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**Disagreement Over the Emergence of  
Property Rights: Alternative Meanings,  
Alternative Explanations**

SCOTT BEAULIER AND DAVID PRYCHITKO\*

**Abstract**

Carl Menger's story of the emergence of money is considered an exemplary account of an evolutionary theory of institutions, among Austrian School economists and many non-Austrians. One would therefore expect Austrians to provide a similar evolutionary account of the emergence of property rights, an institution which emerged prior to the use of money. We demonstrate that Austrians do not offer a unified theory, and appear instead to promote contradictory views. Mises and Bohm-Bawerk offered a rationalistic or goal-oriented account of property rights emergence. By contrast, Hayek, influenced by Menger, offered an evolutionary account, arguing that property rights emerge, like the institution of money, as a strictly unintended consequence of choice. We argue that the Bohm-Bawerk and Mises approach fails if understood to be a universal explanation of property rights emergence. It is best equipped to explain property rights emergence in contemporary society (such as under socialist transition). Hayek's approach, by contrast, addresses a different historical context -- the earliest origins of property rights. It's an exercise, like Menger's, in speculative history. Both positions might be defended—even in light of Vanberg's functionalist charge against Hayek—if limited to their proper historical context.

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\* Scott Beaulier is a Mercatus Center Social Change Graduate Fellow, and a Ph.D. student in Economics at George Mason University. David Prychitko is department head and professor of economics at Northern Michigan University.

The extension and refinement of the concept of property were... necessarily gradual processes that are hardly even completed today. Such a concept cannot ... have been of much significance in the roving bands of hunters and gatherers among whom the discoverer of a source of food or place of shelter was obliged to reveal his find to his fellows.... Separate ownership of perishable goods, on the other hand, may have appeared only later as the solidarity of the group weakened and individuals became responsible for more limited groups such as the family. Probably the need to keep a workable holding intact gradually led from group ownership to individual property in land.

There is however little use in speculating about the particular sequence of these developments, for they probably varied considerably among the peoples who progressed through nomadic herding and those who developed agriculture. The crucial point is that the prior development of several property is indispensable for the development of trading, and thereby for the formation of larger coherent and cooperating structures, and for the appearance of those signals we call prices.

We can hardly say when tribes first appeared as preservers of shared traditions, and cultural evolution began. Yet somehow, however slowly, however marked by setbacks, orderly cooperation was extended, and common concrete ends were replaced by general, end-independent abstract rules of conduct.

F.A. Hayek, *The Fatal Conceit*, pp. 30-31.

### ***Introduction***

The key Austrian contribution to 20<sup>th</sup> century economics is their position regarding economic calculation. Ludwig von Mises, and later F.A. Hayek, argued that prices are necessary for rational calculation of scarce goods and services. Prices require the institution of money – a general medium of exchange. And money requires, of course, the institution of private or separate property rights. It is clear, in the Austrian perspective, that prices and money would be meaningless without exchangeable property rights, and that socialist calculation would be rendered impossible because it replaces private property with social property.

Austrians have developed a dynamic price theory, grounded in market process analysis. They have also established a speculative, yet reasonable theory of the evolution of money. Menger's account is often taken as an exemplary story of the evolution of economic institutions, one accepted by Austrians as a whole, in addition to many fellow travelers. But property rights, in the de facto (economic) rather than de jure (legal) sense, must first exist before the emergence of money. This raises an interesting, and up until now, largely unaddressed question: Do Austrians have a generally-accepted account for the early emergence of private property rights – an institution that necessarily emerged prior to both money and market prices? This paper tries to answer that question. We shall argue that Mises offers what can be called a teleological explanation, and Hayek an evolutionary explanation. Both depart, in their own way, from the kind of evolutionary account provided by Menger's story of the origin of money.

We will begin by examining what we mean by an evolutionary theory of institutional emergence by leaning upon the work of Carl Menger. We will then turn to the particular social institution of property rights and examine teleological stories of this institution both within and outside of the Austrian literature. These competing stories will be juxtaposed against the leading explanations provided by the property rights theorists. From there we will consider more recent efforts by property rights economists, efforts that provide a more evolutionary flavor of the property rights process. Finally, we will explore Hayek's story of cultural evolution, and its relationship to methodological individualism and Mengerian analysis. We make an appeal to reconsider Hayek's story against his critics.

### *Carl Menger and Evolutionary Theory*

For Menger, “[t]he problem that science must solve is...the explanation of human behavior that is *general* and whose motives do not lie clearly upon the surface” (Menger 1994 [1871]: 315). In order to solve this problem, he distinguished between two different explanations of the origin of social institutions. The first is a “pragmatic” explanation:

There are a number of social phenomena which are products of the agreement of members of society, or of positive legislation, results of the purposeful common activity of society thought of as a separate active subject...Here the interpretation appropriate to the real state of affairs is the *pragmatic* one—the explanation of the nature and origin of social phenomena from the intentions, opinions, and available instrumentalities of human social unions or their rulers. (Menger 1963 [1883]: 145; emphasis in original)

He stresses that this is not the result of an economic process, but is rather “*the result of human calculation which makes a multiplicity of means serve one end*” (Menger 1963 [1883]: 132; emphasis in original). An example of this would be a “social contract” explanation to the origin of property. Establishing property rights, in that approach, is the goal of the participants.

