

The Rule of Law: The Greatest Deterrent of Tyranny

And there arose another generation after them who did not know the Lord or the work that he had done for Israel. - Judges 2:10b (ESV)

But I spoke hastily. We must not be hasty. I have become too hot. I must cool myself and think; for it is easier to shout stop! than to do it... we are not a hasty folk. What a pity there are so few of us! - Treebeard, The Two Towers

Introduction

Though it is a “political tract”, *The Road to Serfdom* (RTS) is an incredibly lucid work that unpacks the concerns Hayek had with various intellectual and political movements. The Western world had just undergone a widespread betrayal of its liberal heritage.¹ After WWI and the ensuing economic turmoil in Europe (especially Germany), along with the greatest economic depression that America had yet experienced, people lost faith in markets and limited government. In the intellectual world, debates about the nature of business cycles roared as Keynes published his *General Theory*, while Hayek and Mises found themselves in the midst of the debate over the possibility of calculation under socialism. By the time Hayek wrote and published RTS, war had ravaged half of the globe and Hitler made his name as one of the greatest villains in history books for presumably the next few centuries.

The rhetoric and sentiments surrounding a wartime and a peacetime economy are central to the message that Hayek wanted people to learn from RTS. It tied events in the real world of

¹ I will be using the word liberal in its British or classical meaning throughout this essay as Hayek does throughout *The Road to Serfdom*.

policy such as the New Deal, National Socialism, and the British Labour Party with the intellectual battles over socialist economic calculation. Otto von Neurath, Mises' opponent in the calculation debate, argued that a peacetime market economy would hinder the war effort.² An often-overlooked point in the socialist calculation debate was that many contradictory individual plans constitute the economy. War is unique as individual plans become non-contradictory for a period; the polity unites under a common enemy. The first task was to vanquish the Nazis, but at the war's twilight Hayek realized that the wartime economy could continue into peacetime unless someone paid attention. "Though the first task must now be to win the war, to win it will only gain us another opportunity to face the basic problems and to find a way of averting the fate which has overtaken kindred civilizations."³ He had experienced the warning signs of totalitarianism in Germany and saw the same signs in Britain and America.

The liberal heritage that Hayek wants us to return to in peacetime is marked by the individualist vision of society, property rights, and the Rule of Law. Liberalism allows for a productive society that takes into account the conflicting and contradictory nature of the visions of each citizen. In the following sections, I will discuss some of the intellectual and historical events surrounding the publication of RTS, and how the same demons Hayek feared in the past peek out their heads today.

Expanding the Sphere of Government

² Caldwell, Bruce, *Socialism and War: Essays, Documents, Reviews*. University of Chicago Press 1997 pg. 6.

³ Hayek, Friedrich, *The Road to Serfdom*. The University of Chicago Press 1944 [2007] edited by Bruce Caldwell, pg. 66

Those enthralled with efficiency in the natural sciences hoped to control the economy as if it were a consciously directed machine.⁴ This section will discuss the development of the planning mentality in the American New Deal and the British Labour Party.

Rexford Tugwell and the New Deal

The 1930s suffered the most severe economic depression that America had ever seen. The intellectual movement that provided a ready-made explanations and solutions to the problem were the American Institutionalists. One of Roosevelt's key policy architects for the New Deal was Rexford Tugwell, a Columbia University economist with an envy for Italian fascist planning.⁵ Industrialist Frederick Taylor's innovations in the field of factory management deeply impressed Tugwell.⁶ In President Roosevelt's First Inaugural Address, he declared, "plenty is at our doorstep". The "unscrupulous money-changers" were to blame for the failure of proper distribution.⁷ Tugwell designed the National Recovery Act (NRA) and Agricultural Adjustment Act (AAA) in order to take decision-making out of businessman's blind eyes into the conscious directing eyes of the government. It is important to note that FDR enacted the most executive orders during his presidency at 3,734 (second place being Woodrow Wilson with 1,803) and stepped over the informal rule limiting one person to two presidential terms. That informal rule was made an amendment soon after.

