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The Emergence of Institutions: Some Open Problems in Hayek’s Theory

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Abstract. Hayek opposes the explanation of the emergence of institutions as “spontaneous (unintentional) order”, which he considers correct, against “constructivism” (viewed as erroneous). This dichotomy exhibits some inconsistencies, for, on Hayek’s account, constructivist ideologies seem able both to prevent the evolutionary emergence of norms and to generate institutions coherent with deliberate, intentional, purposes. If this is so, are there then two views on the emergence of institutions in Hayek’s theory? The paper consequently discusses whether constructivism and evolution of norms are two alternative kinds of explanation, and in particular whether the former can be interpreted in evolutionary terms.

Introduction

A number of studies have been devoted in the last two decades to the Hayekian concept of "spontaneous order". Hayek's explanation of the emergence of institutions (as shared sets of rules) is at first glance very simple: a complex of practices or rules of conduct "prevailed because they made a group of men successful" (Hayek, 1973, p. 17), and they "were preserved because they enabled the group in which they had arisen to prevail over others" (Hayek, 1973, p. 9). These rules took shape spontaneously, and they were unintentionally selected for their advantages. In short, as is well known, Hayek adopted an evolutionary approach to explain the unintentional order of society, and a distinctive

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role is performed in his account by the notion of cultural selection. This evolutionary process has in particular connoted Western societies (the "Great Society"), the configuration of which is characterized by "abstract" and non-coercive rules. In this sense, the market constitutes the best example of this kind of institution (cf. Hayek, 1967a, p. 72).

This conception of society as evolutionary order Hayek sets against the one that goes by the name of "constructivist rationalism" (or simply "constructivism") and according to which human institutions have been deliberately designed in order to accomplish human purposes (Hayek, 1946; 1952; 1960; 1967b; 1978; 1988). In Hayek's view, this is an erroneous conception, which also has dangerous effects if it is assumed as a theoretical guide for political, social and economic interventions. In fact, "designed theories [...] lead directly to socialism" (Hayek, 1946, p. 10). Therefore, the shift from constructivism as a conceptual view to its implementation in empirical and historical terms implies emphasising the capacity of certain ideas to modify both the course of history and the configuration of social systems. Hayek is firmly convinced that Western civilization is under threat because of constructivist ideologies. He declares: "[w]e are not far from the point where the deliberately organized forces of society may destroy those spontaneous forces which have made advance possible" (Hayek, 1960, p. 38, emphasis added).²

¹"It is from this kind of rationalism or constructivism that all modern socialism, planning and totalitarianism derives" (Hayek, 1967b, p. 85; cf. pp. 91-5), see also Diamond (1980, pp. 241-2).
² Reason (ideas, ideologies, etc.), in fact, can both destroy and create new (dangerous) social "organizations": "Reason is like a dangerous explosive which, handled cautiously, will be most beneficial, but if handled incautiously may blow up a civilization". But reason can also create a new social system, like the "communist
Although this possibility often concerns only a specific case, it implies that (dangerous) human institutions may arise because of intentional acts, and not because of unintentional evolutionary processes. In addition, intentional forces may be more powerful than spontaneous ones, since the former are able to neutralize the latter.³

Given these premises, the aim of this paper is to analyse the following questions:

1) Are "constructivism" and "spontaneous" orders two alternative explanations for the emergence of institutions? More precisely, when Hayek considers, in empirical and historical terms, the emergence of totalitarian institutions (e.g. socialism) - which are coherent with the constructivist view - does he describe institutions shaped by the intentional action of the legislator and created according to predefined purposes? In this case, institutions are not the result of evolutionary and non-intentional processes, and consequently their rise cannot be explained in terms of "spontaneous order".

2) If constructivist institutions exhibit a tendency to persist for a long time, how can this persistence be explained? Why, in this case, does it seem that processes of rules selection are not at work?⁴ Are the "deliberately organized forces of society" able to survive over time even

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³ It is therefore an error to believe that we can “master the forces of society in the same manner in which we have learnt to master the forces of nature. This is not only the path to totalitarianism, but the path to the destruction of our civilisation and a certain way to block future progress” (Hayek, 2001 [1944], p. 211, emphasis added).

