



THE CART BEFORE THE HORSE: ON EMERGENT AND CONSTRUCTED ORDERS, AND
THEIR WHEREWITHAL

by

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Cany, FRANCE

The Twentieth International Conference on the Unity of the Sciences
Seoul, Korea August 21-26, 1995

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The practical and moral collapse, across half of Eurasia, of the socialist organization of society is exerting much the same fascination on political scientists and economists as did the 1666 Great Fire of London and the 1755 Lisbon earthquake on builders, would-be builders and assorted *kibitzers*. Rarely does history hold out temptation on such a heroic scale for putting forward one's *Weltanschauung*, tendering one's advice, proposing one's recipes. The multitude who, like the present writer, have yielded to the temptation can be classified in many ways. One rough-and-ready way, suggested by this occasion, is by reference to the two basic designs incorporated in the thought of F.A. Hayek. It divides us, crudely but conveniently, into liberals and statists, or "spontaneists" and "constructivists". One-upmanship these days counsels to call one's position "post-something", to signify how far we have advanced. The two sides of the divide are accordingly also liable to call themselves "post-socialists" and "post-liberals" respectively.

Each side is making its case on three levels: the rhetorical, the theoretical, and the empirical. By way of rhetoric, we are for instance told that Hayek's liberal theory offers no guidance for passing "from socialist planning to a stable market economy", and the attempt to translate Hayekian political conceptions into policy

Aus: Contending with Hayek. On Liberalism, Spontaneous Order and the Post-Communist Societies in Transition. Edited by Christoph Frei and Robert Nef. Berlin, New York, Paris: Peter Lang, 1994.

“will prove disastrous, provoking profound economic dislocation and political upheaval” in virtually all ex-socialist countries (Gray’s contribution in this volume...). This prophecy is progressively lifted to the status of a prediction supported by a hypothesis about social order, itself corroborated by claims of evidence from economic and legal history.

In putting the contrary case, much the same strategy suggests itself. Much as I should like to, I cannot altogether steer clear of rhetoric. Without sounding the high notes of freedom and justice, I will hazard, in a lower key, a preliminary observation about spontaneous orders in human society. It is arguable that they represent a “value-free idea” (Gray...) in a consequentialist sense. Indeed, it is hard to prove that they are always beneficent *on balance*, or that they are *lesser evils*, more benign than their constructed counterparts. Where spontaneous order is not value-free, however, is in the deontological dimension. A constructed order entails the imposition of the will of some upon others; some choices will dominate, others will be dominated. Spontaneous orders, whatever else they may be or do, are intrinsically voluntary. Adherents to the conventions that make up the order are choosing what they prefer; adhesion is not coerced. Admittedly, violators of the convention may be sanctioned, no less than violators of the rules of constructed orders. Some would call this coercion or, with Max Weber, legitimate coercion. I must leave it on one side for now whether it is or not, or whether it matters what we call it. Clearly, however, the order itself is a non-coerced, preferred choice under spontaneity, and may be a coerced one under constructivism. This much, it seems to me, is entailed in their ontology, or else the distinction between them loses most of its meaning.

Consequently, whether to impose a constructed order, or stand back and let a (however imperfect) spontaneous order emerge instead, is not a “value-free” choice to be made by technocrats on consequentialist grounds, weighing economic efficiency against political feasibility. Carrying my rhetoric a little further, I have serious doubts whether we have even any moral right to *make* the decision, instead of letting spontaneity emerge, such as it will be, by default.

First- and second-order orders

The social orders we need more clearly to understand are common norm-like patterns of interaction in some domain of multi-person coexistence, that are useful to their adherents, hence durable and relatively predictable. Behavioural conventions are their typical example. They tend to arise and take root without anybody's conscious intent and without any organizing authority, though leadership may play a role at the origin of the convention, and in the setting of one conventional norm rather than another. Basically, these are Hayek's spontaneous social orders. Their observance helps co-ordinate human interactions, and yields a co-ordination surplus, a benefit in terms of convenience, productivity, safety, reduced transactions cost or whatever. In some cases, the coordination surplus rises continuously as adherence to the convention becomes more widespread and uniform. In other cases, there may be discontinuities, thresholds of acceptance that must be passed before any surplus materializes.