Harvard philosopher and psychologist William James's 1910 essay, "The Moral Equivalent of War", inspired many Progressives.⁸ James believed the "martial virtues" cultivated

⁴ "Planning, Science, and Freedom," *Nature*, vol. 143, November 15, 1941, pp. 581-2, reprinted as chapter 10 of F.A. Hayek, *Socialism and War: Essays, Documents, Reviews*. ed. Bruce Caldwell, 1997.

⁵ White, Larry, *The Clash of Economic Ideas*. Cambridge University Press 2011. Pg. 99

⁶ White 2011, 119

⁷ White 2011, 104

⁸ William James, "The Moral Equivalent of War" in *William James: The Essential Writings* ed. Bruce W. Wilshire 1984, State University of New York Press.

by war are favorable but that there are moral equivalents to war that develop the same kind of virtue. James' essay inspired the Civilian Conservation Corps (CCC) and later the Peace Corps. In the CCC, recruits would literally act as a "forestry army" and march as regiments of soldiers in WWI to cut down trees with hopes to boost aggregate demand.⁹

The Labour Party and the Fabian Socialists

The London School of Economics (LSE), where Hayek and Robbins were employed, was founded in 1895 by the married couple of Fabian Socialists, Sidney and Beatrice Webb. They were also instrumental in founding of British Labour Party in 1900. The Webbs were Soviet fetishists, and published *Soviet Communism: A New Civilization?* in 1935. They took most of their data from official Soviet sources, now considered untrustworthy.¹⁰

The chairman of the Interdepartmental Committee on Social Insurance and Allied Services was Hayek's former director at LSE, William Beveridge. Hayek had written a document to Beveridge arguing against the popular misconception that Nazism was capitalism at its fullest. The idea behind this document later became *The Road to Serfdom*.¹¹ Beveridge's committee was tasked with reviewing the programs for the British working class. The infamous 1942 Beveridge Report was the culmination of his work, and through public appearances, he drummed up popular support for the welfare state in Britain.¹²

The Labour Party won a landslide victory in the election of 1945 with the goal of maintaining war powers in the hands of the state.¹³ They created a central planning board that only became a "talking shop" as (ironically) Keynesians and labor unions countered it. They

⁹ <https://www.nationalreview.com/magazine/2019/02/25/everyone-a-conscript/>

¹⁰ White 2011, 182

¹¹ It is reprinted as an appendix to the 2007 edition of *Road to Serfdom* edited by Bruce Caldwell.

¹² Hayek 1944 [2007], 13-14

¹³ White 2011, 176

succeeded in nationalizing the commanding heights such as iron, steel, transportation, and health services.¹⁴ Many of these services remained nationalized until Margaret Thatcher.

The Socialist Calculation Debate

Hayek's teacher, Ludwig von Mises, was involved in a parallel debate around World War 1. Philosopher Otto von Neurath's work on "war economy" provoked Mises. He believed that a peacetime market economy would hinder a war effort. The effectiveness of modern militaries proved that war economy was efficient and that it should be continued in peacetime, in the interest of social justice.¹⁵ In 1920, Mises published "Economic Calculation in the Socialist Commonwealth."¹⁶ Mises grants the point that human nature would change under socialism and so planners would be benevolent.¹⁷ There is no incentive problem. Mises argues that economic calculation under socialism is impossible as monetary prices are necessary to make calculations about the profitability of investments. A socialist manager would be "groping in the dark." The set of technological possibilities is infinite, but markets help actors determine the subset of economically feasible ones.

Mises was widely accepted as the victor in the first round of the debate.¹⁸ With renewed attention on calculation, socialists raised new points and the second major round began. This time it developed around Hayek at the London School of Economics and the Polish economist Oskar Lange. Lange accepted Mises' theorem that prices were necessary for economic calculation but argued that prices were possible under socialism. Lange tauntingly suggested

¹⁴ White 2011, 177

¹⁵ Caldwell 1997, 6

¹⁶ Ludwig von Mises, "Economic Calculation in the Socialist Commonwealth", in *Collectivist Economic Planning*, ed. Friedrich A. Hayek (London: Routledge and Sons, 1935; reprinted Clifton, N.J. Kelley, 1975).