⁴ Khalil argues: "If socialism is a mechanism, it is clearly anti-Darwinian. Then, how could it have appeared and succeeded for many decades via the Darwinian evolutionary mechanism?" (Khalil, 1996, p. 188).
though they produce "inefficient" institutional systems (in Hayek's sense)? Why have "atavism" and tribal mentalities not been "negatively" selected but instead re-appear in the modern age (Hayek, 1976, ch.11; Hayek, 1988)\(^5\)

3) Is it possible to argue that social planning is an evolutionary process? Any plan, in fact, exerts a limited, direct, influence on specific domains, but it also stimulates a number of changes in other (social) spheres which are beyond its control. It thus generates unintentional outcomes and unforeseen situations. These latter, in their turn, constitute the basis for new plans. If “social planning” consists in a continuous interaction among plans (and different planners), then social planning should be conceived as an interactive process, and precisely as an endless process.

4) Is it possible to consider constructivist institutions as a particular case of rules selection? In other words, can one suppose that the constructivist characteristics of an institutional system may emerge, in evolutionary terms, as an adaptive response to the environment? If evolution is blind, why should one exclude the emergence of constructivist systems as the result of selective processes?

5) Finally, the correctness of Hayek's theory should find empirical confirmation in the development of Western market society. But the rise of the "Great Society" as a spontaneous order process does not explain the persistence of societies characterized by rules at odds with those of

\[^5\] “Socialism is simply a re-assertion of that tribal ethics whose gradual weakening had made an approach to the Great Society possible. The submergence of classical liberalism under the inseparable forces of socialism and nationalism is the consequence of a revival of those tribal sentiments” (Hayek, 1976, pp. 133-134).
Western market societies. At first glance, Hayek’s theory is unable to explain these phenomena because his evolutionary approach is connected to neither a historical theory nor a historical account able to show how different rules, values, customs, and behaviors have emerged and survived in different cultural contexts. In short, the spontaneous order view seemingly describes only one specific evolutionary process (that connoting the "Great Society").

In what follows, points 1, 2, 3, and 4 are discussed from different perspectives in sections 1, 3 and 4, while point 5 is treated in section 2.

1. Constructivism and evolutionism: two alternative explanations of institutions emergence?

Part of the literature on spontaneous order has criticized Hayekian theory. A well-known argument is that spontaneous market forces may produce a "spontaneous disorder" (Buchanan, 1977), so that market (undesirable) outcomes can be improved and, accordingly, contractual solutions are required. The possibility that the market system may engender "undesirable" effects, or non-appropriate rules, is a central problem addressed by this literature (Vanberg 1986, 1994, Sugden, 1993; Falkena, 1985), according to which legislative intervention by the state and the evolution of institutions can be considered coherent phenomena, and that a "constructive institutional-constitutional design" is consequently conceivable (Vanberg, 1994, pp. 101-4). For that matter, Hayek himself acknowledged that the legislator can intervene when his
action is consistent with the spontaneous process by which the rules of society emerge (Hayek, 1960; 1973; 1976; 1978; 1979; cf. Buchanan, 1985; De Vlieghere, 1994; Carabelli and De Vecchi, 1998). Yet when the problem is defence of Western civilization, a different kind of deliberate intervention seems to be invoked (Hayek, 2001 [1944]; 1960). In this case, interventions are required not to implement certain results of the spontaneous order process but to prevent the onset of undesirable effects arising from historical and intellectual processes: those due to constructivism and which are capable of destroying the system of the "Great Society".

However, here I shall not explore how contractual or constitutional themes are connected to Hayek's view (or are able to modify it). Instead, my concern is to point out that this literature comprises a number of arguments to the effect that deliberate (state) intervention and evolutionary processes do not contradict each other (see Buchanan and Vanberg 1991; Vanberg, 1994, p. 104). Seen in this light, Hayek's dichotomy between constructivism and evolution of rules appears excessively radical – although, I repeat, it leaves some minimal space for the legislator, on the condition that his action is consistent with spontaneous tendencies.

Given this context I shall examine some problems related to the notion of "constructivism".

Constructivism is not only an intellectual (erroneous) way to conceive the nature of political and economic order; it is also a powerful system of thought able to engender totalitarianism. Constructivism, in my view, can plausibly embrace a variety of historical experiences, from
feudalism to the modern totalitarianisms, since the feature shared by these systems is that they are able to suppress spontaneous forces (see sect. 4). Individuals are not free, and society is organized not by "abstract rules" but by specific (and coercive) commands. In addition, it seems that Hayek does not consider what principles govern the future changes of a constructive society. One can envisage two possibilities. On the one hand, some kind of determinism prevails. Society as it is presently designed will be also thus "designed" in the future by the same powerful, intentional forces, and there is no space for evolutionary changes; in fact, constructivism is in “a certain way” able “to block future progress” (Hayek, 2001 [1944], p. 211).

