Planning Against Planning: Friedrich Hayek's Utopian Vision of The Good Society

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“The history of thought and culture is, as Hegel showed with great brilliance, a changing pattern of great liberating ideas which inevitably turn into suffocating straitjackets, and so stimulate their own destruction by new, emancipating, and at the same time enslaving, conceptions. The first step to the understanding of men is bringing to consciousness of the model or models that dominate and penetrate their thoughts.

_Isaih Berlin, “Does Political Theory Still Exist?”_
The gulf that exists between great liberating ideas and totalizing theoretical frameworks that individuals uncritically accept is measured not in content, but in generations. Enlightenment rationalism, religious dogmas, and even liberal democracy are all, in their own ways, examples of what were once ideas that freed societies from oppressive mindsets until they themselves functioned as straitjackets. By providing individuals with a lens for understanding larger questions, these frameworks carry underlying assumptions: a vision of what is just and, through that, perhaps, a vision of the good society. This was, in many ways, Friedrich Hayek’s intention when he set out to combat the socialist planning that he saw as an authoritarian return to the ways of the old society of status and ascription.

Hayek published his first systematic indictment of planned economies, *The Road to Serfdom*, in 1944. By linking authoritarianism to planning, Hayek implied that the atrocities of World War II perpetrated by Nazi Germany and Stalinist Russia were a result of the latter. Meanwhile, another camp of political philosophers linked authoritarianism to utopianism, similarly suggesting that the atrocities perpetrated by the Nazis and Soviets were products of that which leads to authoritarianism. Karl Popper and Isaiah Berlin, for example, were in this camp. Hayek’s critique of planning was interpreted by many as synonymous with a critique of utopianism, which led commentators to erroneously lump these authors together and whitewash Hayek’s nuanced views under the banner of anti-utopianism. Although Hayek certainly criticized those leaders that sought to plan and execute utopias in practice, these commentators failed to grapple with the possibility that he held a utopian vision of the good society towards which he believed history was moving through an evolutionary process.

Against the conventional wisdom, I will argue that Hayek’s political philosophy contains a utopian vision of the good society. By adopting and building on Isaiah Berlin’s conception of
utopia as a state of static perfection, I will argue that such a vision is implied, if not overtly stated, in Hayek’s work. First, Hayek’s view that there ought to be a relentless application of an unfettered market mechanism brings about, as he would have it, a static and perfect outcome by whittling away inefficient alternatives to yield a perfectly efficient outcome. In applying an unfettered market mechanism to (a) the evolution of the rules of just conduct and (b) the allocation of public goods, Hayek implies a developmental inevitability characterized by static perfection. Second, I will argue that his sketches of the proper contours of government demonstrate a conventionally utopian vision for the good society and manifest his conception of utopia.

It is worth confronting – and dismissing – the assertion that Friedrich Hayek is an anti-utopian. This is a particularly entrenched view because many authors and commentators believed that he typified the anti-utopian movement in the postwar era and, for them, to argue that his work contained utopian visions of the good society would seem both deeply ironic and deeply misguided. Ruth Levitas, for example, writes, “colloquial usage thus tends to dismiss speculation about the good society as intrinsically impractical…this anti-utopian position is characterized by Karl Popper and Friedrich Hayek.”¹ Levitas is correct to point out that Hayek pushed back against utopias in practice, but wrong to suggest that he found a conceptual speculation of utopia impractical. Instead, he applauded such a conceptual vision. In *Law, Legislation and Liberty: Rules and Order*, Hayek writes:

> It is not to be denied that to some extent the guiding model of the overall order will always be an utopia, something to which the existing situation will be only a distant approximation which many people will regard as wholly impractical. Yet it is only by constantly holding up the guiding conception of an internally consistent model which

could be realized by the consistent application of the same principles, that anything like an effective framework for a functioning spontaneous order will be achieved.\textsuperscript{2}

Far from dismissing the importance of a conceptual utopia, Hayek acknowledged it.

With that being said, while my intention in interpreting Hayek as a utopian is twofold. On the one hand, it is a tongue-in-cheek rhetorical move: it is a novel – and some might find ironic – interpretation of Hayek to suggest that his writing contains a utopian vision. It upends received wisdom, a goal I believe Hayek himself would look favorably upon. On the other hand, it is substantive: charting the implications of Hayek’s writings with respect to an implied “utopian” ideal allows readers to identify the logical conclusion of his work. The substantive component of this research, therefore, involves an argumentative method that might make some readers uncomfortable. Interpreting Hayek’s implied utopian visions involves an interpretive leap from Hayek’s overt arguments to their implied logical conclusions.

With this sort of abstract research in political theory, it is always important to grapple with the question, “why is this important?” To answer this question, I would point out that Hayek’s political and economic philosophies have been very influential in practice. His work was particularly important in the resurgence of the New Right in the United Kingdom in the 1980s. Lord Wedderbury argues, “the pedigree and meaning of the new labour laws of the 1980s can be found in a unique and astonishing manner in the writings of Hayek.”\textsuperscript{3} Andrew Gamble writes that Hayek “became one of the main inspirations for many of the currents of thought which made up the New Right of this period...[he became] the intellectual guide of prime ministers and presidents.”\textsuperscript{4} To this extent, Hayek’s contributions to economic and political

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thought have been well documented as scholars such as Wedderbury and Gamble attempt to demonstrate the ways in which his work influenced concrete policy. By looking at Hayek’s work from a utopian perspective, I hope to demonstrate the ways in which Hayek’s contributions to economic and political thought will influence policy makers in the years to come. By asking, “what are the conceptual and logical conclusions implied within Hayek’s writings?” I hope to demonstrate what it means for future generations when present policy is constructed with an eye towards Hayek’s work.

Section One: Considering Utopia

Employing a utopian framework to point out the logical conclusions of Hayek’s work demands a resuscitation of the concept of utopia. After all, in the aftermath of World War II, it became clear that utopian visions more often characterized the rhetoric of dictators and ideologues than well-intentioned intellectuals. Along these lines, a number of political philosophers pointed out the dangers that come with promises of utopias in practice. Francis Fukuyama, looking back on this era in his book, The End of History and the Last Man, declares that “the genocides perpetrated by the totalitarian regimes of Hitler’s Germany and Stalin’s Russia were without precedent in human history, and in many respects were made possible by modernity itself.”\(^5\) Fukuyama is partly talking about a concrete product of modernity: the technological advances that made it possible to consider the systematic destruction of an entire people. However, he is also partly making reference to a more abstract product of modernity. Namely, the erroneous belief that technological advances had conquered nature and, given that, men could bend the “natural” arc of history towards a utopian end point. In pursuit of this end point, these men reasoned, there could be no limit to the human suffering that could (“should,”

for those of a utopian persuasion) be paid for an accelerated approach towards it. The horribly systematic execution of millions in the Holocaust, as Hitler saw it, was a fleeting pain to be endured on the march towards a more perfect utopia.

