

## *Nemesis of Democracy*

**Law, Legislation and Liberty, Vol. I, Rules and Order**, by Friedrich A. von Hayek, *Chicago: The University of Chicago Press, 1973. 184 pp. \$7.95.*

FRIEDRICH A. VON HAYEK is currently the most original philosophic thinker of a conservative cast of mind. He may, indeed, be almost the only intellectual of our times whose name will survive as one who blazed new ground in the conservative field. Most

of his peers, whether as teachers or writers, have contented themselves with polemics. There it is easier to be fluent than fundamental.

Hayek, who seldom uses the honorific "von," was trained as an economist of the Austrian school. There he long since achieved a reputation second only to that of his senior and mentor, the late Ludwig von Mises. But for Hayek economics has long been too narrow a straitjacket. He was never satisfied with the rather easy demonstration that an unrestricted market is more efficient than socialistic planning. That materialistic proof will never fully satisfy idealistic youth. Moreover, free enterprise is only a superficial manifestation of the elusive condition that we call freedom. So where do we look for the basis of freedom itself—*das Ding an sich*—the whole as distinct from a fragmentary part?

This quest has taken Hayek far from the customary paths of economics, though he has always been guided by his rigorous training in that discipline. Anthropology, history, jurisprudence, philosophy and politics have all occupied the omniverous curiosity of this Austrian savant, who is at home in half-a-dozen languages and as well known in Great Britain and the United States as on the continent of Europe. In *The Constitution of Liberty*, published fifteen years ago, Hayek first made an effective synthesis of his wide-ranging knowledge. This was followed, in 1967, by his impressive *Studies in Philosophy, Politics and Economics*. Now we have the first volume of a prospective trilogy on *Law, Legislation and Liberty*, which in its entirety promises to place the capstone on a career already distinguished by a Nobel Prize.

Since his popular study of *The Road to Serfdom* (1944) the English editions of Professor Hayek's books have been published by the University of Chicago Press, which gives to Volume I of the forthcoming sequence the somewhat forbidding title of *Rules and Order*. The book is sponsored, to the extent of selected distribution, by the Institute for Humane Studies. And this dis-

tinguished foundation refers to the volume as "The Rule of Law," which is a much happier summation of its content.

The theme is the familiar observation made by Montesquieu at the outset of his majestic study: *De l'Esprit des Lois*. In translation: "Intelligent beings may have laws of their own making; but they also have some which they never made." These "unmade" laws, Hayek tells us, have come down in the form of traditions, conventions, and social practices which may or may not harmonize with statute law. The medieval schoolmen classified as "natural law" those prevailing rules derived from inspiration rather than from human design. The English, escaping the more rigid stratification of feudalism, developed the concept of a "common law." It was not the product of any human edict, but rather a barrier to the exercise of arbitrary temporal power. At various times and places emphasis has swung from the authority of the underlying to that of superimposed law. Hence the disturbing question which every devotee of liberty must attempt to answer: "Is law a matter of discovery, or of invention?"

A major deficiency of the English language makes that dilemma the more acute for us. In French there is a clear distinction between *Droit* and *Loi*; in German between *Recht* and *Gesetz*; in Italian between *Diritto* and *Lege*. In all these couplets the first noun suggests the power which is direct or morally right. The second noun is reserved for legislative enactment or other indirect political decree. These authorities are by no means necessarily identical but in English we have only the slight verbal differentiation between Law and laws. It is difficult for us to realize that laws may, and often do, run contrary to Law. Also it is easy for us to forget James Madison's admonition that: "We rest all our [political] experiments on mankind's capacity for self-government."

That both deficiencies are becoming increasingly and disastrously the case is the essence of Hayek's argument. *Nomos*, the law of liberty, long antedates *thesis*, the law

of legislation. The latter does not appear, in anything like its modern form, prior to seventeenth century England, and then only to regularize systems of taxation. "It was from the need to obtain consent to taxes," says the author, "that parliamentary institutions arose." He concedes that the implicit Law was inadequate; that it had to be interpreted, defined, perhaps even enlarged to meet the needs of expanding government. But in no case could this "new law," or legislation, replace the old. Indeed "new law" is actually a contradiction in terms, if we agree that "the old law is the true law."

In the name of democracy, says Hayek, there has now for several generations been constant effort to "socialize" the law, so as "to direct private activity towards particular ends and to the benefit of particular groups." This "will-o-the-wisp" of unattainable "social justice" has led governments to treat the citizen and his property as objects of ever more complicated and often contradictory administration. "And the predominance of this interpretation has become one of the chief causes of the progressive transformation of the spontaneous order of a free society into the organization of a totalitarian order."

If "ideas have consequences," as Richard Weaver told us, then the results of Hayek's severely unemotional thinking could be enormous. For what he is doing, at least by inference, is to undermine the brazen idol of democracy, now so thoughtlessly worshiped throughout the allegedly "free world." Parliamentary democracy, as generally understood, is simply a system of popular government in which freely-elected representatives respond to the majority will, whether rational or suicidal. If "there are no absolutes," as the Supreme Court blandly declared some years ago, then there is no reliable limitation to what legislation may attempt, and therefore, no limit to the potential confusion of the human condition.

Though baldly put, this is a viewpoint well worth pondering in the bicentennial period, when the safeguards against the

dangers of democracy, as carefully constructed by the founding fathers, are being conveniently forgotten. They knew, as Plato warned in *The Republic* ages since, that unbridled democracy is all too apt to degenerate into dictatorship. Hayek repeats that warning in this hard-hitting book. Hopefully he will not delay in producing the forthcoming volumes of his trilogy. They are foreshadowed as *The Mirage of Social Justice* and *The Political Order of a Free Society*. In their English version these should be very carefully translated, since the introductory volume unfortunately suffers in places from a rather heavy and turgid Germanic style.

Reviewed by FELIX MORLEY

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### *Summa Contra Skinner*

**The Pseudo-Science of B. F. Skinner,**  
by Tibor R. Machan, *New Rochelle,*  
*N. Y.: Arlington House Publishers,*  
1974. 224 pp. \$9.95.

B. F. SKINNER'S NAME leaves a bad taste in the mouths of many who find it difficult to deal with his doctrines dispassionately. It is very much to the credit of Professor Machan, then, that he manages for the most part to preserve an air of neutrality throughout this critique of Skinner's doctrines. This is especially so since Machan, above all else, wants to rescue the concepts of freedom and dignity from the dungheap of Skinnerian reductionism.

With considerable care Machan shows that Skinner's claims of scientific precision and exactitude are wildly exaggerated. Indeed, "Skinner is proposing a theory of science and a theory of man, not in his capacity as a scientist but in his rôle as an intellectual layman who has inherited a certain view of science." As a result, "we must understand that the Skinnerian announcement