On the other hand, one assumes that a society "deliberately constructed" as regards the future cannot be entirely directed in its aims. Therefore, unintentional and spontaneous effects may emerge in spite of the planner's intentions. This involves the generic possibility of interpreting the emergence of constructivist institutions in evolutionary terms. At time $t_0$ a society is constructed as an "organization", but if it is not possible to control all endogenous and exogenous variables, unforeseen changes will occur, and at time $t_1$ the societal order will not be "the result of human design". 

The question is therefore whether this latter change process can be conceived as an evolutionary process (see sections 3 and 4). In short, when we consider the empirical consequences of constructivism, do we interpret the emergence of institutions in terms of evolutionary theory, or

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is the process connoted by intentional human forces able to stop and even reverse the normal course of change?

We can synthetize the themes just outlined as follows:

1) The empirical dichotomy between constructivism and evolutionism of rules seems to imply two alternative processes by which institutions arise. The former is intentional and characterized by deliberate choices of the planner; the latter is unintentional and connoted by a selection process.\(^8\)

2) If constructivist systems are conceived in terms of a *temporary* halt in the evolutionary process,\(^9\) then the theory of rules selection remains the only explanation of institutional emergence. In fact, one can suppose that sooner or later more efficacious rules for the group (abstract rules) will appear. Negative effects connected to "designed" rules would lead

\(^8\)According to De Vlieghere (1994), Khalil (1996; 1997), Angner (2002), and other scholars, Hayek's theory is Darwinian. On these themes cf. Witt (1992; 1994; 1995; 1998), Hodgson (1991; 1993). Note that Hayek, in the section of *The Fatal Conceit* entitled “The Mechanism of Cultural Evolution Is Not Darwinian”, maintains that “[t]he idea of biological evolution stems from the study of processes of cultural development which had been recognised earlier”. Moreover, “cultural evolution simulates Lamarckism”, because it “is brought about through transmission of habits and information”. Nonetheless, Hayek stresses that “Despite such differences, all evolution, cultural as well as biological, is a process of continuous adaptation to unforeseeable events”. Finally, both cultural and biological evolutions share the “same principle of selection: survival or reproductive advantage” (Hayek, 1988, pp. 23-6).

\(^9\) Rules selection is characterized in terms of conflict among different kinds of rules, and this implies the slow emergence of spontaneous norms which can even be halted: this competition is described as follows: "The growth of the purpose-independent rules of conduct which can produce a spontaneous order will thus often have taken place in conflict with the aims of the rulers who tended to try to turn their domain into an organization proper. It is in the *ius gentium*, the law merchant, and the practices of the ports and fairs that we must chiefly seek the steps in then evolution of law which ultimately made an open society possible" (Hayek, 1973, pp. 81-2).
to the disappearance of these kinds of norms. Generally speaking, the latter should not persist for long. In fact, the persistence of a constructivist order implies that intentional, designed rules prevail over unintentional, spontaneous ones for a long period,\(^\text{10}\) and consequently the hypothesis of two different kinds of force able to create new institutions is proposed once more (cf. Diamond, 1980, pp. 247-8).

Finally, to be stressed is that these problems derive from the distinctive structure of Hayek's theory whereby *explanation* and *description* are often separated. On the one hand, cultural evolution is the explanatory key for institutional phenomena, and Hayek - as regards the theory of evolution - states that we are "confined to ‘explanation of the principle’ or to predictions merely of the abstract pattern the process will follow" (Hayek, 1973, p. 24). In this sense, he also refers to the notion of "conjectural history" (Hayek, 1967a, p. 75). On the other hand, Hayek's political concerns induce him to describe scenarios in which constructivist systems (socialism) may prevail in Western civilization. In short, the explanatory principle does not admit to any analytical description; vice-versa the *empirical* consequences of constructivism are largely descriptive considerations (Hayek, 2001 [1944], 1960, pp. 162-175).