This line of critique against modernity and utopia in the aftermath of World War II deterred attempts to axiomatically deduce the structure and content of the good society as a means of moving history in its direction. In this spirit, Karl Popper argues that utopianism is the idea that, prior to undertaking a political project, an individual knows the ideal state for which they are aiming and, once known, “[they] move slowly towards it, taking it as the aim of some historical process which [they] may to some extent steer towards the goal selected.” This mode of thinking, according to Popper, however, is toxic. “I consider what I call utopianism an attractive and, indeed, an all too attractive theory,” Popper writes, “for I also consider it dangerous and pernicious. It is, I believe, self defeating, and it leads to violence.”

Hannah Arendt, in *The Origins of Totalitarianism*, draws a parallel between utopianism and totalitarianism and attacks the latter by positing that the totalitarian claim to know a suprahistorical ordering of society is misguided. “The law of Nature or the law of History, if properly executed,” she writes, “is expected to produce mankind as its end product; and this expectation lies behind the claim to global rule of all totalitarian governments.” Totalitarian regimes, as the midwives of utopia, see their cause as the acceleration of the march of history towards its final utopian end point. Isaiah Berlin, as well, saw the potential violence that comes with claims to know a utopia. Berlin, though, attacks utopianism because of its incompatibility with pluralism: the utopian tenet that equally valid ends cannot conflict clashes with the pluralistic idea that different ends are often equally valid and yet mutually irreconcilable.

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Despite the uproar of critics in the postwar era that sought to dismantle the concept of utopia, contemporary utopian scholars are reviving the concept by distancing the term from its problematic past that was hallmarked by attempts to realize utopias in practice. Instead, many contemporary utopian scholars argue, utopias ought to be seen conceptually and employed as a guiding light, not as an attainable goal. Davina Cooper, in *Everyday Utopias*, subscribes to this effort:

While many generations of scholars, politicians, activists and writers have criticized the utopian for relying on a static notion of the perfect society that can be imagined and then executed (e.g. Bauman 2003b; Shklar 1994), contemporary scholarship and writing is far more interested in the utopian as an ethos or complex process, whose failure and struggles are as important as success (e.g., see Levitas 2007; Moylan 1986; Sargisson 2007).

Cooper is articulating an attempt to revive the concept of utopia (or, for Cooper, “everyday utopias”) by suggesting that it is a valuable concept in bringing about incremental changes. Such incremental changes, although they do not constitute the totalitarian efforts to impose an end of history, subscribe to the same fundamental principle: there exists a vision of static perfection that, while perhaps unattainable in praxis, is knowable in theory. Although the incremental change that Cooper is advocating is not an attempt to reify that state of static perfection, it takes it as its guiding beacon, implying its existence and importance.

Cooper’s comment also hints at what will be a crucial distinction throughout my research: the difference between “blueprint” and “conceptual” utopias. Blueprint utopianism refers to the overt attempt by leaders to impose the material conditions that would characterize a state of static perfection. Berlin, Popper, Arendt and other critics of utopia often fixate on this understanding to the exclusion of conceptual utopianism, which refers to what Cooper is describing. That is, a vision of a state of affairs characterized by static perfection that, while

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unattainable in practice, is knowable in theory. The value of this brand of utopianism still lies in practice, however. In knowing the perfect form, individuals may advocate for a gradual movement towards it.

To be clear, I employ the terms utopianism and utopia in the conceptual sense, unless otherwise stated. To give substance to the concept, I employ and expand on Isaiah Berlin’s contention that a utopian vision must present a state of static perfection, or a stasis. This is what I take to be the most salient characteristic of a conceptual utopia. In his own words, Berlin writes, “[w]hat is common to all these worlds [utopias], whether they are conceived of as an earthly paradise or something beyond the grave, is that they display a static perfection in which human nature is finally fully realized and all is still and immutable and eternal.” The notion of total “static perfection” might at first appear problematic since it suggests the complete and total absence of any dynamism or change: all human interactions, even mundane conversation, would be predictable. This, however, is not what a state of static perfection implies. Instead, it refers to the stasis of society in its trajectory across history; it refers to the end of progress. At this point of stasis, change might still occur on some level as long as that change either, firstly, functions in order to maintain or, secondly, does not impact that larger historical stasis.

What is at question here is how the particular elements of a society impact the general constitution of that society. Put differently, at what point does the dynamism of a particular element disrupt the stasis of the whole to undermine its utopianism? In the first case, when dynamism helps to maintain stasis, the function and purpose of the dynamism is mission critical to the stasis of society by its very characteristic of being dynamic. Consider as an illustration how in a neoliberal utopia the price mechanism adjusts to meet a new equilibrium based on a

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shift in indifference curves (which are contingent upon a dynamic set of individual human emotions). In its movement towards a new equilibrium it is dynamic, but it is maintaining a larger stasis by keeping prices at the exact level that the demand implies. The stasis, then, refers to the perfection of the *structure* of the price mechanism as a functioning apparatus. In the second case, when the dynamism does not impact the stasis, the dynamism is contained to such minutiae as to be irrelevant. Consider as an illustration of the second case, by way of analogy, how the electrons in an atom are continually moving about. In their movement they are dynamic, yet they do not disrupt the stasis of the larger compound they compose because the movement of any one electron affects very little in terms of the whole.

There are, moreover, two possible implications that follow from Berlin’s notion of static perfection that will further flesh out what I mean by utopia. Firstly, a state of static perfection implies a vision of society where the role of the state – particularly the enforcement of the rule of law - is diminished and, secondly, static perfection further implies the end of political discourse. I raise these implications not as necessary characteristics of utopias, but rather because they appear to follow from a notion of static perfection and because both are, at different times, manifest in Hayek’s writing.

A utopian state of static perfection, firstly, implies that the role of the state is diminished and, particularly, its role in enforcing a rule of law is diminished. Static perfection suggests an absence of discordant actions, which suggests that no individual acts in such a way that would undermine the capacity for another individual to pursue an altogether unrelated, yet equally valid, action. It is commonly thought to be the role of the state – with its monopoly on coercive capacities - to ensure a general conformity among actions. However, the coercive capacities of

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10 By “rule of law” I refer to the procedural, rather than the substantive, component of its definition. That is to say that I am not commenting on what sorts of laws might exist in a utopia, but the way in which those laws are applied through a procedural apparatus.
the state in the service of such conformity will slowly wither away as its service as a “bracketer” of acceptable behaviors is no longer required. Of course, certain procedural issues might still fall to the state – the issuance of currency, for example. But the vast majority of substantive issues arising from discord, whose resolution are presently believed to be the duty of the state, will never present themselves as issues demanding resolution by the state.

