Institutions, Order, and Ethics in Hayek's Thought

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ABSTRACT

INSTITUTIONS, ORDER, AND ETHICS IN HAYEK'S THOUGHT

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This dissertation explores the themes of institution, spontaneous order, and ethics in Hayek's thought. Hayek's critics contend that his treatment of two seemingly opposing ideas, tradition and institutional design, is responsible for inconsistencies in his thought. The first essay examines such alleged inconsistencies and their implications. It is argued that, while Hayek fails to fully reconcile these competing themes, his emphasis on institutional design, if interpreted within the context of the Hayekian theory of cultural evolution and evolution of the mind, is fully consistent with his criticisms of constructivist rationalism. In line with Hayek's epistemology and his early notion of individualism, if reason is a product of tradition, and individual decisions in turn can have an effect on tradition, then not only is institutional design possible, but, under certain circumstances, it is also necessary.

Critics of Hayek's work on cultural evolution argue that the seemingly opposing themes of spontaneous order and constructivist rationalism reveals some tensions, as

constructivist rationalism seems able to hinder the spontaneous emergence of an order and engender stable and enduring institutions whose characteristics are consistent with deliberate design. The second essay discusses such tensions paying particular attention to the interrelated issues of whether constructivism and spontaneous order provide the basis for alternative and mutually exclusive explanations of the emergence of institution, or whether constructivism can be interpreted as an evolutionary force.

In ethics, Hayek believes that the ultimate measure of justice is aptitude to preserve the social order. Hayek's attempt to demonstrate that economic liberalism has a moral foundation is guided by a strong anti-rationalism. Since society is complex and its facts unknowable, unforeseeable, and unpredictable, individuals are incapable of devising a set of principles that proves appropriate for all circumstances. This highly skeptical epistemology leads him to reject a priori conceptions of ethics in favor of those systems of rules that have survived a selection process in which evolution takes the place of reason. Hayek's focus on human ignorance, which inspires his notion of liberty, is reflected in his approach to government intervention, and his strict reliance on the rule of law. The third essay investigates the consequences that the strict adherence to the rule of law has on Hayek's political theory.

CHAPTER 1

Reason, Tradition and Order. Some Tensions in Hayek's Thought

1. Introduction

A recurring critique of Hayek's work is that his social and political philosophy is marred by "competing and irreconcilable commitments"[1] that lead to incoherent results[2]. It has been contended that the most striking inconsistency in Hayek's thought is revealed when his philosophical principle of noninterference with traditions and spontaneous institutions is considered alongside his emphasis on institutional design. On the one hand, Hayek values institutions according to whether they are the result of spontaneous evolution. On the other hand, his proposal of a model constitution for democratic government, as presented in *The Constitution of Liberty*, reveal his willingness to engage in rational design, an approach that to some readers, detractors and devotees alike, suggests a weakened confidence in the workings of traditions.[3]

In his discussion of liberty, Hayek attempts to resolve the tension between traditionalism and institutional design by showing when it is appropriate to rely on culturally evolved institutions and when reasonable reform is required. It's been argued that Hayek fails in this attempt, as his understanding of liberty does not clarify when

[1] J. Gray, "F.A. Hayek on Liberty and Tradition", *Journal of Libertarian Studies*, 4, 1980, 119-137, 120.
[2] J. Gray, *Hayek on Liberty*, London, Basil Blackwell, 1986, 120.
[3] See S. Letwin, "The Achievement of Friedrich A. Hayek", in F. Machlup, ed., *Essays on Hayek*, New York, New York University Press, 1976, 147-67.

tradition or institutional design ought to be the course of action. Some critics go as far as claiming that Hayek develops two different and incompatible political philosophies.[4] In order to assess whether Hayek's reliance on traditionalism and his ventures into institutional design represent tendencies that are inherently self-contradictory, or, rather, tendencies that are able to coexist, we need to assess to the nature of the relationship between reason and tradition in Hayek's thought.

Throughout his work, Hayek is ambivalent about the relative importance of rational choice and rule-following behavior. The conservative undertone of his more recent work devalues individual choice, and emphasizes its absolute dependence on tradition. This view of reason as embedded in tradition has been seen by many as a result of Hayek's growing pessimism about modern democracies to preserve the order of the Great Society and the traditions upon which the Great Society rests.[5]

In this essay, the perceived inconsistencies of Hayek's thought and their implications are examined. After a presentation of the allegedly contradictory themes of institutional design and traditionalism, Hayek's opposition to constructivist rationalism and his reliance on the processes of cultural evolution are examined. Particular attention is devoted to the issue of whether Hayek's emphasis on institutional design is a source of incoherence in his work. It is concluded that, if properly conceived within Hayek's epistemology, Hayek's notion of individual choice and theoretical knowledge are as essential for the preservation of the order of the Great Society and the traditions it rests

[4] S. Brittan, *The Role and Limits of Government: Essays in Political Economy*, Minneapolis, Minnesota, University of Minnesota Press, 1983.
[5] On this particular interpretation of Hayek's approach, see B. Rowland, *Ordered Liberty and the Constitutional Framework: The Political Thought of Friedrich A. Hayek*, Westport, Conn., Greenwood Press, 1987.

on, as are traditions and tacit knowledge: if rationality is generated by the cultural evolution of spontaneous rules and institutions, and if the actions of rational individuals affect in their turn the evolution of spontaneous institutions, then not only is institutional reform possible but it is also consistent with Hayek's general philosophy.

2. Traditionalism and Institutional Design Presented

In his social and political philosophy, Hayek puts forward the requirements necessary for the actions of free individuals to be ordered in a way that preserves both individual liberty and the social order. According to Hayek, a free individual has a set of privately chosen goals to pursue, a unique stock of "tacit" knowledge to employ in the pursuit of those goals, and a set of beliefs about methods of pursuing those goals. These beliefs are reflective of the culture of the community within which the individual acts. This definition emphasizes individuals as being both independent and self-relying, and, at the same time, belonging to a community.[6]

Provided that certain institutional requirements are met, the actions of free individuals are coordinated in a way that the order of society emerges. In his work on constitutional design, Hayek observes that the overall order of society is not safeguarded by modern democracies, as the organization of their legislatures serves the satisfaction of the desires of special interest groups at the expense of the generality of the individuals.

Hayek sees the the fundamental problem of interest group democracies residing in their failure to achieve limited government. Hayek contends that a democratic

[6] It has been contended that this approach is responsible for some inconsistencies in Hayek's work. The examination of such inconsistencies is performed in a later section of this essay.

government whose power is not effectively contained "will be forced to bring together and keep together a majority by satisfying the demands of a multitude of special interests."[7] The solution, according to Hayek, lies in constitutional design. However, some observers have pointed out, if considered in light of his findings on the emergence and evolution of social institutions, such a conclusion reveals an apparent contradiction.[8]

In his discussion of the emergence of institutions and evolution of culture, Hayek maintains that the evolution of spontaneous social institutions, such as language and morals, is part of a larger process of cultural evolution, which accounts for the increasingly large numbers of individuals who can live together and create what Hayek call the Great Society. The development and advance of the Great Society rests on the workings of spontaneous processes, that is, a series of unintended outcomes that are brought about by the interaction of free individuals whose actions are not directed by a central plan.

The overall order of society depends on an appropriate system of rules of conduct that guide to individual action. These rules, according to Hayek, cannot be devised by any one individual mind, as no individual mind could ever possess the knowledge necessary to create them. Rather, individuals "stumble" upon such rules by chance. The appreciation of their value over time does not derive from a conscious, deliberate act of individuals, but, rather, from a process of cultural selection: rules are selected on the basis of the relative success of the groups of individuals who adopt them. In Hayek's words, "the

[7] F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 3, *The Political Order of a Free People*, London, Routledge and Kegan Paul, 1979, 99. On this issue, see also F.A. Hayek, *The Political Order*, p. 105. Hayek's position parallels the critique of government put forward by the Public Choice literature.
[8] On this point, B. Rowland, *Ordered Liberty and the Constitutional Framework*.

ultimate decision about what is good or bad will be made not by individual human wisdom but by the decline of the groups that have adhered to the 'wrong' beliefs."[9]

The tension between the themes of traditionalism and institutional design and Hayek's ambivalent approach to the role of reason appear early in his work. In *The Road to Serfdom*, first published in 1944, Hayek refers to man as an intelligent creator. In his words:

> We seek increasing intellectual mastery of the forces of which we had to make use […]. If they [our grandfathers] had not yet fully learned what was necessary to create the world they wanted, the experience we have since gained ought to have equipped us better for the task.

However, at the same time, he emphasizes the central role played by obedience to and respect of tradition in the development of the Great Society:

> It was men's submission to the impersonal forces of the market that in the past has made possible the growth of […] civilization. […] A complex civilization like ours is necessarily based on the individual's adjusting himself to changes whose cause and nature he cannot understand […] which means, of course, that it could not be explained to more than a few.[10]

[9] F.A. Hayek, *The Constitution of Liberty*, London, Routledge and Kegan Paul, 1960, 36.
[10] F.A. Hayek, *The Road to Serfdom*, Chicago, The University of Chicago Press, 1944, 17, 18.

In his writings, Hayek is skeptical about the ability of individuals to design institutions. In his theory of the origins and emergence of spontaneous institution, Hayek observes that "new institutions emerge not from design but by a gradual evolutionary process."[11] Putting forward a key element of his epistemology, Hayek maintains that "the mind is the product of the same process of evolution to which the institutions of society are due."[12] Emphasizing his skepticism toward reason, In *The Constitution of Liberty*, Hayek rejects the "essentially mistaken" idea that the US constitution is the product of human design, and maintains that "what new discoveries the federal Constitution contained either resulted from the application of traditional principles to particular problems or emerged as only dimly perceived consequences of general ideas."[13] At the same time, however, he points to "the fatalistic belief that we cannot learn from our mistakes, the most abject admission that we are incapable of using our intelligence."[14]

Individuals' ability to design institutions is further investigated in *Law, Legislation, and Liberty*: "it will probably be some time before people will admit that the institutions they have created have led them into such an impasse."[15] Exhibiting a change of mind in his evaluation of the US constitution, Hayek observes,

> What can we do today, in the light of the experience gained, to accomplish the aims which, nearly two hundred years ago, the fathers of the Constitution of the United

[11] F.A. Hayek, *Constitution of Liberty*, 291.
[12] F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 1, *Rules and Order*, London, Routledge and Kegan Paul, 1973, 5.
[13] F.A. Hayek, *Constitution of Liberty*, 183-4.
[14] F.A. Hayek, *Constitution of Liberty*, 284.
[15] F.A. Hayek, *Rules and Order*, 3.

States of America for the first time attempted to secure by deliberate construction? Though our aims may still be the same, there is much that we ought to have learnt from the great experiment and its numerous limitations.[16]

In a rare and dramatic departure from traditionalism, he concludes that "government is of necessity the product of intellectual design."[17] In spite of this conclusion, Hayek constantly emphasizes the need to obey tradition and respect the wisdom it embodies

3. Two Kinds of Constructivism

The nature of Hayek's attack on constructivist rationalism has been interpreted in different ways by his scholars. Barry, for example, observes that Hayek's concern over the "rise of a 'constructivist' outlook which, in the attempt to design institutions with specific purposes, obliterates all the advantages of spontaneous action." In his opinion, Hayek believes that "reason is an inadequate instrument for the construction and appraisal of institutions."[18]

However, it is not the purposeful design of institutions *per se* which Hayek condemns, but rather, the desire to redesign the overall order of society. According to Hayek, such a desire inevitably gives rise to totalitarian regimes and the abuse of the coercive power of government.

[16] F.A. Hayek, *Political Order*, 105.
[17] F.A. Hayek, *Political Order*, 152.
[18] N.P. Barry, "Hayek on Liberty", in J. Gray and Z. Pelczynski (eds.), *Conceptions of Liberty in Political Philosophy*, London, Athlone Press, 1984, 280.

In *Road to Serfdom*, Hayek maintains that individualism "is the exact opposite of that intellectual hubris which is at the root of the demand for comprehensive direction of the social process."[19] With a clear reference to Descartes and his Scientific Revolution, Hayek defines constructivism as that "conception which assumes that all social institutions are, and ought to be, the product of deliberate design."[20] This definition of constructivism implies the idea that it is possible to substitute spontaneous processes with "an organization which relies on conscious control."[21] According to Hayek, the evolution of the Great Society cannot rely solely on design. In his opinion, the constructivist mentality implies a "misconception of the forces which have made the Great Society and civilization possible."[22] This view is forcefully re-presented in a later work, *Knowledge, Evolution, and Society*. Here, Hayek warns: "We are so proud of having created civilization thanks to our intelligence […]. And my present aim is just to undeceive man of this pride, which, if it were justified, of course would justify his attempts completely to reconstruct his society."[23]

Hayek's epistemology provides the key to understanding his position with respect to institutional design. In his opinion, the erroneous view of constructivist rationalism is "closely connected with the equally false conception of the human mind."[24] In *The Sensory Order*, a work that Hayek writes in 1920 but that was published only in 1952, Hayek states that the mind can never assess the whole in which it is embedded, as it has

[19] F.A. Hayek, *Road to Serfdom*, 166.
[20] F.A. Hayek, *Rules and Order*, 5.
[21] F.A. Hayek, *The Counter-Revolution of Science. Studies on the Abuse of Reason*, Glencoe, The Free Press, 1955, 149.
[22] F.A. Hayek, *Rules and Order*, 6.
[23] F.A. Hayek, *Knowledge, Evolution, and Society*, London, Adam Smith Institute, 1984, 56.
[24] F.A. Hayek, *Rules and Order*, 5.

developed within that whole and depends on it for its own existence.[25] Citing Gray, this means that "complete intellectual self-understanding is an impossibility."[26] The very same argument is readily applicable to Hayek's social philosophy: any critical judgment of our culture can only be immanent, as mind and culture evolve together. Our understanding has been so fundamentally shaped by culture itself that it is impossible to fully distance ourselves from it. In Hayek's words, "particular aspects of a culture can be critically examined only within the context of that culture."[27] And, as Gray puts it, "just as in the theory of mind we must break off when we come to the region of unknowable ultimate rules, so in social theory we come to a stop with the basic constitutive traditions of social life."[28]

Hayek's skeptical position regarding the possibilities for human knowledge and its capabilities to design human institutions does not imply however that man cannot make use at all of the theoretical knowledge in his possession. As a matter of fact, Hayek does not reject all forms of constructivism; indeed he invokes of a certain kind of constructivism, which he identifies it with the individualism of classical liberalism. In *Individualism and Economic Order*, Hayek explains that

> the theory of individualism contributes to techniques of constructing a suitable legal framework and of improving the institutions which have grown up spontaneously

[25] F.A. Hayek, *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology*, London, Routledge and Kegan Paul, 1952.
[26] J. Gray, *Hayek on Liberty*, 24.
[27] F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 2, *The Mirage of Social Justice*, London, Routledge and Kegan Paul, 1976, 25; cited in Gray, *Hayek on Liberty*, 24.
[28] J. Gray, *Hayek on Liberty*, 24-5.

> […] [it] allows almost unlimited scope to human ingenuity in the designing of the most effective set of rules.[29]

The long passage that follows suggests that Hayek's judgment of planning depends on the comprehensiveness of the planner's goals:

> Planning is popular because it means that […] we should use as much foresight as we can command. In this sense everybody who is not a complete fatalist is a planner […] [But] what our planners demand is a central direction of all economic activity according to a single plan, laying down how the resources of society should be "consciously directed" to serve particular ends in a definite way. 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 […]. It is a dispute about what is the best way of employing foresight and systematic thinking in planning our common affairs. The question is whether for this purpose it is better that the holder of coercive power should confine himself 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 according to some consciously constructed "blueprint."[30]

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[29] F.A. Hayek, *Individualism and Economic Order*, Chicago, The University of Chicago Press, 1948, 22, 19.
[30] F.A. Hayek, *New Studies in Philosophy, Politics, Economics, and the History of Ideas*, Chicago, The University of Chicago Press, 1978, 234.

In Hayek's view, constructivist rationalism consists of the erroneous belief that we could master our fate if we perfected our design capabilities. It is worth to point out that Hayek's opposition to constructivist rationalism does not necessarily imply full reliance on tradition. In line with his epistemology, Hayek regards tradition as the source of rationality. Hayek recognizes our dependence on tradition, and affirms that it is only with good cause that we can reject its wisdom. Hayek's position is humble but, nonetheless, it acknowledges that reforms are within human capabilities.

4. Ignorance and the Principle of Noninterference

Hayek's exploration of the role of tradition and reason in human affairs is informed by from his views on the capabilities of the human mind. The limitations of the human mind form the basis for his skepticism toward reason: "Man has certainly more often learnt to do the right thing without comprehending why it was the right thing, and he still is often served better by custom than understanding."[31]

While Hayek recognizes that reason plays an important role in human action, he does not clearly specify its scope. Hayek's appreciation for human reason is countered by his realization that what is most beneficial to society is not "what is rationally recognized as serving specific known purposes, but the inherited, traditional rules."[32] Hayek suggests that the most important task of reason is the awareness of its limitations.[33]

[31] F.A. Hayek, *The Political Order*, 157.
[32] F.A. Hayek, *The Political Order*, 162, 163.
[33] F.A. Hayek, *The Political Order*, 176.

In Hayek's view, tradition evolves through a process of cultural evolution. Therefore, it can be interpreted as an instrument for improving reproductive success that is "neither natural nor artificial, neither genetically transmitted nor rationally designed,"[34] and reflects a process of evolution in which "what proved conducive to more effective human effort survived, and the less effective was superseded."[35]

According to Hayek, culture is a set of norms and practices embodied in traditions. Such traditions not only cannot be regarded as rational, in the sense that they are consciously created for some known purpose, but they are also frequently unintelligible to those who obey and respect them. Culture is a tradition of learnt rules of conduct "whose functions the acting individuals usually do not understand."[36] Rational understanding of tradition not only may not be possible, but it is also unnecessary, as the rules that are retained are those which "prove beneficial to the group in which they prevailed."[37]

Rules and traditions are then selected according to their ability to promote the success of the groups that adopts them.[38] Hayek suggests that learnt rules give human beings their "increasing capacity to adapt to changing conditions - and particularly to cooperate with the other members of his group."[39]

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[34] F.A. Hayek, *The Political Order*, 155.
[35] F.A. Hayek, *Studies in Philosophy, Politics, and Economics*, Chicago, University of Chicago Press, 1967, 111.
[36] F.A. Hayek, *The Political Order*, 155.
[37] F.A. Hayek, *The Political Order*, 161.
[38] For a discussion of some controversial aspects of Hayek's theory of the cultural evolution of norms see B. Rowland, *Ordered Liberty and the Constitutional Framework*.
[39] F.A. Hayek, *The Political Order*, 157.

In Hayek, this view is closely connected to another view of cultural evolution, one that implies that the processes of cultural evolution move in some direction. In *The Constitution of Liberty*, for example, Hayek speaks of "the direction in which we are moving," "the vehicle of progress" and "the gradual advance of moral and aesthetic beliefs."[40] Later on in his work, Hayek emphasizes the role of rules and tradition for the emergence of "the new which is better"[41]. It is then plausible to assume that Hayek identifies cultural evolution with some form of progress.[42]

It is fair to ask whether, as defined by Hayek, cultural evolution has some sort of goal or ultimate end. In order to answer this question, consider these two statements contained in the pages of *The Political Order of a Free People*: "The morals which maintain the open society do not serve to gratify human emotions - which never was an aim of evolution - but they served only as the signals that told the individual what he ought to do"; "I have already pointed out that the pleasure which man is led to strive for is of course not the end which evolution serves but merely the signal that in primitive conditions made the individual do what was usually required for the preservation of the group."[43] While alluding to an end of cultural evolution, Hayek never states what such an end might be, although one might argue in favor of the preservation or, more optimistically, the prosperity of civilization.

[40] F.A. Hayek, *Constitution of Liberty*, 398, 399.
[41] F.A. Hayek, *The Political Order*, 169.
[42] In another section of this work, it is contended that interpreting the evolution of society in terms of progress raises some important controversial issues.
[43] F.A. Hayek, *The Political Order*, 160, 163.

5. Liberalism and Constitutional Design. The Unbridgeable Gap

This section discusses Hayek's constitutional reform proposals and the theoretical issues that such proposals raise: namely the issue of the consistency between Hayek's constitutional design and his attack on constructivist rationalism on the one hand, and between Hayek's constitutional design and his principle of noninterference. In order to address this issue, the nature of Hayek's reform proposals needs to be spelled out.

In *The Constitution of Liberty*, arguably his most significant contribution to political philosophy, Hayek offers a spirited defense of the democratic ideal against what he saw as a potentially dangerous rising of conservatism. He made clear that he had "no sympathy with the anti-democratic strain of conservatism."[44] At the same time, however, he asserts that: "I do not regard majority rule as an end but merely as a means, or perhaps the least evil of those forms of government from which we have to choose."

In *The Political Order of a Free People*, the last installment of the trilogy *Law, Legislation and Liberty* published in 1979, Hayek details and develops the ideal political order he had originally sketched in *The Constitution of Liberty*. Here, however, Hayek is has a more skeptical approach to democracy, associating it to "sanitary precautions protecting us against an abuse of power," a necessary evil to avoid the potential for something worse.[45]

Hayek goes on to provide a harsh critique of democracy as we know it, charging that "under the prevailing system it is not the common opinion of a majority that decides on common issues, but a majority that owes its existence and power to the gratifying of the

[44] F.A. Hayek, *The Constitution of Liberty*, 403
[45] F.A. Hayek, *Political Order*, 137

special interests of numerous small groups, which the representatives cannot refuse to grant if they are to remain a majority."[46] He goes on to say that "we have under the false name of democracy created a machinery in which not the majority decides, but each member of the majority has to consent to many bribes to get majority support for his own special demands."[47] He concludes by saying that, while certainly worth preserving, democracy "is far from being the highest political value, and an unlimited democracy may well be worse than limited government of a different kind."[48]

Hayek's distrust of representative democracies should not be interpreted as an argument for minimal government. As he points out in *The Political Order of a Free People*, "we regard the enforcement of the law and the defense against external enemies as the only legitimate functions of government. […] Far from advocating such a 'minimal state', we find it unquestionable that in an advanced society government ought to use its power of raising funds by taxation to provide a number of services which for various reasons cannot be provided, or cannot be provided adequately, by the market."[49] Hayek goes on to endorse government provision of roads, publicly financed education,[50] building regulations, restriction on the sale of dangerous goods such as arms, poisons and drugs, as well as safety and health regulations in the workplace.[51]

Given the above statements, it is at the very least surprising that Hayek has been regarded by some of his opponents as a libertarian extremist. The confusion is in my

[46] F.A. Hayek, *Political Order*, 134.
[47] F.A. Hayek, *Political Order*, 138.
[48] F.A. Hayek, *Political Order*, 138.
[49] F.A. Hayek, *Political Order*, 41.
[50] F.A. Hayek, *Political Order*,44, 61.
[51] F.A. Hayek, *Political Order*, 62.

opinion attributable to a gap between Hayek's political philosophy and his constitutional design, a gap that he was never able to bridge. In what follows, an attempt will be made to show that the assumption that Hayek's policy provisions find their justification in his liberalism is incorrect.[52] As tempting as absolute prohibitions against the coercive power of government might be for a political philosopher of liberal persuasion, Hayek never believed that there existed a philosophical basis for constraints on the scope of legislative discretion. As a matter of fact, Hayek opposed categorical bans against government intervention, as his liberalism neither required nor rejected *laissez-faire* economics.

Consistently with this view, Hayek proposes a formal theory of limited government based on the rule of law criteria: in order to be legitimate, legislation must be framed as a rule that is "general, abstract, equally applicable to all."[53] As presented in *The Road to Serfdom*, obeying to this formal criterion "government confines itself to fixing rules determining the conditions under which the available resources may be used, leaving the individuals the decision for what ends they are to be used."[54] As Hayek explains "the general, abstract rules, which are laws in a substantive sense, are […] essentially long-term measures, referring to yet unknown cases and containing no references to particular persons, places, or objects."[55]

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[52] The devastating impact that *The Road to Serfdom*, first published in 1944, is perhaps responsible for an interpretation of Hayek as not only a political but also a philosophical proponent of *laissez-faire* policies, although, as it will be argued here, this description greatly distorts our understanding of his work and our view of his liberalism as a theory of politics.
[53] F.A. Hayek, *The Constitution of Liberty*, 154. To this list of requirements, non-retroactivity should be added.
[54] F.A. Hayek, *The Road to Serfdom*, 73.
[55] F.A. Hayek, *The Constitution of Liberty*, 208.

