CONTENTS

	PREFACE	viii
	INTRODUCTION	1
I	REASON AND EVOLUTION	8
	Construction and evolution	8
	The tenets of Cartesian rationalism	9
	The permanent limitations of our factual knowledge	II
	Factual knowledge and science	15
	The concurrent evolution of mind and society: the role	-
	of rules	17
	The false dichotomy of 'natural' and 'artificial'	20
	The rise of the evolutionary approach	22
	The persistence of constructivism in current thought	24
	Our anthropomorphic language	26
	Reason and abstraction	29
	Why the extreme forms of constructivist rationalism	
	regularly lead to a revolt against reason	31
2	COSMOS AND TAXIS	35
	The concept of order	35
	The two sources of order	36
	The distinguishing properties of spontaneous orders	38
	Spontaneous orders in nature	39
	In society, reliance on spontaneous order both extends and limits our powers of control	
	Spontaneous orders result from their elements obeying	41
	certain rules of conduct	43
	The spontaneous order of society is made up of individuals and organizations	46
	The rules of spontaneous orders and the rules of organization	48
	The terms 'organism' and 'organization'	52

CONTENTS

	3 PRINCIPLES AND EXPEDIENCY	
	Individual aims and collective benefits	55
	Freedom can be preserved only by following principles and	55
	is destroyed by following expediency	56
	The 'necessities' of policy are generally the consequences of earlier measures	
	The danger of attaching greater importance to the tredictable	e 59
	Spurious realism and the required courage to consider utopic	s 61
	The role of the lawyer in political evolution	
	The modern development of law has been guided largely by false economics	65
	Just conomics	67
4	Di Lii	72
	Law is older than legislation	72
	The lessons of ethology and cultural anthropology	74
	The process of articulation of practices	76
	Factual and normative rules Early law	78
	The classical and the medieval tradition	81
	The distinctive attributes of law arising from custom and	82
	preceaent	0-
	Why grown law requires correction by legislation	8 ₅
	The origin of legislative bodies	89
	Allegiance and sovereignty	91
5	NOMOS: THE LAW OF LIBERTY	
	The functions of the judge	94
	How the task of the judge differs from that of the head of	94
	an organization The aim of jurisdiction is the maintenance of an ongoing	97
	order of actions 'Actions toppords at least 1	98
	In a dynamic order of actions only some expectations can be	101
	protected The maximal coincidence of	102
	The maximal coincidence of expectations is achieved by the delimitation of protected domains	106
	The general problem of the effects of makes and fort	106
	The purpose of law	112
	The articulations of the law and the predictability of	
	judicial decisions	115

CONTENTS

	The function of the judge is confined to a spontaneous order.	118
	Conclusions	122
6	THESIS: THE LAW OF LEGISLATION	124
	Legislation originates from the necessity of establishing rules	
	of organization	124
	Law and statute—the enforcement of law and the execution	
	of commands	126
	Legislation and the theory of the separation of powers	128
	The governmental functions of representative assemblies	129
	Private law and public law	131
	Constitutional law	134
	Financial legislation	136
	Administrative law and the police power	137
	The 'measures' of policy	139
	The transformation of private law into public law by	0,
	'social' legislation	141
	The mental bias of a legislature preoccupied with government	143

	NOTES	145
	INDEX	181