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RELIGION,
LOYALTY, OBEDIENCE to the LAWS,
INDEPENDANCE, PERSONAL SECURITY
JUSTICE, INHERITANCE, PROTECTION of
PROPERTY, INDUSTRY, NATIONAL PROSPERITY
HAPPINESS.

ATHEISM,
REBELION, TREASON, ANARCHY, MURDER,
EQUALITY, MADNESS, CRUELTY, INJUSTICE,
TREACHERY, INGRATITUDE, IDLENESS,
FAMINE, NATIONAL & PRIVATE RUIN,

WHICH IS BEST? MISERY.

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Hayek and liberalism in dark times: *The Constitution of Liberty* at Sixty-five

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I. LIBERALISM IN DARK TIMES (AGAIN)

2025 marked the 65th anniversary of the publication of F. A. Hayek's *The Constitution of Liberty* (1960). The book became a watershed moment and a crucial publication in the history of liberalism in the 20th century. Hayek, the recipient of the 1974 Nobel Prize in Economics for his contributions to “the theory of money and economic fluctuations” and his “penetrating analyses of the interdependence of economic, social, and institutional phenomena,” produced in *The Constitution of Liberty* arguably his most important work (Caldwell 2011). Thus, despite being an accomplished economist, Hayek is also recognized today as a crucial social scientist and scholar at the intersection of politics, philosophy, and economics (PPE). Hence, marking the 65th anniversary of this book presents a unique opportunity to assess its contribution, evaluate its enduring significance for liberal societies in the context of Hayek's intellectual journey, and critically engage with this book, re-evaluating its strong points and potential blind spots. This is particularly relevant in light of the recent challenges being raised to liberalism by different schools of thought and by different illiberal movements from both the left and the right (Yadav 2023; Mounk 2018; Zakaria 2024; Deneen 2019; Paniagua and Pourvand 2025).

Liberalism as we know it, and the liberal democratic order that was spreading around the world after the Second World War, are now under severe intellectual and political attack (Holmes and Krastev 2020). The last two decades have not been good for liberalism and liberal democracies around the world, both as an intellectual and normative ethos, as well as a praxis of reasonable debate and a mechanism for dealing with political challenges (Applebaum 2020). During these last decades, there have been growing concerns about the limits, failures, and fragilities of liberalism (Cherniss 2021; Fukuyama 2023). This has been translated recently, in political terms, into polarization, the rise of illiberal regimes from both left and right, and growing discontent about how liberal democracy seems unresponsive to citizens. For instance, philosopher and economist Cyril Hédoïn (2024) has suggested that we are entering the “winter of liberal democracy,” whereby populist and anti-liberal leaders arise by dismantling—from within—the institutional (liberal) framework and the liberal ethos that have sustained political power and elections in western democracies (see also Mounk 2022).

Moreover, and from the critical camp, some scholars have even argued that liberalism has failed to fulfill its promise (Deneen 2019), and others that we are even entering a *post-liberal* era in which liberalism is no longer the ideal or ideological horizon that guides our way of thinking (Gray 2023; Rose 2021; Moyn 2023). Contrary to what liberal thinkers such as Milton Friedman and F. A. Hayek thought, it seems that the age of liberal democracy and democratic capitalism has reached its twilight, threatened from within by innumerable illiberal forces from the extreme left to the extreme right (Wolf 2023; Stiglitz 2024; Slobodian 2024). Anti-globalism, anti-liberalism, anti-free-trade, and nationalism are once again—much like the

interwar period—rising with severe consequences to peace and prosperity (Zahra 2023). With dismay, many liberals and market-friendly scholars are suddenly realizing, and *pace* Fukuyama (1992), that “the end of history” or the alleged endpoint of humanity’s ideological evolution—in which liberal democracies and free-market capitalism were flourishing and seemed to be the “only game in town”—was just a mirage.

In fact, since (at least) Trump’s first presidential election and the Brexit referendum in 2016, the new rise of anti-market and anti-liberal populist movements, both on the left and on the right, seems to be challenging the hegemony of both liberal democracies and free-market capitalism. Recently, Trump’s frontal attack on free trade and the free market in 2025 makes it clear, as Bob Dylan would say, that ‘the times they are a-changin’. Paradoxically, it seems that the tomb of liberal democracy and free trade lies not in the “banana republics” of the developing world, but, ironically, in the land of Milton Friedman! Our current decade (2015-2025) and the following one we are just entering seem to have more in common with the inter-war period of 1918-1939 which saw the irrational “Revolt of the Masses” (Ortega y Gasset 2021/1930), guided by irrational politics, deep polarization, and by illiberal (both fascists and socialists) conceptions of the political order (Hayek 1944). As political analyst Martin Gurri (2018) has argued, we are entering a period marked by “the revolt of the public”, which is leading the liberal order towards a new crisis of authority.

Put differently, the inter-war period of 1918-1939 was marked by an intensely combative, polarized, and anti-liberal conception of the political, akin to the antagonistic concepts of the political among friends vs enemies, inspired by the work of Carl Schmitt (2007/1932). Schmitt argued that the fundamental criterion of the political is the distinction between friend (*Freund*) and enemy (*Feind*). For the German jurist, this antagonistic distinction is not merely one aspect of politics, but rather the fundamental core of it. Under this polarizing and Manichean vision of politics, the political adversary is interpreted as an enemy that represents an existential threat to one’s way of life, values, or political existence as a collectivity, and, thus, as an “enemy” that should be defeated and conquered rather than listened to.

In this sense, and following Schmitt, it seems that our liberal democracies are becoming ever more “Schmittian” and divisive, and way less “Habermasian” (see Martinez and Paniagua 2025; Paniagua and Pourvand 2025), thus eroding our collective capacities to reach reasonable deliberation, consensus, and solve our political problems through a rational process of argumentation and public discourse. Many politicians and political thinkers, like Schmitt, (see Heidegger 1985/1933; Mussolini 2006/1928; Gentile 2004/1932; Evola 1995/1934; Jünger 2017/1932), used similar frameworks and ideas during the inter-war period to attack liberal political theory and to later undermine the institutions of liberal democracies by presenting a *post-liberal alternative* which led Europe to carnage, irrationality, concentration camps, and the collapse of economic and political liberties. We do not seek to exaggerate our current state of fragility in the present world (we are far—still—from the inter-war state of affairs). Still, if we read the anti-liberal or illiberal thinkers of the inter-war period, their message seems to strongly resonate with our current polarized and irrational world, as well as with the ideas and critiques put forth now by the contemporary post-liberal scholarship (Cherniss 2021).

In sum, liberalism is today (and again) “in dark times”, much like during the first half of the 20th century. As Joshua Cherniss (2021) argues, liberalism currently faces severe threats from across the political spectrum and throughout the entire world; yet, nobody seems to be defending the liberal ethos from a political or ideological perspective. While right-wing and leftist populists are severely undermining the democratic liberal institutions that uphold the liberal order and violate liberal norms and their *modus vivendi*, contemporary theorists of liberalism seem to have little to say. In contrast, the illiberal, anti-market, and post-liberal thinkers seem to have plenty to say against the liberal order and the free-market capitalism that are under threat. Within this pressing context of liberalism, the intellectual image and intellectual journey of Nobel laureate F. A. Hayek (1899-1992) comes naturally to mind.

Hayek was one of the first and most vociferous liberal thinkers to, not only raise awareness and intellectual ammunition against socialism and the illiberal thinkers of his time with his best-selling book *The Road to Serfdom*, but also he was one of the key figures (alongside Walter Lippmann 1937) that united the

liberal thinkers of the interwar period to rekindle liberalism for the post-World War II world (see Burgin 2015). Inspired by the “Lippmann Colloquium”, organized in Paris in August 1938 by French philosopher Louis Rougier, F. A. Hayek sought to do a similar event in April 1947, at the base of Mont Pèlerin on Lake Geneva, Switzerland, in which Hayek gathered a group of 39 liberty-friendly scholars from Europe and the U. S. to discuss the future of liberalism in the aftermath of World War II (see Burgin 2015; Caldwell and Klausinger 2022).

Among the 39 participants at this first Mont Pèlerin Society meeting were some of the leading liberal figures at the time. They included: F. A. Hayek, Walter Eucken, Wilhelm Röpke, Milton Friedman, George Stigler, Fritz Machlup, Frank H. Knight, Ludwig von Mises, Salvador de Madariaga, Henry Hazlitt, Lionel Robbins, Aaron Director, John Jewkes, John Davenport, Leonard E. Read, Michael Polanyi, Karl Popper, and Bertrand de Jouvenel, among other intellectuals (see the transcripts of this meeting in Caldwell 2022). The famous French philosopher and liberal thinker Raymond Aron attended the Walter Lippmann Colloquium in 1937, but not the 1947 Mont Pèlerin meeting. These events are now widely considered as the key historical events that launched the revival of liberalism after the 1950s and later spearheaded the ascendance of “neoliberalism”, which consolidated the alleged “end of history” that brought decades (1980-2010) of economic prosperity, the global reduction of poverty, globalization, and the expansion of liberal democracy across the globe (Norberg 2023; Susskind 2025; Vergara 2025). In hindsight, maybe there is a present need for a new liberal rekindling akin to the one brought about by the “Lippmann Colloquium” and the Mont Pèlerin Society.

Just as “neoliberalism” or the post-Mont Pèlerin liberal revival emerged to respond to the collectivist, illiberal, and anti-market challenges of its time, today liberalism faces the need to articulate a new paradigm to respond to its modern challenges. This is, in part, the task of this special issue celebrating the figure of F. A. Hayek: to contribute to *rethinking liberalism in dark times*. In this context, it is worth questioning: Does liberalism have a future in such a world? If so, how can liberalism recast itself to deal better with these new illiberal tendencies? Can liberalism become again an appealing and “antifragile” ideology for our future, much like it did for Hayek during post-WWII? These and many other pressing questions surrounding liberalism and Hayek’s *The Constitution of Liberty* are at the heart of this special issue for *Cosmos + Taxis* that we have gathered in this volume.

Echoing the work of Alan Kahan (2023), Joshua Cherniss (2021), and Helena Rosenblatt (2018), this special issue has the overarching goal of inviting scholars to reflect upon the past while also seeking to find valuable ways to recast and reimagine liberalism for these new dark times. Kahan (2023) argues that liberalism should become a response to fear and a source of hope: the search for a world in which no one needs to be afraid. To do so, Kahan (2023) claims, persuasive liberal arguments have typically relied on three pillars: *individual freedom, free markets, and a pluralistic and tolerant moral code*. But when liberals ignore one or more of these pillars, their arguments generally fail to persuade, and the liberal order starts to regress slowly. Kahan, Cherniss, and Rosenblatt argue that by reinterpreting our understanding of the history of liberal thought and practice, this could provide a new and fresh picture of the political creed today. This could help to shed light on the intellectual avenues that liberals need to follow, the questions they need to answer, and the dead ends they must avoid—if they are to win against the illiberal and anti-market forces.

Given this state of affairs, Hayek’s (2011/1960) *magnum opus* seems to be a sensible point of departure to allow liberalism to rise (once again) intellectually to meet those modern and pressing challenges constructively, providing a valuable way forward for liberalism for the future. As Helen Pluckrose (2024) eloquently argued in a recent defense of liberal democracy:

Our current crisis is not one of Left versus Right but of consistency, reason, humility, and universal liberalism versus inconsistency, irrationalism, zealous certainty, and tribal authoritarianism. The future of freedom, equality and justice looks equally bleak whether the postmodern Left or

the post-truth Right wins this current war. Those of us who value liberal democracy and the fruits of the Enlightenment and Scientific Revolution and modernity itself must provide a better option.

We believe there is no better way of crafting such a valuable option for the future of liberalism than by engaging critically with one of Hayek's most significant works. In light of these modern threats to the liberal order, and given that 2025 marks the 65th anniversary of the publication of *The Constitution of Liberty*, we gather nine essays, from philosophers, legal scholars, economists, and political scientists, to reflect upon the potential role of Hayek's ideas for the future of liberalism in dark times. This collection of essays lies at the intersection of politics, philosophy, and economics—known today as the PPE approach (see Gaus and Thrasher 2021)—which is a way of thinking about the social order by integrating insights from economics, political science, and political philosophy, much like the entire corpus of Hayek's work. We could say that there is no other economist in the 20th century (with the exceptions maybe of James Buchanan, Kenneth Arrow, and Amartya Sen) who best embodies the PPE approach to the analysis of social and political phenomena. Consequently, this special issue, and the nine essays gathered therein, are a tribute to—and a critical engagement with—both Hayek's *The Constitution of Liberty* and Hayek's broader PPE approach to understanding the importance of liberalism as an ethos; liberal democracy as the only productive form of dealing with political disagreement, and free markets as the only mechanism of generating prosperity and income mobility. The hope is that these nine essays will help spur interest and novel ideas to think about how we can rekindle liberalism for the future, so that it can reinvent itself as a viable (and also attractive) intellectual endeavor that can later create the moral, intellectual, and institutional conditions for a social order able to withstand illiberal challenges from both left and right.

II. BRIEF OVERVIEW OF THE ESSAYS

This special issue is divided into three parts, each composed of three papers: Part I: “Freedom, liberalism, and political economy”, Part II: “Political dynamics, social justice, and the rule of law”, and Part III: “Hayek and contemporary debates”. In what follows, we briefly explore each part of this special issue and the core arguments and insights of the nine papers.

Part I: “Freedom, liberalism and political economy”

The first paper, by Vlad Tarko, “Make Liberalism an Intellectual Adventure Again: The Evolution of Hayek's Understanding of Political Freedom”, claims that Hayek's understanding of political freedom underwent a significant evolution between *The Road to Serfdom* and *The Constitution of Liberty*. The author explains that Hayek shifted his view on the rule of law, moving away from the framework of the Reichstaat toward an evolutionary conception of common law. Tarko also shows how Hayek's idea of individual freedom changed: instead of focusing mainly on the quantitative dimension of choice and opportunity, Hayek began to emphasize psychological autonomy. Tarko highlights that this notion of autonomy supports an open-ended form of entrepreneurial creativity, which Hayek believed should not be constrained by precautionary arguments about social costs. For Tarko, this transition from “freedom of choice” to “autonomy” reveals Hayek's dissatisfaction with grounding liberalism exclusively in negative liberty. Rather than treating freedom as a presumption that can be curtailed by growing claims to welfare and social justice, Tarko argues that Hayek was looking for a conception of freedom that can be maximized without condition. In this sense, Tarko interprets autonomy as both the foundation of the rule of law and the standard for limiting democracy—the intellectual basis of what Hayek calls a “truly radical liberalism.”

The second paper by Brigitta C. Jones and Alain Marciano, “Freedom and Liberalism: Hayek, Buchanan, and Sen Compared”, argues that defending liberalism has once again become a pressing task, given the rise of populist and authoritarian movements in our societies. The authors revisit *The*

Constitution of Liberty to highlight two themes they consider fundamental to any discussion of freedom: its normative grounding and the principle of generality. In their analysis, Hayek's emphasis on the rule of law and spontaneous order is set alongside Buchanan's case for constitutional limits designed to protect personal autonomy, and Sen's idea that freedom should also be assessed in terms of expanding human capabilities. By bringing these perspectives together, Jones and Marciano suggest a richer, multidimensional view of liberty—one that not only respects individual autonomy but also depends on institutions that secure equality and opportunity. For them, this synthesis lays out a constitutional framework strong enough to sustain liberalism under present-day challenges.

The third paper by Peter Boettke and M. Scott King, "Hayek and the Institutional Turn in Political Economy," examines the breadth of Hayek's scholarship—spanning economics, law, psychology, political theory, and political economy—and asks whether there is a unifying thread that ties it all together. They suggest that such a connection can be found, especially when Hayek's political economy and social theory are read through what Boettke has called "epistemic institutionalism." According to this view, the core of Hayek's project lies in his insistence that institutions create the conditions for learning, the generation and communication of knowledge, and ultimately for social cooperation. Boettke and King argue that this perspective is particularly illuminating for understanding *The Road to Serfdom* and, even more so, *The Constitution of Liberty*. According to them, *The Constitution of Liberty* still speaks powerfully to political economists, offering not only enduring insights but also posing challenges to contemporary critics of liberalism that remain unanswered.

Part II: "Political dynamics, social justice, and the rule of law"

The fourth paper by Brian Kogelmann, "Planning, Market Dynamism, and the Rule of Law", explores a subtle tension in Hayek's work between upholding the rule of law and endorsing free markets. Kogelmann points out that while Hayek sees the rule of law as crucial for enabling people to organize their lives, he appears less concerned about how market forces can disrupt those plans. Challenging the common claim in development economics that legal disruptions are more damaging than market disruptions, Kogelmann argues that a more profound understanding requires rethinking Hayek's idea of the good life. Instead of framing the good life primarily in terms of planning, Kogelmann draws on John Stuart Mill to highlight the role of creativity and individual initiative. Through this lens, the value of both legal frameworks and market freedom becomes clear, resolving the apparent conflict in Hayek's arguments.

The fifth paper by Ray Jerram, "Democratic Capture by Sectional Interests: Public Choice Critiques of F. A. Hayek's Constitutional Political Economy", studies the problem of state capture by special interest groups, which he describes as one of the most serious challenges facing modern democracies. According to Jerram, although thinkers like F. A. Hayek, James M. Buchanan, and other classical liberals are often labeled as anti-democratic; they actually take this issue very seriously. He argues that their work offers valuable insights by encouraging us to rethink what democracy and political participation mean. Jerram first traces the intellectual connection between Austrian economics and rational choice theory, highlighting literature that explicitly addresses group-based capture. He then revisits Hayek's constitutional model, designed to limit the influence of sectional interests, and situates it alongside public choice theories. Finally, he uses public choice constitutional models to test Hayek's framework, identifying potential weaknesses and points where it might fail. By uncovering these theoretical challenges, Jerram aims to stimulate more nuanced discussions about the difficulties democracies face today in resisting the pressures of organized interest groups.

The sixth paper by Jeppe von Platz, "Three's Company: Liberty, Prosperity, and Social Justice in the Constitution of Liberty", critically scrutinizes Hayek's claim that societies organized under the constitution of liberty are likely to be more prosperous than any realistic alternative, and that such a system rules out pursuing social or distributive justice. He points out, however, that both of these claims raise questions. Drawing on examples of collective action problems, Platz shows that liberty on its own can sometimes lead to harmful outcomes for society. He observes that Hayek could address this by allowing regulations

against socially destructive behaviors, framing them as compatible with liberty. But this solution creates a second tension: if the constitution of liberty prioritizes procedural fairness rather than a fixed distribution of resources, then efforts aimed at social or distributive justice aren't necessarily prohibited. For von Platz, these tensions don't undermine Hayek's liberalism; instead, they show that his framework is flexible enough to deal with modern challenges, like environmental harm and growing inequalities.

Part III, "Hayek and contemporary debates"

The seventh paper by Axel Kaiser, "F. A. Hayek in the Age of Postmodernist Tribalism", assesses the post-modern progressive ideology that, according to the author, dominates many American universities today, and argues that it fundamentally clashes with Hayek's classical liberalism, especially as presented in *The Constitution of Liberty*. Kaiser points out that Hayek saw American institutions, particularly constitutional practice, as rooted in a tradition of true individualism inherited from Britain. He argues that European civilization in the early 20th century largely fell apart because of intellectual movements that reacted against individualist ideas. Similarly, according to Kaiser, the U.S. now faces waves of collectivist thinking that fuel tribalism and intense political polarization, undermining the liberal ethos. For Kaiser, works like *The Road to Serfdom* and *The Constitution of Liberty* remain essential guides for understanding these developments and for analyzing the threats they pose to America's classical liberal order.

The eighth paper by Bryan Cheang, "Hayek against Neoliberalism", challenges the common portrayal of "neoliberalism" as the root of many modern problems, from rising inequality to the erosion of democracy, and the tendency to cast Hayek as a kind of "market fundamentalist" who puts economic efficiency above political freedom. According to Cheang, a closer reading of Hayek tells a very different story: he was not devoted to markets for their own sake, but deeply concerned with the conditions that allow social order to emerge without centralized, top-down control. Cheang emphasizes Hayek's focus on spontaneous order, epistemic complexity, and institutional pluralism, showing how these ideas stand in opposition to technocratic interventions, whether under the banner of the Washington Consensus or more contemporary "state-led" equivalents. He notes the irony that critics of neoliberalism often end up supporting their own forms of centralized governance, just with different labels. For Cheang, rather than being part of the problem, Hayek provides a lens to understand why both neoliberalism and its opponents frequently fall into similar authoritarian tendencies, even while claiming to oppose them.

The ninth, and closing paper, by Vikash Yadav, "Rising to the challenge: Hayekian insights in an age of nativist populism and climate change", looks at how Hayek's ideas in *The Constitution of Liberty* can help guide practical, bottom-up policy solutions for some of the biggest challenges facing wealthy societies nowadays. He focuses on two main issues: the decline of manufacturing caused by technology-driven creative destruction and the breaking apart of production processes during the Second Age of Globalization, and the urgent need for a transition to green energy to tackle climate change. Yadav notes that populist and nativist responses, influenced by "post-liberal" thinkers, have often led to inconsistent or illiberal measures like tariffs, subsidies, and heavy regulation. In some cases, according to him, countries have ignored environmental concerns or even intensified environmental exploitation to try to save manufacturing. For Yadav, how these societies handle these challenges will determine not only whether liberal political and economic systems remain relevant in the 21st century, but also whether they can stay competitive against more authoritarian states like China, which seem able to tackle both problems more decisively.

In closing this introduction, we would like to thank the authors who submitted their articles and, through their contributions, helped advance the goal of reflecting on and engaging critically with *The Constitution of Liberty* on its 65th anniversary, as well as with Hayek's work more broadly. We also extend our gratitude to Leslie Marsh for the unique opportunity to edit this special volume for the journal *Cosmos + Taxis*. We hope that readers will benefit from engaging with the articles presented here. Enjoy the reading!

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Make Liberalism an Intellectual Adventure Again: The Evolution of Hayek’s Understanding of Political Freedom

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Abstract: The paper tracks the evolution of Hayek’s understanding of political freedom from *The Road to Serfdom* to *The Constitution of Liberty*. Hayek’s thinking about the nature of rule of law changes as he adopts an evolutionary view on common law, replacing his previous position in terms of the idea of *Reichstaat*. His concept of personal freedom also changes from one focused on a quantitative concept of freedom of choice and opportunity to a concept of psychological autonomy. This idea of autonomy is related to supporting an unlimited form of entrepreneurial creativity, unconstrained by precautionary social costs arguments. This conceptual transition from freedom of choice to autonomy is also related to Hayek’s views about the limits of using negative freedom as a foundation for liberalism. Hayek is looking for a concept of freedom that can be maximized unconditionally, rather than merely for a presumption of liberty (as in Adam Smith) that can be overruled by ever-expanding welfare and social justice concerns. He sees autonomy as providing the intellectual underpinning for what rule of law must be, and as the criterion for constraining democracy—a foundation for what he calls “truly liberal radicalism”.

1. INTRODUCTION

The concept of political freedom, as discussed in the political philosophy literature, has numerous nuances and complexities (Brennan and Schmitz 2010). A common claim is that the definition of freedom has political consequences, and, hence, the debate over the “proper” interpretation of freedom is of critical importance (Berlin 1969; Lakoff 2006). For instance, Isaiah Berlin (1969) famously contrasted positive and negative liberty, i.e. an inner, psychological understanding of freedom focused on autonomy vs. an external concept of freedom focused on the absence of coercion (see also Carter 2022; Palmer 2014, ch. 2), and argued that advocating for positive liberty leads to a variety of illiberal positions. But there are more than just two concepts of freedom, and various complementarities between them are also possible.

Brennan and Schmitz (2010) have argued that a multi-faceted concept, combining several important features in a coherent picture, provides a more fruitful approach than the reductionistic attempts to find a single “core” concept and reject all others. Authors like Patterson (1992) and Brennan and Schmitz (2010) also argue that the concept of political liberty has acquired more nuances and features during a long historical process that has involved the gradual securing of more of those aspects. For example, in a time when slavery was still a persistent on-going reality, advocates of political freedom focused primarily on freedom from coercion; but, later, as freedom from coercion was better secured, other, additional concerns moved to the foreground.

Hayek's understanding of political freedom, from *The Road to Serfdom* to *The Constitution of Liberty* and to *Law, Legislation, and Liberty*, fits this pluralistic approach to political freedom, and is best evaluated by assessing how he is dealing with the main challenges associated with the pluralistic approach in general. To assess Hayek's thought we need to look at (a) which aspects of freedom he emphasizes the most, (b) which aspects he ignores or wants to restrict, and (c) what causal connections he assumes to exist between different varieties of freedom.

In this article I explore the reasons why Hayek switched from a quantitative understanding freedom, in terms of the number of available choices and opportunities, to a more psychological understanding, in terms of people's autonomy to make personal plans without coercion, manipulation, and post hoc changes in rules. This change goes hand in hand with a deeper understanding of the idea of rule of law, and with a greater appreciation for common law.

In a nutshell, Hayek is seeking for a foundation of liberalism that is stronger than a mere "presumption of freedom", as any such presumptions are subject to slippery slopes rationalizations that gradually take us away from freedom. Simple negative freedom (freedom from physical coercion) fails to provide a strong foundation for liberalism because negative externalities are everywhere. Economic efficiency, built upon concepts of welfare and freedom of choice, offers too many temptations in favor of various constructivist schemes, i.e. too many reasons to abandon the "simple rules for a complex world" (Epstein 1995) principle of rule of law, and not enough reasons for allowing unpredictable entrepreneurial disruption (Thierer 2016). Finally, attempts to define rule of law in terms of formal procedural or linguistic criteria fail because rules that are discriminatory in substance can always be written in a language that appears universal (Rajagopalan and Wagner 2013). As such, we need a concept like autonomy (a) to decide when to allow negative externalities despite "inefficiencies" (Hayek draws the parallel to freedom of speech), (b) as a more robust bulwark against constructivism than mere rule utilitarianism, (c) as a criterion for judging rule of law on substantive grounds, and (d) as a criterion for establishing legitimate limits to democratic majority rule.

Key challenges for the pluralistic accounts of political freedom

The pluralistic accounts of political freedom stipulate (1) a list of distinct concepts of freedom, (2) some *conceptual* connections between these concepts, elaborating the meaning of the terms, (3) some *causal* connections between these concepts, elaborating the author's empirical expectations, and (4) a preference ordering that specifies the author's priorities in circumstances in which the different concepts happen to conflict.

The existing literature does not provide a consensus even about the list of different available concepts. However, for the sake of specificity, consider the following:

- (1) *negative freedom*—the absence of physical coercion and of threats of physical coercion;
- (2) *freedom of choice or freedom of opportunity*—the number of available options, without engaging in the subjective task of evaluating how desirable these options are;
- (3) *welfare*—the ease of access to high subjective wellbeing; a measure of the desirability of the available goods and services, regardless of how many options there may be;
- (4) *autonomy or positive freedom*—the ability to form personal plans without being subjected to the arbitrary will of others; this is a concern not only with physical coercion but also with manipulation and fraud, and with conditions that favor self-censorship and inauthentic social conformity;
- (5) *freedom of expression* or (on the flip side) *tolerance*—freedom to publicly express one's opinions, as well as any aspect of one's identity (this is a more objective and limited form of the concern with autonomy, although, under some circumstances, the group-based version of tolerance can come into conflict with individual autonomy);

- (6) *freedom under law*—absence of legal discrimination, the idea that everyone is subjected to the same collective rules and that coercion occurs only as stipulated by the publicly known rules; what Hayek refers to as “Rule of Law”;
- (7) *freedom of association*, including freedom to exit associations—freedom to choose (some of) the rules to which one is subjected, by choosing the groups to which one belongs;
- (8) *democracy* or *self-governance*—ability to have a say in the collective rules to which one is subjected, in cases that cannot be reduced to private clubs covered by freedom of association, usually by choosing the political representatives who set up those collective rules.

To illustrate the pluralistic approach to political freedom consider the following definition of political freedom proposed by Benjamin Constant. According to him, political freedom is

the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives or undertakings. It is everyone’s right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims. Finally it is everyone’s right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed (Constant 1988, p. 311).

Several concepts of freedom are combined in this passage: freedom from coercion, rule of law, freedom of association and expression, tolerance, and democracy. This is not just a random enumeration, as Constant understands them as rights that reinforce each other. In other words, Constant offers this combination of freedoms as a philosophical blueprint for building a liberal society.

The concept of political freedom that Hayek elaborates in *The Constitution of Liberty* (CoL) is also such a multifaceted idea (related, but different than Constant’s). Interestingly, it is in some important respects different from the concept of freedom described earlier in *The Road to Serfdom* (RtS). *Law, Legislation, and Liberty* (LLL) then further expands on some topics introduced in CoL. In a nutshell, Hayek experiences the following intellectual changes:

In RtS freedom is understood as a combination of negative freedom, *freedom of choice and opportunity*, rule of law, and democracy. The highlighted concept of freedom changes in his later accounts. The main argument in RtS is that (a) markets are good because they expand our freedom of choice and opportunity, (b) markets work best under a system of impartial rule of law which prevents political actors from establishing discriminatory rules (privileging one group over another, as it used to be the case under mercantilism), (c) markets can be regulated (reductions of negative freedom) if this expands the freedom of choice and opportunity for the average person, but only by regulations that preserve the rule of law, (d) departures from rule of law in the name of equality concerns (the pursuit of the socialist ideal) will undermine not only markets, but also democracy (such regulations are dangerous because they create a slippery slope toward dictatorship, aka the “road to serfdom”), and (e) the mechanism of this slippery slope is as follows: departures from rule of law create positions of power in the public administration (with the power to distribute gains and costs selectively to different groups), which in turn attract power-hungry individuals who have a comparative advantage in conflict rather than production, and who end up further expanding power and destroying democracy.

In CoL Hayek switches to a combination of negative freedom, *positive freedom*, rule of law, and democracy, while his understanding of rule of law also experiences significant changes. It remains the case that Hayek thinks that market regulations are admissible (don’t engender the road to serfdom slippery slope)

only if they preserve rule of law. But he now thinks that freedom of choice (in the forms of typical economic efficiency arguments) is a criterion that is too easy to abuse. All too often it appears that we need to choose between freedom of choice and rule of law, rather than the two reinforcing each other. By contrast, he believes autonomy provides a better foundation to rule of law, and a better criterion for rejecting dangerous economic regulations. As such, *CoL* should be seen as a fundamentally anti-Berlin book, or conversely, Berlin (1969) should be criticized for not addressing the strongest arguments in favor of positive freedom from the side of a key supporter of pro-market liberalism.

Furthermore, in *CoL* Hayek pays significant attention to civil liberties and tolerance, rather than to just economic freedoms, and he sees these aspects of freedom as causally connected to rule of law, i.e. rule of law is *how* we secure civil liberties and tolerance (as opposed to, e.g., some forms of affirmative action).

In *LLL* he builds upon the work in *CoL*, developing a more skeptical picture toward democracy. This is interesting in connection to some of his highly controversial defenses of “liberal dictators”. But some kernels of this are already present in *CoL*, especially when he quotes Ortega y Gasset’s early work, *Invertebrate Spain* (1921). Nonetheless, *CoL* contains a detailed chapter on justifications for democracy, which is ultimately at odds with his later support for temporary “liberal dictators”. If one looks for intellectual support for “liberal dictators”, one needs to look further down the line than *CoL*.

There are two key challenges to any pluralistic approach to political freedom. First, various facets of freedom *both* complement each other (under certain circumstances) *and* are in tension with one another (under other circumstances). Trade-offs between varieties of freedom concepts must be accounted for, and the situations under which such trade-offs occur should be understood.

Second, there are possible *causal connections* between different aspects of freedom. For example, Berlin (1969) thought that by securing negative freedom one also maximizes, as a logical consequence, the number of options available to an individual. This, however, is not entirely accurate, as one can think of scenarios when the number of options, e.g. available to the average consumer, can be expanded by increasing some types of coercion, e.g. regulations that curtail market power. This illustrates the point that while some features of freedom reinforce each other under some contexts, they may, nonetheless, involve trade-offs in other contexts. Securing negative freedom often *does* lead to an expanded menu of choices, but not always.

It is also important to keep in mind the distinction between conceptual connections and causal connections. For instance, a general concept of tolerance implies freedom of expression and association (as a conceptual matter), while rule of law and welfare are conceptually distinct, but causally connected as an empirical matter (all rich countries score highly on measures of rule of law, and increases in such scores in poor countries lead them to higher growth rates (Haggard and Tiede 2011; Bergh and Bjørnskov 2021; Lawson, Miozzi, and Tuszynski 2024).

In what follows, I’m going to give a more detailed account of the evolution of Hayek’s thinking on the topic of political freedom focusing primarily on the transition from *RtS* to *CoL*. As part of this account, I’m going to pay closer attention to one of the neglected, but critical, intellectual influences on Hayek’s thought, the works of Ortega y Gasset. This influence is not hidden, although it is neglected: Hayek cites Gasset numerous times, and he often cites various relatively obscure pieces by Gasset, implying he took a relatively deep dive into his works.

A quantitative definition of progress

In the “Why I am Not a Conservative” postscript of *CoL* Hayek remarks that he is “simply an unrepentant Old Whig” (Hayek 1960, p. 531). This refers to a prominent and long-lasting debate about progress, and to the romantic (and existentialist) critique of, not only the Whig view of history, but of the very idea of progress itself. These romantics and existentialists were in many ways similar to the more recent post-modern critics of progress.

A prominent early liberal response to this is found in Gasset's *Revolt of the Masses* (1932, especially, ch. 4, "The increase of life"), and Hayek's definition of freedom in *RtS* follows closely in Gasset's footsteps. In order to avoid the subjectivity of values involved in defining progress, Gasset has argued that we can simply look at the matter quantitatively, i.e. instead of defining progress in terms of increases in *welfare* (which is vulnerable to the subjectivity of defining what is truly worth having), we can define it in terms of the expansion of *freedom of choice and opportunity*. Hayek adopts the same quantitative approach to progress in *RtS*, which also fits well with his economics background. While both Gasset and Hayek are appreciative of utilitarianism, neither fully adopts it, and their quantitative approach to freedom ditches J. S. Mill's attempts to distinguish between higher and lower preferences (Mill 1879, ch. 2). At first glance, this looks like a downgrade from careful philosophical nuance to a simplistic accounting mentality, but the aim is to save the ability of asserting the objectivity of progress.

Gasset notes that he does "not mean to imply that human life is today better than at other times" (Gasset 1932, p. 43). Instead of referring to "the quality of actual existence", which is vulnerable to accusations of subjectivity, he looks at "its quantitative advance, its increase of potency" (Ibid.). Rather than thinking in terms on one single ideal of the good life, Gasset argues that the "most essential" aspect of human life is "that our existence is at every instant and primarily the consciousness of what is possible to us" (Gasset 1932, p. 40).

Hayek will build on this idea in *CoL*, defining freedom in terms of people's ability to form and implement personal plans, unimpeded by discretionary acts of coercion and/or manipulation. This becomes Hayek's core, and most fundamental, concept of freedom, deeply connected to his analysis of the process by which markets work (Hayek 1945). Interestingly, this type of understanding of freedom, with reference to enabling people's creative capacities and their abilities to fulfil their potential, was fairly common in the 1920s liberal circles both on the left and the right. For example John Dewey defines freedom in *The Public and Its Problems* as follows: "Liberty is that secure release and fulfillment of personal potentialities which take place only in rich and manifold association with others: the power to be an individualized self-making a distinctive contribution and enjoying in its own way the fruits of association" (Dewey 1927, p. 150).

As a consequence of thinking in terms of enabling the diversity of subjective human plans, this most important aspect freedom becomes, in its most mundane form, the availability of options and opportunities. Gasset argues that, even in a world of moral relativism, progress is, nonetheless, real, as a purely descriptive fact, because we can now count on a range of possibilities fabulously greater than ever before.

In the intellectual order it now finds more "paths of ideation," more problems, more data, more sciences, more points of view. Whereas the number of occupations in primitive life can almost be counted on the fingers of one hand—shepherd, hunter, warrior, seer—the list of possible avocations today is immeasurably long. Something similar occurs in the matter of pleasures, although (and this is a phenomenon of more importance than it seems) the catalog of pleasures is not so overflowing as in other aspects of life. Nevertheless, for the man of the middle classes who lives in towns—and towns are representative of modern existence—the possibilities of enjoyment have increased, in the course of the present century, in fantastic proportion (Gasset 1932, p. 41).

Gasset further argues that freedom of choice and opportunity can be measured by what we now call purchasing power parity (PPP) real income:

Take any one of our ordinary activities; buying, for example. Imagine two men, one of the present day and one of the 18th Century, possessed of equal fortunes relatively to money—values in their respective periods, and compare the stock of purchasable things offered to each. The difference is almost fabulous. *The range of possibilities opened out before the present-day purchaser has become practically limitless.* [emphasis added] . . . Many more things can be bought today, because manufacture has cheapened all articles (Gasset 1932, pp.39-40).

Hayek mirrors these concerns in chapter 1 of *RtS*. He first emphasizes that many more “different forms of life” have become available, thanks to the expansion of division of labor: “The gradual transformation of a rigidly organised hierarchic system into one where men could at least attempt to shape their own life, where man gained the opportunity of knowing and choosing between different forms of life, is closely associated with the growth of commerce” (Hayek 1944, pp. 14-15). He then continues by making the same point as Gasset about the growing abundance of consumer choices:

Wherever the barriers to the free exercise of human ingenuity were removed man became rapidly able to satisfy *ever-widening ranges of desire* [emphasis added]... and there can be no doubt that its success surpassed man’s wildest dreams, that by the beginning of the twentieth century the working man in the Western world had reached a degree of material comfort, security, and personal independence which a hundred years before had seemed scarcely possible. What in the future will probably appear the most significant and far-reaching effect of this success is the new sense of power over their own fate, the belief in the unbounded possibilities of improving their own lot, which the success already achieved created among men (Hayek 1944, pp. 16-17).

Last but not least, Hayek expands Gasset’s analysis, arguing that our normative standards themselves evolve as a result of this growth, providing an early starting point to his later thoughts on social and moral evolution:

And while the rising standard soon led to the discovery of very dark spots in society, spots which men were no longer willing to tolerate, there was probably no class that did not substantially benefit from the general advance. *We cannot do justice to this astonishing growth if we measure it by our present standards, which themselves result from this growth and now make many defects obvious.* [emphasis added] To appreciate what it meant to those who took part in it we must measure it by the hopes and wishes men held when it began (Hayek 1944, p. 17).

There are several important conceptual connections in these passages from Gasset and Hayek between personal freedoms, freedom of choice, and welfare.

Personal freedom at the “most essential” level is understood as psychological autonomy, but autonomy is assumed here to be best defended by reference to an observable/measurable fact, namely freedom of choice and opportunity. As Gasset discusses it throughout his writings, autonomy builds on our “consciousness of what is possible to us” (Gasset 1932, p. 40), not just in matters of buying, but also in matters of whom we can choose to become.

The quantitative expansion of modern life refers not only to increased consumer choices, but also expanded occupational choices. Hayek understands this expansion of occupational choices in classic Adam Smithian terms: the greater expansion of markets enables greater levels of specialization. It is the embeddedness of individual life within the enormous modern network of trade that enables the flourishing of choices—an important point that brings a market liberal like Hayek on a similar page to a social liberal like Dewey.

In turn, freedom of choice *causally* (but not conceptually) implies welfare, and, hence, is connected to basic economic efficiency measured by PPP real incomes. This is a straight-forward utilitarian argument that the best way of maximizing subjective wellbeing is by increasing people’s options and allowing them to freely choose what they think is best for them. This idea has been challenged to some extent by modern behavioral economists (Schwartz 2004), but, as far as I can tell, Hayek never considered this potential problem.

We thus have a deep concern with *autonomy*, but which can be satisfied by securing economic efficiency. Both Gasset and Hayek will become increasingly skeptical of the supposedly inescapable connection

between autonomy and efficiency. The two clearly go hand in hand in many circumstances, but not always, and efficiency considerations can all too often be used as arguments against autonomy.

2. RULE OF LAW AND AUTONOMY

Already in *RtS* Hayek connects the subjectivist understanding of freedom, focused on people's ability to develop a variety of personal plans unencumbered by discretionary government actions, to the concept of rule of law:

While every law restricts individual freedom to some extent by altering the means which people may use in the pursuit of their aims, under the Rule of Law the government is prevented from stultifying individual efforts by ad hoc action. Within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts (Hayek 1944, p. 76).

He will expand on this idea in *CoL*. The key concept of freedom in *CoL* is the following: "The state in which a man is not subject to coercion by the arbitrary will of another or others is often also distinguished as 'individual' or 'personal' freedom" (Hayek 1960, p. 58). He takes the expression "the arbitrary will of another" from Locke's *Second Treatise*—which he quotes as the motto of ch. 11, "The origins of the rule of law". The expression occurs ten times in *CoL*, including in some quotes from others. Two important changes occur between *RtS* and *CoL*.

First, in *RtS*, rule of law is understood in the German sense of *Reichstaat* (legal state), which is compatible with the Napoleonic code, and with what he will later refer to as top-down *legislation* (as opposed to the bottom-up evolving common *law*) (Hayek 1973). Between writing *RtS* and *CoL* Hayek got acquainted with the work of Bruno Leoni (1961), and became convinced of the critical importance of common law as a foundation for a liberal society. But defining the concept of rule of law in the context of common law is a lot more challenging. If an important part of law is made by the common law system, is it sufficient to think of rule of law as just a constraint on legislators (i.e. the requirement that legislators don't set up differential rules for different groups)? Does the idea of rule of law impose at least some norms upon judges? The challenge is further expanded by Hayek's increasing interest in looking at law in evolutionary terms.

Hayek thus starts with a straightforward concept of rule of law that's applicable to legislation, but which is not easily translatable to the context of common law. If the body of common law is an emergent phenomenon, how can a rule of law constraint be imposed upon it? In *CoL* Hayek maintains his view that it is essential that we don't set up differential rules for different groups, and continues using this as his criterion of whether welfare state policies are likely to push us down the "road to serfdom"—he supports a wide variety of welfare state policies, but only as long as these policies can be defined in terms of universal and impartial rules.

Defining rule of law in purely procedural or textual terms is notoriously difficult (Rajagopalan and Wagner 2013). This is because laws can be passed that sound universal, but are in fact geared toward specific groups (either privileging them or discriminating against them). For example, environmental regulations are often written in universal-sounding terms, but include various criteria that, in fact, single out specific business interests.

This is why, instead of trying to define rule of law in procedural terms, it is important to think in terms of the underlining rationale that Hayek gives for supporting rule of law: autonomy and people's ability to make and enact plans. Any piece of legislation will disrupt people's plans to some extent. Consider a choice between two possibilities *A* and *B*, which would achieve roughly similar aggregate efficiency outcomes. The key Hayekian question is: Which distributes the disruptions to people's plans in the most egalitarian way? If *A* targets a particular group, while *B* spreads the costs more uniformly, *B* is more in line with the ideal of a rule of law society.

The environmental examples showcase the trade-offs involved, in this case between rule of law and welfare. In case of pollution, we might actually prefer to target specific groups, i.e. the most highly polluting firms (and both pollution taxes or technology mandates will end up doing this), despite this implying a departure from the rule of law criterion. Hayek never addresses the conditions under which it might be preferable to depart from rule of law because he focuses primarily on situations when rule of law is consistent with, and a method of achieving, greater welfare.

Second, in *CoL* he moves to defining freedom as a combination of *positive* and negative freedom, as a replacement of the quantitative concept discussed in the previous section. Hayek notes that

Our definition of liberty depends upon the meaning of the concept of coercion, and it will not be precise until we have similarly defined that term. In fact, we shall also have to give a more exact meaning to certain closely related ideas, especially arbitrariness and general rules or laws. . . . By “coercion” we mean such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another. Except in the sense of choosing the lesser evil in a situation forced on him by another, he is unable either to use his own intelligence or knowledge or to follow his own aims or beliefs (Hayek 1960, p. 71).

It is important to note here that Hayek’s concept of “coercion” is much broader than merely physical coercion. In fact, his position seems to be vulnerable precisely to Berlin’s (1969) later critique of positive freedom, and this is, indeed, part of the reason why Murray Rothbard was so negative about *CoL*, arguing that “F. A. Hayek’s *Constitution of Liberty* is, surprisingly and distressingly, an extremely bad, and, I would even say, evil book” (Rothbard 1958). But, ironically, Hayek may have seen autonomy as a better complement to negative freedom (than the quantitative concepts of freedom of choice and opportunity) precisely because he saw it as less amenable to abuse—less amenable to be used to justify coercion. How so?

Hayek argues that rule of law is justified as a method of preserving autonomy (i.e. as a guardrail to positive freedom):

The conception of freedom under the law that is the chief concern of this book rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another’s man will and are therefore free. It is because the lawgiver does not know the particular cases to which his rules will apply, and it is because the judge who applies them has no choice in drawing the conclusions that follow from the existing body of rules and the particular facts of the case, that it can be said that laws and not men rule. Because the rule is laid down in ignorance of the particular case and no man’s will decides the coercion used to enforce it, the law is not arbitrary. This, however, is true only of by ‘law’ we mean the general rules that apply equally to everybody (Hayek 1960, pp. 221-22).

As noted by Bruce Caldwell, this passage sounds strange:

it is not too difficult to imagine the rule of law, as Hayek understands it, as perfectly consistent with a regime operating under, say, Islamic religious law, a society which in almost every respect is coercive and lacking in all spontaneity. Indeed, this is the gravamen of most of the reviews of *The Constitution of Liberty*, which point out that Hayek makes too much of the rule of law as a guardian of personal freedom (Caldwell in Hayek 1960, p. 12).

This objection is actually anticipated by Hayek in the main text (on the very next page), where he writes that, “It is not to be denied that even general, abstract rules, equally applicable to all, may possibly

constitute severe restrictions on liberty”, only to immediately dismiss it: “But when we reflect on it we see how very unlikely that is” (Hayek 1960, p. 223). The reason he gives is as follows:

The chief safeguard is that the rules must apply to those who lay them down and those who apply them — that is, to the government as well as the governed—and that nobody has the power to grant exceptions. If all that is prohibited and enjoined is prohibited and enjoined for all without exception (unless such exception follows from another general rule) and if even authority has no special powers except that of enforcing the law, little that anybody may reasonably wish to do is likely to be prohibited. It is possible that a fanatical religious group will impose upon the rest restrictions which its members will be pleased to observe but which will be obstacles for others in the pursuit of important aims (Hayek 1960, p. 223).

In other words, the objection works as a hypothetical thought experiment, but it fails to take into account the real-world incentives in any hierarchical organization in which people up the hierarchy create rules for people down the hierarchy. The problem in real world organizations is not that people in positions of power *altruistically* create highly oppressive rules (out of misguided ideas about social welfare) to which they themselves are subjected. The problem is that people in positions of power create rules to which they themselves are *not* subjected in order to control others. And the challenge is to somehow build a system of rule of law despite these pervasive problems of political power. *CoL* is an example of what David Schmidtz (2016a) calls “non-ideal theory”, i.e. theorizing within the constraints of realistic scenarios, rather than purely imaginary hypotheticals.

To put it differently, Hayek does not deny the coercive element in laws (even close to the ideal rule of law situation). He denies that rule of law can undermine *autonomy*, i.e. people’s ability to make and pursue creative plans. In other words, rule of law renders the coercive nature of laws less evil because it enables autonomy:

Being made impersonal and dependent upon general, abstract rules, whose effect on particular individuals cannot be foreseen at the time they are laid down, even the coercive acts of government become data on which individual can base his own plans. Coercion according to known rules, which is generally the result of circumstances in which the person to be coerced has placed himself, then becomes an instrument assisting the individuals in the pursuit of their own ends and not a means to be used for the ends of others (Hayek 1960, p. 72).

To summarize, the conceptual structure of Hayek’s argument is as follows: Freedom is defined as lack of coercion, and rule of law is justified as a method of defending freedom. This all rests on a proper definition of coercion. The critical question is, thus, why Hayek defines coercion more broadly than just physical coercion, i.e. why he doesn’t define freedom as just negative freedom.

3. BEYOND NEGATIVE FREEDOM, 1: THE PROBLEM WITH THE PRESUMPTION OF FREEDOM

The first reason why Hayek defines coercion as more than just physical coercion rests with the fact that negative freedom cannot be maximized unconditionally, while, at least in Hayek’s view, autonomy can. For example, Adam Smith is commonly described as having a *presumption* of freedom (understood as negative freedom), meaning that he would support freedom unless too many negative consequences would follow from allowing it in a given circumstance (Schmidtz 2016b). The issue with this way of thinking is that we don’t have a *principled* way of deciding whether to restrict freedom or not in any given circumstance. The presumption of freedom doesn’t mean much if we can always find some reason to overrule that presumption.

This has long been a concern among anarchists. For example, George Crowder (1992) has argued that classical anarchists like Godwin, Proudhon, Kropotkin, and Bakunin thought in terms of the unconditional maximization of the quantitative concept of freedom of choice and opportunity. Their calls for unconditional maximization of freedom have often been misunderstood because the critics interpreted “freedom” to mean negative freedom. The unconditional maximization of negative freedom would imply a world without rules. But, at least in Crowder (1992)’s interpretation, classical anarchists argued that rules should be chosen such that they maximize freedom of choice. They rejected government monopoly because it impeded freedom of choice and opportunity regarding which communities (with different rules) one could create. Although this type of analysis often used Marxist economics, and had a strong communitarian vibe, it led to similar conclusions to Friedman’s (1973) libertarian anarchism, i.e. to the rejection of government monopoly in favor of a world of overlapping private clubs.

Hayek was, of course, not an anarchist, and he was also increasingly skeptical that maximizing freedom of choice implied even classical liberalism, let alone anarchism. After all, this kind of thinking had led John Stuart Mill to become increasingly statist and socialist, rather than increasingly anarchist. This being said, Hayek thought that it was indeed a useful pursuit to try to find a definition of freedom, such that freedom could be maximized unconditionally. In my interpretation, autonomy plays this role in *CoL*.

In Hayek’s mind, the liberal society is one in which individuals are allowed to pursue their plans unimpeded, *even when* negative social consequences might follow. The idea that what is allowed should be defined *before* the actions take place sounds simple and straightforward, but it is actually at odds with utilitarianism and economic efficiency. We live in a world in which regulations are often passed in response to, and in order to curtail, various entrepreneurial plans that have been put in motion. It is in the nature of creativity that we cannot predict in advance, at the time at which we write down the rules, what plans people will come up with. How should we cope with this fundamental fact about entrepreneurial creativity? We might always be tempted to impede people’s plans as they start developing them, i.e. constantly adjust the rules in arbitrary fashion depending on whatever people might happen to do. By contrast, Hayek wants to maximize this creative freedom (people’s freedom to invent and pursue their plans), and defend it from objections concerning social costs.

Hayek is usually seen as a very moderate libertarian, if libertarian at all, because part 3 of *CoL* provides support for many types of welfare state policies. But this should not distract us from realizing that he remains, in other regards, a very radical liberal. He argues that post-hoc social costs should be irrelevant, which is why he is not a classical utilitarian. In Hayek’s view, the constraints on people’s plans should be universal rules, known in advance of the formulation of the plans, such that the plans can be made with the knowledge of those rules.

A key part of his argument is concerned with the *lack of knowledge* of actually changing the rules in an ad hoc manner. Building on his classic argument about the use of knowledge in society (Hayek 1944), Hayek writes in *CoL* that

From this foundation of the [use of knowledge in society] argument for liberty, it follows that we shall not achieve its ends if we confine liberty to particular instances where we know it will do good...We shall never get the benefits of freedom, never obtain those unforeseeable new developments for which it provides the opportunity, if it is not also granted where the uses made of it by some do not seem desirable. *It is therefore no argument against individual freedom that it is frequently abused. Freedom necessarily means that many things will be done which we do not like* (Hayek 1960, p. 83, emphasis added).

To understand Hayek’s position, it is critical to resist the temptation of misinterpreting him as a deontologist. Although he is raising issues with utilitarianism that are also commonly raised by deontologists, his solution to these issues is not to postulate any kind of natural law. Indeed, this is perhaps the most important reason why Rothbard (1958) hated *CoL* so much.

Hayek's point about the importance of common law is related to his desire to open up entrepreneurial creativity. In his view, legislative and administrative bodies do not have the knowledge, and hence the capacity, to create and adjust the rules in response to the social problems created by people's entrepreneurial creativity. The best they can do is create broad universal rules. Common law, by contrast, due to its bottom-up evolutionary nature, is better suited to incorporate complex knowledge, in a manner analogous to the price system (e.g. see Ostrom 1991). Common law is thus a highly valuable component of the liberal society because, without it, society will be less well-equipped to address the various social costs created by perpetual entrepreneurial creativity. This is why he can maintain the concern with rule of law contained to the legislature (just as in *RtS*). Common law, by contrast, has both the purpose and the ability to aggregate knowledge, and is, thus, better suited to providing a regulatory response to entrepreneurial disruptions.