\(^{10}\)“Hayek can only rebut that totalitarian institutions will not survive in the long run, but how long must this ‘run’ be?” De Vlieghere (1994, p. 299).
2. The “Great Society” and evolutionary theory

The themes sketched above can be further generalized. I shall consider the following problems in particular:

1) the persistence of systems which do not possess Hayek's criteria of "efficiency". Many kinds of societal systems, and not only constructivist ones, are not characterized by "abstract rules". Therefore, the cultural selection explanation fails if it does not account for these social and institutional phenomena;

2) Hayek's evolutionary theory is put forward as a general theory of institutions emergence. In the previous section, I sought to show how the emphasis on constructivism-evolutionism dichotomy may modify this view. In fact, providing a double, antithetical, explanation for the rise of institutions entails that the evolutionary approach is not general in character. But a further argument must be considered in this regard: in Hayek's approach the thesis of spontaneous order emergence seems to be applied only to the Western market societies. If so, the theory loses its feature as a general explanation all the more because it applies only to the "Great Society". Finally, "abstract rules" are connoted in terms of their "superiority", and this contrasts with any (cultural) evolutionary view, even the one that Hayek adopts.11 As is well-known, evolutionary (Darwinian) theory describes only a process, which involves adaptation

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11See note 8. In Hayek's opinion social anthropology has shown that in many fields "the outcome of a process of evolution and selection [is] very similar to that which we find in the biological field" (1967b, p. 86).
and selection, but not the "superiority" of the outcomes of evolutionary processes.

In *Law, Legislation and Liberty*, the theoretical description of the emergence of abstract rules (as regards social and market behaviors, morals, law etc.) is also delineated by introducing analytical and historical considerations. These latter show that only a system of rules, only a process, produces superiority with respect to others:

"All that we are here maintaining is that we know *only of one kind of such systems of rules* [...] which makes the kind of open or 'humanistic' society possible [...] It is only if we accept such a universal order as an aim, that is, if we want to continue on the path which since the ancient Stoics and Christianity has been characteristic of Western civilization, that we can defend this moral system as *superior to others*. (Hayek 1976, p. 27, emphasis added).

Moreover, in general terms, the superiority of a social system is connected to the notion of "progress" (since "[i]n one sense, civilization is progress and progress is civilization" (Hayek, 1960, p. 39)), and spontaneous evolution is a “condition of progress” (Hayek, 1979, p. 168).

Therefore it is easy to conclude that:

firstly, the superiority of Western society, in Hayek’s eyes, is a palpable fact;

secondly, the general rules are incorporated in a precise historical and cultural process which starts from the Stoic and Christian traditions: that is to say, from a specific context (Western civilization);
thirdly, the cultural evolutionary process (although limited to Western history) on the one hand entails unforeseen results; while on the other, these latter are connoted in terms of "progress". In other words, Hayekian evolutionism exhibits both Darwinian (unpredictable future) and non-Darwinian (superiority/progress of evolutionary results) elements.

Hayek more explicitly maintains:

"It is irrelevant […] from which initial system of rules this evolution started; and it is quite possible that one kind of system of such rules is so much more effective than all others in producing a comprehensive order for a Great Society that […] there may occur in systems with very different beginnings a process corresponding to what biologists call 'convergent evolution'. 'The necessity of human society' may bring about an independent emergence, at many different times and places, of the same sort of system, such as that based on private property and contract. It would indeed seem that wherever a Great Society has arisen, it has been made possible by a system of rules of just conduct which included […] 'freedom of contract, the inviolability of property, and the duty to compensate another for damage due to his fault'" (Hayek 1976, p. 40, emphasis added).

From this quotation one can infer that:

1) the most efficacious system of rules is characterized by institutions like private property and contracts;

2) Hayek essentially considers the process which he calls the "convergent evolution" of rules, while he does not focus his attention on the divergent processes of change which induce different social systems to organize themselves in the absence of private property and contracts.

By contrast, a number of scholars are today interested in discovering why different social systems produce non-convergent paths of change.

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12Hayek makes this point on many occasions in his work.
This is, for instance, the purpose of the inquiry pursued by North (North, 1990; 1992; Denzau and North 1994, cf. Schlicht, 1998, pp. 200-202; Fiori, 2002), whose model shows how historical and cultural variables determine their specific (and non-convergent) change over time. In particular, North’s model explains, in path-dependence terms, why dysfunctional institutions (in Hayek's terms) destined to be "negatively" selected persist so long (sometimes for centuries). Moreover, even when this point of view considers the differing abilities of social systems to produce "efficiency" (in the neo-classical sense), it does not involve the notion of "superiority" (or “progress”), whereas Hayek states:

“I have so carefully avoided saying that evolution is identical with progress, but when it becomes clear that it was the evolution of a tradition [that of “Great Society”] which made civilization possible, we may at least say that spontaneous evolution is a necessary if not a sufficient condition of progress” (Hayek, 1979, p. 168, emphasis added).

