

[Hannan, Law and Innovation](#) [1]

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I was struck by a passage in Daniel Hannan's new book *How We Invented Freedom And Why It Matters*. As a UK Member of the European Parliament, he is always asking other MEPs why they think new rules are needed, in banking, working hours, herbal remedies and much else. As he says:

"The response is always the same: 'But the old system was unregulated!' The idea that absence of regulation might be a natural state of affairs is seen as preposterous. In Continental usage, 'unregulated' and 'illegal' are much closer concepts than in places where lawmaking happens in English."

This is a profound point. We've all heard about the differences between British (specifically, English) and Continental Law. In English, Common Law, rules are decided by courts in response to some 'specific problem' arising. In Continental, Roman Law, rules are laid down by the authorities. So in Britain, things are presumed to be permitted unless there is a law to stop them. On the Continent, things are presumed to be prohibited unless there is a law to allow them.

I always figured that such traditions explain why the British are more enterprising, and why they have a much lower opinion of their authorities: to them, politicians and officials just get in the way of what you want to do. To a continental, though, they are people you need to coddle and get onside in order to do what you want to do.

But Hannan's illustrative conversation explains much more: specifically, why the European Union generates so much regulation. To the Continental mind, for something to be permitted, there must be a law ? or a set of regulations ? permitting it. If you are doing something that is not regulated, you must be up to no good. Indeed, it is cheeky of you not to have asked permission in the first place.

In slow-moving societies, this might work tolerably well. But when you are facing rapid social and economic change, as we are today, the Continental presumption of required consent cannot possibly respond fast enough, because every innovation has to be considered and ruled on. In the English tradition, by contrast, you can innovate as much as you want unless or until it infringes other people's rights. Facing the international competition that we do, that seems a much more promising system.

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