As far as I can tell, this is Hayek's position: (1) He takes the very radical stance of rejecting post-hoc changes in rules, even if such changes make sense on efficiency grounds. In order to preserve people's freedom to make plans (the most fundamental of all freedoms), rules cannot be changed once we find out that we don't like some of the plans that people have made. But, if that's the case, how are we to cope with some of the problems that will unavoidably rise? (2) In Hayek's view, it is the role of the common law bottom-up process of creating rules via precedents to solve such problems. Top-down legislation does not have the knowledge capacity to address such issues, and, if we try to use it, the process will also be corrupted via rent-seeking and regulatory capture.

4. BEYOND NEGATIVE FREEDOM, 2: THE UBIQUITY OF EXTERNALITIES

A second reason Hayek thinks negative freedom alone is insufficient, and does not provide a strong bulwark against overreach and abuse, is because externalities are omnipresent. This is a very common anti-market trope (e.g. Stiglitz 2024), and it might be surprising to see Hayek employing it. He argues that because externalities are omnipresent, one needs a different criterion for deciding *which* negative externalities should be addressed and which are just part of life in a complex society. He points out that Mill's attempt to separate private from public sphere on purely conceptual grounds fails to address the key point (the ubiquity of externalities):

Attempts have often been made, notably by John Stuart Mill [ref. to *On Liberty*], to define the private sphere that should be immune from coercion in terms of a distinction between actions that affect only the acting person and those which also affect others. But, as there is hardly any action that may not conceivably affect others, this distinction has not proved very useful. It is only by delimiting the protected sphere of each individual that the distinction becomes significant. Its aim cannot be to protect people against all actions by others that may be harmful to them but only to keep certain of the data of their actions from the control of others. In determining where the boundaries of the protected sphere ought to be drawn, the important question is whether the actions of other people that we wish to see prevented would actually interfere with the reasonable expectations of the protected person (Hayek 1960, p. 212).

This ubiquity of externalities means that the presence of a negative externality cannot, by itself, be used as a criterion to define the proper range of government activities. Strictly applied, the requirement to protect negative freedom implies a near unlimited scope for government intervention.

The economic answer to this problem, as developed in the *Calculus of Consent*, is to compare the costs and benefits of trying to curtail negative externalities, and one can note that it is often that case that living with certain negative externalities involves a lower social cost than trying to address them (Buchanan and Tullock 1962, ch. 5-8). This is not, however, the path that Hayek chose.

He did not choose this economic approach to the matter for the same reason he moved from the quantitative concept of choice and opportunities (used in *RtS*) to emphasizing psychological autonomy. Hayek

became increasingly concerned about the use of utilitarian reasons, and economic efficiency rationales, as arguments in favor of the regulation of markets. As seen above, he is making a rather radical defense of creativity.

Sometimes he sounds dangerously close to making deontological arguments. For instance, he notes that efficiency arguments based on negative externalities could justify restrictions of freedom of speech and of religion, which he interprets as a *reductio ad absurdum* for the efficiency argument:

In particular, the pleasure or pain that may be the pleasure or pain that may be caused by the knowledge of other people's actions should never be regarded as a legitimate cause for coercion. The enforcement of religious conformity, for instance, was a legitimate object of government when people believed in the collective responsibility of the community toward some deity and it was thought that the sins of any member would be visited upon all. But where private practices cannot affect anybody but the voluntary adult actors, the mere dislike of what is being done by others, or even the knowledge that others harm themselves by what they do, provides no legitimate ground for coercion (Hayek 1960, p. 212).

The question becomes: if we see the problem with the efficiency argument in the case of freedom of speech and religion, why don't we see the same kind of problem in the case of economic freedom?

In a notable footnote to this discussion, he pushes the matter to a very progressive position for 1950s America (although less unusual for the inter-war Vienna of his youth):

The most conspicuous instance of this in our society is that of the treatment of homosexuality. . . . private practice among adults, however abhorrent it may be to the majority, is not a proper subject for coercive action for a state whose object is to minimize coercion (Hayek 1960, p. 212, fn. 19).

This is a particularly salient example of the connection between autonomy and rule of law that Hayek is going for. Legalizing homosexuality can be advocated *both* from the point of view of the autonomy of the people involved (and of the fact that others should not have a say regardless of how offended they might feel), *and* from the point of view of rule of law (i.e. having the same rules for everyone, rather than discriminate based on group identity). Moreover, simply implementing the rule of law condition will, as a side-effect, automatically enable more autonomy, which is Hayek's key point.

This example of civil rights progressivism is also important as a counterpoint to the perceived social conservatism embedded in Hayek's support for the social evolution of norms. A key concern, raised by James Buchanan and others (Buchanan and Brennan 1985, ch. 1), is that social evolution by group selection is not guaranteed to care about individual welfare—terrible illiberal rules might emerge and persist. I don't think Hayek ever addressed this criticism, but perhaps his argument would've been that (1) we can distinguish good from bad rules (normatively) by seeing which rules are compatible with the ideal of personal autonomy, and (2) the adoption of an impartial rule of law system *both* (a) protects autonomy and (b) makes a society more prosperous and powerful. Hence, we should expect the evolutionary process of group selection and institutional competition to give the edge to rule of law societies, which are also the more liberal societies. This argument goes back to the discussion of Caldwell's critique discussed earlier.

To summarize, Hayek thinks that:

- (1) negative freedom is an important (essential) concept, but by itself insufficient because:
 - a. it cannot establish which negative externalities should be addressed and which should be ignored (tolerated);
 - b. it cannot establish under which conditions other welfare criteria should prevail;
- (2) psychological autonomy is better suited than economic efficiency to provide a good criterion for:
 - a. deciding which negative externalities should be tolerated;
 - b. justifying rule of law, and evaluating whether we have rule of law.

- (3) Hayek’s proposed solution to the problems created by rigidly sticking to rule of law and personal autonomy is to rely on bottom-up common law instead of top-down legislation.

5. THE SEARCH FOR A “TRULY LIBERAL RADICALISM”

Hayek’s concerns about the ease with which efficiency arguments and utilitarianism can be used to advocate for socialism and for various welfare state policies that he considers dangerous (as he sees them creating slippery slopes toward full-blown socialism or fascism), a concern wrapped with his dislike for John Stuart Mill,¹ find, once again, a striking parallel in Gasset’s writing:

When, proceeding through the century, we reach the great theorists of liberalism—John Stuart Mill and Spencer—we are surprised to find that *their supposed defense of the individual is based not on the question of whether liberty is of profit or advantage to the individual, but, on the contrary, on whether it is of profit or advantage to society* [emphasis added]. The aggressive-looking title that Spencer chose for his book—*The Man versus the State*—has caused a great deal of willful misunderstanding among those who go no farther in a book than the title. Actually, as used in this title, the terms “man” and “state” mean simply two organs of the same subject—society—and the matter of discussion is whether certain social needs are best served by one organ or the other. That is all. Spencer’s famous “individualism” is continually at odds with the collectivist atmosphere of his sociology. Fundamentally both he and John Stuart Mill treat the individual with the same sociolizing cruelty that termites display toward certain of their fellow beings (Gasset 1962, pp. 64-65).

The fact that classical liberals like Spencer and Mill advocated for individual liberty on the grounds that this “benefited society” opened the door for a wide range of caveats—cases when individual freedom should be restricted because “‘society’ would be better off”. This is the failure of the “presumption of freedom” approach. This collectivist concept of economic efficiency, in both Gasset’s and Hayek’s views, does not in fact provide a good criterion for when individual freedom should be restricted. Gasset’s diagnostic of the demise of classical liberalism puts the blame on its own internal collectivism:

The “old liberals” therefore took no special precautions against collectivism, breathing it in with the very air around them. But when one has seen not only the good but also the terror and frightfulness of this social phenomenon, the plain fact of the collectivity per se, one can only adhere to an entirely new kind of liberalism, less naive, more skillful in its encounters, a liberalism that will soon be coming into its own and that even now can be distinguished on the horizon (Gasset 1962, p. 66).

Hayek’s impetus to write *CoL* was partially to provide a better foundation for this new type of liberalism. As he famously put it:

We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia, a program which seems neither a mere defense of things as they are nor a diluted kind of socialism, but a truly liberal radicalism which does not spare the susceptibilities of the mighty (including the trade unions), which is not too severely practical, and which does not confine itself to what appears today as politically possible (Hayek 1949).

It is safe to say that the new liberalism that Gasset thought he was seeing on the horizon, a liberalism that would unapologetically defend individual freedom as an intrinsic good, never actually materialized. Neither did Hayek’s similar vision of a “truly liberal radicalism”. Hayek did try to do his part, by writ-

ing *CoL*. This is indeed a book that tries to provide a foundation to the idea of “truly liberal radicalism”. However, because it is not a *libertarian* book (it accepts the legitimacy of a wide range of welfare state policies), its radicalism has not been widely recognized or appreciated. What makes *CoL* truly radical is the view of unconditional maximization of autonomy (as the proper concept of freedom), even in cases where this conflicts with the maximization of economic efficiency (as in economic-style utilitarianism). What makes it interesting is that it provides a genuinely radical take on liberalism without being another version of libertarianism.

Because most readers of *CoL* have typically come from a libertarian background, they have either missed the nature of Hayek’s radicalism, or have tried to shoehorn *CoL* into the standard libertarian picture (e.g. ignoring that Hayek’s definition of “coercion” is much broader than just negative freedom), misreading Hayek as just another moderate libertarian. People like Rothbard (1958) recognized the deep incompatibility between Hayek’s vision of radical liberalism and his own version of libertarianism, as Hayek rejected all the foundations of Rothbardian/Nozickian/Randian libertarianism: natural rights, negative freedom, and rational constructivism. In Rothbard’s picture, Lockean-style natural rights provide the proper scope of negative freedom (defining what counts as “aggression”), within this scope negative freedom is supposed to be unlimited (this is the source of libertarian radicalism), and we are supposed to be able to rationally deduce the proper form of legislation that implements and maximizes this natural rights freedom (e.g. Rothbard (1982) thought that such rationally constructed legislation can replace the entire body of common law). Hayek, by contrast, was coming from and coping with the issues of classical liberal utilitarianism.

Hayek, like Mises (1949), rejected natural rights as a proper foundation of liberalism because they saw natural rights successfully used by socialists in arguing for the broad expansion of “natural” rights to include a wide range of desirable social outcomes as well as various social justice causes. In other words, natural rights provided a just as, if not more, brittle foundation for liberalism as utilitarian economic efficiency.² The main challenge for Hayekian radical liberalism is not Rothbardian libertarianism, but Isaiah Berlin’s critique of autonomy (positive freedom) on the grounds that it, too, is subject to the same kind of progressive expansion and dilution (Berlin 1969).

This being said, it is worth noting that Hayek does occasionally fall back into old-fashion rule utilitarianism, suggesting that maybe he has not thought-through his position fully, or maybe his individualism is not quite as radical as Gasset’s. For instance, he writes that “[o]ur faith in freedom does not rest on the foreseeable results in particular circumstances but on the belief that it will, on balance, release more forces for good than for bad” (Hayek 1960, p. 83). Or, “Liberty is essential in order to leave room for the unforeseeable and unpredictable; we want it because we have learned to expect from it the opportunity of realizing many of our aims” (Hayek 1960, p. 81). These are instrumentalist arguments in favor of individual freedom, similar to Spencer’s or Mill’s, rather than radically liberal (or at least not as radical as Gasset wanted). But even in such cases, Hayek’s impetus is to defend the radical adoption of freedom.

6. THE TENSION BETWEEN LIBERALISM AND DEMOCRACY

The main difference between *CoL* and *LLL* is that Hayek becomes far more concerned about the trade-offs between democracy and capitalism. As such, while in *CoL* he primarily emphasizes the complementarity of democracy to rule of law and market freedoms, in *LLL* he becomes more concerned about the dangers of “unlimited democracy”.

Nonetheless, *CoL* also contains warnings that could be read as anti-democratic. A better read is probably that he is concerned about policies that undermine *rule of law*—he believes that democracy constrained by rule of law is an essential component of a free society. By the time he writes *LLL*, however, he is increasingly concerned that democracy cannot be constrained. This eventually leads him to speculate if it’s possible to have even temporary liberal dictators.

The idea of a tension between liberalism and democracy makes an appearance in *CoL* in the form of a striking quote from Gasset's 1921 book *Invertebrate Spain*:

Liberalism and Democracy happen to be two things which begin by having nothing to do with each other, and end by having, so far as tendencies are concerned, meanings that are mutually antagonistic. Democracy and Liberalism are two answers to two completely different questions. Democracy answers this question—"Who ought to exercise the public power?" The answer it gives is—the exercise of public power belongs to the citizens as a body.

But this question does not touch on what should be the realm of the public power. It is solely concerned with determining to whom such power belongs. Democracy proposes that we all rule; that is, that we are sovereign in all social acts.

Liberalism, on the other hand, answers this other question,—'regardless of who exercises the public power, what should its limits be?' The answer it gives—'Whether the public power is exercised by an autocrat or by the people, it cannot be absolute: the individual has rights which are over and above any interference by the state' (Gasset, cited by Hayek 1960, p. 167, fn. 2).

Hayek echoes this, arguing that:

Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law. Liberalism regards it as desirable that only what the majority accepts should in fact be law, but it does not believe that this is therefore necessarily good law. Its aim, indeed, is to persuade the majority to observe certain principles. It accepts majority rule as a method of deciding, but not as an authority for what the decision ought to be (Hayek 1960, p. 167).

As mentioned earlier about the challenges faced by pluralistic accounts of freedom, a key challenge is to specify the order of precedence between different types of freedom in situations in which conflicts/tradeoffs occur between concepts. The tension between individual liberty and democracy is perhaps the most important of these, although Hayek is keen on emphasizing that the two often go hand in hand: "democracy is an important safeguard of individual liberty" as "it is more likely than other forms of government to produce liberty" (Hayek 1960, p. 173).

Chapter 7, "Majority Rule" in *CoL* provides a series of justifications for democracy, ranging from Mises' pragmatic point that democracy is a way to avoid violent transfers of power ("Democracy is the only method of peaceful change that man has yet discovered" (Hayek 1960, p. 172) to Tocqueville's epistemic justification. These justifications can also be understood as establishing the range of applicability of democracy. As Hayek put it, "[i]f democracy is a means rather than an end, its limits must be determined in the light of the purpose we want it to serve" (Ibid.).

In line with Hayek's concerns with knowledge in the realm of markets, Hayek is also most impressed with the Tocquevillian epistemic justification of democracy (Wohlgemuth 2002; Boettke, Tarko, and Aligica 2016; Boettke 2018), which he deems "the most powerful": "democracy is the only effective method of educating the majority" (Hayek 1960, p. 174). As he explains:

Democracy is, above all, a process of forming opinion. Its chief advantage lies not in its method of selecting those who govern but in the fact that, because a great part of the population takes an active part in the formation of opinion, a correspondingly wide range of persons is available from which to select. We may admit that *democracy does not put power in the hands of the wisest and best informed and that at any given moment the decision of a government by an elite might be more*

beneficial to the whole; but this need not prevent us from still giving democracy the preference. It is in its dynamic, rather than in its static, aspects that the value of democracy proves itself. As is true of liberty, the benefits of democracy will show themselves only in the long run, while its more immediate achievements may well be inferior to those of other forms of government (Hayek 1960, p. 174, emphasis added).

As noted by Boettke, Tarko, and Aligica (2016), this Tocqueville-Hayek justification of democracy, emphasizing the process of change and learning, is more subtle than the Caplan (2008) critique of democracy focusing on the stationary inefficiencies. To mount a proper epistemic critique of democracy, one needs to show that democracy fails as a collective learning process. This is actually precisely Hayek's approach to establishing the proper limits of democracy. Boettke (2018) calls this "epistemic institutionalism", i.e. we need to ask which institutions are best suited for fostering collective learning.

The epistemic justification serves the purpose of justifying why we should have democracy and of establishing the limits of democracy.

First, because the process of learning requires discussion and experimentation, freedom of speech and association for minority points of view must be secured. Here Hayek follows and cites J. S. Mill standard argument. Interestingly, Hayek's justification of some level of decentralization and federalism follows from his belief in the *limits* of rational argument and rational persuasion. People often learn only by observing actual experience:

Though discussion is essential, it is not the main process by which people learn. Their views and desires are formed by individuals acting according to their own designs; and they profit from what others have learned in their individual experience. . . . It is because we normally do not know who knows best that we leave the decision to a process which we do not control. But it is always from a minority acting in ways different from what the majority would prescribe that the majority in the end learns to do better (Hayek 1960, p. 176).

Second, democracy must be kept in "the limits within which it can work effectively and within which the majority can truly direct and control the actions of government" (Hayek 1960, p. 182). The epistemic justification gives us a way of thinking about this. For example, when the scope of democracy is increased, with the government given a wider range of tasks, (a) the epistemic overload for the average voter, as well as for the press, is increased, and (b) the capacity to control government is decreased (politicians have more opportunities to implement unpopular things, as each thing is diluted within a larger pool of issues).

The argument here involves a quite subtle understanding of complexity theory. The public is entitled to live under the rules they prefer (the ideal of self-governance). The problem is that there is substantial uncertainty about the connection between rules and outcomes. Ideally, we learn over time which rules are more likely to generate the outcomes we like. Hayek's complexity point is that trying to specify the rules with too much specific details (in order to achieve very specific desirable outcomes) makes learning more difficult (in the limit impossible). When the rules are complex, there are many moving parts, many factors interacting in complex non-linear ways, which makes it harder to establish causality. Which institutional details are actually responsible for the bad outcomes, and which specific changes would improve the situation? When there are too many moving parts there is no way to tell. Even experts won't be able to tell, let alone the general public. When we are asking democracy to achieve overly specific goals, we are undermining its capacity to enable collective learning. Hayek brings this type of argument back to the concern about rule of law:

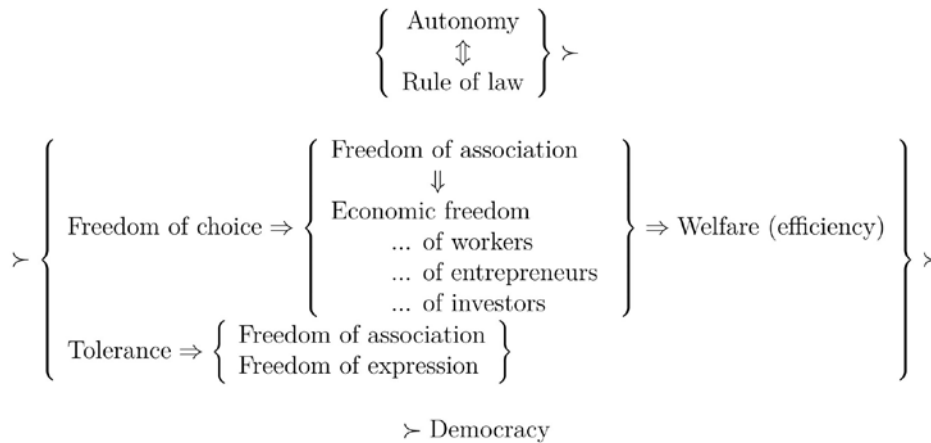
So long as democracy constrains the individual only by general rules of its own making, it controls the power of coercion. . . . And once it is generally accepted that majority decisions can merely indicate ends and that the pursuit of them is to be left to the discretion of the adminis-

trators, it will soon be believed also that almost any means to achieve those ends are legitimate (Hayek 1960, p. 182).

Rule of law has two distinct justifications, one on the side of incentives and one on the side of knowledge. On the incentives side, rule of law is a way of preventing corruption and the abuse of power—making sure that political power cannot be captured and run in the interests of special groups. On the knowledge side, rule of law is a heuristic that tells us how to keep the complexity of laws low enough to preserve the learning capabilities of the democratic process. It is not an accident that, as we have moved further from the rule of law ideal, we have given increased powers to the administrative state—i.e. we have also moved further from the ideal of self-governance. The increased complexity of rules is no longer suitable for the democratic learning process, but instead of moving toward simpler rules, we have instead moved toward increased role for expert rule.

7. CONCLUSION

The following highlights Hayek’s pluralistic account of political liberty:



The implications (\Rightarrow) represent either conceptual or empirical connections. The preference relation (\succ) reflects which concept of freedom has priority in cases in which a trade-off is involved.

Autonomy (ability to make personal plans without being subjected to the arbitrary will of others) and rule of law (everyone is subjected to the same collective rules) stand at the foundation of Hayek’s system, and they are understood to mutually support each other.

Economic and social liberties are mirror images of each other, two sides of the same freedom of association. As Hayek points out, it is widely understood and accepted that, in a liberal democracy, tolerance (e.g. religious and ethnic rights) takes precedence both over majority rule and over considerations of efficiency. One should not, e.g., curtail freedom of religion of a particular group on the grounds that the majority finds them offensive or on the grounds that their churches could generate more economic value if turned into some commercial spaces. Hayek argues that the same logic should apply to economic rights. The most provocative argument he makes here is that entrepreneurial freedom should take precedence over both majority rule and efficiency. Entrepreneurial freedom—acting upon the “consciousness of what is possible to us”, to use Gasset’s words—is at least as fundamental (if not more) form of expressing one’s identity as freedom of speech or freedom of religion.

Freedom of association (in its various aspects) stands in the middle of Hayek's preference ordering. On one hand, personal autonomy takes precedence. Hayek is an individualist. For instance, if someone wishes to leave a minority religion and join the majority, they should be able to do so, even if such an act might be conceived as a betrayal by the other members of the minority group. This kind of tension is less prevalent on the economic freedom side, but not entirely impossible. Refusal to join a union, although such act might involve free-riding on the actions of the union (Olson 1965), can be an example. Concerns about various types of possible addictions could also be examples—if we interpret such choices as reducing one's autonomy.

On the other hand, all these aspects of freedom of choice, both social and economic, take precedence over democracy. In other words, for Hayek, such freedoms provide the constraints on what democracy should be allowed to do. As we have seen, Hayek argues that, in many cases, democracy is actually a method of *securing* these freedoms. However, this is not true under all circumstances.

Hayek provides a sophisticated *epistemic* argument about the limits of democracy, in addition to the more conventional arguments about the danger of factions and special interests. He argues that too much complexity of rules impedes the ability to collectively learn (and form consensus about) which rules are effective at generating desirable outcomes, and spurs the transition from self-governance to increased reliance of administrative expert rule. Rule of law can be seen not just as a defense against corruption and abuse, but also as a heuristic against increasing rule complexity too much.

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NOTES

- 1 This dislike is quite nuanced, though, as both Gasset and Hayek give high praise to Mill for his support for freedom of speech (e.g. see Hayek 1960, p. 178).
- 2 Mises' solution to this problem is to argue that, rigorously considered in all its implications, rule utilitarianism does in fact lead to supporting the minimal state.

Freedom and Liberalism: Hayek, Buchanan, and Sen Compared

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Abstract: The defence of liberalism remains necessary, again, in the face of rising populism and authoritarian trends that characterize our societies. This article starts from Friedrich Hayek’s seminal work, *The Constitution of Liberty*, to explore two essential elements central to liberty and liberalism: the normative foundation of freedom and the principle of generality. By comparing Hayek’s ideas with those of James Buchanan and Amartya Sen, the paper proposes complementary perspectives on the nature and defence of liberty. While Hayek emphasised the rule of law and spontaneous order, Buchanan advocated for constitutional constraints to protect individual autonomy, and Sen highlighted the expansion of human capabilities as a measure of freedom. Together, these perspectives offer a multidimensional vision of liberty, rooted in respect for individual autonomy and sustained by institutions that promote equality and opportunity. This synthesis provides a robust constitutional framework for the defence of liberalism in contemporary society.

Keywords: Hayek, Buchanan, Sen, The Constitution of Liberty, Generality, Capabilities

JEL Classification: B21, B31, B41, B53

1. INTRODUCTION

Growing populism from both the right and left, as well as a rise in identity politics seems to be challenging the liberal project (Fukuyama 2022; Karlson 2023; Mounk 2018, 2023; Boettke 2017-2018, 2018). As economist Peter Boettke explained,

True liberalism today faces a serious problem from ideas emerging from a new generation of socialists on the left and from conservative movements on the right, some of which claim to follow liberalism’s own time honoured teaching about the sanctity of private property rights and freedom of association. Both sides are fuelled by populist rhetoric and disillusionment born of discomfort from having to adapt to an ever-changing globalized world (2017-2018, p. 25; 2018, pp. 258-259).

“Liberalism is,” therefore, “in need of renewal” (Boettke 2017-2018, p. 25; 2018, p. 258), a renewal that undoubtedly means going back to its foundational principles, to its core concepts or, even more precisely and more strongly, means going back to its *soul*. That was the claim James Buchanan made in “The Soul of Classical Liberalism” (2000): liberalism, and liberals, need a “vision”. But on what should this vision be

based? Buchanan's answer was clear: "on the central, and simple, notion that 'we can *all* be free'" (2000, p. 117; italics in original). How, then, can liberalism be defended—or renewed—by reenvisioning what it means to be free?

The question is not new. For centuries, philosophers, economists, and political theorists have grappled with its meaning and implications, emphasizing what can be viewed as the dual nature of this concept: on the one hand, the need to avoid coercion (a sort of freedom from) and, on the other, the importance of allowing human flourishing (freedom to). In this paper, we go back to this very question, and to the same claim, arguing that a defence of freedom, from the perspective of liberalism or true liberalism, needs to combine specific institutions and rules and also an ethical rule—namely, Kant's maxim that each person should be treated as an end and not as means.

Indeed, there is the need for a normative foundation—a framework that defines freedom not simply as the absence of constraints but as the enabling condition for individuals to pursue their own goals, irrespective of what those goals might be. Here, a Kantian perspective provides a valuable lens: freedom, in this view, must be conceived as a principle of universal dignity, allowing people to become what they wish to be, even when their future aspirations are unknown. This leads us to a second crucial element that one finds in the works of these three major economists, the principle of generality, which addresses the practical challenge of translating the abstract ideal of freedom into a workable system of rules. Generality requires that laws and institutions apply equally to all, without favouritism or arbitrary exceptions. It demands that we resist the temptations of partiality and ensure that the structures of power are constrained by principles that transcend individual or group interests. This principle is not only a safeguard against tyranny, but also a cornerstone of the trust and predictability necessary for free societies to thrive.

The significance of these two elements becomes clearer when we examine the contributions of three towering figures of modern economic thought whose work also offers profound insights into the nature and defence of freedom: Buchanan, Friedrich Hayek and Amartya Sen. What we want to do in this paper is to start from Hayek's work and derive these two elements that, in our view, are crucial to define or characterize liberty and a liberal project—institutions and generality—and compare them to the views of Buchanan and Sen. This is our way to pay tribute to one of the most important books written by Hayek, his masterpiece, *The Constitution of Liberty* (1960/2011).

Obviously, each of these thinkers approaches liberty from his own perspective, although perhaps from (not so) different intellectual traditions. Hayek saw liberty both as an important end for society, condemning coercion or the lack of freedom as evil, and as an important means for a society's flourishing, taking a consequentialist view with freedom as a key ingredient to progress.¹ Buchanan primarily saw freedom as an end, believing it should be "the overriding objective for social policy" (1975, p. 4). He also saw freedom as a means, in that it allows man to become the man he wants to be. Sen (1999, p. 3) similarly viewed freedom as the 'overarching objective' of society as well as the means by which people are able to live the lives they have reason to value. However, despite these differences, these three economists all, and this is our argument, converge on the two critical elements for a robust defence of liberty mentioned above.

By comparing these perspectives, this article seeks to uncover what is essential for a constitutional defence of liberty. The synthesis of their ideas points to a vision of freedom that is both principled and pragmatic—rooted in respect for individual autonomy yet attentive to the conditions necessary for its exercise. At a moment when liberalism is criticised, such a vision offers not only a theoretical framework but also a roadmap for action, reminding us how urgent and important the defence of liberty is.

2. HAYEK'S POSITIVE FREEDOM AND THE RULE OF LAW

In *The Constitution of Liberty* (1960/2011), Hayek started with the rather ambitious and challenging—but necessary, before embarking on a discussion of the institutions that may protect it—task of defining liberty. Looking for this definition, and explaining why other definitions were not relevant, is a central theme of

the book—as it was of another of Hayek’s important books, *The Road to Serfdom* (1936). It is thus not a surprise that what Hayek said of freedom and liberty drew significant attention.

In particular, among the many aspects of Hayek’s book that were discussed was the way freedom was defined, i.e., as the absence of coercion—for instance, the first section of the first chapter of the book is entitled “Freedom as absence of coercion”. And, more precisely, Hayek was targeting the “coercion” coming from or exercised by other men: individual freedom is the “state in which a man is not subject to coercion by the arbitrary will of another or others” (Hayek 1960/2011, p. 11). Later in the book, Hayek would repeat that he is “concerned in this book with that condition of men in which coercion of some by others is reduced as much as is possible in society. This state we shall describe throughout as a state of liberty or freedom” (Hayek 1960/2011, p. 57). This definition underscores what was crucial to Hayek, the constraints imposed by other individuals or groups, rather than those arising from external circumstances.

The emphasis put on coercion, and its absence, did not go unnoticed. One reviewer, Sidney Sufrin, noted that coercion was Hayek’s “ideological enemy” (1961, p. 201). Others were more precise. Ronald Hamowy argued that Hayek’s book’s “main thesis” was that freedom should be defined “as the absence of coercion” (Hamowy 1961, p. 32; see also Hamowy 1971, p. 352). French political philosopher Raymond Aron (1961, p. 200) also stressed that Hayek’s definition was centred on the “absence of coercion”, as well as economist Lionel Robbins (1961, p. 67) who similarly observed that “Professor Hayek’s conception of liberty, like that of the great liberal thinkers of the past, runs in terms of absence of arbitrary coercion” (see also Viner 1961, p. 231; Stoppino 1961, p. 772; Rees 1963; p. 348).² Thus, as Aron noted, Hayek had adopted a “negative definition” of freedom—“La liberté est définie d’abord négativement par l’absence de *coercition* ou de contrainte” (1961, p. 200; italics in original)³. Robbins made the same comment, adding an important reference to “Sir Isaiah Berlin’s useful classification” and to the fact that Hayek’s definition corresponds to Berlin’s “negative conception” of liberty (1961, p. 67).

Defining freedom in negative, rather than in positive, terms could be problematic. This was precisely a point that both Aron and Robbins, as well as others who did not refer to a negative definition or to Berlin, made. What is it exactly that should be protected, if what has to be protected is characterized in terms of *absence*? This is exactly the criticism Hamowy (1961, p. 32) raised in his review of the book, when he noted the “lack of clarity” Hayek’s distinction has “between coercive and non-coercive acts” because Hayek did not say or define what should be protected from coercion. Charles Hyneman (1961, p. 87) made the same criticism from the perspective of a defence of the welfare state—to avoid coercion one might be obliged to remove “programs that mark the welfare state”. The consequence of such an indeterminacy is the impossibility to distinguish coercion from non coercion. As Jacob Viner (1961, p. 231) wrote, the frontier between freedom and coercion was very difficult to trace.⁴ Freedom becomes a sort of “empty shell,” that lacks substantive content and real foundations. The criticism was raised against Berlin (see Taylor 1985, for instance), and also against Robert Nozick’s definition of freedom (1974): can a negative freedom, can an absence, have foundations? Hardly, said many scholars of Nozick, as John Meadowcroft (2024) reminded us.

The reference to Nozick is useful because, Meadowcroft showed, the criticism does not hold, and because Nozick did address the issue by grounding his theory of liberty in *Kantian* ethics. According to Nozick, Meadowcroft argued, individuals possess rights that must be protected and that ensure they are treated as ends in themselves, not merely as means that others can use to pursue their goals. These rights imply that individuals “are ends and not merely means”. In that case, “they may not be sacrificed or used for achieving of other ends without their consent. Individuals are inviolable” (Nozick, quoted in Meadowcroft 2024, p. 181). We argue that this is also how Hayek’s definition of freedom can be defended: there exists a Kantian foundation of freedom in Hayek’s *The Constitution of Liberty*. One must note it is the absence of positive rights that should be protected, as in Nozick.⁵

Hayek (1960/2011, p. 208) himself seems to have suggested such a possible foundation when he spoke of “a famous maxim” which is precisely Kant’s maxim—“Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only”. That is however not all.

A single reference would not be sufficient to ground an entire analysis. The point we make is rather that Kant is, even if implicitly, present in the way Hayek defined and explained his concepts of freedom and coercion. We suggest that Hayek's claim that free individuals cannot be "subject[ed] to another man's will" (1960/2011, p. 221)—or, conversely, that "[c]oercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose" (1960/2011, p. 133)—implies that freedom requires recognizing others as having their own ends, while coercion involves treating others as mere means.

It is certainly true that Hayek's freedom is "freedom from *subjection* to the will of others, and not as freedom *to do* anything in particular" (Viner 1961, p. 231; italics in original). In Hayek's view, being free does not imply being able to do anything in particular—Hayek criticised Dewey's views of freedom as the "effective power to do specific things" (1960/2011, p. 67)—but to do anything each individual wants to do (without having to face any interference from the others).⁶ This is why Hayek's freedom is also *positive*: "[i]t becomes positive only through what we make of it. It does not assure us of any particular opportunities, but leaves it to us to decide what use we shall make of the circumstances in which we find ourselves" (Hayek 1960/2011, p. 70). The absence of coercion implies that each individual possesses a private sphere and being free means having this private sphere protected—"Freedom thus presupposes that the individual has some assured private sphere" (Hayek 1960/2011, p. 61). Hayek thus drew a line around the individuals, an "invisible border" that must not be transgressed. What is inside this sphere, within the border—and Hayek seems to have suggested that this has to do with the ends and means the individuals have—must be decided, chosen by the individuals themselves. Freedom is therefore a matter of individual responsibility. When this sphere is not protected, and an individual or entity (the state, in particular) encroaches upon it, freedom is replaced by coercion.

The point we would like to make is that when freedom is replaced with coercion, when their private sphere is not protected, then individuals are treated as means, and not respected as ends. It seems that Hayek suggested this when he explained "law" and how it should be distinguished from "command" (1960/2011, pp. 214-231).

In Hayek's mind, there is no doubt that command is coercive, and the reason for this is that the individual who has to obey a "command" chooses neither the ends he pursues nor the means to use to reach these ends. A command is oriented towards the realisation of a specific outcome; it results from the objectives, ends and means, of the person who issued it. As a result, it violates Kant's maxim, reducing the individual who has to execute it to a means, a means to reach the ends of someone else. Indeed, a command, Hayek told us, is an "order that tells a man to do particular thing here and now". Or, even more precisely,

The ideal type of command determines uniquely the action to be performed and leaves those to whom it is addressed no chance to use their own knowledge or follow their own predilections. The action performed according to such commands serves exclusively the purposes of him who has issued it (Hayek 1960/2011, p. 218).

This is what happens in primitive societies, Hayek said to illustrate his purpose, where "the chief prescribes on every occasion every detail of the actions of his subordinates" and the latter become "*tools*, without an opportunity of using their own knowledge and judgment" (1960/2011, p. 218; italics added). It also happens in less primitive, or more evolved, societies, whenever the ends the individuals have to pursue are determined by another individual; Hayek cited the case of an individual who is employed by someone else or the example of a servant. Societies ruled by "customs" are also coercive because customs "often prescribe specifically how [the individual] must proceed to achieve particular results, or what he must do at particular times and places" (Hayek 1960/2011, p. 219). Therefore, issuing commands (and organising a society around commands) curtails freedom. Issuing commands is also what the "arbitrary government" of a "collectivist" society does when it "directs the use of the means of production to particular ends" (Hayek

1944/2007, p. 113). In these societies, governments use rules as a means for “ordering people where to go... and commanding people which road to take” (Ibid., pp. 113-114). They use rules to give “specific orders” (ibid., p. 115), to “impose its valuations upon people and... choose the ends for them” (Ibid.). They do not let individuals decide by themselves and make their own choices. This is clearly coercive, and also violates Kant’s maxim: the government does not treat individuals as persons who have their own ends.

The only means to avoid coercion, to protect the individual and their private sphere and thus to respect individuals as ends, is to resort to the “law”. Or, to be more precise, to organise human interactions around what Hayek called the “true law” or the “law of liberty”, that also corresponds to the Rule of Law about which he wrote in particular in *The Road to Serfdom* (1944/2007), when he wrote about the Rule of Law, “one of [the] greatest achievements” of “the Liberal age”, “a safeguard” and “the legal embodiment of freedom” (1944/2007, p. 118).

Hayek insisted on the importance of this type of rules, which differ from the rules of command and also from what we most of the time understand as law and which corresponds to *legislation*, for freedom. By contrast with legislation, and with command too, the “true law” is *not* created by human reason, rather it is the product of a spontaneous process. It results from human action and not from human design, to use a sentence Hayek frequently used. It therefore cannot be issued by anyone with the purpose of imposing ends or objectives on anyone else. The role of these rules, of any government actually, is or should be “to help individuals in the fullest development of their individual personality” (1944/2007, p. 115) and to “assist [individuals] in the advancement of their own ends”. Or, in the different and complementary terms used in *The Constitution of Liberty*, the main, actually only, objective of the “true law” is to fix the “invisible border line... within which the being and activity of each individual obtain a secure and free sphere” wrote Hayek (1960/2011, p. 215) quoting José Ortega y Gasset. And he continued, “a sphere belonging to each individual is determined, not by the demarcation of a concrete boundary, but by the observation of a rule” (Ibid., p. 216). Thus, it is important to note that the “true law” cannot be coercive because it delimits the individual’s private sphere rather than prescribing what individuals must do. The “true law” guarantees the inviolability of the private sphere on which individual freedom is grounded.

That is not all, the most important aspect of this law, of this type of rules, is that it guarantees that each individual is treated as ends and not as means, which gives a Kantian dimension to Hayek’s definition of liberty. This appears rather clearly in how Hayek detailed the term or the concept. Hayek uses it to refer to a specific type of rules, that he called the “rules of the game” (1944/2007, p. 112), which are the “*formal rules* which do not aim at the wants and needs of particular people” (ibid., p. 113) or “[t]he rules [that] merely provide the framework with which the individual must move by within which the decisions are his” (1960/2011, p. 220).⁷ These rules only “specify that in certain circumstances action must satisfy certain conditions; but all the many kinds of action that satisfy these conditions are permissible” (Ibid.). To use the language analogy (see Friedman and Friedman 1980, pp. 44-45; Mittermaier 2020, pp. 47-48), these rules of conduct are similar to the “grammar of a language” that “prescribes how things should be said (done) and not what should be said (done)” (Mittermaier 2020, pp. 47-48). They do not tell individuals what they should do and how they should do it, and hence leave individuals to decide their own ends and the means by which they are going to achieve those ends. They are therefore, and Hayek insisted on these characteristics, “abstract” and “general”. The main feature of this rule, that determines and protects the individual sphere that guarantees that each individual is not treated as a means for others’ purposes, is its *generality*.

It cannot be otherwise: the rules, the laws that have to be useful to many different individuals, all with their own specific goals and ends, cannot be specific; it would imply that different individuals are treated in the same way: “[t]o produce the same results for different people, it is necessary to treat them differently” and thus coercively (Hayek 1944/2007, p. 117). Let us, for instance, take the example of conscription that Hamowy used to show that a law could be general, applying to all individuals without discrimination, and be coercive (1961, 34; see also Hamowy 1971).⁸ What, according to us, Hamowy missed is precisely the Kantian dimension of Hayek’s definition of freedom. Conscription in Hayek’s view can be compatible with a society that protects individual freedom, limiting coercion as much as possible, as long as it follows the

generality norm. If conscription is predictable and enforced regardless of individual circumstances then it follows Kant's maxim and thus is not coercive. Hayek wrote: "if a period of military service is a foreseeable part of my career, then I can follow a general plan of life of my own making and am as independent of the will of another person as men have learned to be in society" (Hayek 1960/2011, p. 210). This offers us a clear line in the sand, if a proposed rule has individuals treated as ends, capable of being the author of their own life and not at the will of others, then the rule follows Kant's maxims and thus is consistent with Hayek's vision of a free society.

3. BUCHANAN, POSITIVE FREEDOM AND THE GENERALITY PRINCIPLE

Unlike Hayek, Buchanan never wrote a specific book in which he defined freedom. It is therefore impossible to find a unique place in which Buchanan would have explained what he meant by freedom. However, Buchanan frequently referred to freedom, up to the point that John Gray suggested to "characterize Buchanan's...research program...as an inquiry into the constitutional preconditions and constraints on individual liberty" (1990, p. 149).⁹

Indeed, his entire work can be interpreted as being centred on defence of individual liberty. A particularly good illustration of this goal is given in the article Buchanan wrote for the *University of Virginia Newsletter* to present the "Thomas Jefferson Center for Studies in Political Economy" (1958), i.e. the research Center in which Buchanan would define what he meant by economics. Buchanan then explained that economists should be political economists and defend the tradition of political economy, which meant to him that their role consisted in "examin[ing] philosophical values for consistency among themselves and with the ideal of human freedom" (1958, p. 5) and in "stimulat[ing] open and lively discussion of how a free society should be organized and preserved" (Ibid.).

When he came to explain what he meant with freedom, Buchanan also—as Hayek had—defined liberty as the absence of coercion: "As Knight has suggested, it seems desirable [...] to define freedom somewhat narrowly as the absence of coercion and unfreedom as the state of being prevented from utilizing the normally available capacities for action" (Buchanan 1954, p. 340). Here, one would notice, Buchanan did not say anything about the reasons that would prevent individuals from "utilizing the normally available capacities for action". He clarified his view later, in particular after the publication of Hayek's *Constitution of Liberty*, redefining freedom in terms of coercion from other individuals. In 1963, for instance, Buchanan spoke of "personal liberty, personal freedom from coercion by other men" (p. 3). Much later, he would insist on "the individual's desire for liberty from the coercive power of others" (2000, p. 117) and equate "genuine liberty" with the absence of coercion by others, arguing that "individuals are genuinely 'at liberty'" when "[c]oercion by another person is drained out" (Ibid.).

Buchanan, like Hayek, had seemingly chosen a negative definition of freedom. There is indeed not much in Buchanan's work, over the years, that is devoted strictly speaking to defining freedom in a different way. One nonetheless finds, maybe indirectly, a positive definition of freedom in the distinction Buchanan made between "behavior" and "choice". In different essays from the 1960s and 1970s, Buchanan explained that individuals could make "genuine" choices or not (1964, 1966, 1969a, 1969b, 1976a, 1976b). The latter—that Buchanan called "behaviors"—are "predetermined" (1969a/1979, p. 40), and consist "in direct response to stimuli" (ibid., p. 44) or, as he also said, are "purely mechanical" (Buchanan 1964, p. 218). One of the examples Buchanan gave was the behaviour of a "consumer in a supermarket": an individual who is confined to a particular place, with a limited number of goods to choose from, and thus has a problem to solve: select the best possible set of goods given his constraints (Buchanan 1964, pp. 216, 217). By contrast, there are what Buchanan called "genuine choice[s]" (1969a/1979, p. 44). Genuine choices, then, are those choices that are obviously neither predetermined nor predictable: "Choice, by its nature, cannot be predetermined and remain choice", wrote Buchanan (Ibid., p. 40). Therefore, behaviours are not free, while genuine choices are. Even if, by contrast with Hayek, behaviours are not adopted in response to

a command issued by another individual, but in response to any kind of constraint that the individual is unable to escape. These constraints coerce individuals into making choices that are not free.

Buchanan clarified the point in another pivotal article to understand his views on freedom, “Natural and Artifactual Man” (1979). “Natural man” is alienated (Marciano and Meadowcroft 2024). He is not free because he does not even question the constraints that determine his behaviour. By contrast, artificial man is the man (or the part of each individual) who is capable of escaping or *freeing* himself from the control of these constraints. Artificial man is making “genuine choices”, to become “different” or a “better” person than the person he is (1969a/1979, pp. 96-97). Or, still in other words, Buchanan also wrote that artificial man is capable of “construct[ing] himself through his own choices” (Ibid., p. 110). And it is precisely in this capacity of *construction* that evidences the positive dimension of freedom in Buchanan’s work. Individuals, in Buchanan’s view, can be said to be positively free because of what they make of their freedom. Indeed, Buchanan concluded “Natural and Artifactual Man” repeating twice (and twice in italics) that “*Man wants liberty to become the man he wants to become*” (1979, p. 112; italics original). Buchanan immediately explained his point by adding that “Man wants liberty... to keep his options open... precisely because he does not know what man he will want to become in time” (Ibid.). Freedom is not meant to achieve something precise. Much to the contrary. In this perspective, freedom can be said to be indeterminate in terms of outcome, to use the word Gray used to speak of Buchanan’s contractarianism (1990), or, in other words, freedom should not be viewed as “instrumental”. Buchanan insisted that freedom should be “the overriding objective for social policy” but “not as an instrumental element in attaining economic or cultural bliss, and not as some metaphysically superior value” (1975, p. 4). A statement that he repeated in a slightly different way a few years later: “Let us remove once and for all the instrumental defense of liberty” (1979, p. 112).

Therefore, it could be said that, in his way of defining freedom, Buchanan made the same journey as Hayek did: he started from a negative definition of freedom, viewed as the absence of coercion, to move towards a positive one, in which freedom is a means to achieve something that does not exist yet, that is not predetermined and not specific.

This journey, and Buchanan’s characterization of liberty as positive, involved a detour via Kant: Buchanan’s positive freedom is indissociable from the respect of Kant’s maxim. Let us recall that the distinction between natural man, the individual who is not free, and artifactual man, the free individual, is rooted in a distinction between “genuine choices” and “behaviors”. The *behaviours* that are mechanical, predetermined, and thus not free, are adopted by individuals who are not primarily interested in exchanging with others. Such behaviours consist in selecting an item in a set of given alternatives to maximize satisfaction or profit. Buchanan said of these individuals that they follow an “expediency criterion” or a “private maxim”, that consists in “act[ing] on the basis of expedient considerations in each particular instance that arises” (1965, p. 2). This means that such individuals, when they interact with others, focus only on their own goals or objectives. They behave as if there were no other individuals or as if others were part of their environment and not different from the objects they can use to maximize their satisfaction. Each individual views and treats others as means, as resources that can be used to pursue his or her ends, and not as ends themselves. As a result, their behaviour violates Kant’s maxim.

Alternatively, being an artifactual man, which means being free, implies being primarily interested in exchange rather than in choice. Or, put differently, exchange is indissociable from making genuine choices.¹⁰ And exchange, or genuine choices, goes with the acknowledgment of the impossibility to reach one’s ends by oneself, implying that one should treat others as *ends*, not as means. Being free means understanding that one “cannot treat other individuals as they can the physical environment” (1966/1979, p. 120). This thus means following Kant’s maxim. Buchanan was very clear about that: the individual who treats others as ends follows “the moral law” that is “something that is akin to the Kantian categorical imperative. [Each individual’s] standard for behaviour will be some version of the generalization principle” (1965, p. 7). Or, in other words, the individual who chooses the moral law,

...commits himself to act in subsequent situations on the basis of something like the generalization principle. That is, he will not act in ways other than those which allow his particular action to be universalized, regardless of the specific consequences (1965, p. 2).

To Buchanan, that “each and every person adopts, and follows, something that is akin to the Kantian categorical imperative...will tend to emerge in a small group” (1965, p. 7). Indeed, Buchanan explained, in small groups, individuals follow the Kantian maxim and treat others as ends and not as means; by contrast, in large groups, individuals ignore others, consider them as an object that would be part of their environment and therefore treat them as means (Buchanan 1965; see Marciano and Meadowcroft 2024, 2025). One way of implementing the generality principle would consist in structuring the society in small groups in which individuals would be free because they would treat others as ends. Buchanan called the society in which all the individuals would follow this moral law the “generalized world” (1965, p. 3) or even more significantly “the idealized Kantian world” (1965, pp. 3, 7). Later, he would also speak of “moral order” (2006) that he characterized as Kantian: in a moral order, “[p]ersons are treated as persons... This conception of an order of interaction finds its philosophical roots in Kant’s precept that persons are to be treated as ends and never as means” (Buchanan 2006, p. 76).

One must not forget, however, that Buchanan was also a “constitutionalist” (1973, p. 4; see also 1975b, p. 25), “a constitutionalist and a contractarian” (1978, p. 29) or even a “constitutional- contractarian” (Ibid., p. 33).¹¹ He believed in the need for a social contract, and more precisely in a social contract that is founded on, that embodies, the generality principle based on Kant’s maxim. Indeed, as Gray rightly explained, Buchanan’s contractarianism is “*indeterminate*” (1990, p. 150; italics in original), i.e. what characterizes his social contract is “its indeterminacy as to outcome” (Ibid., p. 166). Buchanan’s social contract is a frame that imposes no output or outcome—which is very close to Hayek’s rule of law, as defined earlier. In particular, as Gray noted, Buchanan does not include a list of liberties, “fixed and unalterable” (ibid., p. 164) that must be protected by the social contract. Gray’s indeterminacy means that the social contract precisely includes the “generality principle”. This echoes what Meadowcroft (2011, p. 119) noted: “The generality principle... is a constitutional rule that constraints post-constitutional politics by applying the generally accepted principle of equality before the law to politics”.

Indeed, Buchanan was very complimentary of Hayek’s work on the generality norm and saw his own work as a continuation of those ideas. In a 1997 lecture to the Japanese Public Choice Society, Buchanan said,

It is surely time that we read and understand what Hayek was telling us almost four decades past. “The Constitution of Liberty” must embody adherence to the principle of generality, whether emergent in the application of ordinary law or to the operation of majoritarian politics. All citizens must be made to play by the same rules, and all politics must be nondiscriminatory in its application (1997/1999, p. 428).

Buchanan directly built off of Hayek’s generality norm in his *Politics by Principle, Not Interest: Toward a Nondiscriminatory Democracy* (1998)—that he saw as very much influenced by Hayek’s *Constitution of Liberty*. And “Why I Too Am Not a Conservative” (2006) is largely written as a defence of the generality principle.

In this way, Buchanan is a clear proponent of utilizing general and abstract rules to create and sustain a free society. He added onto Hayek’s project by highlighting how the generality norm protects individual freedom in the face of majoritarian politics and collective decision-making. Buchanan’s conception of freedom aligns with Hayek’s and they seem to also be in agreement about how to protect that freedom, through the use of a general and abstract rule of law.

4. SEN: FREEDOM AS OPPORTUNITIES, AND BASIC CAPABILITY EQUALITY

The third scholar of our trilogy is Amartya Sen, a major theorist of freedom whose work is of much interest from a liberal perspective, and from the perspective of a comparison with Hayek and Buchanan. Sen in fact saw freedom, and more specifically “individual freedom” as one of the most important ends for a society. This freedom, which is interesting following on from the previous two sections, is in particular defined by Sen negatively. One finds in Sen’s work evidence of his conviction that the social arrangements that should be built to protect or promote individual freedom must avoid coercion. Thus, Sen unambiguously wrote: “it may be thought to be particularly objectionable from the point of view of *social arrangements* if that inability [to walk in a park] is the result of hindrance or threat by others” (1990, p. 104; italics in original). Thus, freedom entails the absence of coercion “by others”. But that is not all. As was the case with Hayek and Buchanan, though even more clearly and more strongly, Sen gave negative freedom and the need to avoid coercion a positive foundation. Sen indeed never envisaged defining freedom only in negative or, for that matter, in positive terms. He even noted that “[A]n adequate view of freedom would have to be both positive and negative, since both are important (though for different reasons)” (Ibid.). Sen also spoke of “the freedom to act, that is the aspect of “autonomy” to act, combined with “immunity from interference from others” (1994, p. 126).¹² Indeed, the possible hindrance or threat by others Sen mentions is problematic because it implies that individuals cannot do what they want to do, and cannot choose what they want to choose. Individuals should be “free to choose”, noted Sen (for instance, 1990, p. 104), using the very same words of Milton and Rose Friedman (1980).