Consider the way that a neoliberal thinker might envision a utopia. Such a thinker, many would argue, might articulate a vision where individuals were free to pursue and maximize their self-interest as they saw fit through an unfettered market mechanism. Such an understanding fits into the oft-stated idea that a neoliberal utopia would have minimal constraints imposed by a rule of law and enforced through a governmental apparatus. Individuals pursuing their narrowly-defined self interests would govern themselves accordingly through a marketplace where those elements of society that were widely considered to be harmful or toxic – which are also those elements that would sow discord - would be expunged through individuals determining that their purchase was not in their self-interest. This, in turn, undercuts the need for a state that provides a regulative process.

Secondly, a utopian state of static perfection implies that there is no political discourse. Political discourse is reasoned debate about differences in opinion regarding what ends a society should pursue and what means should be employed to achieve those ends. Given that in a state of static perfection, the pursuit of ends is understood by all to be singular, there can be no discourse regarding differences because they do not exist. In a Benthamite utilitarian utopia that is narrowly committed to the maximization of human happiness, for example, there would be no ulterior goals driving any political statement other than a desire to reach, or stay at, that level which maximizes human happiness.
Some might say that this does not preclude a political discourse regarding the means to achieve that one end. Indeed, this is a valid critique if such a political discourse took place while there still existed a gulf between present circumstances and the stated-end. To use the utilitarian example again, such political discourse regarding means could only occur if the point of greatest human happiness had not already been met. However, while a discourse over the means suggests that the singular end has not already been achieved, the converse is true in the discussion at hand. In a state of static perfection, which is the core of a utopia, the perfection suggests that the end has been achieved.

**Section Two: Hayek’s Utopian Vision**

Before making the leap from Hayek’s political philosophy to the assertion that it contains a utopian vision, it is crucial to first recognize both the context within which Hayek perceived himself to be writing and the conventional interpretation of his work. To accomplish this, the bulk of this section draws on Hayek’s three-volume work, *Law, Legislation and Liberty* (1973; 1976; 1979). That being said, his earlier works of political philosophy, *The Road to Serfdom* (1945) and *The Constitution of Liberty* (1959), are equally important. Throughout these texts, and for much of his intellectual life, Hayek believed that he was combating the rise of socialism and government “planning,” which he saw as a return to the authoritarian ways of the Old Society where individuals were ruled by notions of status and ascription. Planning, as Hayek would have it, was pernicious and diametrically opposed to the liberty he held up as the object of a free society. He writes, at the beginning of *The Road to Serfdom*, for example:

> We have progressively abandoned that freedom in economic affairs without which personal and political freedom has never existed in the past. Although we had been warned by some of the greatest political thinkers of the nineteenth century, by De
Tocqueville and Lord Acton, that socialism means slavery, we have steadily moved in the
direction of socialism.\textsuperscript{11} In the introduction to \textit{Law, Legislation and Liberty} almost thirty years later, he offers a similarly
bleak assessment that he later ties to socialism: “[g]overnments everywhere have obtained by
constitutional means powers which those men had meant to deny them. The first attempt to
secure individual liberty by constitutions has evidently failed.”\textsuperscript{12} A predictive reader might, at
this point, correctly anticipate that Hayek intends to put forth the form of government that will
best secure the individual liberty that he privileges above all else. Indeed, Hayek undertakes such
a project in the third volume of \textit{Law, Legislation and Liberty: The Political Order of a Free
People.}

Before putting forth such an apparatus, which is in many ways the capstone to his
political philosophy, Hayek articulates a complex social philosophy. At the core of this social
philosophy is the idea that no single mind or institution has the capacity to grasp, understand or
act upon the innumerable particulars of a state of affairs. Instead, Hayek posits,

Most of the advantages of social life, especially in its more advanced forms which we call
‘civilization,’ rest on the fact that the individual benefits from more knowledge than he is
aware of. It might be said that civilization begins when the individual in pursuit of his
ends can make use of more knowledge than he has himself acquired and when he can
transcend the boundaries of his ignorance by profiting from knowledge he does not
himself possess.\textsuperscript{13} He calls this concept, \textit{dispersed knowledge}. This understanding invariably leads Hayek to the

what has been called the *synoptic delusion*, that is, on the fiction that all the relevant facts are known to some one mind, and that it is possible to construct from this knowledge of the particulars a desirable social order.”¹⁴ The tendency of the authoritarian socialist dictator, in his or her infinite wisdom, to assign individuals to specific positions in factories might, for example, be a product of such a delusion.

Instead, Hayek adopts what he calls an *evolutionist* perspective and offers an alternative explanation for the existence of the present social order. He argues that the Great Society, and all complex human institutions within it, is the product of an evolution that is perpetuated by contingencies, accidents, and random occurrences.¹⁵ Although these institutions are the product of a process beyond human control, they are perpetuated because they are successful at fulfilling the needs and desires of individuals. Hayek writes, “a process in which practices which had first been adopted for other reasons, or even purely accidentally, were preserved because they enabled the group in which they had arisen to prevail over others.”¹⁶ The state of affairs that arises out of this process is not *decided* to be the best, but instead *becomes* the best. With this explanation, we begin to see the beginnings of Hayek’s insistence on the capacity of a market mechanism: institutions, according to Hayek, are adopted because they survived a competitive process.

The state of affairs that is brought about by this process is characterized by an *order*. Order, although he couches it in unapproachably abstract language, has a rather conventional definition for Hayek:

“By ‘order’ we shall throughout describe a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations

¹⁵ Hayek accepts that some simple institutions, such as governments, are the product of conscious human design.
¹⁶ Ibid., 9.
Order refers to a state of affairs in which relationships are predictably governed by stated or unstated rules. Consider the order on a busy urban sidewalk among the several pedestrians. If one were to observe the sidewalk from above, it would be clear that the pedestrians were acting in concert with one another so as not to bump into each other. In the United States, for example, that viewer would notice that most pedestrians walk on the right side of the sidewalk and adhere to other general rules that are brought about not by an administrative authority but by convention. That same viewer would reasonably comment that there was an “order” to the sidewalk. That order comes about as a product of the mutual and consistent understanding among the pedestrians as to the abstract rules and their applicability in a number of unforeseen similar circumstances.

Hayek draws a dichotomy within the concept of order by differentiating between two types: spontaneous orders and made orders. Spontaneous orders are the product of the evolutionary process I made reference to earlier, whereas made orders are the product of conscious human design. The latter, what Hayek calls taxis, are rather straightforward and it should suffice to point out that they are a “deliberate arrangement by somebody” and often serve a specific purpose. They are small organizations and can only adequately function to serve basic tasks.\(^{18}\) Spontaneous orders, such as the one that exists on sidewalks, consist in a system of abstract rules that govern relationships. While the particular elements of a situation in a spontaneous order may change, the rules that govern the particulars will not. “All that is necessary to preserve such an abstract order is that a certain structure of relationships be

\(^{17}\) Ibid., 36.