The surplus may accrue to members of the host community equally, or in a biased fashion, or randomly. Everybody benefits if all speak English (or German, as the case may be, – as long as all speak the same language). Everybody gains if all come to the fair on the same saint's day. Everybody is better off if all drive on the same side of the road. No matter how the benefit is distributed among the participants, the crucial feature of such orders is that no one can deliberately increase his own benefit at the expense of his neighbour, at least not by violating the convention. These are, technically speaking, "pure coordination games" (Ullman-Margalit, 1977) and their solution is a spontaneous order.

Alternatively, the order may arise from "non-pure coordination games" that contain the seeds of some conflict of interest, because they permit strategies by which the participants can improve their benefit at each other's expense. In a queue waiting to be served, everybody gains if all conform to the convention of first-come-first-served. Anyone, except the person at its head, can benefit *more* by jumping the queue as long as enough others are still willing to wait patiently. Such conflictual games may also have

spontaneous orders as their solution, arising without design and conscious intent. But they are obviously more fragile. Depending on a host of variables, they may or may not be self-enforcing. In many cultures including our own, queues usually form spontaneously, and are by and large respected without explicit provision for enforcement. The same is true of countless other conventions that are intrinsically conflictual, yet implicit sanctions and the weight of breeding and custom prevent their wholesale violation. There are, however, possible combinations of conventions and their cultural surroundings that, like a rejected organ transplant, would not be viable without enforcement.

Here we have, then, a first-order spontaneous order that, in order to function, endure and produce its benefits, requires the successful graft of a 'second-order order' ensuring that the conventions of the first are sufficiently respected. This 'second-order order' may itself be a spontaneous one; at any rate, the possibility cannot be prejudged and requires thought. It may also be something like the legal system of the state. For many, this would be the obvious answer that would spring to mind. However, they would be ignoring a broad spectrum of alternative possibilities. The state is at one extreme of the spectrum; a general theory, however, must encompass all other points along it, and their possible combinations. Hayek, who to my knowledge has never distinguished between pure and conflictual, self-enforcing and enforcement-dependent orders, has not addressed this, and left open a vital flank of liberal doctrine, not so much to massed attack, but to gradual attrition.

Exclusion: the enforcement of property rights

The paradigm of the enforcement-dependent order is the capitalist economic system. The paradigm is almost invariably presented in the context of a culture of morally unrestrained, anonymous, isolated individuals who do not seek to build and preserve a reputation for square dealing, because they hardly ever happen to

deal a second time with anyone they had tricked or robbed in a first dealing. Real cultures have never been quite like this, and let us hope they never will. In the supposed amoral and anonymous culture, the 'market' (to use this somewhat sloppy term) is more dependent on some second-order enforcing order than in any other, for it is the worst of all possible worlds for capitalism. Schumpeter held that capitalism destroys pre-capitalist social virtues, and creates an amoral and anonymous setting that will, in turn, destroy capitalism. This is as it may be. Suffice it to say that, if the capitalist market survives in such a climate, by the logic of repeated interactions it can *a fortiori* survive in any other that is less anonymous and a little more moral.

Take, however, the worst-case assumptions. Under them, stealing or robbing is superior to buying, though buying is superior to not getting at all. Consequently, 'spot' exchanges of adequately guarded property – a pound of sugar across the counter against cash – are self-enforcing, but contracts combining a spot delivery and a forward payment or *vice versa* are of course not: default on the forward half of the contract is superior to its execution, with obvious and dire implications for credit transactions. Everybody is better off if his commitments are credible to others, but he is better off still if, having been believed, he defaults on his promise. Hence no credible commitments are possible unless either default is deterred or restitution is assured. Above all, property must be physically protected, so that access to it can be made contingent on the owner's consent, which he can then sell or withhold. Interdiction of access, except by right or by the consent of the right-holder, takes care of the security of property and the fulfilment of unexecuted contracts.

In the last analysis, the problem of enforcing the spontaneous market order is reduced to one of exclusion, i.e. the logical corollary of property which in turn entails the freedom of contract and the enforcement of its terms. Exclusion is the unifying principle that turns the theory of private goods (that are in the widest sense 'property') and the theory of public goods into special cases of each other: goods are private when the relevant exclusion cost is incurred, and public when, for whatever reason, it is not. (The

exclusion cost relevant to a particular good is, of course, the cost of preventing unauthorized access to it. Arguably, there is no unauthorized access to a public good *if* it is intended that the entire public should have access to it).