What is it, thus, that freedom has to protect in Sen’s view? Or, in echo to the preceding quotation, what is it that individuals are *free to choose*? Did Sen use the term “positive” to indicate that freedom could have a specific goal to reach? No, to Sen, freedom has no instrumental value. From this perspective, Sen is no different from Hayek or Buchanan: the positive freedom—i.e. the freedom to do something—he defended is not a freedom to do anything in particular, to achieve or secure a specific and a priori known outcome. Sen is rather clear about that aspect when he characterized freedom positively in the frame of his capability approach. Indeed, although Sen did not refer to freedom when he first developed the concept of capability in “Equality of What?” (1979), it became rapidly clear that the two concepts were connected, and that his goal in developing a theory of capability was “to outline a characterization of *positive* freedoms in the form of capabilities of persons” (1984, p. 315; italics added). Or, in the same way, Sen also explained that paying “attention. . . to the capability set of [a] person... has the effect of taking note of the positive freedoms in a general sense (the freedom “to do this,” or “to be that”) that a person has” (1985, p. 201). Thus, in Sen’s view, freedom has to protect and promote individuals’ capabilities.

One might think that Sen has just taken a step back and that capabilities are meant to achieve specific and well-defined goals, to reach a predetermined outcome. This is not the case. This lack of instrumentality appears clearly in the way capabilities are defined. The capabilities individuals have, and that should be protected to guarantee their freedom, are very general and generic means, the potential individuals have to live the life they value and choose to live, encompassing the opportunities available to them. Therefore, to Sen, freedom has both a positive and a negative dimension. It is both an absence—the absence of external restraints—and a presence—the presence of opportunities for individual growth and fulfilment.

To be a bit more precise, individuals’ capabilities are defined in terms of “functionings,” which represent the various things a person may value doing or being: “A person’s capability set can be defined as the set of functioning vectors within his or her reach” (1984, pp. 200-201). For Sen, freedom is best understood and measured in terms of these achievable functionings: the more functionings available to an individual, the greater their capability and, therefore, the more freedom they possess. Certainly, these functionings can be quite concrete, such as being well-nourished, being healthy, or being literate. However, freedom is not about the specific functioning a person ultimately achieves or the quantity of goods and commodities they obtain. Instead, it is about having access to a broader capability set, meaning more opportunities to pursue various functionings, regardless of the choices they make within that set. Or, as Sen noted, we

should focus “on the freedom that a person actually has to do this or be that—things that he or she may value doing or being” (2009, p. 231). Clarifying this point, Sen wrote:

An affluent person who fasts may have the same functioning achievement in terms of eating or nourishment as a destitute person who is forced to starve, but the first person does have a different “capability set” than the second (the first *can* choose to eat well and be well nourished in a way that the second cannot) (1999, p. 75).

In this sense, freedom derives its value not only from the specific outcomes it enables, but also from the opportunities it provides: “[c]apabilities thus reflect the actual freedoms that people respectively enjoy in being able to lead the kind of lives *they have reason to value*” (Sen 1990, p. 460; italics added).

This seems to lead us to Hayek and his definition of freedom. Sen himself noted a sort of convergence if not agreement with Hayek, when he quoted a passage from *The Constitution of Liberty*—“the importance of our being free to do a particular thing has nothing to do with the question of whether we or the majority are ever likely to make use of that possibility” (Hayek 1960/2011, p. 83, cited in Sen 1999, p. 292). Sen gave the caveat “Hayek may have overstated his case (as he often did)”, but he nonetheless argued that “he was ... entirely right in distinguishing between (1) the *derivative* importance of freedom (dependent only on its actual use) and (2) the *intrinsic* importance of freedom (in making us free to choose something we may or may not actually choose)” (Ibid., italics in original). Elsewhere, Sen insisted that “[t]he intrinsic importance of human freedom, in general... is strongly supplemented by the instrumental effectiveness of freedoms of particular kinds to promote freedoms of other kinds” (Sen 1999, p. xii). Here, instrumental is not used in a narrow sense of the word, but implies giving individuals the agency to use this freedom in pursuit of their own ends.¹³

The parallel with Buchanan might be trickier to establish. Robert Sugden noted the potential difference between Sen’s concept of desiring freedom, so that people can lead the lives they have reason to value, and Buchanan’s view of desiring freedom, which allows people to become who they want to be. Sen’s emphasis on *reason to value* points to the idea that there should be some consensus outside of the individual about what functionings a person would reasonably value. What functionings should be available to people are determined through a process of democratic consensus, allowing Sen to arrive at a more objective metric for social evaluation. Sugden noted that under this system that Sen has described with his capabilities approach, individuals have the opportunity to lead the lives that the majority of their fellow citizens judge to be valuable, and the ability to participate in the democratic process to decide what is valued, but *not* assured of the opportunity to live whatever kind of life *they* desire. Sugden wrote, “My unease about Sen’s proposal is that it licenses collective decisions that override some individuals’ actual desires about how to live their own lives, in favour of other people’s judgements about what those individuals have reason to desire” (2006, p. 41). Thus Buchanan’s conception of freedom can be seen as, in a way, more subjective and open-ended than Sen’s. It nonetheless remains that Sen’s capabilities can be viewed as complementing the capacities Buchanan attributed to his artifactual man, and in particular his focus on creative or genuine choice. As Malte Dold and Paul Lewis have noted, Buchanan’s characterization of the capacities to become an artifactual man remain underdeveloped, and Sen’s notion of capabilities offers an account of the capabilities required by artifactual man if he is to create his own identity in an autonomous way, and be the author of his own life (see Lewis and Dold 2020, sec. 5.2; Dold and Lewis 2023, pp. 947-949).¹⁴

Therefore, as is also the case with Hayek and Buchanan, individuals bear the responsibility of defining their goals and objectives and deciding how to use their set of capabilities—their opportunities, which is similar to Hayek’s private sphere. These capabilities enable them to make genuine choices, à la Buchanan, about who they want to become and how to achieve it. In this sense, a free individual, in Sen’s view—an individual whose capabilities are protected—is not so different from Buchanan’s artifactual man. Both

use their liberty not to realise a predetermined identity, but to shape their own path or, to use Sen's words (1999, p. 11), to "effectively shape their own destiny".

Conversely, in this framework, coercion would mean that individuals are not granted this possibility to define their own ends, as well as the means to reach them, or that they cannot choose their own life that goes with the very notion of capability. Coerced individuals are treated as if they had no ends. For instance, a society, a political or an economic system, is coercive if some of its members are free at the expense of others. This point seems to echo the Kantian aspects one finds in Buchanan and Hayek as noted above. Thus, even if Sen made no reference to Kant and to his famous maxim, he does not seem far from it. He came even closer to such a principle in his analysis of development and basic capability equality.

Departing from the traditional and narrow perspective centred on GNP growth, technological progress, or industrialization, Sen ultimately proposed an approach to development that consists in the expansion of freedoms and capabilities. Which means that "better and more acceptable societies", that is societies in the "process of expanding the real freedoms that people enjoy" (Sen 1999, p. 3), should aim at promoting a general capability set that is equally accessible to *each and all of its members*. More specifically, Sen advocated for the use, as an adequate guide for societies, of what he called the *basic capability equality* principle. This principle should enable societies to equalize the opportunities available to their members.¹⁵ The capability set serves as a benchmark for societal progress, as a guide for what society can strive for and evaluate itself by. And it can be seen as aligning with Kant's maxim: to Sen, no individual will be treated as a means in a society based on the promotion and defence of capabilities, that is in a society based on the basic capability principle.

In addition to this "appropriate evaluative framework", Sen added that "better and more acceptable societies... also need institutions that work to promote our goals and valuational commitments, and furthermore, we need behavioural norms and reasoning that allow us to achieve what we try to achieve" (Ibid., p. 249). In other words, we need institutions, *social arrangements*, to implement the basic capability principle. Which are they?

A few elements may allow us to understand them, and see how they compare with those of Hayek and Buchanan. First, Sen excluded giving the state a central role and creating a "nanny-state" (ibid., p. 284) which would tell individuals what decisions to make, thus dictating their chosen ends or means—that state would be coercive, and would not respect the Kantian maxim. The role of the institutions should be to "creat[e] more opportunity for choice and for substantive decisions for individuals who can then act responsibly on that basis" (Ibid., p. 284). Freedom consists in allowing individuals to choose their own means and ends, giving them opportunities, not choosing or deciding on their behalf. Having the state, or any other individual, impose their means or ends on others, like we see in the nanny-state, would go against Sen's definition of freedom (and violate Kant's maxim).

Then, and complementarily, Sen defended markets as an organisational principle, as institutions that do not only create wealth and growth but also development (in his sense of the concept) and therefore freedom (Ibid., p. 6). Sen thus believed that *market* exchange is a source of—both positive and negative—freedom.¹⁶ However, Sen did not believe that the relation between markets and freedom was simple, and that the defence of markets was immediate. He saw it as "complex" and difficult (1994). Markets can enhance individual freedoms by allowing choice, only if they were organised in a specific way, that is only if they operate within an institutional framework. For instance, Sen once wrote: "What is needed is not a rejection of the positive role of the market in generating income and wealth, but the important recognition that the market mechanism has to work in a world of many institutions" (2000; see also Sen 1994). And, as the core of these institutions, one finds the rule of law. Or, to put it in different words, Sen's approach in terms of capabilities seems perfectly compatible with a system based on a rule of law.¹⁷ Indeed, if one wants to devise institutions that guarantee the individuals' opportunities, rights that let people choose the life they want to choose, it is necessary to rely on the rule of law. Sen implicitly recognized it when he insists that the law, the legal system, must contribute to the process of development and to the enhancement of

individuals' capabilities. As Peter Boettke and Robert Subrick noted (2003, p. 126), "[t]he rule of law provides the necessary framework which promotes prosperity and human capabilities".¹⁸

Therefore, it seems that Sen has a definition of freedom similar to that of Hayek and Buchanan. Freedom can be seen as a positive concept, one that allows individuals to make genuine choices in pursuit of living the lives they have reason to value. This freedom is one in the Kantian tradition, where individuals treat each other not as means in pursuit of their goals, but as ends in and of themselves. And society protects this freedom through the creation and promotion of general rules or capabilities that equally apply to all persons.

5. CONCLUSION

The defence of liberalism is not merely a theoretical endeavour—it is an ongoing project, grounded in the realization that liberty is essential for human flourishing, economic progress, and social cooperation. The ideas of Hayek, Buchanan, and Sen form a robust foundation for understanding and advancing this defence, particularly in an era when liberal institutions are under attack from both external and internal forces. By synthesizing their contributions, we gain a multidimensional appreciation of liberty as a principle rooted in individual dignity and institutional design.

Friedrich Hayek's conception of liberty provides the cornerstone of this vision. Hayek's insight into the spontaneous order of the market and the necessity of the rule of law highlights the central role of decentralized processes in fostering freedom. His critique of central planning, famously articulated in *The Road to Serfdom* (1944), and his elaboration on the generality principle in *The Constitution of Liberty* (1960), reveal the dangers of coercion and the irreplaceable value of abstract, impartial rules. For Hayek, freedom emerges not from deliberate design but from a system of rules that constrain arbitrary power while enabling individuals to pursue their unique goals. This understanding of liberty as "freedom under the law" serves as a bulwark against authoritarianism, demonstrating the importance of institutional humility and the limits of human reason in crafting complex social systems.

James Buchanan builds on Hayek's foundation by focusing on the constitutional framework necessary to sustain a free society. Buchanan's *The Calculus of Consent* (1962, with Gordon Tullock) and *The Limits of Liberty* (1975) emphasize the importance of constitutional constraints in preserving individual autonomy. His principle of generality, influenced by Hayek, underscores the necessity of non-discriminatory rules that treat all citizens equally. Yet Buchanan's contribution extends beyond procedural fairness. His notion of "artifactual man" reflects the capacity of individuals to shape their destinies through meaningful choices. Buchanan's defence of liberty is thus not only economic but deeply moral: it insists on treating individuals as ends in themselves, consistent with Kantian ethics. This principle provides a powerful response to the threats posed by collective decision-making and the tyranny of majorities.

Amartya Sen complements these perspectives by introducing a substantive dimension to liberty through his capability approach. In *Development as Freedom* (1999), Sen redefines freedom as the expansion of capabilities—the substantive opportunities individuals have to lead lives they value. While Hayek and Buchanan emphasize the procedural and institutional aspects of liberty, Sen draws attention to the social and economic conditions that enable true freedom. For Sen, development is not merely about economic growth or resource accumulation but about creating the conditions for individuals to achieve their potential. His work underscores the compatibility of markets and freedom, provided they operate within a framework of the rule of law that ensures equality of opportunity. Sen's emphasis on the interplay between formal rights and substantive outcomes broadens the liberal tradition, aligning with Hayek's and Buchanan's insights while addressing the inequalities that constrain freedom in practice.

Together, these thinkers present a comprehensive vision of liberty that balances procedural justice, institutional design, and substantive opportunity. At the heart of their shared project is a commitment to the dignity and autonomy of the individual. Hayek's rule of law ensures the impartiality of institutions; Buchanan's constitutional constraints protect against the overreach of majorities; and Sen's capabilities

approach ensures that freedom is not merely formal but substantive. Each contributes to a framework that respects the complexity of human interaction and the necessity of institutions that enable cooperation and innovation.

The practical implications of their ideas are profound. In defending liberalism, we must prioritize the rule of law, resist the temptations of centralized power, and cultivate the conditions for individual flourishing. As Hayek reminds us, liberty is an essential condition for the coordination of knowledge and plans in society. Buchanan adds that such liberty must be embedded in constitutional rules that align incentives and protect against rent-seeking. And Sen emphasizes that a truly liberal society must ensure that all individuals have the substantive opportunities to participate in and benefit from the market process.

In an era of rising populism, economic nationalism, and growing scepticism toward liberal institutions, these insights are more urgent than ever. The defence of liberty requires not only intellectual clarity but also institutional commitment. It demands that we recognize the fragility of freedom and the constant vigilance required to sustain it. The synthesis of Hayek, Buchanan, and Sen provides a roadmap for this defence, offering principles and practical guidance for the renewal of liberalism in the 21st century. As scholars, policymakers, and citizens, we must take up this challenge, drawing on their insights to build a society that respects individual autonomy while fostering the cooperation and progress that only freedom can achieve.¹

NOTES

- 1 In the chapter of *The Constitution of Liberty* where Hayek defined liberty he wrote, “Coercion is evil precisely because it thus eliminates an individual as a thinking and valuing person and makes him a bare tool in the achievement of the ends of another” (1960/2011, p. 71). Then later, making the consequentialist point, “[i]t is that the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends” (1960/2011, p. 80).
- 2 Obviously, Hayek could not have repeated after each review that he disagreed with this interpretation of his definition. He replied only to Hamowy, writing that “[i]t was not the main thesis of my book that ‘freedom may be defined as the absence of coercion’” (1961, p. 70). In his mind, coercion is unavoidable and has to be reduced to a minimum which could hardly be zero. Hayek, as he explained, was “concerned. . . with that condition of men in which coercion of some by others is reduced as much as is possible in society” (1960/2011, p. 11).
- 3 “Freedom is first defined negatively by the absence of coercion or constraint” (Our translation).
- 4 “At what point “freedom” disappears as “coercion” manifests itself it seems, for some phases at least of Hayek’s argument, to depend on whose ox is being gored”.
- 5 The role and place of Kant in *The Constitution of Liberty* has been noted in connection to Hayek’s views of law (see for instance Gray 1981, pp. 76-77). Our argument is different. We refer to Kant from the perspective of his ‘categorical imperative,’ according to which one should always act in a way that amounts to treating others as ends in themselves, never merely as means.
- 6 This is exactly what Berlin intended to say with his definition of negative freedom: “Berlin wanted freedom to be valued more for what it is than for what it does... Freedom—and this goes right to the heart of what Berlin meant by “negative freedom”—should be regarded as an end, a “source of value”(though not the only source) rather than as a means to something else” (Putterman 2006, p. 418).
- 7 In *The Road to Serfdom*, Hayek also spoke of the “framework of laws within which the productive activity is guided by the individual decisions” (1944/2007, p. 113).
- 8 Anthony de Jasay raised a similar criticism on the generality principle in James Buchanan and Roger Congleton’s *Politics by Principle, Not Interest* (1998): “[t]he inconclusive search for generality is inseparable from arbitrariness and discretion” (1999, p. 116). De Jasay used the example Buchanan and Congleton used, i.e. David Hume’s example of two farmers who have to dig a “drainage ditch”. An example of “general rule” could be “that the farmers. . . should dig the same number of days” (1999, p. 115). As a general rule, it will apply to all, including to some “frail, old, or arthritic” farmers, and who would therefore be coerced: his contribution would be relatively more important than the contribution of a younger, stronger farmer. Hayek’s generality principle as explained in *The Constitution of Liberty* leaves room to solve this issue. Hayek writes, “The requirement that the rules of true law be general does not mean that sometimes special rules may not apply to different classes of people

- if they refer to properties that only some people possess. There may be rules that can apply only to women or to the blind or to persons above a certain age” (1960/2011, p. 222). The checks on this are that “[s]uch distinctions will not be arbitrary, will not subject one group to the will of others, if they are equally recognized as justified by those inside and those outside the group” (Ibid.). So there could be a general rule that takes into account the farmers age or health in how much of the ditch they dig, as long as there is consensus and the rule only takes into account general characteristics of the farmers and does not intentionally benefit specific known farmers.
- 9 Gray is even more positive regarding the importance of Buchanan’s work on liberty, concluding his article by saying that “if liberty has a future, it will have been fortified by Buchanan’s work” (Gray 1990, p. 167).
 - 10 Buchanan made the distinction between choice and exchange in “What Should Economists Do?” (1964). What is not always perceived is that this distinction goes with two views of behaviours and two views of freedom (see Marciano 2009, 2024).
 - 11 Part of his constitutionalism was based on a rejection of spontaneous order theories. In the 1970s, Buchanan did not hesitate criticizing evolution, spontaneous order theories and Hayek’s analysis. Thus, in *The Limits of Liberty*, Buchanan (1975a, p. 211) explained that he refused “elevat[ing] the evolutionary process [that leads to the formation of norms] to an ideal role”. Two years later, in “Law and the Invisible Hand”, he criticized Hayek for his “implicit attribution of efficiency to whatever institutions emerge from an evolutionary process” (p. 33), disagreeing that spontaneous interactions among individuals necessarily produce “order”. A decade later, he repeated the same claim, “Acquiescence before the inevitability of spontaneous evolution is a stance that holds, for me, little appeal.” (Buchanan 1988/1991, p. 197; for an analysis of Buchanan’s views on spontaneous order, see Dughera and Marciano 2025).
 - 12 Sen frequently referred to Berlin’s “classic statement of the distinction between ‘positive’ and ‘negative freedom’ (1982, p. 6) or the “important and influential of the distinction between ‘negative’ and ‘positive’ conceptions of freedom” (1990, p. 103; 1994, p. 126; 1999, p. 5). However, one must also note that there are some ambiguities in the terms, obviously; ambiguities as to how it relates to the rest of Sen’s work (see Robeyns 2023, sec. 3.3). Sen himself eventually agreed that his characterization of capabilities in terms of positive freedom was confusing and later put much less emphasis on it.
 - 13 Even when Sen defined the five basic types of freedom each individual must have—political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security—, he did not give them an instrumental role. Their role consist in “help[ing] to advance the general capability of a person” (1999, p. 10; italics added).
 - 14 (On a comparison between Sudgeen and Sen, see Erasmo and Santori 2025).
 - 15 This approach extends Rawls’s framework, which focuses not only on primary goods but also on the actual impact of these goods on individuals’ capabilities. Basic capability equality has advantages over Rawlsian equality, which centres on the distribution of primary goods, as well as utility-based equality, which focuses on the equality of utility (see Igersheim, 2013, 2022 for further discussion of Rawls and Sen).
 - 16 One point he made was that wage labour should be viewed as a source of freedom because it gives workers the possibility, the freedom indeed, to sell their labour to whomever they want. This is an interesting example because it gives the impression that Sen is defending capitalism, a point for which he was criticised (see, e.g. Selwyn 2011, p. 71).
 - 17 Interestingly, although Sen defended the idea that “a competitive market equilibrium is weakly efficient in terms of achievement-freedoms” (1994, p. 130), i.e. of positive freedoms, his arguments were in favour of the market as an institution, rather than as a means to reach an equilibrium.
 - 18 Let us note that Boettke and Subrick are rather critical of Sen’s approach to development.

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ENDNOTES

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Hayek and the Institutional Turn in Political Economy

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Abstract: Throughout his career, F. A. Hayek made incisive contributions to the disciplines of technical economics, legal theory, psychology, political theory, and political economy. With such a range of scholarship, it may be difficult to know where to start with Hayek. Is it possible to tie these various strands of scholarship together? In this essay, we propose that a commonality can be located. Specifically, we focus on Hayek's works that touch on political economy and social theory—most notably *The Road to Serfdom* (1944) and *The Constitution of Liberty* (1960). We argue that Hayek's work in political economy can fruitfully be read through the lens of *epistemic institutionalism*—a term developed by Peter Boettke in his 2018 book on Hayek. Boettke (2018) posits that the common thread underlying all of Hayek's work was his emphasis on the institutional environment within which learning, knowledge generation, knowledge communication, and social cooperation are allowed to thrive. We show that this rendering is especially relevant for *The Constitution of Liberty* and that, upon the 65th anniversary of its publication, the book still has many insights to offer political economists as well as challenges for modern critics of liberalism that have yet to be met.

Keywords: Liberalism, Hayek, The Constitution of Liberty, Institutions

JEL Classification: B13; B53; D02

I. INTRODUCTION

Academic legend has it that James Buchanan would ask students and colleagues a peculiar question. Effectively, Buchanan would challenge scholars to think about who they were writing for—readers a year from now, readers five years from now, or readers one hundred years from now. For many academics, the temptation to write for the adulation of their immediate peers is overwhelming. After all, it is only natural for us to respond to incentives and chase publication in top journals or with top academic presses. In most cases, this means going with the fashionable disciplinary methodologies and restricting ourselves to the types of questions those methodologies deem important. To Buchanan, this short-sightedness was lamentable. Instead of chasing popular trends, his counsel was to select the third option and write for generations yet-to-come.

Friedrich Hayek needed no such encouragement. His contributions to economics (Hayek 1937, 1945), political science (Hayek 1944), social theory (Hayek 1991), and legal scholarship (Hayek 1973) are legion. But special consideration should be afforded to his wide-ranging entry into political philosophy—*The Constitution of Liberty* (1960).¹ Bruce Caldwell notes in his editorial introduction to *CoL* that many Hayek

scholars think that the work is Hayek's most influential writing (Hayek 1960, p. xi). Though this special issue marks only the 65th anniversary of its publication, the book is surely one for the ages. We have little doubt it will remain a source of criticism, debate, and inspiration for decades to come.

At first glance, the previous list of Hayek's academic forays may give the impression of a scholar who moved from discipline to discipline. While certainly not an intellectual dilettante, this reading of Hayek yields the interpretation that he started off as an economist, but later became someone who was more interested in politics and political philosophy. A perceived discontinuity reveals itself: the early Hayek was a thinker who devoted his energies to macroeconomics (Hayek 1931, 1941) and the theory of the market order, especially as it related to the generation and communication of knowledge (Hayek 1937, 1945). Mid-career Hayek, by contrast, became fixated on the elucidation of liberal principles (Hayek 1945, 1960) and later law and evolutionary theory (Hayek 1981, 1988). This depiction of Hayek's work paints a picture of someone who had abandoned the field of economics and ceased to be one of its leading practitioners (Ebenstein 2003; Gamble 2013).²

This paper cautions against this view of Hayek. We argue the opposite—Hayek *always* remained an economist, though one who, through no fault of his own, was out of step with the “mainstream” economics of his time. At the risk of bluntness, Hayek was a leading figure in the move to create what can be described as a *genuine* institutional economics. He was not just an academic who was comfortable *within* the discipline—he was a thinker who advanced ideas which cut at the very core of economic theory, and when read in the right way, was foundational in a way that few others could be.

Contra the notion that Hayek's oeuvre can be divided among separate disciplines, we posit that his economics is the unifying theme of his career. Specifically, we advance an argument in line with Boettke's idea of *epistemic institutionalism* (Boettke 2017, 2018).³ The crux of our case is this: all of Hayek's scholarship can be read as consistently and persistently centering the role that the institutional environment plays in facilitating social learning as well as the generation, communication, and transmission of knowledge. The payoff for Hayek is that within the right institutional configuration, social cooperation and prosperity become possible. Key to this institutional configuration is the presence of property rights, prices, profit-and-loss accounting, and (most germane to this paper) the stability and predictability engendered by freedom under the law (commonly known as the *rule of law*, though confusions with this terminology do abound).

An emphasis on Hayek's institutional economics and the importance of knowledge and coordination is not novel by itself. As we have mentioned, our approach extends an extant branch of Hayek scholarship (epistemic institutionalism) and is complementary to other works on Hayek.⁴ However, our paper is unique in that it focuses this lens of analysis on *The Constitution of Liberty*. To our knowledge, we are the first researchers to specifically home in on this reading of the book. Thus, our contribution is suited for a volume celebrating *CoL* and advances the frontiers of Hayekian scholarship in its own right.

Our essay proceeds as follows. First, we recount the importance that institutions play in the Mises-Hayek contribution to the socialist calculation debate. We highlight the importance of epistemic issues in Hayek's technical economics, and demonstrate how these fit within the theme of *epistemic institutionalism*. Second, we show how Hayek's epistemic institutionalism can be used to fruitfully interpret his arguments in political economy, especially in *The Constitution of Liberty*. Next, we make that case that Hayek's epistemic institutionalism is a useful input for other research programs in economics—especially public choice theory. In many ways, James Buchanan undertook an institutional turn of his own with his exhortation that economists should study exchange and the institutions within which exchange takes place (Buchanan 1964). However, differences remain in the extent of Hayek's institutional turn as compared to Buchanan's, meaning there is still much room for cross-pollination between market process and public choice paradigms. Fourth, we situate *The Constitution of Liberty* in current debates about the future of liberalism, especially considering the rise of what has been called “post-liberal” scholarship (Deneen 2018, 2023.) Notably, Hayek's epistemic liberalism is not confronted by liberalism's modern critics, which means

that they ignore some of his most important challenges. Finally, we offer some concluding remarks on the enterprise.

II. THE SOCIALIST CALCULATION DEBATE: INSTITUTIONAL REDUX

Hayek's association with Mises began in the early 1900s. While a student at the University of Vienna, Hayek had taken a class with Mises, but found himself dissatisfied with the latter's far too strident (for Hayek's taste) critiques of socialism. However, this changed with Mises' 1922 publication of his treatise *Socialism*. After this, Hayek became a regular attendee at Mises' private seminar. This relationship was augmented by the fact that Mises had hired Hayek as a government employee in an office dedicated to addressing the pre-war debts of nations post-WWI (Boettke 2018, pp. 17-18).

For our purposes, what is most important is the role Mises and Hayek played in the socialist calculation debate. Mises and Hayek—along with Lionel Robbins, who helped facilitate Hayek's eventual hiring at the London School of Economics—provided the core of a theoretical argument which established the impossibility of central planning under socialism. While their argument was never fully grasped by their socialist interlocutors,⁵ it is crucial to note that the line of attack used by Mises/Hayek/Robbins was remarkably consistent. As we endeavor to show, the epistemic nature of market institutions was always in the foreground of the Austrian response.

The origins of the socialist calculation debate began in 1920 with the publication of Mises' *Economic Calculation in the Socialist Commonwealth*. Succinctly, Mises presented the definitive case that rational economic calculation was rendered impossible by socialist systems. Because socialism called for the abolition of private ownership of the means of production, this meant the existence of markets for the means of production was no longer viable. Without the rivalrous competition engendered by such markets, no monetary prices for the means of production would emerge. Absent these monetary prices, socialist planners had no way to engage in rational economic calculation—that is, they had no way of sorting economically rational production processes from the set of technologically feasible ones (Mises 1920; Lavoie 1985; Boettke 1998).

Consider the following example. Imagine that both platinum and steel can be used to build bridges, and for the sake of argument grant that platinum is the superior material from an engineering standpoint. Does this mean it makes economic sense to build bridges from platinum? Clearly not—the answer to that question depends on the alternate uses of platinum. It is more likely that platinum has a higher-valued use than bridge building, and it would make more economic sense to allocate it towards those employments instead of bridge construction. The Misesian argument establishes that absent monetary prices predicated on private property rights and rivalrous markets, central planners will not be able to answer the question as to whether platinum was better used for other pursuits instead of bridges. Sorting the economically efficient possibilities from the technologically feasible ones becomes an impossibility.

To fully understand Mises' move, one must be aware of the intellectual context in which he was operating. When Mises was responding to the specter of central planning, he had in mind the line of argument which was most heavily influenced by Marx. The Marxian conception of central planning called for the complete collectivization of the means of production *and* the elimination of money prices. This explains Mises' emphasis on the importance for money prices—he was responding to a stylization which advocated for their complete removal (Lavoie 1985, p. 50).

However, one must not lose the essential thread of Mises' contention. He is not an equilibrium theorist, arguing that market prices play a simple *informational* role which is necessary for the equilibration of demand and supply factors. Instead, Mises is advancing a more subtle and sophisticated claim: the price system is invaluable because it plays a *coordinative* role which gradually brings the expectations and plans of market participants into alignment with each other. The argument is fundamentally an *institutional* one: foundational to Mises' theory is the recognition that prices require competitive markets, where competition is understood as a rivalrous and dynamic process in contrast with the antiseptic vision of perfect

competition advanced in neoclassical theory. Rivalrous competitive markets cannot exist without certain institutional prerequisites, with secure private property rights being first among these.

As intimated, Mises was not the only scholar to respond to the advocates of planning. After his initial essay, the argument put forth by the socialists began to shift. The next phase of the debate centered on the contributions of Oskar Lange and the market socialists. Having failed to apprehend Mises' argument, the market socialists contented that Mises had not established the impossibility of central planning. It is at this point when Hayek and Robbins entered the debate.

Initially, Hayek and Robbins were erroneously perceived to have given up ground from the original Misesian position. The market socialists read Hayek and Robbins as conceding the theoretical possibility of central planning, and instead focusing their efforts on the impracticality of economic management.⁶ In reality, it was the market socialists who advanced a different strand of argument, having abandoned the strictly Marxian variant of planning that Mises was responding to. The Lange-era socialists instead embedded their theory in neoclassical economic language. The thought was that modern advancements in economic theory would enable central planning boards to devise a more efficient use of resources compared to the competitive market solution. Effectively, economic theory gave experts the tools they needed to replace the outmoded machinations of the market.

Under Lange's vision, planning would only take place in the market for capital goods—markets for consumer goods and labor services would still be allowed to function as “normal.” For capital goods, though, prices would be set by a central planning board with the end goal being to equalize supply and demand. Plant managers would be instructed to do two things: produce to minimize average cost, and use the prices set by the planning board in their decisions. If the initial prices picked by the planning board were not the “correct” equilibrium prices, they would simply be adjusted through a process of trial-and-error until the correct vector of prices had been settled upon (Lavoie 1985, p. 130).

Hayek's response was to reiterate the purpose of market institutions and their epistemic properties—an example of what we have termed Hayek's epistemic institutionalism, *par excellence*. In a series of essays, (Hayek 1937, 1940, 1945) Hayek demonstrated that the market socialists erred in assuming that the conditions required for market equilibration already existed. If one were to assume that the requisite information, preferences, and knowledge of additional production techniques were given, then determining the optimal production of resources is a relatively simple mathematical exercise. However, Hayek is emphatic that the economic problem societies confront is *not* of this nature (Hayek 1945, p. 519). Instead, the knowledge which is necessary for “optimality” never can exist in one place. The real economic problem confronted by societies is to determine how dispersed and localized knowledge can best be made use of.

Hayek's conclusion is no surprise for any of his more seasoned readers. Hayek emphasizes that these questions of knowledge are the very reason why the price system—founded upon the institutions of property and the rigor of profit and loss—is of the utmost importance. Market institutions are the only way that this knowledge can be discovered, generated, and communicated. The real action for economists, as Hayek argues in his 1937 essay *Economics and Knowledge*, is to focus on improving our understanding of the ways in which knowledge is acquired and communicated (Hayek 1937, p. 33). Though he does not spell it out, Hayek's implication is clear: we are once again encouraged to bring institutions from the analytical background to the analytical foreground when we are doing economics. Institutions, instead of being assumed to exist and going unexamined, are given prominence and assume center stage in our studies.

III. THE EPISTEMIC TURN AND *THE CONSTITUTION OF LIBERTY*

Despite the force of their arguments, Mises and Hayek were not judged to have decisively refuted the case for central planning. While the reasons for this perception lay more with the economic mainstream's inability to grasp the centrality of institutions in the Austrian critique, the result was clear: economic planning remained a live research topic, and many economists expressed faith that eventually expert-led planning would be able to outperform market outcomes. This, combined with the emerging neo-Keynesian

consensus and the rise of economic formalism fueled by economists like Paul Samuelson and his 1948 textbook *Economics* left economists like Hayek somewhat outside the mainstream of economic trends (Boettke 2012, p. 53). These developments contributed to the assessment that the next phase of Hayek's career amounted to an abandonment of economics.

This view misses the mark. Even in what were believed to be his more “political” works like *The Road to Serfdom* and *The Constitution of Liberty*, the institutional roots of Hayek's economics are evident. *The Road to Serfdom*, for example, has often been interpreted as a polemic which only has relevance for the 1940s. These readings claim that Hayek's central thesis was that even a modicum of government intervention would place societies on an irreversible path to authoritarianism—that is, Hayek was positing the existence of a slippery slope towards totalitarianism for liberal democracies.

However, Hayek's case is more accurately viewed as an institutional one, with roots in Mises' initial formulation (Boettke and Candela 2017.) The point of *The Road to Serfdom* is that the attempts to surmount the Misesian argument require the weakening and even abolition of key liberal institutions like the rule of law. The internal contradictions within socialist planning present a situational logic in which the institutions of liberal democracy cannot hold. The resultant outcomes are ones that would horrify the well-intentioned advocates for socialist planning, and lead to a devastating concentration of power in the hands of autocrats. Effectively, there is an institutional incompatibility between the rules needed to sustain democracies and the powers required to engage in comprehensive economic planning. In the final analysis, pursuing central planning erodes liberalism, resulting in the latter's perversion and ultimate destruction. One is left with an outcome in which there is no democracy, and no economic coordination. Liberalism and market order must be taken together: they cannot be institutionally separated.

While *The Road to Serfdom* is properly read as an immanent critique of socialist logic, *The Constitution of Liberty* takes a bite at the institutional apple from another angle. Hayek's goal in *CoL* is to provide an updated restatement and defense of the liberal project for a modern day and age—as he writes in the very beginning of the book, “If old truths are to retain their hold on men's minds, they must be restated in the language and concepts of successive generations” (Hayek 1960, p. 47). Hayek was not ignorant of the political and economic fashions of his era: he recognized that liberal ideas had reached a nadir. If anything, the key features of the liberal tradition were seen as intellectual stumbling blocks, which prevented enlightened experts from rationally reconstructing our social orders (Hayek 1960, p. 86).

Of moment for our essay is the *way* in which Hayek situates his defense of liberalism and liberty. For Hayek, the argument for liberty is not rooted in terms of fundamental natural rights. Instead, Hayek takes the position that the liberal order can be justified on epistemic grounds. Functionally, Hayek views the advancement of civilization as being predicated on the existence and maintenance of institutions which allow the individual to benefit from knowledge it is impossible for them to fully grasp (Hayek 1960, p. 73).

The takeaway for Hayek is this: the institutional configuration which allows mankind to best surmount these epistemic hurdles and lead to widespread social cooperation is what we know as liberalism. The title and subject of *CoL*'s second chapter—“The Creative Powers of a Free Civilization”—reveals Hayek's hand. A society which exists within a framework of abstract, general, and non-discriminatory rules comports with Hayek's definition of a free society. And it is *only* these types of societies which can support the existence of the spontaneous orders which allow us to enjoy prosperity that our ancestors could have never imagined. The case for liberalism does not rest on political philosophies—instead, it is epistemic in nature. And the source of its epistemic strength lies in the abstract and general rules we have just mentioned—Hayek's conception of “freedom under the law” or, as it is more commonly known, the rule of law. If anything defines liberalism for Hayek, it is the existence of this rule of law.

Key to understanding Hayek's conception of liberalism is his definition of “liberty” and how this relates to the rule of law. In the beginning of *CoL*, Hayek defines liberty as a situation where one is free from the arbitrary coercion of another (Hayek 1960, pp. 57-58). Effectively, one is considered “free” by Hayek's lights if they can make choices and execute their plans through their own volition, instead of being treated as a means towards another's ends. This idea of liberty is part and parcel with Hayek's conception

of the rule of law. The second part of *CoL* is dedicated exclusively to the history and the importance of the rule of law in liberal thought. The way that Hayek discusses the rule of law is instructive, and key to his entire enterprise. It is not an exaggeration to say that the predominance of the rule of law is the defining feature of Hayekian liberalism, and it is this idea that Hayek defends the most forcefully.

Hayek contrasts the rule of law with the organization of society through “specific and regular commands” (Hayek 1960, p. 217). Commands – the likes of which would be required in a centrally planned economic order—differ from the rule of law in that they require the one following the command to become a tool for whoever is issuing the command. Another way of putting it is that a society organized by command necessarily violates Hayek’s definition of liberty in that commands coerce individuals into obeying the whims of others. Widespread commands therefore become incompatible with a liberal regime.

Crucially, Hayek expresses the benefits of the rule of law versus commands in terms of the epistemic properties possessed by the former. An “ideal” command dictates what an individual must do, or in a more narrowly economic sense, what they must produce and for whom. This renders the subject of the command incapable of making use of their unique knowledge or acting in accord with their expectations for the future (Hayek 1960, p. 218). This knowledge need not be explicitly recognized by the one who holds it—by restricting someone’s liberty, a command also precludes them from acting upon or communicating the tacit and inarticulate knowledge they may possess. A society or an economic order based on centralized command quashes the use of localized and particular knowledge, making widespread coordination that much more difficult. This same centralizing impulse may be damaging to other engines of progress as well. Polanyi (1941, 1967) argues that the attempt to “plan” scientific advancement, or to make it subservient to the whims of the state, do irreversible damage to the scientific process itself. Instead, the ability to act as one wishes when channeled through a set of institutions which result in societal benefits—what Polanyi terms “public liberty” (Polanyi 1941, p. 438) is indispensable. The value of institutions, and the ability to have autonomy in broad spheres of one’s life, is not just relevant for economic coordination.

An order founded on the liberal rule of law, on the other hand, does not suffer from such drawbacks. Instead of requiring certain types of action, the rule of law as Hayek conceives it still enables an individual to make use of their knowledge—they are left with the latitude to act in the manner that they see fit. Thus, rules as contrasted to commands do not substitute the knowledge of the commander for the commanded. Liberalism therefore makes space for those living under it to make use of and communicate their epistemic insights.

The rule of law has a second advantage from an epistemic perspective. While the rule of law gives individuals wide scope to act upon their unique knowledge and expectations, it also gives a level of *predictability* to their actions. Laws, rightly conceived, help to align the expectations of individuals—that is, they give us some assurance about what the consequences of our actions will be and what can expect from others. Consider a general norm around the voluntary transfer of property, akin to David Hume’s emphasis on the importance of “transference by consent.” If I am secure in the expectation that my property will not be alienated from me absent my express agreement, I will feel that much more comfortable in engaging in productive activity. I have some level of awareness of what I can expect from others, which enables the advanced material production necessary to support our modern world. Finally, law—as contrasted with constructivist legislation—has the added advantage of containing knowledge that human beings may not intuitively grasp. It is eminently likely that the rules we followed developed the way they did for a reason: by following them, we experienced greater levels of success at the group level which allowed for our success relative to groups who followed different rules (Hayek 1991).

The Constitution of Liberty is an enormous intellectual undertaking, and any summary we give in this paper will not give the book the justice it is due. Yet, we are hopeful that we have highlighted what is at the core of Hayek’s liberalism: the acceptance and application of the rule of law, by which Hayek means general and abstract laws which apply equally to all who live under them. In Hayek’s liberalism, there is no space for laws that exhibit either discrimination or dominion, but the reason for his opposition to these laws is unique. When viewed through the lens of epistemic institutionalism Hayek’s arguments in *CoL* are given

a newfound clarity and brought back into conversation with his earlier work in “technical” economics. At the risk of belaboring the point, for Hayek, the rule of law is indispensable because it prevents some individuals from running roughshod over the knowledge and subjective expectations of others. It ensures that individuals have the room required to act upon their unique knowledge, and when combined with other institutions like well-defined property rights and the discipline of profit and loss, it allows for this knowledge to be continually generated, renewed, and communicated in a form that is usable by all individuals (Hayek 1960, pp. 224-225).

IV. THE INSTITUTIONAL TURN IN POLITICAL ECONOMY, VIRGINIA STYLE

At this point it may be worth taking stock of our argument. In the previous sections, we have maintained that Hayek’s intellectual path of travel can best be described as institutional in nature. Hayek always remained an economist, but one who clearly articulated the importance of institutions in leading to plan coordination, economic cooperation, and prosperity. In his professional relationships, he can be viewed as a thinker who had to constantly remind the greater discipline that a society’s institutional infrastructure cannot be taken for granted.

Hayek’s position was, sadly, an exceptional one given the prevailing methodological trends in the mainstream. However, later political economists would take institutional turns of their own, reminding their contemporaries that the rules of the game could not just be “assumed” to exist. Few economists exemplify this better than James Buchanan, who made his own institutional turn through his work in public choice and constitutional economics. To Buchanan, economists should not just be content with studying how individuals make choices within a given set of constraints. Instead, the constitutional project he advocated for implored researchers to think about how the very constraints we live under were developed and chosen. Effectively, the venture Buchanan embarked upon in *The Calculus of Consent* was to take the standard behavioral assumptions economists worked from and use them to show the logic of the constitutional order (Buchanan and Tullock 1962). Skillfully used, the economic way of thinking could re-center the importance of institutions in political economy.

It is tempting to view the Austrian and Virginia critiques of the government as being advanced along two different lines. As noted, Mises and Hayek were content to grant the assumption of benevolence on the part of socialist planners. The power of their argument hinged on their demonstration that even individuals with the *very best* of intentions would fail when it came to economic planning, simply because the epistemic burdens were insurmountable. Public choice economists, by contrast, could be seen as pushing on the assumption of benevolence. In the standard formulation, the assumption of behavioral symmetry is what makes public choice unique: we assume, for analytical purposes, that the individual in the marketplace and the individual in the voting booth are one and the same.

This strain of public choice theory is easy to identify—when defending their “economic” approach to rules in *The Calculus of Consent*, Buchanan and Tullock explicitly make note of the fact that it is impossible to deny the role self-interest plays in human affairs (Buchanan and Tullock 1962, p. 27). In market contexts, this self-interest is institutionally mediated in such a way as to result in social benefits. When contrasting profit-seeking with rent-seeking, for example, Buchanan notes that the impulse to maximize one’s utility is the same in either context (Buchanan 1980/1999). The difficulty is that in the political realm, institutions are much less likely to be designed in a way to temper or even harness the rapaciousness of self-interest. This is one plausible reason for making use of the self-interest assumption when thinking about constitutional rules: in line with Hume’s admonition, if you consider all men to be knaves, you may be effective in designing a set of rules which can constrain that knavishness.

To be clear, this perspective is an important one for political economy. Before public choice, the benevolence of political actors was rarely brought into question. The emphasis on institutions—especially the *incentives* they provide to government agents—was welcome indeed. But from a social scientific perspective, it is important to note the way in which institutions are being treated here. In this formulation of

public choice, institutional analysis is subsumed within the neoclassical paradigm: to the extent we focus on institutions, it is so we can minimize the negative social outcomes that result from the utility-maximizing choices of rational individuals.

To give an example, contrast the treatment of *generality* in Hayek and Buchanan. In *The Constitution of Liberty*, general rules of conduct are justified in terms of their epistemic properties. “Knowledge” enters Hayek’s defense of these rules in three ways. First, the existence of commonly accepted *general* rules allows individuals to know what sorts of behavior they can expect from other individuals. Second, the rules themselves—as products of an evolutionary process—*embody* knowledge that we may not be able to articulate.⁷ Third, and perhaps most importantly, general rules leave significant scope for the individual to make use of their localized, and at times inarticulable, knowledge. One can think of general rules (the rule of law) as *knowledge preserving* institutions: largely, they give individuals the necessary space where they can make the fullest use possible of their knowledge, and through market institutions, translate that knowledge into a form others can benefit from (Hayek 1960, pp. 224-225).

Buchanan recognizes the importance of generality as well. Alongside Roger Congleton, Buchanan develops a book-length treatment on the importance of general rules in *Politics by Principle, Not Interest* (Buchanan and Congleton, 1998/2003). Buchanan’s worry is that in democracy, two pathologies manifest themselves: majoritarian instability and widespread rent-seeking. In a democratic context where the winners can obtain “discriminatory” policies which benefit their ingroups and impose costs on outgroups, these two pathologies will be at their worst. Collective decision-making will be result in unstable democratic cycling, where different groups invest resources into vying to capture the state apparatus to obtain such discriminatory policies. On the other hand, groups will also engage in tremendous amounts of rent-seeking, not just to obtain benefits, but to defend themselves from predation when they are not in the majority (Buchanan and Congleton 1998, p. 86).

Suffice to say, such an arrangement generates enormous costs. Buchanan’s answer to this morass is the acceptance of what he terms a generality norm—essentially, a rule or norm which prohibits the implementation of discriminatory policies or programs. Effectively, a norm of generality requires that programs apply to and impact all individuals equally. In a very real sense, what Buchanan is advocating for is an extension of the rule of law into politics. While this is slightly different from the way the rule of law is deployed in *CoL*, the argument remains in favor of broad, general, rules. For Buchanan, generality eliminates what he refers to as the off-diagonals in his game theoretic construction, and significantly reduces the harms that come from cycling and rent-seeking (Buchanan and Congleton 1998, p. 51).

What is noteworthy here are the different ways in which the idea of generality is used. To reiterate, both scholars see the importance of generality, but for different reasons. To Hayek, the benefit of rules that exhibit generality is the epistemic properties they exhibit—*epistemic institutionalism* is at the core of the argument. But for Buchanan and Congleton, the focus is squarely on incentives. A norm of generality reduces the incentive to invest in wasteful rent-seeking and ameliorates the costs generated by unstable majoritarian cycling, with control of the state careening back and forth to serve one group at the expense of the others. The institutional turn introduced by public choice reasoning is illuminating, but not because it emphasizes matters of knowledge and coordination. To put it somewhat crudely, it is incentives all the way down.

We do not want to be overly harsh on Buchanan’s flavor of public choice. If anything, Buchanan fought against a version of public choice that was simply a more rigorous application of neo-classical thinking. Instead, Buchanan was interested in how individuals could use institutional craftsmanship to engender widespread cooperation (Boettke 2018, p. 241). However, it was not Buchanan who would fully carry out this institutional turn. The work of Elinor and Vincent Ostrom, which sought to uncover the learning functions of different sets of rules, were most in line with Hayek’s brand of institutionalism. By considering the different performance properties of institutions in terms of their usage of knowledge and potential for learning/error correction, the Ostroms came closer than anyone to Hayek’s paradigm of *epistemic institutionalism* (E. Ostrom 1968, 1990; V. Ostrom 1993).

Hayek's emphasis on knowledge and institutions has also found an audience outside of political economy. In political philosophy, Elizabeth Anderson has explicitly used Hayekian themes in her work on institutional epistemology (Anderson 2024) and the epistemic properties of democracies (Anderson 2006). The late Gerald Gaus made Hayek a lynchpin of his examinations of liberalism and its ability to grapple with complexity and diversity, especially as it pertains Hayek's writings on the "Open Society" and what was required to maintain it (Gaus 2016, 2022). Further efforts to apply concepts from Hayek's epistemic institutionalism may further both research programs, and present unique opportunities for Hayekian scholars to contribute to them fruitfully.⁸

For the political economist, it is very useful to treat Austrian and Virginia perspectives as two sides of the same coin. Both treat institutions as their analytical focus, but the way they view institutions can differ dramatically. A variety of constitutional economics that evaluates the rules of collective choice by Hayekian lights represents a significant leap forward in our understanding of the rules level of analysis. Marrying Hayek's *epistemic institutionalism* with the traditional remit of public choice economics is an exceptionally promising research area. We remain convinced that immense progress can be made through cross-pollination of the existing programs, as Hayek's insights aid in our study of topics within the traditional remit of public choice adjacent theorists.

V. NEW CHALLENGES FROM NEW DIRECTIONS

It is our hope that this essay has helped forward the case that reading *The Constitution of Liberty* is more than an exercise in intellectual archaeology. Considering *CoL* in the context of Hayek's larger project can help us better understand the different strands of Hayek's argument, as well as augment the work being undertaken by parallel research programs, such as the Virginia and Bloomington Schools. However, the final point we want to touch on is that the Hayekian defense of liberalism is still as important today as it was in the 1960s. While liberalism's specific discontents have changed, the force of Hayek's arguments have not diminished. To the extent that liberalism's detractors do not engage with Hayek on his own terms, they court the same errors as the market socialists. Dispensing with liberal institutions can rob us of the epistemic bounty they provide us with, even if institutions like property rights remain intact to some degree.

While a perfect mapping is impossible, it would not be unfair to characterize Hayek's interlocutors as emerging from the political and economic left. Progressive ideologies of the day placed extraordinary faith in the ability of human reason to not only rationalize the unstable anarchy of capitalist production, but also to reconstruct the seemingly *irrational* practices and beliefs of human morality (Hayek 1952, 1988). In *The Constitution of Liberty*, Hayek ties the decline of the rule of law in the West to this impulse. He notes that many of liberalism's opponents contend that the rule of law is incompatible with planning in that the older conception of the rule of law prevents modern experts from doing what must be done to result in economic and social progress (Hayek 1960, pp. 358-359). Old institutional safeguards were obliterated to make space for a muscular administrative state to exercise strict discretion. From Hayek's perspective, the difficulties with this transformation should be apparent: by ascribing the state broad powers in the economic realm, the knowledge of experts is allowed to trample upon and replace forms of localized and dispersed knowledge. The decline of the rule of law is an institutional degradation which in the long-run will rob societies of their creative powers which generate prosperity and can only exist within liberal rules.

The collapse of communism and the fall of the Soviet Union dealt Hayek's opposition a decisive blow. While the intelligentsia of Hayek's era may have failed to recognize that they had never successfully defeated his arguments, the visible failure of economic planning and centralization made clear that Hayek's reckoning had been prescient all along. This has not stymied the opponents of liberalism, though. What is noteworthy from today's standpoint is that many of the most prominent anti-liberals have emerged from the economic and political right instead of the left.

The conservative-populist reaction against liberalism is best articulated in the writings of figures like Patrick Deneen, Chad C. Pecknold, and Gladden Pappin. Collectively, they have adopted the moniker of

“post-liberal”,⁹ in that they are concerned with envisioning the foundations of a post-liberal society which will emerge in the wreckage of the current liberal order. Specifically, their position is that liberalism can be said to have failed because it has succeeded on its own terms. The post-liberal critique is that liberalism has effectively eroded the foundations which were necessary for its establishment and development. The natural arc of liberal economics and politics is effectively for both spheres to collapse as they result in the disintegration of older forms of social and economic organization.

Take the critiques of liberal or libertarian economics made in Deneen (2018). Deneen posits that the logic of free-market capitalism is inexorable (Deneen 2018, p. 14). The result is the hollowing out of entire regions and local economic subcultures that must give way to the vagaries of impersonal and globalized markets (Deneen 2018, p. 30). At the same time, advanced economic production along liberal lines entails the depletion and destruction of the earth’s natural treasures, such as topsoil, potable water, and vibrant oceanic zones (Deneen 2018, p. 39). The hallmarks of a liberal economy are unabated and wasteful consumption, tragic short-termism, and the alienation of the individual as we turn towards depersonalized and homogenous global markets to satisfy our ever-growing need for consumption, which is in turn spurred on by liberal anti-culture (Deneen 2018, p. 194). The only solution is a refashioning of our economic relationships to foster “the common good.”

Surprisingly, Hayek is an exceedingly minor figure in Deneen’s characterization of liberalism. Between two books, *Why Liberalism Failed* (2018) and *Regime Change* (2023), Hayek only appears on one page, and only to support the contention that liberal societies will be characterized by economic inequality (Deneen 2018, p. 139). Compared to political philosophers like John Locke and liberal polymaths like John Stuart Mill, Hayek is given short shrift. Unsurprisingly, this means that Hayekian ideas concerning knowledge and plan coordination go unacknowledged.

This missed opportunity is most apparent in the latter of Deneen’s books, *Regime Change*. In this book, Deneen purports to sketch the contours of what a post-liberal society would look like. Key to this is an economic plan designed to better promote “the common good”, but to a Hayekian, it reads like a standard list of economic interventions. Effectively, a post-liberal economic order will require a strong state to exert anti-trust powers to curb the existence of monopoly. In addition to this, a post-liberal government would need to engage in muscular industrial policies to re-establish American manufacturing, and at times, domestic manufacturing in certain crucial sectors “should simply be mandated” (Deneen 2023). Markets cannot be relied upon to provide things like food, energy, or raw materials during times of crisis, and for national security reasons, they must be subverted by state dictates.