It is clear that Menger’s “pragmatic” explanation is, in more contemporary language, a teleological explanation. To say that an institution has emerged teleologically is to say that it is deliberately planned. We shall therefore stick with the term “teleological” as opposed to “pragmatic” throughout the rest of the paper.

The second type of explanation attempts to interpret social institutions not as the result of some “common will” – a conscious, teleological effort -- but, rather, as a product of “the unintended results of historical development.” Or, to use Adam Ferguson’s familiar phrase, “the result of human action, but not the execution of any

human design” (Ferguson 1966 [1767]: 187). Menger labels these institutions, which arise in this spontaneous fashion, “organic”:

The social phenomena of “organic” origin are characterized by the fact that they present themselves to us as the unintended result of individual efforts of members of society, in other words, of efforts in pursuit of individual interests...*they are, to be sure, the unintended social result of individually teleological factors.* (Menger 1883: 158; emphasis added)

Instead of being part of a deliberate plan serving a single hierarchy of ends, institutions of “organic” origin are essentially “spontaneous”, or unplanned...serving no single hierarchy of ends, but, rather, a multiplicity of individual, competing ends.<sup>1</sup> That is, the institution develops gradually over time as a result of unintended consequences of purposively acting individuals. In this way, the evolution and the organic, or spontaneous formation of an institution are “twin conceptions” (Hayek 1973: 23). Throughout the rest of the paper we shall use the term “evolutionary,” as opposed to Menger’s “organic” label, for the theoretical explanation of institutions that emerge as unintended consequences of deliberative individual action.

The individualistic evolutionary theory developed by Menger is composed by the interaction of two processes (Vanberg 1986: 81). The first is a “process of variation” in which new ways of behavior are generated by means of separate individual choices. In other words, new practices become adopted as the result of the self-interest of one person

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<sup>1</sup> Note that the distinction between “organic” and “pragmatic” origins does not have to be mutually exclusive (Vanberg 1986, 79, n. 5)...“it allows for ‘intermediate’ cases, combining elements of both kinds of processes.” As Menger (1963, 158) stated:

The present-day system of money and markets, present-day law, the modern state, etc., offer just as many examples of institutions which are presented to us as the result of the combined effectiveness of individually and socially teleological powers, or, in other words, of “organic” and “positive” origin.

For more on the non-mutually exclusive nature of the distinction, see Warren Samuels (1999, 2000).

or a few people. The second process—the “process of selection”—explains how a practice will spread among society due to (self-interested) individual imitation. That is, along with the traditional practices come new, competing practices...some of which become “systematically selected by individual imitation” and will spread, over time, throughout the society (Alchian 1950: 211-21). As demonstrated by Menger (1994 [1871]: 257-62),<sup>2</sup> and commonly agreed upon as a valid explanation by virtually all Austrians, a fine example of an institution of spontaneous, evolutionary origin is money.

### ***Bohm-Bawerk as a Bridge Between the Evolutionary and Teleological Accounts?***

We suggest that Austrians promote both teleological and evolutionary theories of the emergence of property. While aware of the potential for teleological accounts, Carl Menger, the father of the Austrian school of economics, was clearly an evolutionary theorist. This creates the puzzle of precisely when and why some Austrian economists, such as Mises, promoted a teleological explanation. Perhaps our answer lies in the contributions of Eugen von Bohm-Bawerk.

Bohm-Bawerk’s limited writings on property rights usually begin with the assumption of “an organized society” already in place (Bohm-Bawerk 1962 [1881]: 58-9). From there he analyzes an individual in economic control of a resource and the ultimate dependence upon the State for provision of protection. Though describing a different social structure from that which we are presently interested, Bohm-Bawerk does give evidence of being a consistent Mengerian in asserting that:

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<sup>2</sup> Menger (1963, 223-34) also illustrates the “organic”, evolutionary nature of law on behalf of self-interested decision-making of individuals. Unfortunately, he does not discuss the evolution of property rights...at best, he illustrates that property arises out of scarcity (1994, 94-101).

*The economic content of legal rights rests on the assistance furnished by the state's agencies for the administration of justice in the acquisition and preservation of physical control over goods. And the law itself is a necessity that has evolved because mankind lives as an organized society and it is, at the same time, an integral feature of the entire structure of the economic power of disposal over goods* (Bohm-Bawerk 1962 [1881]: 60; emphasis in the original).

