

ARTICLES

Hayek's Normative Basis of Market Order

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This article reconstructs the normative foundations of the free-market order in the thought of Friedrich August Hayek, treating the market as the paradigmatic instance of what he describes as a spontaneous order. Such an order presupposes a determinate set of rules that protect individual liberty and enable decentralized coordination. If the fragile character of the free-market order is to be preserved, these rules must be maintained and embedded in an appropriate legal framework. Drawing on the distinction between *nomos* and *thesis*, the analysis shows that the viability of market processes depends on the subordination of legislation to general, evolutionarily emerged, and morally justified rules of just conduct. This challenges widespread misinterpretations of Hayek's theory, in particular the view that spontaneity implies the absence of rules, as well as the claim that rules may be freely designed to serve predetermined ends and used to correct market outcomes. Both the absence of a proper rule framework and the expansion of purposive regulation beyond its legitimate scope weaken or negate liberty and undermine the informational and coordinative functions characteristic of spontaneous order, and thus those of the market.

In Friedrich August Hayek's (2013, 267–69) account, the free market represents the paradigmatic instance of a spontaneous order. It is a form of order in which coordination emerges not from central direction but from the interaction of individuals operating under general rules (Hayek 2013, 34–38). Yet the free market's rule-governed but undesigned character—lacking any centrally imposed end—has given rise to persistent misunderstandings.

These misunderstandings take two opposing forms. On the one hand, Hayek's notion of spontaneity is often interpreted as implying the absence of binding rules, leading to the view that whatever emerges is thereby justified, an interpretation associated with Hans-Hermann Hoppe (1994), Walter Block (1996), and Steven Horwitz (2001). On the other hand, the market is commonly treated as an object of purposive design, to be corrected or steered through outcome-oriented regulation, as in various models of the "social market economy." Both interpretations obscure the normative structure of Hayek's account and misrepresent the conditions under which a spontaneous market order can be sustained.

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This article argues that both lines of interpretation overlook the same feature of Hayek's theory: the normative primacy of general rules of just conduct. Spontaneous order does not emerge in the absence of such rules, nor can it be sustained when they are subordinated to purposive legislation. The article contributes to the literature by reconstructing this normative structure and clarifying the relationship between *nomos* and *thesis* as a condition of the viability of market order.

The argument proceeds by situating the analysis of the market within Hayek's broader theory of order. It begins with a reconstruction of the distinction between different types of order and the kinds of rules on which they depend, before turning to the specific class of rules constitutive of spontaneous order. Particular attention is given to their moral character and to the conditions under which they require legal articulation and enforcement. The distinction between *nomos* and *thesis* is then introduced in order to clarify the relationship between general rules of just conduct and deliberate legislation. On this basis, the analysis identifies the normative and institutional conditions under which a Hayekian market can be sustained and indicates the consequences that follow when these conditions are not met.

The Two Types of Order

Hayek (2013, 35) defines order as a structured arrangement of elements that allows, on the basis of observing one part of the whole, the formation of reliable expectations about its remaining parts. He distinguishes between two main types of order. First, there is the made order—what he calls an exogenous order or arrangement. It is a constructed structure—that is, an organization whose members are subordinate to it. Second, there is the grown order—what he describes as self-generating, endogenous, or, more conveniently, spontaneous. It emerges in an undesigned manner from the actions of individuals. As Hayek (2013, 36) writes, “An order which would have to be described as spontaneous . . . is one which is formed by the actions of many men but is not the result of human design.”

Both types of order rest on rules—but radically different ones: “A spontaneous order and an organization are distinct, and their distinctiveness is related to the two different kinds of rules or laws which prevail in them” (Hayek 2013, 2, 34–37). This difference concerns not only the origin but also the function of rules: In organizations, they are purposively designed, whereas in spontaneous orders they take the form of general rules that do not direct action toward specific ends and exclude centralized control. This latter point will be examined in detail below.

