

Pessimism and Anti-State Politics From Human Evil to Institutional Particularism

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A rich but also enigmatic neo-Marxian literature has been emerging from Italy for the last thirty years. Especially intriguing to me has been the work of Paolo Virno, who marries an anti-state and anti-capitalist politics to a pessimistic philosophical anthropology invested, if not grounded, in linguistic and biological science. The same period has seen the rise of the new institutionalism in economics, which has complicated the seductive simplicity of the neo-classical model of the market, introducing elements of the friction and complexity of the world of experience. The extent to which these institutional approaches have gained ground can be measured by the Nobel Memorial Prizes awarded last year to Elinor Ostrom and Oliver Williamson, two of institutionalism's most important practitioners.

It seems to me that three threads connect the new institutionalism to Italian neo-Marxism: a) skepticism about the forced state/market dilemma, b) pluralism about institutional structure, and c) an insistence upon the interdependency of institutional structure and an account of human nature. In brief, both traditions combine a certain pessimism about human nature with an eye for the diversity of institutional forms, and use this combination to argue for an appreciation of non-state, non-market institutions. I like the political punch and philosophical depth of the neo-Marxians, but I also appreciate the detail and technical precision of the new institutionalists. Hence, I will attempt in this essay to combine the two perspectives. My aim is to articulate the neo-Marxian argument against the market and the state using many of the concepts and analyses of the new institutionalism.

The argument begins from a certain pessimism about the human condition. Such pessimism has traditionally been associated with the statism of the political Right, from Hobbes to Schmitt. It is the evil of man – and, in particular, the fact that humans are predators and prey of one another – that necessitates the existence or institution of a state to overawe the populace and minimize predation through fear of a central power. Hobbes' phrase, *man is a wolf to man*, is the catchword of this pessimism, even as it understates Hobbes' own case for human evil. After all, wolves don't require a central state; they are not wolves to wolves in the sense Hobbes intends. Hobbes did not mean to put humans on the same level as beasts, but to put us, in our natural state, *below* the beasts. Wolves have no need for a Leviathan because wolves do not pose an existential threat to wolves as a class of beings. A lone beast may kill or be killed by another of its species, but Hobbes never conceives of any species of non-human animals destroying itself or the social bonds that constitute its way of life. Humans are the genocidal animals. That is why we need a Leviathan.

Despite suspicions on the statist Right to the contrary, this pessimism about human nature is carried over from theories of state sovereignty to theories of liberal government. Locke may

appear to paint a rosier picture of the state of human nature than does Hobbes, but when this picture is set in motion, it quickly devolves into the same condition. Federalist 51 contains a premonition of Schmitt in its famous proclamation that government is “the greatest of all reflections on human nature,” and in its immediate conclusion that this reflection shows that, “If men were angels, no government would be necessary.”¹

Thus, both the statist Right and the liberal center have a substantial history of political anthropology and a predisposition to draw universalist prescriptions from this anthropology, prescriptions about the necessity and propriety of the sovereign state or liberal government for beings such as us. These political institutions are indispensable for, or best for, all human beings as human beings because human beings are, as such, deeply problematic beings. I suspect that, wherever you place yourself on the political spectrum, those to your Left are, in your opinion, too naïve and too optimistic to have taken the true measure of the human heart. Hence, anarchists and communists are the most naively optimistic creatures in the political world. By denying that human beings need any central power or external government, the resolute opponents of any state seem to announce openly their tender hearts and utopian sympathies.

What interests me, then, about the neo-Marxians is their attempt to wrest the cudgel of pessimism away from their opponents, and to retort that it is liberals and statist who are naïve and utopian in their conception of governmental power. I think this strategy has potential not only to upend the traditional debate about politics and human nature, but to advance a convincing argument against markets and states as (generally) appropriate practical responses to the human condition.² The argument is that, if one takes seriously the pessimistic claim that human nature is evil, then institutions only work as responses to this evil insofar as they have some other property than the formal properties that have been the focus of modern social and political theory. This other property is the contextually determinate content the institutional form has when and where it happens to forestall collective dilemmas. This content is not supplied by the institutional form itself, but by the ineliminable particularities of the persons, things, and locations involved. Institutional design matters, but good institutional design never strays very far from the concrete situation motivating it, and is thus not amenable to the universalistic prescriptions of statist and liberals.³

I. The Character of Human Evil

For the purposes of this paper, therefore, I presuppose that human beings are evil. As far as I can tell, human evil consists in the fact that there is a theoretical disjunction – which can always be manifest in a practical disjunction – between the *common good* achievable by human action

¹ Now, to say that men fall short of being angels is not the same as to say that they fall short of being beasts. Nonetheless, the devil was an angel, and Kant framed the task of political society as that of designing a state suitable “even for a nation of devils (if only they possess understanding)” (Kant 2006, 90 [Ak. 8:366]), so one should not rule out immediately the prospect that the liberals are at least as pessimistic as Hobbes.

