts and to hold the manifestations of them in check by psychical reaction-formations” (Freud 1930:69–70). Thus he considers there to be a conflict between the twin urges of individual happiness and social union, as “the two processes of individual and of cultural development must stand in hostile opposition” (p. 106).



29. “[B]ecause individuals form a society, new phenomena occur whose cause is association, and which, reacting upon the consciousness of individuals, for the most part shapes them. This is why, although society is nothing without individuals, each one of them is much more a product of society than he is the author” (Durkheim 1893:288n. 16). Note Karl Marx: “Man. . . is not only a social animal, but an animal that can be individualised only within society” (Marx 1859:189).
30. It is interesting to note that Durkheim distinguishes, as does Hayek, two types of individualism: egoistic and moral. Egoistic individualism is predicated on atomism, and is consistent with act-utilitarianism; it is within the purview of “[Herbert] Spencer and the economists,” and represents an attempt at “crass commercialism which reduces society to nothing more than a vast apparatus of production and exchange” (Durkheim 1973:44). By contrast, moral individualism—“the individualism of Kant and Rousseau, of the idealists”—is akin to communitarianism, and holds that individuals are bound in society by a set of common beliefs, while society itself is pluralistic, comprised of a profusion of social communities which serve to provide identity to their members (p. 45). For a communitarian interpretation and defense of Durkheim’s sociology, see Mark Cladis (1992).
31. While there are indeed elements of similarity between Hayek and Durkheim, it is clear that Hayek does not accept completely Durkheim’s organicism nor the scientism evident in his embracing of natural scientific methods.
32. Here we see an agreement with Mises. In Mises’ estimation, “man emerges from his prehuman existence already as a social being,” this as a consequence of acting (Mises 1949:43). More significantly, Mises finds it impossible to differentiate society from its constituents, and interestingly enough admits that, while the “social collective comes into being through the actions of individuals,” this is not to suggest “that the individual is temporally antecedent” to society (p. 43).
33. Rothbard (1998) takes issue with Hayek’s definition of coercion, devoting an entire chapter (28) to the topic.
34. The limitation of rationalism seems rather obvious—one simply cannot plan for every conceivable consequence of every action, or even know all such actions that are capable of leading to a particular consequence. But this has not deterred some from making the most bizarre claims in attempting to refute Hayek. Consider the following from an avowed Misesian, Hans-Hermann Hoppe: “Every action involves the purposeful employment of scarce means, and every actor can always distinguish between a successful and an unsuccessful action” (Hoppe 1994:77; emphasis added); and “Acting is always conscious and rational” (pp. 77–78). He further criticizes Hayek for denying “at least the possibility of recognizing *all* indirect causes and consequences of human action” (p. 93; emphasis added). For these statements to be valid would require perfect foresight and extreme cognitive abilities, attributes which simply do not exist. In addition, Hoppe is oblivious to a critical distinction: Hayek concentrates his critique of rationalism on the impossibility of discerning unintended *social* consequences of *individual* actions, thus providing the intellectual argument against social planning. Hoppe’s critique conflates this with an inability on the part of Hayek to acknowledge the possibility of individual rational *behavior* (as expressed in utility maximization), a charge which cannot be leveled at Hayek.
- Furthermore, Mises himself considered the terms “rational” and “irrational” to be “inappropriate and meaningless,” as they “imply a judgment about the expediency and adequacy of the procedure employed [to the attainment of ends].” This is so because “human reason is not infallible and. . . man very often errs in selecting and applying means” (Mises 1949:18, 20).
35. “What is advocated here is not an abdication of reason but a rational examination of the field where reason is appropriately put in control” (Hayek 1960:69).
36. One sees another parallel between Hayek and Jung, this in their general attitudes toward science: “[S]cience conveys a picture of the world from which a real human psyche appears to be excluded—the very antithesis of the ‘humanities’.” As Jung sees it, this leads to a situation in which “[t]he moral responsibility of the individual is then inevitably replaced by the policy of the State” (Jung 1990:8).
