

Erik Angner, *Hayek and Natural Law* (London and New York: Routledge, 2007), pp. xvi, 140, \$65.00. ISBN 978-0-415-39715-5.

In *Hayek and Natural Law*, Erik Angner defends the view that many of F. A. Hayek's most important contributions are inextricably linked to his early exposure to and subsequent participation in the natural law tradition. The book is brief—five substantive chapters, plus an introduction and conclusion, all in 124 pages of text—and draws on and extends some of Angner's earlier works. His stated goal is neither to provide an intellectual biography nor to offer a rational reconstruction of Hayek's ideas, but "to develop a better understanding of Hayek's life and work" and to provide "an accurate conception of the nature of his project" (p. 5).

In chapter 2 Angner notes that the defining characteristic of the natural law tradition is "its commitment to the superiority of natural over artificial order" and the closely connected "notion of the superiority of natural over artificial law, and the notion that social organization should to the greatest extent possible be modeled upon the natural order" (p. 8). There are a variety of types of natural law doctrines. Some, following Plato, assert that the natural order is actual rather than potential, while others, following Aristotle, claim that the universe is potentially, but not actually, ordered. A second division is between those who claim that the source of order is divine and those who do not. A final division is between those who think that the natural laws associated with the natural order are inexorable or not. This latter distinction has an important implication: those philosophers who reject the inexorability of the natural law "do not in general maintain that natural orders are always or necessarily superior to artificial order" (p. 11).

Angner continues the chapter by quoting extensively from Hayek's writings, noting his frequent reference (particularly since 1967) to rules and orders, his contrasts between man-made and natural orders, his arguments that natural orders frequently conduce to prosperity and are difficult to improve upon, and his preference for grown law over legislation. All these are taken as evidence of his commitment to the natural law tradition, this despite Hayek's own claim in *Law, Legislation and Liberty* that to consider his work a part of the tradition would be "misleading," and that he prefers not to use the term "natural law theory" to describe his ideas (Hayek, in Angner, p. 20). Noting that "misleading" is not synonymous with "incorrect," Angner claims that, despite his protests, Hayek's work is still best viewed as a part of the tradition.

When was the natural law tradition instilled in Hayek? We find in chapter 3 that his commitment finds its origins in part in his "Roman Catholic upbringing" (p. 27), in his legal education at the University of Vienna, and more broadly, in the fact that he was "born, raised, and educated in an environment in which Natural Law doctrine infused religious, political, legal, social, and economic thought" (p. 26). "Perhaps the most important source," however, was his study of the Austrian economists and the British moral philosophers, all of whom participated in the natural law tradition (p. 30). Angner claims that Hayek "closely studied" Adam Smith, David Hume, and others in Vienna, "well before his arrival in England" (p. 31).

The importance of these early studies becomes evident in the next chapter, where Angner argues that much of Hayek's famous work on information and coordination is drawn directly from the British tradition and from Hayek's Austrian predecessors.

Indeed, he cites Erich Streissler's rhetorical question of "whether there was anything original in Hayek's writings on information and socialism at all" (Streissler, in Angner, p. 55). Noting Hayek's debt to Adam Smith, Carl Menger, Friedrich Weiser, and Ludwig von Mises, Streissler went on to say, "If a young scholar asks you how he should go about to gain a Nobel Prize in economics you might answer, 'Take the well-known idea of four of the best known leaders of the profession; repeat and reiterate this idea often enough; and you are sure to gain a Nobel Prize (as a proof of this, just look at Hayek)!'" (Streissler, in Angner, p. 56).

In the next two chapters, two more of Hayek's ideas are linked to the natural law tradition. The first of these is the key idea of cultural evolution, which, according to Angner, Hayek got from Alexander Carr-Saunders and a group of zoologists at Oxford (for an alternative view, see Caldwell 2004, p. 355). Hayek used the theory of cultural evolution to explain how the natural order of the market emerged. In this he was again following the lead of the classical economists and Menger, but he cast their views in terms of a more modern theory: "Hayek decided to adopt Carr-Saunders' theory, presented so as to convince his contemporaries, to build his case for the distinguishing idea of Natural Law doctrine" (p. 95). In the final substantive chapter, Angner retells the story of "Hayek's transformation," that is, his movement from equilibrium theory economist to market process social theorist, stressing once again that the standard story is fully compatible with his account of Hayek as a natural law philosopher.