\(^{18}\) Government, it should be noted, will be used interchangeably with taxis in this research because it is the focus of Hayek’s political philosophy: the role of government.
maintained,” Hayek writes.\textsuperscript{19} The market is the most obvious and the most complex example of a spontaneous order and provides a number of illustrations.\textsuperscript{20} Consider how the rules that abstractly govern the market (laws of supply and demand, for example) are concretely manifested in any number of situations, regardless of the particular elements. A rise in the demand for gold leads to a proportional rise in its price that is tempered against the supply of gold. A rise in the demand for silver leads to a similar scenario. Both gold and silver, although different particular elements, are governed by the same abstract rule.

Hayek’s aim in laying out a descriptive social philosophy is to provide the foundation for his argument regarding the role government ought to fill. At its core, the most basic role of government is to secure the conditions of liberty for individuals to pursue their self-directed aims to the extent that they do not interfere with others. To ensure this is the case, government is tasked with the creation and enforcement of the rules of just conduct. Hayek writes, “a condition of liberty in which all are allowed to use their knowledge for their purposes, restrained only by rules of just conduct of universal application, is likely to produce for them the best condition for achieving their aims.”\textsuperscript{21} Government is also tasked with carrying out the administration of certain tasks that do not extend beyond the limits of its power; often this means the construction of public goods. To abstract, then, Hayek envisions two roles for government: (1) the administration of particular sanctioned tasks to achieve a specific result and (2) the codification and enforcement of the rules of just conduct which govern individuals’ interactions but are not a product of government contrivance.

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\textsuperscript{19} Ibid., 39.

\textsuperscript{20} The market ought to be understood as synonymous with the term “spontaneous order” because, although it is not the only possible spontaneous order, it is the one that Hayek takes issue with.

\textsuperscript{21} Ibid., 55.
Role (1) of government, the administration of certain tasks, is carried out through laws that Hayek calls *theses*. According to Hayek, *theses* “will be rules of organization designed to achieve particular ends, to supplement positive orders that something should be done or that particular results should be achieved, and to set up for these purposes the various agencies through which government operates.” Simply put, *theses* are best characterized as administrative orders. *Theses* may often consist in, for example, the levying of taxes in the service of providing certain public goods is a critical function of government. More specifically, consider a government’s law to allocate, say, $1 million towards the construction of a two-lane highway between town x and town y as an example of *theses*.

Role (2) of government is to ensure that all its citizens are adhering to the abstract rules of just conduct that govern the parameters of acceptable actions. These rules are codified norms – norms that are not decided upon, but have grown to be accepted as crucial elements of the spontaneous order from which they come. This does not mean codifying every abstract rule that was borne out of the spontaneous order – there is obviously no need to codify and enforce the law of supply and demand, for example. Instead, government is tasked with codifying and enforcing these abstract rules - the “*rules of just conduct*” or “*nomos*” - that promote efficiency through their mutual adherence but are not always adhered to. They are accepted norms in the abstract, but are not always adhered to in practice. Take assault, for example: in the abstract, a prohibition against assault is a societal norm; in practice, we know that this is not always the case. Hayek writes,

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22 Ibid., 125.
23 This means, however, that while the collection of coercive levies for public goods is a necessary role of government, the administration of those funds might be better accomplished through private enterprises (consider: school vouchers).
Although it is conceivable that the spontaneous order which we call society may exist without government, if the minimum of rules required for the formation of such an order is observed without an organized apparatus for their enforcement, in most circumstances the organization which we call government becomes indispensable in order to assure that those rules are obeyed.26

Hayek refers to these rules – the rules of just conduct – as nomos. Nomos are born out of the spontaneously generated norms that govern the interactions of individuals in a spontaneous order. 27

The Developmental Inevitability of Nomos

A conventional reading of Hayek might focus on dispersed knowledge and his critique of planned economies, which lends itself to interpreting Hayek as an anti-utopian. But by focusing on nomos and spontaneous orders instead, there emerges a powerful strand of utopianism in Hayek’s thought. Central to teasing out this strand of utopianism is understanding that Hayek sees the rules of just conduct – nomos – as an evolving concept, whose evolution trends towards a perfect and static body of rules that function to protect the market mechanism that exists in the spontaneous order. This process of evolution not only yields rules that protect the market mechanism, but also is governed by a market mechanism, which doubly demonstrates Hayek’s belief in competition as a universally applied operation that brings about the best result – not simply in economic affairs but in matters of justice, as well. Although Hayek does not overtly

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27 This definition is not all that dissimilar to a conventional interpretation of the Greek word, nomos, in fact. Susan Jarratt writes, “nomos [denotes law] ‘as the expression of what the people as a whole regard as valid and binding norm.’” Jarratt continues to suggest that nomos “[signified] the imposition of humanly determined patterns of explanations for natural phenomena.” This falls in line with what Hayek asserts ought to be the role of government: the codification (imposition of humanly determined patterns) of norms (naturally arising phenomena) into nomos. See: Susan C. Jarratt, Rereading the Sophists: Classical Rhetoric Refigured (Carbondale: Southern Illinois University Press, 1991), 41.
state that the rules of just conduct are subject to the market mechanism, he describes a process that is the product of a similarly competitive process: “after all, our morality is itself the result of a process of cultural selection. Those things survive which enable the species to multiply,” he writes.\textsuperscript{28}

It is worth first pointing out that Hayek identifies not one, but three mechanisms for the evolution of nomos. The first two of these mechanisms do not rely on a competitive process but instead involve human intervention. The first mechanism that Hayek suggests is for a judge to codify new nomos if they are found to be necessary complements to the already existing body of nomos. “[Nomos] are discovered either in the sense that they merely articulate already observed practices or in the sense that they are found to be required complements of the already established rules if the order which rests on them is to operate smoothly and efficiently,” Hayek writes.\textsuperscript{29} In the second mechanism, he allows for judges to “improve” nomos by slightly altering it to achieve a more efficient body of law: “These rules,” he writes, “are first the property of a factual state of affairs which no one has deliberately created and which therefore has had no purpose, but which, after we begin to understand its importance for the successful pursuit of all our action, we may try to improve.”\textsuperscript{30} Firstly, although both of these processes involve human intervention, they still preserve the notion that nomos is a product of an evolutionary process that is largely beyond conscious human control. Secondly, these interventions imply a utopian vision for the rules of just conduct: that there are “required complements to the already existing body of nomos” suggests the perfectibility of this body.

