

“The Adam Smith Problem” Revisited: Comparing Hayek’s and Fouillée’s Answers

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1. Introduction

The purpose of this paper is twofold: first, to compare and contrast two approaches to spontaneous order of which F.A. Hayek and the nineteenth century French philosopher Alfred Fouillée are arguably the most exemplary practitioners. Second, and paradoxically, to draw attention to similarities that exist between these two authors and the traditions they represent, namely, classical liberalism veering toward libertarianism, on the one hand, and civic republicanism, especially in its French version. This second objective merges with the more far-reaching goal of effecting some sort of rapprochement between classical liberalism and civic republicanism via a tentative synthesis of their views on liberty and justice. (My choice of Hayek as a prototypical classical liberal think is reasonably uncontroversial, if not obvious; my choice of Fouillée as the standard bearer of civic republicanism probably demands an explanation which I provide further below.) Such a goal is unachievable here but I take the first steps towards its completion in this paper

Now “liberty” and “justice” are plastic words that demand to be carefully defined. By liberty I mean an ideal affirming the sanctity of the right of all individuals to self-ownership and freedom from legal or otherwise politically imposed restraints when making decisions that do not violate the similar rights of others. This is a liberal conception of liberty in the tradition of Locke and Smith. By justice I mean not only the administration of civil and criminal law,¹ but the minimal institutional arrangements compatible with liberty which are necessary for guaranteeing that all the members of a political community treat each other fairly and receive equal protection against arbitrary (ab)uses of power at the hands of either agents of the state or of any other corporate entity or otherwise disproportionately powerful individuals. (I say “disproportionally” because evidently all citizens differ in the degree to which

they can yield some power over each other; thus, to protect everyone against relatively trivial asymmetries of power would be futile and dystopian.) This is a civic republican conception of justice. In the end, these are the ideals that need to be rethought in terms that would rule out the possibility of them being completely incompatible. I do not propose to do so in this paper. What I propose is to tackle the reason why working toward such a convergence is desirable and arguably *necessary*. Necessary, that is, because while market processes are self-organizing, they are not self-legitimizing: markets are at the mercy of the often spontaneous emergence of complex ideas, i.e., Fouillée's "*idées forces*" (which could be roughly translated as self-fulfilling ideas). Social justice is perhaps the best example of such *idées-forces* and certainly one that Fouillée used, while also taking care to define it in a manner that is republican in spirit and yet not incompatible with libertarian views insofar as it echoes Robert Nozick's "principle of rectification," as I explain further below.

To put it succinctly, and as a very first approximation, one could say that the mutual compatibility of the concepts of liberty and justice matters a great deal because they appeal to what Smith called "moral sentiments" that are deeply rooted in "human nature" or, at the very least, in what human nature has become as a result of cultural and political evolution in modern societies. One bundle of sentiments from which liberty takes its strength consists of self-preservation, prudence and sense of self-worth as well as less noble inclinations like selfishness and egocentric solipsism. The other, not necessarily incompatible but qualitatively very distinct, sentiment is what Smith called sympathy, i.e., the capacity to empathize with others, a predisposition toward reciprocity and fairness, but also perhaps a tendency to include some people within concentric circles of friends, associates or fellow citizens, and to exclude others from these circles.

What motivates my search for compatibility between particular concepts of liberty and justice is my conviction is that the key to an understanding of economic, political and moral issues, resides in our ability to conceptualize *both* these psycho-cultural predispositions as the motivations—the social equivalent of physical energy—that powers complex, self-organizing processes. I am alluding here to societal mechanisms that spontaneously or endogenously produce what Hayek called an "order" but which should probably be called an institutional arrangements in a broad sense. My reason for selecting the three thinkers I discuss here is that one, namely Smith, intuited that *both* "sentiments" need to be taken seriously but never very clearly nor explicitly explained why or how it can be done; Hayek and Fouillée, on the other hand, were arguably too preoccupied with only one (albeit not the same) of these sentiments, although *neither* of them was exclusively preoccupied with only one of these sentiments, thus opening the door for some sort of reconciliation. Hayek was a classical

liberal for whom private property rights were paramount while Fouillée, as a liberal republican, was seeking ways of promoting the common good which would be least damaging to property rights.

In the western tradition, the problem of how self-regarding interests and other regarding predispositions play themselves out in social life was arguably first posed by Aristotle in the *Nicomachean Ethics* but when framed in terms of “sympathy” it is usually associated with Adam Smith—hence my title. (In part because he treated each side of the question separately, Smith’s view on this question remains to this day a matter of vigorous academic debate, as I show below.) The question is essentially this: Given that both prudential self-interest and more benevolent forms of “sympathy” are at work in the spontaneous production of, respectively, an economic system and of civil society, and given that the former makes it possible for autonomous individuals to claim rights that allow them to pursue (mostly) self-regarding goals while the latter gives rise to various obligations, what can be said about the logic inherent in the spontaneous production of societal order? An important issue in this regard concerns the extent to which the self-organizing dynamics at work in these parallel processes produce on their own actual societal structures, of which a market economy is a perfect example, or whether what is spontaneously produced are cultural patterns and social norms that need to be actualized through some sort of political agency. Hayek was mostly—albeit not exclusively—concerned with the former; Fouillée, on the other hand, is best remembered for his paradigmatic idea of the “*idées forces*” which is at work in the emergence of compelling moral norms that inspire political movements and bring about political change.

One crucial political change advocated by Fouillée was the creation of “social property” which could make available to all some social resources or human capital without which individuals might not be able to achieve autonomy and act as responsible citizens.² The emergence of a demand for Fouillée’s “social property” can conceivably take place spontaneously through democratic debates. However, its actualization requires legislative enactments, albeit not necessarily centralized bureaucratic management. The social and private forms of property are of course clearly contrasted, and libertarians will no doubt object to a definition of property that is in any sense “social.” But from a pragmatic standpoint, the two have proved to be complementary to each other: without some minimal “social property” it is almost impossible to legitimize all the effects of a market economy which are bound to be perceived by many as “unjust,” whether or not they are—analytically—truly unjust.³ Moreover, societal evolution is a very complex phenomenon that cannot be expected to result only in the emergence of a market economy and a minimal state. Fouillée’s merit is to have shown that, parallel to the market economy,

there are other evolutionary processes that reflect the complexity of the psychology and cultural beliefs of modern (and today, quite possibly, postmodern) individuals. Some deliberate political choice has to be made as to how spontaneously emerging but contrasting tendencies can be balanced. A classical liberal answer to that dilemma favours a heavier emphasis on private property than on social property; it is arguably an optimal goal, and incidentally, in varying degrees, this was a preference shared by both Hayek and Fouillée. I do not take issue with that preference but I intend to show that, from a strictly analytical point of view, a defence of classical liberalism or more specifically of Hayek's "Great Society" cannot be achieved by simply contrasting spontaneous order with constructivism, or pre-modern values and expectations with modern ones. Just as our contemporaries aspire to freedom and feel entitled to the exercise of an ever widening array of individual rights, many of which Fouillée had no way of anticipating, a belief in fairness, reciprocity, and a public philosophy of solidarity can also spontaneously emerge from the experience of living in complex, impersonal, technologically advanced societies. (If this was already true in Fouillée's time, it must be even more so today.) Although there are ways of channelling these expectations through a variety of institutional mechanisms or policies that do not involve a reliance on bureaucratic systems, and can even function independently from the state (e.g., philanthropic foundations), it is unlikely that the final outcome of such a regime will be consistent with classical liberal or libertarian views on the role of the state and reach of public law. In other words, the concepts of spontaneous order and individualism alone are not sufficient to sharply differentiate Hayek—or the Austrian approach as a whole—from certain forms of liberal republicanism or even from "left libertarianism" and market socialism. While the definitive demonstration of that point must await another paper, I intend to take the first steps here.

