

Women and the Invisible Fist

How Violence Against Women Enforces the Unwritten Law of Patriarchy

Charles Johnson
Research Associate, Molinari Institute
Las Vegas, Nevada
Version 2010.1112-1

“The crowd of mankind [*sic*], are directed in their establishments and measures, by the circumstances in which they are placed; and seldom are turned from their way, to follow the plan of any single projector. Every step and every movement of the multitude, even in what are termed enlightened ages, are made with equal blindness to future, and nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design.” (Adam Ferguson, “An Essay on the History of Civil Society”)

“Unlike the ways in which men systematically enslave, violate, dehumanize, and exterminate other men, expressing political inequalities among men, men’s forms of dominance over women have been accomplished socially as well as economically, prior to the operation of the law, without express state acts, often in intimate contexts, as everyday life.” (Catharine MacKinnon, *Toward a Feminist Theory of the State*)

I. Radical Feminism and Rape Culture

Feminist social theories argue that historical and contemporary societies are marked by widespread sex inequality – by systemic privileges for men and systemic burdens inflicted on women. *Radical* feminists, in particular, hold that sex inequality is not only widespread but deeply-rooted and self-sustaining – that the many harms sexism inflicts on women should all be understood as interlocking components in a system of class power (usually called “patriarchy” or “male supremacy”). Most radical feminists focus especially closely on the role of pervasive *male violence against women* as a foundational source and a clear expression of systemic male power over women.¹

¹ Since my topic in this paper is the work of specific radical feminist theorist (Susan Brownmiller), when “feminism” or “feminist” are used by themselves in the text, they are often meant as convenient abbreviations for “*radical feminism*” or “*radical feminist*.” “Radical feminism,” in this sense, is typically distinguished from liberal feminism, on the one hand, and socialist- or marxist feminism. By contrast with liberal feminism – it treats sexual inequality as a deeply-rooted form of systemic class oppression, which is not only upheld by widespread prejudices, outmoded theories about women’s natural capabilities, or arbitrary discrimination, but is also a foundational principle “at the root of” virtually all dominant political, cultural, and economic institutions – whether related to work, politics, the family, sex, language, religion, or any other sphere of social life – and reinforced by the material conditions of women’s daily lives, not simply bad policies or explicit prejudices. By contrast with socialist- or marxist feminism, radical feminism is *radically* feminist the sense of treating women’s oppression as an *irreducible first principle* – a form of oppression which, so to speak, goes “all the way down” – in the analysis and critique of existing society. Socialist-feminist theories treat sex inequality as an epiphenomenal product of economic exploitation, and marxist feminist theories focus specifically on the development of sexual inequality in families and cultures as historical precursors to capitalist divisions of labor, and their reproduction as byproducts of the economic exploitation of workers (male and female alike) at the point of production. Radical feminists, by contrast, argue that a feminist theory must take account not only of the ways in which women, like working-class men, are oppressed *as workers*, but also the unique forms of oppression *by men* that women face *as women* (such as rape, wife-beating, stalking, sexual harassment, government abortion laws, and other forms of systemic male violence against women). Cf. MacKinnon (1989), *Toward a Feminist Theory of the State*, Part I (“Feminism and Marxism”) and MacKinnon (1987), *Feminism Unmodified*, especially “The Art of the Impossible” (1-17) and “Difference and Dominance: On Sex Discrimination” (32-45).

Radical feminists mention forms of mass violence against women centrally organized and directed by political authorities – lethal abortion laws, rape as a weapon of war, the mass torture and executions of the early modern European witch-craze. But they concentrate most on discussing pervasive but *diffuse* forms of violence, like rape, domestic violence, harassment, and other forms of interpersonal intimidation and coercion, typically inflicted on individual women by individual men – intimates, family, acquaintances, or strangers – for motives of their own, and in “private” life, not in the “public” sphere of government policies or centrally coordinated campaigns. Feminist accounts of these forms of individualized violence have at least three key features in common. First, they characterize the violence as *pervasive* rather than abnormal – 1 in 12 men in the U.S. has committed rape;² 1 in 7 women has been raped in her lifetime;³ about 1 in 4 women is raped or physically battered by a husband, boyfriend, or date.⁴ Second, they characterize pervasive violence as *systematically structured by sex* (overwhelmingly committed by men against women, and rarely *vice versa*). Third, they argue that systemic male violence must be understood as *structural* or *political* – in addition to physical and psychological trauma for individual victims, the violence has *ripple effects* for *all* women’s social freedom and material well-being. To insist on this point, and to protest the tendency to write off violence against women by hiding it in the “private” sphere, as a merely “personal” problem, radical feminists often challenged the dichotomy between the “private” and “public” spheres, often quoting Carol Hanisch’s famous declaration that “the personal *is* political.”⁵

II. Susan Brownmiller: Myrmidons and Misinterpretations

Besides these three points, radical feminist theories of sexual violence also have a fourth feature in common: they are typically misunderstood, or wildly distorted, by their critics – and not simply because of malice or intellectual laziness,⁶ but, more fundamentally, because their critics often approach them with conceptual blinders on, which prevent seeing how they are even supposed to work.

For an example of all four points, consider Susan Brownmiller’s “Myrmidon theory” of stranger rape, as presented in *Against Our Will* (1975), her groundbreaking historical and theoretical discussion of rape as a political force. At the end of the first chapter, Brownmiller famously writes that:

2 Koss (1987).

3 Research over the past thirty years has typically found a prevalence of between 1 in 4 women and 1 in 7 women having experienced an attempted or completed rape during her lifetime up to the time of the survey. For the upper and lower boundary figures, see Koss (1987) and Tjaden and Thoennes (2000), respectively. The difference in results may largely be due to differences in the operational definitions of “rape” used in each study – the National Violence Against Women Study defined “rape” more conservatively than Koss: NVAWS included only cases in which a man or woman was coerced into sex through the direct use or threat of violence, while Koss also included cases in which a woman was too drunk to consent, or drugged. When questions related to alcohol or drugs were removed from Koss’s analysis, the rates were closer to those found by NVAWS. Besides the difference in definition, the NVAWS was also conducted during the mid-1990s, a decade and a half later than Koss’s study, and conducted with a broader sample (Koss surveyed American college students; NVAWS surveyed men and women of all ages and occupations from across the United States).

4 Tjaden and Thoennes (2000).

5 Carol Hanisch (1969/1970), “The Personal is Political.” Originally published in *Notes from the Second Year*; reprinted in *The Redstockings, Feminist Revolution* (1975), 204-205. The content of Hanisch’s paper is explicitly concerned with taking down the distinction of “‘personal’ vs. ‘political,’” and Hanisch states in it that “One of the first things we discover in these [c.r.] groups is that personal problems are political problems,” but when reprinting it years later, Hanisch wanted to clarify that the specific *phrase* “The Personal is Political,” which appears only as the title of the essay, was not written by her, but rather provided by the editors of *Notes*, Shulamith Firestone and Anne Koedt (Hanisch, “Introduction,” 2006 <<http://www.carolhanisch.org/CHwritings/PIP.html>>).