The superiority (“progress”) of a specific evolutionary process is closely connected to the superiority of a specific social system: that of Western society. As a consequence, Hayek's theory of spontaneous order further loses its features of a general theory of institutional evolution because it refers to only one model of civilization.

3. Social planning and evolution: Simon's perspective

Hayek’s dichotomy between constructivism and spontaneous order cannot be held if examined in the light of Simon’s approach. Simon's
The general assumption is that both natural and artificial systems exhibit adaptive and evolutionary features, and that they can be conceived as interfaces between an “inner” and an “outer” environment (Simon, 1996, p. 6). Moreover, they have homeostasis and feedback mechanisms with which to respond to environment changes. In particular, the homeostatic process makes “the system relatively insensitive to the environment”, while feedback is a form of adaptation able to re-equilibrate the system when a variation in the environment occurs (Simon, 1996, p. 149).

Therefore, analysis can also deal with a distinctive kind of artificial system: the human institutions created for specific purposes. The first step is definition of the relation between (social) “client” and (social) planner. For example, planning some changes in a town requires the work of engineers, architects, and so on, but such technical interventions engender changes in many spheres of social life as well. But these changes cannot be foreseen by the original plan, which exerts its direct influence on a limited domain alone, because they are simply beyond its control. In other words, fulfilment of the plan produces unintentional results. The thesis according to which artificial and natural (biological) systems exhibit similar features permits us to show that they are connoted by evolutionary processes. In fact, if we assume that society is the "client”, and that social institutions are the planners, then a specific interaction comes about between these “collective” agents:

“The members of an organization or a society for whom plans are made are not passive instruments, but are themselves designers who are seeking to use the system to further their own goals […] A not dissimilar representation of the social planning process views it as a game between the planners and those whose behavior they seek to influence. The planners make their move (i.e., implement their design), and those
who are affected by it then alter their own behavior to achieve their goals in the changed environment.” (Simon, 1996, pp. 153-154; emphasis added).

On this view, in which bounded rationality characterizes every decision-maker (individuals and institutions), there is no room for an omniscient mind able both to define social planning in every detail and to mould society. Rather a continuous interaction between different designers occurs, since the “society as client” is itself, in turn, a planner. Therefore, if unintentional outcomes derive from interaction among the plans of different actors, then Simon's expression “designing without final goals” evocatively encapsulates a distinctive process where every step in the interaction constitutes a new base for the emergence of new plans. In Simon's words:

“it is also beside the point to ask whether the later stages of the development were consistent with the initial one - whether the original designs were realized. Each step of implementation created a new situation; and the new situation provided a starting point for fresh design activity." (Simon, 1996, p. 163).

Contrary to Hayek's notion of constructivism (as a plan able to “block the future”), new purposes and new social configurations emerge purely from the achievement of plans (or, more precisely, from a complex interaction among them), so that social planning consists in “designing the evolving artifact” (Simon, 1996, p. 139). Consequently, “[s]ocial planning without fixed goals has much in common with the processes of biological evolution” (Simon, 1996, p. 165), and homeostasis and feedback mechanisms, as we have seen, connote both artificial and biological systems as adaptive.
On these premises, Simon's analysis is able to specify why social planning is characterized in evolutionary terms. Biological and social evolution, in fact, exhibit a tendency to increase complexity and variety. The former is a process by which complex forms arise from a combination of the simpler ones. The latter increase because evolution produces a proliferation of niches. Which implies a reversal of the traditional view that organisms compete to occupy a limited number of environmental niches. The evolutionary analogy between biological and social life is summed up as follows:

“The environments to which most biological organisms adapt are formed mainly of other organisms, and the environments to which human beings adapt, mainly of other human beings. Each new bird or mammal provides a niche for one or more new kind of flea.

Vannevar Bush wrote of science as an ‘endless frontier’. *It can be endless, as can be the process of design and the evolution of human society*, because there is no limit on diversity in the world.” (Simon, 1996, pp. 165-166; emphasis added).

In short, social planning possesses evolutionary characteristics and, as biological evolution, it is an *endless process*.

