

SPEECHES DELIVERED AT THE FIRST CONVENTION OF THE
PROPERTY AND FREEDOM SOCIETY, BODRUM, TURKEY, MAY 2006

[Notes compiled by **Frank van Dun**]

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Libertarians often complain about how difficult it is to make other people see the points they are making. In part this is due to a certain looseness in the conceptual and terminological framework in which they present their arguments. It is crucial to be very clear about terms. Hayek confused the libertarian discussion with his focus on "social order", after saying the word 'social' is a weasel word. The problem is not that 'social' is a weasel word; it is that Hayek's concept of social order conflates two distinct notions: social order (the order of a society) and convivial order (order in human relations). The distinction should be familiar to economists: a society stands to the convivial order as a firm stands to the market. A study of the behavior, organizational forms and practices of particular firms is neither sufficient nor necessary to understand the idea of the order of the market. In the same way, studying this or that society has no direct bearing on the question of what constitutes order in human relations, i.e. convivial order. After all, criminal and politically organized societies make a business of creating disorder in human relations, just as some firms are not particularly respectful of the market order. War is often called "anti-social" but in reality it is a thoroughly social event.

In a libertarian world, many societies will be very authoritarian. As long as those on the inside respect outsiders and can opt out, this is not a problem for libertarian theory. However, it is illogical to want an anarchistic society. The first action of new "societies" is to "elect a government" and appoint "officers". This is true also for libertarian societies, including the one which is being organized right here in Bodrum. Leaders of societies create rules and positions, a positive law, for their organizations. The laws of conviviality, on the other hand, are in no way positivistic creations. They are given in the nature of things, in particular in the objective distinction between order and disorder in human relations. Hence, the convivial order is essentially and inherently anarchic -- like the market order and unlike any social order. It has no order of positions, roles and functions; no directors or managers, no certified members. It is a horizontal arrangement. In contrast, even the most egalitarian society has a rigid vertical order: the general assembly (where every member presumably has equal "rights") is sovereign and all the parts and members are subordinated to it.

The libertarian position, I say, is that social arrangements never should be allowed to trump the laws of conviviality; that 'social laws' never justify what is injustice under the laws of conviviality. It cannot be the social-anarchistic position that a society has need for no rules and regulations other than the laws of conviviality. It also cannot be the social-minarchistic position that freedom and justice can exist only for and between members of the same society, subject to the same presumably libertarian masters.

There is a tendency, also exemplified by Hayek, to paper over the confusion concerning the meaning of "society" with references to history and evolution. Here, the view of the conditions of conviviality is cluttered not by the organizational aspects and positivistic legality of societies but by the fact that members of a society end up having many things, notions, habits, etc. in common. In short, they end up in communities. A community is not a society but it is not the convivial order either. There are criminal communities, and there are communities that reach far beyond the membership of any society (for example, the community of people who speak English). The "rules" of a community usually evolve slowly, almost imperceptibly, rather than abruptly by the fiat of some "authority". Languages, business practices, ways of educating and caring for children and so on are often cited as examples of such unplanned, undesigned evolutions. However, they are not particularly helpful for explicating the libertarian philosophy, which is about order, freedom and justice in human relations, not about the merits or demerits of constructivism in social organization or administration.

The community of people who speak English and therefore more or less competently follow the same rules of the language is a very thin community. Those people need not have much else in common apart from the language they speak. When other features are added, the community becomes "thicker". Thick communities cause problems for the freedom of men, women and children. Today -- as they have done throughout history -- rulers and states present themselves as a force of emancipation. They emancipate by weakening or destroying the processes by means of which people police the norms and standards of their communities (and families). For a libertarian this is spurious emancipation: exchanging one yoke for another. The point, however, is that for many people the demands of their communities are or appear more oppressive than those of the "impersonal state". Not every community is a good libertarian argument. Most importantly, the so-called spontaneity of communitarian orders is not a good proxy for the freedom and justice that constitute the convivial order.

Apart from the interminable disputations between anarchists and minarchists, differences of opinion concerning some weighty problems illustrate the confusion that exists within libertarian circles about the relation of social versus convivial order. Punishment is one issue. Punishment, in the legal sense of the word, is a positive "right" within a society. The rules of the society determine what is a punishable offence and what is the appropriate punishment for a particular infraction. In the convivial order there is no right to punish, only the right to make sure that justice is done. Full restitution implies full exoneration. Conversely, only "outlaws", those who willfully place themselves outside the convivial order by refusing to cooperate in the process of restoring justice, may rightfully be deprived of their freedom (or life), at their own expense.

Another issue is the status of artificial, corporate persons. They are creations of positive social law. Therefore, corporations as such -- in particular, limited liability corporations, whether political (states), commercial or "non-profit" -- have no standing under the laws of conviviality. Democracies are limited liability corporations. Even if they were truly voluntary associations that would be a reason for concern, except perhaps for their strictly "internal affairs". A and B may contractually arrange / limit their mutual liabilities, but

their contract cannot limit their liabilities toward others. Defending "private" corporations against government interventions is one thing; speaking out for freedom and justice is another. The defense of "free market capitalism" should not degenerate into a defense of state-sanctioned corporatism.