Deep Inside the Bramble Bush: Complex Orders and Humanities

by

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March 2, 2007
1. Complexity and the Theory of Spontaneous Orders

The Theory of Complexity was tailored at the beginning of the 80s (Norman Barry, 1982, Gerard Radnitzky, 1984, Walter B. Weimer, 1983) around the concept of Spontaneous Orders (Friedrich A. von Hayek, 1973), a theory which, nowadays, has regained importance for both its merit and its political implications. The theory of complex phenomena as spontaneous orders is indeed originated by the attempt to give “Invisible Hand Explanations”, that is, explanations for the spontaneous emergence of forms of social order which arise without having any prior conscious design. The main examples of these orders are language and the price system, and according to Hayek’s view, also the Law.

The theory of complex phenomena was thought in order to challenge “rational constructivism” by way of considering the limits of human reason in conceiving and designing ethical, cultural and legal norms which are necessary for both the development and the maintainance of a social order which must thus be seen as unplanned (historical) evolutionary orders.

The political use of this theory in the early 80s was patently directed in favour of the self-corrective character of the market, against political intervention. Its major foundation was Hayek’s reflection on the use of knowledge within society, according to which
decentralized processes, such as the market but also language evolution, use much more knowledge - dispersed among millions of individuals - than conscious centralised political processes. This offered an epistemological foundation for free market politics which can be conceived as a complex phenomenon of spontaneous order. One single person could never manage all this dispersed knowledge and so could never design society in a wiser way than a spontaneous unconscious arrangement of it.

What is interesting to note is that even if enemies and allies have changed, this theory still exerts its appeal. Socialist interventionism is no longer an issue and the hazard of a world ruled by private corporations is much more evident, so to reactivate these discourses within a different setting and to consider these renewed concerns could be worthwhile.

In particular, what is more important in Radnitzky’s and Weimer’s approach is that the appraisal of “spontaneously arisen complex phenomena” makes human studies different from natural sciences. We may find here a possible ground for considering humanities as legitimately different in their very essence from the “hard” sciences, that is, those disciplines which necessarily develop different methods and must be judged on their own specific ground, precisely because the appraisal of human societies has to deal with the essential complexity of historical evolutionary orders.

Obviously, there are complex orders also in nature but the human world is characterised by an “essential complexity” as a “delicate balance of interacting constraints” and it gives origin to evolutionary orders which have the following features:

1. “creativity”: the possibility to display “fundamental novelty”, that is, those changes which could not be predicted in advance and which amount to real
qualitative differences and not simply to different arrangements of the same elements;

2. “rhythm”: the fact that human orders do not remain stable nor change according to predictable time-spans;

3. “regulation by interactive constraint”: dialectical evolution in which the outcome depends on contrasting interactions and so it never derives in a linear way from a single consistent set of variables.

The main conclusion is that models that can be used for understanding and manipulating human orders are either more complex than or equally complex as the phenomenon under study [(Walter B. Weimer, 1983) p.4]. Therefore, given this high complexity it is necessary to limit ourselves to an abstract understanding or to an understanding of principles only rather than being able to model its particulars (either deterministically or deductively). In this realm of academic knowledge we cannot build a model of how something works that is less complex than the thing itself: the simplified model does not allow us to grasp the thing intellectually.

Such a conclusion gains momentum from the splitting of sciences into the two opponent realms: humanistic and natural studies. In fact, if the “models” and the tools they imply cannot be used with reference to complex social phenomena, the whole pretension of an actual “scientism” is simply illegitimate. Conversely, the claim of humanities to maintain their own standards becomes perfectly legitimate.
In brief, to keep human studies apart and independent from natural sciences and from their ways of handling research and evaluating results is perfectly legitimate, whereas any attempt at homologation is totally illegitimate.

In addition, it becomes evident how correct the “traditional” approach of human studies to social orders (culture) in terms of history and philology is. I would also add that spontaneous orders, being unplanned, are also to a great extent tacit and unconscious, dominated by “cryptotypes” (Rodolfo Sacco, 1991), so that hermeneutics deserves a key-role in human enquiries. Finally, given the agonistic nature of interacting constraints shaping evolutionary orders, we may consider as perfectly grounded the dialectical analysis proper of humanities too, including the literary analysis of the rhetoric of scientific discourses produced in order to support particular views of the present and the past which is typical of ideological criticism (Hayden White, 1975).