6 Although there is plenty of that to go around.

Man's discovery that his genitalia could serve as a weapon to generate fear must rank as one of the most important discoveries of prehistoric times, along with the use of fire and the first crude stone axe. From prehistoric times to the present, I believe, rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which *all* men keep *all* women in a state of fear. (14–15)

Quoting this passage, careless antifeminist critics have slammed Brownmiller for supposedly slandering all men as rapists⁷ (she doesn't actually say that; the verb in the dependent clause is not "rape," but "keep... in a state of fear"). Many critics who were more careful and less anti-feminist accused her of advocating essentialism or biological determinism about rape.⁸ Either sort of reading is hard to reconcile with any reading of the text *beyond* page 15.⁹ In Chapter 6, "The Police-Blotter Rapist," Brownmiller discusses the commonplace criminological reality behind sensationalistic myths about the stereotypical stranger-rapist, and the effects of his actions on women's daily lives:

Rape is a dull, blunt, ugly act committed by punk kids, their cousins and older brothers, not by charming, witty, unscrupulous, heroic, sensual rakes, or by timid souls deprived of a normal sexual outlet, or by super-menschen possessed of uncontrollable lust. And yet, on the shoulders of these unthinking, predictable, insensitive, violence-prone young men there rests an age-old burden that amounts to an historic mission: the perpetuation of male domination over women by force.

The Greek warrior Achilles used a swarm of men descended from ants, the Myrmidons, to do his bidding as hired henchmen in battle. Loyal and unquestioning, the Myrmidons served their master well, functioning in anonymity as effective agents of terror. Police-blotter rapists in a very real sense perform a myrmidon function for all men in our society. Cloaked in myths that obscure their identity, they, too, function as anonymous agents of terror. Although they are the ones who

7 For example, conservative Catholic philosopher Michael Novak, in a particularly ill-tempered and amazingly careless review of *Against Our Will for Commentary* (February 1976) writes: "The manifest thesis of this book may be simply stated: it is that the basic sexual relation between men and women is rape. ... For in defining rape so broadly and demanding its eradication, what else can Miss Brownmiller be flirting with but the eradication of all sexual relations between men and women?" (90). Wendy McElroy, a professed libertarian feminist whose writing has become increasingly antagonistic towards radical feminism, wrote in 2001 that "Brownmiller's ... myth is that men, in general, have created a mass psychology of rape. Brownmiller claims that all men are rapists at heart and all women their natural prey. ... Although one might question how Brownmiller comes by her amazing information about rape and male attitudes in prehistoric times, her message is clear. Men are inherently rapists." ("The New Mythology of Rape", iFeminists.com, June 26, 2001 <<http://www.ifeminists.net/introduction/editorials/2001/0626.html>>).

8 The misunderstanding of Brownmiller as a biological determinist is not limited to careless antifeminist polemicists or conservative partisans. In Blackwell's *Companion to Gender Studies* (2009), Criminology contributor Tony Jefferson writes that Brownmiller's theory (along with other radical feminist theories) made groundbreaking contributions, but "In other ways ... they [failed] to surmount orthodox thinking.... [T]he notion of how individual men come to acquire patriarchal, masculine values, whether these were seen as *rooted in biology* (as they were for Brownmiller) or in culture (as became more common), is, like sex-role theory, implicitly deterministic: Weber's 'iron cage'" (220, emphasis added). In Rosalyn Baxandall and Linda Gordon (2000), "Second-Wave Soundings," in *The Nation* (June 3, 2000), the authors – themselves veteran feminist activists and co-editors of *Dear Sisters: Dispatches from the Women's Liberation Movement* – claim that *Against Our Will* "advances the theory that rape is biologically determined" and "called attention to anatomy as the basis of rape." Both claims, made in passing, are apparently based entirely on the brief passages at the end of the first chapter of the book, or on the reception of those brief passages by reviewers. For a more detailed defense of Brownmiller against the charge, see my "She said, she said," in the *Rad Geek People's Daily* (March 3, 2004) <http://radgeek.com/gt/2004/03/03/she_said/>.

9 Those who make it as far as the last chapter of the book can find Brownmiller writing, just as clear as could be, that "[I]nsetion of the penis (a descriptive phrase less semantically loaded than penetration, I think) is *not in itself, despite what many men think, an act of male dominance*. The real reason for the law's everlasting confusion as to what constitutes an act of rape and what constitutes an act of mutual intercourse is *the underlying cultural assumption* that it is the natural masculine role to proceed aggressively toward the stated goal, while the natural feminine role is to 'resist' or 'submit.'" (384-385, emphasis added).

do the dirty work, the actual attentat, to other men, their superiors in class and station, the lasting benefits of their simple-minded evil have always accrued.

A world without rapists would be a world in which women moved freely without fear of men. That some men rape provides a sufficient threat to keep all women in a constant state of intimidation, forever conscious of the knowledge that the biological tool must be held in awe for it may turn into a weapon with sudden swiftness borne of harmful intent. Myrmidons to the cause of male dominance, police-blotter rapists have performed their duty well, so well in fact that the true meaning of their act has largely gone unnoticed. Rather than society's aberrants or spoilers of purity, men who commit rape have served in effect as front-line masculine shock troops, terrorist guerrillas in the longest sustained battle the world has ever known (208–209).

Brownmiller does not portray all men as rapists or biologically driven to rape; her theory *turns* on the structural effects that rapists' actions have for the status of men who *do not* rape. When she calls rape a conscious process of intimidation by which all men keep all women in a state of fear, she has to be understood as asserting not that all men rape, but rather that the *practice* of rape by *some* men functions to give all men positions of power over women. This corrected understanding may still be challenged. Many critics turn from the structural *effects* of rape to the *motives* of the rapist, suggesting that, since most rapists act on no such grandiose plans, but rather on concrete, personal desires (from whatever source), it makes no sense to claim that they act to uphold patriarchal control for men as a class. On the other end, critics frequently accuse Brownmiller of disregarding how far those "other men," and male-dominated public institutions, *condemn* rape (for example, by making and enforcing laws against it), thus, presumably, revealing rape, however common and devastating, as a *private* crime, disavowed by existing political authority, and committed by isolated men for reasons of their own.

Both responses treat Brownmiller as if she had proposed a sort of conspiracy theory to explain the pervasiveness of male violence¹⁰ – in which the anonymous shock troops who commit rape, and the more respectable men who gain structural power over women, all get together somehow and consciously collaborate in a shared plan to keep women down. Now, there is an *exegetical* failure here – such responses read into the text a claim that Brownmiller never makes. But more than that, there are *conceptual* failures: failures to see what Brownmiller is saying because they haven't yet got the lenses to see it. Misreadings can be dispatched one by one, but the *source* of them all cannot be addressed solely by ever-closer readings of the *ipsissima verba*. What's needed is an attempt at a more charitable reconstruction.

Contrary to canonical misunderstandings of feminist theories of male violence, I will argue that the central insights of radical feminist analysis can be illuminated by rereading them in light of a surprising source – specifically, by charitably reconstructing Brownmiller's Myrmidon theory as an unusual but recognizable application of the concept of "spontaneous order," as developed in the works of libertarian social theorists, and most notably the Austrian free-market economist Friedrich Hayek. Rearticulating Brownmiller's theory in Hayekian terms provides a surprising resource for the radical feminist critique of rape culture; it may also dialectically clarify and enrich the concept of "spontaneous order" in the process of applying it to the concrete problem.

¹⁰ Novak 1976, p. 90, for example, claims that Brownmiller views heterosexuality as a self-conscious "extortion racket"

III. Libertarian Social Theory and Spontaneous Order

But first, a pause to get some bearings on libertarian social theory.

Libertarian social theory centers on a radical demand for individual liberty, as against planning or coordination imposed by political authority – a demand based in fundamental concerns about the *means* by which social ends are attained, and the *terms* on which coordination and cooperation are achieved. *Mutual consent* and *mutual benefit* are seen as the most morally and politically desirable bases for social cooperation. Hence the defense of undirected, unlegislated free exchange as a space for positive human intercourse, individual creativity and social experimentation; hence also the critical attention to the *negative means* and *pretensions of authoritative knowledge* implicated in state hegemony and governmental control in social or economic life. Since appeals to social “order” are so often used to impose on liberty and mutual consent, libertarian concerns have inspired a large literature developing the concept of “spontaneous order” in the study of social institutions – a development now most closely associated with the work of Friedrich Hayek.