The above passage suggests that Bohm-Bawerk develops more of an evolutionary theory of property rights. If our interpretation is correct, then we are left with an interesting question in the history of Austrian economic thought: how and why did Austrian economists move from an evolutionary account of property rights to a pragmatic account? Interestingly, that answer might also lie in Bohm-Bawerk.

Shortly after explaining legal rights as the product of evolution, Bohm-Bawerk turns to the question of whether these rights ought to be treated as goods. He claims that although “the economic function of legal rights very closely parallels that of objective control and physical possession of a good” (Bohm-Bawerk 1962 [1881]: 60) the legal right is clearly not a good in itself, but, rather,

[t]he possession...of a good is simply one condition on which depends the fact that the particular good *is* a good for the person within whose sphere of control the good is located. But it is by no manner of means an independent good existent outside of and in addition to the good that is possessed (Bohm-Bawerk 1962 [1881]: 61-2).

It is likely that this stance on the relationship between legal rights and goods affected the way later Austrians treated the issue. Though we can see elements of an evolutionary theory in Bohm-Bawerk, his explanation can also be viewed as rather teleological in the following sense. If the quality of a good, such as water, were to be altered, it could be the result of an individual toiling with that good. For Bohm-Bawerk, one of the margins in which the quality of a good could be improved is through improvements in the legal right to the good. How could these improvements be made?

One source that he notes is through the evolutionary process of legal rights in which there is more of a guarantee of a particular good being “*mine*” (Bohm-Bawerk 1962 [1881]: 62; emphasis in original). The other possibility is through deliberate actions, particularly those in which bargains are made with the State for greater security of property. We claim that it was this second possibility that spurred the teleological accounts of the emergence and changing structure of property rights in later Austrian works.

### ***Property Rights and External Costs***

After Bohm-Bawerk, the first Austrian to offer a systematic, yet fully teleological account of property rights, was Ludwig von Mises. The greater part of his work seems to take the origin of property rights as given,<sup>3</sup> but he does treat the topic of the origin of private property rights by considering the case of “no-man’s property” (Mises 1996 [1949]: 656). In particular, commonly owned land “is utilized without any regard to the disadvantages resulting”:

Those who are in a position to appropriate to themselves the returns—lumber and game of the forests, fish of the water areas, and mineral deposits of the subsoil—do not bother about the later effects of their mode of exploitation. For them the erosion of the soil, the depletion of the exhaustible resources and other

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<sup>3</sup> In *Socialism*, Mises (1981, 43) *alludes* to the idea that private property had always existed:

People were convinced that private property had been proved an historical-legal category *only*. It had not existed *always*, it was nothing more than a not particularly desirable outgrowth of culture, and therefore it could be abolished. Emphasis original.

An idea which Menger was critical of:

Meaningless is...the theory...that recognizes in social institutions something original, that is, not something that has developed, but an original product of the life of the people. This theory...indeed avoids the error of those who reduce all institutions to acts of common will. Still, it obviously offers us no solution of the problem...but evades it. The origin of a phenomenon is by no means explained by the assertion that it was present from the very beginning, or that it developed originally (1963, 149). Original emphasis



impairments of the future utilization are external costs not entering into their calculation of input and output (Mises 1996 [1949]: 656).

Certainly, if property rights were “carried through consistently,” the owner would claim all the benefits which the uses of a good would provide, while at the same time it would “burden him with all the disadvantages resulting from its employment” (Mises 1996 [1949]: 655). But under commonly owned land such incentives are not initially present:

It was only when a country was more densely settled and unoccupied first class land was no longer available for appropriation, that people began to consider such predatory methods wasteful. At that time they consolidated the institution of private property in land (Mises 1996 [1949]: 656).

What is at stake here is his emphasis on deliberation: the intentional parceling of the commons to create private property rights. While such parceling could be said to have “evolved” over time, this story is nevertheless squarely teleological: the participants, facing the problems of economic calculation in the commons, *intentionally embark upon privatization*. It is not an unintended consequence of their efforts. Mises promotes, in this example, a teleological as opposed to Mengerian evolutionary story.

Mises’s explanation of the origin of property rights clearly anticipated Demsetz’s seminal work (Demsetz 1967: 347-59), who also set forth to investigate the emergence of property rights in a “no-man’s property” type of setting. For Demsetz, “the primary function of property rights is that of guiding incentives to achieve greater internalization of externalities” (Demsetz 1967: 348). Thus, he believed that “the emergence of property rights can be understood best by their association with the emergence of new or different beneficial and harmful effects” (Demsetz 1967: 350). Consequently,

property rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization. Increased internalization...results from changes in economic values, changes which stem

from the development of new technology and the opening of new markets, changes to which old property rights are poorly attuned (Demsetz 1967: 350).

Demsetz then offered his classic example of the move from communal to private property rights among the Indians of the Labrador Peninsula as a result of an increase in fur trade (Demsetz 1967: 351-53). The establishment of the fur trade increased the value of furs, and therefore promoted more hunting. Consequently, this “increased considerably the importance of the externalities associated with free hunting.” Hence, “[t]he property right system began to change, and it changed specifically in the direction required to take account of the economic effects made important by the fur trade” (Demsetz 1967: 352).