The third mechanism for the evolution of nomos is one that is beyond human control: the market mechanism. By relying on the arguments made by Andrew Belsey and Charles Lindblom

\textsuperscript{28} F.A. Hayek, \textit{Knowledge, Evolution and Society}, 54.
\textsuperscript{30} Ibid., 105.
in “The Market as a Prison,” I argue that the evolution of nomos, when governed by a market mechanism, implies a notion of developmental inevitability that ends with a perfect and static set of rules of just conduct. These rules of just conduct are static and perfect because they are the product of a positive feedback loop where only those that uphold the market mechanism out of which they were created survive. The process by which the market mechanism sorts through competing alternative rules of just conduct, although it will settle on imperfect options, yields the perfect option in the end.

The market mechanism, when unfettered and relentlessly applied, brings about a utopian state of affairs. To understand the latter contention – that it brings about a utopian state of affairs - consider how the market mechanism, many have argued, is not a process that promotes a plurality of ends, but rewards a select few. In his famous essay, “The Market as a Prison,” Charles Lindblom demonstrates how the market operates in a feedback loop whereby it automatically punishes and deters any actions that undermine its operation and it thereby ensures its perpetuation by tolerating only those ends that support the market. He writes, “Another possibility [for designing a political system that would be highly resistant to change] is simple and fiendishly clever. It is to design institutions so that any attempt to alter them automatically triggers punishment.” Punishment in the form of unemployment and sluggish investment, Lindblom suggests, are automatically triggered when the market mechanism feels threatened by reforms. This suggests that, if nomos are selected by a market mechanism, they are selected only as long as they serve to perpetuate the market mechanism from which they were born. Nomos that function otherwise would be abandoned given their overwhelming costs in the form of, say, unemployment.

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Andrew Belsey, in “The New Right, Social Order and Civil Liberties,” quotes and uses Hayek’s model in *Knowledge, Evolution and Society* to demonstrate the implications of a relentless insistence on the market mechanism. He confirms, similar to Lindblom, that, if left unfettered, the market narrows down a multitude of preferences into a single preference. That is, he points out the conformism lurking at the end of Hayek’s defense of a seemingly neutral market:

‘A system of market-determined prices is essentially a system which is indispensable in order to make us adapt to events and circumstances of which we cannot know,’ [Hayek writes]. The point of this adaptation is the achievement of a purpose: ‘the distribution of market rewards is the mechanism by which individuals are told what to do in order to make their maximum contribution to the total product’. The ultimate project is ‘the obedience to purely abstract rules of conduct that leads to the formation of a social order’. And not just to its formation, but its perpetuation. The point is that all behavior is for the sake of the market order of capitalism.32

The market mechanism, far from promoting a plurality of preferences, promotes the preference that brings about an outcome that maintains the market mechanism. This conformity, by undermining the existence of competing alternatives in the last resort, constitutes a conceptual utopia, I would argue. For one, it promotes a stasis, as evidenced by the argument that the market rewards the preference that brings about the outcome that maintains the market. Secondly, it is a perfect stasis. Its perfection is evidenced by the conformity of outcomes to a single outcome that mirrors the market’s ideal.

Understanding the way that the market mechanism sorts through competing *nomos* involves an understanding of the evolution of the norms that undergird *nomos*. That is, Hayek suggests that the evolution of these norms does in fact have a pattern and that this pattern is governed by the market mechanism. New norms are adopted at wholesale when a small group adopts such norms at retail and that group proves more successful than all other groups as a

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result. The struggling groups, in turn, adopt these norms as a means of parodying the success of the first group. As an example of how these norms come about, consider how Hayek’s describes the genesis of norms that presently govern an exchange economy:

I think the first member of the small group who exchanged something with an outsider…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 neighbors, traded elsewhere… contributed to the development of an ethics that made the worldwide exchange society possible.\textsuperscript{33}

These norms were accepted, moreover, because they proved themselves to be more efficient and effective. Hayek continues, “All of this developed, of course, in a competition among groups, each imitating those who adopted a somewhat advanced – from our present standpoint – system of practices and, in consequence, increased more rapidly in population, both by procreation and by attracting people form other groups.”\textsuperscript{34} Norms are accepted or abandoned by groups with respect to an ideal of “efficiency” where the more efficient norms allow the group to succeed in comparison to other groups. Competing groups will either adopt these more efficient norms or fail. Whether these groups like it or not, they adopt and drop the norms that underlie the changes in \textit{nomos} as a result of living in a Darwinian market mechanism.

When the rules of just conduct – and not just economic actors – are subjected to the market mechanism, as is the case with \textit{nomos}, Lindblom and Belsey’s arguments become applicable. Applying Lindblom’s argument to Hayek’s theory of cultural selection, only those rules of just conduct that perpetuate the existence of the market mechanism will be tolerated. These rules of just conduct will be ones that promote atomistic individual actors, an entrepreneurial spirit and, as Andrew Gamble suggests, “such individuals…will develop the

\textsuperscript{34} Ibid., 32.
essential moral traits that are needed to sustain the Great Society.\textsuperscript{35} The rules of just conduct that do not promote the market mechanism will slowly wither away to reveal an unfettered market mechanism that governs both economic and political life. To elaborate, the idea that new nomos are adopted through a process of competition implies perfection. As individuals transgress old norms in favor of new ones and those new ones are shown to be more successful in ensuring the perpetuation of the group, the individuals in a society will come to adhere to, and emulate, the norms that were once transgressive. This process, which is, at its core, a market mechanism, is a process of trial and error that eventually leads to final end point whereby the most efficient nomos are adopted.

Having established that the evolution of nomos is governed by the market mechanism, we can now turn to consider the question, “does Hayek envision a point at which nomos stops evolving? Put differently, what state of affairs would operate perfectly as to cause nomos to stop evolving? If Hayek implies that nomos evolve with respect to an ideal of efficiency – or, the smoothly operating and unfettered market mechanism - it would stand to reason that nomos would stop evolving when all restraints from such a mechanism are removed.\textsuperscript{36} To draw on Andrew Belsey again, he picks up on this line of argument and demonstrates what Hayek envisions as the product of such an evolution of rules of just conduct governed by the market mechanism:

\begin{quote}
[Since] the basis of social relations must be abstract rules, the rules are to keep people apart, in their private domains… so the individual stands naked in the market-place, alone and isolated. There can be no help to be had from government, as this must not be allowed to interfere in the market. Nor can the individual turn for comfort to fellow citizens: this would be atavistic regression.\textsuperscript{37}
\end{quote}

\textsuperscript{35} Emphasis added; Andrew Gamble, \textit{Hayek: The Iron Cage of Liberty}, 72.
\textsuperscript{36} “The reason why one rule rather than another was adopted and passed on will be that the group that had adopted it did in fact prove the more efficient, not that its members fore saw the effects the adoption of the rule would have.” (\textit{Law, Legislation and Liberty}, Vol. II, p. 4-5.)
\textsuperscript{37} Andrew Belsey, “The New Right, Social Order, and Civil Liberties,” 184.
As Belsey dramatically points out, when the only norms and *nomos* that survive the market mechanism’s process of sorting through alternatives are those that further entrench the market mechanism itself, they produce an atomistic, individualistic, and market-oriented ideal. *Nomos*, in this last resort, would promote, for example, seamless exit and entry into the marketplace, an absence of unions that undermine individualized utility curves, and the free flow of goods across borders. This body of *nomos* would not tolerate any actions that undermine the market, demonstrating that static character of such a state of affairs.