In this way, historicism, hermeneutics and dialectics seem to reemerge as proper tools to handle complexity against every illegitimate “scientism”.

2. Philology and Historicism

From our standpoint, it is particularly interesting the way Hayek tried to combine the theory of complexity with Scottish Enlightenment and German Historicism, with a specific reference to Hume, Ferguson, Savigny and Humboldt [ (Friedrich A. von Hayek, 1973) vol. I, ch. 1].

These references are fundamental for lawyers given the outstanding importance assumed by Savigny in the foundation of modern legal studies on the background of German Idealism in which philology played a major role (Peter Szondi et al., 1974)
Indeed it was from linguistics, religion, and folklore that during the XIX century a paradigm of comparative studies emerged which comprised also the law and politics through the foundation of the concepts of Classic and Primitive.

In this sense it is precisely through the establishment of philology as a historical and comparative science that a model can be derived in which a variety of sources is combined with cultural transmission. Such a model is at the basis of the “hermeneutical government” of social complexity as a framework of binding notions, ranging from philosophy to literature, from art to law, which works as the cultural “grand scheme” of historical existence (Pier Giuseppe Monateri, 2000).

The concepts of Classic and Primitive, and then of Exotic and Modernity, for instance, shape those of time and space, while defining, both historically and geographically, a “us” and a “them”. These concepts are fundamentally political even if ambiguous: they can be, and have been used both for cultural imperialism and for revolutions against “the modern” bourgeoisie. However, they unambiguously display the tremendous capacity of German Historicism to insert itself in the most different areas of the human spirit: from Indo-European linguistics to the foundation of Roman Law as the German legal system, from folklore studies and to the dramatic impact of historical critique of Religion, showing in the most clear way how much the management, if not the government, of complexity is based on the shaping of a “morphè” of the cultural field as a form of Lordship over the formless.

All this proves the force of this attempt to capture “systematically” the history of the Geist as the paradigm of evolutionary complexity and it cannot be simply discarded as
worn out in favor of modern “scientism”, “model-building”, and “clear and measurable
definition of terms”.

On the contrary, on the basis of Hayek’s theory, we must rebuild our capacity to come to
terms with it: there are good scientific reasons to reappraise such a theory against
scientism.


In the previous sections we have observed the way in which the question of complexity is
combined with the theory of evolutionary orders, whose features require a historical
approach to “Culture”.

From this viewpoint the philological approach becomes, once again, of particular
relevance for the appraisal of the “Cultural order” as the overall order of meanings from
language to religion to aesthetics to the law, precisely in the sense Cover gave to the term
Nomos:

“… we inhabit a nomos … a normative universe, a world of right and wrong, of
lawful and unlawful, of valid and void … law becomes not merely a system of rules, but
a world in which we live”

[(Robert M. Cover, 1983) p.5]

In this context we must appreciate the normative universe we live in, highlighting the
continuity between law and other cultural fields, and focusing on the relevance of
philology.
The relevance of philology, in relation to this normative universe, lies indeed in the fact that philology has directly something to do with *scarcity* and *dispersion*. Similarly, the law deals with the passage from individual norms to a legal order as a whole, as the nomos of political existence.

There are thus four main features of the evolutionary order which require the adoption of a classic humanistic appraisal and these features can be summarised as follows:

1. Synecdoque
2. Eidolon
3. Ouroboro
4. Agon

First of all the feature we have labelled as “essential Synecdoque” has to do with the fact that we always possess or have access to only a small part of a complex evolutionary order. However, although we only have access to a limited, and often very limited, portion of it, we must nonetheless try to elaborate from this small selection theories that can prove to be consistent with the entirety of those elements we do not have access to. As an example, we could recall the question of the archives in Roman history. Since most of them have been lost, we can reconstruct ancient culture only on the basis of a very small part of it. This limited selection was reversed in Codex in the V – VI centuries and later transmitted from Carolingian manuscripts into Renaissance editions. Even if they
are limited sources, we must depend on these selections: without archives we cannot rebuild history independently from redactors.