Nor do the boundaries of social engineering end in the economic realm. Post-liberal governance requires giving the state significant powers to enforce what is termed a “moral media” —essentially, the promotion of legislation designed to foster “public morality” and denounce/outlaw programming that is deleterious to the common good, such as things which promote libertinism and religious mockery. Governments must also be given powerful license to promote pro-family and pro-marriage lifestyles. Through the judicious use of tax relief and other financial incentives, polities would be able to privilege marriage and family formation, like what is taking place in nations like Hungary. While the benefits of larger populations are well-established from an economic perspective (Simon 1981/1996), these admonitions amount to encouragements for states to privilege certain types of living.

Our aim is not to deny that these policies may have certain salutary effects, though the track record of industrial policy is decidedly a grim picture. Rather, what these actions require is an erosion of *general* rules in favor of explicit policy ends or outcomes. Industrial policy which mandates the domestic production of specific goods, for example, commits the very same error Hayek warns about in *CoL* where he compares the rule of law with specific commands. Packaged within the slate of post-liberal reforms is the conceit that we possess the knowledge to organize economic relations to bring about a desired end—the “common good”.

Unacknowledged in all of this are the epistemic costs such planning would require. It remains unclear whether these chosen means would be the most effective to achieve the desired ends, and the potential tradeoff in terms of a reduced *epistemic* order is not confronted. The claim we are making is not that the reduced *efficiency* from industrial planning would be the main difficulty—the post-liberals are abundantly clear that efficiency is not the criterion they are concerned with. Instead, our submission is that any post-liberal regime organized along these lines can expect to encounter the same travails the Marxian and market socialists confronted. The elimination of liberal institutions has downstream consequences in terms of plan coordination at any level, as the institutions needed to address the epistemic requirements are curtailed. While a post-liberal economics may not result in a total collapse of the economic order, it does make the maintenance of such an order much more difficult.

The end outcome may be one in which the generalized prosperity of the liberal order becomes that much harder to sustain. While the post-liberals contend that the idea of liberal “prosperity” is a mockery for certain subsets of the population, the epistemic challenge goes unmet. To establish the soundness of their economic agenda, they must demonstrate that the post-liberal juice is worth the epistemic squeeze. This means engaging with Hayek along the lines he developed in *The Constitution of Liberty*, but as of yet, no attempt has been made to address these concerns.

V. CONCLUSION

It would not be wrong to state that thinkers like Mises and Hayek appeared out of sync with the economics profession throughout their careers. To our mind, this is *not* because economic science moved beyond the Austrian approach. Rather, “mainstream” economists relegated the “mainline” observation that the conditions for social cooperation could not simply be assumed to exist to the background of their studies. While this does not mean Mises and Hayek stopped working in economics, it does mean that economists of every disposition have struggled to apprehend their fundamental insights. As we like to say, Mises was a sophisticated thinker of the 19th century, while Hayek was a sophisticated thinker for the 21st century. The intellectual fashions of the 20th century, such as excessive formalism and misplaced faith in the rationalistic designs of experts, meant that the Austrian emphasis on institutions, knowledge, and coordination, went unacknowledged and underappreciated.

This makes the treatment of Hayek’s work in social philosophy something of an irony. In failing to grapple with Hayek’s institutional focus, it became far too easy for his colleagues to read his works in this area as political treatises and products of their time – that is, only relevant in the context of socialism in the 20th century. It is no coincidence that *The Road to Serfdom* and *The Constitution of Liberty* received a much warmer reception from politicians like Margaret Thatcher and Ronald Reagan than they did from political economists—but both groups were ultimately missing Hayek’s point. While Hayek was primarily responding to criticism from advocates of socialism and state intervention, this does not mean that his criticisms lost their bite with the collapse of the Soviet Union and economic planning.

We hope to have shown that *The Constitution of Liberty* is as much a book for the 21st century as Hayek is a thinker for that same century. While today’s critics of liberalism may look different from those of Hayek’s time, their failure to engage him on his institutional terms speaks to the fact that these fundamental insights have yet to be internalized. To the extent that liberalism’s opponents do not grasp its epistemic properties, they may run the same risks as the advocates for economic planning did: their efforts, no matter how well-intentioned, may have implications that they would never desire. While they may imagine a dramatic refashioning of society, they continue to miss the central Hayekian contention: civilization necessitates an institutional structure which enables us to make use of knowledge we cannot otherwise possess.

The maintenance of this institutional structure is not an easy task. It may be the case that a new re-statement of liberal principles is required—even though providing one may be beyond our specific abilities. However, the entirety of Hayek’s work still has wisdom to impart to those who are curious students of

society and lifelong learners, and this is especially true of *The Constitution of Liberty*. Upon its 65th anniversary of publication, it remains as fecund a work as ever, with the potential to augment and reinforce other research programs in political economy. At the very least, it remains a vital aid to seeing the consequences which stem from the abandonment of liberal rules. The maintenance of Hayek’s “Great Society” and the prosperity we enjoy today is dependent on these insights being preserved.¹⁰

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NOTES

- 1 For convention, we shall occasionally abbreviate *The Constitution of Liberty* as *CoL*. We appreciate readers' understanding our use of this informal shorthand.
- 2 A more subtle version of this argument can be found in Caldwell (1988.) While Caldwell rightly emphasizes the historical context of Hayek's career, the thrust of the article is that Hayek moved away from the study of technical economics (Caldwell 1988, p. 515). This transformation can be seen in his writing of *The Road to Serfdom*, after which he returned to economics in *The Use of Knowledge in Society* (Ibid., pp. 535-536).
- 3 Epistemic institutionalism refers to Hayek's focus on the ways different institutions generate and communicate knowledge, as well as how institutions coordinate the expectations and plans of disparate individuals.
- 4 In a particularly influential paper, Karen Vaughn argues that the ideas in *Economics and Knowledge* (Hayek 1937) are implicit in Hayek's more philosophical writings, and thus are necessary for a full understanding of them (Vaughn 1999).
- 5 The definitive reconstruction of this is provided by Lavoie (1985), which we draw heavily from in this section.
- 6 In the Hayek/Robbins formulation, the ends of the socialists were impossible to achieve under the constraint of scarcity without economic calculation. This is the flavor of "impossibility" they sought to advance (Boettke and Leeson 2005).
- 7 Observations of this nature were not original to Hayek. Here, he was preceded most notably by Edmund Burke (1790/1992), who had a profound influence on Hayek's own thought.
- 8 We are thankful to the editor for bringing these literatures to our attention. Though our summaries of them are not exhaustive, interested readers will find much value in these works.
- 9 The name "post-liberal" is one that has been voluntarily adopted by all three authors. An especially popular repository of post-liberal writings is the Substack maintained by the three, which has fittingly been named "Post-liberal Order."
- 10 The support of the Mercatus Center at George Mason University is acknowledged. Trey Dykeman, Nathan Goodman, and Samrudha Surana provided helpful feedback. Primrose King provided useful conversations. The usual caveat applies.

Planning, Market Dynamism, and the Rule of Law

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Abstract: This paper examines a tension in F. A. Hayek's thought between his defense of the rule of law and his advocacy for free markets. While Hayek argues that the rule of law is valuable because it enables individuals to plan their lives, he seems unconcerned about how markets can similarly disrupt planning. The paper challenges the conventional development economics response which says that legal disruptions cause more significant economic harm than market disruptions. Instead, it argues that resolving the tension requires reconsidering Hayek's theory of the good life. Rather than viewing the good life through the lens of planning, this paper embraces John Stuart Mill's conception of the good life as the exercise of creativity. This alternative framework explains why both the rule of law and free markets are valuable, resolving the contradiction in Hayek's thought.

Keywords: Hayek, Mill, rule of law, creative destruction, economic growth, market process.

1. INTRODUCTION

In the 1930's, F. A. Hayek began to move away from technical questions in economics to broader questions in social theory and political philosophy (Caldwell 2004, p. 230). From *The Road to Serfdom* (published in 1944) to *The Constitution of Liberty* (published in 1960), the rule of law was at the center of Hayek's thought (Ealy 2010). Hayek's work on the rule of law has been extraordinarily influential. His formal conception of the rule of law (which I explicate below) still informs our understanding of the rule of law today. Among philosophers and legal theorists, Hayek's normative justification for why the rule of law is an ideal worthy of aspiration is still commonly (although not universally) accepted. The basic idea: the rule of law is valuable because it allows individuals to plan their lives.

The argument is forceful, but there has always been something about it that bothers me. Hayek is a free market economist. He believes very few regulations and restrictions should be placed on the market process. The market process, though, upsets plans in the same way legal systems that violate the rule of law do. For instance, many people planned on being horse and buggy drivers—they invested in physical and human capital to do so—but the invention of the automobile laid these plans to waste. Why isn't Hayek concerned about *these* plans? Why doesn't he want to regulate the market process to ensure individuals can successfully execute them? Since we are coming up on the 65th anniversary of *The Constitution of Liberty*—the book in which Hayek offers his clearest and most in-depth discussion of the rule of law—I think it is worth spending some time addressing this puzzle.

There is an obvious answer to this puzzle that takes inspiration from contemporary work in development economics: the negative economic impact of plans upset by the legal system is significant, while the

negative economic impact of plans upset by the market process is negligible. This response does not succeed, I argue. Ultimately, the puzzle can only be resolved if we rethink a foundational aspect of Hayek's thought. The theory of the good life that Hayek implicitly embraces—where the good life is one in which individuals form, pursue, and execute life plans—must be rejected. A new theory of the good life—the one developed by John Stuart Mill, where the good life is one in which individuals exercise their creative powers—should be adopted in its place. This theory of the good explains why both free markets and the rule of law are valuable.

Here is the structure of the paper. In the next section I explicate Hayek's conception of the rule of law and also his normative justification for it: the rule of law allows individuals to plan their lives (§2). After this, I present the paper's guiding puzzle: because the market process upsets many life plans, if Hayek is concerned about protecting individuals' plans, then he should favor significant market regulation; and yet, he does not (§3). From here I examine a failed resolution to the puzzle, which says it is consistent for Hayek to care about plans upset by the legal system but ignore plans upset by the market because plans upset by the legal system hinder economic growth, but plans upset by the market do not (§4). I offer my own resolution to end: if Hayek adopts Mill's theory of the good life, he can justify both market dynamism and the rule of law (§5). Beyond solving a puzzle within Hayek's thought, the broader goal of this paper is to revive and defend a theory of the good life congenial to liberals that has been largely forgotten. I also hope to demonstrate the importance of thinking about how normative ideals and institutional arrangements fit together.

2. PLANNING AND THE RULE OF LAW

In this section I summarize Hayek's conception of the rule of law. This includes what Hayek meant by the rule of law and why he thought it was important. To accomplish this, I situate Hayek's thought in the broader literature on the rule of law.

The rule of law is an “essentially contested concept,” which means there is significant disagreement over how to understand it (Waldron 2021). Some legal theorists understand the rule of law *conceptually* (e.g., Fuller 1969; Waldron 2008). On this interpretation, for a legal system to actually be a legal system, the rule of law must be realized; if the rule of law is absent, then what appears to be a legal system is not actually one. Far more commonplace is to understand the rule of law *normatively*. On this view, the rule of law is “an ideal of political morality that is realized to a greater or lesser extent in different legal systems” (Wall 2018, p. 283). If a legal system does not realize the rule of law, then it can still be a legal system, though it is an unattractive one. Hayek is in this latter camp. He says the rule of law is “a doctrine about what the law ought to be” (Hayek 2014, p. 163). So, when Hayek articulates what the rule of law is, his aim is normative, not descriptive. In describing the rule of law, he is painting a picture of what an ideal legal system looks like.

What does the rule of law demand of a legal system? There are three schools of thought. The first—what I shall call the *formal school*—understands the rule of law in terms of a set of formal criteria laws must satisfy. For instance, the rule of law may require that laws must be general, public, clear, stable, not retroactive, not contradictory, not impossible to comply with, consistent with one another, and so on (Marmor 2004, pp. 5-7). This approach is typically associated with Lon Fuller's (1969) work on what he calls the “inner morality of law.” There is no definitive list of criteria laws must satisfy for the rule of law to be realized according to the formal school, but the “laundry lists” that legal theorists come up with are often quite similar, differing only in minor details (Waldron 2016, §5).

The second school of thought is the *procedural school* (Waldron 2023, p. 162). On this view, the rule of law does not demand that *laws* satisfy certain criteria, but that the legal system *operate* in a certain kind of way. For the rule of law to be realized, no person can be deprived of life, liberty, or property without access to a procedure that involves a hearing by an impartial tribunal who is required to act on the basis of evidence and argument, the right to representation by counsel, the right to be present at the proceeding,

the right to confront witnesses, the right to present evidence, and so on (Waldron 2023, p. 162). Third is the *substantive school*. According to this school of thought, the rule of law requires specific normatively desirable institutions and policies, such as private property, prohibitions on torture and brutality, democracy, and so on (Ibid.).

To which school of thought does Hayek belong? He is clearly a member of the formal school. In Chapter 14 of *The Constitution of Liberty*, Hayek proposes three criteria laws must meet for the rule of law to be realized, but I believe he actually offers four. First is that “government must never coerce an individual except in the enforcement of a known rule” (Hayek 2010, p. 310). This criterion of the rule of law is sometimes known as *publicity* and less commonly known as *promulgation* (Kogelmann 2021, ch. 4). Most legal theorists in the formal school include it in their laundry lists of criteria. This criterion prohibits secret laws. It also prohibits legal codes that are difficult to access, such as when Caligula wrote laws in small lettering on a tablet that he hung high upon a pillar; he did this to increase violations of the law to thereby increase tax revenue (Grant 2006, p. 321).

The second criterion laws must meet for the rule of law to be realized is that they be “certain. The importance which the certainty of the law has for the smooth and efficient running of a free society can hardly be exaggerated” (Hayek 2010, p. 315). What Hayek means by “certainty” is not fully clear. A look at other work in the formal school can help unpack this. First, some argue that the rule of law requires *clarity*. A law satisfies this condition when “subjects understand what the rule requires” (Marmor 2004, p. 6). This rules out vague laws, such as “drive at a reasonable speed” and “only sell goods at a fair price.” By “certainty” Hayek may mean “clarity,” as in individuals must be certain of what the laws demand of them. Second, some argue that the rule of law requires *stability*, which means the legal code should change infrequently (Marmor 2004, p. 6). This rules out a capricious government changing tax codes or regulatory policies every six months. By “certainty” Hayek may mean “stability,” as in individuals must be certain what the law will demand of them in the future. Because of this ambiguity and because both interpretations are plausible, I shall say Hayek adopts both clarity and stability as formal criteria of the rule of law.

The “third requirement of true law is equality,” which means that “any law should apply equally to all” (Hayek 2010, p. 316). This is sometimes captured by the maxim that “no person is above the law.” This criterion is also found in many formal accounts of the rule of law. The basic idea is that “those who rule with law and in its name are at the same time ruled by it ... the law applies to and tempers ruling power” (Postema 2022, p. 56). This criterion is violated when a legal system grants immunity from criminal or civil liability to certain individuals or classes of people, such as elected officials, members of executive branch agencies, members of a certain race, members of a certain religious group, and so on.

Hayek belongs to the formal school, but he does not belong to the procedural school. After explicating his four formal criteria he notes that “we have now concluded the enumeration of the essential factors which together make up the rule of law, without considering those procedural safeguards such as habeas corpus, trial by jury, and so on” (Hayek 2010, p. 327). This decision “has been quite deliberate” (Ibid.). Hayek ignores these “procedural safeguards” because “while their importance is generally recognized, it is not understood that they presuppose for their effectiveness the acceptance of the rule of law as here defined and that, without it, all procedural safeguards would be valueless” (Ibid.). Hayek’s point is that the familiar procedural components of a legal system are only desirable when the formal components of the rule of law are also present. If laws are not public, clear, stable, and applied equally then jury trials don’t offer much value. Since the rule of law is a normative ideal, a legal system realizing it should strike us as attractive. Standard legal procedures *on their own* do not meet this bar.

Hayek is also not a member of the substantive school. According to this school of thought, the rule of law demands specific normatively attractive institutions and policies. Evidence that Hayek rejects this interpretation comes when he writes that “all laws and institutions which offend against the ideal of the Rule of Law are objectionable in principle, while any law which conforms to it will have to be judged on its individual merits. Such a law may still be stupid or harmful” (Hayek 2014, p. 178). In other words: laws that are consistent with the rule of law are not necessarily good, they merely avoid one significant defect. Many

substantively bad policies are consistent with Hayek's notion of the rule of law. For instance, a law permitting government agents to torture convicted criminals is consistent with Hayek's conception of the rule of law so long as it was announced beforehand, was written in a clear manner, changed infrequently, and applied equally to all.

According to Hayek, then, the rule of law is a normative ideal and should be understood as demanding that laws satisfy certain formal criteria. The rule of law is realized when laws are public, clear, stable, and applied equally. Why is this a normative ideal, though? Why insist that laws satisfy these four criteria? Their goodness is by no means obvious. As philosopher Steven Wall (2018, p. 283) notes, "although it is an ideal of political morality, the rule of law is not a basic or fundamental one. Its normative significance is explained by its contribution to other, more fundamental, values." To fully specify his account of the rule of law, Hayek must tell us *why* it constitutes a genuine ideal.

His answer: when laws are public, clear, stable, and applied equally individuals can effectively plan their lives. This claim can be found across Hayek's writings (e.g., Hayek 1976, p. 5; 2007, ch. 6; 2010, pp. 210, 221, 315-316; 2014, p. 176). However, it is most clearly stated in Chapter 6 of *The Road to Serfdom*, titled (appropriately enough) "Planning and the Rule of Law." Here Hayek (2007, p. 114) writes that "knowledge that in such situations the state will act in a definitive way, or require people to behave in a certain manner, is provided as a means for people to use in making their own life plans." The argument has been incredibly influential. Many philosophers and legal theorists follow Hayek on this point, holding that the rule of law is desirable precisely because it facilitates planning (Marmor 2004, p. 23; Raz 2009, p. 221; Wall 2018; Kogelmann 2021, p. 99).¹

It's easy to see that Hayek's conception of the rule of law facilitates planning when we consider what may happen in a legal system where the four criteria are absent. If laws are not public, then individuals, in their ignorance, may formulate plans that require illegal conduct. When pursuit of their plans leads them to breach existing laws, their plans will be thwarted. Unclear laws can also upset plans. An individual might set up a business that she thinks complies with the existing regulatory code but, because the code is unclear, she is mistaken. When her business is shut down as a result, the individual's plan is upset. Unstable laws can also cause problems for individuals' plans. An individual might start a business selling a certain product; if the product is declared illegal in six months, then her plan is thwarted. Finally, unequal application of the law can also result in upset plans. If a certain class of individuals is immune from civil and criminal liability, then their privileged legal status makes it more likely they will upset the plans of others. Police officers who cannot be criminally prosecuted are more likely to steal from local businesses, for example.

Let me close this section by way of summary. Hayek understands the rule of law as a normative ideal. He belongs to the formal school of thought, which means he thinks the rule of law requires that laws satisfy certain formal criteria. The rule of law is realized when laws are public, clear, stable, and applied equally. This is an attractive normative ideal because when it is realized individuals can form, pursue, and execute their plans.

3. PLANNING AND THE MARKET

Hayek's commitment to the rule of law is ultimately grounded in the importance of protecting individuals' plans. It is valuable for individuals to form, pursue, and execute plans; the rule of law facilitates this. In this section I highlight a tension between Hayek's commitment to protecting individuals' plans and another aspect of his thought. The other aspect I have in mind is Hayek's commitment to free markets. Hayek (1945, p. 527) calls the price system a "marvel," noting that "if it were the result of deliberate human design ... this mechanism would have been acclaimed as one of the greatest triumphs of the human mind." While there are many good things to say about markets, there is at least one downside: the dynamism inherent in them often thwarts individuals' plans.

This can be seen most clearly by looking at *creative destruction*. The term was initially introduced by Joseph Schumpeter (2008, p. 81), but the idea that instability and turmoil are part of the market process goes back at least to Karl Marx and Friedrich Engels (1972, p. 476), who wrote in the *Manifesto of the Communist Party* that “the bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society.”² A bit more formally, creative destruction is “the process by which new innovations continually emerge and render existing technologies obsolete, new firms continually arrive to compete with existing firms, and new jobs and activities arise and replace existing jobs and activities” (Aghion et al. 2021, p. 1). The market process involves a constant cycle of innovation and disruption, where new technologies, companies, and occupations emerge and replace older, less efficient ones.

Consider a few examples. Industrial looms displaced skilled artisan weavers, while ride-sharing apps like Uber and Lyft challenged traditional taxi services. In social media, Facebook’s rise led to Myspace’s decline. The agricultural sector saw significant changes as modern equipment like tractor combines reduced the need for manual labor. In manufacturing, industrial robots have taken over many assembly line tasks previously done by humans. The advent of automobiles rendered the once-thriving horse and buggy industry obsolete. Electric lighting eliminated demand for kerosene and whale oil lamps. In entertainment, Netflix’s streaming service led to the bankruptcy of video rental giant Blockbuster. The rise of high-quality smartphone cameras contributed to the downfall of Kodak, once a leader in photography. Recent advances in artificial intelligence (AI) have led many to predict that a significant bout of creative destruction lay just over the horizon (Kogelmann and Carroll 2024a). Carl B. Frey and Michael A. Osborne (2017, p. 268) predict that “around 47% of total US employment is in the high-risk category. We refer to these as jobs at risk—i.e. jobs we expect could be automated relatively soon, perhaps over the next decade or two.”

You can’t have markets without creative destruction, but creative destruction results in thwarted life plans (Kogelmann 2024). There are a few ways this might happen. First, creative destruction can render goals *obsolete* while individuals pursue them. This is likely to happen if individuals set very specific goals concerning the kinds of careers they want to have. The automobile upset the plans of those who wanted to be horse and buggy drivers, industrial robots upset the plans of those who desired to work in manufacturing, and Uber and Lyft upset the plans of those who were set on being taxi drivers. New AI tools will soon upset the plans of many. For instance, machine learning algorithms are already better than humans at diagnosing disease from medical imaging, leading some to speculate that human radiologists will soon be obsolete (Guilford-Blake 2020). If true, this will upset the plans of all those who are currently in or who have recently graduated from radiology training programs.

Even those who do not adopt very specific goals—such as being a taxi driver or radiologist—can see their plans upset by creative destruction. This brings us to the second way creative destruction can upset life plans: it can render the actions individuals take in pursuit of their goals *ineffective*. An individual might have the broad goal of achieving a certain material standard of living so she can support a large family and enjoy certain luxuries. To pursue this goal the individual decides to become a lawyer. Creative destruction can render this plan of action ineffective as a means for achieving the relevant end. AI tools like ChatGPT may reduce the demand for and hence wages of lawyers because fewer lawyers will be needed to produce the same output of legal services (Weiss 2023). If an individual went to law school to support a large family and enjoy certain luxuries, she might find that plan upset; in the near future, a typical lawyer’s wage may no longer support these goals. Even if creative destruction does not eliminate specific goals, it can change the effectiveness of the actions individuals take in pursuit of them.

Finally, creative destruction can lead to *paralysis*, where individuals become reluctant to make and follow through on plans in the first place due to heightened uncertainty about the future. This phenomenon is reminiscent of arguments in the economic development literature suggesting that insecure property rights can deter owners from investing in their assets due to future uncertainties (Acemoglu and Robinson 2012, p. 75). Similarly, the ongoing process of creative destruction, which reshapes available occupations, may

deter people from making long-term professional choices. This idea finds some support in data showing that areas experiencing significant creative destruction see many individuals completely withdraw from the workforce (Acemoglu and Restrepo 2020, 2219). In these regions, a considerable number of working-age people have ceased job-seeking entirely, though the reasons for this are not entirely clear. One possible explanation is that the constant flux in available options makes it challenging for individuals to decide on a course of action. With their previous manufacturing jobs gone, they question the value of retraining for a new field like radiology, fearing that it too could soon become obsolete.

Markets do wonderful things for us, such as generate information, coordinate plans, economize on the use of scarce resources, channel greed to good ends, and incentivize innovation (e.g., Paniagua 2018). But protect our plans, they do not. The dynamism at the heart of the market process means the plans we pursue can be upended at any moment. An entrepreneur who invents a new piece of technology can render years of human capital accumulation entirely worthless. If you are someone—like Hayek—who believes it is important to protect individuals’ plans, then why not regulate the market process to prevent this from happening? Suppressing innovation was historically common (Juma 2019). In some cases, rulers cited the wellbeing of those whose plans would be disrupted as their motivation for doing so. Queen Elizabeth I denied a patent to an automated knitting machine because she had “too much love for my poor people who obtain their bread by the employment of knitting ... to forward an invention that will tend to their ruin by depriving them of employment, and thus make them beggars” (Diamond 2019, p. 66).

Without a doubt, Hayek would reject such measures. He stands firmly on the side of innovation and economic progress (Hayek 2010, ch. 3). Moreover, in Chapter 9 of *The Road to Serfdom*, Hayek explicitly considers what to do about plans disrupted by creative destruction. Although an individual having their plans upset by the market “undoubtedly offends our sense of justice,” he believes that ultimately the market process must be permitted to continue unabated (Hayek 2007, pp. 149-150). This creates a puzzle, but to state it clearly, I want to first introduce some terminology. When a plan is disrupted by the legal system, I shall call it *legal disruption*, and when a plan is disrupted by the market process, I shall call it *market disruption*.³ Now, the puzzle: what rationale (if any) supports Hayek’s *selective* concern for legal disruption, while remaining silent on cases of market disruption? The rest of this paper tries to answer this question.

4. PLANNING AND ECONOMIC GROWTH

Our puzzle is this: why is legal disruption problematic but market disruption not? One answer points to the *economic impact* of upset plans in the respective domains. In his defense of the rule of law, Hayek (2010, p. 315) notes that “there is probably no single factor which has contributed more to the prosperity of the West than the relative certainty of the law which has prevailed here.” Many social scientists agree with Hayek that the rule of law is essential for growth (Haggard et al. 2008; Haggard and Tiede 2011). This suggests an answer to our puzzle: legal disruption hinders economic growth, but market disruption does not. Since economic growth is deeply important,⁴ we must minimize legal disruption, which leads us to embrace the rule of law. Because market disruption does not hinder economic growth, there is no reason to restrict market dynamism. The current section reconstructs this argument as charitably as possible. After doing so, I offer an objection to it. The argument, I believe, fails to resolve our guiding puzzle.

To begin, why does legal disruption hinder economic growth? When the legal system thwarts individuals’ plans it creates uncertainty; this uncertainty discourages individuals from investing in productive projects, hampering growth. If you’ve seen the state recently nationalize firms, then why start your own business? If you’ve just witnessed courts refuse to uphold valid contracts, then why sign one? If the state continuously alters the regulatory code, then how can you be confident the products you make will comply with it? If you’ve observed frequent changes in tax laws, then how can you plan for the long-term financial stability of your company? As economists Daron Acemoglu and James A. Robinson (2012, p. 75) put it, “a businessman who expects his output to be stolen, expropriated, or entirely taxed away will have little incentive to work, let alone any incentive to undertake investments and innovations.” The core argument

for why the rule of law fosters growth is that it creates certainty in the legal environment, which incentivizes productive activities.

The fact that legal disruption creates uncertainty cannot explain why it is bad for growth but market disruption is not, for market disruption *also* creates uncertainty. Uncertainty in this domain can also discourage individuals from engaging in productive projects. If you've recently seen new technology substitute certain kinds of labor, then why make your own human capital investments? If you've recently witnessed other businesses go bankrupt, then why start your own? If you've seen successful companies fail due to sudden shifts in consumer preferences, then why risk developing a new product line? If you've watched major corporations struggle with supply chain disruptions, then why build a business reliant on complex logistics? Just like a legal system that does not adhere to the rule of law, the creative destruction inherent in the market process creates uncertainty. It may be that legal disruption is bad for growth and market disruption is not, but this difference cannot be explained by uncertainty, for uncertainty is present in both domains.

The divergent effects of legal and market disruption on growth can be attributed not to variance in their economic *costs*—both are economically costly—but rather to variance in their economic *benefits*. When plans are upset in the marketplace, it is typically because someone has introduced an innovation. A new product replaces an old one, a new firm outcompetes an old one, a new method of production is more efficient than an old one, and so on. While scholars still debate the ultimate cause of economic growth, its proximate cause is understood: innovation (Schumpeter 2017, p. 64; Koyama and Rubin 2022, p. 9). Innovation makes us richer. Market disruption thus harbors both economic costs and benefits. It creates uncertainty which may discourage productive investment, but it also results in innovation that makes us wealthier. By contrast, legal disruption is all costs with no economic upside. When the state decides to nationalize an industry, this does not typically result in economic growth. Instead of abundance, the usual result is greater scarcity (Burgess et al. 2020). When the courts decide to not uphold a contract, no wealth is created. It is hard to see how constantly changing or vaguely written regulatory codes create wealth.

So, one can make the argument that legal disruption is bad for growth while market disruption is not, but not with the usual rationale. Social scientists typically explain why legal disruption is bad for growth by pointing to uncertainty, but uncertainty is everywhere in markets, and markets are not bad for growth (indeed, they are growth's engine). The key difference is that though upset plans have economic downsides in both domains, they have upside only in one. In cases of market disruption, uncertainty discourages some individuals from engaging in productive activities, but this is more than offset by the economic benefits of innovation. In cases of legal disruption, uncertainty discourages some individuals from engaging in productive activities, but this is not offset by any kind of compensating benefit.

Regardless of why it is true, we nonetheless have an answer to our puzzle: for purely economic reasons, we should embrace the rule of law to minimize legal disruptions, but we need not worry about market disruptions. I do not think this solution to our puzzle succeeds. The solution successfully explains why we need not be concerned with market disruptions. But it can only explain why we should care about *some*, not *all*, legal disruptions. It offers only a partial defense of the rule of law.

To see this, note first that only some of the plans we make have significant economic impact. If we develop human capital, invent a new good or method of production, or start a business then our plans will impact the economy in a significant way. Call these *economic plans*. Not all our plans are like this. I might plan to join a new religious faith, start a new hobby, watch all eight seasons of *Game of Thrones*, reinvent my sense of fashion, lose some weight, run a marathon, get a tattoo sleeve, fall in love, remodel my house, or read all of Dostoyevsky's novels. The economic impact of these plans is minor at best. Call these *personal plans*. Legal disruption can happen to both economic plans (e.g., when the state unexpectedly nationalizes an industry) as well as personal plans (e.g., when the state unexpectedly declares someone's cherished hobby illegal).

Imagine a state where the rule of law is upheld for economic plans, but not personal ones. Laws that govern property rights, contracts, exchange, finance, business corporations, business regulations, and so on are all public, clear, stable, and applied equally. Meanwhile, laws that govern things like religious worship, speech, sexual partners, expression, and association are secret, vague, frequently change, and applied unequally. Perhaps laws that govern religious worship are only applied to Muslims and not Christians. Or laws that govern acceptable speech change frequently. Maybe laws that govern civic associations are so unclear that they are almost sure to be violated.

I find such examples unsettling. Hayek would too. In *The Road to Serfdom*, one of the many arguments Hayek lobs against central planning is that restricting economic freedom eventually leads to restrictions on personal freedom. This is bad, according to Hayek (2007, p. 126), because “there are many things which are more important than anything which economic gains or losses are likely to affect, which for us stand high above the amenities and even above many of the necessities of life which are affected by the economic ups and downs.” In other words, our personal plans are just as important as our economic ones; they too deserve protection from legal disruption.

And yet, the current solution to our puzzle cannot say this. The solution says we should care about legal disruption because of its negative economic impact. But only *some* cases of legal disruption have negative economic impact. When economic plans are disrupted, uncertainty is created for businesses with no compensating benefit; this has negative economic impact. When personal plans are disrupted, no uncertainty is created for businesses, so negative economic impact is kept to a minimum. If economic growth is your primary concern, then you can decry the sudden nationalization of industry, unstable and unclear regulatory codes, unenforced contracts, and the like. But it is much harder to decry a state that capriciously interferes with personal lives, fails to publish or publishes unclear laws governing speech, selectively applies the laws that govern religious worship, and so on. Presumably, we want to say that *both* kinds of legal disruption are wrong and that the rule of law should be upheld in both the economic and personal sphere. The current response cannot do this.

5. CREATIVITY, MARKETS, AND THE RULE OF LAW

Hayek’s defense of the rule of law is grounded in the importance of protecting individuals’ plans. He thus implicitly adopts a theory of the good life where the good life is understood as one in which individuals form, pursue, and execute plans. Call this the *planning theory of the good*. It has many defenders (Raz 1986; Bratman 2018; Wall 2018). My contention is that one cannot consistently embrace the planning theory and free markets. If planning is what ultimately matters, then the dynamism inherent in the market process must in some way be regulated or altogether eliminated to protect individuals’ plans from the gales of creative destruction. If I am right about this, then Hayek must reject the planning theory if he is to continue embracing free markets. But if he does, he then loses his rationale for the rule of law. What to do? I sketch a solution in the current section. Hayek should embrace an alternative conception of the good life that is both consistent with free markets and able to tell us why the rule of law is important.

The conception of the good I have in mind is defended by John Stuart Mill in *On Liberty*. According to Mill (1978, p. 54), “it is desirable . . . that in things which do not primarily concern others individuality should assert itself.” On the flipside, “where not the person’s own character but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness” (Ibid.). The basic idea is that the good life is one in which individuals exercise their creativity. This can involve creating art, experimenting with alternative lifestyles, trying new things, bucking social norms and trends, innovating, creating novel enterprises and associations, challenging conventional wisdom, pursuing unconventional career paths, developing new technologies, exploring new ideas, cultivating a unique personal style, forging new cultural practices, and so on. A life without the spark of creativity—where custom, habit, and tradition rule the day⁵—is missing something important. Call this the *spontaneity theory of*

the good. As one commentator describes it: “Mill admires the eccentric person, the one who has the imagination and the strength of character to live his or her life against the grain” (Wall 1998, p. 129).

Why does Mill think the spontaneity theory is an attractive way to live? There are two reasons. First, those who live according to the spontaneity theory perform a valuable *epistemic* function. Just “as it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living”; these experiments allow “the worth of different modes of life” to be “proved practically, when anyone thinks fit to try them” (Mill 1978, p. 54). In other words, when individuals live according to the spontaneity theory there is much we can learn from them. For instance, how do we know that monogamy is the best form of sexual and romantic partnership? If individuals live according to the spontaneity theory, then the creativity of some will lead them to try alternatives to it. The rest of us can observe how their lives turn out.

Second, those who live according to the spontaneity theory develop their skills, talents, and capacities, which is a good thing. Mill writes that the individual who follows habit and custom “has no need of any other faculty than the ape-like one of imitation” (Ibid., p. 56). By contrast, he who goes against the grain “employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision” (Ibid.). The creative individual is a more developed and well-rounded person than the unimaginative one.

Hayek would be sympathetic to the spontaneity theory, for a few reasons. First, the spontaneity theory was developed by Mill, and Hayek was a follower of Mill in many respects (Hayek 2015). Second, Hayek would be supportive of Mill’s epistemic defense of the spontaneity theory. In *The Constitution of Liberty*, Hayek (2010, p. 82) argues that freedom is valuable because “above all ... we should provide the maximum opportunity for unknown individuals to learn of facts that we ourselves are yet unaware of and to make use of this knowledge in their actions.” If individuals are free, then some will try new things we can learn from. Mill is taking this logic a step further with the spontaneity theory: the good life is one in which individuals *actively seek* out new experiments in living that others can learn from. Third, Hayek may even be sympathetic to Mill’s self-development defense of the spontaneity theory. In “Why I Am Not a Conservative,” he writes that “the essence of human achievement is that it produces something new,” suggesting that self-development and creativity are intimately bound (Ibid., p. 526).

The spontaneity theory says the good life is one in which individuals exercise their creativity. To facilitate this, we should embrace political and economic institutions that allow and encourage creativity. Free markets do this. Note first that they *allow* creativity. As many have pointed out, the market is a space where individuals can exercise their creative powers (Buchanan and Vanberg 1991; Makowski and Ostroy 2001). They can start businesses, invent new technologies, develop new skills, introduce new products, run novel marketing campaigns, innovate new methods of production, find new ways to organize the firm, and so on. Indeed, entrepreneurs drive the market process, and Schumpeter defines entrepreneurs as those who engage in creative projects. “The entrepreneur and his function,” he writes, “are not difficult to conceptualize: the defining characteristic is simply the doing of new things or the doing of things that are already being done in a new way (innovation)” (Schumpeter 1947, p. 151). Free markets are great outlets for individuals to exercise their creativity.

Free markets don’t only allow creativity, they *encourage* it. We can once again turn to Schumpeter to help illuminate this point. When an entrepreneur does something new, they exercise a kind of temporary monopoly until their competitors learn how to mimic them. This temporary monopoly grants them extraordinary profits (Ibid., p. 155). For instance, the first company to introduce the smartphone—Apple with its iPhone—enjoyed a period of market dominance and extraordinary profits. Similarly, Amazon’s pioneering of e-commerce and one-click purchasing gave it a significant edge over traditional retailers. Netflix’s shift from DVD rentals to streaming video created a new market where it initially faced no competition. In each case, these companies’ creative innovations granted them a temporary monopoly, allowing them to capture substantial market share and profits before competitors could catch up. Temporary monopoly profits

incentivize creativity, as the first one to do something new for which there is sufficient demand receives an outsized reward.

To sum up so far, if Hayek embraces the planning theory of the good then he must reject free markets because of the deleterious impact they have on individuals' plans. The spontaneity theory of the good naturally leads Hayek to free markets, however, for markets allow and encourage creativity. What about the rule of law, though? The planning theory provides a compelling justification for the rule of law, but does the spontaneity theory?

I believe so. Note first that states are often conservative forces that stifle creativity and innovation. Innovation generates society-wide benefits, but it creates losers as well (Taylor 2016, p. 195). Losers can be economic. Examples include horse and buggy drivers driven out of work by the automobile and taxi medallions that plummet in value due to Uber and Lyft. Losers can be social and cultural too. New media platforms like TikTok shift cultural influence from older to younger generations, while new ways of engaging in romantic and sexual relationships through dating apps like Tinder offend puritanical sensibilities. Those who stand to lose from innovation can often use the power of the state to quash it. The logic of concentrated benefits and dispersed costs explains why (Olson 1971, 1984). The potential losers from innovation are typically a small, well-organized group with a strong incentive to lobby against change, while the beneficiaries are often a large, diffuse group who each stand to gain only a small amount. As a result, the state will often be more responsive to the vocal minority opposing change than to the silent majority who benefits from it, leading to policies that protect established industries and cultural norms at the expense of potentially beneficial innovations.

States are disposed to quash creativity and innovation, but institutions can be structured to limit their obstructive tendencies. For example, many have argued that polycentricity fosters innovation.⁶ David Hume (1987, p. 119) initially noticed that “nothing is more favorable to the rise of politeness and learning, than a number of neighboring and independent states, connected together by commerce and policy.” Economist Joel Mokyr has defended the thesis more recently. He writes:

Competition among states, then, implied two things for cultural change. One is that rulers competed with one another for the best citizens, be they astrologers, painters, artisans, sea captains, musicians, or armorers. But more important, they provided a major reason for coordination failure among the powerful forces of conservatism trying to suppress intellectual innovators (Mokyr 2018, p. 169).

Like polycentricity, I believe the rule of law—particularly Hayek's conception of it—counteracts the conservative forces inherent in states, thus fostering creativity and innovation. In this way the spontaneity theory of the good provides a rationale for the rule of law.

The rule of law makes it difficult for states to *preemptively ban* creative and innovative acts before they are even attempted. The requirement that laws be clear is relevant here. Creative acts are novel; it is hard to anticipate what a creative individual does before she does it. No one could have predicted the rise of AI chatbots in 2010, TikTok or Twitter in 1990, the rise of rap and hip-hop music in 1960, or the Grateful Dead in 1940. Laws preemptively banning these kinds of activities would thus have to be extraordinarily vague. For instance, preemptively banning technologies like AI chatbots and social media platforms would require vague laws prohibiting things like “the dissemination of information through electronic means” or “unregulated platforms for public discourse.” Laws like this violate the rule of law's clarity requirement. For the rule of law to be realized, laws must be written in a manner such that those who are subject to them know exactly what they permit and forbid. Because creative acts are unpredictable, laws that preemptively ban them must be vague. Hayek's conception of the rule of law forbids this.

Another way to preemptively ban creative and innovative acts is to have a blanket ban on all innovation that can only be lifted with explicit approval from the state. This was common historically. All acts

of incorporation once required explicit approval from parliament, as did all patents on new innovations (North et al. 2009, p. 168). A law that says “all business corporations are illegal unless explicitly approved by parliament” is clear, so it does not run afoul of the rule of law’s clarity requirement. It does, however, run afoul of the requirement that laws must be applied equally. This requirement can be violated in both a *de jure* and *de facto* manner. *De jure* violations include laws that are explicitly written to only apply to some; for instance, “only white men may start business corporations.” *De facto* violations include laws that are facially neutral but applied unequally in practice. An example would be a law that says, “all business corporations are illegal unless explicitly approved by parliament,” but applied in a discriminatory manner; for instance, only white men are given approval. This gets to why the current proposal violates Hayek’s conception of the rule of law. Though laws that ban innovation unless otherwise permitted may be clear, they will almost certainly be applied in a discriminatory manner in practice, violating the rule of law.

If creative acts cannot be banned preemptively perhaps the state can ban them after the fact. ChatGPT and TikTok can be outlawed once they are introduced, as can rap music and the Grateful Dead. The easiest way for the state to do this is to say that creative act *x* was always illegal, but the law banning *x* was not published. The rule of law’s requirement that all laws be public prevents this. With this strategy taken off the table, the state can instead pass a law banning *x* once it becomes prevalent. The rule of law’s requirement that laws be stable prevents this. This requirement says that a state’s legal code should change infrequently. If the state responds to each new creative act and innovation with another law, then its legal code is constantly in flux. This violates the rule of law.

I don’t mean to suggest that Hayek’s conception of the rule of law, if realized, prevents the state from quashing all creative acts. My point is only that the rule of law, like polycentricity, is one institutional safeguard that makes quelling creativity and innovation a bit more difficult. In a polycentric system, attempts to thwart innovation are evaded by entrepreneurs who vote with their feet. In a legal system that achieves the rule of law, it is difficult for states to both preemptively ban creativity and to respond to it after the fact. Thus, by following in the footsteps of Mill and adopting the spontaneity theory of the good life, Hayek can explain why both free markets and the rule of law are valuable.

6. CONCLUSION

This paper addressed a longstanding puzzle (at least puzzling to me) in Hayek’s thought: if the rule of law is so good because it allows us to plan our lives, then shouldn’t we also worry about market dynamism, which can disrupt our life plans? Ultimately, I don’t think Hayek has a good answer to this question, requiring us to rethink certain aspects of his thought. I have offered a friendly amendment, one that I think Hayek would embrace: we should understand the good life not in terms of planning, but in terms of creativity and spontaneity. This theory of the good is consistent with both market dynamism and the rule of law. It is also, I think, an attractive theory of the good independent of its relationship to these issues. Hayek’s work forces us to grapple with these kinds of puzzles due to its deep fecundity. That we are still reading, debating, and grappling with *The Constitution of Liberty* 65 years after it was first published is a testament to this and, ultimately, a testament to the richness and complexity of the liberal tradition that Hayek worked so hard to defend.

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NOTES

- 1 Not everyone follows Hayek. Paul Gowder (2016), for instance, argues that the rule of law is valuable because it expresses egalitarian ideals. He explicitly rejects the planning argument in defense of the rule of law (Gowder 2016, pp. 68-70).
- 2 Marx and Engels were not the only historical figures to anticipate the idea of creative destruction; Friedrich Nietzsche did as well (Reinert and Reinert 2006).
- 3 Market disruption, as I have demonstrated throughout this section, results from creative destruction, but it can also result from more ordinary market processes, such as shifts in supply and demand. For analysis of the moral status of these more ordinary market processes, see Kogelmann and Carroll (2024b).
- 4 I lack the space to defend this premise in the current paper. For a defense of it, see Kogelmann (2022).
- 5 Mill (1978, p. 55) does not think we should reject all tradition and custom: “it would be absurd to pretend that people ought to live as if nothing whatever had been known in the world before they came into it.” The individual who adheres to the spontaneity theory acknowledges custom and tradition, but always questions it: “it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way”.
- 6 By polycentricity I mean a political arrangement which has a multiplicity of competing governance units, held together by a common framework of rules, whose outcome is a spontaneous order (Aligica and Tarko 2013, p. 737; Aligica 2014, p. 58).

Democratic Capture by Sectional Interests: Public Choice Critiques of F. A. Hayek's Constitutional Political Economy

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Abstract: State capture by special interest groups is widely understood as a profound issue facing democracies. F. A. Hayek, and other 'classical liberal' writers such as James M. Buchanan and the public choice theorists, despite being commonly labelled as anti-democratic, take this problem seriously. Hayek and others can provide key insights into this critical weakness of democracy by reframing the way we commonly understand democracy and participation in political decision making. First, I aim to establish the intellectual lineage between Austrian economics and rational choice theory, covering a breadth of material that deals explicitly with group-based capture. Second, I will reconstruct Hayek's model constitution, made to minimise the impact of sectional interests in democratic decision-making, alongside public choice theories. Finally, I will use public choice models to apply pressure to Hayek's constitutional framework and reveal potential points of failure. By shedding more light on the theoretical aporias to which Hayek's constitutionalism is prone, I hope to spur on more qualified discussions on the difficulties at large democracy faces in withstanding group capture.

INTRODUCTION

Robert Higgs (1989) criticised F. A. Hayek's final major work, *The Fatal Conceit*, as ignorant of breakthroughs in public choice theory made in the preceding near-three decades. Hayek's description of the political system, he claimed, had no room for 'the most significant debates now occurring in political economy' (Higgs 1989, p. 9) on special-interest groups or public goods. However true this claim may be for *The Fatal Conceit*, it is inapplicable as a generalised critique of Hayek's work. In this article, I will demonstrate the susceptibility of democratic systems to sectional interests, and what challenges one faces in attempting to make a secure democratic model. Hayek was explicitly and consistently concerned with a constitution liable to group capture, and subsequently put his hat in the ring by devising his own system. However, fleshing out a full vision of Hayek's model is difficult for two reasons. First, Hayek tinkers with his ideas over a number of years. They are first explicated in *The Constitution of Liberty* (1960) but are revisited and revised through numerous essays and the three-volume *Law, Legislation and Liberty* (1973-1979). Second, his model is based on an idiosyncratic understanding of political economy, economic methodology, legal history, and system of socio-political values. As a result, Hayek's work on his model constitution can seem scattered and weak compared to his typically rigorous intellectual style.

Though much has changed in the sixty-five years since the publication of *The Constitution of Liberty*, analysing Hayek's constitutional view still provides a crucial lens for critically assessing our current democratic systems. Indeed, his unique approach can reinvigorate our staid understanding of democracy, refresh our minds for what can be achieved through democratic systems, and refocus our attention to the

keen threat that sectional capture poses. Commemorating his political economy after more than a half-century is an important reminder that we ought to be alive to the possibility that our political systems have become more brittle and further decayed in the intervening period. Hence, I have dual aims in this article. One is a broad and systematic reconstruction of Hayek's model constitution. The other is to scrutinise this constitutional design to highlight not only issues with his model, but the strong headwinds of group capture that democracy is buffeted by, irrespective of the constitutional design. Democratic backsliding owing to sectional interests is an ingrained weakness of democracies. Critiquing a model such as Hayek's that build up an entire system to suppress this weakness and still fall short is an attempt to indicate this perennial challenge. In the following section, I will draw out Hayek's headline concerns on democratic capture. I will also justify how public choice critiques are not only a theoretically but historically appropriate heuristic for simultaneously reconstructing and critiquing Hayek's model.

I: HAYEK AND THE PUBLIC CHOICE THEORISTS

The claim that must be laid front and centre of Hayek's constitutional model is a seemingly alarming one: democracy is of second-order importance to liberalism. Democracy's prized attribute is that it most effectively supports a liberal system in guaranteeing a peaceful transfer of power, not that the system or morals of democracy are inherently desirable (Hayek 1978d, p. 414). An illiberal democracy is subsequently possible, as 'a democracy may well wield totalitarian powers, and it is at least conceivable that an authoritarian government might act on liberal principles' (Hayek 1978a, p. 31). Democracy is useful to Hayek merely as a vessel to deliver the 'higher' end of liberalism.¹ Consequently, much of the reconstruction of his model constitution rests on questioning the ability of institutional safeguards to deliver on protecting Hayek's core values.

As a result, a popular modern-day claim against Hayek and associated thinkers is that they were, and are increasingly, 'profoundly anti-democratic' (Harvey 2005, p. 205).² Hayek's relationship with democracy is often similarly problematised. Despite this, I do not consider Hayek an anti-democratic thinker. The tendency for totalitarian dynamics to emerge in unconstrained democracies, and Hayek's call to constrain democracy in certain ways, should not lead critics to overrate the 'enemy of democracy' angle. *The Road to Serfdom* can further be read as a singular defence of the importance of economic and political freedom. Whilst critiques of this nature are not invalid, as Hayek's relationship with democracy is complex and sometimes strained, I would warn against defaulting to an overly simplistic position where critics of democracy are subsequently anti-democratic. Perhaps owing to this position that is therefore commonly taken, some theorists have attempted to nuance the characterisation of Hayek as an 'anti-democrat' by reconciling his liberal ideal with democracy. For example, Bellamy (1994, p. 420) considers how democracy and liberalism in Hayek's political thought could be married to create a legitimate method of social governance. A 'constitutional framework of democracy [...] rethought in a manner that employs the procedures and reasoning of the democratic process' would achieve this reconciliation. However, that Hayek is comfortable in cleaving apart liberalism and democracy cannot be ignored. To understand fully Hayek's approach, we must first step out of the paradigm that democracy and liberalism are fused at an atomic level. Understanding democracy in this way reveals our bias to only understand democracy in its most modern iteration—an idea I will revisit throughout this article.

Modern democratic systems fuel the 'misconception that ultimate 'sovereign' power must be unlimited [in democracy as] power can be checked only by another power' (Hayek 1978c, p. 293). A system, such as American bicameralism, 'in which a majority of a representative body lays down the law *and* directs government' (Hayek 1979, p. 1) is liable to invite the most 'repugnant kind of abuse' (Drinan 1980, p. 623).³ This abuse exists as influence from special interest groups. Directives from sectional interests, in Hayek's analysis, jeopardises liberalism. Given that liberalism, not democracy, is Hayek's ultimate end, then a democracy that fails to deliver liberalism is unfit for purpose. Incentives to secure advantages for small interest groups forces the electoral machine to operate on a 'process of vote-buying, for placating

and remunerating those special interests' (Hayek 1979, p. 32). Representative democracy is thus reduced to a 'playball of group interests' (Hayek 1979, p. 99) parading as the will of the majority. Although the frustration of seeing unlimited democratic power antagonise liberalism is shared by many scholars,⁴ his epistemological position sets him apart. His belief that spontaneous social order has an inbuilt ability to resist arbitrary power fuels his frustrations regarding unlimited democracy. Subsequently, the disproportionate exertion of special interests through centralised powers are an especially pertinent concern.⁵

Rational choice theory approaches these concerns from the same direction. Early Virginia School public choice theorists share an undeniable intellectual relationship with Hayek and the Austrian School. They are joined not just by shared methodological choices, but also through ideological concerns that lead them to similarly consider sectional interests as a much-overlooked radical danger to government. The application of economic analysis to political decision-making embodies the ethos of public choice that was arguably predated by the continental economists. Contextual and historical narratives can be established that tie together the Austrian and Virginia schools. Boettke and Leeson (2004, p. 28) claim that a shared praxeological approach conjoins the two traditions. Praxeology, the overarching study of human action under which economics and other social science analysis occurs, is to understand social phenomena 'in the context of the actor's intent'. Though generally disregarded in modern social science, the fundamental axiom of such an approach is that actors are deliberate, purposive, and rational. Utilisation of the praxeological method reframes complex social and political phenomena in the context of conscious actions by actors.