² The qualification is unavoidable, for reasons that I will discuss in my conclusion.

³ Or, for that matter, of many older model anarchists, socialists, and communists.

and the *aggregate good* achieved by uncoordinated rational action on the part of individuals. In other words, human evil is the ineliminable threat of coordination problems for beings such as us. This potential for coordination problems is present even when we all want the same outcome (that is, we agree on what the common good is), and that outcome is compossible for every one of us (That is, it involves no trade-offs).

This evil is not quite self-interestedness. The common good might be equally in the interest of each and every individual, and we might recognize this, and still encounter a coordination problem. The problem is not that we each want what is best for us individually, but that the result of our uncoordinated pursuit of what is best for us each falls short of what we all recognize to be the best possible outcome. We see the better and do the worse.⁴

Nor is this evil rooted in scarcity (or in the unlimited desire that turns abundance into scarcity). The common good that we fall short of might be an unlimited good. The problem is not competition over scarce resources, but the inability to achieve an optimal outcome even when that outcome is compossible for everyone.

Nor is evil a matter either of irrationality or of ignorance of the factors that will influence the outcome of our action. Perfectly rational beings with complete information about the situation in which they act will still confront the specter of coordination problems.⁵ Indeed, *only* rational beings can be evil in this sense.⁶

Finally, evil is not rooted in a lack of communication or deliberation among rational beings. People in a prisoners' dilemma situation might discuss their situation, deliberate about how best to address it, resolve with one another to cooperate, and swear up and down that they will remain true to the common resolution, and yet, if they must nonetheless make their choices independently of one another – that is, without knowing for sure what the other has in fact chosen – then defecting from the commonly arrived at decision will remain the rational strategy for each.

Instead, human evil can be rooted in the conjunction of a) *uncertainty* about what other rational beings will choose to do and b) *dependency* upon the actions of the others for the achievement of any result.

Virno has described human evil in slightly different terms by bringing the question into the ambit of fundamental linguistic structures, especially that of *negation*. Discussing the primal

⁴ In Oliver Williamson's terminology, human evil is the threat of *opportunism*.

⁵ Evil is compatible with perfect rationality – throughout, this will mean instrumental or prudential rationality – and complete information, but not with *perfect information*, since it is crucial that each acts independently, that is, acts in uncertainty as to the decisions that will be made by others. A being with perfect information does not act in time, since it knows not only what is but what will be.

⁶ Hence, behavioral economics, the other current mainstream attempt to rectify the neoclassical model, cannot really confront the problem of human evil, since it focuses on the empirically observable ways in which we fall short of economic rationality, and attempts to take this observable irrationality into account. Treating human beings as irrational or imprudent also has important consequences for the question of governance, but these are a separate issue (Finlayson 2010).

sociability embodied in mirror neurons – which fire both when an animal performs an act and when it observes another animal perform that act (Gallese 2004) – Virno writes:

Verbal language does not serve as a powerful loudspeaker for this preliminary sociability, which, after all, is shared by *Homo sapiens* and other animal species. That is to say, we should not believe that verbal language amplifies and articulates, with an abundance of means, the empathy of members of the same species that is already guaranteed at the neural level. [...] Verbal thought distinguishes itself from other communicative codes, as well as from cognitive prelinguistic performance, because it is able to negate any type of semantic content. Even the perceptive evidence that “this is a man” loses its own irrefutability whenever it is subjected to the function of the word “not” (Virno 2008, 176).

For Virno, the ability to negate, to say “no,” is at the root of the danger humans pose to one another, and to themselves. Verbal language brings with it the ever-present possibility that I will negate your humanity, your community with me. No biologically-rooted empathy can foreclose this possibility.

Despite the divergence of idioms, I think this same insight is attested by the game theoretical articulation of collective action problems. The prisoner’s dilemma, for instance, turns on the possibility that any affirmation of community by one of the two prisoners will be negated by the other. This negation by the other, which cannot be ruled out, and the possibility of which can be anticipated by both prisoners, leads both parties to the conclusion that preemptive negation of the community is in their individual interests, even though solidarity would lead to a better outcome overall. This is even more stark in assurance games, in which cooperation would supply the best outcome for each player but noncooperation is nonetheless a Nash equilibrium from which each can rationally depart only if all others jump at the same time. Hence, in the absence of cooperation, cooperation seems impossible to establish. The threat of negation is the motive for negation. Putting things in Virno’s terms has the virtue, I think, of sidestepping the debate about the precise form and content of economic rationality. Some minimal ability to foresee the likely consequences of action, an awareness of one’s own ability to negate any community by acting on one’s own, and a recognition that others have the same ability are the only requirements of our practical anthropology on this account.⁷

II. Theoretical Responses to the Problem of Human Evil

Given the above characterization of human evil, and presupposing that it does, indeed, describe a recurrent feature of the human condition, we can ask how various social and political theories – that is, theories of collective action – respond to this problem. Three theories of collective action present themselves quite readily: the theory of the market, the theory of the state, and

⁷ I recognize, however, that some might prefer to take on board a more robust and formalized account of instrumental rationality in order to avoid Virno’s reliance upon a philosophy of language. *Vive la différence!*

the theory of the firm. I expect that the theory of the firm will elicit more raised eyebrows than the others, and yet, as the rest of this essay will hopefully show, I think the firm is the most formidable institutional response of the three. This is due to the fact that, despite appearances to the contrary, the market and the state depend upon firms (of a certain description) as background conditions. This will all become clearer as we proceed.

