

Women and the Invisible Fist

How Violence Against Women Enforces the Unwritten Law of Patriarchy

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“For the *Common Law of England* is nothing else but the *Common Custome* of the Realm: and a Custome which hath obtained the force of a Law is always said to be *Jus non scriptum*; for it cannot be made or created either by Charter, or by Parliament, which are Acts reduced to writing, and are alwaies matter of Record; but being onely matter of fact, and consisting in use and practice, it can be recorded and registered nowhere but in the memory of the people... and so by often iteration and multiplication of the Act, it becomes a *Custome*; and being continued without interruption time out of mind, it obtaineth the force of a *Law*.” (John Davies, *Irish Reports*)

“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. Myrmidons and Misinterpretations.

Toward the end of the first chapter of *Against Our Will*, her groundbreaking study of rape as a political force, Susan Brownmiller infamously writes:

From prehistoric times to the present ... 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.ⁱ

Like many radical feminist accounts of sexual violence, Brownmiller's argument has been both influential and intensely controversial, attracting not only criticism but accusations of paranoia if not insanity. Critics have denounced Brownmiller for slandering all men as rapists;ⁱⁱ or for advancing an essentialist theory about rape, her remarks about "Man's structural capacity to rape" being taken not to express bare possibilities, but deep, perhaps inevitable facts about the biology of the human male.ⁱⁱⁱ But neither reading is easy to reconcile with any reading of the text that gets *beyond* page 15.^{iv} In particular, consider the "Myrmidon theory" of stranger rape, presented in Chapter 6, "The Police-Blotter Rapist." Brownmiller discusses commonplace criminological realities behind the stereotypical stranger-rapist, comparing the effects of his actions on women's daily lives to the Myrmidon swarms serving Achilles in the Trojan war:

Cloaked in myths that obscure their identity, they, too, function as anonymous agents of terror. Although they are the ones who do the dirty work, ... to other men..., 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.... Myrmidons to the cause of male dominance, police-blotter rapists have performed their duty... so well... 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.^v

One important gear in Brownmiller's theory, then, *turns* on the structural effects that rapists' actions have for men who *don't* rape. When Brownmiller writes of "a conscious process of intimidation by which all men keep all women in a state of fear," she mustn't be understood as asserting that all men rape, but that the *practice* of rape by *some* men functions to give all men greater power over women.

This too may be challenged. Many critics turn from the structural *effects* of rape to the *motives* of the rapist, suggesting, since most act on concrete, personal desires, not grandiose plans of upholding patriarchal control, it makes little sense to claim they act to further men's class interests. Others frequently accuse Brownmiller of disregarding how individual men, and male-dominated public institutions, *condemn* rape (e.g., by outlawing it); rape, however common and devastating, must be understood as a *private* crime, disavowed by existing authority, committed by isolated men for reasons of their own. Both responses read Brownmiller as proposing a kind of *conspiracy theory* of gender

violence,^{vi} in which all men collaborate in some shared plan to keep women down. Such responses reveal *exegetical* failures – reading into the text claims Brownmiller never makes. But more, they reveal *conceptual* failures: failures to understand what’s said because you haven’t the right lenses to see what, conceptually speaking, is going on. What’s needed then is not only closer readings, but also a more charitable reconstruction of the argument.

I argue, against canonical misunderstandings, the insights of feminist analysis can be illuminated by rereading them in light of a surprising source – reconstructing Brownmiller’s Myrmidon theory as an unusual but recognizable application of laissez-faire economist Friedrich Hayek’s concept of “spontaneous order.” Rearticulating Brownmiller in Hayekian terms will provide a surprising resource for feminist critiques of rape culture – *and* clarify the concept of “spontaneous order,” in fitting it onto the concrete problem.

II. Spontaneous Order and Libertarian Social Theory.

Libertarians’ emphasis on positive functions of free market exchange, and negative aspects of legalistic economic regulation, have drawn attention to “spontaneous orders” as essential elements of human sociality. SO theories observe that the underpinnings of social life include macro-patterns of interaction and coordinating structures which “have not been designed by men [*sic*] but have resulted from the action of individuals without their intending to create such an order,”^{vii} evolving without any intelligent designer. Hayek later characterizes them as “polycentric order”^{viii} where, instead of “putting each individual on a task assigned by authority,” systematic coordination emerges from interconnected but spontaneous individual actions, with no one player in charge, “[adapting] to ... circumstances which are known only to the individual members but not as a totality to any one of them.”

Libertarian writing employs spontaneous order not only as an alternative *explanation* of complex social phenomena, but also an alternative *normative ideal*. Responding to Marxist critique of the “social anarchy of production,” Hayek invoked SO to argue positive social order can emerge without deliberate “social regulation,” and production without centralized control need be neither blind, destructive, nor chaotic^{ix} – ordinary individuals harnessing dispersed knowledge embodied in price signals could discover opportunities, anticipate future needs, correct allocative errors, and adjust to changing conditions far beyond the capacity of even the best-informed, best-intentioned regulator.