On a less lofty level of abstraction, a parallel generalization can be made about property in the ordinary sense, and 'social', 'collective' or 'public' property. For the latter, exclusion cost is either not being incurred at all, or only to exclude those who stand outside the 'society' or some other collective entity in question. (In strict logic, "the institution of property requires exclusion" is an analytic statement. Whether talking about any common pool ownership as 'property' is a conceptual mistake and a misuse of the word, i.e. whether the term "property" must imply that all equity interests in it are clearly delineated and all rights pertaining to its parts are ultimately the properly quantified rights of particular individuals, is not pertinent for our present purpose, though it is important for others. It is enough for now to note that property from which no one is excluded is a contradiction in terms. On the other hand, in a world of perfect bourgeois virtue, exclusion would be possible without the owner having to incur any exclusion cost.)

The wherewithal for exclusion cost

How, and why, are the resources needed to meet exclusion cost forthcoming? If they were willingly provided by property-owners (or other beneficiaries of the capitalist system) as a matter of tacit social convention, we would have a second-order spontaneous order supporting the first-order spontaneous economic system, the 'market'. If, on the contrary, no resources were provided voluntarily, there would have to be a wholly 'constructed' order involving the coercive taxing power of the state (or some agency that resembled it in all but name). The parable of the social contract with its attempted reconciliation of voluntariness and coercion, where coercion is by prior consent and taxation is an agreed price willingly paid in exchange for the services of the state, is of

course no genuine alternative, nor has it any cognitive status. No evidence for or against it is possible, and it has no relevance for a positive theory of orders.

The all-voluntary private and the all-coercive state alternative are crude, simplified markers, standing for the two extremes of the range of conceivable solutions.

The statist, constructivist and 'post-liberal' view seems to be that failing an order inherited from past history, only the state can create one anew. Thus, we are told that unless their memory lingers on and enough of their substance survives, "market institutions ... have to be created by legislative *fiat*" (Gray...); they are "artifacts of law and government"; the legal framework is an "infrastructure", i.e. by implication more basic, and logically and temporally prior to the market which is presumably a superstructure. Without the directing and restraining hand of the state, "we may expect ... an economic order best characterized as an anarcho-capitalism of the mafia" (Gray...).

However, there are no resources available for meeting exclusion costs if there is no pre-existing economic system to produce them. From this point of view if from no other, the thesis that the state is prior to the market seems to be up against difficulties, whether its priority is meant to be temporal or logical, let alone both. There has to be some kind of economic order first, before the state can find the resource to lay the infrastructure for a new one. Perhaps, however, the old one need not be a 'market' order? Yet, if it is not, can it be productive enough? It cannot if it happens to be "in ruins". And if it can, what reason has the state to "construct the infrastructure" for a different one?

The statist solution to satisfying the enabling conditions of an economic order that is both beneficent and spontaneous, is visibly defective. A weak state, especially one with no stored-up reserves of legitimacy, lacks the wherewithal; it has little taxing power to extort it; there can be no efficient economy to extort it from, because the state has lacked the wherewithal to provide the enforcing order that could make it efficient. A strong state, supposing it is logically possible prior to an efficient economy, could find the wherewithal; but no reason is furnished why it would choose

to refrain from using its strength in ways that would probably be more harmful to an efficient market than the much-dreaded mafia. For cogent reasons, it is almost bound to invade and override property rights instead of protecting them, to impose the terms of contracts rather than to enforce those the parties would choose, to engage in ever more substantial redistribution of wealth and income, for this is the logic of the incentives under which states operate. They obey this logic to stay strong. If they do these things, though, the constructivist foundations they might lay would be inconsistent with the Hayekian spontaneously emerging market order. Can, in sum, a constructed legal order *both* be a precondition of the emergent economic one, *and* be inconsistent with it?

The statist, of course, is not unduly troubled by problems of consistency between the two orders, because he really wants to accouple his constructed legal framework with some Third Way, some alternative economic order that is neither 'planning' nor 'laissez faire'. Planning is a proven failure, and the superiority of *laissez faire* is an open question (Gray...). It is intimated that the *soziale Marktwirtschaft* would be better than either.

Hayek himself, rather unsatisfactorily, glosses over the problem by postulating a state that is neither too weak nor too strong but just right; a state that willingly limits itself to upholding the rule of law and to supplying the public goods "which otherwise *would not be supplied at all* because it is usually not possible to confine the benefits to those prepared to pay for them" (Hayek 1960: 222, my italics). Upholding the rule of law is, of course, itself widely thought to be such a benefit. If it is, and if this really means, as Hayek seems to believe of such benefits that it is either supplied by the state or not at all, the state *is* a necessary, enabling condition of his idea of the market as spontaneous order.