(a.) The Market

The theory of the market is radically deflationary about collective action, in that it denies either a) that collective action is necessary and good or b) that collective action is possible. The first denial amounts to one variety of radical libertarianism. Mutually voluntary transactions between individuals pursuing their own interests, and only these, have the property of producing the greatest possible general welfare even where – or precisely because – no individual aims to produce any such general welfare. This is, of course, Adam Smith’s invisible hand. As Foucault notes, the hand is *invisible* precisely because, while it “spontaneously combines interests,” it does so in such a way that “prohibits any form of intervention and, even better, any form of overarching gaze” (Foucault 2008, 280).⁸ Collective action, in which agents self-consciously aim at the common good, is pernicious insofar as it is supposed to be guided by the sight of something that cannot, in principle, be seen. The common welfare can only be the outcome of actions that make no claim to this impossible vision.

This easily shades into the second denial, according to which there is no such thing as collective action (even as the two positions contradict one another, the one being normative while the other is positive – there is no sense worrying about and inveighing against what can never happen anyway). What seems to be collective action is actually analyzable into an aggregate of individual actions. The “common good” aimed at is itself only an alignment of individual interests. Even hierarchical organizations (firms, bureaucracies) and affectively charged communities (families, churches) are susceptible to analysis into an ongoing series of individual transactions of goods and services. In short, according to this second denial, “organizations are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals” (Jensen 1976, 307). It’s markets all the way down.

Regardless of which form it takes, the theory of the market denies this essay’s presupposition – the problem of human evil – and so can be set aside. The market is precisely that sphere where collective action problems do not arise, where public goods either do not exist or are not subject to overuse or undersupply, where human evil has no place. In the market, we’re all innocent; our private vices are public virtues. Certainly Adam Smith did not think that this sphere of innocence encompassed the whole of human life, and it is doubtful that anyone since has seriously taken deflationism about collective action to either of the global extremes envisioned above. The market is generally taken to be bounded, even if those boundaries are regularly expanded by the annexation – practical or theoretical – of previously non-market

⁸ Compare this to J.A. Salter’s claim: “The normal economic system works itself. For its current operation it is under no central control, it needs no central survey. Over the whole range of human activity and human need, supply is adjusted to demand, and production to consumption, by a process that is automatic, elastic and responsive” (Salter 1921, 16-17).

interactions and institutions. Nonetheless, however large or small it may be, the market is the enchanted circle of human innocence, wherein all admitted desires are deemed equally worthy of satisfaction (given that a price can be agreed upon, of course). Hence, the theory of the market does not respond to the problem of human evil at all, except to deny that it is a problem for whatever class of interactions is or should be comprehended by the market. Therefore, it can be set aside.

(b.) The State

The theory of the state is not so idyllic. It rests upon the premise that the specter of coordination problems is overwhelming, and can only be dispelled by a third party bearing a sword.⁹ That is, rational agents, confronting their mutual dependency and uncertainty, will rationally wish for a neutral arbiter vested with coercive power to enforce his or her decisions. This third party is the sovereign, and the condition of living under a sovereign is the civil state. This civil state and the sovereign's coercive power, which secures it, are grounded in a pre-commitment that subordinates the prudential judgment of each party to the judgment of the sovereign. This precommitment establishes the moral obligation to obey the state's laws and the sovereign's decrees. Since the existence of multiple sites of prudential rationality and choice plunges us into insuperable insecurity, it is paradoxically prudent to alienate our separate prudential judgments to one decider.

Coming to this decision, and hence entry into the civil state, is itself a collective action problem. We can all recognize that a lawful state of order is preferable to anarchy, and yet it will still be rational for each of us to defect whenever we think we can get away with it, in which case a civil state does not exist. If we could supply ourselves with a civil state, we would not need a civil state. Hence, the theory of the state must presuppose that the sovereign supplies him- or herself.¹⁰ That is, there must be, on hand, a person or persons in command of enough coercive force to compel the allegiance of the vast majority of rational agents (with the assistance of the preachers of obedience, like Hobbes, of course).

The critique of the sovereign state begins with the realization that, far from grounding the possibility of authority and collective institutions, or explaining their origins, sovereign power must itself be grounded in non-sovereign institutional authority. Moreover, it is Hobbes himself who tells us this.