The Mises-Demsetz story is not rooted in a Mengerian evolutionary story. Mises and Demsetz have succeeded in pointing out that scarcity of particular resources and technology are the primary determinants of the extent to which a good will be privatized, but they have given us inadequate insight into how this process takes place.

Furthermore, Demsetz, and following him, Pejovich (1972), rely on discussion of costs and benefits, which, to some extent, seem measurable. Consider Pejovich:

Man’s compulsive desire for more utility combined with the cost-benefit calculus provides a rational explanation for both the creation as well as endogenously determined changes in the content of property rights assignments over scarce resources...[suggesting that]...the prevailing property rights assignments in the community reflect the costs and benefits of specifying property rights over scarce resources, and *changes in the property rights assignments are endogenously determined by changes in the cost-benefit ratio* (Pejovich 1972: 315; emphasis added).

The establishment of property rights is directly the product of at least partial economic calculation. Again, we have here a teleological story. Pejovich’s work has been considered the most generalized discussion of the origin of property rights—at least

among the modern property rights economists through the 1970s (Buchanan 1975: 182, n. 7). More recent efforts remain in the teleological framework provided by game theory.

Our point is not to criticize these accounts. Game theory, for example, offers a strong instrumentalist explanation of property. In his own way Mises's work anticipates some core contributions of the contemporary property rights literature; he, too, traces the emergence of property to the deliberate effort to internalize externalities. We believe Mises was perhaps the first economist to study property rights in this way. But Austrians tend to be uncomfortable with exclusively instrumentalist methodologies: they wish instead to provide analytically universal and empirically realistic accounts of economic phenomena. Much of what has followed after Mises – though also teleological – has taken more of an instrumentalist approach, which doesn't square well with Austrian praxeology.

### *Traces of an Evolutionary Theory*

Much of the contemporary property rights literature has successfully provided the profession with a much-needed explanation of how property rights will ideally emerge in response to changing values of a resource. However, the story to this point has largely been one that merely takes account of a starting point, namely the scarcity of a resource, and an endpoint—the emergence of a particular form of property rights. The project has been seriously lacking in an area where Austrian economists should be quite interested in exploring: it has hardly any theory of the process by which the movement from here (scarcity of a resource) to there (emergence of property rights) takes place.

While the contributions of the property rights economists were important ones, we should recognize that these efforts established a framework in which much more fruitful research should take place. Instead, what has occurred in large part has been a project moving forward in similar fashion to that of the general equilibrium project. There economists assume the existence of general equilibrium conditions as a starting point and proceed; here many economists are assuming the existence of a Demsetzian property rights structure and proceeding. By taking an ideal construct as their given starting point, neither of these endeavors are offering much in the way of an evolutionary account of the early historical emergence of property rights, one similar to Menger's money story.

That is not to say that all efforts in the property rights literature are guilty of this charge. In particular, some recent works have engaged in the kind of research a process-based approach would likely take up. Process theorists can likely imagine a prolonged period of haggling over the establishment of property rights in which extensive rounds of trial and error occur. During these periods it is possible that many individuals, communities, or tribes erroneously respond to the signals being sent. When this occurs, possibilities of underproduction of property rights, production of more costly institutional regimes (e.g., communal rights or state rights), and/or overproduction of rights can present themselves. At this time we shall briefly turn to the stories of this sort that are finally being told regarding the struggle for the establishment of property rights. Doing so gives us a better understanding of the kind of work that would likely be regarded as consistent with an Austrian approach to property rights.

An early source of discontent with Demsetz's seemingly deterministic perspective on property rights was Richard Posner. Posner (1980: 1-53) responded to Demsetz's

work with a theory that, in many situations, common property could be the optimal outcome for people responding to increased resource scarcity. Posner explained that as a result of “ignorance and uncertainty” on one hand and “efficiency gains” on the other (Posner 1980: 5), communal rights formation could indeed be the norm in primitive societies rather than the exception. Posner posits that most of these communal arrangements will be small kinship groups in which the gains from higher membership are exhausted. Therefore, additional membership would likely increase free riding (Posner 1980: 13-14). Posner’s explanation remains a largely pragmatic account in arguing that communal rights will emerge out of individual desires for greater insurance, but he does demonstrate that private property is not the necessary outcome resulting from the increased scarcity of a common resource.

Anderson and Hill (1990) was another effort that placed even more of an emphasis on the messy evolutionary process of property rights emergence. They offer an overshooting type of model related to the establishment of property rights during the “first privatization movement” in which the process from which property rights emerge in response to a scarce resource can lead to “premature development of land” (Anderson and Hill 1990: 191).<sup>4</sup> They maintain that the effort to establish property rights can lead to a degree of “rent dissipation” that “leaves the efficiency gains from privatization in question” (Anderson and Hill 1990: 177).<sup>5</sup> This implies that if the race for these rights is subject to error or miscalculation by the rent-seeking parties involved, the optimal

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<sup>4</sup> Anderson and Hill note that premature development was the result of squatter and homesteader land claims, but that speculators who did not do anything on the land until the optimal time were engaging in socially efficient action.