No real resolution is offered by Hayek of the *quis custodiet ipsos custodes* dilemma. The substantive content of the rule of law which the state alone can uphold must, for him, be the product of spontaneous evolution, an emergent order. The state must not pervert it by constructivist legislation. Its tendency to drive out spontaneous law, to overproduce legislation (Leoni 1961), as well

as public goods in general at the expense of private goods (cf., e.g., Bergman and Lane 1990), is treated by Hayek as dangerous but somehow avoidable. He has not, however, told us how.

To grow and to construct, and the time each takes

Can anything sensible be said about the opposite, all-private solution? Has the spontaneous growth of an emerging order for the enforcement of property rights sufficient internal logic and consistency? – or is it just nebulous metaphysical speculation about an utopia of arbitrary design?

As a first step, let us nail down the analytic truth that by the usual standard of instrumental rationality, it is rational for each owner to assume exclusion costs to secure his property and enforce the contracts waiting to be executed in his favour, in the same way as it is rational for him to shoulder any other cost involved in his economic activity, as long as the resulting benefit is at least equal to the cost. It pays to incur exclusion costs up to the point where marginal exclusion cost is equal, crudely speaking, to the risk-adjusted value of the marginal loss from theft and default the owner can avoid by incurring the cost. It inescapably follows that the total potential supply of wherewithal for an exclusionary order would, by and large and subject only to misjudgments of risk, always be adequate. Should it fall short, it would always pay to supply more, until the marginal equality of cost and value was achieved. (The converse is, of course, the case for an oversupply). Exclusion cost incurred would seek the level that maximises the excess of the total private value of enforcement over its total cost.

(I cannot deal here with the possible divergence, if any, between total private and total social value and cost.)

In a second step, let us ask why this inescapable conclusion is, as the man in the street is wont to say, “all right in theory but does not work in practice”? The answer is the standard one that it *would* work in practice if it *were* all right in theory. But it is not, given that the property owner usually has a reasonably assured

option of taking a free ride. If he sees a high enough probability that 'society as a whole', through the agency of the state, will look after his property and contracts along with those of everyone else (which is what Hayekian impartial and general law proposes), he need not look after it himself. The presence of the state, by holding out some more or less reliable prospect of publicly financed enforcement, unwittingly blunts the point of private efforts, if it does not render them pointless. The more reliable the prospect of effective enforcement by the state, the weaker will be the development of private efforts and the supply of their material wherewithal. Note that this effect is independent of the state's own conscious striving, visible in French and English history since about the 13th century and in other national histories at later stages, to elbow out private adjudication and private enforcement, seeking to gain "turf" for itself whenever it feels strong enough.

This is broadly why, to proceed to our third step, good theory could predict that real-life enforcement orders found in economies based on property, are almost always a mixture, some way along the spectrum between the extremes of the all-private and the all-state. Owners have fences, locks, alarms, dogs; buy insurance, install television monitors and electronic tagging against shoplifters; employ credit bureaus, private security agencies; have recourse to wise men and professional arbitrators. They boycott known or suspected swindlers, avoid dealings with defaulters and bankrupts, consult quality assessors before accepting deliveries, and tip off each other about the practices and habits of traders and producers. In tacit expectation of reciprocity, and sometimes also without it, they also tend to help neighbours, relatives, fellow members of clubs, friendly societies, trade associations and other peer groups, both on matters of physical security and in the resolution of litigious issues. The habit of mutual aid, where it is efficient, may solidify into firm convention. Resources of self-help and mutual assistance are in practice supplied, not to the limit of the theoretical optimum as they should be in a purely private solution, but as a complement of the private-public mixture, a decreasing function of what the state can be relied upon to do, with greater or lesser efficiency, in these fields.

Starting from zero, on a wasteland with no history of voluntary action, the relevant private and communal skills, habits and conventions no doubt take time to grow. But this is a truism that goes for anything that starts from zero. We may safely presume that it goes for states that are newcomers to capitalism, and propose, on a greenfield site, to "construct its legal infrastructure".

What, if anything, does historical evidence corroborate?