Many readers have noticed that there is a seeming contradiction between the rights of the sovereign laid out by Hobbes in Chapter 18 of *Leviathan*, and the liberties of the subjects enumerated in Chapter 21 of the same. On the one hand, "Subjects' right of self defense is inalienable, which implies that they are released from their obligations to the sovereign when he appears unwilling or incapable of safeguarding their lives. This in turn implies that subjects

⁹ Obviously, the literature on the state is too massive to review. Ostrom has an instructive overview of one relevant facet of this literature, the "deduction" of the need for Leviathan from tragedy-of-the-commons-type scenarios (Ostrom 1990, 8-11).

¹⁰ In contemporary parlance, the creation and maintenance of this overwhelming coercive force is considered to be exogenous to the social contract by which rational individuals recognize the sovereignty of this power.

retain the right to judge the circumstances in which the sovereign has lost *de facto* control and in which disobeying him is [therefore] permitted” (Abizadeh 2009, 163).¹¹ On the other hand, subjects are supposed to have alienated to the sovereign the right to judge what is right, good, and conducive to peace, and this implies that they do not retain the right to judge the circumstances in which the sovereign has lost *de facto* control.

Obviously, everything hinges upon “*de facto* control” meaning the same thing in both cases. Arash Abizadeh has argued that Hobbes is a “negative *de facto*ist,” meaning that *de facto* power over the lives of subjects – understood as the power to take and to protect those lives, together with the will to protect them – is necessary but insufficient for establishing sovereignty. The other necessary condition for establishing sovereignty is the consent of the subject, the precommitment to defer to the sovereign’s judgment. Only the conjoint fulfillment of these two conditions establishes sovereignty as legitimate political authority over subjects obligated to obey. There seems to be some hope here, if not of resolving the contradiction, at least of rendering it “merely academic” with regard to political life, by grounding the sovereign’s *de facto* control in something like an overwhelming show of force, which would render sovereignty uncontroversial in most circumstances.

However, Hobbes pulls this ground out from under the sovereign. This is driven home best, I think, by two lines from *Behemoth*. In section 16, Hobbes writes, “The power of the mighty hath no foundation but in the opinion and belief of the people.” In section 59, he asks, rhetorically, “If men know not their duty, what is there that can force them to obey the laws? An army, you will say. But what shall force the army?”

These considerations have the effect, it seems to me, of completely upending the approach that would trace the sovereign’s legitimacy back to *de facto* power over the lives of the subjects as its necessary and independently realizable condition. That very *de facto* power is shown by Hobbes to be thoroughly mediated by the opinions and beliefs of the subjects, and by their obedience. The first quotation indicates that *de facto* power is not an immediate and overwhelming fact, but a complex and ever-shifting ideological phenomenon. The second indicates that there is not *de facto* protective power on the one side and consent on the other. In fact, consent is nothing more or less than the recognition of power as sovereign power, a recognition that is necessary for power to function as *de facto* power in the first place.

There are two levels here. The difference between a) the physical or passionate, and hence *instrumentally rational claim-right* of a powerful leader to the obedience of his or her followers and b) the *moral claim-right* of a sovereign to the obedience of his or her subjects is the difference, for Hobbes, between a’) irregular confederacies in the state of nature and b’) the civil state. This difference hinges on consent, or the promise to defer to the judgment of the sovereign, even when one (prudentially) disagrees with that judgment. In cases of natural power – that is, non-moral or prudential authority – the opinion and belief of the people is already crucial, since no human can have power over another in anything but an extremely limited, physical sense, except where it is mediated by the beliefs, desires and aversions, and

¹¹ See also Kateb’s discussion of this same difficulty (Kateb 1989).

hence by the imagination of the one commanded. But in the case of constituted, sovereign power, we have not just this natural mediation, but also a *transfer of right*.

In order for the sovereign to elicit submission, s/he must have *de facto* existential power, but if s/he could exercise effective *de facto* power naturally, there would be no need, on Hobbes' terms, for sovereignty. The state of nature would not be state of war of all against all, but a world very much like our own, except stripped of the moral language of rights, duties, and obligations. Sovereign power is supposed by Hobbes to be necessary precisely because actual dominion is only possible if people willingly and obligatorily submit even in the absence of *de facto* existential power. We can now see, however, that consent and obligation cannot be grounded in *de facto* coercive power, nor can *de facto* coercive power be established apart from consent and obligation. Consent – and hence the legitimacy that makes the state the state – must be *sui generis*.

For Virno, this paradox in the theory of sovereignty makes manifest the “impossibility of exiting from the state of nature” (Virno 2008, 26). This conclusion is not yet warranted. There are two possibilities: a) that the state of nature persists under a different name in the civil state, and b) that sovereign power originates in people doing their duty even against their interests. Nonetheless, Virno's conclusion is the only one compatible with the hypothesis of human evil.