Angner's book appears to contain both a weak and a strong version of the thesis that aspects of Hayek's work may be reconstructed as fitting a natural law framework. It seems to me that the weak version is obviously correct. That a natural law tradition has been important in economics is clearly true. The belief that there is a certain order in the social universe that is discoverable is of course the first and most important of its premises. Furthermore, the Scottish Enlightenment philosophers also held that (following Adam Ferguson's famous dictum) many beneficial social institutions are the results of human action but not of human design, that is, they are the unintended consequences of purposeful human action. Smith, Menger, and Hayek all believed that such an order potentially exists ("potentially" because it can be disrupted) and tried to describe both how this order could come into being and (especially in Hayek's case) which social institutions are associated with its preservation. Smith, Menger, and Hayek, then, can usefully be viewed as operating within the same tradition. All of this seems evident, and uncontroversial.

I would raise two concerns, though, about the weak thesis. The first has to do with Hayek's clear objections to labeling himself as a natural law theorist. As Angner notes, he did so in *Law, Legislation, and Liberty*. Hayek also demurred in his earlier book, *The Constitution of Liberty*, where he said this:

The doctrines of legal positivism have been developed in direct opposition to a tradition which, though it has for two thousand years provided the framework within which our central problems have mainly been discussed, we have not explicitly considered. This is the conception of a law of nature, which to many still offers the answer to our most important question. We have so far deliberately avoided discussing our problems with reference to this conception because the

numerous schools which go under this name hold really different theories and an attempt to sort them out would require a separate book (Hayek 1960, p. 237).

Why did Hayek in his two major books on political philosophy distance himself from the natural law tradition? The main reason, I think, is that he saw himself as attempting to reconstruct liberalism on new foundations. Certain older variants of liberalism, of course, sought justification for the transformation of society in the natural law. (The idea that humans are endowed with certain inalienable rights was, for example, used to challenge existing laws and social institutions that trampled on those rights.) But in his reconstruction Hayek wanted to avoid natural law ideas like “the doctrine of economic harmonies,” with its consequent support of a strict *laissez-faire* approach, that were also often associated with the earlier forms of liberalism. If this reading is correct, it is more straightforward simply to see Hayek as he saw himself, that is, as trying to reconstruct liberalism, than it does to associate him with the natural law tradition. As a result, Angner’s labeling scheme, by neglecting this tension or denying its import, confuses rather than clarifies our understanding of the Hayekian project.

A second weakness of the weak thesis is that Angner neglects to identify who among economists should be included in the natural law tradition. After all, it would seem that much of current day neoclassical economics, based as it is on equilibrium theorizing and the law of markets, could also be interpreted as part of the natural law tradition in economics. On such a reading, are all mainstream economists also participants in the tradition? And if this is the case, what content is added by claiming that all of Hayek’s most important ideas derived from it?

Angner recognizes that if all economists are part of the natural law tradition then the thesis that Hayek was also a part of it is trivially true. To defend himself, he notes that at least one school, the German Historical School economists, explicitly rejected natural law doctrine. Perhaps more important is Angner’s claim that “Hayek thought of himself as part of a small minority of people who recognized that spontaneous order is frequently superior to artificial order” (p. 24). Though Keynes is mentioned as one of those who should not be included, Angner declines to identify any others.

But there are problems here. In his explication of the varieties of natural law doctrines, Angner noted that Hayek is among those who reject the inexorability of natural laws, so that he is among those who “do not in general maintain that natural orders are always or necessarily superior to artificial order” (p. 11). Angner recognizes that Hayek frequently disparaged *laissez faire* as an inadequate and indeed an often harmful policy stance, and enumerated various instances in which he felt that government intervention in the economy was warranted. Presumably the same exact sentence could be written to describe John Maynard Keynes. Is it just a matter of degree, then? And how does one decide?