Perhaps the most effective argument-stopper against the liberal hypothesis of the emergent order is that 'in practice' it does not emerge. There is no "reason to suppose that the unplanned evolution of legal systems will systematically favour ... systems of voluntary exchanges. The historical evidence suggests the opposite..." (Gray...). Only "rudimentary market processes" can exist, they are likely to be "exploitative", mafia-ridden, "interdicted by the mortal rivalry of war", "liable to endogenous discoordination" (passim). Only in one case, that of England, did history produce anything resembling the Hayekian ideal; his "model of the emergence of market institutions... is a grand generalisation of their development in one Western country" (Gray...).

It is always hard to be sure what historical evidence does or does not suggest. A good deal of evidence, however, can be cited to corroborate the hypothesis that "systems of voluntary exchange" arising from property and contract, favoured by rules that were for the most part privately enforced, are as old as humanity and occur in a variety of societies. Whether such systems were exploitative is, of course, an undecidable question, since exploitation is in the eye of the beholder.

The law, notably tort law and the law of property based on the principle of exclusion, is historically prior to any proto-statal authority (Popisil 1971). This is borne out by the study of present-day primitive societies. Systems of voluntary exchanges of sometimes quite high degrees of sophistication, showing the essential features of capitalism, go back to classical antiquity (Love 1991).

In more recognizable guises, we find them in medieval Venice and Genoa, and their trade with the Eastern Mediterranean and the Black Sea. They then come to flourish in the Renaissance towns of Northern and Central Italy, Ghent and Bruges and the four great fair towns of Champagne (Pirenne 1925). From the 15th century, capitalism is rising in England (MacFarlane 1979). Far from being the fruit of "a settled society and polity for centuries" (Gray...), English capitalism grew up in a period that, at least until 1688, was as turbulent as any in Western history, with property exposed to grave political risks. Nor did the even earlier and richer capitalist evolution of the Low Countries get much help from a settled society and the strong hand of authority. It overcame the handicaps, if handicaps they were, of the long war of independence against Spain as well as civil war and religious strife.

As far as we can tell from history, there was little or no "constructed" legal order to support the "market system" when the pace of its development was at its most vigorous (North and Thomas 1973, Jones 1981, Rosenberg and Birdzell 1986). It is as plausible to say that states hindered, undermined, retarded markets, as that they helped them. It is significant, too, that where emigrant swarms from advanced civilizations founded new settlements, they did not seek to replicate the state authority they knew. Until organized government authority, its courts, police and taxes caught up with them, their system of law and order was spontaneous, privately and cooperatively enforced (Anderson and Hill 1979).

There may be disagreement about the force of most historical evidence. But whatever the fragments that I have cited prove, there is one shining piece of evidence that really cannot be interpreted two ways. It is the ability of the international, footloose, stateless trading community to govern an increasingly complex system of spot and credit exchanges across and above territorial jurisdictions, by the spontaneously emerging Law Merchant, enforced mainly by peer pressure (Trakman 1983, Benson 1989). This is, as it were, the classic experiment to test what happens when states do not (because for physical reasons they cannot) impose their own organized, tax-financed order. It supports the reasonable belief that the trouble with the emergent order is not that 'in practice' it

does not emerge, but that for high-minded motives or for base ones, states stop them from emerging, and intrude upon them when they do emerge. (For a survey of the available evidence on the spontaneous enforcement of emergent legal orders, cf. Loan, 1991/92).

Property breeds order

Systems of property and complex exchanges did not have to wait for states to lay their "legal infrastructure"; in many known instances, they laid their own as they went. With debatable justice, they might be called rudimentary; but isn't everything rudimentary at its beginnings?

Enforcement, at all events, has no demonstrable *temporal* precedence over exchange. It seems to me, moreover, that the claim, frequently voiced regarding the travails of the ex-socialist countries, that order has a *logical* priority, is an arbitrary assertion and does not seem to follow from anything less arbitrary than itself. If "market institutions" really must precede the "market process" and determine the success of "market reform" (Gray...), it is a simple truism that they cannot be its product, and must come from somewhere else. Presumably their only source then is "constructivist legal activism" (Gray...). But no deductive argument nor empirical evidence supports the premiss about the precedence of institutions, any more than they support the claim that the chicken is prior to the egg. At best, such a claim could have the status of an expert inference from 'technology': if he has neither chicken nor egg and must start somewhere, the social engineer had best start with an artificial chicken. But of course the technology is unreliable or the expert is misreading it. The artifactual chicken may be an expensive fantasy that will never lay a real egg. Starting with an artifactual egg may not help us to hatch a real chicken either. Neither project inspires much confidence.