Therefore, once government decisions are reconsidered under this viewpoint, the economic way of thinking previously only applied to market exchange can be extended further afield. (Gary Becker's 1968 'Crime and Punishment: An Economic Approach' famously does so by stepping into the field of criminology).⁶ Public choice is therefore just one example of a discipline within a broader praxeological approach, an approach pioneered by the Austrian economists. Mises's analysis of bureaucracy, Hayek's concerns on the pressure of special interest groups, and Schumpeter's prediction of rational voter ignorance, are all areas in which the Austrian school predates and underpins early public choice. The similarities in their work and reveal why 'Austrian economists, in short, possess deep methodological, analytical and ideological affinities with their public choice brethren' (Boettke and Leeson, 2004, p. 31).⁷

Historical narratives can also be excavated from a range of sources that demonstrate the ties between public choice and Austrian academics on an individual level. James Buchanan, the eminent Virginia-schooler that typified this economics-in-politics approach, interviewed Hayek in 1978 on his constitutional and political philosophy. Their discussion primarily regarding Hayek's *Law, Legislation and Liberty* project (Buchanan and Hayek 1983), was an important record of one of their many interactions.⁸ Buchanan's later work, *Politics by Principle, Not Interest*, opens with an epigraph from Hayek taken from the same interview (Buchanan and Congleton 1998, p. vi). The book is arguably related in content to his work co-authored with Gordon Tullock some thirty-five years earlier, *The Calculus of Consent*, that will be the primary public choice text drawn on to evaluate Hayek's constitutional model in this article. Both focus on the issues facing democratic politics, and attempt to analyse and solve those issues within a framework of constitutional political economy.

That Buchanan quoted Hayek from their discussion on constitutional philosophy is not solely an homage to the Austrian economist. As the telling subtitle of the book, *Toward Non-discriminatory Democracy* suggests, Buchanan grapples with how to manage the imposition of constitutional constraints on majoritarian democracies while upholding classical liberal ideals. Such an uncomfortable difficulty is certainly one that plagues many of the thinkers in the Austrian and Virginia schools. Nor is it one that managed to muster a united front among those who believed in the same principles. While the concerns expressed by Buchanan in this work respond to similar concerns as Hayek in *The Constitution of Liberty*, it would be an error to assume their stances could be bundled together and summarised. Indeed, Hayek's scepticism of constitutional reform is not one that Buchanan shares in this work; or, as Kliemt aptly summarises, Buchanan's ally in the management of the rough-and-tumble of daily politics is 'Hayek the "Whig revi-

sionist” rather than Hayek the “Conservative evolutionist” (Buchanan and Congleton 1998, p. xv). Nevertheless, even with a brief historiography of their works, the shared intellectual origin of the main cast of characters in this article begins to emerge.

Though Hayek had entered the twilight years of his academic career by the time public choice entered its prime, both were certainly involved in a reciprocal understanding and critical dialogue with the other. Hayek (1979, p. 143) acknowledges admiringly the existence of the emerging discipline, strongly praising Mancur Olson’s *The Logic of Collective Action* as a ‘masterly description of the mechanism of this process of government by coalitions of organized interests’, indicating not only an awareness but engagement and support for the economisation of political analysis. This reciprocal relationship that included the likes of Buchanan, Tullock, and Olson, have led some to argue that there is a ‘natural affinity between neoliberalism and public choice theory’ (Hay 2007, p. 97).⁹ Such a conclusion is surely true, as outlined through their shared historical background (though Hay may be concluding this from a different angle).

Buchanan and Tullock’s *The Calculus of Consent* is an example of a public choice monograph dealing specifically with the constitutional issues posed by group interests. Much like how Buchanan’s 1998 work opens with a quote from his interview with Hayek, *The Constitution of Liberty* is appealed to repeatedly in footnotes throughout *The Calculus of Consent*. For example, when the authors concede that individual utility must be conceived more generally within defined rules, they refer to Hayek in the footnotes. Hayek’s work fills in the theoretical gap as to what those rules might be, outlining what general constitutional rules guiding a collective-choice framework may entail (Buchanan and Tullock 1962, p. 7). *The Calculus* opens with an explicit statement that they ‘are not attempting to write an “ideal” political constitution for society [...omitting discussions on] division of powers, judicial review, executive veto, or political parties’ (Buchanan and Tullock 1962, p. xxii). A handoff to Hayek, who does pitch his ideal political constitution across numerous works, is therefore not entirely surprising.

My reconstruction of Hayek’s model constitution, as did Buchanan’s interview, uses Hayek’s later work including *The Political Order of a Free People* and other relevant essays primarily from 1967 onwards, with *The Constitution of Liberty* and *Law, Legislation and Liberty* bookmarking the timeframe of my analysis. A common claim among Hayek scholars is that from 1960 onwards, Hayek’s work enters a separate chapter from his work in the previous two decades. As Dietze (1977, p.110) notes, Hayek’s later work realised more concrete principles than his earlier theories posed in *The Constitution of Liberty*. Given the continued development of his ideas, Hayek (1973, p. 3) himself conceded that *The Constitution of Liberty* was a more apt name for the work undertaken in *Law, Legislation and Liberty*. Buchanan (1992) appears to agree, claiming the somewhat dated insights of the former motivated Hayek to produce fresh ideas related to the liberal order in the latter (pp. 131-132). Consequently, I cover a breadth of Hayek’s work to ensure sufficient evidence has been provided in reconstructing his model that was built up piecemeal.

Hayek’s model constitution is divided into three main parts: the basic clause, division of powers, and demographic makeup. In the next section I will expound on the wide-reaching clause, and in the third section will handle the ideas of divisions of power and the demographics of separated assemblies. At each layer of his constitutional system, there is a relevant public choice model that can be used to push Hayek’s assumptions to the limit. Owing to the similar umbrella approach of praxeology, these public choice critiques both begin with similar concerns to Hayek and methodological approaches that echo some of the early work carried out by himself, Mises, and Schumpeter. The upshot of reconstructing Hayek’s political and economic thought in tandem with the rational choice theorists’ arguments for placing restraints on popular sovereignty is that it offers us critical insights into the range of possible rationales for doing so. Given their shared starting point, that there are incisive critiques to challenge Hayek’s approach is not only a point of interest, but offers hopefully fresh insights into understanding core features of his model and the difficulty of legislative capture by group interests.

I will highlight through comparisons with Hayek and his interlocutors the problem of special interest groups forming within bodies tasked with enacting constitutional restraints. In doing so, the internal struggle between constructivism and evolutionism in Hayek’s broader thought can be presented more clearly.

Therefore, my aim in this article is to pose an open question: do Hayek's institutional remedies to alleviate democracy from group capture manage the pressures of public choice theory? I will in the following section work through the basic clause, Hayek's first line of defence against sectional groups.

II: THE BASIC CLAUSE

Hayek's model constitution is grounded on what he calls a basic clause. Similar but superior to a bill of rights, this foundational principle of his system is a broad-brush approach that not only limits the 'top-down' power of state coercion, but also of 'bottom-up' individual influence within the state (1979, pp. 109-110). Hayek claimed his ideal constitution could be summarised in one line: that government 'shall make no law authorizing government to take any discriminatory measures of coercion [...making] all the other rights unnecessary' (Buchanan and Hayek 1983, pp. 208-209). The basic clause would therefore state that 'men could be restrained from doing what they wished, or coerced to do particular things, only in accordance with the *recognized rules of just conduct* designed to define and protect the individual domain of each' (Hayek 1979, p. 109, emphasis my own).

Rules of just conduct are abstract and general rules of society. They apply to all citizens equally, and protect individual liberties; in doing so, they protect spontaneous economic order. These may include the right to be free from extortion and physical coercions. Broadly, they align with many of the characteristics that we may typically understand as key elements in a modern Western rule of law. However, these rules are also crucial in coordinating disparate societies as it enables individuals to make decisions within an understood framework and act accordingly. For example, if in England over time individuals within a society built a tacit understanding to walk on the left, then this would streamline behaviour as more individuals adhere to this social behaviour—compared to a less individual, random motion of people down a street. Now it is law to drive on the left. Hence, we can see how broadly understood rules of social conduct bubbling at the social level can receive government assent and become codified.

Hayek institutes the basic clause as the crux of his model constitution for two reasons, one theoretical and one historical. The basic clause's theoretical strength is in its generality, as it protects and promotes spontaneous order and cultural evolution. Overly cumbersome and specific legislation would throttle the ability of individuals to naturally develop new social rules and mores. By outlining a general principle rather than strict boundaries, Hayek attempts to accommodate the emergent properties of a general social order. Social evolutions developing from spontaneous interactions can still be captured through this clause, without being so stringent as to require constant revisions in order to reflect inevitable cultural shifts. The basic clause therefore enables individuals to predict to a limited extent what might be possible behaviour, and what actions would be unacceptable and therefore unlikely to happen. Hence a clause that captures naturally occurring social rules allows a relatively diverse set of individuals in a complex network where people are not in direct contact with each other, or in complete knowledge of others in the same society, to establish regularities in conduct (Mack 2006, p. 261).

As a result, this system retains the freedom of individuals to make decisions along an idiosyncratic value set. Imposed boundaries therefore are primarily negative, insofar as citizens in such a system are constrained from imposing external damages onto others. Some authors assume this generality begets a leniency—that 'Hayek's ideal constitution does not enumerate substantive constraints on state power [... because the basic clause] does not produce a fixed set of rules' (Boykin 2010, p. 23). However, the basic clause can in fact place substantial limits on both the state and the individual. The lack of a fixed set of rules is so the generality can capture abstract social order. This order occurs due to the fundamental constraints of the mind—one cannot comprehend and act on the vast quantities of information contained in other individuals (Hayek 1962, pp. 337-340). This is especially true when aiming to centrally impose and direct 'the formation of coherent and intelligible social structures that emerge independently of their specific intentions' (Tebble 2010, p. 29). This can be misunderstood easily, as one commentator claims:

The distinction [between actors and institutions] is redundant because the group neither acts as an individual nor operates as a cohesive form. It is merely, given external circumstances, a mirror image of the rules adopted by individuals. Even the individuals who make up the group can be represented by their rules of just conduct (Khalil 1996, p. 194).

This is almost antithetical to the way social order is constructed from individual behaviour, for Hayek is not judging the emergent rules of conduct by observing individual actions. Macro-level trends can inform the type or range of individual actions, but can be distinguished from individual actions as individuals do not consciously act with regards to those constraints. That individuals are free to make unpredictable personal decisions without jeopardising broader social stability is why Hayek is such a believer in the strength of natural social coordination.¹⁰ No single citizen embodies or sets the rules of just conduct as it is in the aggregate that they become conduct. Yet, social cohesion still prevails.

The *realpolitik* of the basic clause is understood within a historical story that Hayek set out. In his narrative, the gradual degradation of monarchies into representative assemblies conflated the will and opinion of a majority. When the sovereign was the head of state, they could not possibly pose as a representative of both (Hayek 1979, pp. 32-35; 1978c, p. 299). For Hayek this was in some ways positive, since the general recognition of this fact provided clarity and clear boundaries of what was involved in state decision making. There was no illusion that decisions made by a sole monarch could simultaneously be ‘will’, voiced by individuals, and ‘opinion’, by nature expressed by society as a whole.¹¹ In many ways this echoes Mill’s discussion of how modern democracies were formed in his opening of *On Liberty*: the move away from monarchies or highly exclusionary oligarchic or aristocratic systems toward a more egalitarian society empowered society to shed shortcomings in the old social order such as unjust or arbitrary uses of state power. However, this shift realised new issues that could be as insidious as the old system, for example in the tyranny of the majority, that could mask its coercive power under the pretences of the will of the people.

When the powers of decision and representation were divested into the people via assemblies or parliamentary sovereignty, society tacitly and mistakenly accepted that the ‘democratic decision-making process always is directed towards the common good—the common good being defined as the conclusions which the democratic procedures produces’ (Hayek 1979, p. 35). Highlighting the circular reasoning from this botched merger of will and opinion is key to understanding why modern democracy not only has critical weaknesses, but how those weaknesses are compounded by the fact that no one has yet recognised that such a manoeuvre has occurred. Citizens were beguiled by the empowering fraternity of modern democracy without recognising the dangers posed to liberalism, even though it was liberalism that had given the individuals the freedom they now enjoyed, not democracy. Therefore, the basic clause is Hayek’s way of reasserting this fundamental truth that is now assumed, but not actually present, in modern unitary democracy. ‘Freedom from coercion’, rather than a freedom to practice democracy or empower the ‘will of the people’, is Hayek’s ideological hinterland.¹²

Hayek’s (1967a) desire to codify these abstract rules of just conduct (from his historical justification), initially appears incongruous with his belief that such emergent behaviours are non-codifiable and would be detrimental to their evolution to do so (the basis of his theoretical justification). Constructivism works against the purported strength of cultural evolution, as explicit knowledge of tacitly understood rules is unnecessary for social order (1967a, p. 68). Hayek understands this tension, and does so anyway. Arguably, codification is simply the lesser of two evils. He recognises that codification ensures that his constitution will not fully embody the strength of a flexible social order, yet with potential risks from sectional interests, compromises such as these become necessary. Trade-offs are unavoidable thanks to historical conditions that created modern-day democracies. Hayek understands the importance of cultural conditions, and the path dependence of these historical choices means that he must work to a best solution within current institutional constraints. Any social order would be further damaged by imposing a system that bore no

similarities to the culture of the nation, and so the basic clause must work to capture social rules in any cultural context—resulting in an awkward balancing act.¹³

Public choice models highlight several issues with this approach. Hayek is conscious that when granted full administrative and law-making power, a legislature becomes subject to capture by group interests via the voting mechanism. Therefore, the implementation of the basic clause that explicates diffuse social rules, provides a constitutional superstructure separated from day-to-day administration (1979, p. 38). However, arguably Hayek has only protected the second step of the process. Even prior to democratic capture by group interests within a modern constitutional framework, rules of just conduct themselves could be subject to the sectional interests of groups. (Perhaps especially in pluralist modern societies with competing interests and values). There are three ways in which the natural social construction that Hayek relies on as the steady basis for the basic clause comes under scrutiny: the homogeneity of groups at the social stage; the way in which individuals make choices under uncertain circumstances; and the ability to aggregate will from the individual to the collective level—the key for the formation of rules of just conduct.

Buchanan and Tullock (1962, p. 74) argue that the likelihood of agreement on general rules ‘*within the confines of certain agreed-on rules*’ is contingent on both the dispersion of sectional interests within the collective and the uncertainty of the individual in making choices. In other words, the possibility of rules, such as relating to just conduct, being agreed within any given established political system. Support for ‘constitutional provisions that are generally advantageous to all individuals and to all groups’ (ibid.) requires uncertainty and equality. The utility-maximising individual must be uncertain of their relative position in society so that they act solely based on personal preferences, else they could ‘game’ the system by voting tactically for rules based on the likelihood of certain outcomes. The individuals must be broadly equal, as members in a dominant group would know, and continue to vote for any rules that ensured the dominance of the group.¹⁴ This equality that drives the ‘evolution of democratic constitutions from the discussion of rational individuals’ (Buchanan and Tullock 1962, p. 76) is only destabilised by a society with sharp cleavages (including but not limited to race, ethnicity, wealth) ‘in which one of these coalitions has a clearly advantageous position at the constitutional stage’ (ibid.)—the point where the rules are given assent. Questioning the impact of the heterogeneity of the group is an important question for Hayek’s constitutionalism. The existence of ‘clearly predictable bases among these differences for the formation of permanent coalitions’ (ibid.) is of minor concern for Buchanan and Tullock, for as long as ‘some mobility among groups is guaranteed, coalitions will tend to be impermanent’ (1962, p. 77) and robust constitutional agreements on rules can be discovered and implemented.

For Buchanan and Tullock this concession is easily made. However, the same cannot be said for Hayek. It is the very existence of unequal sectional groups that demands the restriction of democracy. If uneven powers of decision-making were easily dispersed, then his fear that some groups would be able to impose their hierarchy of values onto others would be misplaced (Hayek 1944, p. 142). A diverse enough society without cleavages would not lend itself to the composition of group interests that disrupt the formation of agreeable rules of just conduct. Therefore, while Hayek’s model constitution operates on similar principles of uncertainty as Buchanan and Tullock, it is important that it must be rejected due to the implicit understanding that Hayek’s community is a society composed of sectional interests.¹⁵ If the concern of sectional interests dominating each other could be stamped out at the evolutionary stage as they competed with each other, then the whole construction of the model state would be unnecessary.

Olson’s (1965, pp. 1-2) *The Logic of Collective Action* provides a further key insight into the relationship between the individual and the collective, in a contrasting way from Buchanan and Tullock. Closely following the tread of *The Calculus*, Olson refutes the widely held assumption that the difference between group and individual action are analytically consistent or trivial.¹⁶ Typically, it was assumed that group action was analogous to individual rationality and self-interest. Though this has largely been understood to be false in the case of market failures of public goods, such as how clean air is valued by society but no one takes steps to provide it, Olson takes this logic further. Even in narrow-interest groups, even with self-interested actors aligning along those lines, individuals ‘will still not voluntarily act to achieve that

common or group interest' (Ibid.). For example, Olson suggests that the Marxist view of class mobilisation is not handicapped by a lack of knowledge, or uncertainty as Buchanan may have it, but by the inability for large groups to move with the aim of beneficial collective action (Olson 1965, pp. 102-110). This is due to systematic free-riding incentives that plague the ability of a group to effectively coordinate their broader goals to benefit all members.

Small groups that are able to easily organise will therefore have adverse effects in social situations as they can produce a homogenous view unlike larger groups, due to the difficulty of mobilisation. This relies on the fact that 'in general, social pressure and social incentive operate only in groups of smaller size, in the groups so small that members can have face-to-face contact with one another' (Olson 1965, p. 62). Large groups as a result are captured by small group interests, even though small groups do not enjoy any form of majority and cannot abuse this power to dominate. The ease of organising to push self-interested motivations that small groups enjoy, potentially endangers the notion of a basic clause capturing the result of spontaneous order. A conclusion such as Olson's indicates that the rules of just conduct, a higher but abstract *nomos* that the basic clause attempts to formalise in writing, may simply regurgitate the sectional interests of organised groups.¹⁷

Buchanan and Olson's theories critique Hayek's model in a pincer manoeuvre: on the one hand, Buchanan and Tullock demonstrate that for constitutional rules to be agreed society needs to have relatively dispersed and diverse interests without forming sectional groupings, fundamentally opposed to Hayek's understanding of society; on the other, Olson proves how even small sectional groupings are fiercely capable of exercising an oversized-influence on what rules are dominant at the social stage in the first place. These public choice theories therefore demonstrate the struggles of Hayek's model in fending off group capture—pressure from multiple directions demonstrates how challenging the task can be of striking a balance between constructing a system and relying on natural forces. However, these criticisms are tempered both by external considerations, and some of Hayek's own pre-emptive moves against comments of this type. Doing so further nuances how we can understand the work of the basic clause.

There are several points of concern for the conclusions of Buchanan and Tullock based on assumptions of uncertainty and equality. Fishkin (1989, p.183) notes that Buchanan and Tullock's contractors 'operating from behind a thin veil, know too much'.¹⁸ Buchanan's statement that public choice actors are 'modelled as making a choice among alternative decision rules without knowing how the operation of particular rules will affect his personal interests of values' (Buchanan 1989, p. 178) appears somewhat implausible. This is the individual in both Hayek and Buchanan's world, for they can only make choices within their knowledge bounds and have no ability to direct what rules arise from those choices. The potential failure of this assumption is largely inconsequential in Hayek's case, for the restraints on the powers of the system would help prevent individuals who were aware of the direct impact of their actions from undertaking choices that would allow them to centrally direct rules.

On the other hand, for Buchanan's model to hold up, the 'contractor does know his position in the distribution of income and wealth' (Fishkin 1989, p. 185) since the value of a rule to an individual is calculated within these boundaries. Individual analysis of decision-making and external costs without knowing what those costs unique to them are, would be impossible (Buchanan and Tullock 1962, pp. 43-44). Hence not only does their idea of uncertainty under constitutional frameworks come under some questioning, but also the suggestion that potential clustering of sectional groups in supposedly heterogeneous samples 'should not be overemphasised' (Buchanan and Tullock 1962, p. 76). It would be sensible that if one were to know the distributions of income and wealth, citizens could use this information to their advantage to re-calculate the impact of their decisions, and act tactically to support partisan interests. Rational behaviour such as this is plausible for the actors modelled, and deliberately supporting the adoption of rules with the knowledge that they lead to unequal outcomes is recognised by the pair as a condition that would lead to a failure of agreement. The result of this could be that when there is a dominant (i.e. 51% vote share) group, with perfect alignment on preferences and policy options so that members would not exit the group,

the homogeneity of the group would make permanent coalitions, which would undermine the diversity assumption protected by the uncertainty requirement.

Furthermore, even when operating within Buchanan's paradigm of total uncertainty, the criticism against Hayek concerning group heterogeneity may not be as pertinent as initially considered. Witt and Schubert (2008, pp.203-205) argue that even when decisions under uncertainty are made between methods of constitutional rule, idiosyncratic risk profiles will lead individuals to necessarily alter their preferences on what 'social contract' is agreeable, based on the risks of each system. Given the claim that conclusions drawn in *The Calculus* did not depend on 'narrowly hedonistic' (Buchanan and Tullock 1962, p. 3) actors,¹⁹ it appears reasonable to admit that Buchanan would not require a homogenous risk profile between all citizens. Consistent risk-aversion would weaken the uncertainty condition, as individuals could better predict the behaviour of others when faced with constitutional choices.²⁰ On the other hand, a higher risk appetite could ossify group coalitions, since risk attitudes are often characteristics of age and therefore groups may be more consistently stable (Witt and Schubert 2008, p. 205). Subsequently, Hayek's (1978b, pp.331-332) thicker understanding of uncertainty alongside the generality of the basic clause may be more accommodating to societal realities, requiring fewer assumptions and retaining some force in obtaining rules of just conduct in large societies.

Similar criticisms may extend to Olson's reliance on the rational actor. Though it is rational to free-ride, we can observe that this is often not the case—through the actions of unions, or how farmers continue to band together and dominate national agendas and domestic spending. This may be a result of Olson omitting the importance of norms in his work, that can band together incompatible personal preferences. Hayek's quasi-scientific hypothesis on a spontaneous social order that arises due to mimesis deals explicitly with the impact of cultural norms. Orders that result from the mimicking of neighbours demonstrates why, for example, we may see a footpath form in a natural path through the repeated actions of individuals, who may not even be spacio-temporally contiguous.²¹ Though smaller groups with greater collective understanding can perform and enforce higher levels of adherence due to being able to spot free-riders, mimickery can still set precedents that the group at large can adopt without any specific intentions of the individuals involved. Large groups have over time created a behaviour stemming only from concerns to individual benefit: 'cutting a corner across a patch of grass will save me time'.

Considerations such as these highlight how though Hayek's implementation of a basic clause speaks to his concerns about protecting spontaneous order, his constitutional remedy may fall victim to the very same fears of group capture he set out to fix. Buchanan's (1975, p. 211) criticises Hayek of being 'so distrustful of man's explicit attempts at reforming institutions that he accepts uncritically the evolutionary alternative'. Though Hayek relies heavily on natural behaviour to fix democratic issues, Buchanan's conclusion that as a result Hayek only poses an inadequate model constitution falls short. It is true that Hayek is attempting to mix oil and water by creating institutions to capture natural social change. However, Hayek himself understands the difficulties in doing so and swallows some of the trade-offs required, in order to fortify liberalism from potential pitfalls that arise from adopting an entirely evolutionary or constructivist approach.

Nevertheless, this section has illustrated how Hayek's reliance on cultural evolution to help minimise legislative weakness to sectional interest cannot straightforwardly provide the safeguards he is looking for. Complexity of diverse groups and the organisational abilities of groups are some of the public choice insights that explain how seemingly predictable situations can lead to a greater variance between individual and societal outcomes than expected. The following section illustrates how Hayek furthers this construction of an ideal constitution through the separation of powers, and may demonstrate how Hayek is less naïve than Buchanan's work or criticisms may have us believe. We will see how Hayek's constructivist institutional framework does not exist in isolation, but rather within an edifice of strong social norm inculturation.

III: DIVISIONS OF POWER

A system of government that most effectively upholds the basic clause, Hayek believed would be split along lines of *will* and *opinion*. Divisions of power along these lines would empower government to pursue the collective will, while placing restraints on governments and people alike based on rules of just conduct; for '[d]emocratic legislation and democratic government are probably both desirable, but to place these functions in the hands of the same body destroys the safeguard of individual liberty which the separation of powers meant to provide' (1978c, p. 294). While Hayek's claim that all modern democracies in the West are unlimited democracies is too sweeping given many nations globally enact technically different government and parliamentary procedures, the nature of the statement indicates that the manner of separation in his model constitution is unique from the marginally different systems we see worldwide.²²

To protect the *opinion* about 'what *kind* of action is right or wrong' (Hayek 1979, p. 112) a Legislative Assembly would be formed, directly relating to the rules of just conduct under the basic clause. The day-to-day affairs of the administrative side of the nation would then be managed by the Governmental Assembly, akin to existing parliamentary bodies. Carved up along party lines of votes and *will*, the Hayekian government administration would only be gutted of their ability to tamper with the legal element of rule—a power now held by the Legislative Assembly (Hayek 1979, p. 119-120). Separating power in this way 'prevent[s] legislatures from authorising coercion to secure particular benefits for particular groups' (Hayek 1978c, p. 336). Governments could still respect current issues of popular will while denying the capture of long-term social interests by factions. This essentially bi-cameral system²³ would ideally resolve confusions related to will and opinion by disconnecting them from both feeding into form of power, and re-connecting them instead into new bodies.

Splitting legislatures therefore acts as a safeguard for the basic clause by placing the codification of abstract social rules in the hands of a chamber unbothered by short-term interests. This framework is moulded on the idea that law emerges from social evolution and cannot be willed by individuals (Buchanan 1975, p. 38). The Governmental Assembly would be bound by the rules of just conduct as decided by the Legislative Assembly, and 'could not issue any orders to private citizens which did not follow directly and necessarily from the rules laid down by the latter' (Hayek 1979, p. 119). Therefore, the members of the Legislative Assembly would collectively decide what constraining rules of just conduct are to be implemented.

Members of the Legislative Assembly would supposedly not represent factional interests, instead acting in their own capacity. Crucially, this makes the members non-representative of demographic or geographic groups (Hayek 1978c, pp. 207-208). Hayek only describes in general terms how these individuals would be elevated to the Assembly, though voting is implied. Nor does he outline a specific code of conduct to ensure there is a standardised understanding of how the members would act, or reprimands for jeopardising the aims of the Legislative Assembly. Ideally, the citizens elected at 45 should have already demonstrated professional or public success, and therefore would be morally upstanding model citizens not prone to pressures or bribes (Hayek 1979, pp. 113-114). That the assembly is a hermetically sealed environment from external influence is important, as Hayek does pose an ideal assembly makeup. Therefore, it may be possible to predict and cultivate norms that would allow the good working of the assembly that are atypical from society more broadly, an idea to which Hayek is attentive.

In what may be considered the most interventionist stroke, Hayek advocates for a highly specific and constrained membership of the Legislative Assembly. Whether this is incongruous with Hayek's criticism of the ability of institutional design to allocate resources and impose central plans is up for debate, and not one that will be resolved satisfactorily here. Lewis (2022, p. lxiii) advocates for a nuanced understanding of Hayek: that he justifies a restricted constitutional framework insofar as people can understand that spontaneous order ought to be protected, without certainty in what ends this would produce. Buchanan (1986) in 'Cultural Evolution and Institutional Reform' details how though Hayek becomes increasingly despondent about the possibility of success of constructivist interferences, on the topic of 'the division of functions

as between two separate elected assemblies' (Buchanan 1986, p. 76) he undeniably continues to advocate for institutional interferences. 'Government is of necessity intellectual design' (Hayek 1979, p. 152), and therefore an essential aspect of Hayek's model constitution is how to design without abusing reason and promoting free growth of society and its norms.

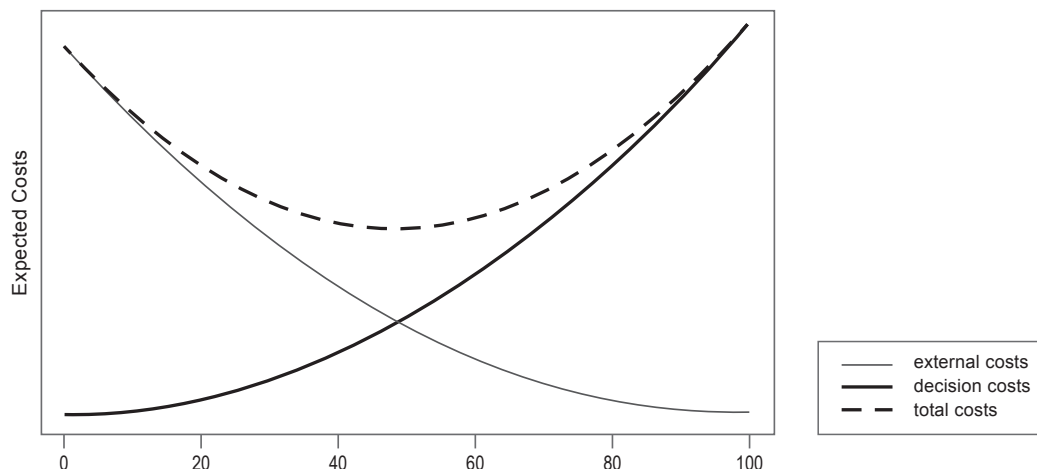
This formalised design to protect the basic clause against the undermining powers of sectional interests is most overt when electing the representatives of the Legislative Assembly. The representatives of the assembly all sit 15-year terms, from age 45-60, and every year 1/15th of the assembly is re-elected as the oldest representatives retire. So that they do not have to worry about their prospects and future, they are granted a comfortable living salary and a guarantee of a role as a lay judge following retirement (Hayek 1979, pp. 113-114).²⁴ Most importantly, preparation for election to the legislative assembly would likely be preceded by the formation of 'local clubs of contemporaries' (Hayek 1979, p. 117). These clubs may initially form naturally but would have a strong incentive for public financial support through the relatively low investment cost of providing meeting places and facilities, by sustaining prime locations for forming desirable future candidates for the Legislative Assembly.

There are several issues with this approach that looks to contain the negative impact of inherently short-termist group interests. First, the decision-making process within the Legislative Assembly to agree what rules ought to be codified is far from cut-and-dry. Hayek fails to outline at what point a 'rule' that has bubbled up through the ranks of social order could reasonably be judged to carry enough weight to impose restrictions on the Governmental Assembly. It seems plausible that there would not be unanimous agreement within the assembly, especially assuming that this would be a chamber of significant size (perhaps emulating a chamber such as the House of Lords). One may then ask whether the threshold would be at just over half, complete agreement, two-thirds, etc. However, Buchanan and Tullock (1962) in the most fascinating claim of their work, propose that there is no one threshold that would be more favourable than another. Though this may be an interesting claim for all democracies, we will see that it is particularly the case for Hayek's assembly based on codifying the basic clause.

They suggest that while deviation from unanimous agreement is not consistently bad, even as a 'value-free' or normative judgement we can claim they are undesirable, due to external costs incurred as a result (Buchanan and Tullock 1962, pp. 92, 271).²⁵ By definition, deviation from total agreement will result in less desirable outcomes for those who disagree when a decision is done to them regardless. In situations of collective action, the number of individuals required to make a decision, in this case implement and codify a rule, determines the total external costs imposed on others in the collective (Buchanan and Tullock 1962, pp. 61-62).

For example, if a single decision maker can make a choice that benefits them without consultation, then the costs imposed on the rest of society are high (the highest point of the external costs in Figure 1). This may be the case even for simple situations such as fixing a pothole outside their house, if single decision-makers could wield the entire collective without discussion by spending money from a public purse funded by collective taxes. As increasing numbers of the collective agree, the costs imposed on people reduces—due to increasing consensus on resource use. Consequently, external costs only disappear with unanimity: '[s]o long as there remains any possibility that the individual will be affected adversely by a collective decision, expected net external costs will be positive' (Buchanan and Tullock 1962, p. 64).

Figure 1: Buchanan and Tullock's illustration on the trade-off between external costs and decision making costs



Source: Dougherty, K & Ragan, R. (2016). 'An expected utility analysis of k-majority rules'. *Constitutional Political Economy*, Vol. 27, No. 3: 332-353.

Unfortunately, approaching unanimity is not a direct path towards the most desirable state of affairs, due to the existence of decision-making costs. While consensus decreases external costs, decision-making costs take their place (the upward sloping decision cost curve):

If two or more persons are required to agree on a single decision, time and effort of another sort is introduced—that which is required to secure agreement. Moreover, these costs will increase as the size of the group required to agree increases [exponentially]. (Buchanan and Tullock 1962, p. 65).²⁶

The significant implication of combining these opposed cost functions in a decision-making environment is that there is no absolute favourability of one mechanism of democratic decision making over another. At no point in Fig. 1 are total costs zero. There is nothing significant about simple majorities, as the 'rational choice will depend, in every case, on the individual's own assessment of the expected costs' (Buchanan and Tullock 1962, p. 77). Levels of interest or stake from members of the community will vary, and takes just one highly passionate involved individual to change the balances of expected costs. Hence, Fig. 1 is only one snapshot of possible curves; on some topics, the curves could slope at different gradients based on the importance or cost assessments any participant may place on that issue.

If the assembly members were representative, this would instantly reduce total costs by aggregating the number of participants demanding action without increasing deliberation costs. However, they are by definition individual actors representing their own interests. Furthermore, it is important for the function of the assembly that they are unburdened by any form of collective or regional responsibilities. That there is no process posed by Hayek in the sealed environment of the Legislative Assembly (uninfluenced by pressures to represent or succumb to lobbying interests) to determine the desirable threshold to implement a rule of just conduct is problematic. This omission poses thorny philosophical issues: at what point can a rule be judged to have broad social consent; can there be a strict threshold at which this can be judged to have reached a tipping point; and how important are personal preferences and individual consent when considering the impact of social rules imposed on them.

Further questions arise when considering how assemblies are stuffed with only members that meet certain demographic requirements. The simple objection here is that Hayek is trading in one form of sectional interest for another. Instead of income and industry, local clubs from which members are gener-

ated would simply uphold the interests of local groups and age. However, I believe this trade-off is not so simple. In a world structured via divisions of labour, special interests are often stratified along lines of income and industry, with individuals working to preserve rules that protect income stability. Clubs could therefore offer an opposing force. Hayek believes that these groups would not be formed on lines of social class, instead ‘serving to provide contacts cutting across all other stratifications’ (Hayek 1979, pp. 117-118). An unfamiliarly structured form of sociability allows people to step back from their daily commitments and dedicate time to sincerely consider the questions of ‘opinion’. Buchanan and Tullock (1962, p. 92) are at points concerned with commitment to norms besides those that may dictate the strength and unity of homogenous groups. They recognise that deviation from the unanimity rule can take the form of a ‘practical expedient [in State decision-making...] analogous to many that are to be found in personal, social, and business life’.

Despite this, deviation in the name of expediency may present a further difficulty for Hayek’s Legislative Assembly. Decision-making members as non-representatives have incentives to promote their own interests. However, through discussion and debate individuals are willing to settle for less than a perfect match with their desired outcomes if the amount invested is smaller—i.e. lower total costs despite deviation from unanimity increasing external costs (Buchanan and Tullock 1962, pp. 94-95). Each rational actor in this haggling game is incentivised to not reveal their preferences in the hope of achieving better outcomes, yet as preferences are gradually revealed through the bargaining process, ‘everyone in the group will be able to see that he would have been better off had the investment in “bargaining” not taken place at all’ (Buchanan and Tullock 1962, p. 95). With some guarantees that the decision would not be harmful, many individuals would prefer a single ‘dictatorial’ decision-maker to determine the appropriate allocation, giving all the upside but none of the loss in wasted decision investment.

The decision-maker, in this case the elected member, can therefore improve their outcomes if they concede more heavily on areas they care less about, and argue/bargain more heavily in areas of interest. If the members of the assembly were homogenous and unanimous in correctly identifying the rule, then the deliberative process would be a wasteful investment that would have been sensible to delegate to a single member (Ibid.). Yet members are formed in club groups, aiming to capture the zeitgeist of their generation or locality rather than embodying occupational or class distinctions, making homogeneity unlikely (Hayek 1979, p. 118). Strong requirements for unanimity or large-scale consent, therefore, can lead to an ‘over-investment’ in deliberation and bargaining relative to the impact of the decision taken (Buchanan and Tullock 1962, p. 141).

To subsequently characterise the existence of bargaining as altogether bad would still be misguided. Allowing some degree of vote-trading and pandering to sectional interests may be desirable, even if the democratic decision-making process appears to be more cumbersome as a result. ‘Permitting those citizens who feels strongly about an issue to compensate in some way those who opinion is only feebly held can result in a great increase in the well-being of both groups’ (Buchanan and Tullock 1962, p. 129), so vote-trading may be permissible in the name of social optimisation. Individuals with particularly strong opinions or those who are adversely impacted by decisions taken by the collective, may have an undersized influence in the decision-making process. Bargaining can help express the individual assessment of cost and achieve outcomes that are not initially available.

Minority groups, who disproportionately feel the impact of a decision due to the intensity of their preferences, may find many that a near-unanimous votes one way by a ‘feebly held’ bloc, insufficient to trump their extreme vested interest the other way (Buchanan and Tullock 1962, pp. 122-123). An example of this may be tax, which is considered both by Hayek (1979, pp. 51-73, 127), as deciding tax burdens and rules is a remit of the Legislative Assembly, and in *The Calculus*. Financing a good that provides general non-excludable public benefits, such as military or police protection, Buchanan and Tullock predict will result in a relatively high-burden tax riddled with exemptions. This occurs due to vote-trading that drives piecemeal concessions, resulting in ‘greatly reducing the efficacy of any generally accepted norms for fiscal organization (such as progression in taxes) that are supposedly adopted’ (Buchanan and Tullock 1962, p. 141).

On the other hand, unanimity may find it difficult to implement rules other than a general tax, which Hayek (1979, p. 127) himself recognises may be regressive. The unanimity rule allows even one dissenting member to hinder the efforts of the whole consistently, making the assembly beholden to a sectional interest in an alternative form. On the other hand, weakening this requirement would encourage rational bargaining and vote-trading, and despite their efficiency in identifying intensity of preferences, would make the Legislative Assembly another arena of sectional interests vying for club benefits. Hence, much like the trade-offs seen from deviating from the unanimity rule as outlined by Buchanan and Tullock, the Legislative Assembly may be subject to similar difficulties.¹

Understanding public choice that characterises problems in this way may undermine the norms that encourage people to act in cooperative ways. Yet this value-free analysis that indicates people would act accordingly does not mesh with the adherence to tradition and customs Hayek supports. A view that ‘within primitive human society ‘sharing’ is a way of life ... The sharing is not limited to food, but extends to all kinds of resources’ (Hayek 1979, pp. 161-162) endorsed by Hayek demonstrates that individual assessments of cost does not have to adhere to the modern model of narrow self-interest. Buchanan and Tullock (1962, p. 272) further concede that ‘[i]f, in fact, the individual could be “trusted” not to follow economic interest, and if all pressure groups could be assumed away [...there may be] considerably less strength in the argument for many of the checks and balances that characterize modern democratic process’. Acting in this manner may overly abstract from the actions of citizen under institutional structures—the powerful conclusions of public choice explaining societal outcomes as ‘the outcome of strategic interactions between intentional actors [...depends] on an implicit structural determinism with regard to actors’ forms of thought’ (Hindess 1988, p. 93). Bearing in mind the concerns given to sectional interests, it is worth considering how adhering to social, cultural, and other ideological constraints explain patterned group actions external to the instrumentally rational behaviours in public choice, especially considering the importance of local tradition for Hayek (1979, pp. 107-108). Scholars may therefore be justified in believing that ‘it is doubtful if any worthwhile political conclusions can be drawn from an analysis that deliberately abstracts from the forms of thought employed by the actors concerned in their deliberations’ (Hindess 1988, p. 8).

CONCLUSION

Ultimately, Hayek’s model constitution is torn between his conviction in the strength of cultural evolution from spontaneous order to provide the most efficient outcome, and the necessity of rational constructivism to provide frameworks that best enable free interaction. The protection and cultivation of societal norms are undermined by a decision-making system prone to group interest capture, yet public choice theory has demonstrated that trying to avoid these issues leads one into a quagmire, and is more complex than initially perceived. Detailing through public choice interlocutors the core of Hayek’s schema, more clearly demarcates what values Hayek is minded to protect and where those limits lie—despite his over-idealised emphasis on the strengths of cultural evolution. This reconstruction of Hayek’s model has touched on wider debates regarding evolution versus construction of modern societies, and attempted to fill ostensibly large conceptual holes with an evidenced account of his later work.

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NOTES

- 1 Critiques that silo classical liberals as definitionally and homogeneously critical of democracy are often limited by conceiving of modern democracy as a unitary administrative and legislative system are common (pace Cornelissen 2017, pp. 507-508). See Slobodian (2020, p. 20) who also considers question of how 'an overly tidy equation of neoliberalism with anti-democracy leaves open critical questions [and] obscures the diversity of neoliberal thought on the problem of democracy'.
- 2 Perhaps significantly, Hayek explicitly rejects this label of 'anti-democrat' in *The Constitution of Liberty* (1960, pp. 107-109, 115-117).
- 3 Hayek is certainly an anglophile, and was enthusiastic about the British system of common law and the bicameral legislature of the House of Lords and House of Commons. It may be useful to remember that in this period, the upper House would have been composed entirely of hereditary peers. The American upper house, in contrast, has always been an elected chamber, though representative in a different proportion or dimension to that of the lower.
- 4 Indeed, much may be owed to German ordoliberals such as Eucken who anticipated similar difficulties of managing rent-seeking behaviour by group interests within constitutional frameworks; See Nientiedt and Köhler (2016, pp. 1754, 1751-1753).
- 5 See Whyte (2019, pp. 156-184) for a detailed elaboration on Hayek's account of spontaneous order and knowledge distribution.
- 6 Often, this is a core foundation of the critique of neoliberalism's tendency to carry out 'economic imperialism'. A very rigorous and fair assessment of this approach is given in Davies 2014.
- 7 Boettke and Leeson's paper gives a much more full and comprehensive treatment of the ways in which Austrian economics contributed to the economics of politics than is possible here. For example, they highlight the importance of Mises as a foundational figure both in praxeology and in understanding political organisation from an economic perspective.
- 8 See Buchanan 1992, pp. 129-135, his contribution to Hayek's obituaries. Buchanan admits an intellectual debt to Hayek, but that their personal relationship was never close.
- 9 Hay 2007, pp. 99-103 sees the unifying aspects of public choice theory and neoliberalism as the

- use of the process of rationalisation are depoliticising, leading to political disengagement and disenfranchisement.
- 10 Gaus 2006, p. 236 uses this point to emphasise that the independence of individual actions and group stability allows Hayek to advocate for an innovative and individualistic society, and hence why he is not labelled a conservative thinker.
 - 11 Rules of just conduct are somewhat Rousseauvian in content. The notion of the diffuse general ‘opinion’ are the object of what the basic clause aims to encapsulate (confusingly the counterpart to the general will, rather than how Rousseau and others use will). Interestingly, Hayek echoes a sentiment similar to Rousseau in his interview with Buchanan (1983, p. 209) where he states ‘I profoundly believe, that in the long run, things are being governed by opinion, and opinion just has been misled’. See Müller 2015 for further discussion on the Rousseauvian content of some of Hayek’s model constitution.
 - 12 Quentin Skinner’s recent monograph, *Liberty as Independence: The Making and Unmaking of a Political Ideal* highlights the rival views of liberty: one as independence as one as the absence of restraint. Skinner argues that the dominant understanding of liberty prior to the 18th-century is as the former. Hayek’s understanding of liberty, as the absence of coercion, is however likely in the latter category, which may cast some aspersions of Hayek’s understanding of his version of liberty as the dominant form of understanding the ideal.
 - 13 Hayek (1979, p.107) does not ‘suggest that any country with a firmly established constitutional tradition should replace its constitution by a new one drawn up on the lines suggested’. This would be antithetical to the need of the praxeological method to take into account the importance of individual actions. Conscious human action has its behaviour defined by cultural boundaries, and therefore constitutional thinkers such as Hayek that respect the actions of individuals would not want to rewrite a model of government adapted for local traditions. As described by Buchanan, *Law, Legislation and Liberty* is ‘more about the structural changes in government that would be necessary before we could even hope to put in such reforms [of policy]’ (Buchanan and Hayek 1983, p. 231). Each nation has their own traditions, beliefs, and culture that are varying conducive to the implementation of his model constitution.
 - 14 Buchanan and Tullock (1962, p. 75) lay out in six points the conditions where ‘the rational utility-maximising individual will support the adoption of rules designed specifically to further partisan interests’.
 - 15 The philosophy of spontaneous order is why Hayek believes current Western democratic systems inevitably create sectional interests—these will always arise in abstract social order, or catallaxy, due to the impossibility of knowing the condition and status of all other people; see Hayek 1967b, pp. 275-276, 278.
 - 16 See Rowley 1987, p. 42; See also Mitchell 2001, p. 10.
 - 17 See Dahl, R. A. (1956). *A Preface to Democratic Theory*. The University of Chicago Press, who proposes that Americans have been long captured by a Madisonian theory of democracy that looks to balance majority and minority powers by way of compromise.
 - 18 See Hindmoor and Taylor (2015, p. 32), who claim ‘The veil of ignorance is for Rawls a useful analytic fiction, but the veil of uncertainty is for Buchanan a real force in the actual world’.
 - 19 Buchanan’s stance on subjectivism is generally consistent insofar as he expresses a continued commitment to the knowledge problem and the impenetrability of the minds of others (Brennan 1990, pp. 116-117), a stance similar to Hayek’s.
 - 20 Perhaps unfortunately for Hayek, the conclusion reached by Witt and Schubert (2008, p. 222) is that ‘It turned out to be implausible to presume that individuals, when situated behind a “veil of ignorance” [...] will unanimously opt for a laissez faire regime’.
 - 21 See Hayek (1948, pp. 9-11; 1952) for more detailed discussions on the scientific nature of spontaneous order.
 - 22 See Barry, 1979, p. 193.
 - 23 There is a third element, the Constitutional Court, which would serve a similar purpose to the Legislative assembly but to a much more minor extent, tasked with ‘the semi-permanent framework of the constitution and need act only at long intervals when changes in that framework are considered necessary’ and therefore for the purposes of this article will largely be ignored; see Hayek 1979, p. 38.
 - 24 In responding to more practical objections, Hayek argues the age is not an issue as at an average age of 52 ½ would be lower than many assemblies globally, and that elections could occur along the lines of regional delegation appointments or something of the sort—although he does not commit specifically to any form of election.
 - 25 It may be worth considering this statement in light of the fact that the unanimity criteria is based on a Pareto efficient outcome where no-one can be better off without making others worse.
 - 26 Consider for example the ‘birthday paradox’, the idea that in a random sample of 23 people, the probability of two individuals sharing a birthday is over 50%. This is due to the fact that each added person results in an exponentially increasing number of connections. Each new addition introduces an n-1 number of connections, with probabilities of shared birthdays increasing from around 10% at 10 people, 40% at 20 and over 50% at 23. Hence, one can see how if each member in a decision-making process

were required to discuss, barter, and agree over a decision in large societies to present a unanimous decision this would start to take an unfathomably long time with high levels of cost.

- 27 There may also be a degree to which understanding agreement and cooperation in economic terms may be damaging to the achievement of beneficial outcomes. Hay criticises public choice analysis on the basis that modelling the state as a 'science of political failure' (Buchanan 1988, p. 3) reinforces self-interested behaviour that ultimately makes rational choice a self-fulfilling prophecy (Hay 2007, p. 122). Interestingly, there may be some weight to the claim as Frank et.al. (1993, p. 159) predict that 'exposure to the self-interest model commonly used in economics alters the extent to which people behave in self-interested way' and promotes self-interested behaviour.

Three's Company: Liberty, Prosperity, and Social Justice in the Constitution of Liberty

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Abstract: Hayek argues that a society structured by the constitution of liberty has higher expected societal prosperity than any of the feasible alternatives, *and* that the constitution of liberty precludes the pursuit of social or distributive justice. I challenge both claims. As illustrated by various collective action problems, liberty can lead to societal disaster. Hayek can deal with this first challenge by arguing that the regulation of socially destructive behavior is consistent with liberty. However, that solution makes it hard to avoid the second challenge, which is that the pursuit of social or distributive justice is permitted by the constitution of liberty, when the guiding principles require procedural fairness rather than a patterned distribution of resources or welfare. The conclusion to my argument is not that we should abandon Hayek's liberalism. My conclusion, rather, is that Hayek's liberalism is flexible enough to deal with current challenges such as the environmental destructiveness and increasing unfairness of unregulated capitalism.

1. INTRODUCTION

Classical liberalism affirms and defends the idea that individual liberty and societal prosperity¹ go hand in hand. Since the time of Mandeville and Smith (if not before), the concept is that the processes of a society of free individuals create prosperity (even if no person aims for it); and, conversely, that unfree societies fall short of prosperity (even if they aim for it). Classical liberalism is thus a deeply optimistic philosophy, for it tells us that we do not have to choose between liberty and prosperity: we can have both. Indeed, we cannot have one without the other—they are happily united.

This belief in the happy marriage of liberty and prosperity is a premise in the justification of a liberal design for the basic structure of society. The laws and institutions that classical liberals argue are required, permitted, and prohibited—what the state must, may, and may not do—are those that respect, protect, and enable liberty. Some liberals argue that this constitution leaves limited room for pursuing social or distributive justice, for such pursuits require the abrogation of liberty to the detriment of prosperity.²

Hayek's *The Constitution of Liberty* offers a powerful version of this argument.³ He argues that a system structured in accordance with the constitution of liberty has higher expected societal prosperity than any of the feasible alternatives, *and* that the constitution of liberty precludes the pursuit of social or distributive justice.⁴ So, as I read it, *The Constitution of Liberty* argues:

First movement:

- I. We should structure society so that it has the highest expected societal prosperity.⁵
- II. A society structured by the constitution of liberty has higher expected societal prosperity than the realistic alternatives.
- III. Therefore, we should structure our society by the constitution of liberty.

Second movement:

IV. The constitution of liberty precludes the pursuit of social or distributive justice.

V. Therefore, we should not pursue social or distributive justice.

In this essay, I discuss both movements. I argue that liberty and societal prosperity are not as happily united as Hayek maintains (challenging II); and I argue that social justice can be pursued without sacrificing liberty (challenging IV).

While my discussion offers two critiques of Hayek, the outcome is *not* that we should reject Hayek (or classical liberalism). Instead, my challenges to II and IV support two friendly amendments to Hayekian classical liberalism that add to its continuing appeal. The present issue of this journal marks the 65th anniversary of the publication of *The Constitution of Liberty*. The world has changed, and to some readers *The Constitution of Liberty* might seem fatally insensitive to serious contemporary challenges such as the environmental impacts and economic unfairness of unregulated capitalism. If my argument succeeds, it shows that Hayek can deal sensibly with these issues.

In section 2 I sketch Hayek's argument for the unity of liberty and prosperity and his critique of social justice. In section 3 I discuss how Hayek can deal with situations where individual liberty leads to societal disaster. In section 4 I argue that the supposed conflict between liberty and social justice is a mirage. Section 5 is a concluding remark on the continuing appeal of Hayek's political philosophy.

2. LIBERTY AND PROSPERITY, BUT NOT SOCIAL JUSTICE

While Hayek's argument is a form of indirect consequentialism, I do not read him as a utilitarian.⁶ Hayek assigns value to many ends other than utility (understood as states of subjective well-being such as pleasure, happiness, or desire satisfaction). Think of Hobbes's description of the state of nature as a situation where life is "solitary, poore, nasty, brutish, and short" (1996, p. 89). Each of these implies its negation as an element of a good human existence: community, wealth, virtue, education, and health. Societal prosperity is a function of how well the members of society do as measured by these values. In addition, liberty has a special place in Hayek's theory as both an end in itself and as the condition of these other values: "liberty is not merely one particular value but [...] the source and condition of most moral values."⁷

There are, of course, many questions we could ask about the definition and measurement of societal prosperity—how to define, commensurate, and weigh the distinct elements; whether it is an aggregate or average value, and so on—but for the purposes of this essay, we can leave these questions open and focus instead on the tight relationship between prosperity and liberty.

Hayek defines *liberty* as the absence of "coercion by the arbitrary will of another or others" (1960, p. 11). Coercion is what happens when "one man's actions are made to serve another man's will, not for his own but for the other's purpose" (1960, p. 133; see also pp. 20-21). Coercion thus has two elements: "the threat of inflicting harm and the intention thereby to bring about a certain conduct" (1960, p. 134).