<sup>5</sup> See also Anderson and Hill (1983).

response to the scarce resource will not immediately result. Instead there will be a prolonged process in which individuals (in this particular case: homesteaders, speculators, and squatters) adjust to the market signals by reducing the amount they allocate to privatization efforts, or, alternatively, increasing their allocation if they have underestimated the market value. Regardless, either possibility provides a much more dynamic understanding of the process actually at work.

While Anderson and Hill illustrated that the privatization process could be a sub-optimal one, Bailey (1992) launched an attack similar to Posner's in arguing against the notion that *private* property rights can be expected to be the only response to increased scarcity among a common resource. In criticizing Demsetz for drawing a generalization from the specific case of the Montagnais tribe, Bailey goes on to suggest that the rights which emerge are a result not only of a resource's scarcity; the property rights which emerge also depend on the usefulness of the resources involved and the efficiency with which the rights can best be managed (Bailey 1992: 184-89). Bailey shows that based on economies of scale, "the minimum efficient size of the enterprise could vary according to the specific hunting or gathering activity, and the allocation of rights could, and usually did, vary accordingly" (Bailey 1992: 186). Bailey's analysis of more than 50 aboriginal tribes supports an evolutionary theory in which the property rights that result are dependent on an extensive give and take process in which most members of the community are involved. Those rights that can best be allocated privately will have the Demsetzian characteristics, but others may be most efficiently provided and protected in a communal organization. Whatever arrangement of property rights emerges is clearly not the automatic and uncomplicated response to the scarcity of a common resource, but,

rather, an extensive learning and discovery process in which actors are constantly deliberating and shifting the balance of rights they desire. In sum, Bailey's analysis opened the door for a variety of forms of property rights to be possible outcomes of increased resource scarcity.

### ***Property Rights and Cultural Selection***

These contributions in large part adhere to mainstream notions of optimality, efficiency, uncertainty, and information – again, pursuing an instrumentalist philosophy of science. They do succeed in making strides in the direction of a more evolutionary theory of property rights. But they appear to have little similarity to Menger's story of the emergence of money. We have found also that Mises himself, fully accepting Menger's theory regarding the evolution of money, does not even attempt to provide a similar evolutionary account of property. He seems to offer only a teleological explanation.

This leaves us with Hayek, who does attempt to recover the Mengerian dimension. Though his evolutionary theory seldom is applied to the specific case of property rights emergence, Hayek gives us enough in the way of a social theory to make conjectures of just how the evolution of property rights might have occurred. In addition, there are a few explicit occasions in which Hayek attempts to grope with the particular issue of property rights emergence. We now turn to a discussion of these efforts.

In analyzing the emergence of social institutions, Hayek has emphasized the difference between the rules of purposively acting individuals and the cultural rules of a society. The former are innate behavioral regularities all humans possess (“genetic

rules”), while the latter are rules of conduct generally recognized by specific groups (“cultural rules”).<sup>6</sup> For Hayek,

The chief points on which the comparative study of behavior has thrown such important light on the evolution of law are, first, that it has made clear that individuals had learned to observe (and enforce) rules of conduct long before such rules could be expressed in words; and second, that these rules had evolved because they led to the formation of an order of the activities of the group as a whole which, *although they are the results of the regularities of the actions of the individuals, must be clearly distinguished from them, since it is the efficiency of the resulting order of actions which will determine whether groups whose members observe certain rules of conduct will prevail* (Hayek 1973: 74; emphasis added).

More specifically, with regards to the formation of private property, Hayek writes:

I think the first member of the small group who exchanged something with an outsider, the first man who pursued his own ends, not approved and decided by the head, or by the common emotions of the group, the first man above all who claimed private property for himself, particularly private property in land, the first man who, instead of giving his surplus product to his neighbours, traded elsewhere...contributed to the development of an ethics that made the worldwide exchange society possible.

All of this developed...in a competition among groups, each imitating those who adopted a somewhat advanced...system of practices, and in consequence, increased more rapidly in population, both by procreation and by attracting people from other groups (Hayek 1983: 31-2).

Hayek also stresses that individuals never understood why they accepted the morals of private property... “[m]an was never intelligent enough to design his own society” (Hayek 1983: 46-7). That is, “[p]rivate property...was never ‘invented’ in the sense that people foresaw what its benefits would be” (Hayek 1983: 47), but spread “because those groups who by accident accepted them prospered and multiplied more than others” (Hayek 1983: 47). Hayek calls this a process of “cultural selection”, which allows certain groups and practices to withstand the duration of time.