The justification for this admittedly loose criterion for judging government policies, one which does not prohibit any measure in particular, rests on Hayek's own understanding of the meaning of liberalism. In summary, a liberal state should remain neutral on questions that allow for reasonable disagreement.

Two important considerations derive from Hayeks's rule of law criterion for limited government: first, from a classical liberal perspective, many laws could meet its requirements and, nonetheless, be highly invasive of individual liberty. It is not clear that legislation consistent with the rule of law criterion will always be consistent with principles that Hayek would find morally acceptable, unless those principles were explicitly endorsed. Second, the rule of law criterion may not necessarily accomplish the task of limiting government, which is precisely the purpose for which it was devised.[56] However, the assumption that Hayek expects the rule of law to have classical liberal implications would be mistaken,[57] as Hayek is aware of the indeterminacy of his criterion.

While Hayek admits that the rule of law as an instrument for limiting government is not entirely satisfactory, he cautions against the conclusion that the rule of law is therefore a meaningless criterion. In fact, Hayek offers a series of tests to guide our judgment about the legitimacy of legislative proposals. Moreover, and more importantly to understand Hayek's interpretation of the meaning of liberalism, as important as limited government is, the Hayekian rule of law criterion is in line with his opposition to

[56] For an example of the libertarian critique of the Hayekian rule of law criterion, see C. Kukathas, *Hayek and Modern Liberalism*, 1989, London, Oxford University Press, 1990, and R. Hamowy, "Hayek's Concept of Freedom. A Critique." *New Individualist* Review 1, 1961, 31

[57] For an opposite interpretation, see J. Gray, "F.A. Hayek and the Rebirth of Classical Liberalism," *Literature of Liberty* 5, 1992.

categorical limits on the exercise of power, as he admits that there are situations in which intervention is warranted.

If this interpretation of Hayek's constitutional design is correct, the judgment about the appropriate level of intervention does not rest on consideration of philosophical principles but on the likely outcomes of the measures considered. As Hayek clarifies, although liberal principles may "provide the criterion which enables us to distinguish between those measures which are and those which are not compatible with a free system, those that are may be examined further on the grounds of expediency. Many such measures will, of course, still be undesirable or even harmful."[58] Therefore, the problem with most government measures is not that they violate the rule of law requirements, but rather that

> the great majority of governmental measures which have been advocated […] are in fact, inexpedient, either because they will fail or because their costs will outweigh the advantages. This means that so long that as they are compatible with the rule of law, they cannot be rejected out of hand as government intervention but must be examined in each instance from the viewpoint of expediency.[59]

[58] F.A. Hayek, The Constitution of Liberty, 222
[59] F.A. Hayek, *The Constitution of Liberty*, 221. The interpretation of Hayek's position as one that recognizes the limits of liberal principles rather than one that insists that liberalism entails a commitment to particular policies orientation such as *laissez-faire* in economics, helps explaining Hayek's endorsement of the writings of John Rawls, as expressed in *The Mirage of Social Justice*.

6. Constitutional Design as a Complement to the Rule of Law

It can be argued that Hayek's own recognition of the modesty of the rule of law requirements leads him to explore the possibility of constitutional reforms as an accessory instrument for limiting coercion. In line with his attack against constructivist rationalism, Hayek's constitutional proposals do not attempt to comprehensively redesign society and its moral traditions, but aim solely at improving the institutional framework of modern democracies. Referring in particular to the market order, he argues that we cannot question "the overall order of actions"[60] because we do not fully comprehend it; more particularly, he claims that morals cannot be completely comprehended.

> Morals are not something we can choose at pleasure. At least the general outline of those we have inherited are an irreplaceable means for keeping alive the number of humans they have called into being.[61]

In *The Political order of a Free People*, Hayek lays out an ambitious program of institutional reforms with the intent to "effectively limit the powers of government."[62] The plan encompasses the legislature, judiciary, and executive branches, as well as several important changes in voting rules and citizenship eligibility.[63]

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[60] F.A. Hayek, *Political Order*, 167.
[61] F.A. Hayek, "The Origins and Effects of our Morals: a Problem for Science", in C. Nishiyama and K. Leube, eds., *The Essence of Hayek*, Stanford, Calif., Stanford University Press, 1984, 330.
[62] F.A. Hayek, *The Political Order*, 105.
[63] Hayek's attempt to build an ideal constitution is rather surprising, given his skepticism about planning. As it has been observed earlier, Hayek denies the created nature of the US constitution when he writes: "What new discoveries the federal Constitution contained either resulted from the application of traditional

The most dramatic change proposed by Hayek concerns the distribution of legislative power. Hayek believes that the Founding Fathers "had hoped by a separation of the legislative from executive as well as the judicial powers to subject government and the individuals to rules of just conduct."[64] According to Hayek, the government they desired did not materialize because the process of formulating rules of just conduct became intertwined with the process of allocating goods and services supplied by the government. Lacking separation of powers, modern constitutional democracies have degenerated into interest-group democracies, in which the legal framework fails to prevent interference in the private sphere of individuals, and in which the legal framework itself is perceived to be corrupt.

Hayek's solution to this problem provides for a stark separation of these two processes. The rule-making function, served by the Legislative Assembly, aims at preserving the order of the Great Society via identification and enforcement of rules of just conduct. The administrative function, served by the Governmental Assembly, has the task to supply certain goods and services. Hayek argues that when these functions are fused, the aim of containing government power is defeated. His constitution calls for a new separation of powers between legislative bodies, in which each is assigned only one of these functions.[65] This constitutional reform, Hayek contends, "would for the first time make possible that real separation of powers which has never yet existed."[66]

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principles to particular problems or emerged as only dimly perceived consequences of general ideas." *The Constitution of Liberty*, 183-4.

[64] F.A. Hayek, *The Political Order*, 105.

[65] Hayek's proposal includes also the establishment of a constitutional court with the task to settle disagreements between the two assemblies and make changes to the constitutions as deemed necessary.

[66] F.A. Hayek, *New Studies*, 96.

Tinkering with the structure of democratic institutions and the system of just rules, as opposed to building anew, not only preserves but also enhances individual freedom. Hayek's constitutional design, which calls for the questioning of individual rules within the context of the overall system of rules, appears consistent with his opposition to constructivist rationalism.[67]

The above analysis raises an important issue: is it possible to reconcile the liberal principle of noninterference, as stated in Hayek's political philosophy, with his approach to constitutional design? In other words, on what basis can Hayek justifiably deviate from the liberal principle of noninterference?

In Hayek's writings in the field of political philosophy, his preference for nonintervention is derived from his understanding of the notion of liberal society. According to Hayek, a liberal society must be guided by principle, and that such principles are found in the classical liberal tradition. Among these principles "freedom for the individual" is the "supreme principle."[68] Furthermore, he argues that "a policy of freedom for the individual is the only truly progressive policy."[69]

Hayek clearly links his staunch defense of individual freedom to his theory of cultural evolution. According to Hayek, individual freedom grants the greatest possible number of adaptations for reproductive success to take place. However, his own observations on the functioning of modern democracies lead him to conclude that that contemporary political institutions make the "principles […] to preserve freedom" impossible to follow.

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[67] On this issue, see B. Rowland, *Ordered Liberty and the Constitutional Framework*.
[68] F.A. Hayek, *Rules and Order*, 56.
[69] F.A. Hayek, *The Road to Serfdom*, 240.

Hayek offers a solution that represents a dramatic departure form the prescriptions of the liberal principles. In order to solve "the problem in which the founders of liberal constitutionalism failed,"[70] he calls for the principle of noninterference to be temporarily set aside. This would allow the building of a new political framework that will allow that principle to once again properly inspire public policy.

It is worth noting that Hayek's prescription to interfere with the spontaneous processes of society, as mediated by political institutions, not only imply a reassessment of the liberal tradition he himself embraces, but also modify its prescriptions.

A reconciliation of Hayek's constitutional design with the noninterference principle must answer the question of when it is appropriate to conclude that the defense of liberty requires institutional reform. In order to attempt to answer this question, Hayek's notion of liberty must be spelled out.

7. The Case for Institutional Design. The Defense of Individual Liberty

The Constitution of Liberty arguably contains Hayek's fullest exposition of liberty. In terms consistent with a "negative" conception of liberty, Hayek defines freedom as "that condition of men in which coercion of some by others is reduced as much as is possible in society."[71] Clarifying what kind of coercion he is concerned about, Hayek states that liberty is "the state in which a man is not subject to coercion by the arbitrary will of another or others."[72]

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[70] F.A. Hayek, *Rules and Order*, 4.
[71] F.A. Hayek, *The Constitution of Liberty*, 11.
[72] F.A. Hayek, *The Constitution of Liberty*, 11. This proposition is the basis for Hayek's contention that civil law is not a source of arbitrary compulsion, and therefore is not a restraint on liberty.

Hayek's endorsement of the rule of law criterion as a condition for individual liberty, as opposed to a restriction has attracted harsh criticism. [73] Certainly, it is not difficult to imagine that even general civil restraints can meet Hayek's requirements for the rule of law and at the same time be illiberal. However, while the basic criticism that, in his strenuous defense of the rule of law as a guarantor for individual liberty, Hayek seems to overlook the possibility of certain kinds of coercion, is generally correct, we ought to translate Hayek's emphasis on the rule of law as "a presumption in favor of general rules and against discretionary power".[74]

The role that Hayek assigns to the rule of law is to protect a

> person's acting according to his own decisions and plans, in contrast to the position of one who was irrevocably subject to the will of another, who by arbitrary decision could coerce him to act or not act in specific ways.[75]

The assumption at the basis of Hayek's justification of the rule-of-law state is precisely that an individual living in a society governed by law, defined as clearly specified categories of which an individual can learn in advance, can take account of laws when formulating his own plans. This kind of certainty allowed by the rule of law would be impossible in societies where discretionary authority prevails. Societies have and will always have laws that need enforcement. However, Hayek maintains, the enforcement of

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[73] See R. Hamowy, "Law and the Liberal Society: F.A. Hayek's Constitution of Liberty", *Journal of Libertarian Studies*, 2, 1978, 287-97.
[74] On this issue, see Brittan, *The Role and Limits of Government*, 63.
[75] F.A. Hayek, Constitution of Liberty, 12.

laws has the advantage of being less arbitrary than a system dependent upon the good will of the rulers.

In line with this interpretation of the effects of the rule of law, Hayek maintains that we can evaluate the extent of liberty for a hypothetical individual by assessing:

> how far in acting he can follow his own plans and intentions, to what extent the pattern of his conduct is of his own design, directed towards ends for which he has been persistently striving rather than toward necessities created by others in order to make him do what they want […] whether somebody else has power so to manipulate the conditions as to make him act according to that person's will rather than his own.[76]

In Hayek, liberty is associated with morality. More precisely, liberty is the condition for moral and responsible behavior:[77]

> Freedom to order our own conduct in the sphere where material circumstances force a choice upon us, and responsibility for the arrangement of our own life according to our own conscience, is the air in which alone moral sense grows and in which moral values are daily re-created in the free decision of the individual.[78]

[76] F.A. Hayek, *The Constitution of Liberty*, 12-13.
[77] Liberty "is the source and condition of most moral values." (F.A. Hayek, *The Constitution of Liberty*, 6).
[78] F.A. Hayek, *Road to Serfdom*, 212.

Therefore, free choice and individual responsibility presuppose 'that the individual has some assured private sphere, that there is some set of circumstances in his environment with which others cannot interfere."[79]

The essence of Hayek's understanding of individual freedom, as well as the principle that should inform policy, are confirmed by his policy recommendations in *The Constitution of Liberty*. According to Hayek, the two paradigmatic methods for policy are experimentation and decisions of authority. In his words, providing an "opportunity for experimentation with alternative methods […] will secure most of the advantages of free growth." In his discussion about social security, and with a clear connection to the notion of expediency, Hayek maintains that the most efficiency in government intervention is more likely to be found "by the constant re-evaluation of available resources" rather than "by advance design." While experimentation allows for such constant re-evaluation, central planning, being costly and often change-resistant, does not. In more general terms, Hayek explains:

> the greater the freedom of experimentation allowed in the existing arrangements, the greater will be the likelihood that the changes will be made in the right direction[80]

[79] F.A. Hayek, *The Constitution of Liberty*, 13.
[80] Speaking on housing and town planning, Hayek identifies the central problem as being "how the effective utilization of the knowledge and skill of the individual owners is to be reconciled with keeping their actions within limits where they will not gain at somebody else's expense." Building regulations, he adds, may be "preventing experimentation with new methods." F.A. Hayek, *The Constitution of Liberty*, 261, 263, 287, 292, 342, 355, 365.

Liberty, conceived as sphere for experimentation, can be defined according to two frameworks. On the one hand, we have the socio-cultural framework of tradition and rules of conduct which allow for appropriate behavior in a variety of situations. On the other hand, we have the political framework, that is, a system of political institutions with the task of enforcing the rules of conduct. It is the latter that is addressed by Hayek's constitutional design. This approach reflects his conviction that liberty could not be preserved without affectively limiting the power of government.

In regard to the social and cultural framework, Hayek's mistrust in the ability of individuals to redefine moral rules is most apparent in the writings published in 1980s, in which he reveals a strong preference for tradition over designed political institutions for the preservation of individual liberty. In *Knowledge, Evolution, and Society*, Hayek's shift in emphasis is clearly illustrated:

> We stand in an enormous framework into which we fit ourselves by obeying certain rules of conduct that we have never made and never understood, but which have their reason. […][Our morals spread] because those groups who by accident accepted them prospered and multiplied more than others […] the social order depends on a system of views and opinions which we imbibe, inherit, and learn from a tradition that we cannot modify.[81]

[81] F.A. Hayek, *Knowledge, Evolution, and Society*, 40, 46, 56.

Hayek's notion of human liberty tries to assign a place for both the principle of noninterference and the possibility of constitutional design. However, it fails to provide a criterion of choice, that is, it does not specify when each alternative course of action is appropriate. Hayek provides only a general guiding principle, according to which "in the ordering of our affairs we should make as much use as possible of the spontaneous forces of society, and resort as little as possible to coercion."[82] By Hayek's own admission, this principle "is capable of an infinite variety of applications."[83] As Barry has pointed out, the "traditionalism of his general philosophy is so strong that it virtually disables him from that critical rationalism which is essential for the appraisal of particular traditions."[84] Hayek is unable to decide when theoretical knowledge is to take precedence over tacit knowledge. According to his critics, Hayek's hesitance derives from his commitment to the free market, and his pessimism about modern societies to protect the values on which the market order rests.

Hayek's mistrust in the ability of individuals for rational independent thinking is well known:

> Probably it is true enough that the great majority are rarely capable of thinking independently, that on most questions they accept views which they find ready-made, and that they will be equally content if born or coaxed into one set of beliefs or another.[85]

[82] F.A. Hayek, *Road to Serfdom*, 17.
[83] F.A. Hayek, *Road to Serfdom*, 17.
[84] N.P. Barry, "Hayek on Liberty", 280.
[85] F.A. Hayek, *Road to Serfdom*, 164.

Moreover, Hayek associates reasonable choice to a sense of individual responsibility, when he states that, "both the willingness to bear responsibility and the consciousness that it is our own individual duty to know how to choose have been perceptibly impaired"[86] by the rise of collectivist doctrines. Hayek acknowledges that this tendency of modern society has an easy game, as individuals find the constraints of the rule of law and the market's demand for accountability increasingly intolerable.[87]

Hayek's reaction is to declare the market order unquestionable. He insists that we cannot question the overall order of actions because we do not fully comprehend it. In particular, "morals are not something we can choose at pleasure. At least the general outline of those we have inherited are an irreplaceable means for keeping alive the number of humans they have called into being."[88] His grave concern that the undeniable advantages of the market system won't be appreciated leads a pessimistic Hayek to seek refuge in the wisdom of tradition.

8. Tradition and Hayek's Theory of Knowledge

One of the charges that critics move against Hayek is that his pessimism prevents him from fully appreciating some of the important implications of his own theory of knowledge.[89] According to these critics, Hayek's account of tradition tends to a definition that is independent of individuals. He considers the "the common moral tradition" as "something different from and autonomous of the individual reasons, though

[86] F.A. Hayek, *Road to Serfdom*, 212.
[87] F.A. Hayek, *Knowledge, Evolution, and Society*, 55.
[88] F.A. Hayek, "The Origins and Effects of our Morals", 330.
[89] See especially B. Rowland, *Ordered Liberty and the Constitutional Framework*.

of course constantly interacting with them."[90] It is precisely the interaction between reason and tradition that is in need of an explanation if we want to assess the consistency of Hayek's work. Hayek, it is argued, seems reluctant to recognize that, while one may not be able to explain tradition in terms of individual decisions and action, it is only through the decision and actions of individuals that tradition manifests itself.[91]

Tacit knowledge is described by Hayek as being mainly practical knowledge of skills in the broadest sense. It is unclear what the content of tacit knowledge should be. In his discussion of tacit knowledge, as presented in *Law, legislation and Liberty*, Hayek maintains that the precepts of a tradition are supported by unconscious beliefs. He believes that "the decisive factors which will determine […] [social] evolution will always be highly abstract and often unconsciously held ideas about what is right and proper."[92]

While the liberal tradition tends to have a neutral stance with respect to the content of tacit knowledge, some observers argue that tacit knowledge encompasses inarticulate knowledge relating to the individual beliefs about what is good and valuable.[93] Tacit knowledge contains both "instinctive" as well as "learnt" rules of behavior. The emphasis of this literature is on instinctive rules. It is argued that instinctive rules not only can be

[90] F.A. Hayek, "The Origins and Effects of our Morals", 318.
[91] One may argue that, in his turn to a more conservative position with respect to tradition, Hayek distances himself from his initial notion of the meaning of individualism. According to Hayek's ontological perspective, all social action is individual action, even if it is difficult to explain particular phenomena in terms of individual actions.
[92] F.A. Hayek, *Rules and Order*, 69.
[93] The issue of the content of tacit knowledge in a liberal society is controversial. Recent work from prominent liberal thinkers challenges the neutral stance of the liberal tradition with respect to different ways of life and individual conceptions of what is good or valuable, and maintains that liberalism requires some degree of virtue in its community. On this issue, see W. Galston, *Liberal Purposes*, Cambridge, Cambridge University Press, 1991.

mutually inconsistent, but are often in contradiction with the learnt rules of tradition. As the individual's definition of what is good and valuable evolves, he will make varying choices among existing rules.[94] The individual's choices, interpreted as applications of traditional rules to particular circumstances, are then influenced by his beliefs. As a consequence, tradition is dependent upon individual human beings who adopt and adapt the practices and beliefs of their predecessors.[95] In conclusion, individual judgment, informed by tacit knowledge, as opposed to unconscious beliefs, represents the key factor in the evolution of tradition.

In line with this view is the idea that traditions provide general guidelines of a general nature only, while the particular application of these general principles to particular circumstances is left to the individual, who must interpret particular situations and choose among available alternatives.

This approach is fully consistent with Hayek's position that the functioning and preservation of society rests on tradition. However, and this is the point of divergence, tradition might embody disagreements about its true meaning. These ambiguities prevent a mechanical adoption of a particular rule from the part of individuals. Individuals face moral dilemmas as there are always opposed tendencies present in every society.[96]

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[94] "There now exists a fundamental tension between universalistic and particularistic ethical claims... The tension has always existed to some extent. Even 'primitive' people had to decide how to treat the 'stranger', whether as a non-person or as a human being like themselves. [...] To be morally aware in the modern world is to recognize this tension and to live with it", T. Kitwood, "'Personal Identity'" and Personal Integrity", in H. Weinreich-Haste and D. Locke (eds.), *Morality in the Making*, New York, Wiley, 1983, 228.

[95] On this issue see E. Shils, *Tradition*, Chicago, The University of Chicago Press, 1981, 205.

[96] As Barrett explains, while the need for rule and order acts as a deterrent on individual behavior and on the evolution of tradition, no matter how sensibly the rules are drawn, their application to complex and varying circumstances require adaptive changes in behavior, which in turns may have an effect on rules.

While in *Law, Legislation and Liberty* Hayek warns that "ethics is not a matter of choice,"[97] in the *Road to Serfdom* he defines moral choice as a decision about "which of the things one values are to be sacrificed to others."[98] This definition of morality seems to imply the idea that individual's choices have the power to alter the definition of tradition. If this is the case, the evolutionary nature of moral tradition cannot be understood without any reference to the choices of individuals who apply that tradition.

9. Liberalism and Spontaneous Order

As discussed above, the liberal order envisaged by Hayek calls for an instrumental view of politics. In line with the liberal ideas of independence and self-reliance, the political sphere is justified only insofar as it serves the private aims and ends of the individuals. Hayek's ideal of political order cannot have any definite goal. Its sole purpose is to allow for the display and orderly realization of privately defined goals. This instrumental conception of politics treats individuals as independent of the political system. Consistently with this view, politics is required only as a means of coordination. The instrumental view of politics is associated to the principle of noninterference. As it will be shown, Hayek's minimal definition of politics becomes relevant only if considered together with his social philosophy.

Therefore, critical judgment embodied in individual choice represents one of the sources of evolutionary change (R. Barrett, *Culture and Conduct*, Belmont, Wadsworth, 1984).

[97] F.A. Hayek, *Political Order*, 167.

[98] F.A. Hayek, *Road to Serfdom*, 212.

Hayek's political ideal is centered in the notion of the rule of law.[99] As we have seen, according to Hayek, four requirements must apply for a system to be under the rule of law: universality, generality, impartiality, and non-retroactivity. The rule of law defines the limits of legitimate political action, whose task is simply to reinforce the spontaneous coordination that emerges in social process.

The principle that ethically grounds Hayek's political model is liberty, or more precisely, negative liberty, from which he derives the meaning of equality and justice as well. In what follows I will present a short reconstruction of Hayek's notion of liberty and highlight some areas of discussion.

The philosophical ground for liberty lies in the impossibility of calculation of the consequences of actions. In other words, liberty is identified with the indeterminacy of the action of ignorant individuals. As Hayek explains in *The Constitution of Liberty*,

> the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great number of factors on which the achievement of our ends and welfare depends […]. If there were omniscient men, if we only could know not only all that affects that attainment of our present wishes, but also the future wants and desires, there would be little case for liberty.[100]

[99] Hayek fullest treatment of the notion of the rule of law is contained in The *Constitution of Liberty* (205-237) and in *Law, Leegislation, and Liberty*.
[100] F.A. Hayek, *The Constitution of Liberty*, 29.

Consistently with a negative conception of liberty, Hayek rejects all notions of liberty in its positive connotation, which include the idea of liberty as political participation. The reason rests on the impossibility of properly assessing human knowledge. Hayek values liberty because of the absence of coercion. While we cannot say that our actions are free in any positive sense of the word, we know when someone else imposes his will on us. The moral value of liberty derives from the immorality of coercion, and the immorality of coercion derives from the limits of man's cognitive abilities. It is important to highlight that in Hayek, coercion refers to the intentional interference in the actions of otherwise free individuals. As a consequence, neither natural constraints nor spontaneous institutions can be regarded as a threat to liberty, as they do not constitute coercion.[101]

Can Hayek's ideal liberalism and his non interference principle as a rule of politics on the one hand, and his notion of spontaneous order on the other, consistently coexist? In Hayek's political philosophy, negative liberty is the only value admissible in the liberal order. Given human's ignorance, which makes social planning impossible, individuals must accept the spontaneous outcomes of social processes as mediated by tradition.[102] In conclusion, negative liberty does not require any social plan, only protection. Therefore, negative liberty is not only compatible, but favors the spontaneous developments of society. Hayek therefore considers liberty as flourishing within spontaneous social processes spontaneously emerging from the interaction of free individuals. Hayek's liberalism is a political arrangement which does not interfere with the spontaneous

[101] The argument implicit in this position reverses the argument made by Rawls and others, concerning the lack of justification in natural and social lottery (J. Rawls, *A Theory of Justice*, Cambridge, MA, Harvard University Press, 1971, 37).
[102] F.A. Hayek, "Individualism: True and False," 1-32, and "The Use of Knowledge in Society," 7-91, in *Individualism and Economic Order*.

process, but only reinforces spontaneous social rules of conduct. This is precisely the definition of the rule-of-law state.[103]

Consistently with Hayek's notion of liberty, considered in combination with the spontaneity of social processes, equality can be conceived only as equality in front of the law.[104] Not surprisingly then, Hayek reinterprets the notion of distributive justice simply as impartiality. Only individual actions can be said to be just, not situations or social arrangements, unless they are intentionally devised.[105] As in the case of coercion, Hayek maintains that any instance of injustice requires the identification of a clear responsibility. Just like what is natural is neither just nor unjust, what emerges spontaneously by means of impersonal processes cannot be qualified in terms of justice.[106]

Individual actions are qualified as just with respect to the rules of conduct enforced under the rule of law. Given that the respect of the rules of conduct implies the respect of other individuals' freedom, and given that an action qualifies as just if it follows the rules of conduct, it follows that an actions qualifies as just if it respects the freedom of other individuals. Therefore, justice is a direct consequence of the respect of liberty.