As correspondent for an American paper, Knickerbocker, visiting the Soviet countryside in the early years of collectivization,

once asked a kolchos president about their problems. We have many great problems, he was told, but they are all being overcome. The greatest, however, is that we have been told from above that we must dance the foxtrot in the village cultural center. This problem we have not yet overcome.

I am reminded of this anecdote when told that for "market reform" to succeed, the ex-socialist countries must have a new contract law, a bankruptcy law, stable money, a banking system, a stock exchange. In another anecdote, a totally apocryphal one, the president of the new Minsk stock exchange faxes the consultants in London: "We have licensed the brokers, put up the quotation boards, bought the computer, now what do we do?" Such institutional preoccupation is, of course, putting the cart before the horse. Real stock exchanges begin at the curb or in the coffee house, when owners have stock to trade. It does not have to be organized first: it is unstoppable. The licensing of brokers, the trading room, the tape may come in due course, but at all events not before *many* owners have *much* stock to trade. Stable money is a great help, but failing it, unrestricted barter is a more direct road to a functioning, efficiency-inducing price system than controls and repression of profiteering in an orderly legal framework. It is not the lack of bankruptcy laws and independent audits that are preventing bankruptcies and the liquidation of walking-dead enterprises, but political exigency.

There is a more fundamental sense in which the constructivist project is putting the cart before the horse. If the state is weak and its legitimacy is in shreds, it lacks the wherewithal for the construction and maintenance of a capitalist legal order out of nothing. In particular, it is too weak to protect property and ensure respect for contracts in the face of the poorer, more numerous, 'socially' deserving party. In a state-made, state-directed order, wages are not bargains between employers and employees. They are a matter of politics. In such an order, the exclusion protecting property and contract is infinitely harder to practice than in one where these are private matters privately enforced, with neither side appealing to the state except perhaps in the direst emergency. A state that has assumed responsibility for 'market institutions',

and depends on popular consent, can hardly find the extra where-withal, for example, to withstand pressure for insulating real wages from inflation, or for 'saving jobs'. The responsibilities it is assuming frustrate the emergence of an efficient economy, and prolong the agony.

Its weakness is relative, in large part due to the inordinately ambitious posture it is adopting. For it is, despite all the talk about privatisation, still standing vis-a-vis society as did its socialist predecessor, both *in loco regis* and *in loco domini*, both as political authority, and as super-employer and super-owner. It takes all the blame attaching to both roles, and cannot shift responsibility for the economic out of the political sphere. Even ruthless and practiced dictatorships have found it hard, in recent decades, to play the two roles of political lord, and economic master and proprietor, all at once. But they at least had the means of their ambition, until they used it all up. The ex-socialist states totally lack the means.

A spontaneous process, however its critics may scold it for being anarcho-capitalist and exploitative, generates its own where-withal for an emergent order, which in any case is less hard to enforce. Stop stopping assets from falling, by fair processes or foul; from the hands of the state and of ownerless institutional holders, into the hands of natural persons and corporations owned by them. Let 'social property' become genuine property.¹ The insistence, notably in Russia and Poland, on fairness, on preventing windfall gains and on dislodging the *nomenklatura*, are all laudable aims, but they draw the state ever further down the constructivist road and into roles that are too big for it. A tight grip, as in Hungary, holding on to voting majorities, 'strategic' holdings in industries of 'national interest', and selling the rest at the best possible price to Western corporations, with the proceeds flowing to the state's budget, does nothing to transfer at least one

¹ Transferring a state-owned asset to the social security fund or to a bank that is really an extension of a government agency, is often said to be "privatising" it. In effect, it is not. In terms of the argument of this paper, it is not genuine property.

of the state's roles to a decentralized and indigenous class of property-owners. Only Prague seems, to date, to have grasped that the obvious way of transferring state assets to the citizenry is to let each take a piece. Afterwards, they can sort out among themselves, by the ordinary processes of a nascent capital market, who shall end up owning what.

* * *

None of my argument was meant to suggest that a spontaneous order of voluntary exchanges, or a spontaneous order of their enforcement, or both, have much chance of emerging in the ex-socialist countries or anywhere else. At best, partial and fragmentary orders might spring up in the gaps, cracks and crevices of the constructed order. It is hard to see how constructivism could fail to have the upper hand once it is assumed – an assumption governments and bureaucracies eagerly share – that the enforcing framework of order must be constructed first, what it is meant to enforce is to come afterwards. Not that it is impossible to put the cart before the horse. It is just not very practical. Nor does it prove that the horse cannot pull.