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<sup>6</sup> For more on innate rules, see Ridley (1996). For more on “cultural rules,” see Taylor (1982).



Consequently, we find that Hayek *does* have an evolutionary theory of the origin of property rights. But several problems exist. First, the empirical support for theories of group selection has been rather mixed and inconclusive. Zywicki (2000) has argued that the Sober and Wilson model of biological group selection helps to make group selection theories “more plausible than traditionally thought” (Zywicki 2000: 81). Yet, both the biological and social science audience remains largely unsympathetic to group selection accounts where behaviors, norms, and institutions emerge that cannot be traced back to individual or kin benefits. Frank (1988) notes the unsustainable nature of a norm that evolves via group selection without concomitant advantages to the individuals in the group when he inquires as to whether altruism could have evolved via group selection.

Frank writes:

For this to have happened, altruistic groups would have had to prosper at the expense of less altruistic groups in the competition for scarce resources. This requirement, by itself, is not problematic. After all, altruism *is* efficient at the group level (recall that pairs of cooperators in the prisoner’s dilemma do better than pairs of defectors), and we can imagine ways that altruistic groups might avoid being taken advantage of by less altruistic groups.

But even if we suppose that the superior performance of the altruistic group enables it to triumph over all other groups, the group selection story still faces a formidable hurdle. The conventional definition, again, is that nonaltruistic behavior is *advantageous to the individual*. Even in an altruistic group, not every individual will be equally altruistic. When individuals differ, there will be selection pressure in favor of the least altruistic members. And as long as these individuals get higher payoffs, they will comprise an ever-larger share of the altruistic group. (Frank 1988: 38; emphasis in the original)

This difficulty with the group selection story leads Frank to conclude that “even in the event that a purely altruistic group triumphs over all other groups, the logic of selection at the individual level appears to spell ultimate doom for genuinely altruistic behavior” (Frank 1988: 38).

In addition, Hayek seems to be facing an insurmountable methodological problem. Although Hayek has an individualistic process of variation (for example, the tribesman who pursued his self-interests, without any intention of establishing an ethic of private property), his process of selection may be defective. Even Mises had questioned such an account. For Mises, “We can ‘explain’ the birth and development of social institutions by saying that those who accepted and best developed them were better equipped against the dangers of life than were those who were backward in this respect,” but “[t]o point out how unsatisfactory is such an explanation nowadays would be to bring the owls back to Athens” (Mises 1981 [1936]: 33).

Viktor Vanberg has advanced perhaps the most sustained critique of Hayek’s effort:

[t]o refer to *group advantage* rather than to *individual benefits* and to argue that the cultural heritage into which man is born consists of a complex of practices or rules of conduct which have prevailed because they made a group of men successful, is, of course, fundamentally different from providing an “invisible-hand explanation.” It rather sounds like the *functionalist* argument [in which] the “maintenance” of a social system explains the existence of a social pattern or institution. (Vanberg 1986: 83; emphasis in the original)

Hence, Vanberg (1986: 85) sees this approach to be inconsistent with Menger’s “organic” understanding of social institutions, and contradicts Hayek’s own pleas for methodological individualism. This idea of a group selection process apparently “doubt[s] that an individualistic evolutionary conception cannot adequately account for the evolution of certain rules which appear to be advantageous to the group, without rendering direct benefits to the individual practicing them” (Vanberg 1986: 87). Vanberg continues:

What a theory explaining the emergence of such group-beneficial behavioral regularities would have to show how these conditions are actually brought about.

It would have to show either how they emerge spontaneously in the process of interaction among individuals separately pursuing their own ends, or, how they are brought about as a result of organized, group action. That is, rather than to resort to the vague notion of group selection, one would have to engage in a systematic theoretical analysis of the two kinds of processes distinguished above: the process of spontaneous generation and change of rules, on which an individualistic, invisible-hand notion of cultural evolution properly focuses, and the process of deliberate changes in and enforcement of rules by organized, collective choices. (Vanberg 1986: 88)

Hence, it should explain how institutions arise due to individuals in a society pursuing competing ends, or how they arise due to deliberate decision-making on behalf of Menger's "socially teleological factors."

If Frank's claim that group selection theories fail to overcome "the logic of selection at the individual level" and Vanberg is correct in his functionalist charge, Hayek's theory apparently fails to provide a *systematic, causal* explanation of the process of selection specifically rooted in methodological individualism. That is, he fails to explain just why, through individual imitation, an institution such as private property will arise with characteristics that are conducive to the successful functioning of the group as a whole. He makes an illegitimate shift from individualism to functionalism.

### ***Toward a Defense of Hayek, and Mises***

We began this paper by asking if Austrians have a generally accepted account for the early emergence of private property rights – an institution that necessarily emerged prior to both money and market prices. We've found that Mises pursued a teleological approach – what Menger called a "pragmatic" account – and that Hayek pursued an evolutionary account – something somewhat like Menger's "organic" explanation of social institutions. Each has chosen a different fork in the road.