Spontaneous order theories spring from an observation that the vital underpinnings of social life include large-scale patterns of interaction – coordinating structures which seem to emerge without –indeed, *beyond the capacity of* – any intelligent designer or designers to construct or manipulate to particular ends. Examples include the emergence and ongoing evolution of human languages and writing systems, which, as Hayek remarks, “possess an order which nobody has deliberately designed and which we have to discover,” through a science of linguistics; or the spontaneous adoption of common media of exchange in barter economies. Hayek writes in “Kinds of Order in Society”¹¹ that these “spontaneous orders,” unlike orders resulting from conscious *organization* on a preconceived plan, are “orders of another kind which have not been designed by men [*sic*] but have resulted from the action of individuals without their intending to create such an order.” He later characterizes spontaneous order as a “polycentric order:” rather than “creating a concrete preconceived order by putting each individual on a task assigned by authority,” the free interplay of individuals’ spontaneous actions converges toward an orderly pattern, even without any one person or committee directing them, as “an adaptation to a multitude of circumstances which are known only to the individual members but not as a totality to any one of them.”

For Hayek, spontaneous order offered vital insights into the dispersed adjustments of price signals to relative scarcities in open markets, as well as the emergence and economic significance of commodity money. But the concept is most easily illustrated with an historical example – the development of the extensive network of amber roads and other early overland routes in Europe, which already crossed central Europe before recorded history, but were never deliberately laid out, engineered or maintained by any dedicated road builder.¹² Rather, travelers through untracked wilderness would simply cut their way through, removing barriers and clearing a path for their own use as they went along. Once cleared, the path would be overgrown only slowly;

11 Friedrich Hayek (1964), “Kinds of Order in Society,” in *New Individualist Review* Volume 3, Number 2 (Winter 1964).

12 Hayek, in *The Counter-Revolution of Science* (1952/1979), offers a similar, if less historically specific, example: “It is only in the very simplest instances that it can be shown briefly and without any technical apparatus how the independent actions of individuals will produce an order which is no part of their intentions; and in those instances the explanation is usually so obvious that we never stop to examine the type of argument which leads us to it. The way in which footpaths are formed in a wild broken country is such an instance. At first everyone will seek for himself what seems to him the best path. But the fact that such a path has been used once is likely to make it easier to traverse and therefore more likely to be used again; and thus gradually more and more clearly defined tracks arise and come to be used to the exclusion of other possible ways. Human movements through the region come to conform to a definite pattern which, although the result of deliberate decisions of many people, has yet not been consciously designed by anyone” (70-71).

later travelers, with no knowledge of their predecessors, would still find smoother ground and thinner, newer growth along the old route – far easier to clear than the rough ground and old growth off the trail. So the more a path was taken, the more attractive it became to future travelers, who in turn cleared and smoothed the path again, creating a feedback loop as paths evolved organically from overgrown backwoods trails to large, open thoroughfares. The evolutionary, undesigned formation of the roads meant that roads depended directly on common use for maintenance; they tended to be widest and clearest wherever the need for a thoroughfare was greatest, while roads left unused soon returned to wilderness. This was, in fact, how most roads were “built” and maintained throughout most of human history, until later expansionist governments (first Rome, then later European powers) began to engineer and maintain roads of their own, laid out strategically for moving armies of conquest and occupation, and constructed through tax levies and forced labor.

Although closely associated with pro-capitalist economists, there is no conceptual reason why spontaneous order theories need be limited to capitalistic economic agendas – or to narrowly economic topics at all.¹³ Spontaneous order concepts illuminate many social conventions and institutions. Hayek frequently mentions of language and writing systems; and he devotes close attention, in later works, to the evolution of customary principles at *common law* for resolving disputes peacefully, without blood-feuds or vendettas – principles which largely emerged from converging practices in many localized, semi-formal courts and folk moots, long before the creation of supreme courts, rigid jurisdictional boundaries, or written codices.¹⁴ Similar accounts appear in writing by 19th century anti-capitalist anarchists such as Pierre-Joseph Proudhon, and evolutionary biologists from Kropotkin to Stephen Jay Gould. Examples include coordination among European

13 Or even to human explananda. The development of the economic concept was itself directly influenced by progress in evolutionary explanations of biological complexity, and the science of self-organizing systems. Failures to see spontaneous order at work commonly lead to the same sorts of creationist fallacies in either field, whether in Paley’s Watchmaker God, or in the founder-hero myths (Lycurgus of Sparta, Numa of Rome, the Three Sovereigns and Five Emperors in China, etc.) that many societies have used to invent authoritative origins for language, writing, cities, civil law, textiles, or money. See the brief remarks in Hayek (1964), and more recently, and in much greater depth, Geoffrey Allan Plauché “On the Myth of the Founder-Legislator in Political Philosophy” (2006). For funsies, see also Stephen Jay Gould’s “The Creation Myths of Cooperstown,” in *Bully for Brontosaurus* (1991), discussed below, which compares the motivations behind the more or less mythical story about Abner Doubleday’s alleged invention of baseball to the intellectual impulses behind fundamentalist Creationism.

14 Feminist theorists have, of course, engaged in a long-standing critique of the common law’s treatment of women and sexual relationships – especially in the common-law doctrine of coverture and the treatment of “chastisement” (wife-beating) and marital rape. During the 19th century “first wave” of feminism, coverture was widely protested as an assault on women’s rights to property and their civil rights. During the 20th century “second wave,” feminist reform campaigns finally managed to eradicate spousal exemptions which made it legally impossible for husbands to be accused of raping their wives. The latter reform campaigns aimed to eliminate spousal exemptions written into codified (state) law, but those exemptions descended from earlier common-law doctrines that denied the possibility of spousal rape (whether because, as per Hale, the marriage vows were held to involve irrevocable consent to any and every demand for sex from a woman’s lawful husband; or because, as per Blackstone, the act of marriage made husband and wife “legally one person,” such that “The legal existence of the wife is suspended during marriage, or at least is incorporated and consolidated into that of the husband,” and a wife could not bring any action for injuries to her person or her property except with her husband’s concurrence and in his name as well as her own). For partial discussions, see chapter 2 of Brownmiller (1975), MacKinnon (1987) and MacKinnon (2007).

Hayek, along with other libertarian legal theorists such as John Hasnas (2008), argue that a polycentric, evolutionary common-law process tends to secure relatively rights-respecting, libertarian results, due to the advantage that libertarian legal doctrines have in averting legal conflict and enabling peaceful social cooperation (Hasnas 2004 would prefer the term “customary law” to “common law”). But generally it may be said that the polycentric selection process claimed to be at work, will only in fact be at work for those who are recognized as having *standing* to bring their conflicts and defend their interests before the court. Hence those who are held to have no standing, or only a second-class and partial, derivative or “covered” standing, to participate in polycentric legal processes – in particular, historically, women, children, and enslaved men – tend to find much less opportunity to press for results that respect *their* persons, property, or liberty, and find common-law doctrines much more likely to represent congealed social oppression rather than individual liberty. It is in fact only a peculiar minority perspective which allows male writers like Hayek to see “law as we [*sic*] know it as the chief protection of the freedom of the individual” (1973, 67); a *feme covert* whose legal existence had lately been incorporated and consolidated into that of her *baron* would have considerably more trouble finding how the old legal order differed from “an apparatus in which the individual is made to serve the ends of [her] rulers” (1973, 67).

railroads and the international network of post offices, which managed to provide reliable worldwide movement of people and parcels, across multiple political boundaries, even though there was never any one company, country, or united global postal or railroad authority to dictate standards to all the parties involved. In “The Creation Myths of Cooperstown,” the evolutionary biologist Stephen Jay Gould even discusses how the common rules of baseball (which, contrary to myth, were never invented in whole by any one man), evolved and spontaneously converged from the local rules for many different mid-19th century ball-and-stick games.¹⁵ What happened is simply that, without any directed effort to make it so, people voluntarily adjusted and converged, little by little, on standards and protocols that would allow them to work, live, or play together.