**Public Goods and The Market**

Surprisingly, Hayek also envisions a role for the market mechanism in the allocation of public goods. In 1954, Paul Samuelson defined public goods as “goods which all enjoy in common in the sense that each individual’s consumption of such good leads to no subtractions from any other individual’s consumption of that good.” The problem with public goods that are shared in common, however, is that individuals often over-consume these goods without proportionately paying into them. This, in turn, brings about a number of negative externalities that range from, for example, deforestation to traffic congestion. The market mechanism’s inability to adequately provide these goods without unacceptable negative externalities constitutes a “market imperfection” or “market failure.” At least since Richard Musgrave’s 1939 article, “The Voluntary Exchange Theory of Public Economy,” the consensus among political and economic theorists has been that governments ought to play a role in the allocation of such goods. That is, government ought to be empowered to levy taxes that allow it to provide these

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public goods and to marshal those funds toward preventing a situation where there is a market failure or negative externalities arise.

An uncritical interpretation of Friedrich Hayek might suggest that he, in step with the economic orthodoxy, believes that governments ought to remedy the market mechanism’s inability to allocate public goods. Hayek does, after all, concede that the market fails to allocate certain necessary goods and services:

Protection against violence, epidemics, or such natural forces as floods or avalanches … most roads, the provision of standards of measures, and of many kinds of information ranging from land registers, maps, and statistics...in many instances the rendering of such services could bring no gain to those who do so, and they will therefore not be provided by the market. These are the collective or public goods proper.\(^\text{39}\)

It would appear that, if there were any instance in which Hayek would abandon his belief in the infallibility of the market mechanism as a universally applicable and perfect concept, it would be here – where the market’s imperfection is easily discernable.

On the contrary, Hayek argues that governments ought to be tasked with raising the funds for the creation of public goods but that governments should not concern themselves with the actual allocation of such goods. Governments are only valuable insofar as they hold a monopoly on coercive force and the only use for such coercive force in the instance of public goods is for levying taxes – not the administration of such goods. Hayek writes, “contrary to an assumption often tacitly made, the fact that some services must be financed by compulsory levies by no means implies that such services should also be administered by government.”\(^\text{40}\) Administration of public goods by governments, Hayek would argue, centralizes and amplifies governmental power and starts down a path of bureaucratic creep that ends in authoritarianism.

\(^\text{40}\) Ibid., 46.
Instead, at the very moment when it would appear most evident that the market mechanism has shown itself to be incapable of performing adequately in every instance, Hayek asserts that it is, in fact, the solution to remedying its own failure to allocate public goods. By subjecting the allocation of public goods to market forces, Hayek intends to bring about the most efficient and perfect state of affairs because that is, after all, the object of competition. In short, he is making an argument in favor of the contemporary notion of privatization: he envisions a marketplace where firms compete with other firms to bid for contracts to produce public goods using funds that have been raised by coercive levies. Consider how defense contractors in the United States, for example, compete amongst each other to receive money raised by coercive levies to provide a public good—defense. Instead of suggesting that a cumbersome governmental authority ought to use those funds to manufacture weapons, Hayek would insist that it is far more efficient to find recourse through the marketplace. Hayek writes, “to leave the organization and management of such services to competitive enterprise and rely on appropriate methods of apportioning the funds raised by compulsion among the producers in accordance with some expressed preference of the users.”41 In a nod to Milton Friedman, Hayek commends Friedman’s policy prescription for education, school vouchers, because it conforms to his argument regarding the allocation of public goods. He writes,

Professor Milton Friedman has developed an ingenious scheme of this kind for the financing of education through vouchers to be given to the parents of the children and to be used by them as total or partial payment for the services rendered by schools of their choice, a principle capable of application in many other fields.42

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41 Ibid., 46.
42 Ibid., 46.
Hayek believes that most efficient state of affairs will be brought about through a competitive educational marketplace where schools are driven by a profit motive.\(^{43}\)

Finally, Hayek’s relentless application of the market mechanism, as was the case with *nomos*, brings about a perfect result. That is, by subjecting public goods to an unfettered market mechanism, Hayek implies a utopian vision for the allocation of public goods. “It [the market mechanism] will produce an inducement to do better than the next best” out of fear of failure. This perpetual inducement, I would argue, lends itself to the idea that institutions subjected to the market will push themselves closer to the ideal of efficiency.\(^{44}\) I take Hayek’s acceptance of the monopolistic firm as an indication that he maintains a utopian vision regarding the final evolution of the firms that provide public goods. He writes that “much enterprise monopoly is the result of better performance” and that, on these grounds, monopoly ought to be tolerated as long as competition still exists.\(^{45}\) He demands the possibility of competition, but suggests that this competition need not alter the monopoly because if it is indeed perfect, it will remain so as its competitors fail to produce equally efficient results. This, in turn, produces a stable equilibrium whereby small firms fleetingly appear and attempt to upend the monopoly before they fail to survive in the face of the monopolistic firm. Competition need not exist for competition’s own sake. Instead, it is a mechanism to bring about the perfect result, which, in the

\(^{43}\) Although my intention in this research is not to criticize Hayek, but instead to point out the logical extensions of his argument, it is worth pointing out that there is a questionable application of “efficiency” onto humans. Is education something that ought to be “efficient” or should it instead be held to a different ideal?

\(^{44}\) Ibid., 68.