To see this, let us take Hobbes' question from *Behemoth*. It seems to imply that people acting out of duty, contrary to the counsel of prudence, is the only option compatible with the civil state. Either citizens do their duty and obey the laws, even when doing so is against their interests, or even fatal to them, or else they must be forced to do so by an army that itself does its duty and obeys the sovereign, even when doing so is against the interests of the soldiers, or even fatal to them. The prudential fear of the sword can only ever be a *supplement* to morally binding obligation. But consistently acting out of moral obligation is contrary to our presupposition of human evil, for a person acting out of moral obligation will never act opportunistically, and a set of persons acting out of moral obligation will never encounter a collective action dilemma. Hence, the Hobbesian theory of the state – supposedly the citadel of political-anthropological pessimism – in fact rests upon the assumption that the sovereign is only secure to the extent that the citizenry, and especially the army, acts non-opportunistically, obeying the commands of the sovereign without appealing first to the calculations of prudence.

The only alternative, it seems, is to deny that any moral obligation to obey exists, and to affirm instead, as Virno does, that there is no difference between the state of nature and the civil state.¹² If collective action dilemmas are real, as we have supposed, then neither the theory of the market nor the theory of the state can provide us with any resources for understanding how these dilemmas can be addressed and worked around. We need – contra market fundamentalism – some way to coordinate our prudential judgments, but – contra contractualism and statism – without alienating those judgments. This leads us to the theory of the firm.

¹² Kateb is also driven to this conclusion; “Hobbes's theory teaches that in the most important respect, therefore, every human being under every government always lives in a state of nature” (Kateb 1989, 384).

(c.) The Firm

The theory of the firm, like the theory of the state, admits that coordination among rational actors cannot always be achieved by the spontaneous fluctuations of the price mechanism, that is, by independent prudential judgments. Coordination via the price mechanism itself has a price, the sum of the various transaction costs. When the cost of achieving coordination via the market rises too high – where transactions are too frequent, involve too much uncertainty, or involve assets the specificity of which cannot be ignored, for example – the coordinating function is taken over by the entrepreneur (Williamson 1985, Ch. 1-3). Unlike the theory of the state, however, this entrepreneurial coordination carries with it no moral obligation to obey.¹³ The purely prudential subordination of agents' activity to the direction of the entrepreneur gives rise to the "vertical integration" – the hierarchy – of the firm. "A firm," as defined by Ronald Coase, "consists of the system of relationships which comes into existence when the direction of resources is dependent on an entrepreneur" (Coase 1937, 393).¹⁴ We must inquire, therefore, whether the firm, situated between the prelapsarian market and the moralistic state, might furnish an appropriate response to the problem of human evil.

Despite – or because of – the frequent attribution of initiative and innovation to the entrepreneur, it must be noted up front that the entrepreneur is only differentiated from other economic agents by being the employer of others, whose activity he or she directs. As Coase insisted, the essence of the economic concept of the entrepreneur is "the fact of direction," the fact that "the master must have the right to control the servant's work, either personally or by another servant or agent" (Coase 1937, 404).¹⁵ Initiative and innovation characterize market transactions; but the entrepreneur is not, as such, engaged in market transactions, but in directly or indirectly telling "the servant when to work (within the hours of service) and when not to work, and what work to do and how to do it (within the terms of such service)" (Coase

¹³ Most treatments of the difference between the state and private associations assume that the difference between the two amounts to the difference between coercive authority and non-coercive authority. The examination of Hobbes conducted above shows that this is a mistake. A proper treatment of coercion would be out of place here, so I will bracket the question of the role of coercive power in the functioning of firms. Suffice it to say that, on Hobbesian terms, coercive power is present in every human interaction. What sets the sovereign-subject relation apart is the presence, additionally, of morally obligatory authority. Hence, in turning from the state to the firm, we are setting aside *only* the moral obligation of the subject to obey.

¹⁴ Compare Marx's discussion of capitalist direction within the firm (Marx 1976, Ch. 13). There is a massive literature on the structural diversity among firms, which I am ignoring here. To the extent that actual firms depart from Coase's ideal-type entrepreneurial direction, they can, I think, be treated as more or less interesting case studies in institutional diversity. However, I think it is also true that the entrepreneur-agents model is quite flexible, and can encompass most any capital-managed firm, including joint-stock and supplier-cooperative firms, and perhaps even some labor-managed firm (Dow 2003, Ch. 5-6). Moreover, despite the essentially economic terminology, there is no reason to restrict the firm to the economic realm, classically understood. A church, for example, is a firm in this sense, as are most voluntary associations.

¹⁵ Coase is here quoting Batt's discussion of the employer, but Coase explicitly maintains the identity of the economic concept of the *entrepreneur* and the everyday/legal concept of the *employer*. I should note that this definition of the entrepreneur in terms of the right of direction refers only to a prudential claim-right, not to a moral claim right. The worker has to do what the entrepreneur says *if s/he doesn't want to be fired*, but this hypothetical imperative has no moral force as such.

