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OF NORMS, RULES AND MARKETS: A COMMENT ON SAMUELS

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Warren Samuels' work on the legal-economic nexus attempts to explain the intricacies and nuances of social order. This work highlights the difficulties that simplistic accounts of social order confront. As he has summed up his position:

"Rights are not produced in a black box called government; and the economy does not operate on its own. A legal-economic nexus is formed by the process in which both are simultaneously (re)determined. At the heart of society and of social (including legal) change is control and use of the legal-economic nexus, and at the heart thereof is the exercise of government, power and belief system. The fundamentals of the legal-economic nexus are not as simple and obvious as contemplated by views that maintain that the polity and economy are pre-existent, self-subsistent spheres."²

Two of his most recent essays, both published in this journal, continue this line of argument and are welcomed additions to the literature on norms, rules and markets.³

Samuels provides an explanation of how certain customs, norms, and rules will shape the social order that emerges. Order may indeed be defined in the

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¹ For an appreciation of Samuels’s contribution to political economy see Boettke 2000. This paper examines the exchange from the 1970s between Buchanan and Samuels on the role of the status quo in political and economic reform.

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process of its emergence, as James Buchanan has emphasized in his writings, but that very process of emergence is structured by the norms and formal rules which govern its generation.4 For Samuel, following in this regard Menger5 and Hayek,6 it is the constitutive approach that enables us to explain the evolution of institutions as “the product of human action, but not of human design.” Samuel’s research program in political economy is a descriptive, as opposed to normative, approach to spontaneous order studies, and in particular he emphasizes the messy details of the process of “working things out” and the role of deliberation and rational criticism within that social process. Samuel argues that no institution is purely spontaneous (nor is any institution purely designed7), for there is constant deliberation taking place at every juncture involving interaction within the evolving process. In his opinion, it is these deliberations within the spontaneous order that shape the outcome of the process. His position is neatly summed up as follows: “The idea that there is no unique market is complemented by recognition both that there are no unique rules and norms – legal or nonlegal – and that there are no unique Pareto optimal outcomes. Indeed, different combinations of rules and norms – legal and nonlegal – help generate both different markets and different outcomes. Talking about the magic of rules and norms and of markets ... obfuscates the need to work out the specific substantive content of rules and norms and, in part, thereby the form, structure and operation of the actual market which ensures as well as the outcomes of that market.”8

But can deliberation as an explanatory story fit with Hayek’s notion of spontaneous order? At first glance, it seems that deliberation is too constructivist an explanation to possibly serve as the primary impetus of the emergence and evolution of social norms.9 Yet Samuel shows how an emphasis on deliberation does not require an abandonment of spontaneous order explanations.

4 See Buchanan 1993, pp. 241-245.
5 Menger 1890, pp. 129-130.
6 Hayek 1952a, pp. 67-76.
7 The argument that no institution can possibly be of pure design could be offered by arguing that even the human mind is a spontaneous order in which the plan constantly undergoes change over time by the simple changes occurring in the individual mind. For more on this point, see Friedrich A. Hayek’s The Constitution of Liberty (Hayek 1960) and as well as Harris 2000.
8 Samuel 2000, p. 992.
9 This approach is only odd with the work of Hayek based on a superficial reading of Hayek. We must remember that Hayek did not submit blindly to the forces of tradition. He took as his task the European one of using reason to whittle down the claims of reason. But he did not seek to supplant rational analysis of the rules. Hayek’s argument is that there are limitations to our critical abilities, but we should continually question all traditions and values. It is not that we cannot question them at all, but instead, our epistemic capacities necessitate that we must always offer criticism of some values while holding others as unquestioned. Hayek, thus, articulates a defense of “immanent criticism” in his work on social order. On Hayek’s argument see his essay “Why I Am Not a Conservative” (Hayek 1980, pp. 807-812). “The Errors of Conservatism,” Hayek 1978, pp. 2-22; and “Three Sources of Human Values” (Hayek 1979, pp. 153-176). On the evolution and unity of Hayek’s ideas in economics and social philosophy see the introduction to Hayek 2000a.

Within any spontaneous order there are innumerable decision nodes, each of which is a kernel of rational deliberation between the parties involved in the interaction. Neither party knows ex ante for sure what the result will be from their deliberations, but in part what emerges is a result which could not possibly have emerged without the actions of individuals brought forth by a deliberative process based on some anticipation of what that result would be. The Samuel’s argument that: “There being no unique rules and norms, no unique markets, and no unique outcomes (no unique Pareto optimal results), the operative questions become which structure, which channeling, which coordination, which norms and what rules, which of these preferences are to count, and so on, which is to say, coordination on whose terms.”10 In other words we have spontaneous orders, but it is far from clear how this spontaneous order affects the evolution of social institutions. Since the ultimate direction that spontaneous orders take is largely unknowable, Samuel argues that we examine the deliberative aspects that the social orders are interested in. Getting to the bottom of how this process “working things out” occurs in given frameworks with specific kinds of custom governance, justice, and rights is what Samuel believes is the only way we can begin to understand how the customs, norms, and rules of the present emerge and shape our social order.