Let us move to what might be called “Angner’s strong thesis,” which involves certain additional claims beyond the (clearly correct) one that Hayek may usefully be viewed as working in a tradition (whatever it might be labeled) that includes Adam Smith and Carl Menger. The most important of these additional claims are that Hayek’s participation in the natural law tradition dates all the way back to his Vienna period; that, in addition to Menger and the Austrians, he studied Adam Smith and the

British moral philosophers in the 1920s; and that his work on coordination and information (which is often viewed as Hayek's seminal contribution) in the 1930s draws directly on their ideas. When confronted by the historical record, these theses run into a number of real difficulties. Angner knows enough about Hayek to recognize some of the problems, but he nonetheless presses on. A short list of the problems might include:

Hayek's family, though nominally Roman Catholic, was basically agnostic, and Hayek himself was after about age 15. (Acknowledging these facts, Angner emphasizes that natural law doctrine was "in the air" in Vienna.) Science, not natural law, was the dominating early influence in the Hayek household.

During his university days, right after aspirating all that natural law doctrine from the Viennese air and having them reinforced by his studies of law, Hayek was an adherent of a type of Fabian socialism, which presumably *is* an example of a doctrine that opposes natural law doctrine.

Through the late 1920s and through the 1930s Hayek worked on trade cycle theory and tried to develop a model of a capital-using monetary economy. None of this work drew on the British classical or on Menger, but on the monetary and capital theory contributions of people like Mises, Knut Wicksell, and Eugen von Böhm-Bawerk. One of Hayek's contributions was the argument, in *Monetary Theory and the Trade Cycle*, that money was the "loose joint" that permitted the system of equilibrium to break down. This is not the sort of argument that one expects to find a natural law theorist making!

Angner provides scant evidence for his important claim that Hayek had "closely studied" Smith and the other British classical while in Vienna—important because this was where he supposedly got his key ideas about coordination and information (recall Streissler's remarkably ungenerous remarks). Angner's evidence here is that in an interview Hayek noted that Mises had introduced him to utilitarianism and Jeremy Bentham in the 1920s; that Smith was frequently cited in Menger's *Principles*, which Hayek had studied; and that Hayek mentioned both David Hume and Adam Smith in his 1933 inaugural lecture at the LSE.

Hayek's mentioning of utilitarianism and Bentham is irrelevant for two reasons: first, the utilitarian tradition is often viewed as a *competitor* to the natural law tradition for providing a foundation for liberalism, and second, for Hayek, Bentham was one of the men whose work *undermined* the British liberal tradition (see Hayek 1960, p. 55). Next, while it is true that Menger cites Smith a number of times in his *Principles*, it is to disparage his cost-of-production theory of value (as well as those of other British classical economists)—a theory that Menger's own marginalist approach was designed to replace. Furthermore, Menger interpreted Smith as a pragmatic rationalist, not as a precursor of his own work on how social institutions are formed as the unintended consequences of human action (for more on this, see Caldwell 2004, pp. 72-73). Finally, in interviews that Angner does not cite, Hayek explicitly stated that he did not study the British classical, excepting Smith, in Vienna:

Rosten: Had you read the English economists, the classical economists?

Hayek: At that time, no. Adam Smith I had read fairly early, but that's the only one—and in a German translation (Hayek 1983, pp. 71-72).

In another interview Hayek expanded on how much Smith he had read:

Alchian: Where did you first read or hear of Adam Smith? Or do you recall?

Hayek: I certainly read Adam Smith first in German; not very early in my studies. I knew Adam Smith mainly through the history of economics—lectures and so on—and it probably was very late that I read right through *The Wealth of Nations*. At first the part on public finance didn't interest me at all; I only came to appreciate the semi-political aspects of it very much later. Being brought up on the idea that the theory of value was central to economics, I didn't fully appreciate him. I think he's the one author for whom my appreciation has steadily grown, and is still growing (Hayek 1983, p. 400).

To sum up: There is little evidence in support of, and much that contradicts, the notion that the early Hayek embraced the natural law tradition. He was raised in a scientific household as a youth, then educated in the Austrian marginalist tradition, a tradition in which Adam Smith (because of his value theory) did not fit. Hayek's appreciation for Smith did not develop until later, when he took as his task the reconstruction of liberalism. Furthermore, in reconstructing that doctrine, though Hayek knew of the natural law tradition and knew that he was investigating problems that could be investigated using a natural law framework, he (as he put it) "deliberately avoided" using the framework. As such, if it is clarification that we seek, it is probably better to take Hayek at his word that his task was the reconstruction of liberalism without having recourse to the natural law tradition, rather than, as Erik Angner would have it, to view him as a natural law theorist.

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