With Locke and other classical liberals, Hayek sees liberty as not only consistent with laws backed by sanctions, but as enabled by laws (1960, ch. 11; pp. 220-2). Liberty is compatible with political authority, and true liberty is realized only within a system of laws where political authority takes the form of the rule of law, rather than the rule of men.⁸

To explain what the rule of law is and how it is consistent with true liberty, Hayek distinguishes between laws and commands (1960, pp. 148-61; 1973, pp. 48-53). Through *a command*, some specific person tells another specific person what concrete action to perform. Normally, the act in question serves the ends of the commanding rather than the commanded person; the person that is commanded has limited discretion in their choice of action, and their own knowledge and desires have limited bearing on their activity. An example case of a command is an army officer telling a private to move into position. The movement does not serve the private's personal ends; she has no discretion about what to do (even if she has some discretion in how to do it), and her personal knowledge and desires play a limited role in her

activity. A *law*, by contrast, is a general and abstract rule of conduct issued by a proper legislative authority that circumscribes the activities of all subjects in general. A law does not serve any concrete person's ends, nor determine any concrete person's behavior. Rather, a law is a rule that defines the limits wherein concrete persons can pursue their own ends, using their own knowledge. An example case of a law is a rule of the road: stop at red lights. All drivers are required to stop at red lights, but not because it serves any concrete person's ends that they do so, and the conduct of those subjected to the rule remains at their discretion; they drive where they please in the pursuit of their own ends using their own knowledge, while obeying the rules of the road. Under the rule of law, then, no person is made to serve another man's will—no person is coerced—and so no person's true liberty is violated by political authority as long as that authority complies with the rule of law.

Hayek further identifies some formal properties of laws required by the rule of law (1960, chaps. 9 and 10): laws must be abstract and general, binding no particular individual or group or requiring any specific action; laws must be public so that all members of society can easily understand and comply with them; and laws must bind all members of society equally, so that no-one is outside or above the law (formal equality).

The *constitution of liberty* is the constitution of a society designed to fully respect the rule of law and that also has all (but not necessarily only) the laws needed to enable and secure the liberty of every member of society. The constitution of liberty *prohibits* some laws, but liberty also *permits* and *requires* some laws and institutions.

In a society organized by *the constitution of liberty*, the state is *prohibited* from using its power in any manner that violates the rule of law (1960, pp. 227-228). So, the state may not issue any commands, it may not exempt anyone from being subject to the law or create legal privileges, and it must respect and protect the rights of all members equally. With respect to economic affairs, these prohibitions entail that the state cannot micromanage economic relations: it cannot decide what goods and services are produced, who produces or consumes what products (though it may require licensing for hazardous products), or the prices of services or products (1960, pp. 227-233).

Conversely, the state is *required* to enable the exercise of liberty by defining a system of personal rights, property rights, and contractual obligations. The state must also protect and secure the rights of all citizens to their persons, privacy, property, and contractual obligations, and thus must provide for police functions and a court system. The state should also define and secure a system of rules to solve coordination problems (such as rules of the road) if adequate informal conventions do not emerge (1960, pp. 220-224).

Other than these required activities of the state, the state is *permitted but not required* to engage in activities that are consistent with the rule of law and can be justified "on grounds of expediency" (1960, p. 222). So, the state may provide for public goods, set standards and measures, conduct and disseminate public surveys, provide a stable currency, construct and maintain various sorts of infrastructure, secure adequate provisions of education and healthcare, and provide a system of poor-relief (1960, pp. 257-258, 297-305, 324-5, 376-80). With respect to economic affairs, the state is permitted to engage in activities that secure an efficient and safe economic system—for example, by regulating working conditions (factory legislation) or requiring licensing for dangerous professions (1960, pp. 224-226, 257-260).

To pay for these required and permitted activities, the state is permitted to collect revenue through taxation, and this permission provides an additional justification for state coercive activities (in addition to what is needed to enable and protect liberty: see 1960, pp. 144-145).

The reason that the constitution of liberty is a sure (and the only sure) route to societal prosperity is that a system of liberty (and only a system of liberty) unleashes "the creative powers of a free civilization" (1960, p. 22). Hayek envisions two alternatives for organizing society: deliberate organization, which directs human activities in the pursuit of known ends; and a system structured by the constitution of liberty.⁹ This latter system unleashes the creative powers of a free civilization by enabling "the game of catallaxy" (1976, pp. 71, 115). This game of catallaxy—a free society and market economy enabled by the constitution of liberty—is a spontaneous order process that continually drives social progress: progress in

technology, goods produced, distributive efficiency, opportunities, knowledge, even culture and the values of individuals. Over time, this progress increases the prospects “for any given person picked out at random [...] The game of catallaxy [...] is a wealth creating game [...] that is, one that leads to an increase of the stream of goods and the prospects of all participants to satisfy their needs” (1976, p. 115).

If we had perfect knowledge, a planned society might have higher expected prosperity, but we do not. As exemplified by the socialist experiments of the 20th Century, there is no realistic way to overcome the fact of human ignorance, so even if a planned society honestly aims to maximize prosperity, it can be expected to do worse. No person can know what all other persons want, no person can understand all other persons’ circumstances, no person can manage economic affairs as comprehensively and effectively as the price-mechanism and the pressures of supply and demand.¹⁰ Hayek thus writes that “the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends. [...] If there were omniscient men [...] there would be little case for liberty. [...] all institutions of freedom are adaptations to this fundamental fact of ignorance” (1960, pp. 29-30. See also 1976, pp. 8, 39, 127).

Hayek offers two distinct *critiques of social or distributive justice*: one conceptual, the other normative (1976a; 1976b). I’ll focus on the normative critique, since I believe that the conceptual critique is weaker. To explain, in the conceptual critique Hayek argues that there is no subject of social or distributive justice, since there is no person or agent doing the distribution, but rather a distribution that arises as the aggregate result of the spontaneous order processes of the economy. Since only agents and their choices are fit subjects of justice, it is a mistake to employ the concept of justice in this domain. Thus, the idea of social justice is “nonsense, like the term ‘a moral stone’” (1976, p. 78). This critique is weak since it stipulates what it needs to demonstrate, namely, that patterns of distribution cannot be just or unjust, since only acts are just or unjust. The stipulation, moreover, seems questionable. For example, Schelling (1978, ch. 4) shows how a society can become racially segregated without injustices in the individual acts or legal framework, and it seems folly to claim that one cannot find injustice in such a society. More generally, and contrary to Hayek’s stipulation, it seems that aggregate results of individual activities can be fit subjects of justice.

The normative critique is stronger. It says that the distributions required by principles of distributive justice such as the principle of equality or the principle of desert can be satisfied only through the micromanagement of economic affairs, in violation of the rule of law (and liberty), at the expense of both liberty¹¹ and prosperity (See 1960, ch.6 and pp. 231-233, 384-286; 1976, ch. 9). Since the pursuit of social or distributive justice violates the rule of law (and thus liberty) it is precluded by the constitution of liberty.

The normative argument also applies, *mutatis mutandis*, to the principle of equality of opportunity. Hayek affirms a principle of non-discrimination (careers open to talents) (1976, p. 84), but he rejects that the state may pursue equality of opportunity (1960, pp. 384-386; 1976, pp. 84-85), since such pursuits require government to “control the whole physical and human environment of all persons” (1976, p. 85). Thus, attractive as the idea of equality of opportunity may sound, “any attempt to concretely realize it is apt to produce a nightmare” (ibid.), of totalitarian government that destroys liberty and prosperity, and so is precluded by the constitution of liberty.

3. THE DESTRUCTIVE POWERS OF A FREE CIVILIZATION

Hayek claims that the constitution of liberty enables a spontaneous order process that is the motor of societal prosperity. The underlying idea is that individual choices made within a system of liberty will be socially beneficial—at least in the aggregate and in the long run. This idea appears to be false.

The falsity appears in various collective action problems.¹² The examples are numerous: varieties of pollution, moral hazards, unsustainable use of common pool resources, and so on. Climate change offers an unpleasantly clear example: since the costs of greenhouse gas emissions are externalized and the benefits are internalized, individual liberty leads to societal disaster.¹³

Hayek calls negative externalities “neighborhood effects” (1960, pp. 365, 341, 348, 369). Thus, in his discussion of city planning, we find the following observation: “the costs involved in large numbers living in great density not only are very high but are also to a large extent communal, i.e., they do not necessarily or automatically fall on those who cause them but may have to be borne by all” (1960, p. 341). So, “the price mechanism reflects only imperfectly the benefit or harm to others that a property owner may cause by his actions [...] only when the value of the property of individuals [...] reflects all the effects of the use they make of it, will the price mechanism function as it should” (1960, p. 349). And in his discussion of agricultural policy, Hayek allows two helpful government functions to manage neighborhood effects: First, “the gradual improvement of the legal institutions which will make the market function more effectively and induce the individual to take fuller account of the effects of his actions. Second, those true service activities in which government as the agent of the people provides certain facilities, mainly in the form of information, which, at least in certain stages of development, is not likely to be provided in any other way” (1960, p. 364). The second of these seems fully in line with the permissible functions of government outlined in section 2 above. With respect to climate change, we can imagine Hayek supporting the work of the IPCC as offering information that any individual actor is unlikely to gather on their own (for lack of ability and/or motivation). However, knowing the harms of behavior is insufficient to deal with the variety of problems in question, as the provided information might merely clarify that the individually rational option is the one that is socially costly. The solution, then, must lie in the first function of government, namely, in how it “induces the individual to take fuller account of the effect of his actions”.

Hayek elaborates on the first of the functions of government in his discussion of natural resources. Here, Hayek allow that the problem of neighborhood effects “may in certain instances lead to wasteful methods of exploitation unless the units of property are of such size that at least all the more important effects of any one owner’s actions are reflected in the value of his property” (1960, p. 369). *This* is the problem—the effects of property use are not reflected in the value of property or the net benefits of its use to the owner. In some such cases, we find situations “where private property will lead to rational use only if the scope of unified control is made coextensive with the range within which the same resource can be tapped, as with a pool of oil. It is undeniable where for such technological reasons we cannot have exclusive control of particular resources by individual owners, we must resort to alternative forms of regulation” (1960, p. 369).

These comments seem to point toward allowing for a sensible approach to the set of problems exemplified by climate change, namely, regulation that internalizes the negative externalities. However, Hayek immediately makes the matter hard for himself by disallowing that the community can have a greater interest in the future than current individual members of society:

[T]he contention [...] is [...] that the community should generally devote a larger portion of its resources to provision for the future than will result from the separate decisions of the individuals [...] or, as it is often put, future needs should be valued more highly (or discounted at a lower rate of interest) by the community than is done by individuals. If valid, this contention would indeed justify central planning of most economic activity. There is, however, nothing to support this but the arbitrary judgment of those who maintain it (1960, p. 370).

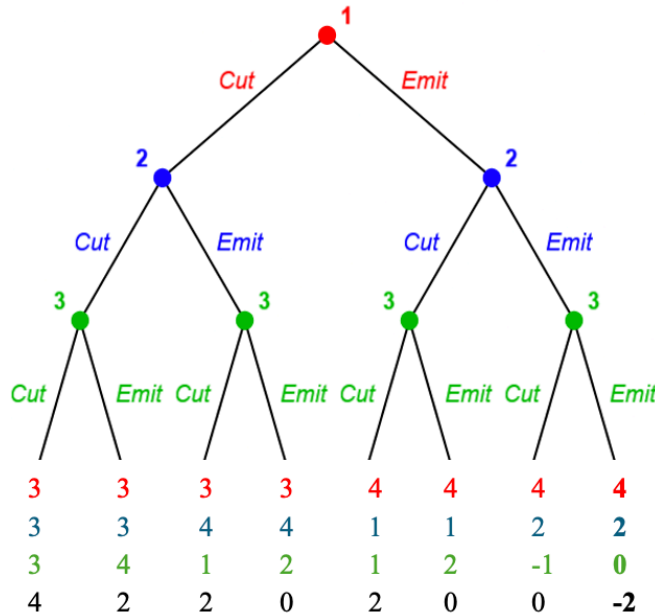
But here Hayek seems to contradict himself. On one hand, he allows that the state can engage in regulations that induce the individual to take fuller account of the effects of his actions. As illustrated by climate change, sometimes this problem is, indeed, temporal as well as spatial: part of the problem is that individuals fail to value the needs of future people as highly as they should. So, Hayek should agree with the contention that a community should devote a larger portion of its resources to provision for the future than will result from the separate decisions of individuals. And, on the other hand, Hayek implies that the contention is invalid, with nothing to support it but the arbitrary judgment of those that hold it. What gives?

Well, in some cases there will be no contradiction. Take simple prisoners' dilemma type collective action problems (simplified to the two-player case, which can be generalized for any number of players):

	Cooperate	Defect
Cooperate	(3, 3)	(1, 4)
Defect	(4, 1)	(2, 2)

It is, indeed, true that the equilibrium outcome (2,2) is suboptimal for each player so that all players have an interest in bringing about the socially optimal outcome (3,3). In such cases, there is no conflict between societal prosperity (measured as aggregate or average utility) and individual interest. Stag hunt type collective action problems (coordination games) and prisoners' dilemma type collective action problems (such as tragedies of the commons) have this structure where there is consistency between community and individual interest. For these, Hayek can, accordingly, accept regulation as serving the interests of every individual and thus as consistent with the true liberty of all.

However, there are numerous cases where there is a conflict between societal prosperity and the interests of some members of society. Climate Change, for example, is not a mere tragedy of the commons, since the externalization of costs is largely temporal. To illustrate, consider the following simple intergenerational game meant to capture the structure of problems like climate change:



In this game, every generation starts with a default payoff of 4. They have two strategies: cut or emit. If they cut, they incur a cost of 1. If they emit, they do not incur a cost, but every subsequent generation incurs a cost of 2. This is to illustrate the situation where there's a net benefit to the players from behavior that creates emissions (the value of what they produce, minus the cost of production inclusive of the cost of their emissions to themselves), but there's a net social loss from emitting as later generations suffer the effects. Since the cost of emissions fall primarily on future generations, generation 1 emits and later generations have no strategies that could incentivize generation 1 to cut. The game repeats with the same choice options and payoffs for every new generation. The game has an infinite horizon, but if we pause the game at the fourth generation and list the outcome for the fourth generation *before* they make their choice, which is also the outcome they get in the rollback path of play (since they choose 'emit'), the outcome at this point

is (4, 2, 0, -2). Indeed, the subgame perfect equilibrium is that every generation chooses to emit at every choice node. The aggregate outcome in the rollback path of play is thus 4 (4+2+0-2), which is significantly less than the maximum aggregate outcome of 12 (at the all-cut branch, 3+3+3+3, if generation 4 also cuts). The game thus illustrates how the individually rational choice leads to societal disaster. In such situations, Hardin is right to note that “ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom [...] brings ruin to all” (Hardin 1968, p. 1244). It should be clear how this simple game exemplifies social structures where it is simply untrue that liberty and prosperity go hand in hand. In short, in situations like this one, *liberty destroys societal prosperity*.

It bears repeating that the *inter*-generational (temporal) game is simply an illustration of the general problem. There are many *intra*-generational (spatial) versions of the game—pollution by factories poured onto neighbors, risks taken that fall primarily on others who lack the same opportunity to create risks, and so on. Indeed, it should be clear that these are not merely hypothetical cases, but the ever-present sources of death, disease, suffering, and misery. In all such cases, contrary to what Hayek says, the community should value the interests of those harmed higher than is done by those individuals whose behavior creates the harm—whether those harmed are elsewhere or elsewhere. This contention seems well established (and thus not an arbitrary judgment), and does, indeed, appear to justify regulation of behavior that is not in the interest of those regulated by it (by contrast with a tragedy of the commons, generation 1 *is better off* without the regulation).

To summarize, in many situations, persons rationally engage in behavior that creates more harm than good, when the harm falls to others and the good to themselves.¹⁴ In many such situations, there is no shared context of interaction and so no opportunities for reciprocal behavior or second-order interest in creating the institutional framework needed to define, monitor, and enforce the required behavior. So, those in the position to do harm *do not* have a purely rational interest in manipulating the choice-situation so that they and others have an interest in avoiding the harm. In such cases, liberty destroys societal prosperity. So, liberty and prosperity are *not*, in general, happily united.

One might object that the problematic behavior, like robbery or fraud,¹⁵ is not true liberty, for such behavior violates the liberty of others and true liberty is consistent with the liberty of others.¹⁶ Since the net harmful behavior in the cases above are not true liberty, based on this objection, the above cases identify no disunity between liberty and societal prosperity.

I cannot here offer a full discussion of this objection, as it would require a full reconstruction of Hayek’s conception of liberty.¹⁷ That said, I do not think the objection works, for as described in section 2, Hayek defines liberty in terms of interpersonal coercion—a person has liberty if she is not coerced by others to serve their ends—and in the worrying cases described above, there is no interpersonal coercion. In those cases, some individuals impose harms or risks on others for merely personal benefit, but, by contrast to cases of robbery, they are not coercing those they harm, and so are not violating their liberty.¹⁸ It seems better to maintain that the behavior should be regulated because it is socially destructive, even though it does not violate the liberty of others.

Moreover, this need for regulation, even if not grounded in liberty, is not necessarily a problem for Hayek, for the regulation won’t limit the true liberty of those regulated if it is consistent with the rule of law. Hayek *permits* regulation that serves economic efficiency, and he might argue that the cases in question fall under this heading. In a remarkable example of global collective action, the world came together in 1987 and created the Montreal Protocol for regulating the emissions of chlorofluorocarbons (CFCs) that were destroying the Ozone layer. The Protocol came into effect in 1989 and continues to this day. Surely, Hayek would agree that in such cases, liberty is limited by the regulation, but in a manner that is consistent with the rule of law and thus permissible within the strictures set by the constitution of liberty. A similar solution appears available for Hayek with the case of greenhouse gas emissions and climate change. What is needed (from the standpoint of societal prosperity) is regulation that prevents emissions above the level where the aggregate harms outweigh the aggregate benefits, or, more generally, regulation that ensures that

economic production is net beneficial across space and time. Such regulation could take many forms: carbon taxes, a cap-and-trade system, subsidies for clean technologies, etc. And it seems that at least some of these forms are fully consistent with the rule of law. A carbon tax, for example, conforms to the strictures of the rule of law: it does not tell producers what to produce, or in what quantities, or with what inputs, where or to whom to sell, or at what prices to sell for, but instead defines a background rule that producers must take into account when deciding what to do—a rule that translates fluidly into the price mechanism that provides the information producers and consumers take into account when making their choices.

So, the legislation needed to maintain the unity of liberty and prosperity in the intergenerational game and similar collective action problems can comply with the rule of law as Hayek defines it. Hayek can, accordingly, allow that we need to regulate behavior in cases where liberty seems to destroy societal prosperity, but argue that such regulation, even if it does not enable or protect liberty, need not sacrifice (true) liberty either, for the behavior in question can be regulated in accordance with the rule of law. So, even if the discussion in this section has exposed a set of conflicts between liberty and societal prosperity, these conflicts are manageable within the constitution of liberty. However, in the following section I argue that the very same solution to collective action problems identified in this section can be used to make the pursuit of social justice consistent with the constitution of liberty.¹⁹

4. SOCIAL JUSTICE AND THE RULE OF LAW

Hayek's argument against social justice is strong when directed at principles of social or distributive justice that require a patterned distribution of resources or welfare. To satisfy patterned principles of equality or desert, the state would have to micromanage behavior in a manner that seems inconsistent with the rule of law, leaving very little room for economic liberty, and, therefore, destroying the drivers of societal prosperity. However, many theories of social justice do not require a patterned distribution of resources or welfare, but that the rules of the economy are fair, and at least some such theories are consistent with the rule of law. To elaborate, consider a theory of distributive justice that currently receives much attention, namely, justice as fairness as developed by Rawls. Is justice as fairness inconsistent with the rules of law and liberty as Hayek understands these? It is not.

Justice as fairness tells us to design the basic structure of society so that the distribution of rights, opportunities, and economic resources satisfy three principles of justice: a principle of equal basic rights, a principle of equality of opportunity, and a principle which says that economic inequalities are to benefit the least well off.²⁰ A lot could be (and has been) said to elaborate on justice as fairness, but for our purposes, the main point is that these principles of justice apply to the basic structure of society, that is, to the basic institutions that define the roles and rules of social cooperation, and so *do not* regulate transactions or outcomes directly.²¹ Justice as fairness is intended to secure *background justice* (Rawls 1996, pp. 265-269; 2001, pp. 50-51), that is, that the roles and rules of society are fair. Justice as fairness thus exemplifies a procedural rather than a substantive theory of social and distributive justice.²² Accordingly, one cannot look at any given distribution of opportunities or resources and determine whether it is just or not; the justice of a distribution is not a matter of whether it satisfies some pattern, but whether it was brought about by a process that was defined by just rules. If the roles and rules of the economy are fair, then the outcome distribution of those playing the economic game defined by the basic structure is fair, whatever it might be: "there is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedures" (Rawls 2001, p. 51).

Rawls's theory of justice thus exemplifies an approach to social justice that does not require the state to micromanage the system of production or distribution, but instead requires that the state maintains an economic system that is a spontaneous order process taking place in accordance with rules that are fair to those involved in it. This makes justice as fairness consistent with the rule of law and so *not* precluded by the constitution of liberty.²³

In the closing paragraph of the chapter on social justice in Volume 2 of *Law, Legislation, and Liberty*, Hayek comments on Rawls:

There unquestionably also exists a genuine problem of justice in connection with the deliberate design of political institutions, the problem to which Professor John Rawls has recently devoted an important book. The fact which I regret and regard as confusing is merely that in this connection he employs the term ‘social justice’. But I have no basic quarrel with an author who, before he proceeds to that problem, acknowledges that the task of selecting specific systems or distributions of desired things as just must be ‘abandoned as mistaken in principle [...] Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust).’ This is more or less what I have been trying to argue in this chapter” (1976, p. 100, quoting from Rawls 1963, p. 102. See also 1976, p. 179n16).

This is a remarkable passage, for it implies that Hayek has no objection to social or distributive justice when its principles apply to the basic structure—as long as they are principles of procedural justice. The constitution of liberty does not preclude the pursuit of social or distributive justice, as long as the principles of social or distributive justice regulate the design of the basic structure of society—the rules of the game of catallaxy—rather than who receives what—the outcome of the game. But then Hayek’s normative critique of social or distributive justice targets a mirage, for most contemporary theories of social justice do not require a patterned distribution, but rather that the rules of the spontaneous order process of the economy are fair. It also means that Hayek’s attempt to narrow the range of permissible economic systems is based on a fallacy. Social democratic economic systems, for example, need not be (and arguably are not) based on patterned principles of distributive justice—they do not aim to secure that all get the same or that all get what they deserve or that any such pattern is maintained. Rather, they aim to secure that the struggle between capital and labor for the productive surplus is fair, so that the distribution that results from the exercise of free agency (including the negotiation of employment contracts and so forth) is fair *because* it results from a fair process.²⁴ Contrary to what Hayek maintains, liberty and the rule of law are fully consistent with the pursuit of social justice through a wide variety of economic systems.

It may yet be that there is a conflict between the pursuit of distributive justice and societal prosperity—the “big trade-off” between equity and efficiency may be unavoidable (Okun 1975). Whether that is the case, and how it should inform Hayekian classical liberalism if it is the case, is a matter for another essay. For this essay, what matters is that there is no inherent conflict between liberty and social justice. The Hayekian solution to collective action problems applies to social justice; we can regulate behavior as needed to secure both societal prosperity and social justice without violating the rule of law and thus without sacrificing true liberty.

5. CONCLUSION

One way to mark the 65th anniversary of the *Constitution of Liberty* is to reflect on the power and continued relevance of its animating idea—that liberty and societal prosperity go hand in hand. I have argued that this belief in the happy marriage of liberty and prosperity must be amended, for there are many cases where the individually rational choice is socially destructive. In such cases, the state should regulate behavior to ensure the consistency of liberty and societal prosperity. This is a friendly amendment to Hayek’s theory, since the required regulation can fully comply with the rule of law (as Hayek understands it) and, therefore, does not sacrifice true liberty. Thus, liberty and prosperity can remain united, even if liberty is circumscribed in ways additional to those that Hayek envisioned.

I have also argued that the conflict Hayek sees between liberty and social justice is a mirage. Indeed, the very move that allows Hayek to deal sensibly with the cases where liberty destroys prosperity—that harmful behaviors can be regulated as needed within the rule of law and, therefore, without sacrificing true liberty—can be made by defenders of social and distributive justice, since the regulation needed to define a fair economy is consistent with the rule of law. When distributive fairness is pursued by designing a basic structure of society where the rules of the economic game are fair, then distributive justice does not require the sort of micromanagement of economic affairs or governmental planning of the system of production and distribution precluded by the constitution of liberty. Thus, liberty and social justice can be united, even if liberty is circumscribed in ways additional to those that Hayek envisioned.

The conclusion to my argument is thus *not* that we should abandon Hayek’s liberalism. My conclusion, rather, is that Hayek’s liberalism is flexible enough to deal with current challenges such as the environmental destructiveness and increasing unfairness of insufficiently regulated capitalism. Thus, *The Constitution of Liberty* can remain a primary source for the continued development of classical liberalism even as we celebrate its 65th anniversary.²⁵

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NOTES

- 1 I understand societal prosperity as a function (aggregating or averaging) on the individual well-being of members of society, not as the well-being of a collective substance.
- 2 I understand social justice as normative principles for organizing political and economic society and distributive justice as normative principles governing the distribution of resources, opportunities, burdens, and benefits. Different principles of distributive justice might apply in different contexts (the family, sports, organizations, economy, etc.). A theory of social justice includes a theory of economic justice (governing the system of production, distribution, and consumption), which, in turn, includes principles of distributive justice. Hayek's critique of social justice amounts to an argument that the only principle of distributive justice that is part of the best theory of economic justice is the principle of liberty: that people should be free to decide for themselves what and how to produce, distribute, and consume goods and services. Correlatively, the state should not seek to impose principles of equality, desert, or need on economic processes and relations. See Platz 2020a for an overview of principles of justice and a discussion of the principle of liberty in Hayek's theory of economic justice.
- 3 Gray (1984) offers an extended analysis of the unity of liberty and prosperity in Hayek's argument, reading it as a synthesis of Hume and Kant. Kukathas (1989), by contrast, argues that Hayek's defense of liberalism fails, exactly because it tries to unite incompatible Humean and Kantian ideas.
- 4 Hayek frequently uses the term prosperity (e.g. 1960, pp. 331, 360); however, the conjunctive term, "societal prosperity" is not Hayek's own, but a term I use to capture the aggregate (or average) well-being of the members of society. I elaborate on Hayek's understanding of prosperity and the consequentialist nature of Hayek's argument in section 2.
- 5 Hayek echoes *salus populi suprema lex est*: "[T]he end of the law ought to be the welfare of the people [...] the general rules should be so designed as to serve it" (1960, p. 159). In LLL Hayek defines the good society (or the 'salus populi') as follows: "The good society is one in which the chances of anyone selected at random are likely to be as great as possible" (1976, p. 132).
- 6 Here I am in agreement with Kukathas (1989, pp. 31-42) and disagreement with Gray (1984, pp. 56-61), who reads Hayek as an indirect utilitarian.
- 7 1960, p. 6. I thus agree with Kukathas that for Hayek "the value of liberty resides in it being the condition for human flourishing" (1989, p. 138).
- 8 "[W]hen we obey laws [...] we are not subject to another man's will and are therefore free. [...] [F]reedom does mean and can mean only that what we may do is not dependent on the approval of any person or authority and is limited only by the same abstract rules that apply equally to all" (1960, pp. 153, 155). See Kukathas (1989, pp. 148-64) for a critical discussion of Hayek's conception of the rule of law as consistent with and enabling liberty.
- 9 This is a theme of all of Hayek's political writings, from *The Road to Serfdom* (1944) to *The Fatal Conceit* (1988). This distinction tracks with a set of binaries that define much of Hayek's political philosophy: organization / spontaneous order; construction / evolution; design / emergence; exogenous / endogenous; constructivism / empiricism; thesis / nomos; teleocracy / nomocracy; taxis / cosmos—to name the most prominent. I often worry that Hayek's arguments trade in false dichotomies, but I won't pursue this worry here.
- 10 This argument appears throughout Hayek thoughts on society. For a succinct early version see Hayek 1945.
- 11 Hayek's argument thus anticipates Nozick's famous argument that liberty upsets patterns (Nozick 1974, pp. 160-168)
- 12 A collective action problem is a situation where at least one equilibrium outcome is socially suboptimal (Dixit et al 2021, pp. 420-421). The socially optimal equilibrium might also be suboptimal for all (as in stag hunts and prisoners' dilemmas), but it might be optimal for some (as exemplified by my discussion of climate change below).
- 13 For an analysis of climate change as a collective action problem, see Gardiner 2011. See also Paniagua and Rayamajhee (2023) for a taxonomy of externality problems. They use climate change to exemplify the type of externalities that is hardest to deal with, as it is global in scope and difficult to use a system of property rights as internalizing mechanism (2023, pp. 399, 404-405).
- 14 This problem of concentrated benefits and dispersed costs has been understood and studied at least since Olson's path-breaking work on public goods and collective action (Olson 1965).
- 15 Hayek describes fraud as akin to coercion, 1960, pp. 143-144.
- 16 In later works Hayek suggests that his position has affinities to Kant's, who understands (external) liberty as universally consistent, i.e. as constrained by the equal liberty of others; see e.g. 1976, pp. 166-167.
- 17 For discussions of Hayek's conception of liberty, see Gray (1984) and Kukathas (1989, ch. 4).
- 18 Again, I do not pretend that this is the end of discussion. Clearly Hayek would agree that some types of

- non-coercive harms and risks are impermissible and should be legally prohibited—dynamite throwing contests, for example. I do, however, believe that Hayek should agree that the dynamite-throwing behavior is non-coercive, and, as such, not prohibited for the sake of liberty, but to prevent harm.
- 19 The discussion in this section has ignored the second-personal ethical dimension of harmful behavior. One might argue that the problem with harming others for personal gain is that it treats them wrongly, not that it fails to maximize societal prosperity. This position could then be used as justification for state regulation, but that argument requires a premise to the effect that the state should play a role in securing ethical conduct, a premise that is anathema to Hayek’s political philosophy.
- 20 For the exact principles see Rawls 1996, pp. 5-6; 1999, pp. 266-267; 2001, pp. 42-43.
- 21 As Hayek notes in 1976, p. 166n19.
- 22 In a substantive theory of distributive justice, the principle of justice regulates the outcome distribution directly, as in, for example, the principles of equality and desert that are the targets of Hayek’s critique of social justice. In a procedural theory of distributive justice, by contrast, justice regulates the procedures by which outcomes are generated, and the outcomes are just if and only if they come about when those engaging in the regulated system follow the procedures. For elaboration, see Rawls 1999, pp. 74-81.
- 23 To say that justice as fairness is consistent with the constitution of liberty is not to say that the constitution of liberty is favored by justice as fairness as the system that best realizes its principles. For arguments that justice as fairness is best served by a system of liberty see Tomasi (2012) and Cowen (2021). I doubt that justice as fairness favors a system of liberty, but I also deny, contrary to Rawls, that justice as fairness precludes free market capitalism (see Platz 2020b).
- 24 See Platz (2022a, 2022b) for elaborations of this reading of social democracy.
- 25 I am grateful to the editors of this volume and especially to Pablo Paniagua for excellent written comments. Lauren McGillicuddy helped me correct many errors and infelicities in the original manuscript.

F. A. Hayek in the Age of Postmodernist Tribalism

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Abstract: This paper argues that the postmodern progressive ideology currently dominant in American universities is fundamentally incompatible with Friedrich Hayek's classical liberal philosophy as articulated in *The Constitution of Liberty*. In Hayek's view, American institutions, particularly the philosophy and practice of constitutionalism, were an expression of the British tradition of true individualism. As Hayek observed, in the first half of the 20th century European civilization collapsed largely as a result of an intellectual movement that evolved in reaction to the philosophy of individualism. In recent times, America has faced waves of collectivist doctrines that have given rise to a new age of tribalism and a level of political hatred that is antithetical to the liberal ethos. Along with *The Road to Serfdom*, *The Constitution of Liberty* offers the necessary intellectual tools to elaborate an accrued analysis of the nature of these doctrines and the dangers which they pose to America's classical liberal order.

INTRODUCTION

With the occasion of *The Constitution of Liberty*'s 65th anniversary, a critical analysis of new forms of collectivist ideologies that have emerged in the United States and other parts of the Western World seems as urgent as ever. This paper argues that the postmodern progressive ideology currently dominant in American universities is fundamentally incompatible with Friedrich Hayek's individualist philosophy, as articulated in *The Constitution of Liberty* and *The Road to Serfdom*. It contends that contemporary progressivism—often associated with “woke culture”—promotes a form of tribalism that poses a threat to individual liberty and to the foundations of Western civilization. The first section of the paper examines the rise of tribalism in the United States. It also introduces key concepts in Hayek's classical liberalism to illuminate why progressive identitarianism is at odds with the principles underlying the American founding and with the true individualism that Hayek defended. The second section explores the anti-liberal and antirational nature of postmodernism, drawing parallels between its philosophical assumptions and those underpinning the totalitarian ideologies of the twentieth century—namely, Nazism and communism. The final section analyzes how postmodernist ideas have become hegemonic within American academia and assesses the implications of this intellectual shift for the future of a free society. Drawing historical parallels with the rise of National Socialism in Germany, the paper argues that Friedrich Hayek's warning about the central role of ideas and intellectuals in shaping social evolution must not be overlooked if a political order based on individual freedom is to be preserved. Finally, the paper will present some conclusions.

THE RISE OF TRIBALISM IN AMERICA

Friedrich Hayek, dedicated his 1960 magnum opus *The Constitution of Liberty* to the “unknown civilization that is growing in America” (2009a/1960). Hayek had great hopes for the future of the United States and believed that in the coming century it was destined to become the most influential nation in terms of moral ideas (Ebenstein 2003, p. 214). Hayek’s admiration for America was the natural result of his intellectual work which aimed at reformulating and restoring the classical liberal ideas of previous centuries (Gray 1986, pp. 1-2). In Hayek’s view, American institutions, and in particular the philosophy and practice of constitutionalism, were an expression of the British liberal tradition of individual liberty as developed by such thinkers as John Locke, Edmund Burke and Adam Smith. According to the Austrian scholar, the new nation of the United States, in building upon the rights previously enjoyed by the American colonists, gave itself “a constitution of liberty, a constitution that would protect the individual against all arbitrary coercion” (Hayek 2009a/1960, p. 159). Although at first sight the creation of the American constitution might have seemed to be a rationalist enterprise, on closer inspection the innovations it contains can be seen to have emerged “from the application of traditional principles to particular problems or as perceived consequences of general ideas” (Hayek 2009a/1960, p. 160). As Roger Scruton observed, the American Constitution was essentially a document that reflected the very fabric of social life in America with all its traditions and customs (Scruton 2002, p. 39). In Hannah Arendt’s words, what the American founding fathers had in mind was not the overthrow of the old order but a restoration of their “ancient liberties” as Englishmen (Arendt 2006/1963, p. 34).

The British philosophy that inspired the American republic was fundamentally opposed to the French rationalist tradition of “false individualism.” For Hayek, while true individualism was the foundation of a free society, false individualism entailed an abuse of reason that led to collectivism and socialism (Hayek 1946, pp. 10-11). Moreover, while the French rationalist idea of freedom aimed at “constructing a utopia,” the English idea of freedom relied on the spontaneous forces of society as the source of progress (Hayek 2009a/1960, p. 49). At the same time, true individualism was directed against “collectivist theories of society” that pretend to comprehend social wholes, such as “society”, or race and class, as entities which exist “independently of the individuals which compose them” (Hayek 1946, p. 8). In a moral sense, Hayek explained in *The Road to Serfdom*, true individualism entails the respect “for the individual man qua man. That is the recognition of his own views and tastes as supreme in his own sphere...and the belief that it is desirable that men should develop their own individual gifts and bents” (Hayek 2001/1944, p. 14). In Hayek’s view, this individualist philosophy served as the foundation of Western Civilization (ibid.).

There can be little doubt, as Hayek argued, that classical liberalism and its promotion of commerce and capitalism has been a major force for progress and peace among and within nations (Pinker 2011, pp. 287-288). Indeed, economic progress was virtually nonexistent for 300,000 years, making human life a constant struggle to meet basic needs (Susskind 2024, p. 1). Moreover, for most of human history, there was little hope that hard work would improve the conditions of the average person (Susskind 2024, p. 11). It was the capitalist revolution of the 19th century that ushered in an unprecedented age of prosperity, in which people could dream of a better future (Susskind 2024, p. 1). One of the core beliefs underpinning the innovation that defined the Industrial Revolution was individualism. By freeing people from the constraints of collective thought, individualism allowed freedom of speech and thought to flourish. It also facilitated the development of institutions that created the right incentives for individuals to stand out thus stimulating innovation (Mokyr 2017/2016, p. 18). The reason for this is that individualism entails moral egalitarianism without which there can be no respect of all persons regardless of sex, class or race. In the 18th century, the egalitarian ethics led to increasing equality of liberty eventually enabling all people to pursue their goals which paved the way for unprecedented human flourishing. Thus, egalitarian liberalism, -in other words, moral egalitarianism-, was the driving force that caused the modern world (McCloskey 2016, p. xv).

Only individualism, based on the idea of equal dignity, enables liberty, which Hayek understood as “a state where coercion of some by others is reduced as much as possible in society” (Hayek 2009a/1960, p.

11). As James Buchanan pointed out, in a social order based on classical liberalism, individual liberty and individual responsibility, are “ultimate or supreme values that are extended equally to all members of the community” (Buchanan 2008, p. 8). This means that “the classical liberal supports extensions of individual liberty for its own sake” and that “there is no attenuation of responsibility based on some judgment of reduced capacity” (Ibid.).

In the United States, this idea of moral equality as consecrated in the opening lines of the Declaration of Independence put in motion the process of effectively achieving equality before the law for all individuals, regardless of race (Wood 2003, pp. 126-127). Moreover, the classical liberal worldview would become so dominant that in his 1955 classic work, *The Liberal Tradition in America*, Harvard professor Louis Hartz went as far as arguing that Americans had an “irrational attachment” to the ideas of John Locke, making them “indifferent to the challenges of socialism” (1991, p. 6). While Hayek would have agreed with Hartz’s thesis that the United States was the most notable political expression of classical liberalism, he also warned that Americans were not immune to socialism. Already in 1949, he pointed out that the mistaken belief that intellectuals did not have an impact on politics was stronger in the United States than in any other country (Hayek 1949, p. 417). Moreover, for Hayek, a dangerous intellectual evolution had been taking place since the 1930s which was endangering America’s free market institutions (Ibid.). What Hayek had in mind was the experience of the New Deal under President Franklin D. Roosevelt, a program that was inspired in an anti-market ideology then dominant among large groups of economists and intellectuals at universities (Friedman and Friedman, 1990/1980, p. 92). According to some scholars the New Deal had devastating effects on the American economy (Higgs 2006; Cole and Ohanian 2004).

In recent times another aggressive anti-liberal ideology has emerged from within progressive circles undermining the egalitarian ethos defended by Hayek. Like their intellectual predecessors in Europe, this ideology has brought about a regression to dangerous forms of tribalism in America and beyond. Tribalism can be defined as a philosophy that appeals to primitive instincts in order to bind us into collectives through the renunciation of our individual responsibility (Popper 2020/1945, p. 164). As Hayek warned in *The Constitution of Liberty*, the abdication of individual responsibility is rooted in fear and is incompatible with the idea of individual liberty (Hayek 2009a/1960, p. 64). Moreover, according to Hayek, “in a free society there cannot be any collective responsibility of a group as such” (2009a/1960, p. 73). Along the same lines, Hannah Arendt argued that “there is no such thing as collective guilt or collective innocence; guilt and innocence make sense only if applied to individuals” (Arendt 2003, p. 29). Collectivist doctrines that characterize totalitarian ideologies, on the other hand, postulate that the individual is nothing more than an element within the whole, a part of a larger organism with its own transcendent characteristics to which the individual must submit: nation, tribe, class, race, etcetera. In the words of Karl Popper, tribalism emphasizes the importance of the tribe, without which the individual is “nothing at all” (Popper 2020/1945, p. 8). These primitive instincts and emotions, argued Hayek in *The Constitution of Liberty*, have biological roots in our past as nomadic hunters and lie at the heart of the critiques against capitalism, industrialism, and civilized life in general (Hayek 2009a/1960, p. 37). Indeed, our social and moral psychology, honed over tens of thousands of years of evolution to guarantee the survival of the species, drives humans to seek identification with individuals who are similar in order to form groups which act in opposition to other groups (Haidt 2011). As Charles Darwin observed, it is precisely the ability of humans to connect with others in collectives bound by moral rules of fidelity, obedience, and sympathies that facilitate individual sacrifice for the common good that allowed some tribes to eliminate others (Darwin 1871, p. 132). If not kept in check, as Hayek insisted in his last book, *The Fatal Conceit*, tribalism can lead to the destruction of civilization (Hayek 1988, p. 18).

Indeed, like Nazism and communism in the past, the modern identity politics currently espoused by progressive intellectuals fosters exactly the type of attitudes that Hayek viewed as incompatible with the true individualism that sustains a free and civilized society. The historical origins of some forms of identity politics in the United States were the justifiable claims for recognition as expressed, for example, in the 1960s by gays, lesbians, and especially African Americans (Gardels 2018). Originally, these groups,

invoked classical liberal principles of shared dignity in order to achieve equal treatment, not special privileges deriving from their belonging to one particular race, gender, or sexual orientation (Fukuyama 2018, p. 107). The fundamental motivation of these movements was individualistic in the classical liberal sense of the term, not tribal or identitarian (Lilla 2017, p. 9). On the other hand, the current form of identity politics is not a claim for moral equality but an exclusionary “pseudo politics of self-regard” (Lilla 2017, p. 10). It argues that humans are defined by their race, class, gender and sexual preference and that Western civilization is a construction based on systemic discrimination for the benefit of white heterosexual men (Mac Donald 2018, p. 2). In the words of Michael Huemer, the progressive ideology of today mistakenly sees contemporary America as a “deeply unjust society filled with prejudice and systematically designed to harm and oppress” (Huemer 2024, p. 1). Universal values such as equality of opportunity and free speech are denounced as distractions that aim at perpetuating the oppression of minority groups (Mounk 2023, p. 11). Thus, instead of collaboration between individuals, identitarianism fosters a society composed of “warring tribes” that do not enable real moral progress (Mounk 2023, p. 14).

Current progressive identitarianism, also known as “woke culture,”¹ resonates with Carl Schmitt’s views on politics. For Schmitt, who would become the leading jurist of National Socialism in Germany, just as the differentiating element of morality is the distinction between good and evil, in economics between utility and uselessness, and in aesthetics between beauty and ugliness, the defining point of differentiation in politics is the distinction of friend from enemy (Schmitt 2007/1932, pp. 25-26). It is no coincidence that the type of “common enemy” identity politics prevalent today at American universities is the same as that used by the Nazis to achieve their aims in the past (Haidt and Lukianoff 2018, p. 63).

The hatred that modern identity politics triggers among students is reinforced by three intellectual myths that have proven to have devastating consequences by dissociating new generations from the truth. The first is the false idea that “what doesn’t kill you makes you weaker,” the second is the belief that one should always trust one’s feelings, and the third is that life is a conflict between good and evil (Haidt and Lukianoff 2018, p. 4). While the first two myths foster a climate of irrationalism, the third myth encourages dangerous tribal attitudes that pave the way to violent conflict between groups (Haidt and Lukianoff 2018, p. 57). The ideology of Diversity, Equity, and Inclusion (DEI) has decisively contributed to reinforcing the last myth. Its stated aim is to address both current and historical injustices experienced by groups marginalized and oppressed based on characteristics such as race, sex, and sexual orientation by giving them preferential treatment. DEI is therefore philosophically fundamental to identitarian progressive leftism, which holds a dominant position in academia (Porter 2023). According to former dean of Yale Law School Anthony Kronman, DEI has affirmed a tribalism that animates the students “to view themselves as victims and wrongdoers; to act as spokespersons for the racial, ethnic, and other groups to which they belong to; and to believe that they are fatally confined in their loyalties and judgments by characteristics beyond their power to change” (Kronman 2019, p. 17). As a result of DEI, the culture of dignity—which lies at the essence of Hayekian liberalism and the principle of equality of treatment—has been gradually replaced by a “victimhood culture” where victimhood is seen as a virtue. This creates systemic incentives for the people who belong to the “non-dominant” groups to present themselves as such. (Lehmann 2018). As a result, the new pariah, the permanent suspect of immorality, is the heterosexual white male, who can be discriminated against, something which is even celebrated in some cases (Ibid.). At universities, DEI has often been used as a justification for arbitrarily discriminating against those applicants who do not fit the identity profile or the ideological biases of leftist administrators (Huemer 2024, p. 204).

The new forms of racial tribalism have been compared to a “woke” religion that makes rational dialogue impossible (McWhorter 2021, p. 24). For the “woke” ideologues and activists, the totality of the experience of black people for example, entails being exposed to systemic discrimination by whites (McWhorter 2021, p. 5). This would justify special treatment for blacks—and other minorities—including the elimination of standards of achievement and conduct (Ibid.). Moreover, this doctrine of “woke racism” is irrefutable because it views any possible evidence against it as a confirmation of its central postulates (McWhorter 2021, p. 10). In other words, identity politics of this sort has no interest in truth. Its irrational-

ism makes it a form of what Popper called “dogmatic thinking,” an attitude that characterizes primitive people and children (Popper 1962, p. 49).

In this context, the cries for “social justice” by “woke” activists and scholars are nothing more than an effort to dismantle both the ethics of universal egalitarianism and the principle of equality before the law under the pretense of creating more equality through the law. In *The Constitution of Liberty*, Hayek warned against the temptation of trying to make people more equal through the law instead of guaranteeing equality of treatment:

From the fact that people are very different it follows that, if we treat them equally, the result must be inequality in their actual position, and that the only way to place them in an equal position would be to treat them differently. Equality before the law and material equality are therefore not only different but are in conflict with each other; and we can achieve either the one or the other, but not both at the same time. Equality before the law, which freedom requires, leads to material inequality (Hayek 2009a/1960, p. 77).

Hayek went on to argue that “...the state ...should treat all people alike, the desire of making people more alike in their condition cannot be accepted in a free society as a justification for further and discriminatory coercion” (Ibid.). This commitment to equality of treatment or freedom under the law constitutes the essence of Hayek’s efforts in *The Constitution of Liberty*. And it is this fundamental idea that “woke” activists, politicians and scholars are working to undermine as they foster the same sort of tribalistic attitudes and irrationalism that defined the principal totalitarian movements of the last century.

THE REVENGE OF RELATIVISM

Collectivism, as Hayek warned on more than one occasion, is grounded on a false epistemology. Rationalism, for example, implies an “abuse of reason” that leads to scientism, which is to say, the belief that an entire social order can be designed by a human mind. In Hayek’s words, “the rationalist tradition assumes that man was originally endowed with both the intellectual and the moral attributes that enabled him to fashion civilization deliberately” (Hayek, 2009a/1960, p. 54). Inevitably, this form of rationalism entails the demand for absolute power in order to apply to the whole of society the plan that the social planners have devised (Hayek 2001/1944, p. 60). There is, however, a somewhat different yet related epistemological position that Hayek viewed as the foundation of totalitarian ideologies such as Nazism and communism, namely relativism. According to Karl Popper, relativism can be considered “one of the many crimes committed by intellectuals” because it entails a “betrayal of reason and of humanity” (Popper 2000/1994, p. 5). In his 1933 memo to Sir William Beveridge entitled *Nazi Socialism*, Hayek denounced this intellectual crime by explaining that anti-liberalism in Germany was related to the “anti-rational, mystical and romantic sentiment, which has been growing for years among the youth of Germany” (Hayek 2007a, p. 246). Hayek went on to argue that the main intellectual influence behind the anti-rationalism that defined Nazism was Karl Marx:

...it must be said that here again the main influence which destroyed the belief in the universality and unity of human reason was Marx’s teaching of the class-conditioned nature of our thinking, of the difference between bourgeois and proletarian logic, which needed only to be applied to other social groups such as nations or races, to supply the weapon now used against rationalism as such (Hayek, 2007a, p. 246).

Hayek added that it was “obvious that, from this intellectual relativism, which denied the existence of truths which could be recognized independently of race, nation, or class, there was only a step to the position which puts sentiment above rational thinking” (Hayek 2007a, p. 247). Hayek further argued that

anti-liberalism and anti-rationalism were inextricably linked because in order to justify the rule by force by some group, its superiority cannot be demonstrated but must simply be accepted. Thus, irrationalism “leads inevitably to a reign of universal compulsion, to intolerance and the suppression of intellectual freedom” (Ibid.). In other words, given the fact that tolerance can only exist when there is a commitment to the idea of a rational dialogue that aims, even if only imperfectly, at discovering the truth, relativism necessarily leads to totalitarian attitudes. As Hayek warned in *The Road to Serfdom*, for totalitarian ideologies, “the word ‘truth’ itself ceases to have its old meaning” (Hayek 2001/1944, p. 167). For Hayek, this is so because truth no longer describes something to be found based on the evidence; instead, it becomes “something to be laid down by authority, something which has to be believed in the interest of the unity of the organized effort and which may have to be altered as the exigencies of this organized effort require” (Ibid.).

An aggressive form of intellectual relativism of the type that Hayek saw as essential to Nazism and communism is precisely what lies at the heart of current so called “woke” ideologies. As Steven Pinker has argued, the ideals of the Enlightenment and classical liberalism are treated by today’s intellectuals with “indifference, skepticism and sometimes contempt” (Pinker 2018, p. 6). Other scholars have compared the type of ideological corruption that today affects the humanities and the natural sciences to the politicization of sciences that took place under the Soviet and Nazi regimes (Krauss 2020).

The philosophy behind this anti-rationalistic mindset is known as “postmodernism.”²² Because postmodernism denies the existence of objective truth, it denounces the development of knowledge as a mere manifestation of unjust power (Pluckrose and Lindsay 2020, p. 30). If enlightened thinkers—including those of the Scottish enlightenment—held that objective reality could be known to varying degrees, the postmodernists argue that reality is the product of socialization and of our subjective experiences as constructed by language (Pluckrose and Lindsay 2020, p. 30). Although some scholars have claimed that Hayek occasionally approached postmodernism (Burczak 1994), he never denied the existence of objective truth in postmodern terms. Instead, he advocated for a proper use of reason in the pursuit of truth—one that acknowledges our epistemological limitations when dealing with complex phenomena. Thus, Hayek firmly rejected postmodernism and remained committed to a scientific worldview (Caldwell 1994, p. 309).

In the postmodern paradigm, by contrast, the unity of human reason that Hayek regarded as foundational to a liberal order effectively dissolves. Instead, race, gender, sexual orientation, and class are deemed to be categories with their own truths, which are often incompatible and even opposed to the truths of other groups. In this way, says Stephen Hicks, “instead of experience and reason,” postmodernism posits “linguistic social subjectivism” against “individual identity and autonomy,” it postulates “various race, gender, and class group-isms” (Hicks 2004, p. 14). In sum, “instead of [seeing] human interests as fundamentally harmonious and tending toward mutually beneficial interaction,” postmodernism sees only “conflict and oppression” (Ibid.).

Without realizing the insoluble contradiction into which they are falling, postmodern thinkers believe they have discovered the true nature of all societal relations, cultural arrangements, and institutions; a thing exclusively reserved for those who adopt their methods. In this, the postmodernists follow Marx, who also affirmed to have discovered the true, oppressive nature of capitalism, invisible to those who do not adhere to his methodology (Butler 2002, p. 2). Thus, the French postmodernist theorists, generally speaking, worked within a broadly Marxist paradigm (Butler 2002, p. 7).

Ultimately, what postmodern thinkers such as Michel Foucault, Jean-François Lyotard and Jacques Derrida sought was the destruction of the very Western civilization that Hayek fought to preserve. A brief analysis of what their main proponents had to say suffices to prove this point. Lyotard for example wrote that “simplifying to the extreme, I define postmodern as incredulity toward metanarratives” (Lyotard 1984/1979, p. xxiv). The Enlightenment, in both the French and Scottish traditions, with its search for truth and human progress, would be a meta-narrative or “overarching narrative” which, for Lyotard, must be discarded in order to open a path on to which thousands of other local narratives can emerge, with there being no possible way of establishing that any one of them is truer to another. According to this view, beauty, morality, art, and even science follow an authoritarian logic because all of these categories are

nothing more than linguistic creations, mere narratives bordering on fictions, competing for acceptance (Butler 2002, p. 15). Consequentially, there is no room for the idea that social progress derives from the decentralized knowledge accumulated in the institutions that have evolved from the spontaneous order. Private property, money, liberal moral principles, the family, the market, and all traditions are nothing but manifestations of domination by some privileged groups over others. In the light of postmodern ideology, Hayek's argument that a commitment to principles presupposes a "theory of society" leading to "an understanding of the general forces by which the efforts of society are coordinated" (Hayek 2009a/1960, p. 346) is nothing more than another attempt to legitimize oppression.