Besides the adjustment of market prices to relative scarcities, common examples of spontaneous orders in economics and libertarian theory include the convergence on common media of exchange in barter economies, and, historically, the development of prehistoric European amber roads and overland routes, never laid out or engineered by any road builder, but evolving from early backwoods trails to wide, open thoroughfares through the repeated clearing of pathbreakers and later travelers.^x Nor are spontaneous orders limited to narrowly economic phenomena:^{xi} Hayek frequently mentioned the linguistic evolution of speech and writing, and examined the polycentric evolution of customary principles at *common law* for dispute-resolution without recourse to blood-feuds.^{xii} Contemporary writers cite the role of spontaneously-evolving community norms in regulating access to agricultural commons,^{xiii} developing common rules for American baseball,^{xiv} and the success of Internet projects like Wikipedia,^{xv} which depend on dispersed contributions, converging consensus, and participatory community norms to inform and shape articles. Within one decade Wikipedia has become the world's largest and most successful encyclopedia *precisely because* its development is driven by the “social anarchy” of millions of reader/editors, contributing without prior vetting or direction from any central point of authority.^{xvi}

III. Pinning Down Spontaneity

Surprisingly, despite the overwhelmingly positive tone of most writing on “spontaneous order,” a careful re-reading of Brownmiller’s Myrmidon passage reveals features clearly reminiscent of its common characterizations. Brownmiller’s understanding of rape culture depends on the macro-effects of widely dispersed actions, by a “swarm of men” acting “in anonymity,” rather than by organizations with centrally-directed plans – a direct parallel to Hayek’s characterizations of spontaneous order as *polycentric* order. The undirected but systematic actions of the “swarm” of Myrmidon-rapists have profound social effects but, because of their very anonymity, “the true meaning of their act has largely gone unnoticed;”^{xvii} as Hayek characterizes spontaneous orders as “the unintended *and often uncomprehended* results of the separate and yet interrelated actions of men [*sic*] in society.”^{xviii} Yet the sexual politics of a rape culture are in other ways reminiscent of authority and “constructed” order. These dispersed acts are not free exchanges or willing negotiations, but acts of force: social orders emerging from them are imposed on unconsenting women, just as the legal demands of governments

are imposed on the governed.^{xix}

These similarities and differences from paradigmatic cases reveal two interrelated points about the notion of “spontaneous order.” (1) Rape culture, as understood by Brownmiller, exhibits some features of Hayekian spontaneous orders, while seeming in other senses definitely imposed. This tension exposes a *systematic ambiguity*, expressing at least *three* distinct senses,^{xx} in the notion of “spontaneous order,” characterizing social structures as either:

- 1) *Consensual* rather than *coercive*;
- 2) *Polycentric* rather than *directive*; or
- 3) *Emergent* rather than *consciously designed*.^{xxi}

When “spontaneous order” means *consensual*, rather than *coercive*, order, coordination is achieved through the free actions and agreements of many different people without force or compulsion.^{xxii}

When “spontaneous order” means *polycentric*, rather than *directive* order, coordination arises through converging micro-actions of many players acting *independently*, not *deferring* to supervisors or authoritative instructions. Polycentric orders depend on *participatory* or *entrepreneurial* action: action is guided by impersonal norms not positional deference, individuals coordinating horizontally among themselves to pursue to achieve goals with nobody finally in charge.^{xxiii}

When “spontaneous order” means *emergent*, rather than *intentional* order, coordination emerges from many different people’s actions, from motives unrelated to effecting that social coordination. In undesigned orders, participants may know nothing about the macro-pattern emerging from their interlocking micro-actions; or may consider it only a *side effect* of pursuing a different private purpose.^{xxiv}

Each of these three distinctions involves a distinct category-pair – but they coincide in fact often enough that they might be mistaken as indistinguishable in concept. When libertarians contrast open market exchange with economic planning by governments, they are contrasting socioeconomic orders that differ along all three dimensions: governmental allocation is *legally compelled*, *centrally directed*, and *consciously designed* to achieve predetermined policy goals; whereas free markets operate through *consensual* agreements and *participatory* coordination with no fixed center of authority, producing *emergent* equilibria nobody designed. Many libertarians, including Hayek,^{xxv} have used “spontaneous order” to characterize orders with any or all of these features, without acknowledging social orders may

be “spontaneous” in one sense, without being “spontaneous” in another.^{xxvi}

But of course they can. These are simply three different distinctions, and while many features overlap, they may diverge even in paradigmatic cases of “spontaneous order.” Orders may be *consensual* while (voluntarily) *directive*; or *polycentric* but substantially *designed*. For example, while Wikipedia’s development offers clear examples of *consensual* and *participatory* order, it’s not a strong example of an *emergent* order. Typically, people edit Wikipedia with an intention of *improving the breadth and accuracy of information on Wikipedia* – the macro-success of Wikipedia is a consciously-adopted part of the micro-intention.