Although there are some differences in Simon’s and Hayek's treatments of the notion of social planning, their perspectives can be compared:

1) In Hayek's theory, institutional interventions are admissible only if they are consistent with spontaneous, evolutionary, processes; otherwise they must be considered constructivist, dangerous, acts. By contrast, for Simon, social planning is a coherent part of evolutionary and unintentional processes, so that no notion of constructivism is implicitly admitted.
Note that Simon and Hayek share the conviction that no (individual or institutional) mind possesses either complete information or perfect foresight (March J. and Simon H.A. (1993) [1958], pp. 225-226; 1996, p. 34). Yet, contrary to Hayek, Simon emphasizes that limited information and bounded rationality provide the explanatory key for the representation of deliberate, institutional, interventions in evolutionary terms.

2) Hayek's "explanation of the principle" is based on the assumption that

“the theory of evolution proper provides no more than an account of a process the outcome of which will depend on a very large number of particular facts, far too numerous for us to knowing their entirety, and therefore does not lead to predictions about the future.” (Hayek, 1973, pp. 23-24).

The historical dimension thus disappears. More precisely, no detailed, and specific, history can be written, only a theoretical “account” founded on a small set of principles. Simon takes the opposite view that “[t]he evolution and future of [natural and economic] systems can only be understood from a knowledge of their histories” (Simon, 1996, p. 47). In short, historical explanation is necessary for the correct understanding of the evolutionary paths of complex systems.

The following section discusses the lack of a historical-theoretical dimension in Hayek's work further, because it seemingly highlights a gap in his theory. Simon's thesis offers some suggestions in this regard,

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13 More precisely, Simon quotes Hayek as a theorist of the computational limitations of the human mind.
but the the notion of institution that he used should be borne in mind. Institutions are complex hierarchical systems, and a hierarchy, in his view, is a system composed of interconnected subsystems whose structure is, in its turn, interrelated (Simon, 1996, p. 184). But this does not imply that relations of subordination (or of authority) obtain among the sub-systems. I shall seek to show that even if we consider the traditional notion of hierarchy, including relations of subordination, the hypothesis of institutional evolutionary processes can be maintained.

4. Constructivism and selection processes

Is constructivism only a modern phenomenon? If it is not, can we find a historical example which is not confined to the twentieth century? Do constructivist systems evolve?

Let us suppose that European feudalism was a constructivist institutional system: political and religious ideologies, social hierarchies, specific commands connoted it even more rigidly than they do contemporary societies (although, as in Hayekian "organizations", feudalism exhibited a certain degree of freedom). In short, let us assume that, in this case, human institutions serve "human purposes" because they "have been deliberately designed for [specific] purposes" (Hayek, 1973, p. 8).

Now, the question is this: how can we explain the transition from the feudal (constructivist) system to modern "Great Societies"? More
simply: how can we explain the transition from constructivist systems to a free and spontaneous market order?

Some problems treated in the first part of this paper thus re-appear. In this section, they will be addressed by referring to Smith's work, for two reasons.

Firstly, his historical theory developed in the third book of the *Wealth of Nations* provides useful suggestions;

Secondly, Smith is a fundamental intellectual source for Hayek.

In Smith's view, after the fall of the Roman Empire, land ceased to be a mere "means of subsistence" and became a "means of power" (WN III.ii.3). In those "disorderly times" individuals felt a greater need for security, and "great landlords" assured them protection in exchange for their obedience. The more the feudal system developed, the more, as is well known, a peculiar relation of subordination arose which linked feudal landlords to their "subjects". Land was thus a "means of power", since its productive resources were used to create (and reinforce) these relations of subordination, even though the exploitation of the land’s productive resources was "sub-optimal". The larger his landed estates, the more the landlord's power increased.\(^\text{14}\) Keeping the land undivided was essential to ensure the landlord's power, which in its turn was based on his ability to protect his subjects against the incursions of enemies.

Therefore, the law of primogeniture and "entails" were introduced to keep land undivided by means of lineal succession and to impede any

\(^{14}\text{The security of a landed estate, therefore, the protection which its owner could afford to those who dwelt on it, depended upon its greatness" (WN III.ii.3). Cf. Fiori and Pesciarelli (1999).}
kind of alienation. As a consequence, also social hierarchies were reproduced over time.