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[103] The criticism often made of Hayek's notion of liberty as being implicitly consequentialist is in my opinion unfounded (see J.W.N. Watkins, "Philosophy," in A. Seldon (ed.) *Agenda for a Free Society*, 31-49; J.C. Rees, "Hayek on Liberty," *Philosophy* 38, October 1963, 346-360.) If, in line with this critique, liberty were to be valued for its positive consequences, the possibility of its substitution with other principles perceived as more advantageous would always be possible. But this would contradict Hayek's explicit statement that liberty for no reason is an exchangeable value. Hayek views liberty as being a procedural value linked with the needs of the species.

[104] F.A. Hayek, *The Constitution of Liberty*, 164.

[105] F.A. Hayek, *The Mirage of Social Justice*, 31-43, 62-100.

[106] This interpretation would preclude the possibility of redistributive policies of any sort. However, as I have pointed out earlier, in *Law, Legislation, and Liberty*, Hayek discusses the provision of some public good by the government. (F.A. Hayek, *Political Order*, 41-64.)

In Hayek's political theory, the sole task of the rule-of-law state is to safeguard the individual's (negative) liberty. The aims and ends of individuals are irrelevant and, therefore, unquestionable.[107]

The important issue introduced by Hayek's ideal political order is how a political order, which allows for unpopular arrangements, such as a non-egalitarian distribution of wealth, can be maintained by a minimal state connoted by a low level of coercion. Hayek's implicit solution lies outside the realm of politics as it is implicit in his social theory.

Hayek's social theory is grounded on his epistemology, a crucial focal point of his studies since *The Constitution of Liberty*. Hayek's cognitive theory revolves around the concept of abstractness of the human mind.[108] According to this theory, our cognitive processes follow abstract patterns and not empirical generalizations.[109] According to Hayek, this approach to reality has its origin in natural selection processes as it corresponds to thee species' response to limited cognitive capability in a complex environment. To this primacy of the abstract that governs sensorial perceptions corresponds the primacy of the spontaneous rules of conduct that regulate human interaction. Rules of conduct are partly unconscious: we are able to use social rules but we are not necessarily able to recognize them or spell them out. The abstractness of the

[107] Hayek's state is therefore indifferent to any question that would broaden the fixed limits of political power and that, consequently, would undermine the Great Society and lead to form of totalitarianism. The Road to Serfdom is to be considered Hayek's response to the danger of abandoning the liberal order. (F.A. Hayek, *The Road to Serfdom*, London, Routledge and Kegan Paul, 1944).
[108] F.A. Hayek, "The Primacy of the Abstract," in *New Studies*, 35-49.
[109] The priority of classifications in processing sensorial perception has been interpreted by some commentators as tracing back to Kant. See E.F. Miller, "The Cognitive Basis of Hayek's Political Thought," *Liberty and the Rule of Law*, Cunningham, 242-267; J. Gray, *Hayek on Liberty*.

mind, combined with rule-following behavior, restricts the room and, more importantly, reduces the need for rational actions:

> Though it sounds paradoxical to say that in order to make ourselves act rationally, we often find it necessary to be guided by habit rather than reflection, or to say that to prevent ourselves from making the wrong decision, we must deliberately reduce the range of choice before us; we all know that it is often necessary in practice if we are to achieve our long-range attitude.[110]

Given the individuals' the need for rules and the impossibility for individuals to create them, how does Hayek explain their origin? Hayek's theory of the emergence of rules of conduct rests partly in the invisible hand tradition of Mandeville and Smith, and partly in the evolutionary view of society stated by Edmund Burke: casual human interaction brings about unintentional patterns of behavior. The individuals' need for rules to overcome their ignorance, establishes a tendency to repeat those patterns as a guideline for action in future instances of similar behavior. Then, among the unintentional patterns that emerge in a given community at a given time, the most successful has a chance to be repeated until it rules out the others.

This mechanism reveal a process of natural selection in which rationality plays no role: rules emerge unintentionally as a byproduct of human interaction and are unconsciously selected. Moreover, since individuals are not really aware of following

[110] F.A. Hayek, *The Constitution of Liberty*, 66.

rules and are not really able to spell them out, such rules cannot be conceived as instruments for means-end rationality. This would imply control over the system of rules that ignorant individuals simply do not possess.

According to Hayek, the system of spontaneous rules of conduct is constitutive of social practices, shared meanings, common understanding, and personal identity:

> We are able to understand one another and get along with one another, are able to act successfully on our plans because most of the time members of our civilization conform to unconscious patterns of conduct, show a regularity in their action that is not the result of command and coercion, often not even of any conscious adherence to known rules, but of firmly established habits and traditions. The general observance of these conventions is a necessary condition of the orderliness of the world in which we live, of our being able to find out our way in it though we do not know their significance and may not even be consciously aware of their existence.[111]

And even more explicitly:

> We have seen that our capacity to recognize actions as following rules and having meaning rests on ourselves being already equipped with these rules. This knowledge by acquaintance presupposes therefore that some of the rules in terms of which we

[111] F.A. Hayek, *The Constitution of Liberty*, 62.

perceive and act are the same as those by which the conduct of those actions we interpret is guided.[112]

The rules of conduct are not merely regulative rules of behavior; rather, they are constitutive rules, defining the range of possible interactions in the various areas of human action, providing the actors with the resources for understanding and communication, and, finally, bringing about social coordination. In this sense, the rules of conduct constitute social practices[113]. The individual engaged in a practice is not positively directed toward a certain class of action by the correspondent rule; rather, following the rule, the individual is constrained in the range of possibilities open to choice. Working negatively as prohibitions, the rules can be applied to an infinite number of future instances, and, ultimately, can be modified gradually in the spontaneous evolution of a practice. Such a slow, internal revision of the rules of conduct characterizes the tradition. Social cohesiveness is, therefore, guaranteed by the system of rules of conduct embodied in the tradition. The system of rules provides the common ground for mutual understanding and, at the same time, imposes constraints on the rational plans of individuals. The end result is the mutual coordination of the individual plans. Hayek's solution implies that the system of rules constitutes the source of individual expectations allowing him to overcome his limited cognitive abilities, and

[112] F.A. Hayek, *Studies*, 59.
[113] The distinction between "constitutive" and "regulative" rules which I am referring here is introduced by Rawls, "Two Concepts of Rules," *Philosophical Review* 64 January 1955, 3-33; On this issue, see G. von Wright, *Norm and Action*, Highlands, NJ, Humanities Press, 1964, 6-16; J. Searle, *Speech Acts*, Cambridge, Cambridge University Press, 1969, 33-42.

enabling him to make rational plans consistent with the plans of the other individuals. [114] In addition, the working of the various systems of rules produces an overall order in society, which is the further spontaneous result of the regularities produced by rule-following behavior.

The preceding analysis of Hayek's liberalism shows that rule-of-law state rigidly delimits state powers to the protection of the private spheres of individuals. In order to gain plausibility, Hayek's theory should explain how such a society holds together in the presence of social arrangements that are perceived as "unjust". The explanation lies in Hayek's social philosophy. In contrast with his conception of the liberal state, Hayek's social theory treats individuals not as isolated entities concerned with the fulfillment of their own plans within private spheres. Hayek's social philosophy portrays individuals as living within a context of traditional rules, which constitutes the ground for individual identity through common understanding and shared meanings. According to Hayek, it is only within society that the single individual can meaningfully conceive of plans and goals. As a consequence, and not surprisingly, Hayek's concept of community is identified in tradition. Therefore, the plausibility of the minimal state of his political philosophy, which has the sole task of reinforcing the rule of law, is, in fact, dependent on the unifying character of tradition. It follows then that the political order can be conceived in terms of a minimal state only because the self-regulating mechanisms implied by tradition have already solved the problem of social order. As a consequence,

[114] Hayek's theory of rational behavior is in stark contrast with traditional theories, which either assume perfect knowledge and complete information, or develop a theory of probability to deal with risk and uncertainty, or a theory of games to tackle a strategic environment. While the highly unrealistic assumptions of the first alternative makes it very uninteresting, the other two alternatives imply a computational capacity on the part of individuals in sharp contrast with Hayek's cognitive theory.

tradition, being outside the realm of politics, can at best be explained but never questioned.

10. Noninterference Vs. Constitutional Design

How do we reconcile the limitations that Hayek's noninterference principle imposes on politics with his call for constitutional reform? In order to answer this question, we must turn to his theory of spontaneous rules and institutions which forms the basis of his social theory.[115]

As discussed above, spontaneous rules of conduct are constitutive of social practices. In this respect, they are not instruments toward any goal, rather, they are the indispensable presupposition for any goal to be set and ultimately reached. As constitutive rules, they define the spheres of social activity and provide the individuals with the resources to act within those spheres. In addition, rules are defined as rules of conduct versus rules of organization. In the first case, rules are abstract and general prohibitions. The rules of organizations are thought of as *ad hoc* commands. Hayek explicitly states that the spontaneously originated rules are rules of conduct while the rules regulating the internal functioning of organizations are consciously created.

In relation to the dichotomy introduced by Hayek which distinguishes rules of conduct from rules of an organization, it must be emphasized that the spontaneous origin of rules does not define their nature or function. Within traditional rules, we can find both

[115] A good presentation of Hayek's conception of rules, which points out both its connections with and its distance from natural law and legal positivism, can be found in N.P. Barry, *Hayek's Social and Economic Philosophy*, London, Macmillan, 1979.

rules of conduct as well as rules of organization, prohibitions as well as commands. As an example, consider Hayek's claim that spontaneously originating rules possess an abstract and general form. A rule is called abstract or universal when the content of its prescription refers to a whole class of behavior, while it is called general when its recipients are all the members of the society regulated by that system. However, historical examples of traditions embodying privileges and various forms of discrimination abound, and it was exactly the task of the Constitution to affirm the principle of universal and general law.

The essential idea underlying Hayek's theory of the rules of conduct is their spontaneous origin. Often in his work, Hayek suggests that the spontaneous origin of the rules of conduct makes them similar to natural laws. But this notion is hardly defensible for, from the point of view of the individual, tradition is not the same thing as the laws of physics. Nonetheless, from such a questionable premise, Hayek draws the conclusion that, first, uncreated rules are by definition not oppressive, and, second, as they are not the result of human design, they can be modified only via the workings of impersonal processes. These two points play a crucial role in Hayek's stand for tradition and his vision of the liberal order.

Some parts of Hayek's social theory forcefully point out the limits of constructivism and the role of unintended consequences in human history, but his conclusions in favor of tradition are not fully convincing. The impossibility of change is based on the questionable assimilation of the rules of tradition to the laws of nature. Also, Hayek's belief that change is outside human reach is reinforced by the fact that the systems of

rules, such as the market price system, moral codes, and legal norms, are treated in the same way as perception and language. However, it is conceivable that the possibility of change could vary dramatically according to whether human perception or legal norms are considered.

As to the positive evaluation of tradition, Hayek's work offers at least three different justifications. First, given the nature of human ignorance, any rule is better than nothing. In this sense, tradition minimizes the costs of living together. Second, tradition appears to be a mechanism that turns human ignorance into "efficient" results.[116] Third, tradition is the premise for rationality, and therefore cannot be rationally questioned. In this third respect, its positive character resides in the fact that tradition is the necessary condition for human action.

Now, in the first case, it is unquestionable that tradition is better than nothing. However, as a rule, we do not weigh totality against nothingness; rather, it is plausible to assume that we can assess one rule of tradition against another.

In the second case, if it is at all possible to maintain that tradition produces optimal arrangements out of human ignorance, that cannot be decided a priori, as a general rule of human history.

In the third case, which is apparently the strongest, tradition is valued because it establishes identities, shared meanings, and the community. It can be argued that, even in this respect, tradition cannot be considered beyond critical judgment. The fact that we

[116] This is exactly the interpretation of tradition implicit in the game theoretical approach of T. Schelling (*The Strategy of Conflict*, Cambridge, MA, Harvard University Press, 1960) and D. Lewis (*Convention. A Philosophical Study*, Cambridge, MA, Harvard University Press, 1969). It should be noted that in both of these cases, tradition is not presented as the general solution for coordination games.

cannot locate a definite responsibility does not necessarily imply that we cannot find fault with a situation and try to change it. As a matter of fact, we question social arrangements derived by tradition.[117]

Let us now turn to the concept of spontaneous order, which derives as the result of the regularities produced by the systems of rules of conduct. According to Hayek's political theory, the protection of the spontaneous order through the application of the rule of law exhausts the task of politics. At this point, one may ask whether all spontaneous social formations in human history fit into the notion of Hayek's spontaneous order. If that were the case, almost all historical societies should be defended in their traditions. Nonetheless, this would be inconsistent with Hayek's position on liberalism, because very few of these societies confined their activities to the application of the rule of law. In fairness, Hayek recognizes the legitimacy of the struggle against feudal privileges, notwithstanding their unplanned character; and he does not consider the U.S. Constitution as a condemnable form of rational constructivism.

These inconsistencies about the concept of spontaneity can be solved if we interpret Hayek's notion of spontaneous order, not as the unplanned result of unanticipated consequences of human interaction, but as an ideal type of social configuration developed around the institution of free market. In spite of Hayek's efforts to develop a theory of spontaneous order grounded on a theory of the human mind, the fact that not all

[117] As described by the essay by W. Berns, "Privacy, Liberalism and the Role of Government," *Liberty and the Rule of Law*, in R.L. Cunningham (ed.), *Liberty and the Rule of Law*, 208-223, quite often, traditions are destroyed by the evolution of social process. The author shows that the right to privacy, originally claimed against government interference, now should be claimed against media interference. The dissolution of the liberal principle of privacy, in fact, is not the product of government, but is an unintended consequence of the principle of a free press.

unplanned traditional societies exemplify his idea of spontaneous order reveals that Hayek's explanation of spontaneity does not describe how things actually have happened. Rather, it represents a conjectural reconstruction in which it is crucially assumed that the notions of spontaneity and freedom coincide.[118] The starting point of the conjectural emergence of a spontaneous order is thought to be the original situation in which independent individuals, each with a certain endowment, exchange their goods freely.[119] From Hayek's viewpoint, only free transactions can be spontaneous. From this initial step, through the working of the invisible hand, all other institutions, such as money, law, and so on, follow, and the final outcome is the rule-of-law state. As a result, the spontaneous order comes to be identified with the order allowed by the market. This conclusion is problematic for Hayek's theory. In his defense of spontaneity over design, Hayek emphasizes the limits of human reason whose existence depends entirely on the system of rules of conduct. Nonetheless, Hayek's conjectural reconstruction of the spontaneous order assumes individuals able to use their rationality even in the absence of tradition. Consistently with Hayek's social philosophy, the market cannot constitute the primitive fact; rather, the market is the spontaneous outcome originating within an ideal community where certain traditions hold and certain rules work so that freedom and fairness of exchange are granted. Free market society represents an unexpected development that did not occur everywhere. As a consequence, the spontaneous order

[118] I refer here to the model of conjectural history spelled out by Menger in *Problems of Economics and Sociology*, ed. by Louis Schneider, trans. by F. J. Nock, Urbana, University of Illinois Press, 1963.
[119] Hayek does not describe this original situation directly. Rather, he says that the explanation appropriate for the overall order is Carl Menger's model of conjectural history. See F.A. Hayek, *Essays in Philosophy, Politics and Economics*, 75-77. However, the presupposition of Menger's explanatory model is, inevitably, a market-like starting point. See Carl Menger, *Problems of Economics and Sociology*, 152 ff.

cannot be identified with the Great Society. There is simply no guarantee that, from spontaneous institutions and rules, the market order will emerge.[120]

The above analysis of Hayek's social theory and the questions it raises suggests a reevaluation of his political theory. Hayek's liberalism gains plausibility only if considered in connection with his social philosophy. However, the inconsistencies of Hayek's social philosophy undermine the integrity of his liberalism. In Hayek's liberalism, the protection of negative liberty via the rule of law is most consistent with respect to a world of individuals conceived of as autonomous entities to be protected from disruptive interferences. If in Hayek's social theory the need for a community of shared rules is recognized as crucial, is it then plausible to assume that individuals act as independent entities in the political realm? Hayek maintains that the problem is properly solved in the spontaneous regulation of society. But we have seen that both his concepts of tradition and spontaneity raise important theoretical questions. Hayek is convinced that his social and political philosophy could prove that the spontaneous order is the only possible outcome. But the theoretical problems that his theory faces preclude such a conclusion.

[120] The inconsistencies found in Hayek's concept of spontaneity derive perhaps from the dual intellectual tradition that has influenced his work. On the one hand, the individualism of Locke, Mandeville, and Smith; on the other hand, the conservatism of Burke as filtered by the German tradition with which Hayek identifies: Savigny, Humboldt, and Menger.

CHAPTER 2

Hayek's Evolutionary Theory of Institutions: Some Open Questions

1. Introduction

Hayek's explanation of the emergence of institutions, intended as shared systems of rules, is seemingly very simple: a set of practices embedded in a system of rules of conduct "prevailed because they made a group of men successful."[1] These practices "were preserved because they enabled the group in which they had arisen to prevail over others."[2] The system of rules of conduct emerged spontaneously, and the practices they generated were unintentionally selected according to the relative advantages they offered to those who used them. It is well known that Hayek adopted an evolutionary approach to the explanation of the spontaneous order of society. Within the evolutionary explanation of the spontaneous order, a distinctive role is performed by the idea of cultural selection. Hayek recognizes that this evolutionary process has in particular characterized the rise of what he calls the "Great Society", which is characterized by the existence of a system of abstract, non-coercive rules.[3]

[1] F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 1, *Rules and Order*, London, Routledge and Kegan Paul, 1973, 17.
[2] F.A. Hayek, *Rules and Order*, 9.
[3] See F.A. Hayek, *Studies in Philosophy, Politics and Economics*, London, Routledge & Kegan Paul, 1967, 72.

Hayek opposes the notion of society conceived of as a spontaneous order against constructivist rationalism, which views social institutions as the product of deliberate design with the task to meet specific goals.[4] Hayek warns against any kind of intervention based on this conception of institutions, as "designed theories […] lead directly to socialism."[5] Hayek's warnings against the implementation of constructivist policies implicitly emphasize the possibility of certain ideas to affect the evolution of society and inhibit progress. He declares that we "are not far from the point where the deliberately organized forces of society may destroy those spontaneous forces which have made advance possible."[6] Although his attacks are directed specifically against socialism, they imply not only that institutions may be created rationally, but also that these institutions may be more powerful than spontaneous institutions, since the former are able to destroy the latter and inhibit progress.[7]

The aim of this paper is to explore the following issues. First, whether constructivist rationalism can be considered an explanation of the origin of institutions alternative to

[4] Hayek spells out his opposition against constructivist rationalism and its consequences time and again in his career: F.A. Hayek, *Individualism and Economic Order*, Chicago, The University of Chicago Press, 1948; F.A. Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason*, Glencoe, Ill., The Free Press, 1952; F.A. Hayek, *The Constitution of Liberty*, London and Henley, Routledge & Kegan Paul, 1960; F.A. Hayek, *Studies in Philosophy, Politics and Economics*; F.A. Hayek, *New Studies in Philosophy, Politics, Economics and History of Ideas*, London, Routledge, 1978; F.A. Hayek, *The Fatal Conceit. The Errors of Socialism*, in W.W. Bartley (ed.) *The Collected Works*, Vol. 1, London, Routledge, 1988.

[5] F.A. Hayek, *Individualism and Economic Order*, 10. And again: "It is from this kind of rationalism or constructivism that all modern socialism, planning and totalitarianism derives" (F.A. Hayek, *Studies in Philosophy, Politics and Economics*, 85; see also 91-5). On this issue, see also A.M. Diamond, "F.A. Hayek on Constructivism and Ethics," in J.C. Wood and R.N. Woods (eds.), *Friedrich A. Hayek. Critical Assessments*, London - New York, Routledge, 1991, vol. III, 239-53, 241-2.

[6] F.A. Hayek, *The Constitution of Liberty*, 38. Implicit in Hayek's attack is his skepticism about human reason: "Reason is like a dangerous explosive which, handled cautiously, will be most beneficial, but if handled incautiously may blow up a civilization." (F.A. Hayek, *Studies*, 94).

[7] According to Hayek, it is an error to believe that we can "master the forces of society in the same manner in which we have learnt to master the forces of nature.This is not only the path to totalitarianism, but the path to the destruction of our civilisation and a certain way to block future progress" (F.A. Hayek, *The Road to Serfdom*, London - New York, Routdlege, 1944, 211).

Hayek's idea of spontaneous order. Second, whether the persistence in history of what Hayek would consider constructivist institutions can be ascribed to an evolutionary mechanism of rule-selection or to the lack thereof.[8] Third, whether the consequences of constructivist rationalism can be interpreted as consistent with the Hayekian notion of spontaneous evolution. In line with Hayek's idea of the limitations of the human mind, rational planning, far from achieving the goals for which it is devised, causes an infinite number of changes that are beyond our control. These changes generate unintentional and unforeseen outcomes, which in turn, will form the basis for other plans, initiating an endless process.

2. Hayek's Theory of Cultural Evolution.

One of the clearest and deepest statements of some of the difficulties in Hayek's use of spontaneous order arguments for the explanation of the emergence of the institutional framework of society may be found in Buchanan's writings. In an important paper, Buchanan observes that in Hayek's later writings we find:

[8] In Law, Legislation, and Liberty, Hayek writes: "Socialism is simply a re-assertion of that tribal ethics whose gradual weakening had made an approach to the Great Society possible. The submergence of classical liberalism under the inseparable forces of socialism and nationalism is the consequence of a revival of those tribal sentiments." (F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 2, *The Mirage of Social Justice*, London, Routledge & Kegan Paul, 1976, 133-134). As it will be discussed at length in the next section, Hayek's reference to the gradual weakening of the tribal ethics as the first step toward the development of Great Society implies an interpretation of social arrangements of the constructivist type as obstacles to the spontaneous forces of evolution, and betrays a conviction, explicitly rejected by Hayek in parts of his work, that cultural evolution allows for superior outcomes. In his assessment of Hayek's theory of cultural evolution, Khalil writes: "If socialism is a mechanism, it is clearly anti-Darwinian. Then, how could it have appeared and succeeded for many decades via the Darwinian evolutionary mechanism?" (E.L. Khalil, "Friedrich Hayek's Darwinian Theory of Evolution of Institutions: Two Problems," *Australian Economic Papers* 35, 1996, 183-201, 188)

the extension of the principle of spontaneous order, in its normative function, to the emergence of institutional structure itself. As applied to the market economy, that which emerges is defined by its very emergence to be that which is efficient. And this result implies, in its turn, a policy of nonintervention, properly so. There is no need, indeed there is no possibility, of evaluating the efficiency of observed outcomes independently of the process; there exists no external criterion that allows efficiency to be defined in objectively measurable dimensions. If this logic is extended to the structure of institutions (including law) that have emerged in some historical evolutionary process, the implication seems clear that that set which we observe necessarily embodies institutional or structural 'efficiency.' From this it follows, as before, that a policy of nonintervention in the process of emergence is dictated. There is no room left for the political economist, or for anyone else, who seeks to reform social structures, to change laws and rules, with an aim of security instead of efficiency in the large […]. Any 'constructively rational' interferences with the 'rational' processes of history are, therefore, to be avoided.[9]

Properly interpreted, Buchanan's criticism is that Hayek's extension of evolutionary arguments from the market processes to the institutional framework of society invalidates

[9] J.M. Buchanan, "Cultural Evolution and Institutional Reform," *Liberty, Market and State*, Brighton, Wheatsheaf Books, 1985, 75-86. In an earlier work, Buchanan writes: "We may share much of Hayek's skepticism about social and institutional reform, however, without elevating the evolutionary process to an ideal role. […] Reform may, indeed, be difficult, but this is no argument that its alternative is ideal." (J.M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, Chicago, Ill., The University of Chicago Press, 1975, 194, ch. 10, n.1)

any possibility of criticism and reform. According to Buchanan, we are left powerless against the outcomes of historical processes.