(2) Because the paradigms for applying the concept have been cases where a social order is participatory or unplanned, and also consensual, libertarians have usually seen spontaneous order in macro-structures freely entered, where everyone finds mutual *benefit* from the proceedings.^{xxvii} So, in libertarian vocabulary “spontaneous order” is constantly employed to praise *benign* orders, especially those spontaneously accomplishing something government planners cannot do. It is remarkable that bottom-up forms of social cooperation so often produce unplanned social outcomes better than comprehensive political schemes for social direction could manage. But nothing requires that emergent orders always be *benign* orders. If widely distributed forms of knowledge or virtue can add up, through many individual self-directed actions, into positive undesigned orders, there’s no reason why widely distributed micro-practices of ignorance, or vice, or violence might not add up to unintended, negative orders, with grave consequences for the lives and liberty of their victims.^{xxviii}

IV. The Invisible Fist and the Unwritten Law of Patriarchy.

As I understand Brownmiller, then, her theory of rape’s “Myrmidon function” can be understood thus: the pervasive fact of rape, and the *threat* it inflicts on *all* women, produces a *polycentric*, *emergent*, but *coercive* order, in which nonconsensual micro-practices inflicted by unrelated, anonymous rapists, end up reinforcing a macro-pattern of male dominance over women, and the cultural and institutional superstructure of patriarchy.^{xxix}

Feminists emphasize how the threat of rape constrains women’s range of free action, operating through felt danger and through explicit warnings: don’t walk alone; not dressed like that; don’t go there; don’t give off “signals.” Paternalistic double-binds often narrow the range to a vanishing point:

don't leave late at night without a man to walk you back; don't leave *with* a man, unless you intend to invite him in, or you'll "lead him on."^{xxx} Women are warned about the dangers of crowded public spaces like subways or parties but simultaneously of empty or secluded spaces like parking garages, alleys, or men's cars or houses. Both public space and private space, being *either* alone or accompanied, are constructed as pervaded with danger; the only space deemed "safe" is *male-protected* space. And the reliability of male protection closely linked to personal connections within a limited set of structured relations – paternal authority, marital protection, or heterosexual availability.^{xxxi} These restrictions on women's occupation of social space, what they feel they can safely do or say in the presence of men, 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 enlist "safe" men for protection against threats other men create. "A world without rapists," Brownmiller writes, "would be a world in which women moved freely without fear of men," but here, "That some men rape provides a sufficient threat to keep all women in a constant state of intimidation."^{xxxii}

For *men* who *don't* rape, and who sincerely care about the safety of individual women, the danger of police-blotter rapists has further consequences. Such men easily come to see themselves as needing to *protect* women they care about. This may, in itself, be a personal virtue, not a social problem. But when protection's so rigidly structured by sex it's all too tempting for men to fall from attitudes of human solidarity into fantasies of male rescue, defining themselves by their identity as Protectors, *contrasted with* frail womanhood, treating women as uniquely dependent by nature, rather than uniquely threatened by the actions of other men. And to demand women depend on and stay within the scope of male "protection" – using intimidating and restrictive warnings, shaming women who step outside the stiflingly close boundaries of that "protection." Imposed dependence here can just as easily become frustrating and confining for women, and power here just as easily corrupting and exploitative in men, as structural dependence and power can anywhere else.^{xxxiii}

This can happen quite naturally whenever a large enough minority of men choose to commit widespread, intense, random acts of violence against a large enough number of women – even without anyone involved intending the macro-outcome. Women's social being — how women appear and act, as women, in public — will be *systematically* and *profoundly* circumscribed, while men's everyday material leverage over women will be reinforced, and their psychosocial identities *as men* systematically

channeled into more patriarchal expressions – through decentralized threats of violence, and the natural but unintended consequences of many small, self-interested actions pursued by women and men reacting to the unequal positions that that threat constructs.^{xxxiv}