¹⁷ Mises only assumed benevolence for the sake of intellectual argument. He did not himself believe that human nature under socialism would change..

¹⁸ Caldwell 1997, 9

that, “a statue of Professor Mises ought to occupy an honorable place in the great hall of the Ministry of Socialization or of the Central Planning Board of the socialist state.”¹⁹ Lange’s method was dubbed *market socialism*. The collective would own the means of production, but central planners would determine market prices through a “trial and error” method. Central planners could determine the proper price ratios (terms of exchange) if they knew the rough preference scales of consumers and the general stock of resources. They increase the price in a shortage, and decrease it in a surplus. The information they would know just as well if not better than entrepreneurs would.

Some interpretations of the calculation debate end here, with Lange showing that socialism was at least *theoretically* possible. A landmark book that changed the minds of historians of economic thought was Don Lavoie’s *Rivalry and Central Planning* (1985).²⁰ To Hayek, Lange ignored the central point by assuming that central planners would have the relevant information to make decisions. The actor’s knowledge is often particular to time and place and contradictory. Don Lavoie puts forward the concept of market rivalry in which there is a “clash of human purposes.”²¹ There is an “unharmonious element” to competition. “In short, some plans are necessarily disappointed by the carrying out of rival plans by others.”²² Two men cannot marry the same woman; they are necessarily rival for her hand.

Because local knowledge is contradictory, a decentralized decision making process such as the price system economizes on all of the particular pieces of knowledge that are relevant to

¹⁹ Lange, Oskar “On the Economic Theory of Socialism: Part One” *The Review of Economic Studies*, Vol. 4, No. 1 (Oct., 1936), pp. 53

²⁰ Lavoie, Don, *Rivalry and Central Planning: The Socialist Calculation Debate Reconsidered*. Mercatus Center at George Mason University. 2015.

²¹ Lavoie 2015, 22

²² Lavoie 2015, 23

economic efficiency. The price system takes all these particular, rival, and contradictory plans and coordinates them the best it can.²³ Both Marxists and neoclassicals deny rivalry and think the economy is trivially about putting resources where they are demanded. The real choice is between “a system where it is the will of a few persons that decides who is to get what, and one where it depends at least partly on the ability and enterprise of the people concerned and partly on unforeseeable circumstances.”²⁴

Hayek’s Vision of the Rule of Law

Two major points of the *Road to Serfdom* are that (1) economic planning is inconsistent with freedom, as a central planner will need a single value scale in order to make decisions and (2) The Rule of Law keeps coercive government actions to a sphere in which most individual ends are in alignment such as national defense. Many took opposition to the Nazis purely because of their anti-semitism but remained socialists.²⁵ Hayek wanted to attack not only the terrible ends of the Nazis but to denounce their socialistic means.

“Economic control is not merely the control of a sector of human life which can be separated from the rest; it is the control of the means for all our ends. And whoever has sole control of the means must also determine which ends are to be served, which values are to be rated higher and which lower - in short, what men should believe and strive for.”²⁶ There is an erroneous belief that there is an economic motive distinct from other human motivations. If only the state takes on all economic concerns, individuals would be free to pursue their own goals. Every mean, however, connects to an end. “Rigorously speaking, there is no such thing as an

²³ Hayek’s “The Use of Knowledge in Society” is his most famous explication of his thoughts on the issue.