When spontaneously emerging aspirations to social justice find their expression in institutions or particular forms of collective action, they can at best complement the spontaneous order envisioned by Hayek, and at worst smother it. I develop this theme by first revisiting "Das Adam Smith Problem," then I turn to Hayek's answer to it before considering how Fouillée and other late nineteenth century French thinkers pursued another path—one that leads to a different interpretation of the very concept of individualism, albeit still rooted in evolutionism. Finally, I compare these answers with a view not so much to reconcile them as to show they are not irremediably antonymic and yet whatever compromise is reached is bound to remain contestable and contested.

2. "Das Adam Smith Problem" Revisited

What is the relationship between self-interest and what eighteenth century thinkers called “sympathy,”⁴ that is, the natural disposition to empathize with others? Claiming to discern a contradiction in Adam Smith’s thought between his exclusive concern for self-interest in *The Wealth of Nations* (*WN*) and his insistence on the moral duty of “benevolence” in his *Theory of Moral Sentiments* (*TMS*), nineteenth century German critics (e.g., Karl Knies, Witold von Skarzynski) concluded that Smith’s philosophy was irremediably flawed.⁵ Before examining the various attempts to refute this apparent paradox and recent explorations suggesting that the general consensus according to which the paradox is merely illusory needs itself to be questioned,⁶ let us pause to examine the terms and context of the debate.

TMS opens up with the famous words “How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and renders their happiness necessary to him” (Smith 1984: 9) This is not a conclusion derived rationally but something we arrive at by using the power of imagination.⁷ It is the basis of Smith’s virtue ethics. Whether this basis is sufficient, whether a strong sense of moral obligation can rest entirely on it, is a relevant question but one that I cannot pursue here; all that can be said at this juncture is that Smith does not merely assume that sympathy immediately translates into virtuous sentiments. He adduces reasons to believe in the power of sympathy as being conducive to ethical behaviour by constructing the elaborate psychological subterfuge of the “impartial observer” presenting to our imagination the image of a person with whom others would sympathize in a positive way. In any event, the virtues that Smith recommends are: beneficence (or benevolence), justice, prudence and self-command. Although a case can be made that self-command is the cardinal virtue for Smith (Montes 2004a: 77), the same cannot be said of prudence. And yet it is the only virtue that sustains the sort of social interactions that Smith analyzed in the work for which to this day he is best known: *The Wealth of Nations*. To quote once more a passage that political economists of all schools and persuasions are familiar with: “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.” (Smith 2001: 30).

Motivated by nationalist prejudices that made them look with suspicion at economic ideas coming from Britain, and thus ready to pounce on Smith’s works, several members of the German historicist school of political economy undertook to demonstrate that Smith was neither an original nor a consistent theorist. Both Karl Knies and Witold von Karzynski opined that Smith first adopted an idealist understanding of human nature—albeit, at least for Karzynski a not very original one—but then fell under the pernicious influence of the French materialist philosophers during his stay in France (Montes 2003:

70-72). The materialist philosophy of the *Encyclopédistes* and the Physiocrats is, according to these German scholars, reflected in the *WN* where Smith depicts human nature as being selfish and amoral.⁸

Formulated in these simplistic terms, the “Smith problem” can easily be refuted. In fact, as early as the turn of the last century, the academic tide was already turning (Otteson 2003: 3). Today, there is general agreement that the German historical school posed the problem in the wrong way, which is not to say, as I argue below, that there is no problem whatsoever. As D.D. Raphael points out,⁹ the 6th edition of that work on which Smith worked at the end of his life, was published many years *after* his *WN*. Nothing in the 6th edition contradicts the text of the earlier version, even though it included further refinements and additional chapters. Clearly Smith had not changed his mind on moral issues. Regardless of this historical fact, it also seems clear that whatever apparent paradox can be detected in the two works, there are convincing explanations of why the paradox is only apparent. It can be argued, for example, that *TMS* deals comprehensively with all the virtues whereas *WN* focuses exclusively on one of them, namely, prudence. In other words, people ought to know what is proper under the circumstances in which they find themselves but the “impartial spectator” will suggest the most appropriate responses to them depending on the context of their actions. Thus propriety dictates that we treat our friends and family generously and act benevolently toward them but it would be imprudent to act in that manner with strangers and all the people with whom we may more or less indirectly come in contact while we buy or sell things. After all, the baker cannot rightfully be expected to give away his bread to all those who are hungry (he might, however, feel compelled to feed an unfortunate neighbour whose sorrow he deeply shares). In the end, the common good is served by the fact that free markets produce more wealth for all than rigidly controlled economies, as was still the practice in much of Europe and even in England when Smith was alive.

It can also be argued that self-interest and sympathy serve two very different functions that ought not to be confused. We are powerfully motivated to act in ways that ensure our self-preservation and it is these motivations that Smith explores in *WN*. However, sympathy is the means whereby we judge the results of other people’s actions. But sympathy is not a motivating sentiment. In other words, there is no contradiction between the two works because they deal with two separate problems, and are inspired by two different epistemologies: one is a work of social science, the other a work of moral theory. If propriety dictates that we refrain from certain acts, then the law and the justice system can modify the incentives pointing us in the direction of what is in our interest. Jean-Pierre Dupuy (1993: 45-57) offers a more radical, and more controversial refutation of “Das Adam Smith Problem.” In his

analysis, the impartial spectator turns out to be none other than the person whom we would like others to love. Thus obeying his advice is ultimately a form of self-love; the same, self-centred—albeit not necessarily crudely selfish—motivation is actually at work in both the economic and the moral spheres!¹⁰ But whether self-love and sympathy are or are not distinguishable, it is clear that the way in which they unfold in both the sphere of economic exchanges and in civil society spontaneously produce two unintended orders: the order of the marketplace and the order of moral rules. (Otteson 2003: 171). Again, there does not seem to exist a fundamental, irremediable contradiction between these two processes which can be thought of as manifestations of the fundamental harmony of nature.¹¹ The intriguing question, however, which Smith never addressed, is to know in which direction this multi-dimensional process of societal self-organization tends to move: is it toward the prudential end of the spectrum, thereby placing the economic sphere at the centre of the human experience, or is it toward justice or even, beyond this “negative virtue,” toward a public good that transcends economic interests?