In addition to characterizing different types of order in relation to the rules that sustain them, it is also necessary to indicate—though not in a fully independent way—their characterization in terms of purposes. Organizations are constituted by the pursuit of specific ends that guide and justify their

internal arrangements. By contrast, spontaneous orders do not presuppose any predefined goal (Hayek 2013, 38). Since they are not the product of a central designer, they cannot be said to pursue a determinate end. They emerge as the unintended result of individuals' pursuing their own purposes within a framework of general rules.¹

Spontaneous Order: Rules of Liberty as the Basis of Law

Once it is recognized that a spontaneous order rests on a specific type of rules, the question arises as to what more precisely these rules are. The shortest answer is that they are rules that safeguard liberty, which in Hayek's account means the absence of arbitrary coercion imposed upon any individual by others (Hayek 2006, 12, 18). Given this understanding, the rules must secure and enforce the framework within which every person's sphere of freedom is protected and coercion is prohibited. Under such conditions, individuals may pursue their own ends without interfering with the equal freedom of others (Hayek 2006, 19).

For Hayek, these rules are moral in nature (Hayek 1991, 66–67). However, treating them as merely moral norms is not sufficient to secure the order.² To be effective and stable, these rules must be enforced by law (Hayek 2013, 35–36), which complicates the picture. Since the legal system itself is an organization, what emerges—once the conditions required to preserve the spontaneous character of the order (and the market as free) are secured, and attempts to replace it with a deliberately designed organization are resisted—is a combination of spontaneous order and deliberate organization. Therefore, with the rules of liberty sanctioned by law, the resulting structure operates within a specific institutional context.

This combination is not theoretically problematic, as Hayek explicitly acknowledges that the two types of order regularly coexist in more complex systems. This possibility of coexistence, however, does not imply that they can be combined in just any way. The question, therefore, is how these two forms should be related and what the appropriate legal framework should be. Hayek's answer is that deliberate control must be strictly limited to enforcing the general rules necessary for the formation of spontaneous order. Organization is justified only to the extent that it serves this function (Hayek 2013, 44–45).

¹ Hoppe (1994, 77) interprets Hayek as denying the purposive character of human action, even suggesting that, by his own theory, he would have had to regard the writing of his work as purposeless. This interpretation rests on a misunderstanding. The absence of purpose concerns the spontaneous order as a whole, not individual action. What Hayek rejects is not purposive agency as such, but the attribution of an overarching, centrally imposed end to the social order. Given that spontaneous order, in Hayek's account, is an order of liberty, defining it in terms of a preimposed, concretely specified common good would be incompatible with that principle, as it would subordinate individuals to ends imposed by others.

² Hayek (2013, 45–46) notes that while spontaneous order may exist without government, in most cases an organized authority is required to secure compliance with its rules.

Law should therefore be understood as an instrument for the protection of liberty, never as a mechanism for imposing arbitrary obligations. For this reason, Hayek (2006, 134; 2013, 69) describes the model that is required as “freedom under law.” The foundation of such law lies in what he describes as “rules of just conduct” and Eric Mack (2018, 40–41), perhaps more aptly, calls “liberty-protective principles of justice.” These rules bind not only private individuals but also those who enforce them—whether public authorities or other organized bodies (Hayek 2013, 129–30). Where more specific rules are required, the legal system provides them, and these must remain consistent with the general principles. They cannot stand in contrast to them; on the contrary, they must be shaped in accordance with those principles (Hayek 2013, 118–33).

At this point, it is useful to introduce a further distinction drawn by Hayek—namely, that between *nomos* and *thesis* (Hayek 2013, 120–21). The former denotes the basic requirements of justice, while the latter refers to legislation. Hayek understood *nomos* as corresponding to what he regarded as the key liberty-protective principles in his account. Most importantly, he emphasized that *thesis* must remain subordinate to *nomos*, since *nomos* defines the spirit of the legal order and must not be contradicted by legislation. Formulated in these terms, the claim concerning spontaneous order can be stated as follows: The emergence of spontaneous order depends on *thesis* (legislation) remaining subordinate to *nomos*, which, in Hayek's terms, means that liberty is secured.

While the distinction serves, above all, to show that legislation cannot be arbitrary if liberty—and with it the spontaneous character of the order—is to be preserved, it also points to the nonarbitrary character of the underlying rules themselves—that is, the rules of liberty. By framing them as *nomos*, Hayek indicates that these rules are not created but discovered.