Buchanan's critique is among the most frequently repeated charges launched against Hayek's theory of cultural evolution. According to his critics, Hayek is guilty of Leibnizian optimism or Panglossianism, after its fictional proponent in Voltaire's *Candide*; that is, he suggests or implies that social evolution must necessarily produce the best of all possible worlds, a world in which "whatever is, is desirable," or, in economic jargon, whatever is, is efficient.[10] Buchanan is not alone in his criticisms of Hayek's theory of cultural evolution. Gray, for instance, claims that "Hayek frequently affirms that the sheer persistence of a tradition or a form of life suggests that it must possess some general utility."[11] De Vlieghere characterizes Hayek as maintaining that "only those cultural attainments can survive and spread that are beneficial. So, the very longevity of an institution proves its value […]."[12]

If, on the one hand, the criticisms are substantially correct, in the sense that evolutionary systems cannot be characterized as unambiguously efficient in their outcomes, regardless of how efficiency is defined, on the other hand, the error that Hayek's critics seem to commit is in directing this criticism at Hayek. This does not mean

[10] In Voltaire's novel *Candide*, Dr. Pangloss, maintained that we live in the best of all possible worlds. "It is proved, that things cannot be other than they are, for since everything is made for a purpose, it follows that everything is made for the best purpose." (Voltaire, *Candide*, J. Butt (Tr.), Harmondsworth, Penguin, 1947 [1759,] 20)

[11] J. Gray, *Liberalism*, London, Routledge, 1989, 98.

[12] De Vlieghere, "A Reappraisal of Friedrich A. Hayek's Cultural Evolutionism", *Economics and Philosophy*, 1994, 10, 285-304, 293. With a clear reference to Hayek's work, Stiglitz argues that "those who appeal to the evolutionary process also claim too much: There is no reason to believe that evolutionary processes have any optimality properties," and he goes on to say, "It seems nonsensical to suggest that we should simply accept the natural outcome of the evolutionary process." J. Stiglitz, *Whither Socialism?*, Cambridge, Mass., The MIT Press, 1994, 275.

that one cannot find weaknesses in Hayek's theory of cultural evolution, however, Leibnizian optimism does not seem to be on of them, or at least, not always. As a matter of fact, in different occasions, Hayek rejects the idea that cultural evolution necessarily produces optimal results, however optimality might be defined.[13] As it has been recognized by authors sympathetic to socialism,[14] in most of his work, the outcomes of social or cultural evolution receive no automatic praise for economic efficiency or social justice. However, Hayek's evolutionary arguments, as presented in *Law, Legislation and Liberty* and in *The Fatal Conceit*, suggest that attempts to direct the evolutionary process will undermine the spontaneous order that has developed over the centuries.

Hayek seems to be aware of the charges of Panglossianism that his theory might attract. He seems particularly concerned with the propensity of observers to dismiss any evolutionary explanations of society because of the errors of social Darwinism, that is, the idea that evolution in human societies is driven by competitions among individuals or groups of individuals. He goes to great lengths to reject social Darwinism as an adequate

[13] Throughout this essay I rely on a purposely vague definition of efficiency or optimality. Even within economics, efficiency has been defined in a variety of ways, from strict Pareto efficiency to wealth maximization. However, the standards employed to judge the efficiency of institutions differ from the standards employed to judge efficient activity within given rules and institutions. When considering the efficiency of market institutions, Hayek refers to the extent to which institutions promote the dissemination and use of knowledge and their role in the coordination of the plans of individuals. In the context of the evolution of human societies, Hayek believes that the cultural selection process operates via the survival and reproduction of groups. However, the selected rules cannot be assumed to be efficient even by this standard. It would then be peculiar, to say the least, consider rules and institutions to be efficient according to some other criterion, such as the notion of efficiency of neoclassical economics or the tenets of classical liberal ethics. Whatever specific definition of efficiency or optimality may be adopted, an evolutionary system could not be expected to achieve it in all cases, although some kinds of efficiency may be more easily approached than others.

[14] See, in particular, G.M. Hodgson, "Economic Evolution: Intervention Contra Pangloss", *Journal of Economic Issues* 25, 2 (Jun., 1991), pp. 519-533.

theory of evolution of human society. In *The Fatal Conceit*, arguably among his most evolutionary oriented works, Hayek warns:

> Bertrand Russell provides a good example in his claim that "if evolutionary ethics were sound, we ought to be entirely indifferent to what the course of evolution might be, since whatever it is is thereby proved to be the best" […]. This objection […] rests on a simple misunderstanding. I have no intention to commit what is often called the genetic or naturalistic fallacy. I do not claim that the results of group selection of traditions are necessarily "good" – any more than I claim that other things that have long survived in the course of evolution, such as cockroaches, have moral value.[15]

Hayek goes on claiming that the products of cultural evolution are not immune to criticism:

> It would be wrong to conclude, strictly from such evolutionary premises, that whatever rules have evolved are always or necessarily conducive to the survival and increase of the populations following them. […] Recognizing that rules generally tend to be selected, via competition, on the basis of their human survival-value certainly does not protect those rules from critical scrutiny.[16]

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[15] F.A. Hayek, *The Fatal Conceit*, 27.

[16] F.A. Hayek, *The Fatal Conceit*, 20. The same message appears repeatedly in earlier works. In *The Constitution of Liberty*, for instance, Hayek admits that, "[t]hese considerations, of course, do not prove that all sets of moral beliefs which have grown up in a society will be beneficial. Just as a group may owe its rise to the morals which its members obey, […] so may a group or nation destroy itself by the moral beliefs to which it adheres." (F.A. Hayek, *The Constitution of Liberty*, 67.) In *Law, Legislation and Liberty*,

This and other similar statements seem to imply that Hayek perceives the process of cultural evolution as open-ended, so that at any point in time we may find undesirable rules and customs that have not been weeded out by the selection mechanism. As it will be discussed more thoroughly in a later section, Hayek does not deny the possibility of modification of rules, or even of an entire section of the system of rules; nonetheless, he insists that any revision of particular rules must necessarily take place in the context of a complex of other rules that are *taken as given*: "This givenness of the value framework implies that, in our efforts to improve them, we must take for granted much that we do not understand."[17] As it will be argued below, this position rests only partly on his theory of cultural evolution.

What is important to address here is that Hayek's evolutionary approach confirms his dissatisfaction with the comparative statics character of much of economics. Indeed, one of the reasons for the rise of evolutionary theorizing since the early 1980s, thanks in part, or perhaps mostly to Hayek's work in the field, has been an attempt to break the constraints of a mode of explanation involving fixed end-points. Turning for example to the *vexata quaestio* of the chicken-or-egg, the question itself has been changed. The question is no longer which came first; rather, the question is about the processes that explain the development of both of them This implies a movement away from

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Hayek again emphasizes the possibility of reform of established rules in the context of the common law. "The fact that law that has evolved in this way has certain desirable properties does not prove that it will always be good law or even that some of its rules may not be very bad. It therefore does not mean that we can altogether dispense with legislation. (F.A. Hayek, *Rules and Order*, 88.) Indeed, Hayek even admits that general principles of justice may "require the revision not only of single rules but of whole sections of the established system of case law." (F.A. Hayek, *Rules and Order*, 89)

[17] F.A. Hayek, *The Constitution of Liberty*, 63.

comparative statics and toward a more evolutionary and open-ended framework of analysis.[18]

3. Constructivism Vs. Spontaneous Evolution

Buchanan's appraisal of Hayek's conception of spontaneous order, as applied to the emergence of institutions, is crucial in that it points to the fundamental question of whether the idea of spontaneous order provides a value-free explanation or whether it conveys some sort of moral notion. In the first case, spontaneous order stands at the core of invisible hand explanations of the sort discussed by Robert Nozick in his *Anarchy, State, and Utopia*.[19] Following this interpretation, the growth of the constructivist mentality and, with it, the growth of the welfare state lamented by Hayek may be viewed as an example of evolution of a spontaneous order, inasmuch as these social phenomena are the unintended consequences of human interaction.

On the other hand, if Hayek's notion of spontaneous order is interpreted as embodying desirable moral values and that there exists an inherent or evolutionary tendency for the development of practices that encourage the emergence of liberal

[18] Hodgson (G.M. Hodgson, "The Approach of Institutional Economics"; G.M. Hodgson, "The Evolution of Socioeconomic Order in the Move to a Market Economy," *Review of International Political Economy* 1, 3 (Autumn) 1994, 387-404), sees Hayek's later evolutionary works (F.A. Hayek, *The Fatal Conceit*,) with its emphasis on the role of Polanyi's tacit knowledge (M. Polanyi, *Personal Knowledge: Towards a Post-Critical Philosophy*, London, Routledge & Kegan Paul, 1957; M. Polanyi, *The Tacit Dimension*, London, Routledge & Kegan Paul, 1967,) as converging towards the evolutionary and open-ended ideas of the old Institutionalist school. Quoting Veblen (T. Veblen, *The Place of Science in Modern Civilization and other essays*, New York, B.W. Huebsch, 1919, p. 37,) Hodgson maintains that Hayek's "evolutionary explanations involve the search for 'a theory of the process of consecutive change, realized to be self-continuing or self-propagating and to have no final term.'" (G.M. Hodgson, "The Approach of Institutional Economics," 185)

[19] R. Nozick, *Anarchy, State, and Utopia,* New York: Basic Books, 1974, 18-22. For a discussion of some related aspects, see N.P. Barry, "The Tradition of Spontaneous Order," *Literature of Liberty* 5, Summer 1982, 7-58, and R. Vernon, "Unintended Consequences," *Political Theory* 7, 1979, 57-74.

institutions, that is to say, illiberal social arrangements are weeded out during the process of evolution of rules and institutions, then it seems that Hayek's evolutionary model would need to be framed alongside a moral theory much closer to natural law ethics , which Hayek never conceived.[20]

The above discussion reveals Hayek's seemingly ambivalent attitude towards reason. In fact, if we interpret Hayek's theory of spontaneous order as a value-free explanatory model, its uses for political action presuppose that we have in our possession a theoretical knowledge of society and its processes of the sort that Hayek suggests is impossible. In other words, if we are to make use of the idea of spontaneous order in reforming social institutions so as to make the best use of society's spontaneous forces, we need a theoretical model of society and its processes able to somehow predict the outcomes of our reforms. To this extent, contrary to Hayek's epistemological recommendations, but in line with his constitutional reform proposals conforming to his idea of immanent criticism, we cannot avoid questioning inherited institutions and rules of conduct embedded in tradition.

In some of his writings, Hayek recognizes that the morality of modern society is not generally favorable to the emergence of market order. Especially in *Law, Legislation and*

[20] On this point, it is worth mentioning Oakeshott's refusal of what he considers an implicit universalism of Hayek's arguments for the liberal order. (M. Oakeshott, *Rationalism in Politics*, London, Methuen, 1962) In Oakeshott's view, the traditions inherited in society are unquestionable. Oakeshott conservatism derives from two orders of considerations. First, in agreement with Hayek's theory of the mind, any appraisal of traditions can only emanate from immanent criticism. Second, unlike Hayek, there is no inherent tendency for the evolution of traditional practices to converge on liberal institutions. Oakeshott is in fact convinced that the idea of the rule-of-law state is unique to the modern European state and has no necessary application elsewhere.

Liberty and in *New Studies*,[21] Hayek implicitly acknowledges that the spontaneous growth of moral norms may not, in fact, yield results congenial to a market order. At the same time, however, Hayek continues to strongly advocate a form of moral conservatism, resisting his own vision of modern morality as in need of reform. In Hayek's system there appears to be an irresoluble tension between an impulse to challenge traditions that deviate from a liberal standard and his moral conservatism.

Buchanan's critique extends to the Hayekian notion of the market order: market forces may produce "spontaneous disorder," [22] defined as the emergence of social mechanisms that frustrate the purposes and damage the interests of all individuals, and the undesirable outcomes of the market can be improved upon by means of contractual agreements that give rise to novel institutional arrangements.[23] The possibility that the market may generate undesirable effects that may weaken the overall order is a central issue addressed by the public choice literature,[24] and constitutes a potential problem for the Hayekian theory of cultural evolution. According to this literature, the spontaneous

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[21] F.A. Hayek, *New Studies*, 249-266; F.A. Hayek, *Political Order,* 165-166.

[22] J.M Buchanan, "Law and the invisible hand." In *Freedom in Constitutional Contract: Perspectives of a Political Economist*, College Station, Texas A&M Press, 1977, 25-30. Such "spontaneous disorder" directly refers to the idea of the Prisoner's Dilemma, which Buchanan has extensively explored in his writings. The lack of attention in Hayek's political work of the problems that the Prisoner's Dilemma poses for his theory seems to corroborate Buchanan's basic objections.

[23] J.M Buchanan, *Freedom in Constitutional Contract*. "Market" here is defined in the orthodox, narrow way. Only in this overly restricted conception we can consistently speak of "market" failures. The shortcomings of the market, narrowly defined, reveal the need for new institutional arrangements, which, in Buchanan's view, become mere extensions of markets.

[24] V.J. Vanberg, *Spontaneous Market Order and Social Rules: A Critical Examination of F. A. Hayek's Theory of Cultural Evolution*, in J.C. Wood and R.N. Woods (eds), *Friedrich A. Hayek. Critical Assessments*, London - New York, Routledge, vol. IV, 1991, 177-201; V.J. Vanberg, *Rules and choice in economics*, London and New York, Routledge, 1994; R. Sugden, "Normative Judgments and Spontaneous Order: the Contractarian Element in Hayek's Thought", *Constitutional Political Economy*, 4, 3, 1993, 393-424; H.B. Falkena, *On Hayek's Philosophy of Limited Government and the Economic Order*, in J.C. Wood and R.N. Woods (eds.), *Friedrich A. Hayek. Critical Assessments*, London - New York, Routledge, 1991, vol. IV, 141-55.

evolution of institutions and institutional design are not necessarily mutually inconsistent[25].

As the above discussion clarifies, Hayek himself often recognizes the possibility of reasonable intervention aiming at correcting certain outcomes of spontaneous processes.[26] In light of the institutional design proposals contained in writings such as *The Constitution of Liberty*, and, to a lesser degree, his piece-meal approach to intervention, Hayek's natural propensity for an absolute dichotomy between design and spontaneous evolution of institutions appears excessively radical. However, in his attempt to protect Western civilization from the dangers of constructivism, Hayek invokes a different kind of intervention. In this case, deliberate intervention has the specific purpose to prevent the undesirable effects deriving from the rising of the constructivist mentality. [27] Hayek's forceful attacks against socialism imply that, in his view, constructivism not only provides an erroneous framework for interpreting the nature and evolution of social institution, but it is also a force capable to subvert the order of the Great Society.

Historical analysis would suggest that constructivism, interpreted as a system of beliefs that is able to neutralize spontaneous evolutionary forces, is responsible for a variety of historical experiences. Feudal agrarian societies, as well as the modern

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[25] V.J. Vanberg, *Rules and choice in economics*, 101-4. On the connection between Hayek's theory of cultural evolution and the contractual-constitutional tradition see J.M. Buchanan, "Cultural Evolution and Institutional Reform"; J.M. Buchanan – V.J. Vanberg, "The Market as a Creative Process", *Economics and Philosophy* 7, 1991, 167-186, and V.J. Vanberg, *Spontaneous Market Order and Social Rules*; V.J. Vanberg, *Rules and choice in economics*, 104; M. De Vlieghere, "A Reappraisal of Friedrich A. Hayek's Cultural Evolutionism", *Economics and Philosophy*, 1994, 10, 285-304.

[26] On the propriety of some form of intervention, see F.A. Hayek, *The Constitution of Liberty*; F.A. Hayek, *Rules and Order*; F.A. Hayek, *The Mirage of Social Justice*; F.A. Hayek, *New Studies*; F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 3, *The Political Order of a Free People*, London, Routledge & Kegan Paul, 1979.

[27] F.A. Hayek, *The Road to Serfdom*; F.A. Hayek, *The Constitution of Liberty*.

totalitarianisms, seem to share the characteristic of being held together by designed institutional structures and pervasive coercive command. In his evolutionary work, Hayek does not specify the general principles according to which constructivist social arrangements might evolve over time, as they are not the *explananda* of his theory. On the one hand, one can assume that constructivist societies are wholly deterministic, in the sense that their progressive stages are fully anticipated in the initial plan from which they originated. In this case, any possibility for evolutionary spontaneous change is inhibited, and constructivism is able "*to block future progress*."[28] On the other hand, and ironically more in line with Hayek's critique of reason and his continuous emphasis on the "irremediable ignorance of most of the particular facts which determine the process of society"[29], constructivist social arrangements cannot be coherently seen in any sense as entirely directed in their aims, as unanticipated, unforeseen outcomes contrary to the original plan will spontaneously emerge. This is especially true if the plan's temporal horizon stretches to include the remote future. Therefore, the question that needs to be answered is the following: in our assessment of the historical consequences of constructivism, do we interpret the emergence of institutions in terms of evolution, or is the process characterized by intentional forces able to inhibit the spontaneous evolutionary process? An answer favoring the former would seem to open designed institutions to the possibility of evolutionary developments.[30]

[28] F.A. Hayek, *The Road to Serfdom*, 211.
[29] F.A. Hayek, *Rules and Order*, 13.
[30] J.M. Buchanan – V.J. Vanberg, "The Market as a Creative Process".

Hayek's distinction between constructivism and spontaneous evolution seems to imply two alternative and separate processes by which institutions arise. One is intentional and characterized by purposeful deliberate design, while the other is unintentional and implied by an evolutionary process.[31] Hayek provides what can arguably be considered his clearest description of the concept of evolutionary mechanism of rule-selection in *Rules and Order*. Such mechanism is characterized in terms of a conflict among different types of rules, which gives rise to the slow emergence of spontaneous norms. This competition among rules is described as follows: "The growth of the purpose independent rules of conduct which can produce a spontaneous order will thus often have taken place in conflict with the aims of the rulers who tended to try to turn their domain into an organization proper. It is in the *ius gentium*, the law merchant, and the practices of the ports and fairs that we must chiefly seek the steps in the evolution

[31] According to De Vlieghere (M. De Vlieghere, "A Reappraisal of Friedrich A. Hayek's Cultural Evolutionism"), Khalil (E.L. Khalil, "Friedrich Hayek's Darwinian Theory"; E.L. Khalil, "Friedrich Hayek's Theory of Spontaneous Order: Two Problems", *Constitutional Political Economy* 8, 1997, 301-17), Angner (E. Angner, "The history of Hayek's theory of cultural evolution", *Studies in History and Philosophy of Biological and Biomedical Sciences* 33, 2002, 695-718), and other scholars, Hayek's theory is Darwinian. On these themes see also U. Witt, "Turning Austrian Economics into an Evolutionary Theory," in B.J. Caldwell and S. Böhm (eds.), *Austrian Economics: Tensions and New Directions*, Boston – Dordrecht – London, Kluwer, 1992, 215-43; U. Witt, "The Theory of Societal Evolution. Hayek's Unfinished Legacy," in J. Birner and R. van Zjip (eds.), *Hayek, Coordination and Evolution; His Legacy in Philosophy, Politics, Economics and the History of ideas,* London, Routledge,1994, 178-89; U. Witt, "Schumpeter vs. Hayek: Two Approaches to Evolutionary Economics," in G. Meijer (ed.), *New Perspectives on Austrian Economics*, London – New York, Routledge, 1995, 81-101; G.M. Hodgson, "Hayek's Theory of Cultural Evolution. An Evaluation in the Light of Vanberg's Critique", *Economics and Philosophy* 7, 1991, 67-82; G.M. Hodgson, *Economics and Evolution. Bringing Life Back into Economics*, Cambridge, Polity Press, 1993. Reversing the conventional wisdom that sees the theory of cultural evolution as deriving from Darwinian ideas, in *The Fatal Conceit*'s "The Mechanism of Cultural Evolution Is Not Darwinian," Hayek writes: "The idea of biological evolution stems from the study of processes of cultural development which had been recognised earlier." Moreover, "cultural evolution simulates Lamarckism," because it "is brought about through transmission of habits and information." Nonetheless, Hayek stresses that "Despite such differences, all evolution, cultural as well as biological, is a process of continuous adaptation to unforeseeable events," adding that both cultural and biological evolutions share the "same principle of selection: survival or reproductive advantage" (F.A. Hayek, *The Fatal Conceit*, 23-6).

of law which ultimately made an open society possible". [32] Now, an interpretation of constructivist structures as a temporary halt to the evolutionary process implies that the Hayekian theory of rule-selection remains the only explanation of the emergence of institutions. Over time, the negative results associated with designed rules and institutions would lead to their disappearance. However, the persistence of social arrangements that fit Hayek's definition of constructivism suggests that designed rules can prevail over spontaneous rules over a prolonged period of time.[33] This conclusion is consistent with the idea that social institutions might be the result of intentional design.[34]

These difficulties perhaps derive from a distinctive feature of Hayek's theory of institutions, whereby explanation of abstract processes is distinguished and kept separate from the description of particular historical facts and scenarios. Consistently with his epistemology, the explanatory power of Hayek's theory of spontaneous evolution of institution does not allow for the description of any particular outcome, [35] while the consequences of constructivism correspond mainly to a series of descriptive considerations.[36]

[32] F.A. Hayek, *Rules and Order*, 81-2.
[33] "Hayek can only rebut that totalitarian institutions will not survive in the long run, but how long must this 'run' be?" M. De Vlieghere, "A Reappraisal of Friedrich A. Hayek's Cultural Evolutionism", 299.
[34] See A.M. Diamond, "F.A. Hayek on Constructivism and Ethics", 247-8.
[35] Hayek insists that we are "confined to 'explanations of the principle' or to predictions merely of the abstract pattern the process will follow."F.A. Hayek, *Rules and Order*, 24. In this sense, Hayek also refers to the notion of "conjectural history" (F.A. Hayek, *Studies*, 75.)
[36] On this issue, see F.A. Hayek, *The Road to Serfdom*. The same argument is reiterated in F.A. Hayek, *The Constitution of Liberty*, 162-175.

4. Is Hayek's Theory of Cultural Evolution a General Theory?

The persistence of social arrangements whose organization depends on rules that cannot be characterized as spontaneous and abstract, and that therefore do not meet Hayek's selection criterion, is problematic for his theory of cultural evolution. Hayek's evolutionary theory is put forward as a general theory of institutions, but it can hardly be defended as such if it does not account for these persistent social phenomena. The persistence of constructivist social arrangements over a prolonged period of time would appear to be consistent with the idea that design is at the origin of social institutions, pointing to a failure of Hayek's theory of evolution to provide a general explanation of institutional emergence. Several observers have maintained that, while providing valuable insights to our understanding of the evolution of norms and institutions, Hayek's theory of cultural evolution is applicable only to Western market societies.[37] If this is the case, Hayek's theory cannot be considered a general explanation, and the explanation of spontaneity it provides does not describe how things actually have happened. Rather, it

[37] Others, even within the Austrian tradition, go even further, and maintain, in line with Buchanan's critique, that Hayek's original mistake lies in his attempt to carry over his theory of the market process to the analysis of cultural evolution. Endorsing the epistemological role that Hayek assigns to markets, Kirzner maintains that market forces are able to solve both the overoptimism problem and the overpessimism problem of knowledge. Overoptimism arises from the individual trying to achieve something that is unattainable, and it is solved by the market through a self-corrective mechanism. Overpessimism involves the failure to notice a possible profit opportunity that nobody else has noticed either. In this case, there is no intrinsic negative-feedback mechanism able to eliminate this knowledge problem. However, Kirzner argues, the problem is solved by the process of entrepreneurial discovery which drives the market process. According to Kirzner, while the market process exhibits a solution to both problems, other spontaneously ordered institutions, such as language, law, and culture, can only solve the problem of over-optimism. In a sense, Kirzner is saying that market process is "equilibrating", while other spontaneous order processes are not. Therefore, in Kirzner's view, Hayek's confidence in the convergent evolution of social institutions other than the market is unjustified. See I.M. Kirzner, "Knowledge Problems and Their Solutions: Some Relevant Distinctions", *Cultural Dynamics* 3, 1990, 32-48; I.M. Kirzner, *Market Theory and the Price System*, Princeton, N.J., D. Van Nostrand, 1963.

represents a conjectural reconstruction in which it is crucially assumed that the notions of spontaneity and freedom coincide.