In Hayek’s hands, the concept of “spontaneous order” was employed not only as an *explanatory* alternative to the monocentric, imposed orders characteristic of government policy, but also an alternative *normative ideal*, which could not only better explain how we got many existing social goods, but also how future social goods might be better achieved without imposed programs or policies. Hayek, as a free-market economist, found the theory of spontaneous order especially important in the so-called “calculation debate,” and in reply to Marxist and Fabian worries about the “social anarchy of production.” Hayek invoked spontaneous order to argue that positive social order can emerge without conscious “social regulation,” and that production without centralized control need be neither blind, destructive, nor chaotic.¹⁶ Further, he argued that the decentralized process of accepting, rejecting and adjusting market prices and supplies under conditions of free exchange spontaneously elicited and communicated tremendously complex, localized or idiosyncratic, often tacit and unspoken knowledge about local economic conditions, dispersed among countless workers and consumers, so that ordinary individuals acting on the dispersed knowledge embodied in price signals could anticipate future needs and adjust to changing conditions beyond the capacity of even the most comprehensive

However, the fact that common-law produced these results does not, of course, indicate that monocentric legislation produced better results, or that campaigns to reform the situation through corrective legislation – rather than through changes within the polycentric framework of common-law – represented the best strategy for improving the situation. MacKinnon (2007) is concerned primarily with the development of government antidiscrimination laws which radical libertarians reject fundamentally. But it offers a radical feminist defense of struggles within a polycentric, common-law process, as preferable to campaigns for legislative intervention – a defense with intriguing parallels to Hayek’s later discussions of common-law and the law of legislation.

It may be asked whether concerted feminist struggle to alter the balance of customary practice within a polycentric legal system, so as to systematically alter or eliminate customary norms that ignore women’s rights or constrain women’s liberties, ought to count anymore as a development within a “spontaneous” legal order. After all, to the extent that such campaigns are successful, it will appear that they have succeeded in enacting specific, non-spontaneous designs for general legal norms, rather than allowing those general norms to evolve undesigned. (A parallel issue is raised by Timothy Sandefur (2009b) in his challenge to Hayek and to John Hasnas concerning rational action within putatively spontaneous orders.) But whether or not this counts as a non-spontaneous “intervention” will depend, in part, on whether “spontaneity” is intended to indicate an undesigned (or *emergent*) order, as defined below, or a *polycentric* order – a distinction that will be laid out, and will become central to the discussion, immediately below.

15 Gould 1991. Gould does not refer to Hayek’s or other economic formulations of spontaneous order theory; he approaches the topic by means of an analogy with biological evolution. But the overlap in explanatory frameworks is not accidental. Hayek’s father and paternal grandfather were both trained biologists, and Hayek later explained that his interest in spontaneous order was profoundly influenced by his early reading in evolutionary biology. See the first chapter of Alan Ebenstein’s *Hayek’s Journey* (2003).

16 In contrast to the view advanced by, for example, Friedrich Engels (1880): “Active social forces work exactly like natural forces: blindly, forcibly, destructively, so long as we do not understand, and reckon with, them. But when once we understand them, when once we grasp their action, their direction, their effects, it depends only upon ourselves to subject them more and more to our own will, and, by means of them, to reach our own ends. And this holds quite especially of the mighty productive forces of today. As long as we obstinately refuse to understand the nature and the character of these social means of action – and this understanding goes against the grain of the capitalist mode of production, and its defenders – so long these forces are at work in spite of us, in opposition to us, so long as they master us, as we have shown above in detail. But when once their nature is understood, they can, in the hand working together, be transformed from master demons into willing servants. ... With this recognition, at last, of the real nature of the productive forces of today, the social anarchy of production gives place to a social regulation of production upon a definite plan, according to the needs of the community and of each individual.” (“Socialism: Utopian and Scientific,” Part III)

aggregate statistics and best-intentioned central regulator or planner.¹⁷ The popular example with all the hip kids these days is not so much the calculation debate, but rather the explosive growth and refinement of Wikipedia, a project partly inspired by Hayek's remarks on dispersed local knowledge in "The Uses of Knowledge in Society,"¹⁸ which has become the world's largest encyclopedia in less than 10 years, even though – or *precisely because* – its development is the "social anarchy" of contributions and decentralized initiative from millions of volunteer reader/editors, without prior invitation, screening or direction by any central point of authority.

IV. Three Versions of Spontaneity

There are, however, two important and interrelated points that I'd like to make about the notion of "spontaneous order" — points which may reveal something interesting, both about the notion, and also about Brownmiller's Myrmidon theory. Both points are easily missed in extant writing about spontaneous order, in part because of the normative work that spontaneous order does in libertarian arguments for freeing economic exchange from government control. Whatever value that normative work may have, it's important to recognize that, as systems of interpersonal coordination, market exchange and government intervention differ from each other along more than one dimension. Perhaps because these dimensions are so often linked with each other, the notion of "spontaneous order," as employed in libertarian writing, is, I would argue, systematically ambiguous, and embodies at least *three* different sorts of distinctions, depending on the precise sense of the critical term "spontaneous."¹⁹ "Spontaneous order" can be used to mean a macro-scale pattern of social coordination which is:

- *Consensual* rather than *coercive* (when "spontaneous" means *uncoerced*);
- *Polycentric* or *participatory* rather than *directive* (when "spontaneous" means *unprompted*); or
- *Emergent* rather than *consciously designed* (when "spontaneous" means *unplanned*).

When "spontaneous order" means *consensual* rather than *coercive* order, coordination is achieved through the free actions and agreements among many different people. Order will be spontaneous in this sense where it is achieved without recourse to the use of legal or "private" force; or coercive where at least some of the people participating in them would prefer not to, but are compelled by an overwhelming exercise of physical or legal power. A common economic example of spontaneous order is the emergence of money from barter economies. This need not take place in Bronze Age settings: when cigarettes emerge as a *de facto* currency in prisons, it's not because any central authority forces prisoners to accept cigarettes as payment for

17 For Hayek, where entrepreneurial experimentation was allowed, and where risk was borne by those who chose to accept it, rather than imposed on taxpayers through government, the price system provided a kind of constantly self-correcting information-discovery and information-dissemination system, which was constantly getting things wrong, but which provided internal mechanisms for correcting errors and equilibrating itself *toward* the right results; as contrasted with the bread lines, hypertrophic heavy industry, and constant shortages and gluts typical in government-planned economies.

18 See, for example, "Wales on Wikipedia," Russ Robert's interview with Jimmy Wales for *EconTalk* (March 9, 2009). <http://www.econtalk.org/archives/2009/03/wales_on_wikipie.html>

19 I use the term "at least" advisedly: there are many other characteristics associated with the spontaneous/constructed distinction which are too far beyond the scope of this paper to consider – among them distinctions between tacit and explicit norms, experimental and comprehensive or definitive approaches to policy, pluralistic and uniform selections, evolving and fixed solutions, orders based on selection on the margin and orders based on refactoring or ground-up design, immanent and transcendent forms of social critique, "endogenous" or self-organizing forms of order and "exogenous" or imposed forms, et cetera.

all debts public and private; it's because enough people will willingly trade for a smoke that even non-smokers quickly find it worth their while to gather cigarettes, not for personal consumption, but on the expectation that they could easily make a later exchange with some third party who does smoke, to get things they *can* use.