To say that the German historical school over-dramatized the “Adam Smith problems” is not to say that there is no tension between self-interest and sympathy in Smith’s works, let alone in the world at large. While Smith may not have blatantly contradicted himself, he never explicitly explained how self-interest and sympathy can be made to work in harmony. As Otteson (2003: 158) notes, the impartial observer is strangely absent from the pages of *WN*. That it may be a work of social science rather than of moral theory, however, does not do away with the problem of how positive and normative concerns are ultimately to be reconciled. As Montes (2004: 39-56) argues, to say that sympathy is not a direct motivation to always act in a benevolent manner does not rule out that the sympathetic process could in some general way shape our perception of social reality, of our place within it and ultimately constrain the decisions we make.

In fact this point is central to Fouillée psychology. His concept of *idée force* implies that once an idea has taken hold of our mind, we develop the will to see it become a reality. It seems that Smith was not very far from this intuition: if some things strike us as being unjust, or if we feel that “propriety” dictates that more should be done, for example, to provide an education to every child,¹² our imagination will eventually lead us to contemplate the means of effecting the necessary changes. At the very least it might mean willingly complying with the laws of the land even when it goes against a narrow interpretation of property rights. Thus it might imply that in a somewhat “constructivist” manner, laws should at least approximate a higher ideal—that of natural justice. In practice, such an ideal may not be realizable (“Every system of positive law may be regarded as a more or less imperfect attempt

toward a system of natural jurisprudence” but “the decisions of positive law [do not] coincide exactly, in every case, with the rules which the natural sense of justice would dictate” [Smith 1984: VII.iv.36.] The important point, however, as Douglas Long (2006: 302-303) points out, is not that the ideal cannot be attained, but that Smith should treat it as an ideal in the first place. “Justice, then, is [not a] matter of internal administration of prudential rules of property”; the “sense of justice” becomes “constitutive [of] the principles and practice of politics.”

Of course, what Smith meant by “natural justice” did not correspond to what social activists today call “social justice.” But without trying to claim that he ever envisioned anything like contemporary social policy, it is worth noting that his understanding of sympathy was not confined to face to face relations. “The state or sovereignty in which we have been born and educated,” he noted (Smith 1984: VI.ii.2), “is by nature most strongly recommended to us.” This he argues (Smith 1984: VI.ii.11) causes “an earnest desire to render the condition of our fellow-citizens as safe, respectable, and happy as we can.” The parallel with Fouillée’s notion of co-operative interdependence which he called “solidarity” is far from perfect. Still, for Smith a proper regard for all the virtues, including those that express our concern for the well-being of others, may legitimize actions that place limits on the logic of letting property rights alone determine societal outcomes. Moreover, what “natural justice” means can change as cultural evolution unfolds. While one can find good reasons for denying that true justice necessarily includes within its scope everything that today passes for “social justice,” I will want to argue below, in relation to Fouillée’s theory, that the experience of living in a modern complex society (something which could already be discerned in the early 1900s) forces upon us the realization that we are bound by an implicit social contract¹³ whose terms include an obligation to attend to the needs of those who lack the resources to compete fairly in the game of life.

To come back to Smith, however, it is clear that he stumbled across a deep and perplexing problem to which he did not provide a fully thought out answer. Whether his promised but never completed third book would have provided such an answer will remain a tantalizing question. It seems probable that he would have elaborated on a theme that, according to Edward Cohen is already present in his two major works,¹⁴ namely, the necessary intervention of the “visible hand” of the legislator in order to attend to the ills of commercial society. However, it is clear that he did not have in mind a direct or intrusive role but an indirect one, especially through education, for the purpose of cultivating the public spirit.

3. Hayek’s Answer

Properly speaking, Hayek did not take an active part in the scholarly debate concerning “Das Adam Smith Problem.” But Hayek’s political economy is firmly rooted in the Scottish Enlightenment tradition and its singular attention to the notion of spontaneous order which Hayek also calls a “grown order,” a “kosmos” or a “catallaxy.” Hayek played a pivotal role in rekindling interest in that tradition and in linking it to contemporary advances in the “sciences of complexity.”¹⁵ Although Hayek was obviously very familiar with the *TMS* which he often quoted, his views on social justice were more consistent with Smith’s insistence on the importance of self-preservation and of “natural liberty” than with Smith’s preoccupation with the sympathetic part of human nature. To wit, he remarked “though not a single economy, the Great Society is still held together mainly by what vulgarly is called economic relations”; and he adds that in view of the complexity of contemporary societies, “it can hardly be otherwise.” (Hayek 1976a: 112). Hayek also conceded the state has a responsibility for guaranteeing at least a minimum income for those who have been singularly unlucky in the game of life. While his pragmatic views on this subject detract from the unity and coherence of his theoretical outlook, they can be interpreted as stemming from a keen attention to the consequences of complexity: in a complex world, theoretical tidiness never fits the facts.

Beginning with his attack on the 1942 Beveridge Report in *The Road to Serfdom* (1944) and continuing through his later works, Hayek warned his contemporaries that social justice is but a “mirage.”¹⁶ That mirage is partly due to a longing for simpler times when human beings were living in tribal societies where face-to-face interactions are common; but, as he says, the moral progress achieved in modern times through “the extension of the obligation to treat alike, not only the members of our tribe but persons of ever wider circles and ultimately all men, had to be bought at the price of an attenuation of the enforceable duty to aim deliberately at the well-being of the other members of the same group.” (Hayek 1976a: 146). To support that view, he adduced at least three reasons.

First, since society is not a person, it cannot be said to act intentionally in either a just or unjust manner. The grown order of the market happens to be the most economically efficient of all known economic arrangements, and thus can help to alleviate absolute poverty, but on its own it cannot achieve a “just” distribution of incomes. To do so, and here we come to the second reason, would require the practice of “social engineering” by governments relying on the skill of professional experts in economics and social policy; unfortunately, and here we recognize of course a central theme in Austrian economics, the knowledge required to achieve the goals of the welfare state is not available to social engineers—and never will be, no matter how sophisticated their methods

become, because they cannot replicate the tacit knowledge of their surroundings that economic agents use to make decisions. Consequently, social engineering is bound to engender all sorts of mostly negative unexpected consequences. Finally, the same process that spontaneously historically produced a market economy also produced legal systems that embody general and time-tested rules, of which the English common law is the archetype. Because the general prescriptions entrenched in the Common Law are known to all, are stable and universal in their application, they constitute a pillar of the liberal political order in which individuals enjoy more freedom than in any other known political arrangement. To promote specific social objectives requires the enactment of necessarily discriminatory and confiscatory legislation that seriously erode this regime of liberty.

Nevertheless, on numerous occasions Hayek remarked that the principle of non-intervention must suffer a few exceptions. The closest he came to establishing a countervailing principle—without making much of an effort to square it with the logic of the arguments summarized above—was when he wrote:

There is no reason why in a free society government should not assure to all protection against severe deprivation in the form of an assured minimum income.... To enter into such an insurance against extreme misfortune may well be in the interest of all; or it may be felt to be a clear moral duty of all to assist, within the organized community, those who cannot help themselves. (Hayek 1976a: 87).