Moreover, if everything is narrative and if there is no mechanism for claiming superiority through some reality outside of the subject, then the historical narrative of the West itself becomes a form of self-justification that has no way of defending itself objectively. Even the idea that it is possible to make an objective reconstruction of history on a foundation of collected evidence is nothing more than a fallacy. From this perspective, history is a form of mythology, and its survival depends on whether it is accepted in the process of discussion, nothing more (Butler 2002, p. 33). Thus, everything melts into absolute subjectivism, in the tide of whatsoever the reader believes to be true. Hence, given that access to the past is impossible and the texts in themselves have no significance or message, the reader must deconstruct the text, destroying any imprimatur that the author has placed upon it. In this view, even scientific knowledge becomes suspect. Indeed, postmodernism claims that Western science cannot grasp objective facts or assert superiority over other understandings of reality developed by different cultures at different times. Thus, Western science, with its pretense of objective truth, is nothing but an imperialist narrative aimed at domination (Pinker 2002, p. 198). Medical science, for example, has the goal of enabling the political authority of doctors over their patients, whom they can treat thanks to the power that this discourse confers upon them. Thus, Foucault argued that true power does not consist in what is obliged by force from these processes but rather in what he denounced as micro-power and "extrajudicial coercions":

Traditionally... it was enough to study the judicial structure which determined what was permissible and what was prohibited....In reality it seems to me that the law which differentiates the permissible from the prohibited is nothing more than an instrument of power...highly inadequate and highly unreal and abstract. In particular, power relationships are much more complex... all that is extrajudicial, and all extrajudicial coercion is brought to bear on individuals and runs through the social fabric (Foucault 2012, pp. 41-42).

According to Foucault, "When a psychiatric doctor imposes a confinement, a treatment, a status on an individual," he exercises domination. Thus, power relationships effectively "are those that the apparatus of the state wields over individuals, just as they are those that a father wields over his wife and children, the power wielded by the doctor, the power wielded by the leader, the power that the owner wields over his workers in the factory" (Foucault 2012, pp. 41-42). "Everything," he said, analyzing medicalization, "is profoundly linked to the development of capitalism" that could not "function with a system of political power that is, in a certain way, indifferent to individuals" because of its need to make productive function of all persons by "normalizing" them (Foucault 2012, p. 36). Thus, the Big Brother that George Orwell described in his novel *1984* in reference to socialist totalitarianism would, in reality, be the type of liberal social order defended by Hayek in *The Constitution of Liberty*. From the postmodernist perspective, it is capitalism that created a "precise and concrete vigilance over all individuals," who are now always under surveillance and control by political power, a situation that had never existed before, not even in the days of feudalism (Ibid.). Foucault would even went so far as to say that the people, in order to rebel against all these invisible forms of oppression, had to apply their own justice, without liberal institutions such as the rule of law guaranteed by courts or legal processes, since the existing legal systems were a plot of the bourgeoisie to stave off the vengeance of the masses (Ibid.).

As Roger Scruton observed, Foucault was not interested in truth. In his efforts to demonstrate that there exists an intrinsic connection between the bourgeoisie, the family, paternalism, and authoritarianism, he completely ignored the importance of objective fact. Hence, Scruton suggests, Foucault's entire attempt to unravel the hidden power structures of bourgeois society lacks credibility, becoming instead a "liturgy of denunciation" (Scruton 2015, p. 104).

Like Foucault, Derrida marshaled ideas against language, specifically against what he called "logocentrism," which is the predominance of *logos*, that is, of language and of the reasoning expressed through it, leading to the creation of hierarchies which, in his opinion, must be removed. Continuing Foucault's line of argument, Derrida believed that it is not possible to know the truth through language, since this is in itself a structure created by the person who uses it and, therefore, it is impossible to claim access to an externally existing truth by means of language. His theory of "deconstruction" states that all texts are ambiguous and, as such, there is no single meaning that can be attributed to the written word, but rather there are as many meanings as there are readers. In other words, the doors are open to a complete irrationalism in the sense that it is impossible to claim to have found truth in any text, as there exist multiple truths, which may even be contradictory. And it is thus, according to this argument, that the ideas, interpretations, and sentiments related to a text are neither true nor false (Güney and Güney, p. 222). Derrida himself admitted that his attack was one leveled against the concept of rationality and truth:

The "rationality"—perhaps that word should be abandoned for reasons that will appear at the end of this sentence—which governs a writing thus enlarged and radicalized, no longer issues from a "logos" and inaugurates the destruction, not the demolition but the de-sedimentation, the deconstruction of all the significations that have their source in that of the *logos*. Particularly the signification of *truth*. All of the metaphysical determinations of truth and even the one beyond metaphysical onto-theology that Heidegger reminds us of, are more or less immediately inseparable from the instance of the *logos*, or of a reason thought within the lineage of the *logos*, in whatever sense it is understood...(Derrida 1997/1967, p. 10).

In sum, language is inherently unreliable because words have meaning insofar as they refer to and differ from other words such as, for example: fat and thin, beautiful and ugly, man and woman, superior and inferior, etc. Now, none of these concepts have a direct link with the object they refer to, obesity, beauty, masculinity, and so on; rather, they are part of an entire language system that never makes contact with the real world and, as a consequence, the meaning of what is being discussed is never stable and is always subject to change, even when the same words are used (Güney and Güney, p. 222).

The consequences of this suspicion of language are devastating and for some postmodernism has already "ruined the West" (Pluckrose 2024). This should come as no surprise. If Derrida was correct and we must distance ourselves from logocentrism, then we are unable to claim, for example, that Hayek's liberal philosophy—with its belief that every one of us, every human being, possesses the same dignity and, hence, deserves an equal degree of respect—is in any way superior to communism or fascism. Not even the market can be seen as the best system to favor human flourishing since, as Foucault argued, it is nothing more than a system of oppression. In short, if language is unable to say anything that is true, then all of the effort made by the West toward moral progress is absurd, and we are left utterly adrift, with no philosophical North by which to guide ourselves. Mark Lilla writes:

If deconstruction throws doubt on every political principle of the Western philosophical tradition—Derrida mentions propriety, intentionality, will, liberty, conscience, self-consciousness, the subject, the self, the person, and community—are judgments about political matters still possible? Can one still distinguish rights from wrongs, justice from injustice? Or are these terms, too, so infected with logocentrism that they must be abandoned? (Lilla 2001, p. 179).

In creating an atmosphere loaded with irrationalism, postmodern culture renders all meaningful communication between diverging positions impossible. This makes social life under the rule of law and democracy unviable. As was argued by Harry Frankfurt, no society can be minimally functional without a “robust appreciation of the endlessly protean utility of truth” (Frankfurt 2017, p. 15). It would be impossible, adds Frankfurt, to make decisions and informed judgments regarding the more relevant public issues without sufficient knowledge of the facts (Ibid.). For this reason, Frankfurt’s calls postmodernists “shameless antagonists of common sense” who deny that truth has “any genuinely objective reality at all” (Frankfurt 2017, p. 19).

Along the same lines, Bertrand Russell argued that no society that is spiritually sane tolerates radical subjectivism, as this rapidly leads to irrationality, destroying the idea of community (Russell 2004/1945, pp. 20-21). Therefore, it is not an exaggeration to say, like Frankfurt, that all civilizing endeavors depend on clarity and honesty with which facts can be debated (Frankfurt 2017, p. 16). As Hayek himself argued, civilization and freedom depend on the respect for truth, which is precisely what totalitarian ideologies seek to destroy (Hayek 2001/1944, p. 159).

THE TREASON OF THE INTELLECTUALS

Few thinkers in the last century gave more importance to the role of intellectuals in shaping social evolution than Friedrich Hayek. In *The Constitution of Liberty*, he wrote:

The belief that in the long run it is ideas and therefore the men who give currency to new ideas that govern evolution, and the belief that the individual steps in that process should be governed by a set of coherent conceptions, have long formed a fundamental part of the liberal creed... So far as direct influence on current affairs is concerned, the influence of the political philosopher may be negligible. But when his ideas have become common property, through the work of historians and publicists, teachers and writers, and intellectuals generally, they effectively guide developments (Hayek 2009a/1960, p. 98).

The reason why ideas and ideologies are so influential in human history was explained by Ludwig von Mises. A worldview, explained Mises, is a theory and interpretation of all things, an opinion about the best means to remove uneasiness. Insofar as religion, metaphysics and philosophy provide worldviews, they “advise men how to act” (Mises 1996/1949, p. 178). Ideology, said Mises, is a narrower concept that only includes doctrines concerning the individual’s conduct and social relations. Like a worldview, an ideology is not only a descriptive theory but also a doctrine about what ought to be. For Mises, the outcome of the clash between differing world views, political philosophies, ideologies and ideas is what defines the type of economic organization and institutions a society has. “The genuine history of mankind is the history of ideas. It is ideas that distinguish man from all other beings. Ideas engender social institutions, political changes, technological methods of production, and all that is called economic conditions” (Mises 2007/1957, p. 187).

For Hayek, Germany’s tragedy under the Nazi regime was precisely the end result of an intellectual evolution that paved the way for the abandonment of liberal ideas and the rise of collectivism. In Hayek’s own words, National Socialism was “the culmination of a long evolution of thought, a process in which thinkers who have had great influence far beyond the confines of Germany have taken part” (2001/1944, p. 171). Socialism, insisted Hayek, was not at first a working-class movement but “a construction of theorists, deriving from certain tendencies of abstract thought with which for a long time only the intellectuals were familiar” (1949, p. 417). According to the Austrian professor, “it required long efforts by the intellectuals before the working classes could be persuaded to adopt it as their program” (1949, p. 417).

Apart from Marxism, one of the schools of thought that had played a decisive role in the rise of socialism, observed Hayek, was the German Historical School led by Gustav von Schmoller, who argued that the

state had to be “the leading intelligence, the responsible center of public sentiment, the acme of existing moral and intellectual powers” (Caldwell 2004, p. 53). For Schmoller, “the right man in the right place, the great statesman and reformer, the far-seeing party chief and legislator can here accomplish extraordinary things, not directly, not immediately but through a wise and just transformation of the economic institutions” (Ibid.).

Similar to Nazism and Marxism, one of the central postulates of the Historical School was epistemological relativism. More specifically, the Historical School advanced the idea that there were no universal economic laws. According to Hayek, by denying the existence of general economic laws, the Historical School undermined the necessity of “controlling emotions by difficult reasoning” paving the way for irrationalism (Hayek 1933, p. 125). Moreover, the relativistic position of Schmoller and others had made their school of thought unable of refuting even “the wildest Utopias” (Ibid.). In Hayek’s view, this new class of intellectuals in Germany had a “complete dislike for the practical conclusions of the classical English school” (Hayek 2007b/1983, p. 13).

According to Ludwig von Mises, after the hegemony of Schmoller’s doctrine, “there was no longer any liberal thinker left in Germany” (Mises 2003/1969, p. 13). Like Hayek, Mises argued that Schmoller’s doctrines had made Germany “safe for the ideas, the acceptance of which made popular with the German people all those disastrous policies that resulted in the great catastrophes” including the aggressive imperialism, the hyperinflation of the 1920s and the *Zwangswirtschaft* (or command economy) of the Nazi regime (Ibid.).

But the process of social contagion through collectivist ideas was not a uniquely German phenomena. As Hayek himself explained, in every country that had moved toward socialism, “the phase of the development in which socialism becomes a determining influence on politics” had been preceded “for many years by a period during which socialist ideals governed the thinking of the more active intellectuals” (Hayek 1949, p. 221). Few in interwar Europe foresaw the threat posed by the collectivist virus more clearly than French novelist Julien Benda. In his 1928 work *The Treason of the Intellectuals*, Benda predicted that the agitation of political passions by European thinkers would lead to a catastrophe of epic proportions. As Benda saw the matter, the rejection of reason and the exaltation of identity politics around race, nationality, and class was infecting European society with hatred (Benda 2017/1928, p. 1). Moreover, Benda defined his era as “the age of the intellectual organization of political hatreds,” adding that every political passion was “furnished with a whole network of strongly woven doctrines” that aimed at dividing the world between good and evil (Benda 2017/1928, pp. 14-15). As Hannah Arendt observed, hatred became the driving force of a large part of European political life in the decades prior to the Second World War (Arendt 1985/1951, p. 268). Like Hayek, for Benda, the treason of the intellectuals consisted in abandoning their commitment to the ideas of truth and justice: “the clerks who indulge in this fanaticism betrayed their duty which is precisely to set up a corporation whose sole cult is that of justice and of truth” (Benda 2017/1928, pp. 35-36).

Benda’s prophetic analysis and the Hayek-Mises understanding of Europe’s collapse under collectivism in the past offer valuable lessons in the face of the current postmodern culture at universities. If, as Hayek and Mises argued, German universities had been taken over by thinkers hostile to individual liberty since the second half of the 19th century, the same can be said to have happened in the case of most elite American universities over the past several decades. Harvard University is a case in point. According to the Crimson’s annual survey of the Faculty of Arts and Sciences more than 77 percent of surveyed Harvard faculty identified as either “very liberal” or “liberal” (Hamid and Schisgall 2023). This is consistent with a wider trend that has affected American universities where professors have moved dramatically to the left since the 1990s. The data show that the number of teachers who consider themselves conservative has fallen from just over 20 percent to about 10 percent. Moderates, meanwhile, have dropped from 40 percent to less than 30 percent, while progressive and radical leftists have increased from just over 40 percent to more than 60 percent (Abrams 2016). A 2021 paper argued that the available evidence clearly shows that, generally speaking, university faculty in the United States are not particularly diverse in terms of ideol-

ogy (Whittington 2021, p. 2). Political discrimination may help explain this trend. A 2018 study found that conservative and libertarian law professors appear to experience discrimination based on their political orientation. As a result, legal scholarship has become an “echo chamber,” undermining the education of law students (Phillips 2019). Other studies have identified similar patterns across various academic disciplines (Whittington 2021, p. 6).

Even Finance has developed a clear leftist bias. In the top twenty finance departments in the United States, the average ratio between democrat and republican professors is 4,62:1. Leading universities such as Harvard and New York have a 10:1 ratio of Democrat to Republican professors (Kuvvet 2021). A similar pattern is also observable at the editorial boards of finance journals (Ibid.). Another example of ideological bias is psychology. Research done by José Duarte, Jonathan Haidt and others have noted that almost everyone in the field is on the Left politically. More importantly, academic psychology exhibited considerable political diversity in the past, but it has lost it in the last 50 years (Duarte et al. 2015). This absence of political diversity undermines the validity of social psychological science through mechanisms such as the bias in the questions posed arising from the incorporation of left-wing values and research methods, and can also lead to the avoidance by researchers of certain topics for political reasons (Ibid.).

Other studies have confirmed the lack of intellectual diversity at universities in different areas. After analyzing 7,243 teachers in different universities, one study found that the total ratio of Democrats to Republicans was 11.5:1 (Langbert, Quain and Klein 2016, p. 425). Specifically, the proportions by discipline in the forty institutions analyzed were: economics: 4.5:1; history: 33.5:1; journalism and communications: 20.0:1; law: 8.6:1; and psychology 17.4:1. These data are not irrelevant because, as the authors themselves argued, Democratic academics as a group generally display a lower diversity of opinion than do their Republican colleagues, adopting a harder doctrinal line, usually inclined toward greater state interventionism. In the words of the authors, “Democrats are, often without being very self-aware about it, more deeply enmeshed in bents and mentalities that spell statism than are Republicans, who show more diversity and allow greater place for the classical liberal tendency” (Langbert, Quain and Klein, 2016, p. 427).

A 2020 study of Democrats to Republicans ratio among 12,372 tenured and tenure-track professors in eight academic departments (anthropology-sociology, biology, chemistry, economics, English, mathematics, philosophy, and psychology) confirmed these findings. According to the authors, “the D:R donation ratio favors the Democratic Party in all nine disciplines sampled...For six of the eight or nine disciplines, the D:R donation ratio exceeds 100:1.” The study predicted that this trend was likely to continue because the D:R registration ratio was highest among assistant professors (Langbert and Stevens 2020).

The previous findings are relevant because democrats show lower intellectual diversity and more extremist positions than republicans in a number of relevant socio-political issues (Lüders, et al. 2023). Democrats are also the group that supports progressive identity politics and DEI policies that foster tribalism (Lilla 2017 p. 11). As a result, cancel culture has taken over western universities silencing conservative or right-wing scholars who face a hostile environment toward their worldview (Norris 2021). As Michael Huemer has argued right of center thinkers are a small minority at universities and that in the next decades there is a substantial risk that non leftist voices will be completely eliminated from the academic world making college education “pure ideological brainwashing” (Huemer 2024, p. 205).

Along the same lines, historian Niall Ferguson has warned that the politicization of the university, influenced by ideologies that seek to judge the past according to current standards, has brought about a veritable erasure of any content considered to be “offensive” (Ferguson 2016). Ferguson observed that the Left has sought to colonize universities, schools and departments of education, in order to “send out its missionaries to teach young people a version of events that might make sense in the context of Marxism-Leninism, but is in fact a complete and grotesque misrepresentation of the past” (Ferguson 2018).

And just as in the past when collectivist ideologies grounded in relativism spread from the universities and intellectual spheres to the rest of German society, the doctrine of postmodernism espoused by leftwing scholars has not remained confined to academia. In the words of Yascha Mounk, postmodern identitarianism went from an ideology that was influential “in some corners of campus in 2010 to one that had a firm

grip over some of the world's most powerful foundations and corporations by 2020" (Mounk 2023, p. 98). Moreover, according to Mounk, postmodern identitarian activists and professionals left their universities and took jobs in "prestigious newspapers and well-endowed foundations, in giant corporations and powerful government offices". In these institutions their presence reached critical mass, making it possible for them to "transform the norms, rules, and assumptions that govern them" (Ibid.).

As Helen Pluckrose and James Lindsay have pointed out, postmodernism has impregnated all life in general since it first appeared in the 1960s creating "the least tolerant and most authoritarian ideologies that the world has had to deal with since the decline of communism and the collapses of white supremacy and colonialism" (2020, p. 13). The same scholars sum up the reasons why postmodernism is completely at odds with the central postulates of the classical liberal philosophy espoused by Hayek:

Postmodern Theory and liberalism do not merely exist in tension: they are almost directly at odds with one another. Liberalism sees knowledge as something we can learn about reality, more or less objectively; Theory sees knowledge as completely created by humans—stories we tell ourselves, largely in the unwitting service of maintaining our own social standing, privilege, and power.... Liberalism values the individual and universal human values; Theory rejects both in favor of group identity.... Liberalism encourages disagreement and debate as means to getting at the truth; Theory rejects these as ways of reinforcing dominant discourses that suppress certain perspectives [and] promotes the idea that truth is a "language game" Liberalism accepts criticism, even of itself, and is therefore self-correcting; Theory cannot be criticized (Pluckrose and Lindsay, p. 237).

Hayek's insight into the role of ideologies and intellectuals teaches us that, ultimately, the ideas that prevail in society will define its political and institutional evolution. If irrational ideas take over the intellectual spheres and public opinion, a political order of free people cannot survive. If, on the other hand, classical liberal ideas permeate society enough to make it resilient to totalitarian degeneration, individual liberty can have a future. This requires that liberals concentrate on the long-term impact of their ideas and not just on what is politically feasible. As the same Hayek put it: "it is the beliefs which must spread if a free society is to be preserved or restored and not what is practicable at the moment" (Hayek 1980, p. 108).

CONCLUSION

Friedrich Hayek's work *The Constitution of Liberty*, in addition to his best-selling book *The Road to Serfdom*, provides the necessary intellectual tools to identify postmodernism as a threat to America's classical liberal institutions and to Western Civilization at large. Its rampant relativism, its cult of radical subjectivism and tribalism, which it shares with Nazism and communism, make it incompatible with a social order based on true individualism. As Hayek explained, the liberal order cannot be sustained without an appreciation of truth and even less so if the individual is replaced by collectives as the center of political organization. In rejecting truth and moral egalitarianism, postmodernism reduces all social life and human interaction to mere power dynamics between tribes. Consequentially, the spontaneous forces of society that Hayek viewed as crucial for human progress, have no real epistemological value and the market as well as the rule of law can only be seen as mechanisms to reinforce the oppression by privileged groups. Thus, the postmodern formula aims at destroying all the Western institutions and values that Hayek described in *The Constitution of Liberty* in order to liberate those who are supposedly oppressed. Hayek also offered a theoretical framework to prevent such a development. Drawing on lessons from the German experience under National Socialism, Hayek explained that the survival of Western Civilization ultimately depends on the ideas that prevail in society. This means that if freedom is to be preserved today in America and elsewhere, an active engagement by classical liberals in the clash of ideas at all levels of the intellectual and public debate is unavoidable.

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NOTES

- 1 The term “woke” in this context is a euphemism that refers to a set of extreme progressive ideas and attitudes that are incompatible with open debate and rational thinking. Originally, the term “woke” referred to the awareness of social injustices such as racism which current social justice activists claim to be fighting against.
- 2 According to the *Stanford Encyclopedia of Philosophy*, postmodernism cannot be defined but it can be described as a “set of critical, strategic and rhetorical practices employing concepts such as difference, repetition, the trace, the simulacrum, and hyperreality to destabilize other concepts such as presence, identity, historical progress, epistemic certainty, and the univocity of meaning” (Aylesworth 2015).

Hayek against Neoliberalism

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Abstract: Neoliberalism has become the go-to culprit for a host of modern maladies, from rising inequality to democratic erosion. F. A. Hayek is frequently held up as one of its high priests, accused of promoting a brand of “market fundamentalism” that exalts economic efficiency while subordinating or even sabotaging political freedom. This paper challenges that reading. When read with care, Hayek’s work reveals no such devotion to markets as ends in themselves, but rather a deep concern with the conditions under which social order can emerge without centralised intelligent design. His commitment to spontaneous order, epistemic complexity, and institutional pluralism undermines the very logic of technocratic imposition, whether in the guise of the Washington Consensus or its more fashionable successors. The irony is hard to miss: critics who reject neoliberalism for its elitism often end up endorsing their own brand of top-down governance, just under different slogans. Far from being the problem, Hayek offers a framework for understanding why both neoliberalism and its critics so often reproduce the same authoritarian temptations they claim to oppose.

INTRODUCTION

In contemporary discourse, neoliberalism is frequently blamed for various social ills, including inequality, financial crises, environmental degradation, crime, populism, and authoritarianism. The conventional wisdom posits that neoliberalism, pushed by figures like Milton Friedman and Friedrich Hayek, emerged in the 1980s and wreaked havoc globally. Critics aim to correct their “excessive hostility” to intervention, advocating for more active state-led direction, typically centred around ambitious industrial policy (see Mazzucato 2021a). Assessing these critiques is challenging due to the conceptual ambiguity and rhetorical looseness surrounding “neoliberalism” (see Vallier 2021 for a literature review). Critics from diverse fields, history, political theory, economics, and sociology, often attribute undefined or inconsistently applied values or consequences to neoliberalism.

Yet, one may detect a common denominator across these accounts, which is the presence of a brand of market fundamentalism at the root of various evils. Accordingly, there are three interrelated components associated with this critique of market fundamentalism and the alleged consequences of neoliberalism. They are as follows:¹

1. **“Washington Consensus” policy package.** First, neoliberalism is understood as an economic doctrine fetishising market-based policies. A form of “unbridled” capitalism, it is championed by global organisations and involves “deregulation, privatization, and withdrawal of the state from many areas of social provision” (Harvey 2005, p. 3). This “harsh and individualistic neoliberal-

ism” rests on an “almost religious faith in the benefits of free markets” (Chandler 2023, ch. 6). Historically, this has allegedly been pushed in both Western nations by the likes of Reagan and Thatcher, and unceremoniously forced onto developing countries, usually under unsavoury conditions. The implication for critics is to embrace more egalitarian and state-led policymaking in various domains (see Cohen 2019, Collier 2024, and Besley et al. 2025 for examples).

2. **The *homo economicus* method.** Closely associated is the belief that this doctrine rests on an economic methodology centred around “*homo economicus*”, i.e. the rational utility-maximising individual. Francis Fukuyama (2022, ch. 3) laments that modern economics is “built around an assumption that human beings are ‘rational utility maximisers’” and are “typically greedy, individually selfish and smart”. This problem began when neoliberals expanded the concept of *homo economicus* to cover aspects “at one point considered separate from economic calculation: marriage, family, morality, education, even sports” (Gerstle 2022, p. 90). This neoclassical approach translated into a model of the market as approximating textbook conditions of perfect information and competition (Harvey 2005, p. 68; Blakey 2024, p. 9). Outside of the policymaking context, such a worldview gives rise to a pervasive ethos of profit-seeking across society; or a “narcissistic consumerism” (Harvey 2005, p. 41). Neoliberalism’s “economization” of life configures the human “always, only, and everywhere as *homo economicus*” (Brown 2015, p. 31). Naturally, this “crude individualism and the pursuit of self-interest” implies “little concern for the consequences this might have for family or community life” (Chandler 2023, ch. 3). Taken together, (1) and (2) may be categorised as “**market fundamentalism**”.
3. **Negative consequences, especially to democracy.** Market fundamentalism (1+2) is said to result in a range of deleterious outcomes, whether stagnant wages, massive inequality, or even the “devastation of rural and suburban regions” (Blakeley 2024; Cohen 2019; Brown 2019, p. 3). It serves to “justify the ecological destruction and inequality that blight our societies today” (Chandler 2023, ch. 1). Perhaps the biggest concern is the threat to democracy, since neoliberals prefer relying “upon undemocratic and unaccountable institutions (such as the Federal Reserve or the IMF) to make key decisions”, such that “what remains of representative democracy is overwhelmed, if not totally though legally corrupted by money power (Harvey 2005, pp. 69, 78). Neoliberals are suspicious of democracy, understood in terms of “governance by majority rule” (Harvey 2005, p. 66), thereby facilitating an “assault on the commitments to civic equality, public reason, and shared responsibility that are essential to a flourishing democracy (Cohen 2019, editor’s note, see Brown 2015 for similar thoughts). Alas, human rights are subordinated to the “imperatives of wealth accumulation” (Whyte 2019, p. 2).

While it is impossible to examine in the space of a single paper the broad range of claims that have been levelled, I examine specifically the charge of market fundamentalism and its negative association with democracy levelled against F. A. Hayek, one of neoliberalism’s supposed architects. In other words, to what extent may Hayek be viewed as a market fundamentalist, practitioner of *homo economicus* economics, and an enemy of democratic governance? This exercise is justified by Hayek’s central role in twentieth-century classical liberalism and the intensity of recent attacks on his work. Hayek is routinely accused of promoting a “market fundamentalism” that undermines democracy and liberty, portrayed as an “enemy of freedom” (Soltly 2024), and his vision of liberty framed as “freedom for the wolves”—a hollow concept legitimising new forms of domination (Stiglitz 2024b). Hayek is also allegedly the intellectual father of numerous “bastards” who have extended his ideas in toxic ways, like racism, genetic determinism, eugenics, and populism (Slobodian 2025). Such portrayals warrant scrutiny, especially given their traction around the 65th anniversary of *The Constitution of Liberty*, one of the most systematic liberal treatises in recent history.

In response to these criticisms, I show that far from endorsing market fundamentalism, Hayek's core insights precisely resist it. His emphasis on spontaneous order, epistemic complexity, and social pluralism vitiate the technocratic imposition of market arrangements characteristic of neoliberal governance. For Hayek, markets are defensible not for utilitarian economic efficiency, but because they emerge through evolutionary processes reflecting dispersed knowledge and decentralised adaptation. Markets are legitimate insofar as they arise organically from social practices, not as blueprints to be imposed. This has important implications: many real-world instances of authoritarian capitalism, rightly condemned by neoliberalism's critics, are incompatible with Hayek's vision. These regimes violate the principles of epistemic humility and institutional pluralism central to his worldview. Where pluralism is curtailed and experimentation foreclosed, control, not freedom, prevails.

The fundamental error in many criticisms of neoliberalism lies in reducing Hayek's ideas to a narrow concern with economic efficiency, detached from his broader commitment to social pluralism and institutional diversity. While some Chicago-school economists use a model-driven view of rational actors and efficient outcomes, Hayek and other Austrian political economists offer a different theory: how constitutionally ignorant individuals navigate evolving rules and norms. Since no single agent possesses the knowledge to coordinate society from above, liberty is sustained through institutional arrangements fostering decentralised experimentation—across markets, governance structures, and even culture itself. Thus, the Hayekian recommendation is not a dogmatic attachment to deregulation or markets per se, but a deeper commitment to liberal polycentrism: an open, pluralistic order where no single institutional form monopolises progress. Without trying to divine what Hayek “really meant” or to present him as flawless, this paper instead engages with deeper themes animating his political project: spontaneous order, epistemic complexity, and social pluralism, showing that they offer an overlooked but constructive lens to interrogate the trends of authoritarian capitalism that vex so many today.

Much has been said about Hayek's supposed nonchalance or even promotion of authoritarian capitalism. The focus by critics is on his remarks on Pinochet's Chile and his theory of “transitional dictatorship”, which seems to suggest a tolerance for non-democratic regimes (Harvey 2005, pp. 7-8; Brown 2019; Whyte 2019, ch. 4).² Classical liberals have also responded to this charge by invoking the Hayek-Friedman Hypothesis (HFH): capitalism being a necessary precondition for political freedom (see Lawson and Clark 2010; Benzecry et al. 2024). Using economic analysis, they show that market economies tend to be democratic, and interventionist ones, less so (see Bjornskov 2017). On this view, government expansion threatens liberty, not capitalism itself.

This paper takes a different approach that more readily acknowledges the concerns of neoliberalism's critics on authoritarian capitalism, but shows that eventually, these concerns may be assuaged within a Hayekian framework. Specifically, I focus on the history of developing nations, often neglected by traditional economic analyses. Fundamentally, Hayek and Friedman addressed Western liberal democracies, where political liberty's foundations are assumed. *The Road to Serfdom*, for instance, warned that preserving democracy required maintaining economic liberty. This is a conditional argument, dependent on prior liberal norms and institutions. Yet many of today's authoritarian capitalist regimes emerged in societies with no prior commitment to liberal democratic norms. These regimes seek economic gains from liberalisation without a corresponding commitment to liberal principles. In this sense, neoliberalism's critics are correct to observe a growing divergence between capitalism and democracy. As Slobodian (2022, p. 215) notes, “what we are seeing is not the union of capitalism and democracy but their increasing divergence—in Hong Kong and Singapore, London and Liechtenstein, Somalia and Dubai.”

I share this concern. Some classical liberals may have unintentionally provided cover for authoritarian capitalism by focusing too narrowly on economic freedom, neglecting the conditions for its meaningful and sustainable existence. When classical liberals highlight the abstract benefits of privatisation, deregulation, and low taxes, without addressing the institutional underpinnings of society, they risk reinforcing the suspicion that they are indifferent to authoritarianism. In such cases, neoliberalism's critics may be forgiven for concluding:

Libertarians' expressions of admiration for authoritarian Asian governments are more common all the time. In a conversation with a young Bitcoin guru who had just moved from Australia to Dubai to escape COVID lockdown, the president of the Mises Institute applauded the efficiency of places like the Emirates and Singapore. He took the lesson of the pandemic to be that freedoms were provisional everywhere and could be removed at a moment's notice. "In Singapore, things work. In Dubai, things work." he said (Slobodian 2022, p. 216).

Yet, neoliberalism's critics themselves throw the baby out with the bathwater. Hayek's anti-economistic social science methodology encourages researchers to conduct interdisciplinary explorations of liberal societies' foundations (or authoritarianism's origins in illiberal societies). This is especially needed because authoritarian capitalism is concentrated in the non-Western world (see Carney 2018; Som 2022) and requires liberals to appreciate unique cultures, social contexts, and histories in these places (see Cheang 2023). There is much potential for Hayek's liberalism, grounded in epistemic humility and social pluralism rather than economic efficiency, to address governance challenges in today's increasingly illiberal world.

This paper is structured as follows. The first section explores the criticism of market fundamentalism by neoliberalism's critics. Contrary to his critics, Hayek's position is not one "where property rights and consumer welfare are worshipped, and all aspects of state action and social solidarity denigrated" (Fukuyama 2022, p. 44), but a nuanced stance accepting a wide range of policy action within the ideal of the rule of law. Ironically, when critics see Hayek's theory as promoting a "regulation-free" market (Stiglitz 2024b), they adhere to an impoverished conception that simplistically conflates the absence of top-down regulation with the absence of rules per se. The second section focuses on development policy, where critics condemn the top-down imposition of Washington Consensus policies. I will show that Hayekian concerns with spontaneous order, epistemic complexity, and social pluralism also lead to scepticism of such external imposition, even domestically. Ironically, neoliberalism's critics resist external foreign intervention but do not similarly resist domestic intervention into private governance.

The third section focuses on the importance of social pluralism in Hayek's thought to evaluate charges of him being an anti-democrat. If democracy means only competitive elections, Hayek is not a democrat. But if one is concerned about individual liberty and the associational rights of democracy, then Hayek's political theory is a significant contribution. Authoritarian capitalism, a serious problem today, can thus be criticised on Hayekian grounds. Ironically, when critics condemn Hayek, they use an impoverished account of democracy reduced to mere competitive elections.

NOT A MARKET FUNDAMENTALIST

A popular account of Rawlsian egalitarianism motivates its case on the notion that we live under the shadow of a (neoliberal) "outlook characterized by an almost religious faith in markets and an overriding focus on economic growth" (Chandler 2023, introduction). This expression, which so aptly captures the sentiments of neoliberalism's critics, suggests that neoliberals like Hayek advocated a "regulation-free" order to single-mindedly secure the efficiency of market-led growth (Stiglitz 2024a). Such portrayals overlook Hayek's prioritisation of *rule-governed coordination* under complex social conditions over any alleged "faith" in growth.

Central to Hayek's worldview is the knowledge problem, extending beyond policymakers' informational constraints. It is a deeper recognition of the radical (Knightian) uncertainty characterising all human interaction. In such an environment, individuals are not merely limited by bounded cognition; they operate in a world of distant strangers, embedded in institutions they do not fully control, and subject to unpredictable outcomes. Unlike small, face-to-face communities that humans once populated, modern life's complexity demands navigating systems far removed from personal experience. This condition is not chosen nor easily altered; it is a structural requirement of social distance, where individuals contend

with difference, contingency, and unpredictability. We may not always welcome this reality or agree on its implications, but it remains a defining feature of modern social life.

In a world of radical uncertainty, individuals rely on a framework of rules, norms, habits, values, and customs for decision-making and coordination. What economists call “institutions” function as cognitive and behavioural guideposts, enabling navigation despite limited information. The analogy to traffic systems is apt: just as a driver in sprawling landscapes depends on signals, laws, and intuitive habits, individuals in society rely on shared norms to guide action. These norms are not arbitrary, but represent evolved responses to recurrent coordination problems, offering functional stability where foresight is limited. On this view, the human mind operates not as a planning device but as a rule-following mechanism, processing inherited norms to function within complexity. As Hayek observed, the mind is “a system that constantly changes as a result of [man’s] endeavour to adapt himself to his surroundings,” and thus “cannot foresee its own advance” (Hayek 1960, pp. 23-24; see also Hayek 1952/2012; Vanberg 2017). The varied laws, rules and norms which extend from human action not only enable impersonal coordination but indeed constitute the very foundations of our present civilisation where we can fruitfully cooperate with those whom we know little about (Hayek 1960, p. 27; 1967, pp. 56-57, 1976, p. 11; 1983, pp. 44-57).

The rules that make society a “cooperative venture for mutual advantage” are cumulative products of dispersed knowledge and practical adaptation, refined across generations. They are shaped through the feedback loop between individual agency and shared structures (see Lewis 2014). In other words, individuals are shaped by their cultural, familial, and national environments, but also reshape them through innovation, dissent, and reform. This mutual interplay of constraint and creativity is what Hayek, along with Scottish Enlightenment figures, termed “spontaneous order”, i.e. self-organising processes where social phenomena dynamically evolve through undirected yet purposive individual actions (Hamowy 2005 for an overview). Spontaneous order, a constitutive principle of social life, helps explain institution formation, norm persistence or decay, and how preferences are generated and revised through lived experience. Ironically, the “endogenous preferences” approach in modern economics, heralded by Stiglitz (2024a) as novel, was already anticipated by this spontaneous order dynamic articulated earlier. In the end, the “overriding focus” for Hayek was not economic growth, but social cooperation in a world of complexity, which renders impossible the notion of a “regulation-free” order.

SOCIETY AS IT IS, NOT THE IMAGINED ATOMISM

Critics of neoliberalism, who condemn modern economics as “built around an assumption that human beings are ‘rational utility maximisers’” and are “typically greedy, individually selfish and smart” (Fukuyama 2022, p. 40), or that “all individuals are perfectly rational and perfectly consistent in the choices they make” (Stiglitz 2024a, p. 147), cannot plausibly attribute such views to Hayek. These statements are contradicted by Hayek’s direct attack on this “false rationalistic psychology” and the “bogey of economic man,” a caricature used to conflate all market-oriented thinkers since Adam Smith (Hayek 1948/1958, ch. 1).

For Hayek, human behaviour falling short of Max-U is not a problem for markets but precisely their justification. Competition is valuable because fallible individuals must *discover* what they even want (Hayek 1978). The idea that profit-seeking is the summum bonum of human life is antithetical to Hayek’s vision. To navigate uncertainty, people rely on non-conscious rules, cultural norms, religious traditions, and inherited practices that *precede* economic calculation (Hayek 1960, pp. 25-29, 35; 1952/1979, pp. 149-150; 1979, p. 168). The benefits of exchange depend on these non-economic institutions, which generate stable expectations and social coordination. He did not, contrary to Stiglitz, “have an unfailingly dismal view of human nature,” nor did he arrive at “extreme views about individual selfishness” through “deep introspection,” which were then “generalised to everyone” (2024a, p. 19). Hayek’s liberalism has strong sociological grounding. If critics worry about economic imperialism, they would find in him an unlikely ally.

In an ironic twist, Hayek's focus on epistemology enriches our understanding of how social cooperation can be better achieved. Limiting analysis to mere incentives or motives is simplistic:

The real question, therefore, is not whether man is, or ought to be, guided by selfish motives but whether we can allow him to be guided in his actions by those immediate consequences which he can know and care for or whether he ought to be made to do what seems appropriate to somebody else who is supposed to possess a fuller comprehension of the significance of these actions to society as a whole (Hayek 1948/1958, p. 14).

In other words, given pervasive human uncertainty, the more interesting question is how even the most altruistic individual coordinates social endeavours with others who may have divergent interpretations of the common good. The case for market institutions is not that it rests on utility-maximisation, but that it facilitates the discovery, transmission, and communication of social knowledge about what is in the human community's interest and how best to serve it.

It is therefore seriously mistaken to depict Hayek as a champion of unbridled individualism. For instance, Daniel Chandler charges neoliberalism as a "harsh" ideology "grounded in an individualistic conception of human nature that fails to recognise the importance of family, community and religion in our lives" (2023, intro and ch. 6). Yet Hayek's entire theory of social order presupposes that individuals are embedded in overlapping networks of norms and practices. Individuals are not atoms floating in a void, but participants in traditions and institutions they both inhabit and reshape. A spontaneous order cannot emerge from disconnected agents; it depends on mutual interaction. Hayek's liberalism is better understood as an "embedded individualism", in the Scottish Enlightenment tradition, not the deracinated caricature offered by his critics.³

Nor does Hayek assume that spontaneous orders necessarily produce optimal outcomes. Stiglitz claims Hayek's theory rests "simply on the hope that evolutionary processes would yield desirable outcomes" (2024a, p. 35). But Hayek explicitly acknowledges that evolution may lead to dead ends, and since liberty entails creative destruction, some may become worse off. His point is that in a complex, changing world, liberty allows diverse individuals to adapt and fulfil their plans without requiring central coordination or agreement on ends. Moreover, the absence of a teleological endpoint does not negate the observable comparative success of liberal orders. Where liberty prevails, feedback mechanisms correct errors, and institutions evolve. Where top-down systems dominate, this capacity is stunted. As Hayek puts it, the case for liberty "does not rest on the foreseeable results in particular circumstances but on the belief that it will, on balance, release more forces for the good than for the bad" (Hayek, 1960, p. 31).

MODEST PUBLIC POLICY

Hayek's approach to public policy is informed by the commitment to spontaneous order and adaptation under uncertainty described above. Contrary to critics who portray a "religious faith" in the benefits of free markets, Hayek arrived at his conclusions through a comparative analysis of the epistemic properties of alternative institutional arrangements (see Boettke 2018 for an explanation). That is, when we compare market capitalism against central planning, which was the central choice confronting most nations at the time of Hayek's life, we may observe the superiority of the former in coping with the local, dispersed and tacit nature of economic knowledge. Notably, the value of decentralisation extends even to contemporary cultural matters, where there is a similar uncertainty pertaining to debates on multiculturalism, dress policy, language, and religious customs (see Tebble 2016).

Hayek's focus on knowledge provides a unique *epistemic* defence of the liberal order. Central planning is not only inefficient, but politically dangerous because it licenses elitist rule on the part of planners who assume knowledge unavailable to them. While markets facilitate trial-and-error learning, central planning assumes no learning is required, with central actors claiming to know everything needed to "steer" the

economy. More seriously, it exercises domination over individuals, who are expected to fulfil, under penalty, “The Collective Purpose.” In contrast, healthy democracies typically feature a degree of fragmentation and contestation, which play the epistemic function of discovering better solutions in political contexts (Muller 2016; Cowen et al. 2025).

Neoliberalism’s critics, to be fair, do not advocate comprehensive central planning. Instead, they argue for greater regulation, intervention, and social redistribution within a broadly capitalist economy. Mixed economies of this sort are not technically incompatible with Hayek’s economics, provided policies are consistent with the rule of law ideal. The rule of law ideal, extensively developed in *The Constitution of Liberty*, consists of principles ensuring policies are general, predictable, and apply equally to everyone. It does not refer to mere legality or political authority commands, but a “meta-level doctrine” circumscribing the limits of coercion (Hayek 1960, p. 206). The generality and equal applicability of rules ensure individuals have broad agency without specific direction. Its predictability enables individuals to plan and interact, promoting social coordination and pluralism. Overall, adherence to the rule of law facilitates an environment where individuals are free to pursue goals, discover possibilities, and adapt to life’s changes without fear of arbitrary interference. The state, in this view, is what Oakeshott termed a “civil association,” as opposed to an “enterprise association” where a collective purpose is enshrined.

Accordingly, accounts depicting Hayek as advocating a “regulation-free” market are misguided, as if humans exist without regularities. Markets cannot be “regulation-free” any more than corporations, communities, neighbourhoods, or any other human association can function without rules of conduct. Hayekian liberals do not dismiss the need for some measure of deliberate legislation but argue that even where necessary, having multiple regulatory jurisdictions can enhance regulation’s benefits more than a single centre can achieve (a case in point is the United States’ federal system).⁴

The question for Hayek and liberals is therefore not whether “regulation” per se is desirable, but how it should be structured without compromising the rule of law. The case against an excess of top-down *legislation* is not that classical liberals have a religious fanaticism against regulation, but that it could potentially compromise the transparency, predictability, and equality of proper *law*.⁵ Ironically, by viewing deliberate legislation as the only plausible governance tool, neoliberalism’s critics precisely undermine the very function of law: allowing people to form stable expectations of others and fruitfully cooperate.

Consider the growth of the modern administrative state, with its thousands of statutes and compliance requirements in jurisdictions like the United States and the European Union. The American administrative state has been charged with empowering bureaucrats with broad discretion to issue legislation, without traditional legal constraints, leading to inconsistent rule interpretation and application (Epstein 2020).⁶ Individuals and businesses become subject to mandates they do not fully understand or are even aware of, with compliance becoming overwhelming due to volume and complexity. Instead of providing a clear and predictable legal framework, administrative regulations become tools of arbitrary enforcement, creating uncertainty and inhibiting private actors’ ability to plan and innovate. Classical liberals are not irrationally hostile to “regulation” but wish to defend the rule of law from arbitrary legislation.

Critics of neoliberalism often contend that Hayek’s ideas promote dangerous deregulation that empowers the strong at the expense of the vulnerable. In this account, neoliberalism strips away protective institutions, giving “freedom to the wolves, and death to the sheep” (Stiglitz 2024a, p. xvii). The exaltation of economic freedom, they argue, undermines political liberty and facilitates the rise of authoritarian populists. While Stiglitz is right to warn against the radical right, he misattributes the causes of its ascendancy. The authoritarian tendencies he rightly fears are entirely consistent with Hayek’s own concerns about discretionary power and the erosion of general rules. The Trump administration’s selective use of tariffs and corporate favouritism illustrates this danger. Such policies reward some groups while punishing others, compromising the neutrality that underpins a liberal democratic order (Triantidis and Cowen 2020). This same logic applies to state-led developmentalism in East Asia. Mission-oriented industrial policy in countries like Japan, South Korea, and Singapore relied heavily on bureaucratic discretion to direct capital, control information, and shape incentives. These regimes achieved economic growth, but

through authoritarian methods rarely acknowledged by critics of neoliberalism. If the concern is truly to protect the “sheep,” then bureaucratic mission direction, not “neoliberalism”, poses the more immediate threat (Cheang 2024b).

Accusations of “market fundamentalism” also overlook the institutional sophistication of Hayek’s theory. His emphasis on a general legal framework does not entail a rigid commitment to laissez-faire. Rather, it reflects a broader concern with the conditions for spontaneous order to emerge. Hayek recognises that markets do not operate in a vacuum; they require legal and regulatory frameworks that structure interaction, support innovation, and facilitate discovery. As he sets out in Part III of *The Constitution of Liberty*, a Hayekian framework allows for public goods, merit goods, and social insurance, provided such policies respect generality and the rule of law requirements. Social welfare is a case in point. Hayek did not oppose safety nets; he explicitly endorsed them for those outside market provision. Even expansive welfare policies may be compatible with Hayek’s principles, if implemented through stable, general, and transparent rules (Bergh 2019). The universal basic income (UBI) aligns well with these criteria. Unlike targeted or discretionary welfare schemes, UBI distributes benefits through a rule-based system that avoids political favouritism and aligns with Hayek’s normative framework. Moreover, UBI may serve as a tool of discovery, enabling individuals to experiment with new lifestyles, pursue entrepreneurial ventures, and achieve economic independence (Fleischer and Lehto 2023).

THE ELITISM OF WASHINGTON CONSENSUS DEVELOPMENTALISM

As the previous section showed, Hayekian public policy accommodates a wide range of state action as long as it fulfils the rule of law requirements of generality, equality, and transparency. The problem with the modern administrative state is its increasing discretionary powers, which favour some groups over others. Unsurprisingly, such bureaucratic discretion contributes to rent-seeking and political capitalism, a serious problem in Western capitalism since the Great Financial Crisis.

Many problems critics attribute to neoliberalism are often, though not always, a reflection of political capitalism, where elite insiders enjoy protected interests and are insulated from creative destruction. American capitalism, especially from the Nixon era to the 2008 financial crisis, saw the rise of such rent-seeking cronyism. This period witnessed the rejection of sound money and fiscal discipline in favour of speculative finance, excessive government intervention, and corporate bailouts, all enriching a narrow elite at the expense of broad prosperity (Stockman 2013). Importantly, this corruption of capitalism was due to the actions of governments and central banks, which distorted market exchange and created “socialism for the rich,” especially in finance-related sectors (Sharma 2024). On a different continent, political capitalism has also plagued China’s post-communist reform. This entanglement of political and economic power involves massive exploitation of state resources and rent-seeking, exemplified by cases like Zhou Yongkang’s graft empire, which continued despite Xi Jinping’s “anti-corruption” facade (see Pei 2016).

That said, neoliberalism’s critics make a legitimate point when they criticise the Washington Consensus market reforms pushed onto poor countries by global development organisations. Especially from the 1980s, organisations like the International Monetary Fund and the World Bank recommended reforms including privatisation, liberalisation, deregulation, balanced budgets, and austerity, often bundled into “structural adjustment plans” conditioning aid on policy implementation. As critics point out, such reforms were imposed on developing nations during vulnerable crises, when they could not reject external pressure. This “disaster capitalism” undermines democracy because local populations are too weak to resist global neoliberal hegemony (Klein 2007).

Assessments of neoliberal market reforms must be proportionate. Over a broader time horizon, Washington Consensus policies yielded considerable economic gains, particularly in the developing world (Grier and Grier 2020). These reforms were crucial in steering many economies away from autarky and central planning, restoring basic market pricing and trade mechanisms. For much of Southeast Asia, this shift was a pragmatic response to devastation from ideological communist governance experiments. In

countries like Cambodia, Vietnam, Laos, and Myanmar, collectivisation, land nationalisation, and economic isolation led to a human catastrophe. In Cambodia, where the Khmer Rouge pursued forced urban evacuation and systematic mass killing, the results were so extreme that “even Hitler might be shamed by the poor performance of his killers” (Rummel 1994, ch. 9; see also Chandler D. P. 1991; Vu 2014). In the aftermath, economically liberal reforms were introduced. To the extent they restored basic economic sanity, they must be credited.

Yet, this account must be qualified. While these reforms often produced growth, they were typically implemented under authoritarian conditions, with little democratic input and few corresponding efforts to build inclusive institutions. The Russian transition is a well-known example, but similar patterns unfolded across Asia. In Indonesia, the Suharto regime oversaw rapid economic growth underpinned by market liberalisation. But reforms were nested within crony capitalism, built on elite patronage and concentrated power. Following Suharto’s fall, liberalisation continued in form but not substance. Regulatory capture, rent-seeking, and economic nationalism persist, preventing a genuinely inclusive political economy. The story in Cambodia is worse. Since the 1990s, market reforms, largely driven by international donors, have coincided with the entrenchment of a deeply illiberal regime. Economic growth has been real, and market mechanisms more widely used, but political and economic power remain tightly concentrated in the hands of the Cambodian People’s Party (CPP). Extractive institutions, weak rule of law, and systemic corruption have enabled elites to convert market reforms into tools of political consolidation. Foreign investment, especially from China, has been used not to liberalise governance, but to reinforce authoritarian control. In many developing nations, therefore, liberal market reforms are captured by entrenched interests, undermining the humane spirit of liberalism and perpetuating institutional stagnation.

How should such developments be evaluated? One approach focuses narrowly on economic freedom and aggregate welfare. But this risks legitimising regimes that, while adopting market reforms, retain coercive political structures. Singapore illustrates this dilemma. Often praised as a beacon of “economic freedom”, Singapore combines, in reality, pro-business economics with technocratic governance and strategic control over key sectors (Cheang and Lim 2023). Its political economy is marked by high state direction, with the ruling party maintaining dominance through calibrated interventions in civil society, media, and land ownership. While market exchange is encouraged, political liberalisation is tightly constrained. Singapore is not an outlier. It exemplifies a broader phenomenon of authoritarian capitalism where nations selectively adopt market instruments while rejecting liberal norms. This disjuncture between economic and political freedom, identified by many critics of neoliberalism, is real. But it should not be seen as a failure of Hayekian political economy. Rather, it highlights the danger of severing market reform from the moral commitment to individual rights that makes capitalism humane.

To be fair, many so-called “neoliberals” are aware of authoritarian dimensions in contemporary capitalist regimes. The issue lies less in their recognition of these tendencies and more in their analytical frame. Too often, economic freedom is treated as a standalone metric, abstracted from the political contexts where markets function. This leads to the problematic implication that an economy may be meaningfully “free” even within an authoritarian political order. The recent exchange between Cheang (2024a) and Murphy (2023) highlights problems when liberal narratives focus narrowly on economic indicators without attending to the broader institutional ecology. To the extent that “libertarians’ expressions of admiration for authoritarian Asian governments are more common all the time” (Slobodian 2022, p. 216), classical liberals need to reflect.