The same feature of “essential Synecdoque” (a part for the whole) is shared by the Law. The Law is always “lacking” in its sources (precedents, statutes, regulations) with respect to reality. It is necessary to proceed from presence to absence, from what is there towards what is not there, thus, reconstructing an order of meaning to recapture what is already missing and posing a patent questioning of the Truth on the fragment and of the Power of the absent.

The typical philological questions on the “essence” of Ancient Greece or “the real words of Jesus” are clear examples of this interplay between truth and fragments, and thus between truth and power.

Moreover, philology has to deal with another main feature of those complex phenomena which arose spontaneously: historicity intended as the vanishing of presence and the emergence of unpredicted novelty. If we, like Hayek, look at the institutions in historical terms, this implies that their past, which would give explanation to their present, is no more at hand and is no longer present. Philology has precisely to do with the study of what has ceased to be present even if its effects persist, that is, with the actual being of having been, with the study of an Eidolon.

Such a vanishing and such a persistence entail “essential novelty” in the same sense in which we can speak of an “Eliot effect” in literature: in a cultural order, the newest part gives meaning to older ones and not the other way round, even if the most recent block has obviously been built with the “older bricks” (Thomas Stearns Eliot, 1920). We may
label this “Eliot effect” as Ouroboro, from the name of the mythical snake encircling the Cosmic Egg which has become the symbol of the eternal return.

This is precisely what happens with the latest decision of the House of Lords: it is the latest precedent which gives a sense to the older chain of cases, and not the opposite.

All this implies that complex evolutionary orders cannot be afforded without considering all the mediations occurred from a “then” to a “now”, which acts as a chain of both transmission and change as we do in hermeneutical contexts (Hans Georg Gadamer, 1997).

In this perspective complex relations cannot be appraised without a totally legitimate traditional and humanistic approach in order to deal with historical and literary analysis. In this way “objectivity” manifests itself as the explicit assumption of a specific viewpoint which starts from the fragment and provides the grounds for a normative reconstruction.

In brief, in cultural studies truth is scarce, most of it is out of hand, and we are dealing with chains of transmissions and adulterations in a context of Synecdoque, Eidolon and of the Eliot effect, as well as, of intrinsic antagonism (Gerard Radnitzky, 1984) which manifests itself precisely in the everlasting struggle for the attribution of meaning.

However, it is precisely the awareness of these processes which makes cultural studies scientific, an awareness that goes lost in “scientism” in which knowledge is reduced to the paradigms and standards of natural science. Therefore, it becomes necessary to stand against it also from a broader ethical and from a political point of view.

Finally, with particular reference to the Law, we must underline the normative side of the “struggle for meaning” as the mastering of something which otherwise would appear as
formless dispersion, wherever “Reason” itself is part of the same evolutionary process and thus is not the same at all times and in all places (Friedrich A. von Hayek, 1952b). Reason does not lie somewhere outside history and outside the evolution of human societies, but rather it is part of the same evolution leading from past to present forms of culture. In the field of the Law this entails an approach (Carl Schmitt, 1974) focused on the political as the main feature of a legality (Ernst-Wolfgang Bockenforde, 1997) which can be conceived as the form (morphè) of a peculiar historical existence (Cristina Costantini, 2007).

In this perspective, the relationship between the lawlessness of emergency and the legitimacy of sovereignty is structured as the iconic depiction of an inner connection between the amorphous state of Politics and the opposite but connatural form of the Law in its concrete historicity. Emergency is the time and place of the exercise of mere sovereignty, imposing a complex juri-political form on mere life where the foundation of legitimacy of such an imposition could be, in its proper essence, either divine or enigmatic. The complexity of the Law arises from a direct politicisation of life itself in a moment of clash. Just to mention one example: the formalism of conceiving a Constitution as a Grundnorm concerning the validity of all other norms becomes the actuality of a Constitution arisen from a real political sovereignty exercised over a state of emergency as an effective Nomos, that is an actual partition of the land, resources and of power which determine a course of History, something we can call Law by virtue of the force of Arcanum.

This metamorphosis of a fact into a law is made evident precisely when forms fall apart in a state of emergency, that is to say, when emergency unveils formlessness. It is
undeniable that to capture this hidden nature of the Law, the Romantic aesthetics of night and chaos as a kind of superior Knowledge becomes much more useful than logic, or economic analysis or, to quote Hayek once more (Friedrich A. von Hayek, 1952a), more useful than Reason and all its abuses.


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