When “spontaneous order” means *participatory*, rather than directive order, coordination comes about through the converging micro-actions of many players acting *independently*, rather than *deferring* to designated supervisors or authoritative decision-makers or relying on external plans or instructions. In directive orders, coordination happens vertically as players act on the bidding of a recognized final authority, who takes responsibility for assigning, vetting, or integrating their many micro-scale courses of action. In participatory orders, by contrast, there is no recognized final authority; it's up to individual actors to coordinate horizontally with other participants, to determine which courses to pursue in order to achieve their goals, and so on. Consider the contrast between the *directive* system of top-down editorial vetting in Encyclopedia Britannica, and the wide-open system of self-correction in Wikipedia, which is indeed guided by explicit community norms, such as Neutral Point of View²⁰ or Citation Needed,²¹ but leaves it almost entirely up to the attention and initiative of an Internet-sized pool of potential reader/editors to interpret and implement these norms by revising or correcting existing articles, and which relies on the convergent consensus produced by the back-and-forth between multiple reader/editors, with anyone free to join the fray at any given time, to handle the questions of vetting and policy.

When “spontaneous order” means “emergent order,” contrasted with conscious design, forms of social coordination emerge from the actions of many different people, acting on motives separate from any conscious desire to effect that form of social coordination. Intentional orders effect social coordination through people acting for the sake of a shared purpose, whatever it may be; in undesigned orders, participants may know nothing about the macro-pattern emerging from their interlocking micro-scale actions; or they may be aware of it, but consider it only a *side effect* – even if a pleasant one – of pursuing a distinct private purpose. A path-breaker is not *mainly* out to help future fellow travelers, or to lay groundwork for a future highway; she's out to remove obstacles that block her way from point A to point B. If it helps others later on, that collateral effect is just gravy.²²

20 “Wikipedia:Neutral point of view” (WP:NPOV, <https://en.wikipedia.org/wiki/Wikipedia:Neutral_point_of_view>): “Neutral point of view (NPOV) is a fundamental principle of Wikipedia and of other Wikimedia projects. All Wikipedia articles and other encyclopedic content must be written from a neutral point of view. This means representing fairly, without bias, all *significant* views that have been published by reliable sources [WP:RS]. This is non-negotiable and expected of all articles and all editors.” The NPOV policy was formulated within months of the launch of Wikipedia, and based on similar policies in predecessor projects. Like most Wikipedia community policies, the rule was initially proposed in a simple form with a great deal of room for interpretation; over the course of a decade, Wikipedians have repeatedly found points of interpretation, dispute, debate, and the community consensus that slowly emerged from the efforts to resolve those debates has produced a tremendous amount of elaboration on, and interpretation of, the practical applications of WP:NPOV. Originally six paragraphs written personally by Jimmy Wales (including examples), WP:NPOV is now 16 pages long, with an 11 page tutorial and a 9 page FAQ, virtually all of it written, rewritten, and refined by Wikipedia contributors based on common experience and community consensus.

21 “Wikipedia:Verifiability” (WP:V, <<http://en.wikipedia.org/wiki/Wikipedia:Verifiability>>): “The threshold for inclusion in Wikipedia is verifiability, not truth—whether readers can check that material in Wikipedia has already been published by a reliable source, not whether editors think it is true. All material in Wikipedia articles must be attributable to a reliable published source to show that it is not original research [WP:NOR], but in practice not everything need actually be attributed. This policy requires that all quotations and any material challenged or likely to be challenged be attributed to a reliable, published source in the form of an inline citation, and that the source directly support the material in question.” WP:V is the norm behind the marking of claims with “[citation needed]” in Wikipedia articles.

22 While I have presented each of these dimensions of spontaneity and non-spontaneity as a simple dichotomy, the distinction between participatory and directive orders, and that between emergent and intentional orders, is really a matter of degree. Participants can exercise greater or lesser degrees of autonomy in selecting and vetting their courses of action; the gap between micro-scale intentions and the macro-scale pattern that results may be more or less wide of a gap.

It's important to see these distinctions as interrelated but analytically distinct; they tend to coincide in fact often enough that they might be mistaken for being indistinguishable in concept. When libertarians contrast political methods of allocation with open networks of free mutual exchanges, they are contrasting orders that differ along all of our three dimensions: political allocation is *coordinated by requirements from a designated authority, legally enforced, and consciously designed* to achieve a predetermined set of policy goals; whereas networks of mutually consensual exchange produce organic structures which are *participatory* (without a fixed center of authority), arise from *consensual* agreements, and develop an *emergent* structure none of the trading partners consciously set out to create. The question, then, is which of these differences we should treat as *definitive* of spontaneous order. Hayek himself was fairly consistent when he attempted *formal definitions* of “spontaneous order” — as above, he defined it in terms of *emergent* coordination, with a noticeable gap between micro-intentions and macro-patterns. But Hayek's *characterizations* of spontaneous orders also constantly identified them with “polycentric” or participatory orders;²³ and his *application* of the concept in discussing free-market processes closely linked it with cases where the *consensuality* of transactions was at least as important as their emergent properties or participatory context. In any case, both later Hayekian scholars and popular writing have repeatedly used “spontaneous order” indifferently to refer to orders that are “spontaneous” in any of our three senses or all of 'em; or have equivocated between different senses of “spontaneous” from one statement to the next.²⁴ Wikipedia, to return to one of our popular examples, is a clear

23 Hayek (1964) ¶ 8 describes them as orders which are “not made by anybody.” *Ibid.* ¶ 9 explicitly characterizes such orders as “polycentric,” placing the term in quotes apparently because he is taking it from Polanyi. Hayek (1973) tells us that “The spontaneous order which we call a society also need not have such sharp boundaries as an organization will usually possess. There will often be a nucleus, or several nuclei, of more closely related individuals occupying a central position in a more loosely connected but more extensive order” (47, emphasis added).

24 For example, in a recent exchange in the online journal *Cato Unbound*, Timothy Sandefur raised some rather different, and to my mind mostly ill-founded, concerns about the analytical rigor of “spontaneous order” theories; the Hayekian legal philosopher John Hasnas, in the course of his (largely successful) reply, stated “I would have thought the principled distinction between constructed and spontaneous orders was patent,” and then went on to offer three different characterizations of it within two adjacent paragraphs, apparently treating all of these characterizations as more or less equivalent. Hasnas uses “spontaneous order” as equivalent to “polycentric order” when he writes that “[C]onstructed orders have a designated final decision maker ... A spontaneous order has no such centralized, collective decision maker.” (“Four Solutions to Sandefur's Problems” ¶ 5). Immediately afterwards, he writes that “spontaneous orders are systems of individual choice,” (*Ibid.*) and that “Spontaneous orders are evolving systems. What makes the state the state is its power to stop evolution” (*Ibid.*), apparently referring to the coercive power of the state, and thus (if that is indeed what was intended), characterizing the spontaneous/constructed distinction in terms of the distinction between *consensual* and *coercive* orders. In the next paragraph, Hasnas characterizes the spontaneous/constructed distinction as straightforwardly equivalent to the emergent/consciously designed distinction, invoking a slogan that Hayek inherited from Adam Ferguson, that “Spontaneous orders are the product of human action but not human design; constructed orders are the product of human design” (¶ 6).