I contend that we can consider both the law of primogeniture and "entails" as constructivist institutions, for various reasons:

1) they are "designed" institutions created for specific purposes;
2) they help reproduce hierarchies and social relations of subordination (i.e., they do not construct a free "Great Society");
3) they structure each fief as an "organization" characterized by "specific commands".

Nonetheless, the shortcoming of this hypothesis is that Hayek usually connects modern constructivism with the role of information, which involves both the theory of "dispersed knowledge" and the problem of "socialist calculation" (Caldwell, 1997; Fiori, 1998). Evidently, the question cannot be resolved by means of analogies and conjectures, given the difficulty of treating the role of information when comparing systems distant in time and space.

Yet a provocative hypothesis would be that the constructivist characteristics of the feudal system may emerge, in evolutionary terms, as an adaptive response to the environment. In fact, one can assume that the political, institutional and historical events which engendered this system and constituted the "environment" for individuals induced them to respond in adaptive terms. The conclusion is that institutions like

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15In Caldwell's view: "Hayek also recognized that the conscious construction or imposition of social institutions is a tricky business. Many such institutions are the product of a long process of evolutionary development; they are themselves examples of complex self-organized adaptive orders" (Caldwell, 1997, p. 1885). It would seem that evolutionary theory could explain the emergence of constructivist
laws of primogeniture and "entails" were selected in spite of their constructivist structure. This was because, with respect to the alternatives, they offered a reproductive advantage where free private property was unable to survive in an environment characterized by violence, constant wars, and incursions. Moreover, although slow marginal changes occurred over time, selection processes assured the persistence of such a system for many centuries. As Simon reminds us, the stability of institutions (and in general of every complex system) is an essential condition for their "positive" selection and their persistence. Therefore, the emergence of constructivist systems may be coherent with an evolutionary view, and in provocative terms it can be considered a special case of "spontaneous order".

As a consequence, if one accepts this hypothesis, Hayek's radical distinction between constructivism and evolutionism breaks down.

The final question to address is how the feudal constructive system changed into the "Great Society". How did rigid, designed, rules allow the emergence of "abstract rules"?

Hayek does not put forward a historical theory, only an intellectual history of ideas (the history of "true and false individualism"), and he sometimes describes how tribal mentalities re-emerge in modern institutions, although it should be specified what forces permitted the persistence of these latter.

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16 This process can be described in terms of competition among institutions and rules; see Vanberg and Kerber (1994).
17 Once again, the question is defining the precise nature of the forces which long impeded the emergence of "abstract rules", and the persistence of a self-reproducing constructivist system.
contexts. Consequently, not to be found in his work is description of those marginal changes which slowly transformed the *Ancien Régime* societies. By way of contrast, Smith (and in a different way D. North) offers a historical-theoretical description of marginal "variations" which modified the original feudal system. In fact, Smith describes the role played by foreign trade, the rise of towns, the change of social and contractual relationships in the countryside until the “great landlords” were able to spend their revenues on consumption and not on commanding individuals (WN III).

One notes a further problem in passing. As pointed out both in *Introduction*, and in section 1, Hayek stresses the danger that constructivist mentalities and institutions may prevail over the “abstract rules” of the “Great Society”. Therefore, in this case, one must explain not the change from feudalism (constructivism) to the spontaneous market order, but the plausible change from a spontaneous order to a constructivist one. What forces bring about these changes? Are they evolutionary forces? Do spontaneous rules cease to be advantageous for the social order?

In short, problems seem to arise in Hayek's theory because of its lack of a historical-theoretical approach.

In conclusion, the first part of this contribution discussed whether constructivism and the evolution of norms are two alternative kinds of explanation. The third part showed that it is possible to unify both these views by conceiving social planning as an endless process which exhibits evolutionary features. The fourth section supported this view by including more specific conditions, with the result that constructivism
emerges as a special case of the evolutionary approach. This conclusion, however, contrasts with Hayek’s dichotomy (constructivism versus evolution). Conversely, if this approach is rejected, the double explanation of emergence of institutions re-appears.

Finally, a historical-theoretical perspective would permit correct evaluation of the sense in which the emergence of "abstract rules" has connoted Western societies (in the sense discussed in section 2). In this case too, the problem consists in demonstrating that cultural evolution theory is a general and unique explanation, and not a specific (perhaps disputable) thesis circumscribed to the development of market societies.

History matters, and it can probably be of assistance to approaches which seek to explain very complex phenomena.

References


Glasgow Edition of the Works and Correspondence of Adam Smith, Oxford, Oxford University Press.