1937, 404).¹⁶ Therefore, the question of the sufficiency of the firm as a response to human evil resolves itself into the question of whether or not entrepreneurial direction of agents' activity suffices to overcome the danger of coordination problems, not into any considerations of the powers of "entrepreneurial innovation," which properly belong to the theory of the market.

The case for the firm would seem to rest on the notion that wherever coordination problems threaten, this danger constitutes an increase in market transaction costs, an increase that is avoided by the substitution of the entrepreneur's direction for the uncoordinated activity of buyers and sellers. That is, firms will only internalize those transactions that can be more efficiently directed by the entrepreneur than by the spontaneous ordering of the market's price mechanism. Hence, the lesson of transaction cost and new institutional economics is that hierarchical, non-market institutions – firms – are efficient, rational solutions to market failures, with transactions being distributed and redistributed between firms and markets as necessary to keep costs at a minimum.

At least two considerations tell against this rosy scenario, however: a) the issue of asset specificity, and b) the second-order problem of institutional supply.

First, the analysis in terms of transaction costs – which motivates the appreciation of firms in the first place – undercuts the best-possible-world optimism of marginal substitution. One of the central categories of transaction cost economics is *asset specificity*. As Oliver Williamson puts it, "asset specificity refers to durable investments that are undertaken in support of particular transactions, the opportunity cost of which investments is much lower in best alternative uses or by alternate users should the original transaction be prematurely terminated," wherefrom it follows that "the specific identity of the parties to a transaction plainly matters in these circumstances" and "contractual and organizational safeguards arise in support of transactions of this kind" (Williamson 1985, 55). In plain language, asset specificity names the stubborn fact that most transactions are not like those in a stock exchange, where every commodity is indifferently fungible vis-à-vis every other. Rather, we generally invest time and effort in supplying or seeking out some particular good or service, the replacement of which by another commodity of the same price would not do. The world of exchange transactions is lumpy and irregular, not smooth. Parties sink time and energy in the specifics of transactions, and become locked-in thereby, to greater and lesser extents. There's almost never another consumer or supplier standing right next to your current partner. This is a crucial basis of transaction costs; finding an appropriate partner takes time and effort and, in the face of fundamental uncertainty about how best to find the best partner, leads to satisficing rather than maximizing behavior.

But asset specificity thereby also renders dubious the presumption of efficient distribution of transactions between firms and markets. The lumpiness of real transactions confounds the smoothness of marginal cost curves. To say, as Coase does, that "a firm will tend to expand until the costs of organising an extra transaction within the firm become equal to the costs of carrying out the same transaction by means of an exchange on the open market or the costs of

¹⁶ Coase is quoting Batt.

organising in another firm” (Coase 1937, 395), is to presume that the cost of organizing transactions slopes down smoothly to the margin. The same presumption is contained in Williamson’s mantra that institutions and organizations “have the main purpose *and effect* of economizing on transaction costs” (Williamson 1985, 17, and passim; emphasis added). Granting that they have this purpose, there is no guarantee that they will have this effect, precisely because the asset specificity that motivates long-term contracts, personal relations, and vertical integration also makes it difficult or impossible for the parties to these institutional arrangements to tell whether they have actually arrived at the most efficient solution. Hence Williamson’s rather comic discussion of company towns, which ends with the lament:

Company towns would be a good deal less objectionable if they were actually organized along efficient contracting principles. But what company store was ever organized as a cooperative? A chronic problem with labor market organization is that workers and their families are irrepressible optimists. They are taken in by vague assurances of good faith, by legally unenforceable promises, and by their own hopes for the good life. Tough-minded bargaining in its entirety never occurs or, if it occurs, comes too late (Williamson 1985, 38).

It doesn’t seem to have occurred to Williamson that his own account of asset specificity contains the key to understanding the absence of “efficient contracting principles” in more or less every actually existing contract.¹⁷ In short, there is no reason to be optimistic that firms are, in general, efficient solutions to collective action dilemmas, rather than expressions of ignorance and/or irrationality. Relying upon human incompetence to mitigate the effects of human evil is not a very reassuring strategy.

Furthermore, just so far as the firm does constitute an efficient solution to the coordination problems encountered by independent agents, it is a public good, the supply of which is itself a collective action problem. As Robert Bates has argued, the new institutionalism provides a sort of functionalist argument for the rationality of hierarchical institutions, but “this interpretation encounters grave difficulties as a theory of their origins” (Bates 1988, 393).¹⁸ Bates’ presentation depends upon a developed technical literature in game theory,¹⁹ but the basic argument can be sketched easily enough:

Given a set of rational agents facing a coordination problem (an assurance or prisoner’s dilemma game), and assuming that a hierarchical employer/employee relationship would constitute an efficient solution to the coordination problem, the question is, how do the agents get themselves from their current state of uncoordinated action into the preferable state of organization within a firm? Since the mutual agreement of all to be directed by one is subject

¹⁷ It should also be noted that Williamson here displays an astounding ignorance of the background conditions of wage labor, unfortunately all too common among economists, who tend to focus exclusively on workers’ “freedom to contract” while ignoring their correlative freedom from assets by which they might support themselves in the absence of a wage. Desperate people are ill-equipped to engage in tough-minded bargaining (Marx 1976, Ch. 6, 26-33).