V. Crises and Opportunities.

A carefully articulated and radicalized concept of spontaneous order presents both feminists and libertarians with crises, and opportunities. Given the way in which *pervasive, diffuse* threats of coercive force constrain the liberty of women in everyday life, libertarians must recognize in patriarchy a system of violent political oppression no less ancient, invasive or powerful than the violence of governmental command-and-control. But unlike the centralized orders libertarians have been accustomed to discuss — restrictions of freedom handed down from the center, 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 largely produced by bottom-up, decentralized forms of violence, committed independently by countless unrelated men who commit violence of their own accord, without conscious collaboration or conspiracy, sometimes in conflict with the nominal provisions of the law.^{xxxv} Libertarians must recognize the coercive social orders that arise directly or indirectly from this kind of diffuse gender violence are no less real, no less serious, and no less political, for being undesigned, for battering women into confining social positions as if by an invisible fist. For the insights of libertarian theory to apply to everyone, they must be *radicalized*, and applied everywhere that systemic coercion limits freedom. Including invasions on liberty by the State; but also radically different forms of invasive violence, coordinated through different means, and calling for different sorts of response.^{xxxvi}

The analysis of rape culture as a malign form of (nonconsensual) spontaneous order, might make it tempting to suppose feminists ought to be suspicious of spontaneous orders, and libertarian theories, which propose to transfer much of social life from government control to spontaneous orders within civil society. But the distinctions I have traced to clarify the radical feminist understanding of rape culture, might also clarify how *political* responses to oppression need not entail *governmental* responses. Spontaneity isn't chaos; resistance can be *systematic* and *comprehensive* while remaining *decentralized* and *participatory*. Delineating consensual, emergent, and participatory orders may

illuminate the radical impulse behind uniquely feminist *responses* to pervading gender violence.

Woman-led social movements, c.r. groups, speak-outs, grassroots networks of crisis centers and other feminist spaces flourished outside conventional policy-making and the male-dominated central state; they may be productively classified as *voluntarily-coordinated*, *polycentric*, but *consciously organized* resistance to a *polycentric*, *emergent*, *coercive* pattern of oppression.

When feminists challenge the dichotomy of pervasive “private” crimes from “public” policy, insisting the personal *is* political, antifeminists often see only an attempt to extend existing concepts of politics to new cases, formerly considered “personal” — to reinterpret “private” interactions as parts of the consciously-coordinated policy of The Patriarchy, demanding conventional governmental responses. But the aim really is to *reject* conventional understandings of politics, in favor of more supple conceptions, encompassing other dynamics of oppression and liberation: power expressed through dispersed “private” interactions without conscious coordination, or recognizable centers of authority, which nevertheless share the pervasive, systematic and far-reaching character of more conventionally “political” social structures. SO theory can help this new conception; a fuller development and application of SO theories, to agendas set by women’s liberty as well as men’s, may provide a vital confluence between feminist and libertarian insights, further radicalizing libertarianism and liberating radical feminism, highlighting possibilities for more effective radical activism than male-governed politics could allow for. SO theories, far from acquiescence to the *status quo*, offers a radical lever for transformative social critique.

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- i Brownmiller (1975). 15.
- ii Brownmiller never says anything like that; the verb in the infamous sentence is not “rape,” but “keep ... in a state of fear.” But this has not stopped Brownmiller’s critics. For example, conservative Catholic philosopher Michael Novak, in a particularly ill-tempered and amazingly careless review of *Against Our Will* for *Commentary* (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 in recent years, writes in “The New Mythology of Rape” (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.” (§§ 35-37).
- iii The misunderstanding of Brownmiller as a biological determinist is not limited to 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). Rosalyn Baxandall and Linda Gordon (2000) – 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 Johnson (2004).
- iv In the last chapter of the book one can find Brownmiller writing, just as clear as could be, that “[I]n *insertion 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); the underlying cultural assumption is, presumably, a cultural assumption that she believes it possible and desirable to change.
- v *Against Our Will*, pp. 208-209.
- vi For example, when Michael Novak claimed Brownmiller views heterosexuality as a self-conscious “extortion racket.” Novak 1976, p. 90.
- vii Hayek, “Kinds of Order in Society” (1964), § 7.
- viii *Ibid.* § 9.
- ix In contrast with 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” (Chapter III. §§ 35-36). Hayek (1973), apparently with similar views in his sights, writes: “If indignant social reformers still complain of the chaos of economic affairs, insinuating a complete absence of order, this is partly because they cannot conceive of an order which is not deliberately made, and partly because to them an order means something aiming at concrete purposes which is, as we shall see, what a spontaneous order cannot do” (37-38).
- x Hayek (1952/1979) offers the evolution of roads as a brief example without any specific historical referent: “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).