Similarly, the political philosopher Anthony de Jasay discusses “spontaneous order” in his chapter on Hayek in *Against Politics* (1997); at the beginning of the chapter, he passingly characterizes “spontaneous orders” as *emergent* orders, “an unintended result of human actions directed at other purposes” (121-122), when distinguishing them from the results of conscious political activism. But later in the same chapter he directly equates spontaneous orders with *consensual* orders in order to argue that they have a “prima facie moral standing” which constructed (read, “coercive”) orders lack:

The attraction of spontaneity is both moral and prudential. Though it is not clear whether Hayek saw more than instrumental value in it, he stressed that the elements in a spontaneous order “arrange themselves” rather than being arranged by “unified direction” (1960, p. 160). When the elements are human beings, their property and their choices, *nobody's dispositions are imposed on him by another's command. Everybody chooses for himself [sic] what seems to him [sic] the best, given that everybody else chooses likewise.* All choices are interdependent, and made mutually compatible by property rights and their *voluntary exchanges. None dominates and none is subordinated.* This lends the order in question a moral laissez passer, while nonspontaneous orders, constructed by *imposing some alternative on the participants by authority or the threat of force,* are morally handicapped by their *coercive* element. If they are to pass for legitimate, they need to show some compensating merit. Spontaneous social orders, in other words, have a prima facie moral standing. Constructed orders must first earn it, or do without. (125-126, emphasis added)

In the following paragraph, de Jasay argues for the “prudential attraction” of spontaneous orders by referring to Hayek's knowledge problem for constructed orders—to the ability of *polycentric* and *emergent* orders to gather “irretrievably dispersed or latent” knowledge, and so surpass the epistemic limitations of planners, which inevitably hobble the ability to scale up *directive* and *consciously-designed* orders:

example of a consensual and participatory order – nobody’s forced to contribute; the editing process is wide open to anyone who wants to jump in without waiting for instructions – but not a strong example of an *emergent* order; typically, people edit Wikipedia, at least in part, with the intention of *improving the breadth and accuracy of information on Wikipedia* – that is, the macro-scale success of Wikipedia is a consciously-adopted part of the micro-level intention.

The second point to be made about the notion of spontaneous order is related. Because the paradigms for applying the concept have generally been cases where an order is participatory or unplanned, and is also consensual, what libertarians have tended to see in spontaneous order is almost always a macro-scale pattern that is freely chosen and where all involved find some mutual *benefit* from the proceedings. You don’t need top-down command and control to get many important things that libertarians like to use – language, money, Wikipedia.... So, in libertarian vocabulary “spontaneous order” is almost always employed to praise *benign* orders, especially benign orders that spontaneously accomplish something that government planners cannot do as well, or at all. It is interesting and important that bottom-up forms of social cooperation can so often produce unplanned large-scale social outcomes better than could be managed through comprehensive, consciously designed political schemes for social coordination. But nothing *conceptually* requires that emergent orders need be *benign* orders. If widely distributed forms of intelligence, knowledge, virtue, or prudence can add up, through many individual self-concerned actions, into a benign undesigned orders, there’s no reason why widely distributed forms of ignorance, prejudice, folly or vice might not add up into unintended, malign orders. So might widely-distributed, micro-level practices of *violence*; since libertarians are centrally concerned with individual freedom from violence and coercion, the possibility our threefold distinction raises of an *emergent but nonconsensual* order must surely give us pause.

V. The Invisible Fist

In this light, I would like to attempt to charitably reconstruct Brownmiller’s Myrmidon theory, in terms of our enriched, and properly distinguished, concepts of spontaneous order. As I understand Brownmiller, her hypothesis that stranger-rapists serve a Myrmidon function for male supremacy, with benefits that redound not only to practicing rapists but to all men, is best understood as arguing that the pervasive fact of rape, and the *threat* that its pervasiveness inflicts on *all* women, produces a spontaneous (emergent) but coercive order, in which nonconsensual micro-scale actions inflicted by unrelated, anonymous stranger rapists, end up reinforcing a macro-scale pattern of male dominance over women, and the cultural and institutional superstructure of patriarchy.

The prudential attraction of spontaneous orders springs from the belief, strongly held by Hayek and fairly well supported by historical evidence, that since the knowledge required for successfully designing a complex order is either irretrievably dispersed or latent or both, the constructed order runs a high risk of being inefficient if not grossly counterproductive. (126)

These two paragraphs are followed by several pages of agonizing over the apparent difficulty that Hayek’s understanding of his own arguments about the prudential attraction of spontaneous order seem to depend on the deliberate enforcement of rules by an authoritative agency, but makes no clear distinction between (1) the fact that the “enforced enforcement” mechanism he worries about is *coercive* (i.e., based on punitive force, rather than “voluntary conventions” like “ostracism,” and supported through tax mandates, rather than through voluntary support for the sanction), and (2) the fact that it is *directive* (i.e., not implemented, unprompted, through *participatory* social sanctions, but rather through authoritative orders and “exogenous sanctions” from an “ultimate, sovereign enforcer”). Although each of these arguments depends on a distinct sense of “spontaneity,” de Jasay uses the term “spontaneous order” throughout, without noticing that each argument turns on a distinct and conceptually separable characteristic, and that social orders may be “spontaneous” in any of these senses, with or without being “spontaneous” in the others.

It's hardly news that the threat of rape constrains women's range of free action, through felt danger and explicit warnings: don't walk alone; not after dark; avoid male-dominated social scenes. Paternalistic double-binds often narrow the range to a vanishing point: don't leave late-night events without a man to walk you back; don't leave *with* a man, unless you plan to invite him in – or you'll "give him the wrong idea," and who knows what could happen then?²⁵ These restrictions on women's everyday lives, their use and exploration of public space, what they feel they can safely do or say, especially in the presence of men, simply mean that women's freedom is systematically constrained by the fear of men, as a ripple-effect of the danger of widespread, intense, random male violence, and the practical need to solicit the aid of some seemingly safe man for protection against the threat other men create. Thus, as Brownmiller writes, "A world without rapists would be a world in which women moved freely without fear of men," but here, in this world, "That some men rape provides a sufficient threat to keep all women in a constant state of intimidation." Note, in passing, that just as Hayek writes that in spontaneous orders, much of the structure of social life is determined by rules that are understood through tacit understanding and know-how, rather than conscious application of explicit general principles,²⁶ it's important to remember that, in Brownmiller's discussion, while some of the "intimidation" she describes is expressed in self-conscious adjustment to felt dangers and explicit warnings, a lot of it is tacitly inscribed in everyday relationships, or simply incorporated into an intensification of the sort of small-scale, subconscious acts of vigilance and self-protection that we all carry out, as a daily routine, or as an expression of felt anxiety.

Meanwhile, *men* who *don't* rape, and who sincerely care about the safety of individual women, find themselves in a material and emotional position where they easily see themselves as needing to *protect* the women they care about from the threat of male violence, and where women, reasonably responding to that threat, often need to solicit their aid. The desire to protect others from violence is, in itself, a personal virtue, not a social problem. But the danger is how tempting and easy – and how corrupting – it is for men to take the psychological step of going from human solidarity to a fantasy of male rescue, coming to see themselves as *defined* by their identity as a Protector *in contrast to* frail womanhood, and coming to see women as uniquely dependent by nature – rather than uniquely threatened due to the chosen actions of other men. And to go even further, to try to make sure that women seek and depend on and stay within the scope of a man's "protection," whether or not they really want it – by using intimidating and restrictive warnings, by harassing women – blamed as foolish or wanton – who step outside the dependence of that "protection" or the stiflingly close boundaries of those "safety tips." That kind of imposed dependence and that kind of power can just as easily become corrosive, oppressive and exploitative in women and men as any other form of structural dependence and power can.²⁷

25 Women often feel constrained to persuade men to help them just in getting home at the end of the night; and the constant warnings and real risks make the danger of the night intense enough that women often feel unsafe just in leaving a man's car, or his place, late at night, no matter how much they may just want to go home alone. Of course, the man in question may have nothing to do with that; he may not have ever thought about it, or he may deplore the fact. But nevertheless, the actions of the anonymous rapist have made his place a *de facto* jail cell – and made him its warden.