Mises's explanation can be considered as consistently Mengerian. After all, Menger *does* allow for teleological explanations – he certainly does not reject that possibility. But this raises another question: Mises accepted Menger's evolutionary story of money, so why would he choose a teleological story of a much earlier institution upon which money is dependent – private property? Again, perhaps Bohm-Bawerk had an influence here.

Hayek, on the other hand, attempts an evolutionary explanation – one quite different from Anderson and Hill and others in the contemporary property rights literature – one that instead tries to be more closely wedded to the Mengerian tradition. We've found, considering Vanberg's criticisms, that Hayek himself actually departs from Menger's emphasis on methodological individualism. Recall, in Menger's money story, the advantage of embarking upon indirect exchange goes to the *individuals* who choose to do so, rather than directly to the group of individuals as a whole. Of course, as more individuals gain, so, too, does the group of individuals gain. But the causal link runs from the individual to the group. In Hayek's property-emergence story, the group as a whole enjoys the advantage of property formation. Hayek suggests that individuals within the group merely stumble upon practices that form property rights – it is certainly not a teleological effort, as in Mises. Those groups that stumble upon such practices, and unintentionally transmit them to future generations, tend to enjoy greater power to survive and grow in numbers, while those groups that failed to stumble upon such practices, and/or failed to transmit them, perished. But there is no causal explanation that leads from individual wealth-creation to overall group improvement. Instead, the

development of property is explained by its function. Functionalism replaces strict methodological individualism.

We wish to suggest, by way of conclusion, that Hayek's approach may be defended once we recognize the speculative and methodological nature of Hayek's story. We shall sketch a defense by considering the following points:

(1) *Hayek is engaged in speculative history.*

Hayek's discussion of the emergence of property is not meant to simply explain the emergence of historically contemporary property rights. For example, it is not meant to explain, say, the privatization process that is taking place under post communism. Nor is it intended to explain the emergence of property rights in the seventeenth and eighteenth centuries. Both Mises's story and game theory, with its assumptions of participants engaged in strategic, calculative rationality, might very well be appropriate for explaining and predicting outcomes in these domains. Hayek is focusing instead on the earliest possible emergence of something like private or separate property. He is engaged in speculative history that explains the emergence of civilization itself, the gradual and slow movement away from face-to-face nomadic tribes to toward early civilization, which apparently emerged some twenty to thirty thousand years ago. *Like Menger*, Hayek is necessarily engaged in speculative history. *Unlike Menger*, Hayek is attempting to understand the emergence of the institution that *long preceded* the emergence of money. Menger had the comfort of taking *private property and civilization as a given*. Hayek is attempting to explain the emergence of what Menger already assumed to exist.

Once we acknowledge that Hayek is really discussing the emergence of the institutions – such as property rights -- that support early civilization itself, it would be appropriate to acknowledge Hayek’s – and Mises’s -- stance on human rationality:

*(2) While all human action is rational, calculative rationality emerged much later in civilized history.*

Consider Mises’s argument: “There is no history of acting; there is no evolution which would lead from nonaction to action; there is no transitory stages between action and nonaction. There is only acting and nonacting” (Mises 1996 [1949]: 198). Now this might look like it contradicts our second claim above. It doesn’t. Yes, even primitive hunters and gatherers were actors. But they did not have the capacity to systematically engage in *calculative action* prior to the emergence of private property. Systematic calculative action is a product of human history – of appropriate human institutions. This is Mises’s own argument, with which we fully agree. “Every action can make use of ordinal numbers. For the application of cardinal numbers and for the arithmetical computation based on them special conditions are required,” Mises observes. “These conditions emerged in the historical evolution of the contractual society.... Their applicability to premeditation and the recording of action depends on certain conditions which were not given in the early state of human affairs, which appeared only later, and which could possibly disappear again” (Mises 1996 [1949]: 199). Mises thereby concludes:

It was cognition of what is going on within a world in which action is computable and calculable that led men to the elaboration of the sciences of praxeology and economics. Economics is essentially a theory of that scope of action in which calculation is applied or can be applied if certain conditions are realized. No other

distinction is of greater significance, both for human life and for the study of human action, than that between calculable action and noncalculable action. Modern civilization is above all characterized by the fact that it has elaborated a method which makes use of arithmetic possible in a broad field of activities. This is what people have in mind when attributing to it the – not very expedient and often misleading – epithet of rationality (Mises 1996 [1949]: 199).

Mises clearly understands that, while all action is necessarily “rational” as he defines it, it is surely not necessarily calculative. This squares with Hayek’s argument that the human mind is an historical product of cultural evolution, and that the development of civilization is not directly a product of reason, but that reason as we now know it is instead a product of civilization (Hayek 1988: 21-23).