37. Kukathas maintains that Hayek’s project fails because of his “assumption that it is rationalism, particularly as it is manifested in the attempt to give a deductively sound justification for a morality, that is the source of all that is hostile to the Open Society” (Kukathas 1989:19). Yet Hayek does not abandon rationalism or reason, but rather denies the possibility of a *constructed* morality.
38. Reason “is no motive to action, and directs only the impulse received from appetite or inclination, by showing us the means of attaining happiness or avoiding misery” (Hume 1777:294). See also McCann (1999).

39. The use of the term “rational” in this instance follows David Gauthier: “Moral principles are those to which our rational selves would agree, *ex ante*, for the regulation of our cooperative interactions” (Gauthier 1990:272). We *would agree* as to their necessity, but are not required even to *understand* the way in which they function.
40. It must be noted that Lawson attributes to Hayek a “hermeneuticist/subjectivist” posture, which effectively leads him “to reduce structure to agency” (1994:150). Yet as this essay seeks to demonstrate, such a position is at odds with Hayek’s social ontology, and can be justified only if one is already convinced that Hayek is a committed positivist.
41. Here we see the basis for Hayek’s rejection of socialist calculation and arguments for social design, as these constraints make it impossible to effect purposeful constructions.
42. This is in stark contrast to the position of the political philosopher C. B. Macpherson, who proclaims “the facts of human capacities and needs contain enough data for the deduction of a system of obligation and rights” (Macpherson 1962:83). For Macpherson, democracy is an end in itself, a form of moral order. Yet his liberal vision must be seen as diametrically opposed to that of Hayek, for, while he accepts the socially-constituted self as central, he nonetheless looks to rational structure as the appropriate vehicle for social cohesion. This allows the derivation of Marxian conclusions respecting property, and more importantly (but perhaps unwittingly) establishes a theoretical justification for a totalitarian order.
43. The classic example concerns the outbreak of a communicable disease. In this instance, the population as a whole is protected by the quarantine of the affected group, until the outbreak is halted. This is a position actually embraced by Mises: “[A]s a member of society, a man must take into consideration, in everything he does, not only his own immediate advantage, but also the necessity, in every action, of affirming society as such. . . . In requiring of the individual that he should take society into consideration in all his actions, that he should forgo an action that, while advantageous to him, would be detrimental to social life, society does not demand that he sacrifice himself to the interests of others. For the sacrifice that it imposes is only a provisional one: the renunciation of an immediate and relatively minor advantage in exchange for a much greater ultimate benefit. The continued existence of society as the association of persons working in cooperation and sharing a common way of life is in the interest of every individual” (Mises 1978:33–34). This would appear to suggest that, at least in this period of his writings, Mises considers society to have a real existence, for how else could it *demand* a sacrifice?
- Mises is even more explicit in *Human Action*: “Nobody ventures to deny that nations, states, municipalities, parties, religious communities, are *real* factors determining the course of human events” (Mises 1949:42; emphasis added). But he notes: “It is illusory to believe that it is possible to visualize collective wholes. They are never visible; their cognition is always the outcome of the understanding of the meaning which acting men attribute to their acts. . . . Not our senses, but understanding, a mental process, makes us recognize social entities” (p. 43).
44. As Rescher suggests, utilitarianism does not allow for the judgment of “vicarious” affects, which judgment would allow us “to set up moral criteria as an arbiter over the points of view of individuals” (Rescher 1975:93).
45. Rescher notes, “Morality and utility-maximization go their own separate ways. The utilitarian policy of providing for the greatest good of the greatest number may perhaps afford a plausible *political polity*, but it just is not a plausible *morality*” (Rescher 1989:83; emphasis in original). But note Mises: “Everything that serves to preserve the social order is moral; everything that is detrimental to it is immoral” (Mises 1978:34).
46. Gray esteems Hayek to be a “system” utilitarian, to the extent that “the proper rôle of utility is not prescriptive or practical but rather that of a standard of evaluation for the assessment of whole systems of rules or practices” (Gray 1998:59).