Nomos—that is, the rules of just conduct—is understood as discoverable and universal (Hayek 2013, 220–22). Hayek grounds these principles in morality itself, showing how they are supported by tradition, though not by just any moral tradition. He has in mind a distinctly liberty-oriented tradition—antistatist and even anticommunist—that supports liberty both directly, by opposing arbitrary coercion, and indirectly, by strengthening voluntary, bottom-up cooperation.

Historically and evolutionarily, this tradition endured because it proved effective. It enabled large, complex societies to coordinate dispersed knowledge, sustain growing populations, and avoid poverty and famine. In Hayek's view, it was the only moral framework capable of sustaining an extended order of cooperation—one that reaches beyond small, tribal communities and makes large-scale social coordination possible. What is crucial, however, is that regardless of the many social and epistemic benefits this tradition continues to generate, these are not the ultimate reason for its preservation (Hayek 1991,

70; 2013, 59). The decisive reason is ethical. As Hayek (2006, 19) writes, “Coercion is evil precisely because it eliminates the individual as a thinking and valuing person and makes him a mere instrument for the purposes of another.” To make a person an instrument for the purposes of another is to violate his dignity and diminish his humanity. For that reason, coercion must be regarded as morally impermissible, and liberty emerges as the only acceptable state.

Nomos, in Hayek’s account, can also be understood as embodying principles akin to natural law—objective standards of just conduct that are not reducible to the arbitrary will of the legislator (Hayek 2013, 69–71). Hayek is, however, cautious about the term “natural law” itself and generally distances himself from it in order to avoid the suggestion that law reflects some form of suprahuman wisdom (Hayek 2013, 222–24). While maintaining that such rules possess an objective character, he emphasizes that they are not eternal but the product of social evolution, emerging as unintended outcomes of human interaction whose functions can increasingly be understood. He nevertheless acknowledges that his position may still be described as a form of natural law theory in an original, etymological sense (Hayek 2013, 222–24). As he writes, “It would be legitimate to describe as ‘natural’ anything that has grown spontaneously and not been deliberately designed by a mind. . . . It would seem fitting to call such traditional rules ‘natural law’” (Hayek 1991, 143). Thus, Hayek presents the rules of just conduct as firmly axiologically grounded.

Misunderstandings

Misunderstandings concerning the functioning of spontaneous order, stemming from a failure to grasp the normative structure underlying it, can be grouped into two main lines.

The first line assumes that spontaneous free-market order does not presuppose any preestablished rules—that spontaneity means arbitrariness. This reasoning appears in the literature, even among libertarian theorists—for example, in the charge of relativism advanced by Hoppe (1994, 74) and in the critique formulated by Block (1996, 340).³ Both conclude that in Hayek’s framework, the absence of rules implies that whatever emerges is thereby acceptable. A related misunderstanding appears in Horwitz’s (2001, 214; 2015, pt. 2) interpretation. Although he acknowledges the role of general rules, he suggests that any emerging practice may be treated as spontaneously generated and therefore presumptively acceptable.⁴

³ Block argues that Hayek not only fails to formulate a guiding principle, but even “specifically renounces the possibility of a principle.”

⁴ This position implies an alleged acceptance of such practices by Hayek, extending normative approval even to practices that neither promote liberty nor arise under the conditions required for a genuine spontaneous order. Hoppe and Block present this as a criticism, whereas Horwitz appears to endorse it.

The failure to recognize the principles underlying Hayek's account and the attribution to him of a kind of historicism—namely, the view that normative legitimacy follows from a mere license of history—do not appear only in the scholarly literature. They also take a more colloquial form: Once the order is described as “spontaneous,” it is assumed to entail a normative free-for-all or radical permissiveness. In public discourse, this has often been reflected in the view that no moral rules are required, as well as in the expectation—sometimes voiced by policymakers—that legal rules would emerge spontaneously in the course of market processes (Pavlík 1999).⁵

The second line of misunderstandings is perhaps even more widespread. It holds that the market can—or should—be externally corrected and steered toward substantively defined outcomes, as in various models of the “social market economy.” This view assumes that legislation directed at particular ends can operate independently of general rules of just conduct (that is, the rules of liberty). Hayek explicitly addresses this tendency. As he writes: “If indignant reformers still complain of the chaos of economic affairs, insinuating a complete absence of order, this is partly because they cannot conceive of an order which is not deliberately made, and partly because to them an order means something aiming at concrete purposes which is, as we shall see, what a spontaneous order cannot do” (Hayek 2013, 37–38).