26 "Man [*sic*] does not know most of the rules on which he [*sic*] acts In animal societies and in a great measure in primitive human society, the structure of social life is determined by rules of action which manifest themselves only in their being obeyed. ... Though man [*sic*] never existed without laws which he obeyed, he [*sic*] did exist for millennia without laws which he knew in the sense that he was able to articulate them" (Hayek 1964). Hayek stresses throughout his work that this reliance on considerable stores of tacit knowledge is modified in its scope, but remains of central importance – indeed, becomes even *more* important to successful functioning, in highly-specialized, complex, and modernizing societies.

All of this can happen quite naturally when a large enough “swarm” of anonymous men choose to commit widespread, intense, random acts of violence against women. And it can happen quite naturally without the male rapists, or the male protectors, or the women in the society ever intending to bring about any particular macro-scale social outcome. Brownmiller seems to indicate that she sees this outcome is a malign *emergent* order, hardly deliberate conspiracy, in her remark that “police-blotter rapists have performed their duty ... so well ... that the true meaning of their act has largely gone unnoticed.” But what *does* happen, nevertheless, is that women’s social being — how women appear and act, as women, in public — will be *systematically* and *profoundly* circumscribed, and the amount of time and effort they need to spend keeping supposedly “protective” men pleased and willing to help will be increased; while men’s everyday material leverage over women will be reinforced, and their psychosocial identities *as men* systematically channeled into more patriarchal expressions — with the familiar outlines of a *rape culture* emerging spontaneously from the diffuse, decentralized threat of violence, and the natural but unintended consequences of many small, self-interested actions carried out by women and men reacting to the unequal positions that that threat constructs.

I’ve talked about stranger rape all this time because that’s Brownmiller’s topic, and Brownmiller’s theory is a good case study in the point I’m trying to make. But similar remarks, with different but related consequences, could be made for other forms of violence directed against women — harassment in public spaces, or battery and sexual assault in intimate relationships — which Brownmiller’s theory does not encompass. In fact, I think that what feminist researchers have learned about rape in the years since the publication of Brownmiller’s book — in particular, the fact that the overwhelming majority of rape is actually committed by intimates and acquaintances, not by strangers — calls for some significant revisions to her theory about stranger rape,²⁸ although what will remain after the revision is still a feminist theory importantly akin to Brownmiller’s. But whether her theory is true, or something else in the neighborhood is, the different roles that different forms of violence play in shaping the violent undesigned order of a rape culture is best understood when they are seen as different expressions of the same underlying phenomenon.

VI. Crises and Opportunities

Because of the central role that the pervasive violence against women plays in sustaining patriarchy, and the way in which that pervasive, diffuse threat of violence constrains the liberty of women in everyday life

27 Libertarians and anarchists who easily see this dynamic when it comes to government police and military protection of a disarmed populace, shouldn’t have any trouble seeing it, if they are willing to see it, when it comes to male protection of women.

28 *Against Our Will* was written from 1971-1975. While feminist speak-outs on rape, and sharing of women’s experiences in consciousness-raising groups, had begun to reveal that many women had been raped not by strangers, but by husbands, boyfriends, dates, and acquaintances, the full *extent* of this discovery would not become clear until the groundbreaking work of feminist researchers on “hidden rape” during the 1980s (most famously Koss 1987). Hence, Brownmiller discusses marital rape (380-382) and acquaintance rape (400) toward the end of the book, as areas where feminist scrutiny is beginning to reveal a problem which had heretofore been concealed or left unspoken. But she does not — and in 1975, she could not yet — give either topic the chapter-length treatment that she devotes to topics such as rape as a weapon of war, rape within institutions, or “police-blotter” stranger-rape. In 1975, Brownmiller could write that “We know, or at least the statistics tell us, that no more than half of all reported rapes are the work of strangers, and in the hidden statistics, those four out of five rapes that go unreported, the percent committed by total strangers is probably lower.” By 1987, Mary Koss’s investigation into the “hidden statistics” had revised “no more than half” downward to *less than 15%*.

In order to account for the discovery that the *overwhelming majority* of sexual violence committed against women is committed by men who know them, and profess to love them, within intimate and allegedly “protective” relationships, had a profound effect on feminist writing on sexuality and violence during the 1980s and later, when radical feminist theories began to incorporate this new information, and this changed perspective on male “protectors,” into their analysis; see, for examples, Andrea Dworkin’s *Right-Wing Women* (1983) and *Intercourse* (1987), or “Sex and Violence: A Perspective” in MacKinnon (1987), et cetera.

to move and act and live as they want, libertarians and radicals alike must recognize patriarchy as a system of violent political oppression older, no less invasive, and no less powerful, than the violence of the militarist/police state. But unlike the kinds of State violence male radicals are accustomed to discuss — repressive restrictions promulgated as explicit policies, ratified through political processes, and consciously carried out by official agents of the State — patriarchy expresses itself in attitudes, behaviors, and coercive restrictions that are distributed among us all, and shaped by bottom-up, decentralized forms of violence, committed independently by countless unrelated men, freelance terrorists who commit violence, out of a desire for personal domination and control but without any unified social plan, without conscious collaboration or conspiracy, sometimes in conflict with the explicit provisions of the law (though rarely investigated and ineffectively prosecuted in the male-dominated legal system). This is part of what I take Catharine MacKinnon to mean when she writes that:

“Unlike the ways in which men systematically enslave, violate, dehumanize, and exterminate other men, expressing political inequalities among men, men’s forms of dominance over women have been accomplished socially as well as economically, prior to the operation of the law, without express state acts, often in intimate contexts, as everyday life.” (Catharine MacKinnon, *Toward a Feminist Theory of the State*, 161.)

It’s essential for libertarians to recognize that the coercive social order that arises from this kind of diffuse gender violence, its direct consequences and social ripple effects— is no less real, or important, or *political* an evil for being undesigned, for battering women into the social position they currently occupy as if by an invisible fist. The insights of libertarian theory are genuine, but to apply them for all human beings, they must be *radicalized*, and applied everywhere that systemic coercion limits freedom. That includes invasions on liberty by the State; it also includes radically different forms of invasive violence, coordinated through wholly different means, and calling for different sorts of response.

A carefully articulated and radicalized conception of spontaneous order presents both crisis and opportunity for radical feminists, as well. The analysis of rape culture as a malign form of (nonconsensual) spontaneous order might tempt feminists to suspicion of spontaneous order just as such—and of anything like libertarianism, which proposes to transfer vast spaces of social life from government control to spontaneous orders within civil society. But if the distinctions I have traced helped illuminate the radical feminist understanding of rape culture, I believe that they can also help illuminate the radical impulse behind existing feminist *resistance*. A *systematic* and *comprehensive* response to oppression need not entail a *governmental* response: spontaneity is not chaos, and resistance can be systematic and comprehensive while remaining decentralized and bottom-up. Grassroots women’s movements to counter diffuse male violence formed outside, or *beyond*, the sphere of government and conventional political lobbying – c.r. groups, speak-outs, dispersed networks of women’s shelters, rape crisis centers, and other feminist spaces –originally with little or no connection to hierarchical power-politics or the male-dominated State. All could productively be understood as *voluntarily-coordinated*, *polycentric*, but *consciously organized* political resistance to a *polycentric*, *emergent*, *coercive* order of violent oppression.