Similar ideas can be found in his *The Constitution of Liberty*,¹⁷ and he returned to it in an interview reproduced in *Hayek on Hayek*.¹⁸ From a pragmatic standpoint, that it is to say, from the point of view of what might work best to ensure stability and prosperity in the Great Society, there is no doubt that a minimum income scheme is a very reasonable recommendation. Indeed, the way in which “left libertarians” develop this and related ideas opens up what I suspect is a promising solution to the Smith problem. But, contrary to these authors who provide if not compelling at least reasoned arguments in favour of an unconditional “basic income,” Hayek never really took the pain to explain how and why a means-tested minimum income scheme is a *principled* proposition rather than merely an expedient way of dealing with the morally embarrassing presence of “extremely deprived” people in our midst. As for the intimation that such a scheme might originate in a “moral duty,” it appears to be an even more casual remark on his part. For a more sustained analysis of the origin and implication of this duty, Fouillée’s works offer some promising insights which—as I suggested earlier—could well be compatible with Hayek’s primary purposes.

4. Fouillée’s Answer

Fouillée is much less well known in the Anglo-American world than either Smith or Hayek, and indeed has only recently been rediscovered in France.¹⁹ He lived in the last few decades of the nineteenth and the first decade of the twentieth centuries, a period still remembered as “*la Belle Époque*” when profound transformations were taking place in French intellectual and political life against a background of economic growth and increasing prosperity, transformations to which he contributed in no small measure.

In its early years, the French Third Republic witnessed a crossing over of the politically discredited anti-democratic liberal current²⁰ and the hitherto revolutionary republican tradition, giving rise to a uniquely French hybrid. This liberal civic republicanism²¹ was very appealing to the growing urban middle classes and the vast majority of then still numerous small farmers. Both groups feared the rising socialist movements’ threat to property rights, but they also distrusted the still influential aristocratic monarchists and reactionary Catholics who actually came very close to seizing power in the early 1870s and only grudgingly rallied to the regime under the banner of nationalism and the urgency of national defence. Thus while in many ways socially and politically conservative, the Republicans’ coalition of political parties, opinion leaders and social elites that supported the regime firmly occupied the centre of the political spectrum. Their commitment to both individual and political liberties and to humanitarian values stemmed from their conflicts with the reactionary right wing of the French political spectrum,²² while their commitment to economic liberties set them apart from their adversaries on the left, the revolutionary Marxist socialists. They were inspired by, and committed to, the 1789 Declaration of the Rights of man and the Citizen which guaranteed fundamental Lockean rights like “liberty, property, security, and resistance to oppression” (article 2).²³ However, for sui generis intellectual and moral reasons but also partly in order to deflect the threat posed by radical syndicalism and the socialist movement, they formulated a social doctrine known as “solidarism” (more about this below). That doctrine provided the intellectual justification for the establishment of a small-scale welfare state—small by post World War II standards in any event.

Central to Fouillée’s social theory is the argument that our sympathetic feelings reinforced by the experience of complex relations of interdependence characteristic of modern societies predispose us to feel obligated to abide by rules of an implicit social contract. The metaphorical contract provides a way of summing up the on-going acceptance and legitimization by public opinion of policies and institutional mechanisms intended to achieve as much equality of opportunity as in possible in a constitutional regime of liberty. Not only is

market-induced cooperation necessary for one to flourish materially, but moral subjects cannot attain their moral ends without helping others to attain theirs. When individuals become conscious of the rational congruence of their individual welfare and of the common good, a sense of social solidarity emerges. It is sufficient to create the perception of a universal duty which is embodied in a “quasi-social contract” whereby we agree to provide the state with the means to achieve “reparative justice.” Reparative justice seeks to rectify past injustices in the distribution of assets; at a minimum it takes the form of Nozick’s (1974: 149-182) “principle of justice in rectification” which is meant to correct unjust instances of acquisition or transfer of property. Fouillée went farther than Nozick in drawing the limits of what sort of original injustices need to be rectified, and rectification plays a much more important part in Fouillée’s political philosophy than in Nozick’s. (Surprisingly also, rectification is the one aspect of Nozick’s much debated theory of justice that has been the most neglected). (Tebble 2001: 90). But the important point, and the reason why the idea of moving toward a convergence of civic republicanism and libertarianism appears to be a plausible proposition, is that Fouillée did not argue in favour of, indeed argued against, the socialist ideal of building a society that is inherently just in the very way in which it redistributes resources. But he thought that most people would regard as legitimate policies that compensate the old, the sick and the unemployed insofar as their predicaments are due in part to past or present circumstances beyond their control, some of which might have been brought about by imbalances of power that probably originated in some arbitrary or unjust social advantage or appropriation of property or societal resource. Before tackling the relatively straightforward issue of the design and implementation of these policies, I want to look at the question of how Fouillée goes about explaining the *origins* of the will to enter into such a contract. It is here that we can discern interesting parallels, as well as some significant differences, between his thought and the spontaneous order paradigm common to both Smith and Hayek.

D.D. Raphael (2007: 135) concludes his most recent book by saying that if “we wish to understand conscience and moral judgments, we do well to take account of psychology and sociology as well as logic,” adding that this “purpose is exceptionally well served by Adam Smith in *The Theory of Moral Sentiments*.” I would say the same about most of Fouillée’s works. Sociology in Fouillée’s time, however, was more accepting of the idea of society as a complex whole, existing separately from the psychology of its individual components, than was the case in Smith’s time when indeed sociology as a recognized discipline did not exist. While Fouillée used the concept of a quasi-social organism in some contexts, he did not believe in simple social determinism and was always at pains to insist on the complexity of

relationships that exist between what individuals think because they are immersed in networks of social interactions and what individuals contribute to the constant redefinition of societal norms and institutions. Thus the contrast between Hayek and Fouillée’s approaches to the notion of social justice cannot be simply explained in terms of the opposition between a collectivist or holistic standpoint and an individualistic one.

Thinkers like Fouillée and even Emile Durkheim were fundamentally individualistic and were profoundly attached to the cause of liberty.²⁴ (Anticipating Rawls’ idea of a “lexicographic” ordering of liberal values, Fouillée (1885: 352) claimed that solidarity was logically subordinated to liberty). Moreover, and especially in Fouillée’s case, their approach was evolutionist and resembled in some crucial ways Hayek’s notion of “grown order.” However, their understandings of individualism was markedly different from that of Anglo-American liberals: the individual is not posed as an a priori concepts endowed with “natural rights” but spontaneously emerges in the context of complex social interactions—what Durkheim called “the division of labour” by which he meant something broader than Smith. The basic ingredients from which a grown order was supposed to emerge and in which the individual finds his or her place, so to speak, were of a different kind—psycho-sociological and symbolic rather than derived from either natural law or economic calculations. In Fouillée’s case, the psychological dimension of this vision is particularly evident.