Hayek’s characterization seems to aptly describe the (pre)historical development of the European overland routes, which developed into a network of heavily-trafficked, economically vital roads, criss-crossing Europe before recorded history. The original “path-breakers” for these roads were generally not even human; human travelers tended to find the easiest routes along natural defiles and animal trails, established by the geological landscape, natural habitats and the migration patterns of deer and other large animals through the forests. Human travelers would follow the least overgrown paths, cutting rude paths for their own use as they went along. But then, after breaking the path, any later travelers, never knowing or meeting the pathbreakers, would nevertheless find smoother ground, and thinner, newer growth along the old route, far easier to clear a way through than the rougher ground and older growth off the trail. But following the old trail, they would cut back the overgrowth even further and clear more obstacles themselves. The more these paths were traveled and clear, the more they attracted future travelers, creating a feedback loop which, over time, organically transformed overgrown backwoods trails into large, open thoroughfares. Unlike the engineering of later, pre-planned grids of roads and highways, which often involved massive efforts to drive roads over natural obstacles, destroying natural habitats and requiring levies of money and forced labor to build and maintain, this evolving network of roads was maintained directly by those who depended on them, and the widest, clearest roads naturally developed along the routes best suited and most needed for travel and trade. This was how most roads were “built” through most of human history, until later expansionist governments began to engineer and maintain their own roads for hauling tribute and marching armies.

But the applicability of the point is not limited to ancient economies, either – or to capitalist perspectives on economic and social theory. During the nineteenth century, anticapitalist anarchists such as Peter Kropotkin frequently mentioned, as illustrations of their theories of consensual federation and stateless social harmony, the way in which European railroads managed to develop standards through free agreement to provide reliable continent-wide mobility, across multiple political boundaries, even though there was never any one company, country, or united global railroad authority to act as the “European Central Government of Railways” or to dictate standards to the hundreds of separate outfits involved. Kropotkin (1906), Chapter XI, ¶ 15. See Ch. XI, ¶ 8 *et seq.* for Kropotkin’s extended discussion of the European railway network.

xi 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 Hayek (1973) pp. 37ff and 81, and more recently the treatment in depth by Geoffrey Allan Plauché in “On the Myth of the Founder-Legislator in Political Philosophy” (2006). For funsies, see also Stephen Jay Gould’s “The Creation Myths of Cooperstown” (1991), discussed below, which compares the motivations behind more-or-less mythical account of Abner Doubleday’s whole-cloth invention of baseball to the intellectual impulses behind fundamentalist Creationism.

xii 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).

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), although concerned with the development of government antidiscrimination laws which radical libertarians reject fundamentally, offers a radical feminist defense of struggles within a polycentric, common-law process, as preferable to campaigns for legislative intervention, 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.

xiii See Boettke and Coyne (2005) for a discussion of the work of Elinor Ostrom (*inter alia*), including her work on polycentric social regulation of agricultural commons and other “common pool resources,” in terms of Hayekian theories of spontaneous order.

xiv Gould (1991) shows how the common rules of American baseball evolved polycentrically from the local rules for many different, pre-existing mid-19th century ball-and-stick games. Convergence on a common set of rules was largely the result of uncoordinated *ad hoc* compromises, as neighborhood teams began to solidify into standing clubs, and clubs with widely different local rules began to play more exhibition matches outside of their hometowns. 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 Ebenstein (2003).

xv For discussions of the Internet or Wikipedia in light of, or as a straightforward example of, Hayekian spontaneous orders, see for example Boothby (2005), Mangu-Ward (2006), Sunstein (2006), Black (2007), Mangu-Ward (2007), Clark (2007), Lee (2008), Roberts and Wales (2009), and the passing references in the Preface and Acknowledgements of McCloskey (2010). Bragues (2007) discusses Wikipedia in terms of equilibrating processes in competitive markets, but does not make an explicit connection to Hayek or spontaneous order (seeming, rather, to draw on neoclassical rather than Austrian understandings of “competitive market structure”). Founder Jimmy Wales has remarked that the Wikipedia project was directly inspired by Hayek’s remarks on the importance of dispersed local knowledge in “The Use of Knowledge in Society.” See, for example, the *EconTalk* interview “Wales on Wikipedia” (Roberts and Wales, 2009).

xvi Contributions to Wikipedia are guided by a shared goal of factual accuracy and explicit community norms such as Neutral Point of View (WP:NPOV) or Citation Needed (WP:V), but rather than being imposed by privileged editors, the interpretation and implementation of these norms, as well as most other questions of vetting and policy, rely almost entirely on the convergent consensus produced by the back-and-forth among Wikipedians, with anyone free to join the fray at any given time.