Abandoning government solutions to oppressive political systems like patriarchal violence hardly means trusting that anonymous “civil society” will come up with a solution, somehow. Spontaneous order and civil society, on a properly rich and well-delineated conception of both, can be a space for hard-driving,

conscious grassroots activism at least as much as conventional governmental politics can; and spontaneous order theory, while helping articulate the workings of oppression, can also contribute to more clearly understanding the unique forms of solidarity and resistance that radical feminists have employed, and which have often, over the past 40 years, done a much more effective job at changing social attitudes towards violence against women, and at providing life-saving help to women who need it, than any comparable government program. When feminists challenge the dichotomy of pervasive “private” crimes from “public” policy, and insist that the personal is political, antifeminist critics often react to this move by treating it as an attempt to extend our existing concept of politics out to new cases, which we had formerly classified as “personal” — in particular, as an attempt to interpret “private” violence as parts of a consciously-coordinated social policy, aimed at some defined common end and directed towards that end by policies handed down from The Patriarchy as some recognizable central authority, or coordinating body. But the aim in declaring the personal to be political is not simply to extend preexisting conventional notions of political coordination to new cases heretofore considered private; rather, it is to *challenge* the conventional understanding of politics, and to call for a more supple understanding, in order to encompass other kinds of social structures and power relations revealed in women’s experience, which involve “private” interactions without conscious coordination, or recognizable centers of authority, or explicitly promulgated policies, but which nevertheless share the coercive, pervasive, systematic and far-reaching characteristics of more conventionally “political” social structures. If, as I argue, spontaneous order theory can provide a rich conceptual resource for articulating this new conception of political order and political resistance, then a fuller development and application of spontaneous order theories, to an agenda set by the needs of women’s freedom as well as men’s, may help highlight possibilities for more effective radical activism than male-dominated state politics could ever allow for. Far from a tool of political quietism or conservative defenses of the socioeconomic status quo, the concept of “spontaneous order” can and should be claimed as a vital tool for transformative social critique.



References

- Baxandall, Rosalyn and Linda Gordon (2000, June 3). “Second-Wave Soundings,” in *The Nation*. <<http://www.thenation.com/article/second-wave-soundings>>
- De Jasay, Anthony (1997). *Against Politics: On Government, Anarchy and Order*. New York: Routledge.
- Dworkin, Andrea (1983). *Right-Wing Women: The Politics of Domesticated Females*. New York: Perigee Books.
- Dworkin, Andrew (1987). *Intercourse*. New York: Free Press.
- Ebenstein, Allan (2003). *Hayek’s Journey: The Mind of Friedrich Hayek*. New York: Palgrave Macmillan.
- Engels, Friedrich (1880). “Historical Materialism,” in *Socialism: Utopian and Scientific*. <<http://www.marxists.org/archive/marx/works/1880/soc-utop/ch03.htm>>
- Gould, Stephen Jay (1991). “The Creation Myths of Cooperstown,” in *Bully for Brontosaurus*. New York: W. W. Norton. 42-58.
- Hanisch, Carol (1969). “The Personal is Political,” in *Redstockings (1975/1978)*. 204-205.
- Hanisch, Carol (2006). “Introduction to ‘The Personal is Political’”. Online. <<http://www.carolhanisch.org/CHwritings/PIP.html>>.
- Hasnas, John (2004). “Hayek, the Common Law, and Fluid Drive,” in the *New York University Journal of Law & Liberty*, Vol. 1. 79.
- Hasnas, John (2008). “The Obviousness of Anarchy,” in *Anarchism/Minarchism: Is Government Part of a Free Country?* Ed. Roderick T. Long and Tibor R. Machan. Burlington, VT: Ashgate. 111-132.
- Hasnas, John (2009). “Four Solutions to Sandefur’s Problems,” in *Cato Unbound* (December 2009). <<http://www.cato-unbound.org/2009/12/09/john-hasnas/four-solutions-to-sandefurs-problems/>>
- Hayek, Friedrich A. (1952/1979). *The Counter-Revolution of Science*. 2nd ed. Indianapolis: LibertyPress.

- Hayek, Friedrich A. (1960/1978). *The Constitution of Liberty*. Chicago: University of Chicago Press.
- Hayek, Friedrich A. (1964). "Kinds of Order in Society," in *New Individualist Review* Volume 3, Number 2 (Winter 1964).
- Hayek, Friedrich A. (1973). *Law, Legislation and Liberty Vol. I: Rules and Order*. Chicago: University of Chicago Press.
- Jefferson, Tony (2005/2009). "Crime," in *A Companion to Gender Studies*. Ed. Philomena Essed, David Theo Goldberg, and Audrey Kobayashi. Malden, MA: Wiley-Blackwell. 212-238.
- Johnson, Charles W. (2004, March 3). "She said, she said," in *Rad Geek People's Daily*. Web log post. <http://radgeek.com/gt/2004/03/03/she_said/>.
- Koss, Mary P. (1988). "Hidden Rape: Sexual Aggression and Victimization in a National Sample in Higher Education," in A. W. Burgess (ed.), *Rape and Sexual Assault II*. New York: Garland. 3-25.
- MacKinnon, Catharine A. (1987). *Feminism Unmodified: Discourses on Life and Law*. USA: Harvard University Press.
- MacKinnon, Catharine A. (1989). *Toward a Feminist Theory of the State*. USA: Harvard University Press.
- MacKinnon, Catharine A. (2007). "The Logic of Experience: The Development of Sexual Harassment Law," in *Women's Lives, Men's Laws*.
- McElroy, Wendy (2001). "The New Mythology of Rape," in iFeminists.com (June 26, 2001). Online. <<http://www.ifeminists.net/introduction/editorials/2001/0626.html>>.
- Novak, Michael (1976). "A Radical Feminist," review of *Against Our Will: Men, Women & Rape* by Susan Brownmiller. *Commentary* (February 1976). 90.
- Plauché, Geoffrey Allan (2006, December 29). "On the Myth of the Founder-Legislator in Political Philosophy," presented to the Molinari Society at the American Philosophical Association Eastern Division Meeting, December 2006. <<http://www.veritasnoctis.net/docs/foundermyth.pdf>>
- Redstockings (1975/1978). *Feminist Revolution: An Abridged Edition with Additional Writings*. Ed. Kathie Sarachild. New York: Random House.
- Roberts, Russ and Jimmy Wales (2009, March 9). "Wales on Wikipedia," for *EconTalk* [Audio podcast]. <http://www.econtalk.org/archives/2009/03/wales_on_wikiped.html>
- Sandefur, Timothy (2009a). "Four Problems with Spontaneous Order," in *Cato Unbound* (December 2009). <<http://www.cato-unbound.org/2009/12/07/timothy-sandefur/four-problems-with-spontaneous-order/>>
- Sandefur, Timothy (2009b). "Unmade, Amoral Orders Composed of Made, Moral Orders? A Response to John Hasnas," in *Cato Unbound* (December 2009). <<http://www.cato-unbound.org/2009/12/15/timothy-sandefur/unmade-amoral-orders-composed-of-made-moral-orders-a-response-to-john-hasnas/>>
- Tjaden, Patricia and Nancy Thoennes (2000). *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*. Washington, DC: National Institute of Justice. NCJ 183781. <<http://www.ojp.usdoj.gov/nij/pubs-sum/183781.htm>>
- "Wikipedia: Neutral Point of View" (WP:NPOV). Online. <http://en.wikipedia.org/wiki/Wikipedia:Neutral_point_of_view>
- "Wikipedia: Verifiability" (WP:V). Online. <<http://en.wikipedia.org/wiki/Wikipedia:Verifiability>>