The whole point of Fouillée’s psychology is that consciousness of self, experience of the inner world of thought, sensations and emotions, makes us want to change the world around us. Our innermost sense of being is the source of our volition, not the objects that we perceive or think about. While the physical world, including our physiology, follows certain deterministic patterns that it is the role of science to discover, the mind can not only adapt to, but transform the world it comes to know. Like William James—and not surprisingly in light of Fouillée’s profound influence on James (Kloppenber 1986: 69)—Fouillée sought to overcome the sterile dichotomy between objectivism and subjectivism. Of course, we are not free to re-make the world as we please. But the human capacity to formulate ideas—provided that these ideas are not merely groundless utopian fantasies—also implies that we acquire the will to bring about their realization; ideas do influence the material and social conditions that constitute the world as we experience it.²⁵ In other words, ideas are not merely a representation of the world but the means to refashion it, at least to some extent and within boundaries set by our physical and intellectual limitations.

There is no suggestion that this entire process is unfailingly guided by Reason, although self-reflection is said to play a role. Fouillée never subscribed

to Hegel's mysticism nor was he a Cartesian rationalist. Ideas, including moral ideas, are the product of the human experience, of lives lived, and of the way we reflect upon these experiences. All normally constituted human beings find in themselves the seed of a sense of moral obligation (the parallel with Smith is clear); to feel bound by a moral duty is not something that is caused by historical and social circumstances. (Fouillée (1908: iv). Moreover, the suggestive power of ideas, their grip on our attitudes and dispositions to act in certain ways toward others is a spontaneous process. (Ibid xv). Thus, incidentally, Hayek's admonition that we should ignore widespread impulses to bring about a greater degree of social justice because it is an evolutionary relic, an adaptation to circumstances that prevailed eons ago, is rather futile. It may well be that a detached, analytical process will reveal that our sympathetic feelings toward not only our immediate neighbours but, by extension, other unknown members of society whose circumstances can be intuitively recognized as "unfair," are dysfunctional in the Great Society; but such an assessment is unlikely to become an idea that spreads beyond a small circle of convinced libertarians. (For one thing, it is not rooted in the ordinary experience of most people who look at the world through the lenses provided by contemporary media which tend to tug on the people's emotions; but that is only the tip of the proverbial iceberg.) Trying to act politically on the basis of this counter-intuitive analytical reasoning is a little like trying to plug a leaking dike with one's finger! And, incidentally, the suggestion that this perspective ought to guide political authorities in a liberal democracy sounds paradoxically quite rationalistic and constructivist. (It may be true, as Fouillée feared, that over time the authorities' constant and continuous refusal to respond positively to spontaneous expectations that injustices need to be addressed will eventually become a self-fulfilling prophecy; but if that is to happen, the loosening of the social bond may also lead to dysfunctional behaviours that ultimately also threaten the societal institutions and cultural dispositions upon which a market economy depends.)

We can take Fouillée's paradigmatic vision a little further. While individuals by definition are free and autonomous, they are the constitutive elements of networks that bring about emergent structures on whose integrity they in turn depend. Just as higher organisms can survive only if their individual cells are themselves self-replicating and self-organizing, modern or even post-modern societies function well only to the extent that they are catallaxies where individuals make their own decisions and coordinate their activities through decentralized processes like the price mechanism. But just as the cells in a complex organisms cannot survive on their own, individuals depend for their survival and prosperity on the networks and the accumulated material and cultural capital their interactions have brought about.²⁶ This is what Durkheim

meant by “organic solidarity,” an unfortunate metaphor that is often wrongly taken to mean that the unity of society takes precedence over the individuality of its members. J.-F. Spitz who is arguably the contemporary scholar most familiar with Fouillée’s writings, summarizes his thought on this point in a manner that strongly evokes a parallel with Smith’s impartial spectator:

The individual must not be conceived merely as a physical existence, a system of desires seeking gratification but as a moral existence, that is to say a system of duties; its is a concept centred on the idea that the self is respectable and sacred, that it is in its autonomy an object of love and veneration. Yet no one can think of his or her own self as an object deserving respect without thinking of others in the same terms. (Spitz 2005: 129). Moreover, critical reflection on this interdependence issues in the idea of a social contract:

Once reflected in consciousness, once it has become an object of discourse, the solidarity that binds the different parts of society can become the topic of a critical examination. Once unleashed, this critical examination necessarily leads to the idea that social structures have no other function than to be liberating instruments for individuals and ways of arranging legitimate relations among them. This idea is an *idée-force*, that is to say an idea whose actualization is the consequence of the fact that it has been conceived.... Under the influence of this *idée-force* objective solidarity becomes consensual, and the [social] organism becomes contractual.... Society is therefore a self-reforming organism, opening the way toward a situation whereby all relationships among individuals could become willed. (Ibid 141).

For Fouillée, experiencing these interconnections suggests to our minds that that when others lack the resources required to function as free and autonomous citizens, a portion of our resources—that portion that in fact we owe to the operations of a well functioning society and not just to our talents and hard work²⁷—ought to be used to redress the injustices that deprived these individuals of the resources they need. In his view, private philanthropy, albeit very important,²⁸ cannot on its own bring about the conditions necessary to redress what we would call today systemic injustices. (He took into account the fact that “capital is not a purely individual force but a social one, in view of its origin, of its development and of its effects of all kinds within the social milieu”). (Fouillée 1930: 10). Only the state or its subunits (e.g., cities) can muster the resources that are adequate for that purpose but, more importantly from a moral standpoint, the “duty of reparation” being common to all is a collective responsibility that only the state can fulfill. (Fouillée 1885: 371).

While the paradigm of *idées forces*, that is, of a spontaneous process of inter-subjective adjustment through dialogue and intellectual reflection, provides an explanation of the emergence of a sense of societal solidarity, actual social change requires political mobilization around an identifiable

project. “Solidarism”—a political movement that rapidly became influential among the intellectual and political elites of the French Third Republic—served as the vehicle for the injection of the *idée-force* of solidarity into the political process. “Solidarism” is a rather nebulous ideal but the centrist republican politician and author Léon Bourgeois took pains to define it and to make it relevant to the concerns of his contemporaries. Suffice it to say here that solidarism promoted the idea that since all members of society benefit from institutions, knowledge and culture that they themselves have not produced and, therefore, do not own, they all have an obligation to contribute to the production and maintenance of what we would today call human and social capital. Tax-funded public education, some insurance schemes like public pensions, access to basic medical care were some of the means proposed to that effect. But the solidarists were more motivated by the desire to ground social policy on a moral foundation than by their practical reformist zeal. Much of their program, in any event, consisted of measures intended to give more autonomy to workers by encouraging property ownership, mutual aid societies, and the like, rather than of costly government run schemes.