47. It is not clear that Hayek can be classed as a full-fledged transcendental (critical) realist, but there is much in his writings to suggest at least a close affinity. To give just one example, Bhaskar notes that “experiences and the things and causal laws to which it affords us access are normally out of phase with one another” (Bhaskar 1997:25), while Hayek allows that “[t]here exists. . . no one-to-one correspondence between the kinds (or the physical properties) of the different physical stimuli and the dimensions in which they can vary, on the one hand, and the different kinds of sensory qualities which they produce and their various dimensions, on the other” (Hayek 1952:14).
48. It appears that Fleetwood minimizes the importance for Hayek of social wholes when he refers to them as mere “aids to thinking” (Fleetwood 1995:46).

49. Cf. Hayek's position to the instrumental positions of Mises and Wilhelm von Humboldt: "It is through a social union. . . based on the internal wants and capacities of its members, that each is enabled to participate in the rich collective resources of all the others" (Humboldt 1791/2:11). "Individual man is born into a socially organized environment. In this sense alone we may accept the saying that society is—logically or historically—antecedent to the individual. In every other sense this dictum is either empty or nonsensical. . . . [S]ociety is nothing but the combination of individuals for cooperative effort" (Mises 1949:143).
50. This has led some, such as Viktor Vanberg (1986) and Robert Sugden (1993), to observe that Hayek actually is a contractarian.
51. Cf. Jung: "Happiness and contentment, equability of mind and meaningfulness of life—these can be experienced only by the individual and not by a State, which, on the one hand, is nothing but a convention agreed to by independent individuals and, on the other, continually threatens to paralyze and suppress the individual" (Jung 1990:60).
52. Note the Freudian component: "The first requisite of civilization, therefore, is that of justice—that is, the assurance that a law once made will not be broken in favour of an individual. . . . The further course of cultural development seems to tend towards making the law no longer an expression of the will of a small community. . . . The final outcome should be a rule of law to which all—except all those who are not capable of entering a community—have contributed by a sacrifice of their instincts, and which leaves no one—again with the same exception—at the mercy of brute force" (Freud 1930:49).
53. Cf. the consequentialist position of Mises: "Society is the outcome of conscious and purposeful behavior. . . . The actions which have brought about social cooperation. . . do not aim at anything else than cooperation and coadjuvancy with others for the attainment of definite singular ends. The total complex of the mutual relations created by such concerted actions is called society" (Mises 1949:143). (Note that this seems to conflict with Mises' position, presented in note 35, above, of society as somehow real.) In addition, Mises takes care to address the evolutionary nature of the process, noting that "[t]he evolution of reason, language, and cooperation is the outcome of the same process" (p. 43). Hoppe (1994) condemns the very notion of spontaneous order (as presented by Hayek), while lionizing Mises for his recognition that society is but the totality of relations engendered by individual, rational actions. But as the quotations show, Mises presents nothing here if not an example of a Hayekian spontaneous order!
54. Hayek's views on social justice have been attacked recently (although largely ineffectually and without incident) by, among others, David Johnston (1997) and Steven Lukes (1997). But see Edward Feser (1997) for a point-by-point critique of the critics.
55. While Hayek is unhappy with the use of the concept of "social justice," he nonetheless expresses some regard for the road taken to its advancement, particularly that of Rawls. Specifically, he accepts the validity of the idea of a "veil of ignorance" behind which the social contract is initiated, since it is entered into without regard to prescribed social ends (although, oddly enough, the initiation of a social contract would require that individuals voluntarily agree to place themselves in society, so the connotation is that the individual is antecedent to community). In establishing the basic rule framework, one of the first conditions is "that only such rules as can be applied equally to all should be enforced" (Hayek 1976:97). Hayek in fact expresses his justification for the concept in very Rawlsian terms: "Man has developed rules of conduct not because he knows but because he does not know what all the consequences of a particular action will be" (pp. 20–21). Once established, rules of law and society are binding on all, and must "be obeyed irrespective of the known effects of the particular action" (p. 21). Hayek rejects, however, Rawls' egalitarianism as somehow short-circuiting the process of social evolution. (See Hayek 1988.)