While Hayek makes an effort to avoid the naturalistic fallacy, in some significant parts of Hayek's work, the systems of abstract rules are defined in terms of their superiority, in plain opposition with any non-Panglossian evolutionary approach, sometimes, as described in the previous section, even his own. Many of Hayek's evolutionary arguments derive from the fact that "the outcome of a process of evolution and selection is very similar to that which we find in the biological field."[38] However, it is well-known that the Darwinian theory of evolution describes a process of adaptation and selection that does not imply the necessary superiority of the outcome. Evolution in biology is an ongoing process of continuous change in which the environment against which selection takes place is not exogenous and invariant, but rather it is endogenously determined. If changes in the traits of an organism can affect the environment as well as be affected by it, the all concept of adaptation looses its clear meaning, let alone optimal adaptation.[39] In spite of Hayek's explicit and repeated objections to the contrary, his theory of cultural evolution is not completely immune to the charge of Panglossianism.

The intent of this essay is not to assess whether intervention or economic planning are to be at times preferred to *laissez-faire*. Rather, it attempts to focus the reader's attention

[38] F.A. Hayek, *Studies*, 86.

[39] The fact that the theory of biological evolution does not justify the belief that evolutionary processes lead unequivocally to efficient results does not mean that evolutionary systems exhibit no desirable qualities at all. Extremely detrimental traits have a high likelihood of being weeded out, and the organisms of the natural world have clearly inherited remarkably sophisticated and effective structures and behaviors that allow them to survive and reproduce. What is in question is not the adaptive character of a large number of traits observed in existing organisms; rather, whether such traits represent the best solutions possible in all cases, and whether every single trait must serve some adaptive purpose. See R.G. Wesson, *Beyond Natural Selection*, Cambridge, Mass., The MIT Press, 1991, 154.

to the fact that the idea of evolution necessarily reaching optimal outcomes is misconceived. Both in the biological and the social context, evolution is not an optimizer or a perfectionist. It is worth clarifying Hayek's position with regards to *laissez-faire* in the context of his theory of cultural evolution. As Hodgson points out,

> [t]he 'old' institutionalist Karl Polanyi (1944)[40] argued at length that the market is necessarily embedded in other social institutions such as the state, and is promoted or even in some cases created by conscious design. It is indeed striking that modern experimental economists, in attempting to simulate the market, have found that they face the unavoidable initial problem of setting up its institutional structure. As Vernon Smith (1982)[41] writes: 'it is not possible to design a resource allocation experiment without designing an institution in all its detail.'[42]

And again,

> it is intellectually self-contradictory to assume that *laissez-faire* involves the retreat of the state from the sphere of economic decision making. [Karl] Polanyi […] showed long ago that the rise of the capitalist system in England involved continual meddling

[40] K. Polanyi, *The Great Transformation*, New York, Rinehart, 1944.
[41] V.L. Smith, "Microeconomic Systems as an Experimental Science," *American Economic Review* 72, 5, (December 1982), 923-55, 923.
[42] G.M. Hodgson, "The Evolution of Socioeconomic Order," 398.

and regulation by government. Then and today […] markets involves the establishment of institutions and rules – this itself is action and intervention.[43]

Hodgson remarks finds corroboration in Hayek's reference to the property of many ideas and practices to evolve in group, even though their analysis could theoretically be separated. Religions, for example, are complex structures comprising multiple beliefs and traditions. One would expect a religion to persist if its selective advantages outweigh its disadvantages. As, Hayek argues:

Customs whose beneficial effects were unperceivable by those practicing them were likely to be preserved long enough to increase their selective advantage only when supported by some other strong beliefs; and some powerful or magic faiths were readily available to perform this role.[44]

Another and, in the context of Hodgson's remarks, more important case of the co-evolution of a group of cultural attributes arises from the fact that the growth of government power could have both beneficial and harmful consequences. As Hayek observes,

Those [governments] that gave greater independence and security to individuals engaged in trading benefited from the increased information and larger population

[43] G.M. Hodgson, "The Evolution of Socioeconomic Order," 399.
[44] F.A. Hayek, *The Fatal Conceit*, 138.

that resulted. Yet, when governments became aware how dependent their people had become on the importation of certain essential foodstuffs and materials, they themselves endeavoured to secure these supplies in one way or another.[45]

Consequently, Hayek seems to be aware that the patrolling of trade routes and abuse of power have tended to develop together, although whether they can ever be separated remains an open question.[46]

In *Law, Legislation and Liberty*, Hayek defends the spontaneous emergence of abstract rules by means of theoretical and historical considerations. In Hayek's political philosophy, the superiority of Western society is an unquestionable fact. He maintains that, insofar as our goal is the emergence of the Great Society, there is only a particular system of abstract rules that has proven superior to others. In his words:

"All that we are here maintaining is that we know only of one kind of such systems of rules […] which makes the kind of open or 'humanistic' society possible […] It is only if we accept such a universal order as an aim, that is, if we want to continue on the path which since the ancient Stoics and Christianity has been characteristic of Western civilization, that we can defend this moral system as superior to others."[47]

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[45] F.A. Hayek, The Fatal Conceit, 44.
[46] The co-evolution of rules and practices discussed by Hayek, has its parallel in biology in what P.W. Hendricks calls "genetic hitchhiking," (E.O. Dodson and P. Dodson, *Evolution: Process and Product*, Boston, Prindle, Weber & Schmidt, 1985, 212) a phenomenon by which traits often travel together in packs, even when there is no apparent adaptive advantage to the traits appearing together. In such situations, it becomes possible for non-adaptive or mal-adaptive traits to appear jointly with traits of high adaptive value.
[47] F.A. Hayek, *The Mirage of Social Justice*, 27.

Moreover, the superiority of spontaneous evolution is often associated to the notion of progress:

> "I have so far carefully avoided saying that evolution is identical with progress, but when it becomes clear that it was the evolution of a tradition which made civilization possible, we may at least say that spontaneous evolution is a necessary if not a sufficient condition of progress."[48]

From the above statements, it is clear that, for Hayek, the evolution of the system of abstract rules is the defining feature of a particular social configuration in history, that is, the Western civilization which originated from the Stoic and Christian traditions. Moreover, Hayek's evolutionism exhibits both Darwinian and non-Darwinian elements, as it entails the emergence of unforeseen results that can be thought of as superior and leading to progress.

Such an attitude invokes the assumption – that Darwin himself was keen to avoid – that cultural evolution implies increasing progress and efficiency, a journey from the inferior to the superior form of social organization.[49] However, for reasons discussed above, there is no reason to assume that rule-following behavior will generally put the system on a superior track.

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[48] F.A. Hayek, *Political Order*, 168. "In one sense, civilization is progress and progress is civilization" (F.A. Hayek, *The Constitution of Liberty*, 39.)

[49] Notably, the Spencerian version of the evolutionary metaphor fails to specify any plausible and detailed mechanism for the evolution of societies. Despite its appeals to reason and science, Spencer's theory falls back onto some quasi-religious notion of a universal and unknowable motive force to explain its operation.

Turning to Hayek, insofar as the selection mechanisms are themselves path and structure dependent, that is, limited and molded by the evolutionary process and its outcomes in both wholes and parts, it seems appropriate to conclude that he is unjustified in assuming that spontaneous forces will always generate an appropriate institutional framework. Hayek sees selection as operating on a plurality of different groups, but within a given structure. Thus he ignores the possibility that selection may also be working at the level of the structure, creating diversity not simply at the level of groups but also at the level of the overall system.[50]

It has been observed that an economic system can get locked into given paths of development, excluding a host of other, perhaps more desirable possibilities. A relevant example, discussed by Michael Best, is the development of the system of transport based on the motor car, which, once it had occurred, tended to preclude the gradual development of other alternatives.[51] In such cases, marginal adjustments towards perhaps more optimal outcomes are often ruled out.

But Hayek pushes his evolutionism even further. In a critical passage contained in *Law, Legislation and Liberty*, he explicitly maintains:

> "It is irrelevant (and, of course, normally unknown) from which initial system of rules this evolution started; and it is quite possible that one kind of system of such rules is so much more effective than all others in producing a comprehensive order for a

[50] On this point, see G.M. Hodgson, *The Democratic Economy: A New Look at Planning, Markets and Power*, Harmondsworth, Penguin, 1984; G.M. Hodgson, "Economics and Systems Theory," *Journal of Economic Studies* 14, December, 1987, 65-8; G.M. Hodgson, "Hayek's Theory of Cultural Evolution."
[51] M.H. Best, "The Political Economy of Socially Irrational Products," Cambridge Journal of Economics 6 (March 1982): 53-64.

> Great Society that […] there may occur in systems with very different beginnings a process corresponding to what biologists call 'convergent evolution'. 'The necessity of human society' may bring about an independent emergence, at many different times and places, of the same sort of system, such as that based on private property and contract. It would indeed seem that wherever a Great Society has arisen, it has been made possible by a system of rules of just conduct which included […] 'freedom of contract, the inviolability of property, and the duty to compensate another for damage due to his fault.'"[52]

It is then plausible to infer that for Hayek, not only does the system of rules most advantageous to the needs of the Great Society correspond to the Humean "fundamental laws of nature"[53], but also that such a system has the potential to emerge regardless of the initial configuration. Hayek's focus on what he calls "convergent evolution" ignores all those evolutionary processes that diverge from the Humean fundamental laws of nature, and allow for the persistence of social configurations that differ from the Great Society.[54]

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[52] F.A. Hayek, *The Mirage of Social Justice*, 40. By "convergent evolution" Hayek refers to Bertalanffy's "principle of equifinality", which states that it is possible for an open system to reach the same final state from differing initial conditions and by a variety of paths. See L. von Bertalanffy, *General System Theory. Foundations, Developments, Applications*, New York, George Braziller, 1968.

[53] David Hume, *Treatise*, *Works II*, 293.

[54] Part of the literature on path-dependence attempts to explain the development of social systems from non-convergent evolutionary processes. For instance, North's model of path dependence tries to show how historical and cultural variables determine their specific change over time. In particular, North's model explains why institutions that should be "negatively" selected according to Hayek's evolutionary theory persist for a long period of time, sometimes centuries. Moreover, even when assessing the differing abilities of various social systems to produce efficient results in the neoclassical sense, there is no reference to a notion of superiority or progress. For an extensive treatment of non-convergent evolutionary processes, see D.C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge, Cambridge University Press, 1990; D.C. North, *Transaction Costs, Institutions, and Economic Performance*, San Francisco, Center for Economic Growth, 1992; A.T. Denzau - D.C. North, "Shared Mental Models: Ideologies and Institutions", *Kyklos* 47, 1994, 3-31; E. Schlicht, *On Custom in the Economy*, Oxford,

Vanberg has used game theory to offer a sharp critique of Hayek's theory of cultural evolution, noting that "once a coordination rule is established in a group, it cannot be assumed that a shift to a more beneficial rule can, in general, be brought about by a spontaneous, invisible-hand process."[55] Hayek seems to be aware of the fact that some cultures that are very different from Western civilization have somehow been able to survive: "There are, undoubtedly, many forms of tribal or closed societies which rest on very different systems of rules. All that we are here maintaining is that we know only of one kind of such systems of rules, undoubtedly still very imperfect and capable of much improvement, which makes the kind of open or "humanistic" society possible where each individual counts as an individual and not only as a member of a particular group, and where therefore universal rules of conduct can exist which are equally applicable to all responsible human beings."[56] The question is whether Hayek considers these "tribal or closed societies" spontaneous orders or made orders or organizations. From his discussion on the characteristics of *kosmos* (spontaneous order) as opposed to *taxis* (made order or organization) a dichotomy that he likens to Oakeshott's distinction between *nomocracy* and *teleocracy*, it would appear that Hayek confines these social arrangements to the realm of organizations.[57] Insofar as Hayek considers social arrangements different from the Great Society as being an expression of *Taxis*, Vanberg's criticism appears to be substantially correct.

Clarendon Press, 1998, 200-202; S. Fiori, "Alternative Visions of Change in Douglass North's New Institutionalism", *Journal of Economic Issues*, XXXVI, 4 (December 2002) 1025-1043.
[55] V.J. Vanberg, Spontaneous Market Order and Social Rules, 93.
[56] F.A. Hayek, *The Mirage of Social Justice*, 27.
[57] F.A. Hayek, *The Mirage of Social Justice*, 15.

The superiority of a specific evolutionary process, defined as the ability to induce progress, is closely connected to the superiority that Hayek confers to a very specific social configuration, which is Western society. As a consequence, Hayek's theory of spontaneous order further loses its features of a general theory of institutional evolution because it refers to only one model of civilization.

5. Hayek's Cognitive Theory and the Constructivism-Spontaneous Order Dichotomy

Hayek's dichotomy between constructivism and spontaneous order cannot be sustained if both processes exhibit adaptive and evolutionary features. Hayek's definition of constructivism involves the creation of institutions for the realization of specific purposes according to an overall plan. In line with Hayek's theory of knowledge, a central plan can exert its direct influence only on a limited domain. Its implementation will have effects that cannot be foreseen by the plan simply because they are beyond its control. In other words, the fulfillment of the plan produces unintentional results that frustrate the attainment of its purposes. Is it not then plausible to argue that constructivism is characterized by some kind of evolutionary process?

In line with the implications of Hayek's individualism, the members of a society for whom the plan is designed are not passive instruments of the planner, but are planners themselves. In their attempt to further their goals, individuals adjust to the changes introduced by the plan. Consistently with Hayek's skepticism about the capabilities of the human mind, there is no room for an omniscient mind able to define an overall plan and to mould society according to it. Rather, the interaction between the plan and the

individuals originates unintentional and unforeseeable outcomes that call for the formulation of new plans better suited to face the changing situation. The subsequent revision of the original central plan triggers adaptive behavioral changes from the part of individuals. Each iteration constitutes a new basis for the emergence of new plans according to an ongoing adaptive mechanism. According to this interpretation, and contrary to Hayek's treatment of constructivism, central planning is not able to "block the future"; rather, the realization of the plan causes unintended consequences that form the basis for adaptive responses from the part of individuals. On these premises, it is plausible to assume that social planning can be explained in evolutionary terms as an endless process.

It is important to observe that the process described above appears to be consistent with a particular interpretation of Hayek's theory of cultural evolution, one which sees the individual not merely as a unit of selection, but as an integral part of the selective mechanism that influences the survival and reproduction of cultural attributes. This interpretation of Hayek's theory of cultural evolution is crucial in the case for methodological individualism, for, as it will be discussed below, it resolves the apparent conflict between methodological individualism and the idea of group selection favored by Hayek in his explanations, and allows the coexistence of the two concepts within the same theory.

There seems to be some confusion, in both Hayek's work and in the literature on cultural evolution in general, about the exact mechanism by which selection takes place. It is often unclear whether the emergence of cultural norms is a matter of individual or

collective choice or purely a product of impersonal environmental factors. In explaining his theory of cultural evolution, Hayek adopts the concept of group selection, that is the idea that cultural attributes are naturally selected on the basis of advantages and disadvantages they create for the groups of people who practice them. A number of authors have found Hayek's idea of group selection problematic. Vanberg, for instance, argues that group selection is in conflict with Hayek's professed methodological individualism. Given that the idea of group selection is "theoretically vague, inconsistent with the basic thrust of Hayek's individualistic approach, and faulty judged on its own grounds," Vanberg contends that the idea of group selection should be abandoned in favor of methodological individualism.[58] On the other side of the spectrum, Hodgson agrees with Vanberg that there is a conflict between the two doctrines, but recommends instead that methodological individualism should be abandoned in favor of group selection.[59] The following discussion of the mechanisms by which selection takes place in cultural evolution may help solve the controversy.

Generally speaking, a cultural evolutionary system consists of two fundamental elements: the units of selection and the selection mechanism. The units of selection are the cultural attributes that have the potential of being adopted, consciously or unconsciously, by individuals. The selection mechanism resides partly in the human mind under the form of the psychology and preferences of individuals, and, partly, in the requirements of survival and reproduction. Interpreting cultural evolution as responding to a dual selection mechanism has the advantage of allowing a more complete integration

[58] V.J. Vanberg, "Spontaneous Market Order and Social Rules," 1986, 97.
[59] G.M. Hodgson, "Hayek's Theory of Cultural Evolution."

of the Hayekian concept of spontaneous order and his theory of cultural evolution. As a matter of fact, it is not completely clear why the market order that serves a multiplicity of individual aims should survive a selection mechanism based solely on the survival and reproduction of the group, as Hayek seems to imply. The critical advantage of a spontaneous order is placed by Hayek in its capacity to discover and disseminate knowledge that is found within the system in a dispersed form, including knowledge about individual preferences. It is precisely thanks to the satisfaction of the psychological demands of the human mind that knowledge about individual preferences becomes relevant to the evolutionary process.

In Hayek's political philosophy, institutional reform is admissible only if it is consistent with the spontaneous evolution of the existing systems of rules, otherwise it must be considered a manifestation of constructivist rationalism. However, if the implementation of institutional reforms that are constructivist in the Hayekian sense gives rise to unforeseen changes, through the filter provided by individuals, it follows that constructivism becomes a part of the evolutionary processes of society. Consequently, Hayek's idea that no individual mind can possesses the totality of the knowledge dispersed in society can be applied to the explanation of the development of deliberate institutions in evolutionary terms.

Hayek's "explanation of the principle" derives from his theory of knowledge. In his words,

> the theory of evolution proper provides no more than an account of a process the outcome of which will depend on a very large number of particular facts, far too numerous for us to knowing their entirety, and therefore does not lead to predictions about the future.[60]

This is a perfect example of Hayek's affirmation of "the primacy of the abstract" in all human knowledge, which has invariantly informed his method. It implies that social sciences can never aspire to an exhaustive description of concrete social facts. It follows that no social science, including economics, can ever do more than predict the occurrence of general classes of events. At least in respect of complex phenomena, all science can aim at is an "explanation of the principle," or the recognition of a pattern, "the explanation not of the individual events but merely of the appearance of certain patterns or orders. Whether we call these mere explanations of the principle or mere pattern predictions or higher level theories does not matter."[61]

Hayek continues observing that:

> Predictions of a pattern are […] both testable and valuable. Since the theory tells us under which general conditions a pattern of this sort will form itself, it will enable us

[60] F.A. Hayek, *Rules and Order*, 23-24.
[61] F.A. Hayek, *Studies*, 35. In "The Theory of Complex Phenomena," Hayek concludes that, because social life is made up of complex phenomena, "economic theory is confined to describing kinds of patterns which will appear if certain general conditions are satisfied, but can rarely if ever derive from this knowledge any predictions of specific phenomena." F.A. Hayek, *Studies,* 35. In his strong emphasis on the primacy of the abstract, Hayek goes as far as to question the adequacy of the nomothetic model for all sciences, and especially social sciences, by means of which independent variables that account for the variations in a given phenomenon are identified so that we can formulate exact prediction through laws.

> to create such conditions and to observe whether a pattern of the kind predicted will appear […] though we are ignorant of many of the particular circumstances which will determine the pattern that will appear.[62]
>
> We may be able to indicate the general class of circumstances which have made them what they are, but we do not know the particular conditions to which the values we hold are due, or what our values would be if those circumstances had been different. Most of the illegitimate conclusions are the result of erroneous interpretation of the theory of evolution as the empirical establishment of a trend. Once we recognize that it gives us no more than a scheme of explanation which might be sufficient to explain particular phenomena if we knew all the facts which have operated in the course of history, it becomes evident that the claims of the various kinds of relativists (and of evolutionary ethics) are unfounded.[63]

In following Hume, Hayek supposes that the moral rules that are brought about spontaneously by human interaction all have certain features or principles in common. Among the general facts that Hayek cites in "The Legal and Political Philosophy of David Hume", are the individual's limited generosity, limited intellectual abilities, and the permanent scarcity of means to satisfy men's needs. As Hayek puts it: "It is thus the nature of the circumstances, what Hume calls 'the necessity of human society,' that gives

[62] F.A. Hayek, *Studies,* 36. "Where our predictions are thus limited to some general and perhaps only negative attributes of what is likely to happen, we evidently also shall have little power to control developments." F.A. Hayek, *Studies*, 18. Furthermore, "the wise legislator or statesman will probably attempt to cultivate rather than to control the forces of the social process." F.A. Hayek, *Studies*, 19.
[63] F.A. Hayek, *Studies*, 38.

rise to the 'three fundamental laws of nature': those of 'the stability of possessions, of its transference by consent, and of the performance of promises'." [64]

In Hayek's view, as in Hume's, the justification of these fundamental laws of nature, which are fixed, and morality, whose content is subject to change, is that they represent the indispensable conditions for the promotion of human welfare.[65]

In Hayek's system utilitarianism, the test of any system of rules is whether it increases an anonymous individual's chance of achieving his own goals.[66] In Hayek's conception, therefore, we are not bound to passively accept the inherited system of rules of conduct as we find it. It may be reformed in order to improve the chances of the unknown man's achieving his goals.[67] However, one conclusion that Hayek (partially) draws from his evolutionary analysis is that gradual or piecemeal change ought to be preferred to radical or wholesale change. At first glance, this conclusion appears to fit in nicely with the evolutionary paradigm. In Hayek's view, reformers who wish to discard rules or conventions whose functions are not immediately clear or whose systemic repercussions are not understood may seriously threaten the stability of an interdependent system.

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[64] F.A. Hayek, *Studies*, 113.

[65] In Hayek, as in Hume, there is a fundamental utilitarian commitment in their theories of morality. The utilitarian component of Hayek's conception of morality differs from Bentham's or Mill's in that it does not invoke a utilitarian principle in order to settle practical questions. Given our intellectual limitations, we are in general better served by following tradition, which can never be the subject of a rationalist reconstruction in Benthamite fashion, but only reformed gradually and slowly. Hayek refutes the argument that utilitarian principles can govern specific actions and that utility may yield new rules. Consistently with system utilitarianism, Hayek argues that the proper role of utility is not prescriptive but rather provides an evaluative standard for the assessment of whole systems of rules.

[66] See F.A. Hayek, *Studies*, 173: "An optimal policy in a catallaxy may aim, and ought to aim, at increasing the chances of any member of society taken at random of having a high income, or, what amounts to the same thing, the chance that, whatever his share in total income may be, the real equivalent of this share will be as large as we know how to make it."

[67] Considering a hypothetical unknown individual as the reference point, Hayek's conception parallels, by his own admission, Rawls' model of rational choice behind a veil of ignorance contained in *A Theory of Justice.* See F.A. Hayek, *The Mirage of Social Justice*, xiii.

Hayek therefore advises that all reforms be judged within the context of a complex of other rules taken for the time being as given.

Upon closer inspection, however, and particularly insofar as Hayek's view does not rule out cultural relativism, Hayek's preference for gradual intervention cannot be taken as a universal rule on the sole basis of his evolutionary arguments alone. Hayek's theoretical possibility that the development of human society might follow a multiplicity of routes with different end-points that represent the highest adaptability of the system along the different paths implies that a system very different from the *status quo* could, conceivably, possess more desirable qualities. Short of a radical reform affecting the entire system, society could persist indefinitely in an inferior state. In order to eliminate the danger of destabilizing system-wide reform, Hayek introduces a powerful argument grounded on his epistemology: put simply, individuals whose civilization has evolved along one path lack the knowledge necessary to identify viable alternatives that differ substantially from the status quo. The possibility of alternative adaptive paths does not necessarily imply that individuals endowed with fragmented knowledge are bale to know what they are and how to implement them. When reform proposals differ only marginally from the status quo, the cognitive abilities of individuals can be reasonably relied upon. However, in the case of wholesome changes, the demands placed on human knowledge are too great.[68]

[68] Although the outcomes of the Hayekian cultural evolution are given no automatic praise for economic efficiency, the thrust of Hayek's argument is to suggest that attempts to guide or direct the evolutionary process will subvert the complex "spontaneous order" that has developed over the centuries. (F.A. Hayek, *The Fatal Conceit*.) Hayek's related argument that complete central planning is not feasible (F.A. Hayek, *Individualism and Economic Order*), has been confirmed by writers sympathetic to socialism, such as Nove (A. Nove, *The Economics of Feasible Socialism*, London, George Allen and Unwin, 1983) and Hodgson

Hayek's defense of classical liberal principles, and of gradualism in intervention as its main instrument, is founded on the proposition that they are best suited to the nature of social knowledge. He uses the limited, fragmented and fleeting nature of knowledge to derive implications for our social, political, moral and economic life. The genius of liberal institutions and practices, he contends, is that they help us coping with the ignorance we invariably encounter in all walks of life. Hayek's theory of knowledge is undoubtedly Kantian, as he supports the view that the human mind must possess a priori categories or mental concepts which allow us to make sense of the external world. He rejects the notion that the mind is simply a mirror-like mechanism on which the objects of the outer world are reflected. In his essay "The Primacy of the Abstract" he argues

> I do not wish to deny that in our conscious experiences […] concrete particulars occupy the central place and the abstractions appear to be derived from them. But this subjective experience seems to me to be the source of the error with which I am concerned. […] What I contend, in short, is that the mind must be capable of performing abstract operations in order to perceive particulars, and that this capacity appears long before we can speak of conscious awareness of particulars. When we

(G.M. Hodgson, *The Democratic Economy: A New Look at Planning, Markets and Power*, Harmondsworth, Penguin, 1984.) However, Roland (G. Roland, "Gorbachev and the Common European Home: The Convergence Debate Revisited?" *Kyklos* 43, 1990, 385-409) points out that in the context of Perestroika in the East, Hayek is caught between two irreconcilable arguments: his support for markets, on the one hand, and his opposition to deliberate structural change or "constructivism," on the other. Logically, according to Roland, Hayek should oppose Perestroika in the Soviet Union, as it is essentially interventionist and "constructivist" in nature.

want to explain what makes us tick, we must start with the abstract relations governing the order which, as a whole, gives particulars their distinct place.[69]

Following Kant, Hayek agrees that there must be mental categories or rules of perception which are logically prior to, and responsible for, our ability to perceive and interpret external stimuli. But Hayek adds a twist to this standard account. Whereas most theories of knowledge attempt to ground some element of certainty or reliability either by claiming some permanency in the objects of the natural world as perceived by the human mind or by claiming that all human minds operate according to some universal and invariable principles, Hayek offers a third possibility. While accepting that the mind's abstract categories are primary and logically prior to our understanding of the world around us, these categories in turn are not unaffected by external stimuli. As the mind's classificatory equipment processes incoming stimuli, Hayek argues that the mind's cognitive maps are themselves restructured and refitted by events in light of their kind, number, intensity and association with other events.