¹⁸ Williamson, for instance, seems to believe that efficiency motivates the coming into being of at least some institutional arrangements (Dow 2003, 121-22).

¹⁹ In particular: (Holmstrom 1982) and (Eswaran 1984).

to the threat of defection, it seems that the agents will not be able to supply themselves with this agreement; everyone will want to be the master, no one the servant, each will prefer their own defection to the defection of another, and no agreement will be reached.

This result is not changed by supposing that the entrepreneur comes from outside. We might suppose that such an entrepreneur has no stake in the outcome of the situation, in which case s/he has no rational motive to supply coordination for the agents; if collective dilemmas can be solved by positing benevolent action on the part of a third party, they can be solved by positing the same on the part of the parties to the dilemma. Otherwise we must suppose that the entrepreneur supplies direction in return for a stake in the outcome. But in this case the outcome will not be efficient – the entrepreneur's share of the proceeds will make it such that the division of the remainder among the agents will leave them worse off than they would have been otherwise. The rate of exploitation must be taken into account, and when it is, we are back in the position of doubting the firm's efficiency.

It seems that the theory of the firm, as constituted by the new institutional economics, is only a theory of collective action by a theoretical slight of hand. If entrepreneurial direction within the firm is a rational response to a collective action problem, then this would be a reason for firms *not* to exist, since agents would be unable to supply them. If, as is more likely, firms do exist and have been supplied, then this is itself reason to doubt that they represent rational solutions to collective action problems. Taking human evil seriously leads one to the suspicion that the actual is not rational, and the rational is not actual.

Bates believes that the only way out of this theoretical dilemma is to soften our picture of the rational agents involved by supposing that some of them are themselves optimists about human nature, or are at least unconvinced by pessimism.²⁰ This would not necessarily entail theoretical optimism about human nature. Rather, as a theorist, one need only suppose that a critical mass of people are practically optimistic about most others. Most people are not economists, thankfully.²¹ Regardless of how opportunistic people, including ourselves, actually are, we do not behave as if we are surrounded always by opportunists. A certain naïveté characterizes our practical comportment. Most people initiate interactions with “nice” behavior, and don't defect except in retaliation. This is not incompatible with opportunism, since this strategy is actually quite effective in many settings (Axelrod 1984). It is incompatible, however, with cynicism. It may be that we generally think ourselves to be exceptionally cunning, or else that we generally think those around us to be a bit too credulous.

This approach, I think, tends in the same direction as Philip Pettit's argument that *homo economicus* has a “virtual reality,” or that rational self-interested calculation tends to kick in only in response to signals of danger – interactions that are unusual or have previously resulted

²⁰ Bates does not put things in these terms. He claims that the matter turns on agents' uncertainty as to one another's preferences (Bates 1988, 398). I think this amounts to a mitigated pessimism about others because each rational actor is only unsure of others' preferences to the extent that s/he doubts that those preferences are identical to her or his own, which s/he knows to be opportunistic.

²¹ I refer, of course, to the famous study that found students of economics to be less cooperative than students who had taken no economics.

in harm, for example – rather than being constantly or generally definitive of human psychology (Pettit 2001). Both Bates and Pettit want to hold to the rational choice or economic model of human being, but seek to account for the fact that, in the world we actually live in, things are not so bad as the rational choice model suggests they should be. In fact, the state of nature is not quite the war of all against all that Hobbes extrapolated from the prudential calculation of human desires. This doesn't mean that Hobbes was wrong about desire, even if he was wrong about the social and political consequences of desire. Firms – institutions organized by non-obligatory directive authority, what Hobbes called “irregular systems” or “leagues” – exist. Even if we have no good reason to think they are economically or instrumentally efficient, they do frequently exhibit a degree of stability that could only signify some degree of support from opportunistic calculation. What we lack is a “theory that would identify the mechanisms by which a group of individuals could organize themselves” into such irregular associations (Ostrom 1990, 40).²² I do not pretend to be able to supply such a theory. In the concluding section of this essay, however, I would like to explore what its absence means.

III. Towards institutional particularism

The absence of a theory of institution formation in the face of human evil is not such a terrible thing unless one thinks that this absence of a theory leads to or entails an absence of practices of institution formation in the face of human evil. I don't think, however, that the absence of a theory entails such an absence of practices. By way of conclusion, therefore, I will outline the considerations that lead me to be relatively sanguine about the prospects of practice despite the dim prospects for theory.