Ironically, the planned and deliberate character of “solidarism” was more circumstantial than the accusation of “constructivism” would imply; reformist legislation was introduced as a deliberate response to the threat posed by Marxist socialism.²⁹ Although Hayek thought he discerned in the thinking of theorists like Émile Durkheim the direct influence of Auguste Comte’s positivism,³⁰ neither Durkheim nor Fouillée shared Comte’s technocratic hubris. And in practice the resulting legislative enactments were more reactive and “piecemeal” than reflective of a rationalist planning mentality. (The same cannot be said of the more ambitious social reforms put in place by the Fourth Republic after World War II but these reforms were instigated by governments led by, or including socialists, not by liberal republican solidarists.) Fouillée suggests that governments can do two things. On the revenue side, governments at all levels ought to take maximum advantage of opportunities to own land and natural resources so as to be able to fund social programs from the rent they could derive from these properties (rather than using the instrument of taxation). It is easy to discern a parallel here with similar ideas proposed in Fouillée’s time by Léon Walras, Herbert Spencer or by Henry George, and advocated today (as part of complicated schemes intended to capture rent from all natural resources) by “left wing” libertarians.³¹ On the expenditure side, Fouillée was less specific; he advocated a series of reforms (e.g., educational reforms) and “positive” rights: right to work (something about which he is less than clear), right to a minimum wage, and so on, as well an obligation on the part of the state to facilitate the creation of cooperatives

and other associational mechanisms whereby ordinary people can gain control over their employment, access to health resources, etc.³²

For Fouillée, the purpose of social legislation is to create conditions under which the contracting parties are not negotiating on the basis of a patently unfair distribution of social resources like education. But there is nothing in Fouillée’s work that would contradict the hypothesis of some sort of discovery process whereby political entrepreneurs seek to achieve electoral success by proposing innovative policies. In other words, the required legislation can be said to arise from a self-organizing democratic process rather than from a process of design by bureaucratic experts engaged in social engineering—in fact Fouillée was sharply critical of positivism (Fouillée 1896).³³ Altruism is not strong enough, on its own, to motivate us to act generously toward all fellow human beings in every circumstance but it can suggest to us reason for abiding by laws that enable us to more efficiently achieve other-regarding results, for example because they take care of with the free-rider problem. Fouillée’s point was that this kind of low grade altruism evolves spontaneously in modern societies and is part and parcel of the character of modern individuals. In other words, pace Hayek, but arguably in agreement with Smith’s conception of sympathy as something that is the product of social habits—that in other words, it is epigenetic rather than inherited—Fouillée thought altruistic feelings are not a relic from long gone times when we were living in small groups where face-to-face encounters are the habitual way of relating to others

If our intuitive understanding of the idea of fairness and our corresponding sense of moral obligation are not only the product of the evolution of the human species but also a consequence of living in complex societies where we become aware of the web of interdependencies that make our existence possible, the specific means of satisfying these feelings, however, are by necessity the product of our immediate and changing societal environment. Contingent factor set the limits within which social justice can reasonably be achieved. (Fouillée [1884: 131-153] was very conscious of the fact that social justice cannot become, and never ought to be treated as a goal that just because it can be considered moral, should trump all other considerations, partly because there always exist conflicts among desirable goals, and partly because there are practical limitations to what can be achieved at any given time).

For Fouillée, as well as for Durkheim, the kind of solidarity that modern individuals may feel justified in seeking must be compatible with individual freedom. The same self-evident sense of equity that leads modern individuals to demand redress for what they observe as morally intolerable instances of unfairness in society would also render illegitimate any attempt at recreating the

kind of group mentality and primitive communism that existed in tribal societies or even in the Greek polis. Modern individuals, precisely, have become individuals, and that quality defines their own identity. For Durkheim, because the belief in the inviolability of individual rights is sociological rather than an a priori axiom, it is not in practice incompatible with a communitarian ethics. (Otteson 2003: 158). Fouillée was far more circumspect in that regard. His psychology is centred on exploring the act of volition, on the experience of one's own power to change the world and he never claimed that individuality is a purely sociological fact. But he also insisted that this experience is not solipsistic and that the ideas we develop individually can change the world only when they are shared, only when they become embedded in a rich social fabric and that, in return, we feel obligated toward others since our liberty, our capacity to make our goals become real, is conditioned on their "capacities" as Amartya Sen would say.³⁴

5. Conclusion

Some ideologies and schools of political economy deliberately focus on only one of Smith's capital virtues. Libertarianism (excluding its "left" variant), with its exclusive concern with self-ownership and Smith's value of prudence, assumes that whatever other-regarding sense of sympathy for those who do not fare well in a market economy may be present in given culture, it can be addressed entirely through voluntary means (e.g., philanthropy). Leaving aside radical Marxists, contemporary egalitarians tolerate markets as means to produce the wealth required to sustain the generous distributive schemes they advocate. However, in their attempt to contain self-regarding concerns through regulations and other coercive instruments, they end up threatening individual freedom even if, like Rawls, they may proclaim their attachment to that value.³⁵ I have argued that neither Hayek nor Fouillée were positioned at the extreme poles of a continuum to which they were attentive. That is, both were vaguely aware of the fact that unpredictable, sui generis evolutionary dynamics were at work outside of their respective areas of primary concern (i.e., the economy-centred catallaxy for Hayek, the political and social law-centred pursuit of solidarity and reciprocity favoured by Fouillée). Unfortunately, neither they themselves nor any of their followers ever attempted to bring both these evolutionary tendencies into a single theory. In spite of Fouillée's almost obsessive desire to work out synthetic combinations of seemingly opposite ideas and principles—throughout his prolific writings one comes across ingenuous syntheses of determinism and free will, private property and public goods, science and humanism, and so on—he never undertook that synthesis because he took for granted that markets are self-regulating but imperfect, and

only focused on how to correct for these imperfections. He thus neglected to consider that market processes can also be self-correcting and that solidarity does not have to be invoked as often as he thought.

This might actually be an unfair criticism of Fouillée, who was well aware of the dangers inherent in policies that limit economic freedom, but the same cannot be said of French solidarists in more recent times. Short term unemployment, for example, can more easily be corrected through the Schumpeterian process of “creative destruction” than through the kind of interventionist measures favoured by French policy-makers in recent years in the name of solidarity (e.g., France’s 35-hour work week), notwithstanding that the way in which this concept is understood today diverges significantly from Fouillée’s notion of reparative justice.³⁶ Hayek, on the other hand, fleetingly acknowledged a sense of sympathy toward severely disadvantaged individuals but the vague accommodations he advised for dealing these problems sound like grudging concessions to an altruistic impulse that he never took pain to explore in sufficient detail when he did not altogether dismiss it as an evolutionary relic. Moreover, as strict libertarians have rightly claimed,³⁷ once Hayek conceded that the state has an obligation to intervene in some instances, he has no ground for opposing further extensions of that commitment. My point is not that Hayek erred in recognizing the necessity of some minimal “safety net,” nor do I want to take issue with how he described the best ways of achieving this reasonable goal (i.e., ensuring that the state does not create monopolies). My point is that Hayek missed an opportunity to grapple with the “Smith problem” by rather peremptorily dealing with this important issue as an “exception that confirms the rule,” rather than exploring the origins and implications of more or less altruistic dispositions among modern individuals—dispositions that lead them, in particular, to regard as legitimate a whole range of measures and societal arrangements geared toward creating more equal opportunities for all.