\(^{45}\) Here, I think there is an important distinction between the “possibility of competition” and “concrete competition.” Concrete competition refers to a state of affairs where a number of firms are competing with one another and thereby pushing every other firm to do better than the next best. Possibility of competition refers to a state of affairs where there exists both a monopolistic firm and free entry and exit into the market in which the firm is operating. Here, the monopolistic firm, even in the absence of concrete competition, still feels pressure to do better than the next best in the event that an entrant quickly enter the market and sweeps the monopolistic firm’s share.
last analysis, will bring about a monopoly that maintains its perfection in the face of – and as a result of – the possibility of competition.\textsuperscript{46}

\textbf{Hayek’s Utopian Sketches of Government}

Friedrich Hayek’s conviction that an unfettered market mechanism brings about the most perfect result clashed with the tendency of political philosophers and politicians to try and intervene in such a mechanism to shape the results. Such interventions, he posited, lead to planning and then to authoritarianism. To combat this tendency, he spent the latter half of his career criticizing the failures of contemporary parliamentary and constitutional democracies around the world. He links their demise, and the rise of interventions into the market, to the rising influence of vested interests that lead governments away from their fundamental task of protecting the liberty of individuals to pursue their self-directed ends through an unfettered market and towards an overly intrusive government that seeks to serve those vested interests at the expense of individual liberty. “Under the existing system” Hayek writes, “every small interest group can enforce its demands, not by persuading a majority that the demands are just or equitable, but by threatening to withhold that support which the nucleus of agreed individuals will need to become a majority.”\textsuperscript{47} Yet, Hayek knows he cannot simply tear down the existing system but must also build up an alternative model. In this endeavor, Hayek reveals his utopian vision. His choice of an epigraph by David Hume at the beginning of Chapter Seventeen, “A Model Constitution,” is telling. Hume writes, “[i]n all cases it must be advantageous to know what is the most perfect in the kind, that we may be able to bring any real constitution or form of government as near it as possible, by such gentle alterations and innovations as may not give too

\textsuperscript{46} Ibid., 83.
\textsuperscript{47} Ibid., 10.
great a disturbance to society." To this extent, Hayek sets out to discern the contours of the ideal institutions that would not succumb to the shortcomings of the contemporary structures.

In the previous two parts, I argued that Hayek maintains a vision of a conceptual utopia. By insisting on the relentless and universal application of an unfettered market mechanism, he implies the existence of a state of affairs marked by static perfection. In this part, I argue that Hayek’s work in the third volume of *Law, Legislation and Liberty: The Political Order of a Free People* demonstrates Hayek’s more conventional, blueprint utopian vision. In this volume, he articulates the definite structure of the institutions that ought to govern society: first, the Legislative Assembly, second, the Governmental Assembly, and third, the Constitutional Court.

Before pressing on, it is worth pointing out the irony in Hayek planning the institutions that ought to govern society after having spent a lifetime combating the tendency of social theorists to plan society. In doing so, he substantiates what Michael Oakeshott suggested was the biggest failure of Hayek’s work: that it was “a plan to resist all planning.” Hayek is clearly uncomfortable with this interpretation and tries to distance himself from its irony. At a number of points, Hayek attempts to preclude such interpretations. For example, he provides the disclaimer, “I certainly do not wish to suggest that any country with a firmly established constitutional tradition should replace its constitution by a new one drawn up on the lines suggested.” More subtly, Hayek writes in a way that appears to mask that he is planning the institutions of government. He writes, for example, that “it would probably be desirable” or “it would seem appropriate” to adopt certain institutions. However, he later suggests that these

48 Ibid., 105.
50 I am not suggesting that this irony undermines Hayek’s work. It is, of course, inevitable that political philosophy must also ‘build up’ and not just ‘tear down.’
52 Ibid., 121.
institutions are valuable models in planning the future “supra-national institutions” such as the European Union: “the principles embodied in the scheme to be outlined may be of relevance in connection with the contemporary endeavors to create new supra-national institutions.”

Another point should be addressed before pressing into the textual analysis in order to preempt a likely criticism. If Hayek’s “model constitution” embodies a utopian vision, is it not also the case that, for example, the United States Constitution also embodies a utopian vision? To this question, I would argue that the United States Constitution was perhaps conceived of with an eye towards a utopian vision, but was written with an awareness of political possibilities. The pragmatism of its authors, as well as the political compromises, tempered the Lockean or Montesquiean principles that, if codified in their purest forms, might have constituted a utopian vision. Hayek’s “Model Constitution,” on the contrary, is a blueprint that has been conceived of in a vacuum. This allows him to articulate a vision of “that which is most perfect in its kind” since he is not burdened with political realities, making his vision utopian in ways that the U.S. Constitution is not.

Finally, in understanding how Hayek views these institutions in relation to nomos, public goods, and the market mechanism, it might be useful to view them teleologically. In short, he views them as all working towards the same state of static perfection. He sees the purpose of these institutions as ensuring the existence of an unfettered market mechanism. When left to its own devices, Hayek believes, the market mechanism brings about a perfect state of affairs. Governmental institutions, in their most perfect form as Hayek conceives of them here, simply serve to bracket the realm of acceptable actions in order to allow the market mechanism to operate freely. “In a free society the state is one of many organizations,” he writes, but it is simply “the one which is required to provide an effective external framework within which self-

generating orders can form.” The institutions that Hayek outlines are those which allow the market mechanism to function most efficiently, which is to say with as little government intrusion as possible.

The first institution that Hayek sketches out is the Legislative Assembly, which is tasked with the alterations to the recognized body of existing rules of just conduct, nomos. He writes,

The basic clause of such a constitution would have to state that in normal times…men could be restrained from doing what they wished, or coerced to do particular things, only in accordance with the recognized rules of just conduct designed to define and protect the individual domain of each; and that the accepted set of rules of this kind could be deliberately altered only by what we shall call the Legislative Assembly. The rules of just conduct that ought to be codified, we have seen, are those that best serve to maintain an unfettered market mechanism. Those rules would adhere to the general principle that individuals ought to be able to pursue a variety of aims as long as their pursuit of such aims does not impede others’ pursuits. The Legislative Assembly is tasked with crafting rules of just conduct that work to strengthen this principle. In pursuing this goal, some might suggest that the Legislative Assembly is not “static” because it will be altering rules of just conduct towards its static and perfect endpoint. However, as an institution, Hayek envisions the mission and structure of the Legislative Assembly as static and perfect even as the minutiae that comes before it is ongoing.

In describing the role of the Legislative Assembly, Hayek dictates its structure in great detail. He demands, for example, specific term limits: “an assembly of men and women elected at a relatively mature age for fairly long periods, such as fifteen years.” Later, he suggests an unfamiliar electoral process where representatives are selected by citizens of the same age. “It would seem wise to rely on the experience that a man’s contemporaries are his fairest judges and

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54 Ibid., 140.
55 Emphasis added; ibid., 109.
56 Ibid., 113.
to ask each group of people of the same age once in their lives, say in the calendar year which
they reached the age 45, to select from their midst representatives to serve for fifteen years.”57 In
another instance, Hayek asserts that the salary of the representatives of the Legislative Assembly
ought to be “a certain percentage of the average of, say, the twenty most highly paid posts in the
gift of government.”58

Hayek then moves on to describe the contours of the Governmental Assembly. For the
most part, current parliamentary structures serve as a good indication of what the Governmental
Assembly would look like: “there is no reason why it should not be formed by periodic re-
elections of the whole body on party line, and why its chief business should not be conducted by
an executive committee of the majority,” Hayek writes.59 In terms of its role, Hayek envisions
the Governmental Assembly as tasked with carrying out specific administrative tasks. The
imposition of a levy to raise funds for public goods, for example, is the role of the Governmental
Assembly. He writes “[w]ithin the limits of these rules [nomos] the government would, however,
be complete master in organizing the apparatus of government and deciding about the use of
material and personal resources entrusted to the government.”60 This is the key difference
between the structure of Hayek’s Governmental Assembly and present parliamentary structures:
“it would be bound by the rules of just conduct laid down by the Legislative Assembly.”61 This,
to a large extent, undermines Hayek’s assertion that the Governmental Assembly would be
“complete master;” instead, it will be complete master to act within the narrowly bracketed realm
of government action that does not fetter the market mechanism. That being said, it is still an
institution that exists to promote the freely functioning market mechanism.