Hayek's theory of knowledge was first expounded in *The Sensory Order*, in which he described the human mind as resembling a "physiological switchboard" made up of neural fibers which are active in the interpretation of all incoming stimuli. He suggested that our classificatory apparatus is altered or further defined in subtle ways by the impulses or experiences received by our sensory order. All past experiences are perceived, and then incorporated into our switchboard to help in the classification and

[69] F.A. Hayek, *New Studies*, 36-37.

interpretation of all future experiences. Although some boundaries established by our a priori categories are common and invariable to all minds, Hayek argued, it is "beyond question" that individuals "differ in significant aspects" because of the uniqueness of their individual experiences.[70] The importance of this view to the nature of human knowledge lies in his insistence on the dynamic and subjective, character of knowledge coming from our cognitive processes. His theory of knowledge forms the basis of the views he develops in his social and political philosophy.

6. Constructivism and Cultural Evolution. A historical perspective

The question that this section attempts to answer is whether it is plausible to assume that constructivist systems are subject to evolutionary forces analogous to those which drive the development of spontaneous orders.

Consistently with his scientific method and his skepticism about the power of human reason, Hayek's theory of evolution provides an account of a process whose outcomes depend on a set of particular facts that no one can know it its entirety, and therefore does not lead to predictions about the future. Hayek denies the possibility of an account of the details. In his opinion, only a theoretical account of the process founded on a set of principles is possible. As a consequence, his theory of evolution fails to wholly account for the emergence of the "Great Society". The lack of a historical dimension points to a weakness in his theory of cultural evolution.[71]

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[70] F.A. Hayek, *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology*, London, Routledge & Kegan Paul, 1952, 134.

[71] Other authors have maintained that a historical explanation is necessary for the correct understanding of the evolutionary paths of society and of complex systems in general Simon's exploration of the

Hayek's treatment of constructivism is inextricably intertwined with the problem of the socialist calculation. However, constructivism can hardly be considered a phenomenon exclusively associated to modern totalitarian regimes. Economic historians have pointed to other forms of social organization exhibiting features that were constructivist in character. European feudal agrarian societies, for instance, possessed elements that would fit Hayek's notion of a constructivist society: hierarchy, specific command, and coercion. Not only were these features crucial to the functioning of feudal agrarian societies, but also constituted a barrier to medieval economic growth. It is then plausible to assume that institutions within feudal societies corresponded to what Hayek defines as deliberate institutions designed to serve specific purposes.[72] The question that the social scientist faces is therefore the following: what are the forces at the basis of the transition from the feudal model of society to the Great Society? More generally, what explains the evolution of society from a constructivist system to a spontaneous order?[73]

It is arguable that most medieval feudal institutions were agrarian institutions. First, feudalism itself was based on a hierarchic military form of government, composed of military aristocrats. The militaristic system of government was originally designed to provide defense and protection at the local level in absence of central authority. Its hierarchic-pyramidal system promoted serfdom and dependence: kings or emperor at the

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organization of complexity and the science of design, as contained in *The Sciences of Artificial*, leads him to the observation that social systems "can only be understood from a knowledge of their histories." (H.A. Simon, *The Sciences of Artificial*, third edition, Cambridge, Mass., The MIT Press, 47)

[72] F.A. Hayek, *Rules and Order*, 8. The fact that feudal societies exhibited a certain degree of freedom is wholly consistent with Hayek's definition of an organization.

[73] A clear weakness of this analogy lies in the fact that Hayek's treatment of constructivism is inextricably intertwined with his theory of knowledge and the problem of socialist calculation. The question cannot be easily resolved by means of analogies and conjectures. The problem lies in the difficulty in assessing the role that knowledge plays within social systems that are distant in time and space.

top were served by a military aristocracy, who in turn ruled and were supported by a servile peasantry. Second, manorialism, as the organizing principle of feudal societies, implied a landed estate granted to a feudal lord for his maintenance. Under this form of ownership, the land was rented to tenants by the lord of a manor, who also exercised legal authority. Serfdom developed as a system of subservient, dependent peasant cultivation on manorial estates for the benefit of the feudal lord. All of these institutions have been recognized as important barriers to change and innovation necessary to free land, labor and other resources for better uses. Manors as fiefs were given as rewards and payment for military service, and thus could not legally be alienated. As it is well known, the laws of primogeniture and entail were introduced in order to keep the land undivided by means of lineal succession and the prohibition of any kind of alienation. One of the consequences of the introduction of these laws was the establishment and perpetuation over time of social hierarchies.

The laws of primogeniture and entail plausibly fit Hayek's definition of constructivist institution: they are designed institutions created for specific purposes; they obstruct the emergence of spontaneous evolutionary processes through the perpetuation of hierarchies and relations of subordination, and, therefore, they impede the emerging of the Great Society; similarly to Hayek's notion of organization, the order within the fiefs is attained and held by means of coercive command.

It may be plausible to assume that the constructivist attributes of the feudal system may have emerged as an adaptive response to the environment. In Caldwell's assessment, Hayek himself is aware of the fact that the conscious construction or imposition of social

institutions is a complex issue, as he recognizes that "many such institutions are the product of a long process of evolutionary development; they are themselves examples of complex self-organized adaptive orders".[74] It would seem that the emergence of constructivist institutions could be explained in evolutionary terms: institutions like the laws of primogeniture and entail were selected for the reproductive advantage they offered over alternative institutions, which may include private property.[75] Moreover, although slow marginal changes occurred over time, selection processes assured the persistence of such a system for many centuries. As a matter of fact, even in Hayek's theory of spontaneous order the stability of institutions, their homeostatic character, is an essential condition for their selection. Therefore, the emergence and persistence of a constructivist system may be consistent with an evolutionary view of society, and, in some sense, it can be considered a special case of spontaneous order, one in which the system of abstract rules is substituted by a system of specific commands. Under this set of assumptions, Hayek's distinction between constructivism and spontaneous evolution loses its relevance, as constructivism would be a particular outcome of evolution.

The remaining issue would be to explain how a system of abstract rules emanated from a system of designed rules, allowing the transition from manorialism to the market order. Hayek does not develop a historical theory alongside his theory of cultural evolution and therefore it is impossible to find in his work an account of those marginal changes through which feudal societies evolved into the Great Society.

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[74] B. Caldwell, "Hayek and Socialism", *Journal of Economic Literature* XXXV, December, 1977, 1856-1890, 1885.

[75] As Kerber and Vanberg observe, this process can be described in terms of competition among institutions and rules. See W. Kerber and V.J. Vanberg, "Institutional Competition among Jurisdictions: An Evolutionary Approach", *Constitutional Political Economy* 5, 2, 1994, 193-219.

CHAPTER 3

Hayek on Economics and Ethics

1. Introduction

Like other exponents of the Austrian School of Economics, Hayek has a subjectivist approach to ethics. From an innate reluctance to engage in moral judgment of liberty that is characteristic of a libertarianism that emerges from economics, Hayek rejects the notion of natural rights, and the idea that human action can be informed by a doctrine of rights. He believes that the ultimate measure of justice is conduciveness to the preservation of the social order. Hayek has attempted all his life to demonstrate that economic liberalism has a moral foundation, but, in direct contrast to the natural law libertarians, he explicitly denies that there can be an abstract, universal, and historical conception of rights. The reason for this is that Hayek's whole social philosophy is informed by a strong anti–rationalism. Since society is complex and its facts unknowable, unforeseeable, and unpredictable, individuals are incapable of devising a set of principles appropriate for all circumstances. It is this highly skeptical epistemology which leads him to reject *a priori* or deductive conceptions of ethics, in favor of those systems of rules that have emerged and survived an evolutionary process.

In the "Epilogue" to *The Political Order of a Free People*, Hayek writes: "since we owe the order of our society to a tradition of rules which we only imperfectly understand,

all progress must be based on tradition."[1] Evolution seems to take the place of reason in the explanation of a legitimate ethical order. In the same work, he writes: "Tradition is not something constant but the product of a process of selection guided not by reason but by success."[2] On what, then, does the morality of liberty rest? While social evolution provides us with knowledge of morality, Hayek adopts the Kantian idea of universalization to determine the validity of rules in a traditional system. However, many different rules may be universalized within a system, so that it is possible to formulate illiberal and anti–individualistic rules in the form of general rules applicable to unknown, future situations.

It will be argued that Hayek's account of liberty is not necessarily conducive of a liberal order. Following Hayek's logic, an individual's liberty is violated when he is coerced to perform an action by some authority, but it is not necessarily reduced when general rules forbid a class of actions. I will point out that, while it is true that regimes characterized by general rules tend to achieve a greater amount of liberty than all known alternatives, Hayek's anti–rationalism precludes him from appreciating those general rules that may inhibit a range of actions, which, conversely, would be permitted under an individualist's doctrine of rights. These considerations lead to Buchanan's rejection of the idea that the rules and institutions, which sustain a free economy, emerge in a spontaneous manner.

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[1] F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 3, *The Political Order of a Free People*, London, Routledge and Kegan Paul, 1979, 167.
[2] F.A. Hayek, *The Political Order of a Free People*, 166.

Hayek's focus on human ignorance, which inspires his notion of negative liberty, is reflected in his approach to state intervention. In order for government policy proposals to be considered *just*, they must adhere to the rule of law. As we will see, the strict reliance on the rule of law for the evaluation of government intervention raises issues of inconsistency that affect his political philosophy.

2. Economic values and moral values

For Hayek, ends are exclusively individual and each individual has his own scale of values which are changeable according to circumstances, not comparable with those of others and not open to external judgment.[3] Rational knowledge is only possible of means, and economics is the study of how, from the actions of individuals following their own ends in conditions of dispersed information and scarcity of means, an order emerges, or, rather, a situation in which the action of one does not induce others to modify their plans that, as a result, appear consistent.

Hayek excludes the possibility of a rational discussion of ends, or even that absolute ends can be proposed.[4] He also states that it is not possible to perceive within society a complete ethical code, or even a common scale of values shared by the members of

[3] F.A. Hayek, *The Road to Serfdom*, London, Routledge and Kegan Paul, 1944, 42-7.
[4] Rational discourse in morals is possible for Hayek only when it is aimed at resolving conflicts between the rules of action which deprive the overall system of rules of consistency, or at comparing systems of rules that offer alternative paths to the same ends. On this point, see F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 2, *The Mirage of Social Justice*, London, Routledge and Kegan Paul, 1976, 24-30; F.A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Chicago, The University of Chicago Press, 1978, 19; F.A. Hayek, *The Fatal Conceit. The Errors of Socialism*, in W.W. Bartley (ed.) *The Collected Works*, Vol. 1, London, Routledge, 1988, 69.

society. Therefore, it is not possible to organize resources for specific "social ends," and terms such as "common welfare," "general interest" or "public good" are meaningless.

These ideas are based on a conviction that Hayek borrowed from Hume. In following his own ends, the individual is confronted with two "natural" obstacles:

> […] every individual's predominant concern with the needs of his own or of his immediate associates, […] the scarcity of means, i.e. the fact that "there is not a sufficient quantity of them to supply everyone's desires and necessities."[5]

For Hayek, as for Hume, it is from self interest and natural scarcity that the social regulation of human relationships originates. The individual has two fundamental requirements: first, to limit the possibility of abuse by one individual of another, which Hayek calls a "sense of justice," and which implies the need "to act in accordance with non–articulated rules."[6] Second, to follow a "procedure" which permits the discovery and the best possible use of dispersed knowledge, allocates scarce resources among individuals independently of any specific design, and, as a result, co–ordinates individual actions toward an order. Such a procedure is competition, and the institution that affects it is the market.[7]

[5] F.A. Hayek, *Studies in Philosophy, Politics and Economics*, London, Routledge and Kegan Paul, 1967, 112-3.
[6] F.A. Hayek, *New Studies*, 81.
[7] F.A. Hayek, *The Road to Serfdom*, 27-9; F.A. Hayek, *New Studies*, 179-90.

Hayek defines as just only those actions that follow abstract and formal rules ("to judge action by rules");[8] and justice is essentially a respect for the principle "of treating all under the same rules." According to Hayek, a sense of justice and justice itself develop in society along with the institution that regulates economic relations between individuals. In fact, the market determines a system of relative prices and individual rewards which permits the efficient use of scarce resources, and can be called "just," in the sense that it is the result of the action of individuals following rules in the context of dispersed and limited knowledge. No one, neither individuals nor organizations, can intervene to determine discretionary rules to their advantage over the freedom of others to choose their own ends and means.[9]

When, in economics or politics, measures are proposed to pursue specific "social ends," "common welfare," or "social justice," the only result is an imposition on the competitive market, considered by Hayek the only procedure that guarantees "individual freedom under the law," of correctives or limitations which undermine such freedom. For Hayek, all the terms mentioned above are meaningless. Common welfare might, at best, indicate a situation in which a randomly chosen individual is given the best chance to successfully use his knowledge for his own ends.[10] But this can only occur when

[8] We will see how Hayek's concept of justice is far from any statement relative to moral postulates on the ethically neutral character of the market.
[9] See F.A. Hayek, *The Road to Serfdom*, 83; F.A. Hayek, *Individualism and Economic Order*, Chicago, The University of Chicago Press, 1948, 21; F.A. Hayek, *The Mirage of Social Justice*, 107-32; F.A. Hayek, *New Studies*, 62-5; F.A. Hayek, *The Fatal Conceit*.
[10] F.A. Hayek, Studies, 163. Vanberg (V.J. Vanberg, *Rules and Choice in Economics*, London, Routledge, 1994, 254, note 9) remarks the ambiguous meaning of this statement and suggests an interpretation of it either in Benthamite-utilitarian or Rawlsian contractarian terms.

relationships between individuals are regulated by the market, and by spontaneously and involuntarily originated institutions.

It follows that some form of social justice would be imaginable only if there were "some unitary conception of relative "merits" or "needs" of the different individuals, for which there exists no objective measure."[11]

Therefore, where there is a will to distribute wealth according to some principle of social justice outside the market, the result is a form of authoritarianism in which individual freedom is sacrificed.[12] On the other hand, the market provides a distributive mechanism that is "impersonal," in that it derives from complex individual interaction, and guarantees individual freedom under the law.[13]

Finally, it is only possible to speak of social ends when they are exclusively defined as "identical ends for many individuals," whose achievement better allows everyone to pursue their own desires. These are ends that concern organizations and deliberate institutions such as the state, which are endowed with independent decision–making powers. However, in order not to compromise individual freedom, such organizations must also be bound by the "rule of law," that is, they must follow fixed and pre–announced rules so that individuals can foresee how such authorities will use their

[11] F.A. Hayek, *Studies*, 172.
[12] On the meaning of justice in Hayek and the consequences of his rejection of political intervention for redistribution see R. Plant, "Hayek on Social Justice. A Critique," in J. Birner and R. van Zjip (eds.), *Hayek, Coordination and Evolution; His Legacy in Philosophy, Politics, Economics and the History of ideas*, London, Routledge, 164-177, 1994.
[13] F.A. Hayek, *Studies*, 116, 166-7, 170, 257-8; F.A. Hayek, *The Mirage of Social Justice*, 62-74; F.A. Hayek, *New Studies*, 60, 139-42; F.A. Hayek, *The Fatal Conceit*, 6.

powers in any given circumstance and can modify their plans in the certainty that the authorities will not frustrate their decisions.[14]

It is clear, then, that for Hayek the economic and the moral aspects of social relations are strictly linked. If individuals pursue their ends according to spontaneous rules of conduct, the market not only resolves the economic problem of the efficient use of scarce resources, generating and exploiting dispersed and limited knowledge, but also resolves the moral problem, in that it is the instrument which selects and establishes the rules, allowing those rules which have "proved conducive to more effective human effort" to survive. Above all, the market economy is consonant with a free society, in that it guarantees respect for the principles Hume indicated as fundamental to human society, above and before any form of government:

> […] the stability of possession, of its transference by consent, and of the performance of promises.[15]

Hayek claims that "the whole argument" of his *The Road to Serfdom* was determined by "certain ultimate values" and that his main objective was to make these clear to readers.[16] The particular historical moment, characterized by authoritarian tendencies of every kind, encouraged Hayek to explicitly defend such values, and, above all, to

[14] F.A. Hayek, *The Road to Serfdom*, 45, *54-9;* F.A. Hayek, *The Constitution of Liberty*, London, Routledge and Kegan Paul, 1960, 148-61 205-19; F.A. Hayek, *Studies*, 165-ó.
[15] F.A. Hayek, *Studies*, 113; F.A. Hayek, *The Constitution of Liberty*, 158; F.A. Hayek, *New Studies*, 62; F.A. Hayek, *The Fatal Conceit*, 34. Hayek's reference is to David Hume, *A Treatise of Human Nature* (1739), in T.H. Green & T.H. Grose (eds.) *Philosophical Works*, vols. 1 and 11, , London, Longmans Greens, 1886, 11, 288, 293.
[16] F.A. Hayek, *The Road to Serfdom*, v.

underline the indispensable conditions for their survival: individual responsibility for action and the freedom to act, even against one's own interests, respecting the principles in which one believes. The key proposition of *The Road to Serfdom* is the following:

> Outside the sphere of individual responsibility there is neither goodness nor badness, neither opportunity for moral merit not the chance of proving one's conviction by sacrificing one's desires to what one thinks right. Only where we ourselves are responsible for our own interests and are free to sacrifice them, has our decision moral value.[17]

For Hayek, a responsible individual is he who, in any case, follows the rules of just conduct, even when he is aware of immediate personal damage, and only actions that follow spontaneous rules of conduct are of themselves "good," without reference to moral criteria outside the process of the evolution of the rules of conduct. To question action which follows the rules is immoral, as it would result in a deliberate interference in what is just, and would limit the spontaneous process of evolution of the rules of just conduct.[18]

In *The Road to Serfdom*, Hayek is not only concerned to make explicit the moral values he intends to defend, but also to demonstrate that only the mechanisms of the market can guarantee their safety. The economic problem of the efficient use of dispersed knowledge, and the moral problem of the selection of general rules of conduct which

[17] F.A. Hayek, *The Road to Serfdom*, 156-7.
[18] F.A. Hayek, *The Constitution of Liberty*, 74-5; F.A. Hayek, Studies, 90-3, 106-2 1.

respect liberal values are solved simultaneously, without resorting to normative arguments.[19]

The ability of the market to realize and sustain the values that Hayek sees as the linchpins of a liberal society appears to many observers to be generally untrue. It can be argued that the existence of spontaneous institutions and rules of conduct that emerge within the market order are only a necessary but not a sufficient condition for the preservation of such values. The safeguard of such values rests also on the possibility of a rational constitutional and institutional reform. Therefore, the economic problem and the moral problem are not one and the same, and should be kept separate.

From the assumption that individuals act in a condition of limited and dispersed knowledge, Hayek is noted for giving the market an epistemic role, and concluding that it "efficiently" solves the economic problem of the co–ordination of individual actions. It is true that Hayek himself admits that there is not complete correspondence between the results obtained by a single individual and his efforts, between his personal responsibility and his ability. Moreover, Hayek does not argue for a minimal state, one whose activities are restricted to those things (such as protection of individuals and property and the enforcement of contract) which are necessary to the functioning of a market system. He accepts the use of the power of the State, through taxation and other means, for the provision of collective goods, the correction of externalities, the financing of education, a system of transfer payments to assure that no one falls below a minimum standard of

[19] Kley criticizes Hayek on this point. He considers Hayek's thesis on the epistemic role of the market well founded, but not that of the market as a procedure able to reconcile the conflicting ends of individuals. He therefore rejects the idea that Hayek's defense of liberalism does not require normative arguments. See R. Kley, *Hayek's Social and Political Thoug*ht, Oxford. Clarendon Press, 1994, 26-48, 184-220.

income (defined sociologically, not physiologically), licensure and certification, building codes, health, and safety standards in the workplace, the prevention of private monopoly, and the prohibition of price discrimination.[20] He does not wish to reject such governmental activities on principle, arguing indeed that they should be evaluated piecemeal by assessment of their costs and benefits. But these considerations are not inconsistent with the basic premise that the market, through the price mechanism, renders individual expectations and claims on scarce resources compatible[21]. From his conviction of the impossibility of a rational discussion of ends, and his rejection of the idea that the individual has a claim over substantial freedoms as a complement to freedom under the law, Hayek generally views government interference in the market process as a dangerous element of subversion of the liberal order.

3. Individual freedom and the scope of public intervention

Let us turn to Hayek's investigation of the cardinal question of political economy: the scope of state intervention on individual action, and the role of purposeful and deliberate institutions. In Hayek, individual freedom, in his negative connotation, is the guiding principle in the evaluation of the propriety, limits, and content of intervention. Hayek opposes interventionism, but his objections are not based on a blind prejudice against collective bodies, the state in particular. As with Hume or Burke, Hayek accepted public

[20] This list of legitimate State functions is collated from remarks throughout in Hayek's works, but see especially F.A. Hayek, *The Road to Serfdom* , 27-9; *The Constitution of Liberty*, 224-6 and 247-58; *The Political Order of a Free People*, ch. 14.
[21] F.A. Hayek, *Studies*, 233; F.A. Hayek, *New Studies*, 64-5.

institutions as indispensable to liberal society, [22] as they are purposefully crated to provide an appropriate legal system "designed both to preserve competition and to make it operate as beneficially as possible.[23]

In strictly economic terms, Hayek has not always vigorously opposed intervention in questions of monetary policy and employment. He made occasional concessions, even though respect for competition and the general character of the measures remain a precondition.[24] He does not even exclude intervention aimed at guaranteeing a minimum standard of living, medical assistance or limits to working hours. However, these concessions should not be seen as an acceptance of intrinsic defects in the market, but rather as a concession to reduce the inevitable inequalities between individuals: inequalities of opportunities, chances and initial prospects.[25]

There is, in fact, a basic general principle by which any intervention must be judged: if it is to respect and preserve competition and create "a suitable framework for [its]

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[22] On the rules of government in Hayek's thought, see V.J. Vanberg, *Rules and Choice in Economics*, 116-9, 12 1-3, 199-207. Vanberg notices Hayek's ambiguities on this point, but he affirms that there are elements in Hayek's thought that may make his evolutionism compatible with Buchanan's "contractarian-constitutionalism." I sympathize with Vanberg analysis of Hayek's view on rules. However, I believe that in Hayek the legal framework that regulates public organizations can be "designed" but only to preserve and enforce the effective order of the market. Therefore, Vanberg's references to Hayek should only be interpreted in this sense.

[23] F.A. Hayek, *The Road to Serfdom*, 28; F.A. Hayek, *The Constitution of Liberty*, 205-33; F.A. Hayek, *Studies*, 121; F.A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Vol. 1, *Rules and Order*, London, Routledge and Kegan Paul, 1973, 47; 1978, 144-5; F.A. Hayek, *The Political Order of a Free People*, 41-64; F.A. Hayek, *The Fatal Conceit*, 63-4.