²⁴ Hayek 1944 [2007], 134

²⁵ Hayek 1944 [2007], 196

²⁶ Hayek 1944 [2007], 127

economic interest, or a material interest, ... economic interest is never final; it is an interest in the efficacy of activity, and the use of means, in promoting ... final interest.”²⁷

Neither can the implementation of democracy take control out of the hands of central planners. In a large population, the conflicting ends of the multitude cannot be simply coalesced into a unitary social plan. “A democratic assembly voting and amending a comprehensive economic plan as it deliberates on an ordinary bill, makes nonsense. An economic plan, to deserve the name, must have a unitary conception.”²⁸ Central economic planning will require the bulldozing of some ends for others. In wartime, central planning can take control much easier as people actually do have common ends. It can create the illusion that planning will also work in peacetime.

Democracies, therefore, create a demand for a “strong-man” leader who can get the job done. The most well organized minority will get their leader in power to make sure that their particular plan is driving the bulldozer. Hitler was such a strong-man in Germany.²⁹ Two central chapters in RTS are *Why the Worst Get on Top* and *The End of Truth*. He describes the actions these strong-men will take in order to carry out the unitary plan. A compassionate person may not have the guts to take necessary actions. How likely is it that, “an extremely tender-hearted person would get the job of whipping-master in a slave plantation.”³⁰ There is a selection bias for the ruthless and cruel to be in top positions of a totalitarian machine.³¹ For the plan to work “it is

²⁷ Knight, Frank *Economic Theory and Nationalism* Allen & Unwin 1935. pgs. 306-7

²⁸ Hayek 1944 [2007], 106

²⁹ Hayek 1944 [2007], 108

³⁰ Hayek 1944 [2007], 170

³¹ Hayek uses the example of the Nazi Gestapo.

essential that the people should come to regard them as their own ends.”³² The need for uniform beliefs justifies suppression of free speech and the grotesque use of propaganda.

In *The Constitution of Liberty*, Hayek develops his unique concept of freedom. “The conception of freedom under the law . . . rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man’s will and are therefore free”³³ We are free not because we have the capability to do whatever we want, but because we are not subject to the coercion of another. We are mutually tied from one another. The rule of law and constitutional limited government create fixed rules for coercive government action that are “fixed and announced before-hand.”³⁴

Hayek does not want to make a rule against all government action, but he thinks that every particular actor in the government should be constrained by general rules to truly common ends. The military protects everyone’s freedom, not any particular end a free individual may hold. Our troops fight for freedom of religion, not for Christianity, or Islam, or Hinduism. An empty platitude such as the “common welfare” does not suffice for a common end, as it does not give planners a ready-made scale of values. It abstracts away the underlying contradictory visions of each individual.³⁵

The government also ought to restrict themselves to allow individuals who have economic knowledge of particular time and place are able to take risks with their own property without the permission of the state. Only individuals can have full knowledge of a situation to the extent that they can adapt to them. Each individual must be able to plan his or her own lives

³² Hayek 1944 [2007], 171

³³ Hayek, Friedrich A., et al. *The Constitution of Liberty: The Definitive Edition*. Univ. of Chi. Press, 2011. pg. 27

³⁴ Hayek 1944 [2007], 112

³⁵ Hayek 1944 [2007], 104

with relatively static conditions. If the state is unbounded then they must give up all direction in their own lives to the discretion of the planners. “[T]he more the state ‘plans’, the more difficult planning becomes for the individual.”³⁶ We leave economic freedom open for individuals because of the unforeseeable innovations that they need to invest in without the permission of the state. These innovations can be economic, cultural, or religious in character. Economic planning precludes that all relevant knowledge is known by the planner and thus that there are no opportunities lost by collective ownership.

The Abuse of National Emergency Legislation

On September 14, 1976, President Gerald Ford signed the National Emergencies Act (NEA). The President of the United States may declare a national emergency that grants them discretionary powers. Congress has designated 136 distinct statutory emergency powers to the President.³⁷ Since the bill’s enactment, 59 national emergencies have been declared with 32 of them being renewed annually.³⁸ These include sanctions on foreign countries, suspension of limits on government power following Hurricane Katrina, and attempts to control nuclear proliferation. Let it sink in that there are currently 32 national emergencies that no one other than the White House seems to be aware of.³⁹