57 Ibid., 113.
58 Ibid., 114.
59 Ibid., 119
60 Ibid., 119.
61 Ibid., 119.
The Constitutional Court, finally, is the last major institution of government that Hayek sketches in detail. It serves as a sort of catchall: when there is an issue that neither the Governmental Assembly nor the Legislative Assembly can properly deal with – or it involves a contention between the two – the Constitutional Court steps in. Hayek writes, that the “problems would arise chiefly in the form of a conflict of competence between the two assemblies, generally through the questioning by one of the validity of the resolution passed by the other.”62 The rulings that the Court hands down are to be viewed as amendments to an already internally coherent body of *nomos*. It is not altering the state of static perfection that these institutions bring about, but it is instead maintaining it.

As he did with the Governmental Assembly and the Legislative Assembly, Hayek sketches out the operational contours of the Constitutional Court. “It would seem appropriate that in addition to professional judges its membership should include former members of the Legislative and perhaps also of the Governmental Assembly. In the course of building up a body of doctrine it should probably be bound by its own former decisions,” he writes.63 At another point, he demands that judges be paid similarly to representatives in the Legislative Assembly, “a certain percentage of the average salary of a fixed number of the highest positions in government.”64 The appointing of individuals to the Constitutional Court, Hayek asserts, is a decision that must be “placed in the hands of that committee of former members of the Legislative Assembly.”65 In doing this, Hayek is describing how the Court ought to operate from its membership to the necessity of binding jurisprudence.

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62 Ibid., 121.
63 Ibid., 121.
64 Ibid., 121.
65 Ibid., 121.
What is clear is from these sketches is that, firstly, Hayek believes that there ought to be a greater distance between the electorate and the representatives they elect than is presently the case, particularly for the Legislative Assembly and the Constitutional Court. By insulating representatives from elections and fickle wages, Hayek hopes to prevent them from acceding to vested interests and to instead focus on ensuring the attainment of a higher goal: an unfettered market mechanism. Indeed, Perry Anderson observes, “Hayek’s vision…was expressly designed to safeguard the free workings of the market from democracy, against whose dangers he was always on guard.”66 Hayek’s role for the conventionally democratic Governmental Assembly is noticeably neutered, demonstrating the fear that Anderson points out.

What is also clear from these sketches, secondly, is that they are utopian blueprints. By Hayek’s own admission, these institutions are ideals, or “models,” of the perfect institutions that ought to govern society. Bringing about these institutions in practice is beyond what he intends to do: “my purpose in presenting such a sketch is not to propose a constitutional scheme for present application,” he writes.67 As the epigraph from David Hume at the beginning of Chapter Seventeen instructs, Hayek instead sees his sketches of the Legislative Assembly, Governmental Assembly and Constitutional Court as an opportunity to envision the perfect institutions of their kind. In doing so, he provides a utopian vision that acts as a blueprint so that future concrete attempts at crafting a constitution may approach, but perhaps not reach, his model. Perry Anderson comes to a similar conclusion in The New Old World: “The [European] Union remains, with its dense web of directives, and often dubious prebends, far from a perfect

Hayekian order. But in its political distance from the populations over which it presides, it approaches the ideal he projected.”

**Conclusion: The Future of The Concept of Utopia**

Despite the overwhelming evidence in the third volume of *Law, Legislation and Liberty* that Friedrich Hayek has a utopian vision – perhaps even a blueprint – for the structure of government, arguing that Friedrich Hayek’s writing contains a utopian vision of the good society flies in the face of received wisdom. This received wisdom locates Hayek in a postwar intellectual milieu that was decidedly anti-utopian. Political philosophers of this era reasoned that Hitler and Stalin perpetrated the horrors of World War II in an attempt to accelerate their march towards a utopian vision. Hayek simultaneously critiqued the efforts of Stalin and Hitler to plan the Soviet and German economies and, to the extent that he pushed back against any and all planning, he was an anti-utopian. With that being said, however, I have hoped to demonstrate that Hayek’s writings do not preclude a conceptual utopian vision of the good society brought about by forces outside human agency. Namely, I have hoped to demonstrate that a relentlessly applied market mechanism brings about a state of affairs that can be characterized as static and perfect.

I have argued that Isaiah Berlin’s definition of utopia as a state of “static perfection” is compelling and maps onto Hayek’s work. To interpret Hayek in such an unconventional manner, however, has involved drawing a crucial distinction between conceptual and blueprint utopianism whereby the latter is rightly deplored and the former is mistakenly folded in. The task of distinguishing between conceptual utopias and blueprint utopias must be part and parcel to any effort to systematically resuscitate the concept of utopia. Contemporary scholars such as

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Ruth Levitas and Davina Cooper have promoted the distinction, but the task is still far from accomplished. What this involves is daunting. I believe that what must undergird any attempt to revive the concept of utopia along these lines is a reconsideration of the interaction between theory and practice and distancing ourselves from the Marxian unification of the two.

Hayek’s epilogue at the end of *Law, Legislation and Liberty* is, in many ways, instructive in the task that sits at the feet of contemporary utopian scholars. Hayek writes the “In concluding this epilogue I am becoming increasingly aware that it ought not to be that but rather a new beginning.”⁶⁹ Although there is much work left to be done, the project I have undertaken here has been to both present an argument for conceptual utopias that opens up new avenues for researching the logical conclusions in works of political philosophy and to use this argument to carry on where Hayek left off and shepherd his writing to its implied logical conclusion.

I focused my research on Hayek’s political philosophy, mostly the three volumes of *Law, Legislation and Liberty*, *The Road to Serfdom* and *The Constitution of Liberty*, but Hayek was a polymath. His research and writings spanned a number of disciplines - psychology and economics, as well as political philosophy. Casting Hayek as a utopian thinker in any systematic way would necessarily involve a more systematic study of his work that would include his major studies in psychology and economics: *Theory of Money and Credit* and *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology*. Put differently, I believe that the concept of utopia provides an invaluable toolkit for assessing works of political philosophy and I am confident that it can contribute to other disciplines as well and further our understanding of not just Friedrich Hayek, but many other authors as well.

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