

Of Norms, Rules and Markets: A Comment on Samuels

Scott Beaulier and Peter Boettke

James M. Buchanan Center for Political Economy
Department of Economics
George Mason University
Fairfax, VA 22030

Warren Samuels' work on the legal-economic nexus attempts to explain the intricacies and nuances of social order.¹ This work highlights the difficulties that simplistic accounts of social order confront. As he has summed up his position:

Rights are not produced in a black box called government; and the economy does not operate on its own. A legal-economic nexus is formed by the process in which both are simultaneously (re)determined. At the heart of society and of social (including legal) change is control and use of the legal-economic nexus, and at the heart thereof is the exercise of government, power and belief system. The fundamentals of the legal-economic nexus are not as simple and obvious as contemplated by views that maintain that the polity and economy are pre-existent, self-subsistent spheres (1989, 184).

Two of his most recent essays, both published in this journal, continue this line of argument and are welcomed additions to the literature on norms, rules and markets.²

Samuels provides an explanation of how certain customs, norms, and rules will shape the social order that emerges. Order may indeed be defined in the process of its emergence, as James Buchanan has emphasized in his writings, but that very process of emergences is structured by the norms and formal rules which govern its generation.³

For Samuels, following in this regard Menger (1883, 129-159) and Hayek (1952a, 61-

¹ For an appreciation of Samuels' contribution to political economy see Boettke (2000). This paper examines the exchange from the 1970s between Buchanan and Samuels on the role of the status quo in political and economic reform.

² See Samuels 1999 and 2000.

³ See Buchanan 1999, 244-245.

76), it is the compositive approach that enables us to explain the evolution of institutions as “the product of human action, but not of human design.” Samuels research program in political economy is a descriptive, as opposed to normative, approach to spontaneous order studies, and in particular he emphasizes the messy details of the process of “working things out” and the role of deliberation and rational criticism within that social process. Samuels argues that no institution is purely spontaneous (nor is any institution purely designed⁴), for there is constant deliberation taking place at every juncture involving interaction within the evolving process. In his opinion, it is these deliberations within the spontaneous orders that shape the outcome of the process. His position is neatly summed up as follows:

The idea that there is no unique market is complemented by recognition both that there are no unique rules and norms – legal or nonlegal – and that there are no unique Pareto optimal outcomes. Indeed, different combinations of rules and norms – legal and nonlegal – help generate both different markets and different outcomes. Talking about the magic of rules and norms and of markets ... obfuscates the need to work out the specific substantive content of rules and norms and, in part, thereby the form, structure and operation of the actual market which ensues as well as the outcomes of that market (2000, 392).

But can deliberation as an explanatory story fit with Hayek’s notions of spontaneous order? At first glance, it seems that deliberation is far too constructivist an explanation to possibly serve as the primary impetus of the emergence and evolution of social norms.⁵ Yet Samuels shows how an emphasis on deliberation does not require an abandonment of spontaneous order explanations.

⁴ The argument that no institution can possibly be of pure design could be offered by arguing that even the human mind is a spontaneous order in which the plan constantly undergoes change over time by the simple changes occurring in the individual mind. For more on this point, see Friedrich A. Hayek’s *The Sensory Order* (1952b) as well as Steven Horwitz (2000).

⁵ This approach is only at odds with the work of Hayek based on a superficial reading of Hayek. We must remember that Hayek did not submit blindly to the forces of tradition. He took as his task the Humean one

Within any spontaneous order there are innumerable decision nodes. In each of these rests a kernel of rational deliberation between the parties involved in the interaction. Neither party knows *ex ante* for sure what the result will be from their deliberations, but in part what emerges is a result which could not possibly have emerged without the actions of individuals brought forth by a deliberation based on some anticipation of what that result would be. The Samuels' argument is that: "There being no unique rules and norms, no unique markets, and no unique outcomes (no unique Pareto optimal results), the operative questions become: which structure, which channeling, which coordination, which norms and which rules, which/whose preferences are to count, and so on; which is to say, coordination on whose terms."⁶ In other words we have spontaneous orders, but it is far from complete spontaneity which affects the evolution of social institutions.

Since the ultimate direction that spontaneous orders take is largely unknowable, what Samuels argues that we examine the deliberative aspects embedded in the social nexus. In so doing we find that the pressing questions concerning whose rights, whose freedom, equality/inequality for whom pervade any spontaneous social order we are interested in. Getting to the bottom of how this process of "working things out" occurs in given frameworks with specific kinds of customs, governance, justice, and rights is what

of using reason to whittle down the claims of reason. But he did not seek to supplant rational analysis of the rules. Hayek's argument is that there are limitations to our critical abilities, but we should continually question all traditions and values. It is just that we cannot question them all at once. Instead, our epistemic capabilities necessitate that we must always offer criticism of some values while holding others as unquestioned. Hayek, thus, articulates a defense of "immanent criticism" in his work on social order. On Hayek's argument see his essays "Why I am Not a Conservative" (1960, 397-411); "The Errors of Constructivism," (1978, 3-22); and "Three Sources of Human Values" (1979, 153-176). On the evolution and unity of Hayek's ideas in economics and social philosophy see the introduction to Boettke, ed. (2000).