Perhaps the single most important community norm, “Wikipedia:Neutral point of view” (WP:NPOV) states: “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.

xviiBrownmiller (1975). 209.

xviiiHayek (1952/1979), 58. Emphasis added. Reading *Against Our Will* alongside Hayek's *Law, Legislation, and Liberty*, it is hard not to see a very suggestive parallel between Brownmiller's description of the "unthinking" police-blotter rapists and their "largely unnoticed" contribution to the durable structure of patriarchy, and Hayek's description of the role of lawyers in the deformation of law towards increasingly authoritarian conceptions, in which "the individual lawyer is necessarily more an unwitting tool, a link in the chain of events that he does not see as a whole, than a conscious initiator. ... It is often said that the professional bias of the lawyer is conservative. ... The situation is entirely different, however, when a general philosophy of the law which is not in accord with the greater part of the existing law has recently gained ascendancy. The same lawyers will, through the same habits and techniques, and generally as unwittingly, become a revolutionary force, as effective in transforming the law down to every detail as they were before in preserving it. ... Already the lawyers in many fields have, as the instrument of a general conception which they have not made, become the tools, not of principles of justice, but of an apparatus in which the individual is made to serve the ends of his [*sic*] rulers" (66-67).

xix See Johnson and Long (2005) § 2 on the parallels between sexual and political consent.

xx 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.

xxi You might think of these three dimensions of spontaneity as corresponding to three different meanings of the term "spontaneous," with three different contrast points – consensual order is "spontaneous" in the sense of "uncoerced;" polycentric order is "spontaneous" in the sense of "unprompted;" and emergent order is "spontaneous" in the sense of "unplanned." For rhetorical simplicity, each of these three dimensions of spontaneity and non-spontaneity are presented here, as they usually are elsewhere, as if they were simple dichotomies. But each of them must be assessed relative to a level of social organization – an overall polycentric order may contain, as Hayek says, "several nuclei" of centered organization (such as firms or associations in an open market); a consensual process may produce their distinctive spontaneous results because they operate against a backdrop of coercive constraints (when cigarettes are consensually adopted as *de facto* currency in a prison economy, the adoption is at one level consensual; but of course it is profoundly shaped by pervasive, coercive constraints on possession and exchange, which forbid most uses of outside money).

And both the distinction between polycentric and directive orders, and that between emergent and intentional orders, are really differences of degree, with many intermediate shades and borderline cases rather than clean categorical breaks. 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.

xxii So, for example, when marketable commodities such cigarettes emerge as *de facto* currencies in barter economies, they are not selected because any authority forces traders to accept them as payment for all debts public and private; it's because enough people will willingly trade for a smoke that even non-smokers find it worth their while to accept cigarettes as payment, on the expectation that they could easily make a later exchange with some third party who does smoke, in order to get things they *can* use.

xxiiiFor example, consider the contrast between the *directive* system of top-down editorial vetting in Encyclopedia Britannica, which depends on the vertical direction of many writers and workers by means of the vetting, assignments, and the personal decisions of a hierarchy of editors and, ultimately, managers; and the wide-open system of self-correction in Wikipedia, which depends on an impersonal set of norms, and the attention and initiative of an Internet-size pool of potential reader/editors to revise and correct articles.

xxiv A path-breaker whose actions help clear and maintain a road through the woods is not *mainly* out to help fellow travelers, or ease the way for a future highway; she's out to remove obstacles blocking her way from point A to point B. If it helps other people out later on, that collateral effect is just gravy.

xxvWhile many later libertarian writers have been less careful, Hayek was fairly consistent and circumspect when he attempted *formal definitions* of "spontaneous order," defining it more or less exclusively in terms of *emergent* coordination, with a noticeable gap between micro-intentions and macro-patterns, and frequently recurring to Adam Ferguson's description of "establishments, which are indeed the result of human action, but not the execution of any

human design.” But whatever his *definitions*, he also constantly *characterizes* spontaneous orders by means of a *contrast* with “constructed” order, carried out by monocentric authority, “which has been made by somebody putting the elements of a set in their places or directing their movements” (1973, 37). Such a contrast simply equates emergent orders with polycentric orders “not made by anybody” (1964 ¶ 8). *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).

Meanwhile, Hayek’s *application* of the concept in discussing free-market processes consistently contrasted their healthy, unimpeded ordering process with purposive “interference” or “intervention,” which are both *monocentric* and paradigmatically backed by the *coercive* power of government, and in general closely linked it with cases where the *consensuality* of the transaction was at least as important as its emergent properties or participatory context. Hayek of course recognizes that monocentric orders (characterized as *taxes*, “organization,” or “constructed order”) may be consensually organized – in firms, families, associations, or other nuclei of social organization. But Hayek’s *normative* employments of spontaneous order concepts hardly ever remained within such carefully drawn conceptual boundaries; spontaneity is constantly contrasted not with constructed orders in general, but rather with purposive “interventions” or “corrections,” attributed to a desire for a totalistic and politicized form of constructed order, which coercively “interfere” with a healthy spontaneous order. Thus Hayek sometimes, and later writers very often, write as if it were a matter of a simple alternative between polycentricity and coercion, rather than treating the polycentric-monocentric and consensual-coercive polarities as cross-cutting, conceptually separate dictions. In his discussion of planning and market orders in *The Road to Serfdom* (1944/2007), Hayek treats the coercive power of government and centralization of authority in planned orders as simply identical: “The dispute between the modern planners and their opponents, is, therefore, *not* a dispute on whether we ought to choose intelligently between the various possible organizations of society.... The question is whether for this purpose it is better that the holder of coercive power should confine himself [*sic*] in general to creating conditions under which the knowledge and initiative of individuals are given the best scope so that *they* can plan most successfully; or whether a rational utilization of our resources requires *central* direction and organization of all our activities” (85). Similarly, in *The Constitution of Liberty* (1960/1978), at the end of his assault on constructive rationalism, Hayek writes that “None of these conclusions are arguments against the use of reason, but only arguments against *such uses as require any exclusive and coercive powers of government*” (70). In *Law, Legislation and Liberty*, Hayek argues characterizes constructivism as issuing in plans to “improve or correct [spontaneous] order by *direct commands*” (51). This is clearly a reference to directive order contrasted against polycentric order; depending on the sense in which “commands” is intended, it may or may not also be a direct reference to coercive means. In any case, we are soon told that “This is the gist of the argument against ‘interference’ or ‘intervention’ in the market order” by “directing authority,” (*Ibid.*) which clearly is a reference to the coercive power of government.