As I intimated earlier, the infamous “Das Adam Smith Problem” still raises intriguing questions. This is not because one can claim that Smith was an inconsequential thinker who radically contradicted himself, but rather that his explorations of prudential self-interest and our human capacity for sympathetic understanding raise more questions than he was able to answer. In this paper I have laid the ground for one more run at the Smith problem, namely, that not only are market processes self-organizing and thus spontaneously produce transitory forms of order (albeit not the sort of stable equilibrium that neoclassical economics posits), but the “sentiments” that legitimize policies and institutions intended to bring about a greater degree of social justice are also spontaneous and deeply rooted in the psychology of modern individuals and their experience of how modern complex societies operate. This is not, as I

have also suggested, contrary to Smith's own views on the origins of "moral sentiments" but it is a thesis that was more thoroughly investigated by Fouillée and some of his contemporaries. We are thus led to recognize that invoking the notion of spontaneous order does not in and of itself suffice to ground any particular strategy for either dismissing, or wholeheartedly embracing, a commitment to social justice and social democracy. It is unfortunate that no one has yet attempted to seek ways of establishing bridges between the works of Hayek and Fouillée since unlike some of their followers, neither Hayek nor Fouillée were located at either one of the extreme poles of a continuum that extends between libertarianism and social democracy. There is still time to work out a much needed synthesis of their contributions in order to articulate a complex and multi-dimensional paradigm of spontaneous order! The recent works of a new school of "left libertarianism," in fact, go some way toward effecting such a synthesis. Their most original contribution has been to articulate rather sophisticated defences of the concept of an unconditional "basic income."³⁸ As we have seen, Hayek was also in favour of a minimum income, albeit of course a much less generous one and not an unconditional one either; but it would be wrong to zero in only on these differences because there is room for some sort of convergence between a basic income assorted with some restrictions justified by the notion of responsibility and a minimum income designed as an alternative to invasive welfare programs. And although Fouillée never broached the subject, Daniel Raventos (2007: 66) argues that a "Basic Income" policy is entirely consistent with civic republicanism; it "offers the possibility... for an individual to grow in civic virtue, which is no more and no less... than the ability to be self-governing in one's private life, thence to engage in public life in the full exercise of one's condition as a citizen."

Such an approach has the merits of being relatively easy to administer and of not being too disruptive of the market economy. If it could be financed through the public ownership of land and/or natural resources according to some sort of Walrasian or Georgian scheme, rather than through taxes that create disincentives to productive investments, this vision could open up promising theoretical perspectives on the very practical question of how to adapt the increasingly dysfunctional 20th century idea of the bureaucratic welfare state to the twenty first century. But I cannot tackle it in this paper.

Notes

¹ This restricted definition matches rather closely Adam Smith's own definition of justice as a "negative virtue" but even in Smith's works, especially in the final edition of *The Theory of Moral Sentiments*, it is possible to discern a preoccupation with what modern political philosophy now equates with justice, i.e., justice as fairness (see Raphael 2007: 74-75). But regardless of whether

Smith used the term “justice” to describe them, it is clear that Smith dealt at great length with reciprocal interactions among individuals who show some concern for each other’s welfare.

² There is, of course, a long republican tradition dating back to Machiavelli’s *Discourse* that stresses the dangers of excessive concentration of wealth by the few in a republican polity.

³ Hayek insisted that only the outcomes of intentional acts can be deemed to be just or unjust (see Hayek 1976). This is true from a strictly abstract point of view. Just as if I am struck with lightning I cannot say that this was “unjust,” if I am hurt unintentionally by someone or a group of people pursuing legitimate goals and who are neither acting recklessly nor maliciously, I am not the victim of an injustice. However, most people are likely to consider unjust situations where jobs are lost because the labour market has changed in ways that make it more rational to re-locate plants in low wage counties, or situations where access to quality education or medical care is very unequally available. In a strict sense, no one can be blamed for the decisions that indirectly resulted in these situations. Yet the feeling of injustice that the “losers” experience in such situations is not entirely unjustified. Insofar as the overall effects of certain kinds of decisions are known by economists and policy-makers to match observable patterns (e.g., greater mobility of investment capital, the elimination of tariff and non-tariff barriers, and accelerated technological change will accelerate the restructuring of firms and industrial sectors), *not* to put in place programs or policies to deal with the human costs of these expectable outcomes amounts to a denial of justice.

⁴ Although there are broad similarities, it is not certain that Smith and Hume understood the same thing by that term; Smith’s sympathy is deeper in the sense that it implies a more complete and profound identification with the other. See Montes (2004b: 63-90).

⁵ Years later, Jacob Viner also came to the conclusion that there is a fundamental contradiction between the two works. Viner (1927: no. 2: 198-232).

⁶ See Montes (2004a; 2004b); Otteson (2003).

⁷ Imagination plays an important, albeit often neglected, role in Smith’s writings (see Harrison 1995: 91-112). It is the faculty that allows the mind to connect all the impressions that we experience, to form some semblance of order in nature and society by relating these disparate units of information into a coherent whole derived from experience and a sense of taste. “On most occasions imagination is a prerequisite for sympathy”; Raphael (2007: 13).

⁸ Not only did the German historical school take issue with the philosophical grounds of Smith’s political economy, but they claimed that his advocacy of free trade and free markets worked against the interests of newly industrializing nations, as Germany was in the middle of the nineteenth century.

⁹ See Raphael (2007: 1-11).

¹⁰ Space lacks here to review everything that has been written on “das Adam Smith problem” but I would like to briefly mention yet another perspective because it also underlines that Smith did not contradict himself. This one inspired by the epistemological theory known as “critical realism.” This epistemological theory distinguishes between three level of existence: the empirical, the actual, and the real. For David Wilson (2006: 272) and William Dixon, “Smith’s talk of sympathy is not concerned with the *actual*, not concerned with our acts as such—whether self-interested or benevolent... Rather his concern with the *real*: the condition of possibility of our acting and... how we are able, on *reflection*, to pass ‘moral’ judgement on the actions of others.”

¹¹ Jacob Viner (1927) underlined the centrality of that idea in Smith's.

¹² Education was a subject to which Smith returned on several occasions; he thought it could be "imposed" (Smith 2001: 1044) but did not advocate a centralized public education system, something that would have been rather anachronistic in his days. (And he definitely was in favour of students directly paying for the salary of university professors!) In other words, our altruistic feelings do not justify in this instance placing more responsibilities on the state. (Decades later, J.S. Mill [*Principles of Political Economy* V, ch. 11] started from the same premise but argued that though private local schools are a good idea in principle, they are not in practice.) His recommendations on the subject of schooling follow from his expression of sympathy for those who have to perform repetitive, mind-numbing tasks; he thought that education was a way to enhance the quality of their lives (Smith 2001: 1039-1040). The significance of this point is that he showed there that sympathy is not directed only at those whom we know personally. Interestingly, he alluded to another motivation which paralleled the political concerns of the 19th century solidarists, namely, that providing disadvantaged people access to the resources they need—in this case, education—is a good way to prevent public disorders (Smith 2001: 1048).