A theory of institutions, in this case, would amount to a rule or set of rules according to which rules for institutions could be made and assessed. These meta-rules, or principles of institutions, would not necessarily dictate the content of the actual rules adopted for a particular institution, but they would establish the grounds on which those rules would count as rules. Contractual and utilitarian theories are examples of such theories; they purport to identify and explicate principles – of justice or utility, for example – that function as procedural or normative constraints on the process of rule formation and assessment. Institutional rules generated or evaluated according to the principles of institutions are thereby legitimated as rules that make a claim upon members of the institution in question, a claim to be recognized precisely as the rules of the institution.

The considerations introduced by the examination of Hobbes above, however, seem to me to tell against this conception of theory. The obligation to obey the sovereign is a theory of institutions in the relevant sense, for it is supposed to explain why subjects should follow whatever rules happen to characterize the particular state in which they find themselves. There is obviously no law that says, Obey the law. Such a law would beg the question (Virno 2008, 25). The principle of obedience grounds or transcends the realm of law as such. It is in

²² Ostrom is concerned with this lack as it pertains to the exploitation of common property resources, but I think it is fair to generalize her diagnosis.

light of this principle that the various laws, whatever they happen to be, are laws of the state and for its members, legitimately calling for recognition as such. Moreover, Hobbes' theory is a representative example of normative theory in general. Any theory of institutions would supply just such a transcendent principle, by which members of institutions would recognize the rules of their institutions as institutional rules to be followed. The theory of institutions would supply, one might say, the categorical imperative, in light of which the various hypothetical imperatives of institutional life would count as imperatives.

Transcendent rules require, however, a transcendent – or moral – rationality that would always understand the merely prudential rules of institutional life by reference to the theoretical principles of institutions, and never understand the latter by reference to the former. Any conflict between prudential rules and the principles of institutions must be decided by annulling or amending the prudential rules to come into accord with the principles of institutions. This entails that prudential rationality must always give way before the moral rationality that recognizes the transcendent nature of these principles.

This bifurcation of rationality, by which principled concerns always trump prudential concerns, is ruled out, however, by the supposition of human evil. Taking human evil seriously confines us to the realm of prudential rationality, because it denies that we can count on moral rationality or appeal to it as an explanation of institutions. Just as the Hobbesian theory of the state requires most people to act out of duty, even against their prudential interests, so, too, does any theory of institutions require that the existence of institutions be explained by appeal to members' principled refusal to subordinate principles to prudence. To appeal to transcendent principles of institutions is to appeal to meta-rules that can never fail to be binding in a real institution. To have a theory of institutions just is to articulate a set of transcendent principles of institutions. Hence, confinement to the realm of prudential rationality rules out any theory of institutions. In this realm of prudential rationality, there is no rule that cannot, in its turn, be subject to the same question about whether it ought to hold in this or that circumstance (Virno 2008, 36-42).

The outcome of this argument is congruous with arguments advanced in ethical theory by Jonathan Dancy, Martha Nussbaum, and John McDowell, among others, and which have been dubbed *moral particularism*. Hence, I will call my skepticism about any theory or principles of institutions *institutional particularism*. Moral particularism does not deny that there is some one right thing to do in any situation; it is not moral relativism or skepticism. Rather, it denies that the right thing to do can ever be discovered by or understood as the application of any moral principle, because all moral principles, so far as they are substantive, encounter exceptions. By analogy with moral particularism, then, we can outline several consequences of institutional particularism.

First, because particularism does not entail skepticism, we can say that, in any given situation, there will be some (one or more) institutional arrangement that will effectively stave off coordination problems, realizing the common good. Because of asset specificity, however, there is, second, no *prima facie* reason for supposing this best institution to be the institution actually on hand. Actually existing institutions are not necessarily efficient. Hence, there is

room for criticism of institutions, and extreme conservatism is ruled out. However, finally, the best institution for the circumstances cannot be found by an application of universal principles of institutions to the situation. There are no transcendent principles that we can be certain the best institution will instantiate, for all such “principles” are in fact prudential rules subject to circumstantial exceptions. Hence, the universalism of liberal and statist normative theory is out of bounds.

There is *no* generally appropriate practical response to the human condition. No institutional arrangement is the solution to the riddle of history. Conversely, however, there is no *a priori* way to rule out the local and temporary efficacy of most any institutional arrangement. History matters, and historically and geographically local judgments are more likely to be correct than are generalities. Modifying what Jacob Levy has written about constitutions, we can say, “Real [institutional] orders appropriate, incorporate, and channel the histories and divisions of the societies they govern. Treating them as if they are social contracts will flatten and distort them, making those engagements with the past or with social plurality appear anomalous and encouraging their minimization” (Levy 2009, 192). Institutional particularism leaves behind the normative utopia and turns to historic-natural institutions to learn more about the forces that restrain evil and defer destruction without recourse to the impossible possibility of expelling evil entirely (Virno 2008, 45).

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