Mises goes further: He chides economists of his time for assuming that any agents under any historical conditions can successfully engage in economic calculation. Of course, we know how he criticized socialism for such an assumption. But Mises had a much broader issue in mind. Institutions make a difference. Why assume the existence of institutions which do not exist when studying history? It would be obviously mistaken to assume that a face-to-face barter community has a general medium of exchange. It is equally mistaken to assume calculative rationality on behalf of people who have no established institutions to encourage and support calculative rationality. The socialist calculation debate is the most obvious example. The issue that Hayek is studying is perhaps less obvious at first, but just as applicable. (Perhaps this implies that Mises’s account of “no-man’s property” discussed earlier is not really intended to explain the early emergence of property among primitive peoples.)

Mises’s criticism can also be applied to those contemporary economists who, like Vanberg, wish to employ game theory as an alternative to Hayek’s “functionalist” story when explaining the early emergence of property:

They were prone to take economic calculation as a matter of course; they did not see that it is not an ultimate given, but a derivative requiring reduction to more elementary phenomena. They misconstrued economic calculation. They took it for a category of all human action and ignored the fact that it is only a category inherent in acting under special conditions. They were fully aware of the fact that interpersonal exchange, and consequently market exchange effected by the intermediary of a common medium of exchange – money, and therefore prices, are special features of a certain state of society’s economic organization which did not exist in primitive civilizations and could possibly disappear in the further course of historical change. But they did not comprehend that money prices are the only vehicle of economic calculation. Thus most of their studies are of little use. Even the writings of the most eminent economists are vitiated to some extent by the fallacies implied in their ideas of about economic calculation (Mises 1996 [1949]: 201, 229).

We do depart from Mises’s argument that most contemporary game theory studies are of little use in explaining the emergence of property. Game theory models – such as Vanberg’s in his own criticism of Hayek – *can* be defended on instrumental grounds. They can certainly be appropriate when modeling *contemporary* property rights issues and disputes. If they offer some efficient degree of predictability about the early emergence of property (though it is questionable what predictions can be drawn about the pre-civilized peoples that Hayek is focused upon), then they might meet the criteria of an instrumentalist philosophy of science. That’s for *their* users to decide. But Mises does persuade us that, for a more “realistic” account of human interaction, history does matter in the theorist’s choice of which institutions are to be treated as given and which have yet to emerge. On this level, Hayek’s understanding of the nature of the problem – the story of the early emergence of property rights – is fully in line with Mises’s concerns.



(3) *So what if Hayek is more like a functionalist?*

Therefore we are led to the above conclusion – Hayek, on this historical topic, seems more like a functionalist than an individualist. Hayek is departing from a strict interpretation of methodological individualism in his emergence of property story. Using Mises’s distinctions between economics – as a science of calculative action – and praxeology as the broader science of human action in general – we find that Menger’s story of the evolution of money moves from the broadly praxeological to the economic. Hayek’s account is necessarily in the non-calculative, non-economic, but broadly “praxeological” dimension. We should therefore expect that Hayek’s account of the emergence of property must differ from Menger’s account of the evolution of money. Hayek’s starting assumptions are quite different – his agents are necessarily in a thoroughly pre-calculative setting, without the benefits of *any* of civilization’s institutions. His agents have yet to *learn* thoroughly strategic ways of social interaction. Surely none of us model the earliest emergence of language in a strictly Mengerian evolutionary sense; surely nobody argues that an individual found that she could increase her wealth by teleologically establishing “words” with the *strategy* of increasing her own wealth, akin to establishing indirect exchanges in order to profit.

In short, while methodological individualism is fully appropriate for the study of perhaps all of civilized human history, something more like functionalism might offer us more insight on sketchy, pre-civilized history. Some choose instrumentalism – which might have the virtue of remaining rooted in methodological individualism, albeit of a very narrow and atomistic variety – but at the cost of descriptive realism. Social contract theories, for example, might be instrumentally useful as predictive devices, but they come

at the cost of historically accurate descriptions. A Hayekian functionalism attempts a more realistic description of admittedly obscure historical episodes, at the cost of the kinds of methodological individualism evident in economic phenomena properly understood. Is it too radical of a proposal to suggest that different theorists weigh those costs and benefits, and pursue those methods that they believe are most productive?

### *Conclusion*

Austrians themselves do differ on their theories about the early emergence of property. It does seem that Menger's exemplary treatment of the evolution of money is not enthusiastically applied by Bohm-Bawerk, Mises, or Hayek when explaining the emergence of property. Bohm-Bawerk and Mises take a more teleological or "pragmatic approach" – which might be fitting for most cases but cannot work for the case that Hayek concentrates upon. Hayek writes the evolutionary story, which departs from assumptions regarding calculative rationality among individuals – something which Mises would approve of – but as a result appears more functionalist than individualist. While Hayek's approach is subject to criticism if it is meant to clearly account for recent-past or present emergence of property rights in contemporary history, it might be justified as an effort at speculative history, at least on the grounds that its assumptions regarding human rationality at that time are more realistic than the assumptions made in teleological accounts of activities during the same era.

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