[24] F.A. Hayek, *The Road to Serfdom*, 28; F.A. Hayek, *The Constitution of Liberty*, 222, 264. After making this concessions in 1944, Hayek, in the introduction to the second edition (1976: ix) claims that in 1944 he had "not fully freed myself from all the current interventionist superstitions, and in consequence still made various concessions which I now think unwarranted." In his later writings, Hayek strongly limits the discretional autonomy of public institutions such as central banks. See in particular F.A. Hayek, *Denationalisation of Money. The Argument Refined*, London, Institute of Economic Affairs, 1990.

[25] F.A. Hayek, *The Road to Serfdom*, 28-9, 76-8, 89-92; F.A. Hayek, *The Constitution of Liberty*, 257-8; F.A. Hayek, *Studies*, 172, 175; F.A. Hayek, *New Studies*, 14 1-2, 306.

beneficial working." An intervention may be "for competition" if it follows the same rules followed by individuals, does not introduce additional limitations on individual knowledge, does not supply monopoly services and is financed by equal contributions by all.[26] Failure to observe any of these requirements would indicate the discretional nature of the intervention, its arbitrariness in respect to the spontaneous process of evolution of the rules of conduct. Such intervention would send "false" signals to individuals – for example, monetary signals inconsistent with their saving decisions – affect the use of resources and the price system determined by the market, introduce instability and encourage governments to take further corrective measures. This opens the door to an ineluctable rise of planned economies and authoritarian regimes.

For Hayek, attempts to correct the price system and the distribution of returns to resources, which should be spontaneously determined by the combined action of individuals, none of whom has the power to influence the results of the market to his own advantage, are the result of an epistemological error. From Hayek's point of view, any intervention aimed at correcting the spontaneous market process can be considered reasonable only if it is based on a complete forecast of the future; nevertheless, in order to satisfy such a condition, it is necessary to hold a presumptuous constructivist faith in the power of reason.[27]

Considering the problem of reform, what is needed is, according to Hayek, a "government of laws and not of men"[28]: no individual or institution – not even comprised

[26] F.A. Hayek, *The Road to Serfdom*, 27-31; F.A. Hayek, *Studies*, 175; Hayek [978: 105-18, F.A. Hayek, Hayek on Hayek, S. Kresge and L. Wenar (eds.), London, Routledge, 1994, 123.
[27] F.A. Hayek, *Studies*, 82-95, 237-47; F.A. Hayek, *The Fatal Conceit*, 57, 61-2.
[28] F.A. Hayek, *Studies*, 117, 121

of "right" men – can realize order, but only the slow, spontaneous evolution of the rules of just conduct, with the unconscious agreement of all.[29] This thesis also rests on a conviction that the rules to which individuals refer are rules which produce order, and that the process of selection will never substantially deviate from this principle.

4. Ethics and duty

Hayek shares Hume's view that "the rules of morality […] are not the conclusions of our reason" and "reason of itself is utterly impotent" in creating moral rules. For Hayek, "all our values […] are ends which reason serves but which reason cannot determine."[30]

Ultimate ends and ethical values are subjective, individualistic, and non-rational; further they are not concrete. There are neither private nor social or public duties. There obviously exist moral rules that should be followed in practice, but these rules are neither good nor bad in themselves. Hayek's ethics and morals can be defined as naturalistic or, better, as evolutionary. Moral rules are identified with "natural" laws in line with the eighteenth–century Scottish philosophers, David Hume, Adam Smith and Adam Ferguson:

> […] it would be legitimate to describe as "natural" anything that as grown spontaneously and not being deliberately designed by a mind. In this sense our

[29] Hayek (1988: 27-8) affirms: "While facts alone can never determine what is right, ill-considered notions of what is reasonable, right and good may change the facts and the circumstances in which we live; they may destroy, perhaps forever, not only developed individuals and buildings and art and cities […] but also traditions, institutions and interrelations without which such creations could hardly have come into being or ever be recreated."

[30] F.A. Hayek, *Studies*, 88. Hayek refers to Hume's *Treatise,* op. cit., book II, part I, sec. I.

traditional, spontaneously evolved morals are perfectly natural rather than artificial, and it would seem fitting to call such traditional rules "natural law."[31]

The novel element in Hayek's appeal to natural law is, as noted above, that he construes it in evolutionary terms. The transcendent rules are emergent not immanent; they are the outcome of the undesigned and indeed unknowable processes of social evolution. This idea was advanced by Hayek in *The Constitution of Liberty* and it is a main theme of *Law, Legislation and Liberty*. As Buchanan[32] (1977) points out, Hayek's theory of law is that it is the product of an "invisible hand" process, emerging from the actions and interactions of human beings but, as Adam Smith noted about the market order, not the product of deliberate human design or intention.[33] To say that basic rules of conduct, or "law" in Hayek's use of the term, develop in this way, is a proposition in social theory. To say that such rules are *just* is a proposition in ethics, which is generally considered a very different thing. How are these two propositions linked? Hayek advances the view that the rules that develop in this way are morally proper because they are the result of undesigned evolutionary processes; their moral merit is certified by the

[31] F.A. Hayek, *The Fatal Conceit*, 143-7.
[32] J.M. Buchanan, "Law and the invisible hand," In *Freedom in Constitutional Contract: Perspectives of a Political Economist*, College Station: Texas A&M Press.
[33] "Man is as much a rule-following animal as a purpose-seeking one. And he is successful not because he knows why he ought to observe the rules which he does observe, or is even capable of stating all these rules in words, but because his thinking and acting are governed by rules which have by a process of selection been evolved in the society in which he lives, and which are thus the product of the experience of generations" (F.A. Hayek, *Rules and Order*, 11). Many other similar passages could be quoted, especially from the first chapters of *Rules and Order*, and the "epilogue" to *The Political Order of a Free People*.

fact that they are the rules of conduct of societies that have passed the test of competition and have survived.[34]

Given his view that ends and values are subjective and individualistic, Hayek lacks a theory of right conduct and duty. However, a duty exists in human conduct: "follow nature." But there are no natural or pre–social individual rights and society is not the result of an artificial contract deliberately drawn up, through reason and will, by men who are originally in a state of nature: in Hayek there is no trace of either Hobbes or Rousseau's social contract.

Society is viewed as an organism, or a system, which results from the spontaneous or natural interaction of individuals.[35] For Hayek, in line with the Scottish philosophers, what is artificial is not necessarily designed by man, by his reason and will.[36] The laws and rules, which regulate the functioning of human nature and society, are certainly artificial inasmuch as they are relative to men and not to inanimate things; they are not the product of reason but the "spontaneous" or "natural" result of the historical and cultural interrelationship of individuals living in an organized society, and "whose whole nature and character is determined by their existence in society."[37]

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[34] As Hayek explains, "The reason why such rules will tend to develop is that the groups which happen to have adopted rules conducive to a more effective order of actions will tend to prevail over other groups with a less effective order" (F.A. Hayek, *Rules and Order*, 99). Hayek goes on saying that "appropriate rules of conduct […] have prevailed because the group that had adopted them was more successful […]. The whole system of rules can […] never be reduced to a purposive construction for known purposes, but must remain to us the inherited system of values guiding that society" (F.A. Hayek, The Mirage of Social Justice, 5.)

[35] As we will see, this does not exclude recourse to specifically "designed" institutions to secure the spontaneous process toward order.

[36] F.A. Hayek, *Studies*, 96-105; F.A. Hayek, *New Studies*, 71-97, 262-5

[37] F.A. Hayek, Individualism and Economic Order, 6.

This vision of human nature and society has developed historically against the seventeenth–century doctrines of Cartesian demonstrative inference and Hobbesian mechanistic reason. For Hayek (as well as Hume), the order of society has a spontaneous origin like human institutions, such as language or money. In Hayek's words, "many of the institutions on which human achievements rest have arisen and are functioning without a designing and directing mind."[38] However, Institutions can also be created by design in order to "reconcile conflicting interests without giving any one group power to make their views and interests always prevail over those of all others."[39]

Nobody rationally planned society as it actually is, or has actually developed. No human mind or reason planned its effective and specific historical and cultural evolution; no human mind nor reason is – nor will ever be – able to reprogram it and to guide it towards predefined, specific and concrete ends.

Certainly, the individuals within society pursue their specific, concrete and heterogeneous ends; but none of these is the end of society. For Hayek, on the contrary, the society has no ends; if it had one it would be independent of that of particular individuals or "organizations"; this end would be the self–preservation or self–reproduction of society always in an evolutionary sense.

The theoretical point of reference of this interpretation of society is the concept of "natural law"; it is not the conception peculiar to the *jus naturalism* of Grotius or Hobbes, based upon abstract and universal natural rights, which allows for a contractual view of society, but the conception of the Hume–Smith–Ferguson tradition which rejects the

[38] F.A. Hayek, *Individualism and Economic Order*, 69.
[39] F.A. Hayek, *Individualism and Economic Order*, 13.

hypothesis of an original social contract, and sees society as a historical natural–spontaneous entity.

In general, the Humean theory, which Hayek accepts, makes a clear separation between "is" and "ought." Nothing can be rationally said about individual ends. They are the domain of passion, taste, sentiment and individual preferences, and for these the motto "*de gustibus non est disputandum*" applies; the so–called "practical reason" can only hope to operate on the means, since the ends are given. Thus "practical reason" belongs to the field of science, the ends to ethics. However, let us recall that in Hayek, in line with Hume, "practical reason" is nature and not rational calculus, which explains his refusal of the rationalist Benthamite calculus. In Hayek, morals and positive analysis are therefore identified, via nature. It is this bringing together of the moral sphere, on the one hand, and the material sphere, on the other, that opens the way to harsh criticism from the part of some of his contemporaries.[40]

In Hayek's evolutionary vision, the right conduct is to follow the laws of nature, and the ultimate ends pursued by individuals are not identified with the ends of society. Society's ultimate end, as I have described it, is, for Hayek, unconscious and not describable in concrete terms because each individual pursues his own personal specific ends and only by pursuing these does he unintentionally "contribute as much as possible to the need of all others"[41]

The implicit duty is to follow rules, which are also the natural laws of society:

[40] Keynes, for instance, does not criticize Hayek because he defends the dichotomy between "is" and "ought," but because, according to Keynes, he identifies morals with capitalist morals and economics with the science of capitalism, which Hayek defines as the "extended order of human co-operation [which] arose from unintentionally conforming to certain traditional and largely moral practices."
[41] F.A. Hayek, *Individualism and Economic Order*, 13.

> All moral problems, in the widest sense of the term, arise from a conflict between a knowledge that particular desirable results can be achieved in a given way and the rules which tell us that some kinds of actions are to be avoided […]. The actions of a person who insisted on being guided only by calculable results amid refused to respect opinions about what is prudent or permissible would soon prove unsuccessful and in this sense be irrational to the highest degree.[42]

To be precise, for Hayek the implicit duty is to follow the natural laws that characterize the evolution of society, given that nature is not fixed and immutable. In this evolutionary conception of society, nature is a mixture of social, historical but also biological elements. And nature is manifest in habits, experience, culture, practices and tradition. In line with this vision, Hayek maintains that human action, deprived of reason, follows – and ought to follow – the general rules of action that evolved spontaneously.[43]

5. Knowledge, ignorance, and disbelief in reason. Hayek's Theory of Action

In line with Hume, Hayek shows a substantial disbelief in human reason. Hume considers reason as the slave of passion. Hayek considers reason "not the judge but an instrument" and "only one element among those which guide us." Better, he defines reason as a product of culture:

[42] F.A. Hayek, *New Studies*, 87-8, original italics.
[43] Hayek 1948, 18-19; 1973, 8-54.

> […] man's capacity to think is not a natural endowment of the individual but a cultural heritage, something transmitted […] through example and teaching […]. The extent to which the language […] determines our whole manner of thinking and our view and interpretation of the world is probably much greater than we are aware of […]. The structure of the language itself implies certain views about the nature of the world; and by learning a particular language we acquire a certain picture of the world […].We should regard human reason as the product of civilization […] grown by a process of evolution[44]

The evolutionary rules of human action are "a device for coping with our constitutional ignorance."[45] It is difficult to say whether knowledge or ignorance plays the most important role in Hayek's theory. The "problem of knowledge" seen as the problem of limited knowledge is certainly central to his theory. Often times, however, his stress is upon ignorance:

> It is the extent of our ignorance which makes it necessary that in the use of knowledge we should be limited amid should refrain from many actions whose unpredictable consequences might place us outside the order within which alone the world is tolerably safe for us. It is only thanks to such restraints that our limited

[44] F.A. Hayek, *Studies*, 86-7.
[45] F.A. Hayek, The Mirage of Social Justice, 8.

knowledge of positive facts serves us as a reliable guide in the sea of ignorance in which we move. [46]

The stress upon ignorance and the limits of reason prevail as the main motives of his refusal of constructivism. In particular, for Hayek, probability plays no role in guiding decision and action in conditions of limited knowledge. He seems to implicitly accept Hume's view that probability, and probable judgment too, are, as Hume maintains, mere "lively imaginations" and nothing more. Probability is groundless, irrational, and subjective, as are taste and passion.[47]

In Hayek, however, limited knowledge also has a positive role. It is unconscious knowledge that is not the product of reasoning. Hayek uses Polanyi's term, "tacit knowledge." This knowledge is practical and specific: "to know how." It is knowledge of rules:[48]

[46] F.A. Hayek, *New Studies*, 87-8. Referring to *Individualism: True and False* (F.A. Hayek, Individualism and Economic Order, 1-32), Barry notes as "the most significant feature […] is Hayek's emphasis on man's *ignorance* […] his concept of constitutionally ignorant man may well be considered something of an equivalent to Hobbes's egoistic man […]. It is not, therefore, the selfish aspect of 'economic man' of Adam Smith that is significant, it is the fact of his ignorance […]. Morality may well change, but what cannot change is ignorance." (N.P. Barry, *Hayek's Social and Economic Philosophy*, London, Macmillan, 1978, 9.)

[47] It appears that Hayek identifies probability solely with mathematical probability, that is mere calculus, rather than a logic of non-demonstrative (or inductive) reasoning; probability seems inevitably to fall within the sphere of Cartesian demonstrative reason. In his writings there is no attention to Nagel's remarks on non-demonstrative inference. In Hayek, a concept of uncertainty that differs from calculable risk plays no role. See E. Nagel, "Probability and the Theory of Knowledge", in Philosophy of Science 6, 2, 1939, 212–253; "Probability and non-demonstrative inference", in *Philosophy and Phenomenological Research* 5, 4, 1945, 485-507.

[48] F.A. Hayek, Individualism and Economic Order, 77-91; F.A. Hayek, *Studies*, 44; F.A. Hayek, *The Fatal Conceit*, 78.

> […] in all our thinking we are guided […] by rules of which we are not aware […] our conscious reason can […] always take account only of some of the circumstances which determine our actions[49]

Throughout it should be clearly understood that the term "rule" is used for a statement by which a regularity of the conduct of individuals can be described irrespective of whether such a rule is "known" to the individuals in any other sense than that they normally act in accordance with it.[50]

In Hayek, one can also speak of a process of "learning by doing." Those who follow certain rules of action are successful in practice; hence they are imitated by others. In the choice of the rules to follow, the individuals are free to choose. In action, there is therefore the possibility of creativity in the individual action, but a creativity that is expressed within rules. The basis for the formation of rules comprises habits and practices that are automatic and unconscious. But "customs, morals and the rule of law" do not serve, in Hayek's view, to give positive indications on how to behave; they show what should not be done. They are "the taboos of society", the "the wisdom of our ancestors."

> Human action […] is in fact as much guided by rules […] which generally preclude certain kinds of action irrespective of their foreseeable particular results. Our capacity to act successfully in our natural and social environment rests as much on such

[49] F.A. Hayek, *Studies*, 87.
[50] F.A. Hayek, *Studies*, 66-7.

> knowledge of what not to do (usually without awareness of the consequences which would follow if we did it) as on our knowledge of the particular effects of what we do. In fact our positive knowledge serves us effectively only thanks to rules which confine our actions to the limited range within which we are able to foresee relevant consequences. It prevents us from overstepping these limits. Fear of the unknown, and avoidance of actions with unforeseeable consequences, has as important a function to perform in making our actions rational in the sense of successful as positive knowledge.[51]

Further, this practical knowledge is distributed among different individuals. In this way we return to the substantial disbelief in reason of Humean and Burkean tradition. Nobody can claim to be able to form his own personal and reasonable judgment grounded upon specific limited knowledge. This is even truer for the state and the government

The behavior considered by Hayek is of the "pattern" type; he considers single and unique events and "surprise" events irrelevant. What counts are the "patterns" of behavior, repetition with the possibility of variation.[52] And the "pattern rules of behavior" refer to the "classes of reference", which manifest an empiricist epistemology, and a frequentist conception of probability. There is, therefore, a strong connection between imitative conformist behavior (conformism) and the general abstract rules of action. Conformist behavior and the abstract and general rules are self–sustaining, giving

[51] F.A. Hayek, *New Studies*, 83-4. In a note, Hayek adds: "The extension of knowledge is largely due to persons who transcended these limits, but those who did many more probably perished or endangered their fellows than added to the common stock of positive knowledge." See also F.A. Hayek, *Studies*, 81.
[52] F.A. Hayek, *Studies*, 45.

rise to an interactive and evolutionary process towards the universal spontaneous order. Following the rules and the conventions, if they are correct and adequate to natural selection, actually implies not only self-producing and maintaining the order, but also contributing to its evolution.[53] In this case, we could also speak of an evolutionary autopoiesis.[54]

Nevertheless Hayek distinguished "the systems of rule of individual conduct and the order of actions which results from the individuals acting in accordance with them" and repeatedly pointed out that

> not every system of rules of individual conduct will produce an overall order of the actions of a group of individuals; and whether a given system of rules of individual conduct will produce an order of actions, and what kind of order, will depend on the circumstances in which the individuals act.[55]

And he adds that:

[53] F.A. Hayek, *Studies*, 66-81; F.A. Hayek, *The Political Order*, l53-76. See N.P. Barry, *Hayek's Social and Economic Philosophy*.
[54] In science, autopoiesis refers to the ability of living systems to create change out of their own internal structure (H.R. Maturana and F.J. Varela, *Autopoiesis and Cognition: The Realization of the living*, Boston, Reidel, 1980.) Thus, a significant feature of the evolution of such systems is that, in transforming themselves, i.e., in creating and selectively implementing novelty, they may refer to their own mode of collecting, interpreting, and utilizing information. Such a phenomenon is referred to as self-reference.
[55] F.A. Hayek, *Studies*, 67.

> Society can thus exist only if by a process of selection rules have evolved which lead individuals to behave in a manner which make social life possible.[56]

He concluded that the evolution of a spontaneous order is allowed only if society's legal framework is designed to preserve and to enforce competition and the market mechanism.[57] In any case, in the Hayekian social organism that tends spontaneously to order, the behavior of those who do not follow rules – that is non-conventional behavior – creates disorder.[58] The Hayekian principle of rationality, if it exists, is again that of following nature and not abandoning it for any reasons at all, even though there may be good reasons to do so, because nature itself is order. In Hayek, the maintenance of the order in the system is not obtained through a vision of the God-nature who maintains order by means of the invisible hand of providence, but by a more lay view, which uses the institution of the market to play the same divine role within society. Hayek is again in line with Hume and Smith's liberalism. In Hayek, competition is the "procedure" which brings about spontaneous order and the market effects it.

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[56] F.A. Hayek, *Rules and Order*, 43-4, 104-5. It is not clear whether to bring about an order this process of adaptation to rules and of imitation is to be followed by the majority of the individuals. According to Steele (G.R. Steele, *The Economics of Friedrich Hayek*, Basingstoke, St. Martin's Press, 1993, 37, 42) "abstract principles" serve to form "legitimate expectations" and the "greatest coincidence of expectations" brings to "social harmony." It follows that expectations and conventions are self-fulfilling, if shared by the majority of individuals.

[57] F.A. Hayek, *New Studies*, 139-47. Some interpreters of Hayek (see, for instance, N.P. Barry, *Hayek 's Social and Economic Philosophy*, 82; V.J. Vanberg, *Rules and Choice in Economics*, 77-94, 109-124) pointed out "that Hayek ultimately does not succeed in providing a convincing argument for a spontaneous evolutionary process that will tend to systematically select for 'appropriate' rules and, further, that there is, in fact, no reason for us to assume that any such process is at work." (V.J. Vanberg, *Rules and Choice in Economics*, 81)

[58] For a criticism of this aspect of Hayek's theory, see U. Witt, "The Theory of Societal Evolution. Hayek's Unfinished Legacy," in J. Birner and R. van Zjip (eds.), *Hayek, Coordination and Evolution; His Legacy in Philosophy, Politics, Economics and the History of Ideas*, London, Routledge, 178-189, 1994.

His attention is devoted to the "catallaxy,"[59] i.e. to the distribution of the social product by the market[60]. He admits that

> this does not preclude, of course, that outside the market government may use distinct means placed at its disposal for the purpose of assisting people who, for one reason or another, cannot through the market earn a minimum income,

but he adds that the overall level of wealth which makes it possible for this minimum to be at an adequate level

> should not be achieved by manipulating the spontaneous order in such a manner as to make the income earned on the market conform to some ideal of "distributive justice." Such efforts will reduce the total in which all can share.[61]

For the individual following the rules of action is a manifestation of rationality elaborated through experience, habits and practices.[62] The practical knowledge is a

[59] Hayek prefers the term "catallaxy" to the terms "economics" and "the economy," since, in the original Greek, their reference is to organization, like that of a household or business, deliberately directed to definite ends (a telocracy). He would prefer it if the terms "catallatics" and "catallaxy" were in general use, since they refer to spontaneous order which is governed by intrinsic laws (a nomocracy) (F.A. Hayek, *The Mirage of Social Justice*, 38, 108-9, 185, n.5). More accurate terminology would contribute to an essential recognition: "The truth is that catallatics is the science which describes the only overall order that comprehends nearly all mankind, and that the economist is therefore entitled to insist that conduciveness to that order be accepted as a standard by which all particular institutions are judge." (F.A. Hayek, *The Mirage of Social Justice*, 113.) "The important point about the catallaxy is that it reconciles different knowledge and different purposes which, whether the individuals be selfish or not, will greatly differ from one person to another" (F.A. Hayek, *The Mirage of Social Justice*, 110.)

[60] F.A. Hayek, *The Mirage of Social Justice*, 107-32; F.A. Hayek, *The Political Order*, 65-97; F.A. Hayek, *The Fatal Conceit*, 77.

[61] F.A. Hayek, *New Studies*, 90-92.

[62] F.A. Hayek, *Individualism and Economic Order*, 24; F.A. Hayek, *Studies*, 56; F.A. Hayek, *The Fatal Conceit*, 16.

fundamental wealth for the individual, as it permits him to react automatically to new events, thus avoiding indecision and dilemmas:

> Tough it sounds paradoxical to say that in order to make ourselves act rationally we often find it necessary to be guided by habit rather than reflection, or to say that to prevent ourselves from making the wrong decision we must deliberately reduce the range of choice before us, we all know that this is often necessary in practice if we are to achieve our long–range aims.[63]

In Hayek, rules help to survive in society. Complying with the rules and conventional (natural) laws of society, and imitating others[64] also mean respecting tradition, which is intended by Hayek as "the results of genetic and cultural transmission," and serves as "adaptation to the unknown."[65]

In Hayek, there are no – nor must there be – exceptions to the general rules of behavior. In no cases are rules to be disregarded. The individual ought always to follow rules even when the consequences expected in the immediate future are detrimental to him. That is, rules are to be followed regardless of consequences, both immediate and remote, as "end states" are unknown and unknowable.