xxviThus, for example, in his chapter on Hayek in *Against Politics* (1997), Anthony de Jasay 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 [*sic*] 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)

But 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 unique ability of *polycentric* 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* orders:

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 prudential arguments seems to depend on the deliberate enforcement of rules by an authoritative agency; but de Jasay makes no clear distinction, in his worries about "enforced enforcement" mechanisms, between (1) the *coercive* features of such mechanisms (as opposed to "voluntary conventions" like ostracism they are based on punitive force and paid for with tax levies), and (2) their *directive* character (as opposed to *participatory* social sanctions, which are implemented, unprompted, by ordinary people, "enforced enforcement" comes from 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.

Similarly, in a recent exchange in the online journal *Cato Unbound*, Timothy Sandefur (2009a) 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." (2009, ¶ 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).

A somewhat different example appears in Norman Barry's "The Tradition of Spontaneous Order: A Bibliographical Essay" (1982), in which Barry actually attempts to *distinguish* two different senses of spontaneous order, but tells us that:

In one sense we speak of spontaneous order to refer to a complex aggregate structure which is formed out of the *uncoerced actions of individuals*, whereas in another sense we speak of the *evolutionary growth* of laws and institutions through a kind of Darwinian 'survival of the fittest' process (and the biological analogy is not inappropriate.) In both these meanings we are describing social structures that are similar in not being of conscious design and which emerge independently of our wills.... (¶11)

Barry's real concern here is apparently, first, the distinction between a focus on individual interaction and a focus on institutional persistence, and, second, the presence or absence of an "invisible hand" explanation for the reconciliation of initially disparate interests. The first half of his attempted distinction simply merges consensual with emergent orders, without any further justification or argument, while the second half explicitly discards individual consent as a criterion, but unhappily invokes the metaphor of biological evolution, which is by nature both polycentric and emergent, while the reference to the "invisible hand" invokes one specific form of emergent (conciliatory and mutually beneficial) consequence. Gordon (1982) criticizes Barry's unexplained characterization of emergent order as necessarily consensual, saying "It isn't at any rate obvious why a conscious agreement is morally inferior to a spontaneous order. It might be said that with a spontaneous order, at least one knows that the actions of the constituent individuals haven't been coerced. *But this is wrong: why can't coerced actions be the subject of invisible-hand explanations?* And agreements, on the other side, can be entirely voluntary. Barry evidently disagrees with the first part of this, as he apparently (p. 11) makes it a requirement of a spontaneous order that it operate on uncoerced actions. But he gives no reason for this" (¶ 12, emphasis added).

xxvii You don't need top-down command and control to get many important things that libertarians like to use – language, or money, or roads, or Wikipedia....

xxviii The prospect of malign spontaneous orders has rarely been wholly lost by spontaneous-order theorists, and is, as far as I know, hardly ever flat-out denied. The worry, rather, is that, in practice, it is rarely *mentioned* or *highlighted* as a significant possibility. However, Hayek does certainly entertain the possibility; as when he suggests that profit-motives alone do not "insure that [spontaneous market orders] will be of a beneficent character" (1964 ¶ 22), and that for a *beneficent* order "it is necessary that people also obey certain conventional rules ... which have become habitual in their

society. The common rules of morals and law are the chief instance of this” (*Ibid.*). Kirzner (1982) explicitly introduces the *conceptual possibility* of treating social orders as both spontaneous and malign, mentioning theories which have acknowledged the descriptive power of spontaneous order concepts, but which “have questioned the social desirability of at least some aspects of these accepted regularities” and “claimed, correctly or otherwise, to perceive theory as showing the systematic emergence of social *immoralities* or social *inefficiencies*” (§ 3). But while Kirzner thinks this has important effects on the *historical* story that needs to be told about the development of spontaneous order theories, and the intellectual figures who need to be included in that story, he associates the view with such thinkers as Marx, Pigou, and Keynes, whose economics Kirzner wholeheartedly rejects; he strongly suggests that the conceptual possibility of a malign order is not part of his own actual view of the social world. Rather, he suggests that the distinctive contribution of writers like Hayek is “the idea that the normative character of these systematic results *can hardly be judged as other than socially beneficial*” (§ 2).