⁶ Warren Samuels (2000, 393).

Samuels believes is the only way we can begin to understand how the customs, norms, and rules of the present emerged and shape our social order.

Thus, the selection mechanism determining which customs, norms, and rules are passed on and which are not derives from the process of “working things out.” How things are “worked out” is dependent upon the customs, norms, governance, and institutions of justice at the time the process begins. This could very well appear to be circular reasoning in which we get the evolution of customs, norms, and rules from assuming customs, norms, and rules. However, those which emerge from the previous customs, norms, and rules are of a completely different nature than their predecessors, for they have endured one additional time period in which the process of “working things out” was at work. In other words, regardless of where we begin our analysis of the evolution of customs, norms, and rules, there were inevitably certain customs, norms, and rules already embedded in the social nexus of our starting point.⁷

If Samuels is correct in his assertion that the “rules of the game” and the particular circumstances of the different parties determine the course of the game, then the primary expedient to altering the course of future customs, norms, and rules is through the very process of “working things out.” If, for whatever reason, a particular norm is undesirable, the means to transforming this norm rests in incremental tinkering with the “rules of the game.” But, of course, this brings us back to two additional problems. The first being the unintended consequences of any attempt to alter a long-established institution. And the second problem once again being the question of, “For whom, by whom?”

⁷ On the importance of the concept of social embeddedness for political economy see Boettke and Storr (2000).

Despite his insistence on continuous deliberation on the social order, Samuels notes the requisite degree of suspicion that “must be directed at those who propose either any change or any reversal of change of the interests protected and given effect by rights, norms, and rules.”⁸ He adds, “One must question each proposal in terms of the interest which it (newly) protects and the power and/or ideological position on which it is based.”⁹ Yet at the same time, Samuels also has a profound respect for Carl Menger’s argument that “each generation in every society has as its calling the evaluation and revision of received institutions.”¹⁰ To Samuels, it seems that we must always make an effort to find ways to correct for the errors which may spin out of spontaneous orders, but at the same time maintain a watchful eye towards the interests of the parties concerned with the present injustice. Thus, his emphasis on the messy details associated with the process of “working things out” in the political-legal-economic nexus.

How this can be effectively done remains the perilous question which social philosophers and political economists have attempted to resolve since at least Adam Smith. In these two recent essays, Samuels contributes to our understanding of how we get the customs, norms, and rules that we do by reminding us that the outcome is not entirely the product of some mysterious fate working its course, but instead the product of a multitude of decisions which individuals within the nexus had some control over. Though the end result was undoubtedly unforeseen in its entirety, it is the culmination of

⁸ Samuels (2000, 395).

⁹ Ibid.

¹⁰ See Samuels (1999) and Menger (1883, 223-234). Menger’s argument is similar to that of Hayek’s “immanent criticism” which we previously addressed.

a process that was the product of a great amount of individual rationality at the different stages of the evolution.¹¹

The customs, norms, and rules which have emerged successful are of a malleable form. Not completely malleable, but more malleable than most presentations of spontaneous order seem to permit. If we do not like them or feel that better norms were abandoned, we can blame the institutional environment in which they evolved for the outcome. If we want to change them, we can only do so by “working things out” in a similar deliberative environment. Whether the same norms emerge, old ones are rectified, or new ones are discovered is the result of the individual choices during the refinement effort.

In this regard, Samuels, like Buchanan (1977, 25-39), is both affirming the power of invisible hand explanations, but resisting the implication that efforts at improvement in that order are to be eschewed. The argument that whatever has evolved is efficient is to be tempered by the recognition that whatever evolved is context dependent. In Samuels’s language, it is meaningless to discuss a particular order without reference to the system of social control within which it emerges. “In sum, there are no unique rules and norms, no unique rights. There is ‘only’ the process of working things out – and included in that process are efforts to structure and channel it, to control and put it to use, which efforts are also part of the process of working things out.”¹²

Samuels’s emphasis on the details of social control corrects the tendency among some classical liberal political economists to talk in broad generalities about the wonders

¹¹ On the dialectics of the classical liberal project see Chris Sciabarra (1995 and 2000).

¹² Samuels (2000, 396).

of spontaneous order. As a progressive research program in social theory, those engaged in spontaneous order studies cannot be content with platitudes, but must get serious about studying the details of the social process. Samuels by putting the political back into political economy focuses our attention on power and mechanisms of social control. Combined with Buchanan's emphasis on the rules of the game and strategy within rules, and Hayek's emphasis on the informational properties of the exchange process and the spontaneous order of both the rules which govern that exchange process and the exchange process itself, the Samuels emphasis on mechanisms of social control and the deliberative process of "working things out" through time represents a fundamental contribution to improving our understanding of norms, rules and markets.

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