Therefore, in Hayek, the value and the goodness of an action depends neither on its consequences, as it happens in consequentialist morals, nor on the actor's intentions and

[63] F.A. Hayek, *The Constitution of Liberty*, 66.
[64] F.A. Hayek, *Studies*, 46-8
[65] F.A. Hayek, *The Fatal Conceit*, 12-13, 17, 76.

rational motives, as it happens in rationalist morals. Rules are to be followed whatever, even though one has good reason, motive or evidence not to believe in these rules: "no longer the end pursued, but the rules observed make the action good or bad."[66]

Rules and general laws are abstract. Therefore they do not depend on circumstances. The relativity of rules and duty to particular circumstances, and their variability according to changes in circumstances are concepts totally absent in Hayek. The abstractness of rules is in contrast with the possibility of exceptions, *ad hoc* solutions and the dependence of rules upon circumstances.[67]

Following rules is, for Hayek, not only necessary but also useful. In this sense, we can say that Hayek is a rule-utilitarian. This interpretation is in line with the distinction that Hayek draws in the history of ideas between the calculating rationalist utilitarianism of Bentham on the one hand, and the spontaneous utilitarianism of Hume on the other.[68]

Hayek's disbelief in human reason (in line with Hume and Burke) brings him to a skeptical position in his theory of individual action and of government. The individual has no possibility to form an autonomous, genuine and reasonable judgment of concrete situations which involve the future, and even less so of unique and non repetitive events. Hayek denies independent rational judgment of the individual. Rational judgment is also denied to designed institutions created for the attainment of concrete ends, that is organization. There is no possibility for them to form a rational judgment which guides their activity towards the future. Limited knowledge, when available, is mainly technical

[66] F.A. Hayek, *The Fatal Conceit*, 81.
[67] This vision is clearly reflected in Hayek's well-known opposition of "rules versus discretion" in economic policy.
[68] F.A. Hayek, *Studies*, 88.

knowledge and accumulation of past knowledge; it is not rationally modifiable by argument and cannot be increased by voluntary cooperation. It only changes spontaneously. Because of the ignorance of the future, the individual is unable to form autonomous judgment and resolves to follow tradition and to imitate others. Will does not play any significant role. The disbelief in reason brings a basic pessimism in the rational construction of the future. In fact, the optimist attitude was negatively labeled by Hayek as "constructivist rationalism"

The ignorance of the future and the disbelief in reason underlie Hayek's observations on the limits imposed to "critical scrutiny" of established traditions. Reason cannot set itself against culture.[69] It can only try to reform the established rules, when "coercive interference" appears in the process of cultural evolution.

> Yet an understanding of cultural evolution will indeed tend to shift the benefit of the doubt to established rules, and to place the burden of proof on those wishing to reform them.[70]

6. Abstract rules of conduct and justice

In Hayek, justice is linked to general and abstract rules.[71] Abstract rules are also just rules. Justice is that of the overall system, that is, only that of the impersonal market process:

[69] See G.R. Steele, *The Economics of Friedrich Hayek*, 37
[70] F.A. Hayek, *The Fatal Conceit*, 20.

> In the market place (as in other institutions of our extended order,) unintended consequences are paramount: a distribution of resources is effected by an impersonal process in which individuals, acting for their own ends (themselves also often rather vague,) literally do not amid cannot know what will be the net result of their interactions.[72]

Competition is the procedure by which justice emerges. Hayek has neither an *a priori* nor a substantive conception of justice, only a procedural one.[73] Just rules are those which allow the emergence of an order. The spontaneous order is just in itself, in the sense that it is neither created nor chosen by anybody in particular; no direct responsible exists.

To define justice as a mere procedure implies the development of non-intentional processes, such as the market; conversely, to ground justice on ethical principles implies intention and design. This, according to Hayek, leads to disorder and denial of individual freedom.

As the ends of individuals are subjective and unquestionable – and common, social ends (that is ends that ought to be pursued) do not exist – the consequences of the interrelationship of the individual decisions are neither just nor unjust. First, because the

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[71] For a comparison between Hayek and Hume on this point, see F. van Dun, "Hayek and Natural Law. The Humean Connection," in J. Birner and R. van Zjip (eds.) *Hayek, Coordination and Evolution; His Legacy in Philosophy, Politics, Economics and the History of ideas*, London, Routledge, 1994, 269-86.
[72] F.A. Hayek, *The Fatal Conceit*, 71.
[73] As Barry observes, "procedural justice can best be understood as a contrast to end-state or patterned conception of justice. Instead of *social institutions* being compared in terms of such eternal criteria as merit, desert, need and so on, they *are evaluated by references to rules and procedures;* if these rules and procedures are adhered to rigorously then no further comment on the justice or injustice of outcome is required." (N.P. Barry, *Hayek 's Social and Economic Philosophy*, 131.)

consequences possibly to be considered are all the consequences, that is the immediate, the remote and, above all, the global consequences. Besides, the undesirable consequences concerning single individuals are socially irrelevant, as mere incidentals. At most, these undesirable consequences only deserve attention outside the market and are only of charitable interest. For Hayek, the undesirable consequences are not a subject of ethics and, above all, of economics. The market is ethically neutral.

These global or system consequences are both "unintended," in the sense that nobody has – voluntarily or by design – caused them, and "unexpected," because they can be forecast neither by the individuals nor by any organizations, including the government. In Hayek this aspect is connected not only to his disbelief in human reason but to his awareness about human ignorance of the remote future.

A result of this process is that there is no conflict between desirable and undesirable consequences of action. Nor is there any difference between probable and desirable (ethically speaking) consequences of action: in terms of utility, pleasure, or some other non–utilitarian criterion such as intrinsic goodness. A distinction can be made between individual and social consequences, but not between their causes. One can only speak of the justice of the system; spontaneous order is just in itself. Devoid of will, the system can have no responsibility. Indeed, to think of a responsibility of the system is to commit a fallacy, that is, as Hayek points out, the anthropomorphization of the economic system.

The rules of just conduct ensure that the private domain of the individual is not violated by others ("individual freedom under the law.") Justice relates not to moral

principles or actions that an individual is to maintain, but to actions which are not to be maintained; those which would go against the legitimate rights of the individual.

Such a conception of justice is therefore alien to the assertion of moral postulates, ethical ultimate ends or distributive justice:[74]

> What we call the "sense of justice" is nothing but that capacity to act in accordance with non–articulated rules, amid what is described as finding or discovering justice consists in trying to express in words the yet unarticulated rules by which a particular decision is judged[75]

The weaknesses of such a view are well known. Hayek begins his "epilogue" to his *The Political Order of a Free People* (153 ff.) with a discussion of "the errors of sociobiology" but the only error he notes is that, by focusing exclusively upon genetic and "rational" factors in human evolution, socio-biologists neglect the non-rational, spontaneous, character of cultural development. He does not consider the claim of Wilson and others that modern biology can furnish a superior code of ethics although it is clear that, in Hayek's view, this task properly belongs to economics, not to biology.[76] Moreover, when Darwinism was in its youth, Huxley pointed out that survival is no test of moral worth[77]. If survival is the test, would Nazism have met it had it won the Second

[74] On distributive justice in Hayek see in particular R. Kley, *Hayek's Social and Political Thought*, and R. Plant, "Hayek on Social Justice. A Critique."
[75] F.A. Hayek, *New Studies*, 81.
[76] See E.O Wilson, *Sociobiology: The New Synthesis*, Cambridge, Mass., Harvard University Press, 1975; E.O Wilson, *On Human Nature*, Cambridge, Mass., Harvard University Press, 1978.
[77] T.H. Huxley, *Evolution and Ethics*, London, Macmillan, 1893

World War? What ground would Hayek have for objections against collectivist trends in western democracies if they are now dominating, as it seems, the process of social evolution? Hayek plausible rebuttal would be that not all social processes are morally good and not all developments work towards the evolution of the Great Society. But this puts us back to square one: by what moral criteria do we distinguish beneficial evolution from degenerate evolution? As a criterion, "the test which the rules of just conduct have passed in the process of their evolution"[78] would seem to be of little help as many unjust laws have passed the same test. Buchanan, an admirer of Hayek's general political philosophy, concludes regretfully that "Hayek is […] led into what we must classify finally as a logically inconsistent position because of his implicit fear that politically orchestrated change must, in most cases, produce social damage"[79].

But Hayek is skeptical not only of politics but also of reason, or, in his words, the "abuse of reason,"[80] which leads men to think that they are wiser than the spontaneous forces of evolution. Hayek's moral philosophy, revolving around the sole principle of individual freedom, in his negative connotation, is in stark opposition with the idea that there exists a plurality of moral values not reducible to any singular value such as freedom.[81] According to this view, and ironically similarly to the Hayekian idea of the emergence of practices, values are largely the product of enculturation, but not wholly. It

[78] F.A. Hayek, *The Mirage of Social Justice*, 39.
[79] J.M Buchanan, "Law and the invisible hand."
[80] Hayek notes that when he originally sketched a plan of work, in 1939, which turned out to occupy him for forty years, he intended to call it "The Abuse and Decline of Reason" (F.A. Hayek, *The Political Order of a Free People*, 152, 196 n. 19). Hayek's *The Counter-Revolution of Science* (Glencoe, The Free Press, 1955,) which reprints some of his published papers, including his celebrated *Economica* articles on "Scientism and the Study of Society," is subtitled "Studies in the Abuse of Reason."
[81] See S. Gordon, *Welfare, Justice, and Freedom*, New York, Columbia University Press, 1980.

is this element of cultural indeterminacy that makes moral discourse meaningful, since it permits improvements on the values inherited. Improvement however does not mean adopting values which are intrinsically better, as no one would be able to demonstrate that quality; rather, it means adopting values for which better arguments can be made, including arguments based on scientific evidence. A pluralistic system of values introduces the possibility of conflicts within such a system, and the problem of ethics is to determine the degree to which one value should be sacrificed to achieve some improvement in another. This problem could be technically insoluble, and it is precisely the main task of politics to cope continuously with such matters in a world in which both facts and values are subject to change. In Hayek's ethics, freedom not only is a factual concept it is also a moral concept. Since only freedom is permitted to enjoy this dual status, it is the only value legitimately employable in the analysis of a spontaneous social order. It follows that other notions that aspire to moral status, such as justice, are admissible only to the degree that they are aspects of, or applications of, freedom. As a matter of fact, in Hayek, there is no conflict between justice and freedom, since justice, properly understood, is an aspect of freedom.

The proper understanding of the nature of spontaneous order makes this point clear in Hayek's view. Much of *Law, Legislation and Liberty*, especially the second volume, entitled *The Mirage of Social Justice*, is devoted to presenting this thesis and to attacking the view that government can promote justice by means of redistributive policies. Hayek's essential contention is that the concept of justice can refer only to the actions of individuals towards one another, since only individuals are conscious entities capable of

choosing among alternative courses of action. A state of affairs can be meaningfully described as just or unjust only if it is in the power of a person to bring it about, and he chooses to do so. A system of competitive markets consists of purposeful individual actions, but no one has power to determine its results, such as the structure of relative prices or the distribution of income. It would be meaningful to say that anyone who does not honor his contracts acts unjustly or that theft is unjust, but the overall market system is a spontaneous order, not the result of anyone's design or intentional act, so it would be as meaningless to call the market system unjust. This does not mean that the market system is just; it means that the concept of justice is simply not applicable to it. This is to say, that the market is amoral.[82] The market order, however, can be correctly described as a reflection of individual freedom, intended as absence of coercion: the market order is a state of freedom, because individuals may engage in whatever transactions they voluntarily choose to make. Since there are many potential actors, no one is subject to the will of another. Although only individuals are free, it is meaningful to call a social order free, since that term refers simply to the fact that the individuals who compose it are not coerced by other individuals. Thus, one may properly refer to the market order as a "free society," or, which is the same a "just society." However, and here lies the difficulty of Hayek's approach, the use of the term "just society" in current political discussion does not refer to the fact that individuals act justly in their private activities, but that certain results at the macro level, such as the distribution of income, are just. Correctly

[82] This explains the many comments in Hayek's writings on the evils of monopoly. The introduction of monopoly power into markets introduces an act of will in the determination of prices and thus destroys the amorality of the market order.

interpreted, what Hayek has in mind is to demonstrate that the term "social justice" is a mirage, in the sense that not only is it merely unattainable, but it is conceptually meaningless.

The main object of Hayek' s thesis is to attack the argument that, since the market system does not produce what is considered a just distribution of rewards, governmental power should be used to rectify such injustice. In Hayek's view, the argument is not only nonsensical but it is also dangerous, as it encourages the use of the State for redistributive purposes and leads to a situation in which everyone seeks to advance his welfare by joining with others in interest groups which can bend the power of the State to their service. Hayek's argument to regard "social justice" as a meaningless term has not persuaded most of his colleagues in academia, and, most importantly, has not persuaded those who were in a position of influencing or devising economic policies, and the result has been the exclusion of his ideas from the discussion of some of the most important issues of politics. Hayek's theory of justice, which is the basis for his attack on interventionist policies, has been labeled by critics and followers alike, as too vague to serve the practical needs of politics. Even those who, in principle, oppose intervention are unlikely to hold rigorously to it. On the one hand, it is meaningless to apply the concept of justice to the market order, as the market order is amoral, that is it is neither just nor unjust. On the other hand, by this argument, the outcomes generated by the market process must be accepted, which to many critics is equivalent to regarding them as just, so that one would have reason to believe that what Hayek really contends is that social justice is not a mirage but rather it is in fact realized in a system of competitive markets.

7. Intervention, market, knowledge

The preceding analysis explains Hayek opposition to economic intervention. The market, as a spontaneous institution in the Humean sense, has the task of spontaneously coordinating the decentralized decisions of the individuals. The market is also the only institution capable of distributing limited and scattered knowledge among individuals precisely because "human reason" is either absent or, if it is present, has serious cognitive limits. Thus Hayek, with very original intuition, sees the market as the true cognitive network among individuals.[83] The market is a broadcaster of knowledge rather than of mere information. In the market process, the surviving knowledge is in itself adequate. In the market, knowledge is available to all the individuals, in a decentralized manner and concentrated in no hands. The amount of knowledge available to each individual is not sufficient to modify the general rules. Moreover, the dispersed knowledge cannot be centrally collected, as part of it corresponds to tacit knowledge. The knowledge of the individual is practical rather than theoretical; individuals are, in particular, in a condition of general equality in relation to knowledge.

On this aspect, the contrast between Hayek and his critics, Keynes *in primis*, becomes significant. The main criticism contained in "the fatal conceit" is that of introducing tacit hypotheses of certainty, of unscrupulous use of Cartesian demonstrative reason and forecasting calculus and, finally, of not being aware of the real limits of human reason. In a word, the charge is that of "constructivist rationalism":

[83] F.A. Hayek, Individualism and Economic Order, 77-106; F.A. Hayek, *New Studies*, 179-9 1.

> Rationalism in this sense is the doctrine which assumes that all institutions […] have in the past and ought in the future to be invented in clear awareness of the desirable effects that they produce; […] that we have it in our power so to shape our institutions that of all possible sets of results that which we prefer to all others will be realized; and that our reason should never resort to automatic or mechanical devices when conscious consideration of all factors would make preferable an outcome different from that of the spontaneous process.[84]

According to Hayek, intervention is only possible if correct forecasting is possible; and, in his view, the latter being impossible, then it is better not to intervene, unless in order to enforce abstract rules and preserve the market order.

> Government is needed only to enforce [… the] abstract rules, and thereby to protect the individual against coercion, or invasion of his free sphere, by others.[85]
>
> Most defects and inefficiencies of […] spontaneous orders result from attempting to interfere with or to prevent their mechanism from operating, or to improve the details of their results. Such attempts to intervene in spontaneous order rarely result in anything closely corresponding to men's wishes, since these orders are determined by more particular facts than any such intervening agency can know.[86]

[84] F.A. Hayek, *Studies*, 85.
[85] F.A. Hayek, *The Fatal Conceit*, 63.
[86] F.A. Hayek, *The Fatal Conceit*, 84.

Hayek accepts the fact that a body of positive law, a legal framework, is a necessary complement to a system of spontaneous order. To play this role, Hayek argues, positive law must be constructed, and administered, in accordance with the general principle of the rule of law. This point is discussed in *The Constitution of Liberty*, and, in a lesser degree, in *Law Legislation and Liberty*, and it constitutes a key element in Hayek's political philosophy. It is in my view one of Hayek's most valuable contributions to current thinking on public policy. In essence, Hayek's view is that good positive law must be universal in the sense that all statutes and their administration must apply equally to all members of society.[87] Laws which discriminate among individuals or among classes of individuals, whether those classes are racial, religious, or economic, are in violation of the rule of law. There is "freedom under law" only if all persons are subject to the same law, not when some are subject to special restraints or are the object of special benefits. Hayek uses the Kantian criterion of universalization to defend the rule of law as an abstract moral principle, but the main weight of his argument rests upon more concrete considerations. Although Hayek does not state them systematically, his case for the rule of law as a defense of the liberal order of society can be reconstructed by means of four arguments.

[87] "The basic conception of classical liberalism, which alone can make decent and impartial government possible, is that government must regard all people as equal, however unequal they may in fact be, that in whatever manner the government restrains (or assists) the action of one, so it must, under the same abstract rules, restrain (or assist) the actions of all others." (F.A. Hayek, *The Political Order of a Free People*, 142). For a discussion of the idea of the rule of law, see especially F.A. Hayek, *The Constitution of Liberty*, ch. 10.

First, no one is coerced by laws which apply to all, since anyone can, by free choice, avoid the penalties associated with deviant behavior by complying with such laws.[88] Second, since many of the present activities of the State are inherently inconsistent with the rule of law, adherence to the rule of law would reduce the size of government in an effective and appropriate way.[89] Third, the rule of law requires that judges and administrators apply the law strictly, without discriminating between cases; thus, it prevents abuse of discretionary power and promotes what Hayek refers to as "the rule of law and not of men."[90] Third, Lawmakers will exercise restraint in the use of their power and their agents will be restrained in the administration of it, if they are fully subject to the same laws; this is the effective way to govern the governors.[91]

In relation to this last argument, I think there can be little dispute. Even in a democracy it is necessary that those who govern and their agents should not be exempt

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[88] "Provided that I know beforehand that if I place myself in a particular position, I shall be coerced and provided that I can avoid putting myself in such a position, I need never be coerced. At least insofar as the rules providing for coercion are not aimed at me personally but are so framed as to apply equally to all people in similar circumstances they are no different from any of the natural obstacles that affect my plans. In that they tell me what will happen if I do this or that, the laws of the state have the same significance for me as the laws of nature; and I can use my knowledge of the laws of the state to achieve my own aims as I use my knowledge of the laws of nature" (F.A. Hayek, *The Constitution of Liberty*, 142).

[89] Hayek maintains that "during the last few generations certain new aims of policy have emerged which cannot be achieved within the limits of the rule of law. A government which cannot use coercion except in the enforcement of general rules […] cannot determine the material position of particular people or enforce distributive or "social" justice." And he adds that "those who pursue distributive justice will in practice find themselves obstructed at every move by the rule of law. They must, from the very nature of their aim, favor discriminatory and discretionary action." (F.A. Hayek, *The Constitution of Liberty*, 231, 232.)

[90] "The individual has little reason to fear any general laws which the majority may pass, but it has much reason to fear the rulers it may put over him to implement its directions […]. If anything has been demonstrated by modern experience in these matters, it is that, once wide coercive powers are given to governmental agencies for particular purposes […] the decisions of their agents will be more or less arbitrary" (F.A. Hayek, *The Constitution of Liberty*, 116).

[91] The classical theory of representative government, according to Hayek, was based on the doctrine that legislators would not except themselves from the law. He quotes Cato: "when they make no laws but what they themselves and their posterity must be subject to; when they can give no money, but what they must pay their share of; when they can do no mischief, but what must fall upon their own heads in common with their countrymen; their principals may expect then good laws, little mischief, and much frugality." (F.A. Hayek, *The Political Order of a Free People*, 9).

from the law. If assault is a crime, a policeman who commits assault should be tried and punished; if burglary is a crime, illegal trespassing by government investigators in search of evidence is a criminal action. As a matter of fact, some of the worst abuses of modern governments would be prevented if one could effectively apply this aspect of Hayek's principle of the rule of law. The remaining three arguments, however, do not seem conducive of unanimous consensus.

Hayek's argument that the rule of law should require its strict application without discriminating between cases appears to some observers too restrictive. Their argument can be summarized as follows: the potential for gross abuses in administrative law notwithstanding, it would seem unwise to require that administrators and, especially, judges be totally deprived of discretion. If this situation were desirable, and the state of technology adequate, judges could be replaced by machines. But we depend upon humans for the interpretation and application of the law, and it would seem desirable that one should take note of special conditions and circumstances. The dangers and potential for injustice in judicial and administrative discretion cannot be repaired by a rigid application of Hayek's rule of law.[92]

Hayek's claim that many of the present activities of government are inherently in violation of the rule of law is aimed mainly against redistribution policies which discriminate between categories of people. The central issue here is whether in drafting legislation it is proper to treat people as members of a class. Affirmative action legislation in the United States, for example, discriminates between black and white

[92] In another work, I have observed that the judge is arguably the figure within the framework of designed institutions to which Hayek assigns a higher degree of discretion.

people. Hayek would reject this separation, arguing that its objective, that is the rectification of past "social injustices, is irrelevant, since the only valid principle is whether people are equal before the law as individuals. No one would argue that any discrimination the legislature chooses to embody in law is proper. However, Hayek's view that no discrimination is proper, if strictly adhered to, would make it impossible to have law at all, since all law, if it is to possess substantive content, must be less than perfectly general and nondiscriminatory.[93] Hayek's argument seems incapable of grasping what has become an important issue of modern political dialectic, which is to determine what groupings are relevant for various public policies and what arguments can be made for discriminating among them.[94]

The first argument, namely that a law that is applicable to all is not coercive, is the most abstract, and apparently the least defensible.[95] Laws may be as general as one can make them and yet be coercive. Are laws that everyone must use seat–belts in cars not coercive? To say, as Hayek does, that laws are not coercive because the penalties that they imply can be avoided by complying with them seems counterintuitive at best. Such an argument would seem to render the concept of the rule of law incapable of condemning even the most repressive acts of government as long as they oppress indiscriminately.

8. Concluding Remarks

[93] This point has been discussed by Narveson (J. Narveson, "Review of Hayek's *Law, Legislation and Liberty*, vol. 2," in *Philosophy of the Social Sciences* 10, 325-28).
[94] L.C. Thurow, "A theory of groups and economic redistribution," in *Philosophy and Public Affairs* 9, 1979, 25-41.
[95] On this issue, see L.C. Robbins, "Hayek on liberty," in *Politics and Economics: Papers in Political Economy*, New York, St. Martin's Press, 1963, 94-5. In this article, Robbins specifically refers to *The Constitutions of Liberty*.

Readings of Hayek's thought, from the most sympathetic to the most skeptical, share the view that among those thinkers who have written extensively on political philosophy from a base in economics, Hayek is second to none, and probably better than anyone else. Hayek's writings in social and political philosophy contain arguments and observation relevant to today's concerns and apprehensions. The market mechanism as a discovery procedure conducive of a spontaneous order where knowledge is not only communicated but augmented, the relation of the market order as a *locus* of freedom, and its significance for the role of government, are vital matters which are not adequately treated by political and ethical philosophers who do not know economic theory. If Hayek's writings were to have the effect of making political philosophers aware of the value of economics to their subject, that alone would be a major constructive contribution. Hayek amplifies his contribution by connecting his theory of spontaneous order to the realm of ethics, or better, by deriving his theory of ethics from his theory of the market order. A key element in this extension of his theory of spontaneous order is a naturalistic argument, with its appeal to the wisdom embodied in tradition. At the basis of Hayek's Humean naturalism, is his skepticism toward the human capabilities for rational thinking. Man, in Hayek's view, has developed civilization not because of his reason; rather, civilization has emerged in spite of it. The only way to keep man from endangering and irreparably compromising his heritage is to counter "constructivist" ideologies. To some, this amplification of the original insights proper of the market order to other fields, which his followers see as a sign of unity of his intellectual legacy, has been seen by many critics the fundamental weakness of his political philosophy. In other words, Hayek's

intellectual mistake would lie in his tendency to push his arguments too far. Against Hayek's argument that justice is just another aspect of freedom, reflected in the impersonal outcomes of the market processes, his critics maintain that freedom is a value among other values, whose relative importance varies. It is the task of ethics to determine the relative importance of conflicting values, with politics as a supplementary adjustment mechanism that enters into play when ethics fails.

In Hayek, freedom involves the absence of coercion and a competitive market order is necessary to freedom, but it is not the sole factor contributing to it. The market order is sided by a positive legal system that obeys to and enforces the rule of law. To Hayek, the rule of law and, providing a criterion according to which intervention proposals are judged, is unquestionable. To the absolute defense of the rule of law, Hayek's critics, without doubting Hayek's dedication to liberty, counter that, while the rule of law provides a good principle, it is not applicable without limit or exception. Hayek's concept of liberty does not accept compromise. His intransigence and his dutiful obedience to principles, praised by many as a sign of his intellectual integrity and a unifying element of his work, are seen by many, critics and admirers alike, as the main obstacle to the adoption and implementation of his reform proposals.

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