The most emphatic recognition of the possibility probably comes from Roderick Long, who has occasionally discussed phenomena which he takes to be actual social orders which are both spontaneous and “maleficent,” for which he has coined the unforgivable pun “spontaneous ordure” (Long 2006).

xxix The common misunderstandings of Brownmiller’s theory discussed above may be seen as parallel to the misunderstandings of spontaneous orders in society that Hayek dissects throughout his work. In Hayek (1973) 20-21, for example, Hayek discusses how spontaneous order forms a third category of *grown* orders, in between the *found* orders of the natural world and the *made* orders of conscious human design. For Hayek these grown orders demonstrate the inadequacy of “the false dichotomy of ‘natural’ and ‘artificial’” (20). “The distinction intended may be either between objects which existed independently and objects which were the results of human *action*, or between objects which arose independently of, and objects which arose as the result of, human *design*. The failure to distinguish between these two meanings led to the situation where one author could argue with regard to a given phenomenon that it was artificial because it was the result of human action, while another might describe the same phenomenon as natural because it was evidently not the result of human design” (*Ibid.*). Common responses to Brownmiller’s theory treat her as if she must either be describing rape culture as a *found* order (based in some inescapable natural features of the human male), or else a *made* order (the product of a deliberate conspiracy among men). Such responses evince the same difficulty in seeing the possibility of a *grown* order, the product of dispersed human actions but not of concentrated human design, as a serious possibility, is little different from the difficulty that most social theorists have had in recognizing that law might arise neither from the *found* order of immutable nature nor from the *made* order of heroic founder-legislators.

xxx 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.

xxxi Hence Brownmiller’s argument, in Chapter 2 and elsewhere of *Against Our Will*, that the threat of rape is essentially connected to the primitive origins and structure of marriage, as well as the social privileges demanded by husbands as a condition of their “protection.”

xxxii *Against Our Will*, p. 209. It is important to note here 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, in Brownmiller’s discussion, while some of the “intimidation” she describes is expressed in self-conscious adjustment to felt dangers and explicit warnings; but 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.

xxxiii Libertarians and anarchists who so readily 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. The individualist anarchists of the 19th century certainly saw it clearly: as Ezra Heywood writes, “A cruel kindness, thought to be friendly regard, assumes to “protect” those who, by divine right of rational being, are entitled, at least, to be let alone. We are not among wild beasts; from whom, then, does woman need protection? From her protectors” (qtd. in Johnson and Long 2005). See also Johnson and Long (2005) on the radical libertarian feminism of the 19th century individualists, and the parallels between patriarchal “protection” of women and the state’s paternalistic “protection” of a disarmed populace.

xxxiv I’ve talked about stranger rape because that’s Brownmiller’s topic, and Brownmiller’s theory is a good case study in the point I’m trying to make. But a similar case could be made for other forms of violence directed against women – such as 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 Brownmiller's theory. *Against Our Will* was written from 1971 to 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 1988, 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, Dworkin (1983), Dworkin (1987), or "Sex and Violence: A Perspective" in MacKinnon (1987), et cetera.

But while new data may call for serious revisions to Brownmiller's theory, and an effort to incorporate dynamics acted out not only through stranger rape but also through wife-beating, rape by intimate partners, harassment in the workplace and in public space, and many other forms of violence and intimidation, often committed by intimates and acquaintances, what results from the revision will still, I would argue, be a radical feminist theory sharing much of the fundamental structure of Brownmiller's. And whether Brownmiller's theory is true or false, or whether another radical feminist theory in the neighborhood is, the roles that different forms of violence play in shaping the violent undesigned order of a rape culture will still, it seems to me, be best understood as many different expressions of the same sorts of emergent, decentralized dynamics of violence and control.

xxxv Though rarely investigated and ineffectively prosecuted in the male-dominated legal system. This is in any case 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. (1989, 161.)

xxxvi The radical traditions within libertarianism and feminism have many critical insights to offer each other in social theory and political practice; and the form that the exchange should take is not one of mutual compromise, or watering down the more "extreme" end of libertarian or feminist principles are watered down or traded off one for the other, but rather one of mutual *radicalization*, in which each encourages the other to live up to their own better selves, and to more fully embrace the radical insights that they have held thus far, but only at arm's length. See Johnson and Long (2005).