Thus, the selection mechanism determining which customs, norms, and rules are passed on and which are not derives from the process of “working things out.” How things are “worked out” is dependent upon the customs, norms, governance, and institutions of justice at the time the process begins. This can very well appear to be circular reasoning in which we get the evolution of customs, norms, and rules from assuming customs, norms, and rules. However, those which emerge from the previous customs, norms, and rules are often different in nature than their predecessors. If they have endured a long time period in which the process of “working things out” was at work, they are less likely to change. In other words, regardless of where we begin our analysis of the evolution of customs, norms, and rules, there are inevitably certain customs, norms, and rules already embedded in the social nexus of our starting point.11

If Samuel is correct in his assertion that the “rules of the game” and the other circumstances of the different parties determine the course of the game then the primary expedient to altering the course of future customs, norms, and rules is through the very process of “working things out.” If, for whatever reason a particular norm is undesirable, the means to transforming this norm rests on incremental tinkering with the “rules of the game.” But, of course, this brings us back to two additional problems. The first being the unintended consequences of any attempt to alter a long-established institution. The second problem is again being the question of “For whom, by whom?”

10 Samuel 2000, p. 995.
11 On the importance of the concept of social embeddedness for political economy, see Boettke 2004.
Despite his insistence on continuous deliberation on the social order, Samuels notes the requisite degree of suspicion that "must be directed at those who propose either any change or any reversal of change of the interests protected and given effect by rights, norms, and rules." He adds, "One must question each proposal in terms of the interest which it (newly) protects and the power and/or ideological position on which it is based." Yet at the same time, Samuels also has a profound respect for Carl Menger's argument that "each generation in every society has as its calling the evaluation and revision of received institutions." To Samuels, it seems that we must always make an effort to find ways to correct for the errors which may spin out of spontaneous orders, but at the same time maintain a watchful eye towards the interests of the parties concerned with the present injustice. Thus, his emphasis on the messy details associated with the process of "working things out" in the political-legal-economic nexus.

How this can be effectively done remains the pernicious question which social philosophers and political economists have attempted to resolve since at least Adam Smith. In these two recent essays, Samuels contributes to our understanding of how we get the customs, norms, and rules that we do by reminding us that the outcome is not entirely the product of some mysterious late working of its course, but instead the product of a multitude of decisions which individuals within the nexus had some control over. Though the end result was undoubtedly unforeseen in its entirety, it is the culmination of a process that was the product of a great amount of individual rationality at different stages of the evolution. The customs, norms, and rules which have emerged successful are of a malleable form. Not completely malleable, but more malleable than most presentations of spontaneous order seem to permit. If we do not like them or feel that better norms were abandoned, we can blame the institutional environment in which they evolved for the outcome. If we want to change them, we can only do so by "working things out" in a similar deliberative environment. Whether the same norms emerge, old ones are rectified, or new ones are discovered is the result of the individual choices during the refinement effort.

In this regard, Samuels, like Buchanan, is both affirming the power of invisible hand explanations, but resisting the implication that efforts at improvement in that order are to be eschewed. The argument that whatever has evolved is efficient is to be tempered by the recognition that whatever evolved is context dependent. In Buchanan's language, it is meaningless to discuss a particular order without reference to the system of social control within which it emerges. In sum, there are no unique rules and norms, no unique rights. There is only the process of working things out — and included in that process are efforts to structure and channel it, to control and put it to use, which efforts are also part of the process of working things out. Samuels's emphasis on the details of social control corrects the tendency among some classical liberal political economists to talk in broad generalities about the wonders of spontaneous order. As a progressive research program in sociological theory, those engaged in spontaneous order studies cannot be content with platitude, but must get serious about studying the details of the social process. Samuels by putting the political back into political economy focuses our attention on power and mechanisms of social control. Combined with Buchanan's emphasis on the rules of the game and strategy within rules, and Hayek's emphasis on the informational properties of the exchange process and the spontaneous order, both the rules which govern that exchange process and the exchange process itself, the Samuels emphasis on mechanisms of social control and the deliberative process of "working things out" through time represents a fundamental contribution to improving our understanding of norms, rules and markets.

12 Samuels 2000, p. 595.
13 Ibid.
14 See Samuels 1999 and Menger 1983, pp. 223-254. Menger's argument is similar to that of Hayek's "immanent criticism" which we previously addressed.
15 In the dialectics of the classical liberal project see Buchanan 1977 and Buchanan 2000.
17 Samuels 2000, p. 596.
REFERENCES


SYSTEMES NATIONAUX D’INNOVATION ET THEORIE EVOLUTIONNISTE : UN PANORAMA DE LA LITTERATURE

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1. Introduction

Dans les années 50-60, les théories de la croissance fondées sur le modèle de Solow ont montré l’importance du phénomène du “progrès technique” dans la dynamique économique. Le souci d’expliquer la façon dont le changement technique était susceptible d’affecter les performances économiques a donné naissance aux théories du progrès technique “incorporé”. Deux modèles de dynamique ont pu alors être mis en évidence :

- le cas de l’Europe occidentale où le progrès technique autonome joué un rôle plus important dans le processus de croissance intensive à l’œuvre dans les années 50-60 ;
- le cas des États-Unis où, inversement, le progrès technique incorporé a joué un rôle plus important dans la dynamique économique.

La supériorité du “trend” de progrès technique autonome en Europe fut attribuée à la nature du processus de rattrapage technologique dans lequel s’étaient engagés les pays européens. En ce cas, il s’agissait moins de créer des technologies nouvelles que de réussir au mieux le transfert de technologies éprouvées. La planification et le rôle des systèmes nationaux d’innovation – notamment en France – furent sur ce plan parfaitement adaptés. À l’inverse, lorsqu’un pays se situe sur la frontière technologique, la logique plus aléatoire de l’innovation reprend ses droits et l’investissement des entreprises en R&D devient l’élément moteur de l’accumulation et de l’incorporation du progrès technique.

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