The replacement of general rules with purposive regulation undermines the spontaneous and liberty-based character of the order, thereby turning the market into an instrument of political intention and weakening its essential function as a mechanism for discovering and coordinating dispersed knowledge. Hayek (2013, 3) explicitly warns: “Sooner or later the people will discover that not only are they at the mercy of new vested interests, but that the political machinery of para-government, which has grown up as a necessary consequence of the provision-state, is producing an impasse by preventing society from making those adaptations which in a changing world are required to maintain an existing standard of living, let alone to achieve a rising one. It will probably be some time before people will admit that the institutions they have created have led them into such an impasse.”

It follows that, in Hayek's account, the market loses its spontaneous and informational character as *thesis* displaces *nomos*. The more this occurs, the less the resulting order resembles a Hayekian market. One cannot, therefore, simply attribute contemporary social and economic problems to the functioning of a Hayekian market, since such a market—understood as an order governed predominantly by general rules of liberty—can scarcely be found in practice.

⁵ Ján Pavlík discusses these interpretations in the context of postcommunist transformation.

Conclusion

The free-market order, as a spontaneous order, depends on a specific set of moral and legal rules that safeguard liberty and enable decentralized coordination. For it to persist as a stable rather than a transient arrangement, its normative basis must be sustained, which requires an institutional framework limited to the legal enforcement of rules that protect liberty. Misinterpretations arise when this structure is overlooked. Treating spontaneity as arbitrariness leads to the dissolution of order and opens the way to the imposition of coercive and illiberal norms, while treating the market as an object of purposive design erodes its spontaneous character and undermines the coordinating mechanisms through which dispersed knowledge is processed and utilized. The lines of interpretation criticized here are therefore fundamentally incompatible with Hayek's account and lead to outcomes he explicitly regarded as undesirable.

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REFERENCES

- Block, Walter. 1996. "Hayek's Road to Serfdom." *Journal of Libertarian Studies* 12 (2): 339–65. <https://mises.org/journal-libertarian-studies/hayeks-road-serfdom>.
- Hayek, F. A. 1991. *The Fatal Conceit: The Errors of Socialism*. Edited by W. W. Bartley III. Vol. 1 of *The Collected Works of F. A. Hayek*, edited by Bruce Caldwell. University of Chicago Press, 1988–. <https://doi.org/10.7208/chicago/9780226321158.001.0001>.
- Hayek, F. A. 2006. *The Constitution of Liberty*. Routledge.
- Hayek, F. A. 2013. *Law, Legislation and Liberty*. Routledge. <https://doi.org/10.4324/9781315887685>.
- Hoppe, Hans-Hermann. 1994. "F. A. Hayek on Government and Social Evolution: A Critique." *Review of Austrian Economics* 7 (1): 67–93. <https://doi.org/10.1007/BF01102136>.
- Horwitz, Steven. 2001. *Microfoundations and Macroeconomics: An Austrian Perspective*. Routledge. <https://doi.org/10.4324/9780203456309>.
- Horwitz, Steven. 2015. *Hayek's Modern Family: Classical Liberalism and the Evolution of Social Institutions*. Palgrave Macmillan. <https://doi.org/10.1057/9781137448231>.
- Mack, Eric. 2018. *Libertarianism*. Polity Press.
- Pavlík, Ján. 1999. "About the Misinterpretations of Hayek's Theory of Spontaneous Order and Their Negative Impacts on the Transformation Programme in the Czech Republic." *E-LOGOS—Electronic Journal for Philosophy* 99. <http://elogos.vse.cz/pdfs/elg/1999/01/16.pdf>.