56. Given Hayek's position on this question, it is difficult to fathom the following preposterous claim of Alain de Benoist (1998:76): "[Adam] Smith operates on a macro-economic level: although operating in an apparently disorderly manner, individual acts end up miraculously contributing to the collective interest or to everyone's well-being. This is why Smith allows for public intervention when individual aims do not bring about collective well-being. Hayek does not allow for this exception."
57. Here (and elsewhere in *The Constitution of Liberty*), Hayek incurs the wrath of Rothbard. Rothbard considers that Hayek's treatise "can in no sense provide the criteria or the groundwork for a system of individual liberty. . . . For Hayek, government—and its rule—of law *creates* rights, rather than ratifies or defends them. It is no wonder that, in the course of his book, Hayek comes to endorse a long list of government actions clearly invasive of the rights and liberties of the individual citizens" (Rothbard 1998:229).

58. Hayek's State can be differentiated from the more libertarian constructs of Nozick and Mises. Nozick considers his "minimal state" to be "the most extensive state that can be justified" without violating individual freedom and individual rights (Nozick 1974:149). To this end, the State has no authority beyond the limited sphere of the provision of public safety. While communities *within* the State may impose limitations upon members, since these restrictions are agreed to as a condition of membership, the more extensive collective (the State) is proscribed in its role (pp. 320–321).
- For Mises, "[t]he state is essentially an institution for the preservation of peaceful interhuman relations," which nonetheless "must be prepared to crush the onslaughts of peace-breakers" (Mises 1949:149).
59. Mises regards the establishment of a system of social security as eliminating incentives to avoid penury, sickness, and injury (Mises 1949:835). It also, to the extent that its financing is controlled by government, can adversely affect capital markets (pp. 843–844). Interestingly, Holmes notes that communists have also consistently opposed program of social welfare, "which they considered a subtle ploy to dampen the fighting spirit of the working classes." These policies were seen "as blocking the path to collectivism, as irredeemably liberal" (Holmes 1995:37).
60. This book is a collection of essays originally published in the *New Republic* in 1929–1930.
61. For Dewey, "[a]ssured and integrated individuality is the product of definite social relationships and publicly acknowledged functions" (Dewey 1999:27). Yet as Dewey perceives it, "individuals do not find support and contentment in the fact that they are sustaining and sustained members of a social whole" (p. 28). He thus seems unprepared to acknowledge that the self is socially-constituted, but rather appeals to social engineering to construct such a communal being. Dewey's conclusion is that a "new" individual must emerge, one "whose pattern of thought and desire is enduringly marked by consensus with others, and in whom sociability is one with cooperation in all regular human associations" (p. 44).
62. As Bernard Yack (1993) notes, MacIntyre neglects the importance in Aristotle's notion of community of conflict and opposition. Aristotle's notion of community is a more expansive concept, applying not merely to political society, but to all forms of social integration.
63. This does not, of course, imply that the rules are rationally *determined*.
64. Cf. Lawson, who interprets Hayek as having an "empiricist ontology... that is augmented by the concepts and beliefs of others." Lawson suggests that Hayek came eventually to accept a "structured ontology," "acknowledging the reality of structure irreducible to events, including social structures that are dependent upon, but irreducible to, the concepts and actions of human agents" (Lawson 1997:150). See also Lawson, 1996.
65. Stephan Boehm, in his comments on an early draft of this essay, points out that Hayek consistently eschews "the middle." However, Hayek himself shows no such concern. In any event, the problem lies with the relevant continuum: if the continuum extends from libertarianism to communism, then neither liberalism nor communitarianism represents an end point.
66. Although Carl Schmitt regards Burke as at least sympathetic to the Romantics. To Schmitt, Burke's philosophy "marks a historical connection between the Whig aristocrat Shaftesbury and the German romantic Adam Müller" (Schmitt 1925:58).
67. "Seen from the point of view of the individual, society is the great means for the attainment of all his ends" (Mises 1949:164).
68. Kukathas classifies Hayek as a "molecular individualist," an approach which "asks what rights and obligations there must be if society is to be sustained and the security or freedom of the individual preserved" (Kukathas 1989:125).

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