¹³ For a brief summary in English of Fouillée's conception of a quasi-contract as the link between our own individual sense of responsibility and the rule of law, see Gough (1957: 221-224).

¹⁴ See Cohen (1989: 50-72).

¹⁵ Hayek showed that he was aware of early developments in the theory of self-organizing systems (see Hayek 1973: 37). And his very original work, *The Sensory Order* anticipated contemporary applications of the concept of neuronal networks to the cognitive sciences.

¹⁶ "The Mirage of Social Justice" is, of course, the subtitle of vol. II of *Law, Legislation and Liberty*.

¹⁷ See Hayek (1978: 285, 286, and 303).

¹⁸ See Hayek (1994: 149).

¹⁹ See, for example, Spitz (2005).

²⁰ Space lacks here to explore in detail the history and unique complexities of the French liberal tradition which differs in significant degree from the Anglo-American one. One of these differences, which also justifies my use of the term 'discredited', is the nineteenth century French liberals' reluctance to espouse the modern democratic ideal. While even in the nineteenth century Americans or Britons found nothing incongruous about the notion of a 'liberal democracy', their French counterparts were far more fearful of majority rule. They were committed to the defence of representative parliamentary institutions but thought that only an elite of property owners with considerable means could be entrusted with the right to vote; this led them, under Louis-Philippe, to oppose even a modest broadening of the franchise, on the model of what was happening in the United Kingdom in the same era. Later on, they rallied behind Napoleon III when he agreed to institute a 'liberal Empire' in 1869 but this potentially viable liberal-democratic constitutional monarchy collapsed within the space of a year and the ignominious military defeat of Napoleon III in September 1870 tainted the liberal leaders who had joined forces with him. But while the self-identified 'liberals' and their movement were personally discredited in the 1870s, many of their ideas were successfully re-appropriated by a new generation of moderate "republicans."

²¹ See Spitz (2001); Jennings (2004); Soltau (1959).

²² A defining moment in that respect was the famous Dreyfus affair.

²³ Indeed much of the history of French republicanism can be re-interpreted somewhat simplistically as a continuous struggle between a liberal ‘spirit of 1789’ and the illiberal democratic extremism of the Jacobins.

²⁴ Recent scholarship has brought to light the centrality of the individual in Durkheim’s philosophy; see for example Cladis (1992). For Durkheim, though individuals are not ontologically prior to society, their existence and freedom of action is inherent in the functioning of modern liberal societies, hence the rights that society confers to them ought to be ‘sacred’ because to deny them would destroy the moral order upon an advanced civilization rests. Hayek’s cultural evolutionism is actually cut from the same conceptual cloth.

²⁵ In the opening page of his massive, two-volume *Psychologie des idées-forces* Fouillée (1893: v.) explained that his purpose was to redefine the goal of psychology as the study of “the efficacy of thought in us and around us, [of] the power of ideas and of the states of consciousness subsumed within them, of their influence on spiritual evolution as well as on natural evolution.”

²⁶ Continuing on the theme of postmodernism broached in the previous note, it is frightening to realize the extent to which we have become dependent on the computer networks that supposedly exist only to make life easier for us; cyber-terrorism, if successful, could potentially reduce our cities to complete chaos and to loss of lives on a large scale.

²⁷ Fouillée discussed at length the contribution of natural resources and accumulated cultural capital in the productive process; no one can claim to own one hundred percent of what he/she produces if that claim is based on the labour and inventiveness that one contributed to the production of a good or service. By the same token, he criticized socialists for claiming that a socialized production process could produce any wealth at all! See Fouillée (1884 : 11-40).

²⁸ If reparative justice is the responsibility of the state, distributive justice, which Fouillée argues must be accomplished “via liberty and not authority,” is primarily the domain of private charity. However, it must as much as possible be exercised through some form of exchange so as not to leave those who are helped in the position of powerless recipients of ‘alms’ but as partners in a meaningful relationship. See Fouillée (1885 : 303).

²⁹ Stanford Elwitt defends the classical Marxist argument that solidarism amounted to a ‘class conspiracy’ against the working class; see Elwitt (1986).

³⁰ By linking Durkheim to Comte, Hayek grossly distorts the history of social ideas and philosophy in France. In fact, in his doctoral dissertation Durkheim traced the origin of sociology back to Montesquieu but paid scarce attention to Comte in his writings. While it is true that Comte’s view was holistic, Durkheim was far more sensitive to the central role played by individuals in society; however, like Tocqueville before him, he considered ‘individualism’, i.e., the view that individuals are ontologically prior to society, to be an ideology rather than a true description of social reality. See Hayek (1976a: 186 n. 9).

³¹ See for example Vallentyne (2000).

³² See Fouillée (1930).

³³ But as is always the case with Fouillée, his criticism was meant to be what we would call a ‘constructive’ one, and this book shows how both idealism and positivism can be used as building blocks of a more comprehensive and nuanced paradigm for sociology.

³⁴ See Sen (1999).

³⁵ Rawls’ first principle, i.e., the guarantee of a wide array of political and other liberties, trumps the second principle and its egalitarian implications. Nevertheless, his neglect of the notion of responsibility—after all, what the contracting parties in the original position agree to is a scheme of universal insurance against all risks to which an unequal distribution of talents and social resources may expose them—severely limits the scope of these freedoms. (Rawls did not completely dismiss individual responsibility since he was not seeking equality of results. but the veil of ignorance downplays the possibility that some inequalities are deserved.) Fouillée relentless emphasis on moral obligations, by contrast, leaves much more room to the notion of responsibility for one’s own actions: ‘the ethics of *idées-forces* recognizes the indivisibly psychological and sociological, personal and social character of responsibility. Any doctrine that absorbs the individual’s part [transl.: ‘part’ as a part in a play] in that of society or the part of society in that of the individual, is inexact’ (Fouillée 1908: 290). His notion of reparative justice is almost entirely concerned with compensating for competitive disadvantages that are systemic and potentially crushing (e.g., unequal distribution of educational opportunities), not just any kind of unforeseen disadvantage. A key criterion here is whether, in Smithian terms, claims for redress do or do not offend our sense of propriety; thus not all inequalities that are not to the advantage of the “least advantaged” need to be remedied. Only disadvantages that are disempowering, that prevent people from claiming their rightful place as free citizens, need to be rectified.

³⁶ For an acerbic critique of the dysfunctional way in which in recent years ‘solidarity’ has come to be interpreted by feather-bedding trade unions in the French public sector; see Smith (2004). These unions are demanding ‘solidarity’ from the public to protect their privileges against attempts by government reformers to implement uniform pension regimes across the board and have occasionally been successful in getting that support (e.g., the 1995 general strike forced the government to back down because it was becoming more unpopular than the strikers). It must be added that with the election of President Sarkozy, French public opinion has turned around and is now more supportive than in the past of public sector reforms and, generally, of liberalizing social and economic regulations.

³⁷ See Block (1996: 327-350).

³⁸ See Parijs (1995); (2006); and Raventos (2007).

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