There are few to no limits on what the president can declare a national emergency. Only 13 of the 136 powers require congressional approval. The rest are up to the discretion of the President. Recently, Donald Trump declared the immigration crisis at the southern border a national emergency. Despite the declaration being an unpopular measure, it seems to have lost

³⁶ Hayek 1944 [2007], 114

³⁷ <https://www.brennancenter.org/analysis/emergency-powers>

³⁸ https://www.brennancenter.org/sites/default/files/analysis/DeclaredNationalEmergenciesUndertheNationalEmergenciesAct_2.14.19.pdf

³⁹ <http://gmufourthestate.com/2019/02/25/dont-get-fooled-again/>

him little public support.⁴⁰ House Speaker Nancy Pelosi responded to Trump's measure by warning Republicans that a Democratic President could declare a national emergency on gun violence. "A Democratic president can declare emergencies, as well... So the precedent that the president is setting here is something that should be met with great unease and dismay by the Republicans."⁴¹

President Obama summed up the attitude when he said, "I'm going to work with Congress where I can to accomplish things, but I'm also going to act on my own if Congress is deadlocked. I've got a pen to take executive actions where congress won't. And I've got a telephone to rally folks around the country on this mission."⁴² Saturday Night Live parodied the classic Schoolhouse Rock performance of "I'm Just a Bill." After the Bill character sings about the long process of ratification through Congress, Obama vetoes it. The Executive Order sings, "I'm an Executive Order, and I pretty much just happen."

Though it is a fictional account, in *Star Wars Episode III: Revenge of the Sith*, Jar Jar Binks proposed to extend emergency powers to the Chancellor of the Senate, which extends his term limit indefinitely. With his new discretionary powers, the Emperor ended the Clone Wars, but at the same time destroyed the Jedi Order and formed the Galactic Empire. Hayek's point stands strong.⁴³ When you pooh-pooh limiting principles, politics becomes a stiff-arm game between strong-men (and women). Political might makes right.

Even more dramatically, the current crisis in Venezuela relates to the constitutional convention held by Hugo Chavez in 1999. Chavez was elected in 1998 and promised to convene

⁴⁰ <https://www.cnn.com/2019/03/19/politics/trump-approval-rating-national-emergency-analysis/index.html>

⁴¹ <https://thehill.com/homenews/house/430098-pelosi-warns-gop-next-president-could-declare-national-emergency-on-guns>

⁴² https://www.youtube.com/watch?v=G6tOgF_w-yI

⁴³ https://starwars.fandom.com/wiki/Jar_Jar_Binks

a National Constituent Assembly. A referendum of the people voted heavily in favor of the reconvening of the Constitution.⁴⁴ The convention allowed Chavez' government to suspend all actions of congress and to suspend judges on charges of "corruption". The new constitution included broad requirements for human rights such as health care, education, and housing. Presently, Venezuela is in a state of utter turmoil. The economy is rife with shortages, debt, and lack of housing, as well as hyperinflation.⁴⁵

Conclusion

None of these events is the death knell for liberty and Rule of Law. It is easy to forget that Hayek's book is a warning not a prophecy. We may have begun down the Road to Serfdom, but we have the opportunity to gather our bearings and constrain Leviathan. "Nor am I arguing that these developments are inevitable. If they were, there would be no point in writing this. They can be prevented if people realize in time where their efforts may lead."⁴⁶ I will conclude with Hayek's thoughts on freedom of speech and the hope that lies with the free minds of individuals. "So long as dissent is not suppressed, there will always be some who will query the ideas ruling their contemporaries and put new ideas to the test of argument and propaganda. The interaction of individuals, possessing different knowledge and views, is what constitutes the life of thought. The growth of reason is a social process based on the existence of such differences."⁴⁷

⁴⁴ <https://venezuelanalysis.com/analysis/70?artno=1003>

⁴⁵ <https://www.nytimes.com/2018/11/01/magazine/venezuela-inflation-economics.html>

⁴⁶ Hayek 1944 [2007], 59

⁴⁷ Hayek 1944 [2007], 179