While neoliberalism’s critics are right to criticise the technocratic imposition of Washington Consensus policies, they ironically elide the similar concerns expressed by Hayekian liberals. Though correcting price distortions may be defensible in isolation, the imposition of such reforms reflects a technocratic mindset: policy experts, development economists, and international advisors attempting to engineer social change from above. The implicit assumption is that economic development can be planned by experts and delivered to populations by administrative fiat. This technocratic impulse shaped not only the Washington Consensus but development practice more broadly. Foreign aid programmes, for example,

are routinely designed by political elites in global institutions or donor governments, with scant regard for local knowledge, context, or values. These programmes are paternalistic, treating communities as passive recipients rather than agents capable of charting their own course. As Hayekian liberals have warned, such elite-driven development undermines the dignity of those it claims to empower (Easterly 2014; Cheang and Palmer 2023). Ironically, neoliberalism's critics unwittingly channel Hayekian warnings of constructive rationalism in their denunciations of Washington Consensus.

The irony is further compounded when examining the disjuncture between neoliberalism's critics' rejection of the elitist imposition of the Washington Consensus and their preference for activist states in domestic policy. Take Mariana Mazzucato, a chief critic of neoliberalism today. She has written that "something must replace the Washington Consensus if we are to flourish, rather than simply survive, on this planet" (2021b). Yet, she advocates replacing one consensus with another—a "Cornwall Consensus" driven by a mission-directed state—that she favours. Notably, this view envisions society operating cohesively around a common mission, with an ambitious state leading structural transformation. What seems like a radical critique ends up as old wine in a new bottle. Recently, some have also called for the replacement of the Washington Consensus with a new London Consensus (Besley et al. 2025). By contrast, rather than pushing any elite-driven *consensus*, a consistent application of Hayek's thought would lead one to embrace the *dissensus* of bottom-up social processes. All communities may choose their own modes of governance, without needing to cohere, agree or converge to some common "consensus", neoliberal or otherwise.

THE PROBLEM OF AUTHORITARIANISM AND THE PLURALIST RESPONSE

This section further responds to charges that Hayekian neoliberalism undermines democracy, stemming from concerns over his rhetoric about dictatorial regimes and his ostensible elevation of economic liberties over political liberties. Here, my intention is not to defend Hayek's statements, reinterpret history, or divine his true intentions, but rather to build a critique of authoritarianism, especially contemporary authoritarian capitalism, on Hayekian grounds.

First, it should be emphasised that Hayek never idealised authoritarian dictatorship, despite statements legitimising it as a transition. In *The Constitution of Liberty*, he praised democracy's relative efficiency compared to dictatorships, its contribution to safeguarding individual liberty, and most importantly, its dynamic effects on "formation of opinion"—where democratic processes could improve social knowledge over time (Hayek 1960, pp. 107-109; 1979). The last point is especially important since he distanced himself from the epistocratic expectation that an educated elite could produce superior outcomes than democracy, which draws on wider knowledge inputs. In this sense, Hayek's arguments might be read with contemporary proposals for "epistemic democracy," even if he might object to the scope of state activity endorsed by some adherents.

Importantly, Hayek's scepticism of democracy was against its potentially "unlimited" nature that could undermine individual liberty. For him, a free society was not merely predicated on economic exchange, but grounded on a legal-political order that separates and checks powers, protects individual rights from majority tyranny, and codifies equal treatment under law. In this sense, Hayek was hardly unique. He echoed the Western tradition of liberal constitutionalism, including Montesquieu and the American framers, who stressed separation of powers rather than unfettered popular sovereignty (Hayek 1960, chaps. 11-12). Consequently, the fear of unbounded democracy has classical foundations: thinkers like Aristotle and Cicero stressed the law as a counterbalance against the rule of the mob and its accompanying tyranny (see Keane 2009). Hayek's position draws on long-running themes *within* democratic theory itself on the dangers of unbounded popular sovereignty.

When evaluating Hayek's statements on democracy and dictatorship, it is essential to separate theoretical expectations from reality. Much has been said about his controversial "transitional theory" of dictatorships, where he hoped a period of dictatorship would lead to subsequent political liberalisation. This is technically possible, but whether such a scenario plays out concerns complex issues of institutional

change that Hayek's normative writings cannot authoritatively address. How and whether an authoritarian dictatorship transitions to political democracy is subject to a serious knowledge problem given the contingency of political contestation from country to country during critical junctures, shaping subsequent institutional development in unexpected ways long after these time windows have closed. Taking Hayekian epistemic concerns seriously would mean institutional transitions—political (dictatorship to democracy or vice versa) or economic (socialism to capitalism or vice versa)—cannot be predicted in pace, sequence, or precise nature. Hayek would have been most consistent when fielding interviews on political transitions with “I don't know.”

A key consideration in evaluating the criticism of Hayek as an “anti-democrat” lies in understanding the tension between intellectual commitments and messy political realities. The controversy surrounding Hayek's interactions with Pinochet's Chile highlights navigating such terrain. Hayek's primary concern seemed to be economic progress spurred by market reforms, a stark departure from prior socialist policies (Caldwell and Montes 2014, see also Farrant and McPhail 2014 for a nuanced evaluation). Yet his failure to repudiate Pinochet's human rights abuses naturally opened him to the charge of legitimising “free-market authoritarianism.” While this perception is understandable, it oversimplifies the predicament intellectuals often face. Here's the problem: liberal change does not always proceed consistently across political and economic domains. Authoritarian leaders, like Pinochet, may implement market reforms (sincerely or opportunistically), but democratic leaders may also champion economically interventionist or quasi-socialist policies. Ideally, genuine political actors or parties would advance a comprehensive liberal programme. Javier Milei's “neoliberal policies,” for example, are genuinely liberal and find broad support. But in many cases, such options simply don't exist. This isn't an intellectual puzzle smart liberals can solve; it's a political reality. In these contexts, liberals face bad choices: support the least harmful option available or remain silent.

For Hayek, acknowledging the merits of market reform in Chile, independent of its political status, was not inherently wrong. Indeed, those reforms fostered economic recovery and growth, defensible on their terms.⁷ The ethical dilemma, however, lies in how such acknowledgements could be framed as tacit approval of authoritarianism. Consider the Singapore case. Singapore's government has implemented policies yielding remarkable economic outcomes, even if grounded in a technocratic conceit. One can recognise these successes without endorsing the government's hubris and authoritarianism. Similarly, in nations like Cambodia, Laos, and Vietnam, market reforms pulled millions out of poverty after years of nightmarish socialist dysfunction, even though reforms were not always accompanied by inclusive political institutions.

In such situations, it is consistent to applaud economic progress while remaining dissatisfied with the broader political context. For intellectuals like Hayek, easy answers are rare. The tension between economic and political progress is a persistent reality, not a defect of classical liberalism. At the same time, state actors with specific agendas may seize intellectual arguments to legitimise their hegemony, further muddying the waters. Framing Hayek as an “anti-democrat” based on certain statements or omissions is understandable, but remains an overly reductive interpretation of a far more nuanced challenge.

AUTHORITARIANISM AND THE NON-WESTERN WORLD

Some criticisms of Hayek have been unduly harsh, reflecting politics' inherent dilemmas rather than any fundamental flaw in his reasoning. However, I want to advance a different argument: authoritarian capitalism is, to some extent, a cultural challenge, one Hayek himself could not fully address due to his Western-centric perspective.

Hayek's primary concern was defending free societies from state interventionism, which he believed could erode their foundations. This underpins his argument that liberal democracy is incompatible with economic governance characterised by increasing state interference in private exchange. Notice the conditional nature of his argument: *if* a society wishes to preserve its valued political liberties, *then* it must

ensure robust market freedoms and property rights. He feared those controlling production means would inevitably gain power to undermine democracy itself. This thesis remains largely correct, as socialist dictatorships have shown.

The problem I highlight is that many non-Western societies do not necessarily share the assumption that living in a politically free society—with civil liberties, free speech, competitive elections, etc.—is highly valued. Hayek’s writings were primarily for a Western audience, like *The Road to Serfdom* readers, who already cherished political freedom but were tempted by economic planning. For Hayek, socialism represented “a break not only with the recent past but with the whole evolution of Western civilization” (Hayek 1944, p. 13). Similarly, the danger of unlimited democracy morphing into a vehicle for expanding state control was, in his view, “what has been threatening during the last two or three generations throughout the Western world” (Hayek 1960, p. 206).

Hayek’s work was deeply rooted in liberalism’s cultural heritage, reflecting a concern for Western civilisation’s preservation. His writings consistently emphasised this civilisational context (see Dekker 2019). He acknowledged that “the essential features of that individualism, from elements provided by Christianity and the philosophy of classical antiquity, was first fully developed during the Renaissance and has since grown and spread into what we know as Western European civilization—the respect for the individual man qua man” (Hayek 1944, p. 14). For Hayek, this individualist ethos “created Western civilization” (Hayek 1944, p. 20). In *The Constitution of Liberty*, he noted it had been “a long time since that ideal of freedom which inspired modern Western civilization and whose partial realization made possible the achievements of that civilization was effectively restated” (Hayek 1960, p. 1). He thus framed Part 2 of that work as “an examination of the institutions that Western man has developed to secure individual liberty” (Hayek 1960, p. 5).

But here’s the challenge: many non-Western societies have not been steeped in this “individualist tradition” and do not prize political liberty the same way. In such contexts, offering a roadmap for “the preservation of political liberty” may be irrelevant, assuming a need or desire that isn’t there. This might explain the tendency of many non-Western nations to embrace economic liberalisation while remaining committed to closed political systems. These societies seek material prosperity from markets but remain indifferent, even resistant, to the liberal values historically associated with those markets. For them, Hayek’s thesis that free markets are essential to preserving political liberty has little resonance, as political liberty’s preservation is not their chief aim. As a result, economic liberalisation is often treated as a mere expedient for wealth generation, detached from the broader ideals of political freedom and individual liberty Hayek rightly associated with Western civilisation.

Indeed, outside the Western world, we increasingly witness authoritarian regimes seeking capitalism’s benefits but resisting its liberal spirit. Singapore and China come to mind, and more so than Pinochet’s Chile, seem to harness market freedoms within a closed political order. In such contexts, the idea that “market freedoms are necessary for political liberty” is correct but irrelevant, because people in these societies simply do not start with the same cultural assumption of political liberty’s value. Numerous cultural surveys and analyses—including those by the present author—show that residents in much of the non-Western world value authoritarian regimes, meritocratic governance involving elitist paternalism, or mixed regimes that somewhat insulate decision-making from popular will (Huntington 1996; Shin and Kim 2016; Cheang 2026). This is not to say such residents love dictatorships; certainly, we have seen popular resistance and democratisation movements, but political liberty is often one of many other valued ends, rather than something especially prized as in Western political consciousness. Additionally, even the “democracies” such nations establish are intermixed with illiberal, non-liberal, or traditional social practices. Therefore, my contention is not that Hayek “undermined democracy,” but that his emphasis on economic freedom falls on the ears of those who believe they either already have enough of it, or that they can combine it with illiberal politics.

As such, if the aim is to advance the liberal agenda, the emphasis cannot be economic freedoms per se, but *the moral, legal, and cultural value of the individualist ethic*. This is not to say economic freedom

is no longer valuable, but that it is only part of the wider liberal programme summed up by the idea that “each individual has values of his own which he is entitled to follow” (Hayek 1960, p. 79), even if those values involve non-economic aims or even economic regress. Interestingly, Hayek’s methodology is more amenable to such a moral defence of the liberal order than the positivism of neoclassical liberals (like Friedman), which is obsessively concerned with measurable economic benefits. Adam Smith’s liberal plan was not GDP, profits, and utility maximisation, but rather “equality, liberty, and justice,” that “allows every man to pursue his own interest his own way” (1776/1977, p. 881). It is this humane face of liberalism, rather than economic analyses, that should be front and centre of any reform agenda (see McCloskey 2019 for an exemplar).

Let’s take the specific case of Singapore, which Quinn Slobodian (2022) dedicates an entire chapter to. He explains that neoliberals have foolishly praised libertarianism in the nation when it was a state-led project. Singapore is also a “hero in the pantheon of crack-up capitalism,” which in reality has a darker face: inequality, stratification, democratic stagnation (see ch. 3). He is not wrong. Yet, he fails to recognise that these very problems he raises flow not from “neoliberalism,” but from an obsession with technocratic social engineering of the sort Hayek warned against (see Cheang 2022; Cheang and Choy 2021; Cheang 2026). No matter how much economic growth a nation has achieved, or how high its rankings on “economic freedom” indices, it is subject to liberal critique if it suppresses the individual.

CHALLENGING AUTHORITARIANISM THROUGH SPONTANEOUS ORDER

We can now reflect on how best to challenge authoritarianism. Democracy is not merely, as Schumpeter described it, the existence of competitive elections; it also encompasses various features that together constitute what Dahl (1998) terms a “polyarchy.” Among these is “associational autonomy,” the principle that “citizens have the right to form relatively independent associations or organisations in order to exercise their rights” (Dahl 1998, pp. 85-86). Associational autonomy is critical for securing civil liberties, freedom of expression, electoral freedoms, and other democratic safeguards, particularly in societies characterised by heterogeneous and diverse values. By emphasising pluralism, we can improve democracy’s operations through mechanisms like power sharing (as in consociational democracy), devolution, and political compromise among diverse political groups. Institutionally, pluralism invites us to embrace a polycentric form of governance where political authority is divided rather than concentrated (Thunder and Paniagua 2024; Cheang 2025). In this sense, what critic of neoliberalism Quinn Slobodian (2022) unceremoniously described as “crack-up capitalism” is simply to take seriously institutional and social diversity.

In this context, Hayek’s theory of spontaneous order is invaluable because it emphasises the undesignated dynamics of social interaction, where individuals and groups freely come together to pursue mutual interests, without anyone dictating their goals or outcomes. These bottom-up processes energise civil society, vital to any thriving democracy. Here, Alexis de Tocqueville’s insights naturally complement Hayek’s. Tocqueville recognised that democracy’s real value lies not in its formal institutions but in its vibrant associational life. Such voluntary associations are democratic training grounds, where citizens develop habits of cooperation, mutual trust, and shared responsibility. Hayek and Tocqueville remind us that a healthy democracy’s heart is not in state direction or even in collective deliberations but in self-organising networks of civic engagement, spaces where associational freedoms cultivate democratic virtues.

A difficult challenge for the liberal pluralist is the presence of groups whose values threaten social order or are fundamentally intolerant. As explained, this is especially common in the non-Western world, and possibly amongst certain peoples moving into the West. If pluralism means respecting diverse views, does that mean liberals should “do nothing” in the face of illiberal values—values rejecting liberty, individualism, and mutual toleration? ⁸ This is a challenge not just for defenders of the open society like Popper and Hayek, but a practical dilemma for liberal reformers today, particularly in non-Western nations where illiberal values are often entrenched.

From the perspective of indigenous reformers confronting authoritarianism, there is a way forward: through the creative forces of spontaneous order. While Hayek rightly emphasised evolutionary wisdom in traditions, one may also lean into how all traditions can and should be subject to ethical creative destruction. Spontaneous order doesn't just preserve traditions; it destabilises and reshapes them, subjecting even entrenched norms to contestation and reinvention. For people in illiberal societies, this is a vital tool for gradually fostering broader acceptance of values like individual freedom, pluralism, and the rule of law—values Hayek rightly associated with the Western tradition but which must be adapted and grown from within. Cultural entrepreneurs need to rise to the occasion, as they have in places like Iran, Russia, Hong Kong, and many more. Hayek's respect for traditions is not absolute, but contingent “on the direction of existing tendencies” (Hayek 1960, p. 399). For much of the world, which still exists in the pre-Enlightenment stage of development, many of the existing traditions are manifestly hostile to liberty and should be challenged. This is why, “what is most urgently needed in most parts of the world is a thorough sweeping away of the obstacles to free growth” (Hayek 1960, p. 399).

At the global level, however, liberal pluralism requires caution in public policy. Authoritarian regimes and illiberal cultures cannot be easily “fixed” from the outside. History shows such efforts are fraught with difficulties, whether due to elite capture, historical path dependence, or the absence of genuine liberal movements. A pragmatic response is to envision a sea of toleration including even authoritarian states, a “liberal archipelago” (Kukathas 2003). This doesn't endorse authoritarianism or illiberal values but recognises the limits of external intervention. Liberal orders need to be created from *within* a society's cultural resources, and liberal change instigated by homegrown movements (Cheang and Palmer 2023). At the same time, the most potent instrument Western nations (who have successfully transitioned to open access orders) can “wield” in a world of authoritarian states is an open door. Free movement is not only a cornerstone of the liberal order; it also circumvents difficulties associated with conventional institutional change. It allows people to escape authoritarian societies and carve out their own small worlds aligning with their values—what Slobodian denigrates as a “crack-up” world.⁹ In a world of free movement, authoritarian leaders lose hegemony over their subjects, the very targets of their coercion.

CONCLUSION

Critics of neoliberalism often caricature Hayek as the prophet of “market fundamentalism,” championing the worship of deregulation and economic efficiency. Yet, as this paper has demonstrated, a proper understanding of Hayek's work reveals a sociologically grounded account of the inescapably rule-governed nature of human affairs. Far from advocating a “regulation-free” world as Joseph Stiglitz suggested, Hayek recognised that rules are essential for social order—he simply rejected the hubristic belief that these rules must always be the product of deliberate legislation. Ironically, in their rush to castigate neoliberalism, these critics commit a fundamentalism of their own, a “government fundamentalism”. They cling to the dogma that deliberate legislation is the *only* source of social order, oblivious to the very Hayekian insight they unwittingly deploy: that attempts to impose sweeping reforms from the top down often fail due to ignorance of local knowledge and the complex nature of social systems.

Their critique of the Washington Consensus is a case in point. While they attack it as an elite-driven project, they ignore that many of their own alternatives rely on similarly paternalistic, technocratic impositions. To their credit, the Washington Consensus did help some nations escape economic extremes, but its failure lay in violating Hayekian principles: it ignored bottom-up dynamics of spontaneous order and treated developing nations as blank slates for foreign expertise. It was not Washington Consensus' emphasis on markets that “failed”, but its failure to consider Hayekian warnings of technocratic design, whether driven by governments or global elites.

The legitimate concern with authoritarian capitalism, highlighted by neoliberalism's critics, deserves scrutiny. As this paper has shown, tackling this issue requires moving beyond a Western-centric lens. The persistence of illiberal traditions in the non-Western world demands indigenous cultural entrepreneurs

who can challenge entrenched values and foster broad-based support for liberal governance. But this process must emerge organically, through spontaneous processes, rather than directives from outside actors presuming to know better. Fortunately, they may draw inspiration from Hayek's *Constitution of Liberty* and indeed the wider tradition of liberal constitutionalism that preceded and succeeded him. At a meta-level, however, toleration of political diversity, including authoritarian regimes, is warranted. This is not a justification of the status quo, but a recognition of conventional institutional change's difficulty, and a principled stance for open havens for those fleeing oppression.

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NOTES

- 1 These categories are not mutually exclusive, as some critics straddle across all three, and some less. It is possible for instance to be an advocate of market-oriented policies without subscribing to the tenets of neoclassical economics.
- 2 Many critics of “neoliberalism” have themselves praised authoritarian regimes. Joseph Stiglitz and his favourable remarks on Venezuelan dictator Hugo Chavez is a case in point (Epstein 2018). Another similar instance is Jostein Hague and his favourable remarks of China (see Adam Smith’s Panmure House 2025). Should they also be condemned?
- 3 To better understand what I call the “embedded individualism” of Hayek’s thought, refer to the following: Steven Horwitz (2001, pp. 81-97); Chandran Kukathas (1989, pp. 84-129). The chapter “Individualism: True and False” is also central (Hayek 1948/1958). That said, other brands of classical liberalism may not be as nuanced.
- 4 The *polycentric* nature of such a federal system mirrors the market in that it provides competition in governance.
- 5 This important distinction is explored by Hayek in *Law, Legislation and Liberty*. Hayek as a philosopher of law is discussed in Skoble (2006, pp. 171-81).
- 6 Regulatory burdens may even be heavier in the EU, where businesses are more likely to report regulatory obstacles as burdens to them. See Statista (2023) and Myers (2024).
- 7 Evidence suggests that in Latin America, where market reforms were actually and genuinely implemented, there were positive outcomes (see Goldfajn et al. 2021).
- 8 There is no reason why a liberal order cannot formulate sensible rules on migrants. Free migration is also compatible with targeted procedural rules that ensure newcomers respect basic norms and rules.
- 9 While we cannot predetermine people’s choices, there is hope that if given the chance, they often choose to live in civilisation. As Hayek (1988, ch. 8) described, “the readiness with which ordinary people of the Third World—as opposed to Western-educated intellectuals—appear to embrace the opportunities offered them by the extended order, even if it means inhabiting for a time shanty towns at the periphery, complements evidence regarding the reactions of European peasants to the introduction of urban capitalism, indicating that people will usually choose civilisation if they have the choice”.

Rising to the Challenge: Hayekian Insights in an Age of Nativist Populism and Climate Change

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Abstract: This paper argues that Hayek’s insights from *The Constitution of Liberty* may help to provide perspective and to inform bottom-up policy solutions to two of the greatest challenges facing high-income, liberal-meritocratic-capitalist (LMC) regimes in the post-globalization era: 1) the apparent decline of the manufacturing sector due to technology-induced creative destruction and the unbundling of production processes that accelerated during the Second Age of Globalization (1980-2015); and 2) the need for a rapid green energy transition due to the looming threat of global climate change. Nativist and populist responses, spurred on by “post-liberal” theorists, have tended to emphasize erratic and illiberal solutions (e.g., tariffs, subsidies, taxes, and regulations) toward both challenges although some regimes have either ignored or redoubled exploitation of the environment to tackle the manufacturing issue. At stake is not only the relevance of the liberal political and economic model for addressing the most important problems of the 21st century, but also the competitiveness of LMC regimes with authoritarian political capitalist regimes, such as China, which offer solutions to both challenges.

INTRODUCTION

Is Hayek’s *The Constitution of Liberty*, published in 1960, still useful for the most daunting challenges of the 21st century? Can the spontaneous forces of a free society that Hayek championed in the face of creeping mid-century socialism be repurposed for the battle against both creeping populist nativism and a palmy authoritarian political capitalism today?

Two major challenges face nearly all high-income, liberal-meritocratic-capitalist (LMC) regimes, such as the United States, in the first quarter of the twenty-first century.¹ First, the effort of politicians to protect and revive employment in their industrial manufacturing sector, which declined during the Second Age of Globalization (1980-2015) and has experienced only anemic growth in the current Post-Globalization Era (2017-Present) relative to its peak in 1979, run counter to the core values of a competitive free market system. The decline of manufacturing employment and rising income inequality has spurred nativist resentment toward the free flow of goods and bodies across borders. The growth of nativist populism in turn challenges the liberal ideology on which these societies are founded. Second, the efforts of governments to tackle the looming threat of climate change through the use of subsidies, taxation, regulations, and even supposedly “market-based” solutions, although not wholly unjustified, may reveal a growing lack of faith in a competitive market. These somewhat interconnected challenges are exacerbated by the competition with authoritarian political capitalist (APC) regimes, such as China, which appear poised to continue building on their growing manufacturing base and to dominate the “green” manufacturing sector of the economy—thus addressing both major challenges of the 21st century simultaneously. The dif-

ficulty that liberal regimes have had in resolving these major challenges have helped to fuel doubts about the very relevance of liberalism as a political and economic ideology.

This paper will argue that liberalism has not failed. Anxieties about the decline of the industrial sector in liberal regimes misunderstand both the nature of the economic transformation that began in the waning decades of the 20th century and the ways in which deviations from liberalism have prolonged much needed economic adjustment. Using arguments from Friedrich Hayek's *The Constitution of Liberty*, the paper will attempt to show that 1) efforts to place industrial sector workers outside of the market through protectionist policies are deeply misguided; and 2) the reliance on subsidies and industrial policy to accelerate adaptation to climate change is inefficient and misguided in world characterized by uncertainty—but that the environmental challenge can be tackled without sacrificing one's faith in a market economy.

I. PROTECTING A WAY OF LIFE?

[Tyranny and cruelty may make men justly wish the downfall of abused powers, but I believe that no government ever yet perished from any other direct cause than its own weakness.] My opinion is against an overdoing of any sort of administration, and more especially against this most momentous of all the meddling on the part of authority; the meddling with the subsistence of the people. — Edmund Burke²

Hayek begins the twenty-third chapter of *Constitution of Liberty* with a passage from Burke's *Thoughts and Details upon Scarcity* (from *The Works of Edmund Burke*, vol. 7, 1795). Although Hayek's seemingly obscure chapter is narrowly focused on "Agriculture and Natural Resources," the complete passage from Burke draws our attention to the sources of political crisis, much like the one that is currently haunting liberal meritocratic capitalist regimes. Burke argues that governments perish not so much from tyranny as from internal weakness, particularly through administrative overreach and meddling in the sectors that provide subsistence to the masses.

Today, the agricultural sector employs so few workers as a portion of the total labor force in high-income countries, like the United States, as to be essentially politically irrelevant. Of course, conservative "post-liberals" blame liberalism itself for the decline of the rural way of life. For example, Patrick J. Deneen argues:

"Modern industrialized agriculture works on the liberal model that apparent natural limits are to be overcome through short-term solutions whose consequences will be left for future generations."³

But Deneen's opposition to the social impact of increasingly industrialized agriculture is simply nostalgic. Moreover, its grounding in an Aristotelian notion of natural constraints to economic growth is anachronistic and naïve given the phenomenal rise in human development since the industrial revolution.⁴ This posture permits him to inveigh against liberalism, while gesturing toward a respect for the environment, without offering any serious solution that would sustain current levels of agricultural productivity (and hence population and prosperity). His valorization of the Amish as a culturally grounded alternative to the technologically acquisitive, efficiency maximizing, liberal farmer is quaint but unlikely to persuade anyone outside of that community to place serious limits on productivity enhancing technology for the sake of cultural strengthening.⁵

Conservative nostalgia is not confined to the agrarian sector; manufacturing jobs have also become an object of conservative cultural preservationists, populists, and market interventionists since at least the mid-twentieth century. Unlike agricultural employment whose increases in productivity were paired with a relatively inelastic demand until the size of the work force inevitably declined, the general reduction in

manufacturing as a share of the labor force since the start of the second age of globalization in 1980 is the outcome of the unbundling of production processes through globalization⁶ and advances in mechanization and compufacturing. In part, this unbundling reflects an inversion and deepening smile curve whereby manufacturing has become the lowest source of value added in most production processes.⁷

Blaming liberal economic policies for the erosion of manufacturing jobs has become fashionable. Even Francis Fukuyama, often considered a champion of liberalism, writes:

Neoliberalism has problematic consequences in its support of free trade. The basic doctrine is correct: countries that lower trade barriers with one another will see markets and efficiency expand, leading to higher aggregate incomes for all parties concerned

Those same trade theorists would, however, have also explained *sotto voce*, that not every individual in every country will benefit from free trade. In particular, low-skilled workers in rich countries are likely to lose jobs and opportunities to similarly skilled workers in poor countries as multinational corporations offshore their facilities. The typical answer given to this problem at the time was that workers losing jobs would be compensated through job retraining and other forms of social support.... But few neoliberal free trade theorists ever expended sufficient time, effort, and resources on these programs as they did on trade facilitation.⁸

Of course, it should be mentioned that despite this pessimistic narrative, the decline in goods production employment is not as great as imagined in the aggregate and has been more than compensated by the dramatic growth of the service sector. Where the private service sector provided 54.8% of employment (49.7 million jobs) in January 1980 relative to 27.4% for all goods producing jobs (24.9 million jobs), the private service sector today provides 71.5% of employment (112.6 million jobs) compared to 13.8% for all goods production (21.7 million jobs).⁹ In other words, while goods producing jobs shrank slightly by 3.2 million jobs over forty years, private service jobs more than doubled, increasing by 62.9 million. Notably, this reallocation of labor has accompanied a growing standard of living and the integration of new technologies, particularly with regard to information and communication technology (ICT) services. If one focuses only on manufacturing jobs within the goods producing category, the loss in employment appears more significant (-6.3 million). At the same time, however, construction jobs increased significantly during the same period, while mining and logging occupations continued to slide. In other words, while manufacturing employment has declined significantly since the start of the “neoliberal revolution,” the portrait of deep malaise for blue collar workers misses the increase in construction jobs and a dramatic increase in private services.

Even if one accepts that the second age of globalization essentially ended by 2017 with the election of President Donald Trump, the results are similar. Increases in service sector employment (53.8 million) more than compensated for employment losses in the goods production sector (5 million). And while manufacturing jobs witnessed a sharp decline (6.9 million), construction employment rose (2.2 million).

Table 1: US (Non-Farm) Private Employment

	1980 (Jan.)	2017 (Jan.)	Gain/Loss	2024 (Jan.)	Total Gain/ Loss
Goods Production	24.9 million	19.9 million	-5.0 million	21.7 million	-3.2 million
Manufacturing	19.3 million	12.4 million	-6.9 million	13.0 million	-6.3 million
Construction	4.6 million	6.8 million	+2.2 million	8.2 million	+3.6 million
Mining & Logging	1.0 million	0.6 million	-0.4 million	0.6 million	-0.4 million
Private Services	49.7 million	103.5 million	+53.8 million	112.6 million	+62.9 million

Source: St. Louis Federal Reserve Data.¹⁰

As Philip Aghion et al. argue, modern growth is grounded in innovation; it imposes risks from the creation and destruction of firms. The era of secure, lifetime employment in a single firm is over. But creative destruction also creates new jobs which eventually tends to reduce the unemployment rate.¹¹

Of course, as Fukuyama points out, voters do not base their impressions on aggregate data:

... few voters think in terms of aggregate wealth. They don't say to themselves, "Well, I may have lost my job, but at least there's someone else in China or Vietnam, or a new immigrant to my country, who is proportionately much better off."¹²

Although Fukuyama's explanation rehearses the "lump of labor fallacy," he is probably not incorrect in his assessment of how unemployed workers might view their predicament. Moreover, because job destruction in the short term precedes job creation and capitalization in the longer term, individuals may experience the downside of creative destruction for an extended period.¹³ Thus, it is undoubtedly cold comfort that Aghion et al. find that areas in the US with the greatest level of job destruction are also the *same* areas that had the highest rates of job creation from 2005-2010, because these areas are correlated with the highest unemployment rates.¹⁴

In any case, the rise of the service economy has not been sufficient to overturn the pessimistic narrative that seeks to blame liberalism. For example, Deneen also writes about the desperation of the urban non-elite trapped in service industry jobs:

Those who remain in the hamlets, towns, and cities are generally condemned to straitened economic circumstances, destined for low-wage and stagnant service industry jobs and cut off from the top tier of analytic-conceptual work that is reserved for elite graduates. They are rooted in economically deprived regions or survive on the outskirts of concentrations of elites, where they will struggle with inflated real estate prices either by overpopulating subpar urban housing or by living at great commuting distance from work and entertainment. They generally own extraordinary and growing levels of debt, mainly college loans and mortgage debt, though the insistent demand that they participate fully in the broader economy as consumers doubtless leads them to accumulate other excessive debts as well.¹⁵

While Deneen’s complaint undoubtedly resonates with the frustrations of those trapped in debt and struggling to break into more lucrative opportunities, it again fails to offer much of an alternative solution or even to recognize that the struggle to succeed is a perennial and arguably desirable feature of a competitive market economy.

At any rate, the empirical economic data shows that average hourly earnings in the service sector (\$29.97/hour) actually slightly surpassed those in manufacturing (\$29.26/hour) during the COVID-19 Pandemic in April 2020. By May 2024, average private service-providing hourly earnings were \$34.76/hour, which was still competitive with goods producing jobs at \$35.58/hour. The highest average hourly earnings in the private (non-farm) sector for goods producing occupations are in the mining and logging field (\$39.62/hour).¹⁶ These average hourly earnings were comparable to service positions in information technology (\$49.41) and financial activities (\$45.47) in May 2024 when one considers the skill premium. The only area where average non-farm earnings are lagging significantly is in the leisure and hospitality field where hourly earnings were \$22.02. While traditional blue-collar and white-collar employment are not interchangeable, the notion that blue-collar jobs have been severely degraded is overstated. Similarly, it is inaccurate to argue that service sector jobs are stagnant or uncompetitive. As noted in Table 2, average earnings in professional and business services as well as education & health are competitive with goods producing jobs.¹⁷

Table 2: Average hourly earnings of all employees on private nonfarm payrolls by industry sector (seasonally adjusted)

	May 2024	*2000 Hours
Goods Producing	\$35.58	\$71,160
Manufacturing	\$33.83	\$67,660
Mining & Logging	\$39.62	\$79,240
Service-providing	\$34.76	\$69,520
Trade, Transportation, Utilities	\$29.97	\$59,940
Information	\$49.41	\$98,820
Financial Activities	\$45.47	\$90,940
Professional & Business Services	\$42.01	\$84,020
Education & Health	\$34.09	\$68,180
Leisure and Hospitality	\$22.02	\$44,040
Other Services	\$31.38	\$62,760

Source: St. Louis Federal Reserve, 2025.

But Deneen also adds a spatial component to his narrative. He implies that residents of smaller towns outside of major metropolitan areas are trapped in dull and stagnant occupations. While granular data is not available to confirm or deny his vague assertions, state level data tends to show that the fastest growing states are those which are predominantly rural and traditionally considered backward or marginal, e.g., Wyoming, Delaware, Mississippi, Georgia, and Louisiana. For example, Wyoming witnessed a seven-fold increase in new businesses from 2005 to 2022.¹⁸ Housing prices have been dropping in non-metropolitan areas of the US since 2011.¹⁹ In 2022, the largest increase in real personal income was 3.0% in North Dakota.²⁰

Prolonging the Pain?

Setting nuanced aggregate economic trends aside, it is indisputable that globalization did promote an unbundling of manufacturing processes in a set of emerging markets. A consequence of this innovation was the decline of employment in manufacturing spread over several decades. Critics of the excesses of “neoliberalism,” argue that promises of economic adjustment and reskilling to compensate those harmed by globalization were neglected by both economists and politicians:

... neoliberal reformers sought to cut back state sectors by ending or scaling back social programs, firing bureaucrats, or seeking to offload programs on to private sector contractors or civil society organizations. In the United States, this effort culminated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which ended AFDC [Aid to Families with Dependent Children] altogether and shifted its funding into block grants to states. Its very title points to the neoliberal premises underlying the legislation.²¹

Unfortunately, this caricature of “neoliberal” neglect of workers ignores a more complicated reality. In the US, the Trade Adjustment Assistance (TAA) program was established with the Trade Act of 1974 to provide help to workers who faced a job loss or wage reduction because of import competition.²² Assistance included cash benefits, job re-training, health-care tax credits, job search assistance, relocation allowances, income support, and wage insurance under certain circumstances.²³ In theory, the TAA program provided workers, who could successfully demonstrate trade-induced dislocation, a two year reprieve to seek retraining and new employment.²⁴ A study of Congressional voting from 1980-2004 found that while the program was strongly supported by protectionist legislators, half of the pro-free trade legislators also supported increased funding.²⁵ In other words, the narrative of “neoliberal” neglect is overblown. Of course, the use of trade adjustment was not consistent. For example, the Ford and Carter administrations relied heavily on the TAA program to stave off protectionist demands, but the Regan administration preferred alternate strategies—particularly in the face of increased competition from Japan.²⁶ The TAA program was expanded in 2002 when its provisions were combined with a similar program in the NAFTA pact. Program resources were temporarily increased again from 2009 to 2011 in response to the Great Recession. The TAA program, having assisted 2.5 million workers, lasted until 2022 when it stopped accepting new petitions in accordance with the program’s termination provisions outlined in the Trade Adjustment Assistance Reauthorization Act of 2015.²⁷ The TAA program will remain funded until 2025. The logic behind pro-trade support for the TAA may have been grounded in a desire to broaden the pro-trade coalition and to minimize opposition to free trade from labor groups. Opposition to the TAA often came not so much from “neoliberals” but from unions, even though the program had first been proposed by the head of the steelworkers’ union in 1954. Unions began to perceive trade adjustment programs as facilitating the transfer of unionized workers into non-union jobs.²⁸

Since 2017, the discourse has shifted away from trade adjustment assistance strategies for manufacturing workers to illiberal protectionism. While “neoliberals” did not abandon manufacturing workers to their fate as critics alleged, the strategy of trade adjustment assistance always implied compensating workers after an industry has been shuttered. Protectionist trade barriers, although economically distortionary and harmful to consumers, seek to sustain domestic industries in the midst of competition rather than *ex post facto*.

Moreover, while TAA assisted a couple million factory workers who could demonstrate that their unemployment was due to import competition, this still meant that several million workers did not receive assistance in finding new jobs (although some may have opted for early retirement or other programs). A 2022 Department of Labor (DoL) report assessing the program found that employment rates for program participants were higher for younger cohorts and those with higher levels of education prior to enrolling in the program. Wages after participation were slightly higher for those under 30 years of age, but on aver-

age workers experienced a 20% drop in income, with workers over 60 experiencing a 38.6% drop in wages. Wages were also higher for those who completed credentialed training than those who enrolled but did not complete their training.²⁹ Overall, while the program benefits a few workers, it is not highly effective and most workers experience a wage decrease.

The DoL report's findings are similar to Aghion et al, who find that the years elapsed since a worker earned their last degree is strongly correlated with a 5% reduction in "innovation revenue" and an increase in the probability of job loss.³⁰

We may gain some insights by returning to Hayek's chapter on agriculture in the *Constitution of Liberty*. Hayek reasoned that the adjustment in the distribution of manpower from agriculture to other occupations required a disparity in income to incentivize the shift. The disparity in income would have been kept small if the movement occurred relatively quickly. However, Hayek notes, "Policy... has everywhere delayed this adjustment, with the result that the problem has steadily grown in magnitude."³¹ The delay in shifting occupations through policies which incentivize workers remaining in an uncompetitive sector builds up a constituency which then becomes too large and impractical to shift over. The contemporary malaise toward liberalism is perhaps the product of a similar logic.

The pursuit of the "embedded liberal" compromise, in which liberal states used short-term protectionist measures to slow the impact of declining efficiency and productivity as well as compensatory mechanisms (e.g. the TAA program discussed above) to sustain a free trade regime, in the post-WWII era among the economies of the North Atlantic secured social stability at the expense of market efficiency.³² The end result of the protectionist component was the accumulation of labor in occupations which were not as productive as in middle and low-income countries.

For example, the US steel industry has lobbied politicians for protection from foreign competition since the late 1960s.³³ Protectionist measures could take the form of tariff and non-tariff barriers but could also include voluntary restraint agreements (VRAs). VRAs were used from 1968-1974, "trigger price" mechanisms were used from 1976-1982, VRAs were put back in from 1984-1992, tariffs were used from 2000-2002. In the face of complaints from steel consumers and a WTO ruling against US protectionism that sanctioned retaliation, the US dropped its protectionist approach. Thus, the periods in which the US did not protect the steel industry from 1968 to 2002 were: 1974-1975, 1983-84, 1993-2000.³⁴ Even the appearance of open competition in the last phase is deceptive, since the Clinton administration defaulted to handling steel lobbyists complaints on the case-by-case basis of the International Trade Commission, which authorizes protectionist measures.³⁵

The reality of lingering embedded liberalism in international trade during the second age of globalization contrasts with the popular narrative of a "neoliberal revolution"³⁶ that posits a clean break with the Keynesian economic order after 1980. The reason for the confusion stems from lumping together changes to the monetary and financial order as well as the regulatory and fiscal posture of welfare states with changes in the international trade regime. While the Reagan-Thatcher reforms did initiate a new monetary and financial order in the US and UK on the ashes of the Bretton Woods system, "... the trade regime embodied in the GATT and later in the WTO managed to at least survive until the present day."³⁷ This is not to deny that trade theorists and intergovernmental organizations strongly encouraged countries to lower trade barriers to expand markets and increase efficiency.³⁸ And while successive GATT negotiation rounds did result in progressive reductions to tariff barriers among high-income countries, it is notable that: 1) The WTO did not emerge until 1995; 2) The agricultural sector in most countries has remained, despite some reforms in response to trade disputes, fiscally supported, protected from import competition, and export subsidized in spite of the WTO's Agreement on Agriculture (1995-2004); 3) Even where trade-distorting agricultural and industrial policies have begun to be dismantled, new carbon neutral agricultural and industrial policies are being erected to retain sectoral protection; 4) low-income economies historically exempted themselves from several rounds of trade negotiations and the poorest economies continue to do so.³⁹ In contrast to the Bretton Woods' "fixed-but-adjustable" monetary order which became inflexible and collapsed in 1971, the international trade regime permitted flexibility and exemptions

through the concepts of Most Favored Nation (MFN) status (Article I) and Safeguards (Article XIX).⁴⁰ In essence, despite a general liberal orientation, states have retained the regulatory space to enact social objectives and aim for full employment. Embedded liberalism persisted in international trade and only recently has it been surpassed with open protectionism.

A final mechanism for placing workers outside the market is a redistribution of income. In Hayek's time there was an effort to ensure an "adequate income" to agricultural workers, today there is an emphasis on mandating a "living wage" for workers in manufacturing and low-productivity service occupations. Of course, Hayek knew that the redistribution of income only delayed the inevitable need for occupational adjustment until it became imperative.⁴¹ Hayek shrewdly noted that it was usually conservatives who initiated and supported the efforts to place farmers outside of the market mechanism and subject them to government direction, because conservatives "... have shown themselves little averse to socialistic measures if they serve the ends of which they approve."⁴² The end result in the agricultural sector was the accumulation of a massive surplus of food stock and irrational allocation of land. Ultimately, the nostalgic desire to preserve the old way of life was aesthetic.⁴³ He rejected the notion that without protection all farming would disappear, noting that there is a wide disparity in the ability and willingness to adapt to change. This means,

"... the farmer or peasant, if he is to succeed, must progressively become a businessman—a necessary process that many people deplore and want to prevent. But the alternative for the agricultural population would be to become more a sort of appendage to a national park, quaint folk preserved to people the scenery, and deliberately prevented from making the mental and technological adjustments that would enable them to be self-supporting."⁴⁴

Workers can be preserved in any sector through public policy but at the cost of creating men dependent upon the state for subsistence.

Hayek was not advocating a *laissez-faire* solution, however, he believed that there was a role for government in improving the legal infrastructure of the market and to better align market incentives with the full costs of individual actions.⁴⁵ The government should be a provider of information, for example, to induce farmers and workers to adopt more productive techniques. A liberal government must also provide a minimum income and even use monetary policy to reduce cyclical unemployment.⁴⁶

The heart of the problem of adjustment, however, is ultimately due to the "stickiness" of wages. Hayek argued that the cause of unemployment was primarily a function of high real wages. Lowering wages would be resisted by organized labor. Keynes sought a sleight of hand solution to this *political* problem through devaluing the currency. Increasing the money supply raises prices to a point that existing wages are no longer greater than the productivity potential of those seeking employment. Of course, Hayek correctly anticipated that this salve would only incentivize greater wage demands and thus further cycles of inflation.⁴⁷ A better solution would be to deprive unions of their coercive power over workers. Hayek believed that unions would have had an incentive to provide voluntary unemployment insurance had welfare states not relieved them of that task. He believed that the state provision of unemployment insurance would only end up subsidizing "unstable trades" at the expense of stable ones and "to support wage demands that are irreconcilable with a high level of employment."⁴⁸ One might modify and update this argument to argue that states tend to subsidize unviable trades at the expense of viable ones and at wage rates that are not realistic in the context of massive increase in the global labor force.

In sum, it was the resort to illiberal economic policies during the supposed "neoliberal" revolution that created the challenges which are now spurring the backlash against liberalism. A solution to the employment problem created by innovation and creative destruction, which would be in line with Hayekian principles, is Denmark's 1993 Flexicurity policy. This policy approach increases labor flexibility for firms (e.g., simplified dismissal procedures; limited severance pay) in exchange for unemployment benefits up to 90% of a worker's salary for three years and a massive investment in professional retraining so

that workers can reenter the labor force.⁴⁹ In essence the program is similar to America's recently phased-out TAA program but more generous and capacious for unemployed workers and oriented to create buy-in from employers. The Danish model dramatically reduces labor market rigidity while ensuring a measure of economic security for individuals and provides a path that transitions workers from a "job security" mentality to an "employment security" outlook—thus enabling an even more dynamic economy.⁵⁰

II. PROTECTING THE EARTH?

What is a Hayekian view on tackling the challenge of climate change? Are there prescriptive insights from Hayek's 20th century framework that can be applied to one of the most pressing problems of the 21st century? These questions are certainly anachronistic, but clues towards Hayek's environmental views are evident in his discussion of natural resources in *The Constitution of Liberty*. This section will argue that a Hayekian approach, while not providing a guide for public policies, does offer tools with which to critique environmental policies in the context of complexity and uncertainty.

Natural Resources

In the section on natural resources in *Constitution of Liberty*, Hayek was a pioneer in recognizing that natural resources in the United States were wastefully exploited. He exhibits particular concern at deforestation. However, Hayek contends that this exploitation was facilitated by a failure to privatize public lands. Incentivizing exploiters to operate in the short term on public lands led to predictable outcomes. Of course, Hayek realizes that privatization does not work with all-natural resources, particularly those "fugitive resources" (e.g., natural gas or oil) whose appropriation leads to their consumption or resources whose scope (e.g., large oil and gas deposits) cannot be made coextensive with individual owners.⁵¹ Moreover, Hayek never believed that private ownership (particularly of land) conferred unlimited authority to use or abuse that property as the owner sees fit.⁵² Neighborhood effects, particularly in densely populated urban areas, impact the ability of interdependent individuals to use their own land.⁵³

Hayek notes that the main arguments in favor of centralized control of natural resource use assume that the community has greater interest and knows with greater certainty the future consequences from the depletion of natural resources than the individual.⁵⁴ The underlying logic is premised on the notion that future needs ought to be valued more highly and that the community is better able to actualize this valuation than the individual. Hayek rejects the notion that individuals should be relieved of the responsibility of valuing the future. He does not deny that there are some facts concerning probable future developments which the government will have a superior knowledge than individual owners of natural resources.⁵⁵ However, he contends that there is an even greater store of knowledge about particular circumstances of specific natural resources which the individual will possess and which ought to be considered in decision making. The government's knowledge of certain probable trends may be more than equaled by its ignorance of other particulars. Even if the individual were not in a position to predict the future, a competitive market would be likely to incentivize her to act in a manner that builds on the knowledge of those who do take these future probabilities into account.⁵⁶

Similar to the argument for community management, Hayek understood that monopolies might actually have an incentive to increase conservation. However, he felt that this was not sufficient grounds to support monopolies in practice.⁵⁷ More broadly, Hayek did not generally endorse the preservation of natural resources for their own sake. He argued that "... our problem is not to preserve this stock in any particular form, but always to maintain it in a form that will make the most desirable contribution to total income."⁵⁸ The aim is to maximize income from available resources so as to bestow greater accumulated wealth to posterity.⁵⁹ To conserve materials to a point where the return is lower than the capital it uses would bring elsewhere would reduce future income. Hayek says:

... consumption of irreplaceable resources rests on an act of faith. We are generally confident that, by the time the resource is exhausted, something new will have been discovered which will either satisfy the same need or at least compensate us for what we no longer have, so that we are, on the whole, as well off as before.⁶⁰

In sum, Hayek sees little reason for the preservation or conservation of natural resources based on existing known limits of resource availability. Hayek would generally not support policies that would deliberately strand natural assets, except where extraction of a natural resource would demonstrably harm the ability of others to use their own land. Overall, this would tend to paint a pretty bleak picture for environmentalists seeking to draw on Hayekian insights to help accelerate a transition away from fossil fuels. But the picture is more complicated than it appears—an examination of the challenge of climate change might help to draw out a more nuanced position.

The Climate Challenge

Although the perennial threats of war, plague, and poverty persist for all societies, the most pressing challenge in the 21st century is arguably managing the effects of global climate change. The scientific evidence for human induced climate change has been overwhelming and indisputable for several decades. The motivated reasoning that aligned with libertarianism to fuel climate change skepticism and promote inertia over the last three decades today reads like either shameful mulishness or intellection from dubious assumptions.⁶¹ Today, we know that petroleum industry research scientists were well aware of the greenhouse effect and the primary role of burning fossil fuels in projections of global warming as early as 1979.⁶² In any case, detailed, peer reviewed research and sober projections on the impact of global warming on sea levels, ecosystem biodiversity, agricultural productivity, freshwater reservoirs, and human societies have been readily available to the educated public for decades. There have already been documented, irreversible impacts as some natural ecosystems have been unable to adapt to climate changes. Almost half of the species assessed globally by the Intergovernmental Panel on Climate Change (IPCC) are now moving poleward or on land toward higher elevations.⁶³ In general, nevertheless, there has been little progress on decarbonization, as Cullenward and Victor note:

Since around 1990, when diplomacy to address global climate change first began on a sustained basis, world emissions have risen by two-thirds. In only one sector (electric power) and one group of countries (the Western industrial democracies) have emissions declined a bit. Most of that is due to fortuitous changes in fuel markets, the decline in the cost of wind, and solar power, and policies that have mandated a shift away from coal toward cleaner sources.⁶⁴

Important questions, therefore, are: 1) Why has liberal capitalism generally failed to act quickly? and 2) Can liberal capitalist regimes finally rise to the challenge or is political capitalism better suited to the task? This issue is becoming a proving ground for both ideologies.

For those attracted to the decisive characteristics and transformative capacities of strong authoritarian regimes, political capitalism appears to be the best option for realigning societal values and environmental policies in a short time span. Frustrated by the pace of change, one sees even liberal capitalist societies increasingly opting to intervene in the market to shift consumer behavior rather than removing subsidies for all actors and trusting in market forces. Unfortunately for policy makers, their well-intentioned interventionist policies have often generated unintended deviations.

The Interventionist Route I: Subsidies & Targets

Countries which have begun rapidly transitioning to lower carbon emissions, have relied heavily on publicly announced targets, state-subsidized market incentives, and public investments to shift behavior as it is assumed that markets will not spontaneously course correct. The belief that rational policies can and must be designed to shape and modify human behavior to meet climate goals is now practically common sense.

It should be noted from the outset that Hayek himself was not opposed to all subsidies.

... the subsidization of particular efforts out of funds raised by taxation, which we shall have to consider in connection with housing, agriculture, and education, raises problems of a more general nature. We cannot dismiss them simply by maintaining that no government subsidies should ever be given, since in some unquestioned fields of government activity, such as defense, it is probably often the best and least dangerous method of stimulating necessary developments and is often to be preferred to the government's taking over completely.⁶⁵

He goes on to add the proviso that subsidies should not be for the benefit of the immediate beneficiary but only of the general benefits enjoyed by all citizens.

Subsidies are a legitimate tool of policy, not as a means of income redistribution, but only as a means of using the market to provide services which cannot be confined to those who individually pay for them.⁶⁶

However, the empirical evidence from state-crafted solutions to the climate crisis should give one pause as pathologies resulting from interventionist policies are already apparent.

First, efforts to promote voluntary adoption of new technologies to reduce carbon emissions, such as switching to battery electric vehicles (BEVs), have resulted in certain counterproductive incentives. For example, overcoming consumers' "range anxiety" requires replicating the "gas station experience" which naturally reduces incentives to create more efficient individual vehicles and collective mobility solutions.⁶⁷ Nudging consumers to switch from internal combustion engine (ICE) vehicles also apparently requires replicating essential features of ICE vehicles and thus leads to the production of larger, heavier, faster, more luxurious, and less efficient vehicles. For example, the 2022 GMC Hummer BEV had an astounding curb weight of 9,063 pounds (4,110 kg) and is rated at 47 MPGe. The vehicle uses a massive 212 kWh of electricity for a range of only 329 miles. At 2,923 pounds (1,326 kg) the battery itself weighs more than a subcompact automobile.⁶⁸ These practices in turn promote the demand for greater mineral extraction to build large capacity batteries—with predictable consequences in impoverished mining towns in low income countries—and generate demand for greater electricity consumption.

Second, efforts toward reducing carbon emissions to meet national and intergovernmental targets are being pursued most vigorously in countries that continue to export fossil fuels. Norway, for example, is a leader in the transition to lower carbon emissions and yet it is also a major exporter of fossil fuels. In 2019, crude petroleum constituted 27% of its exports (\$29.6 billion), with petroleum gas adding another 21% of GDP (\$23 billion) and refined petroleum contributing 5.6% (\$6.1 billion).⁶⁹ Similarly, Canada, whose Prime Minister pledged in 2021 to reduce carbon emissions by 40-45% below 2005 levels by 2030, sits atop the third largest proven oil reserve in the world and remains one of the world's leading exporters of petroleum (i.e., approximately 5 million barrels of oil per day). In fact, crude oil exports constituted 15.7% (\$67.8 billion) of the country's exports in 2019—a roughly fifteen-fold *increase* over the previous three decades⁷⁰—along with 2.9% (\$12.3 billion) for refined petroleum and 2.1% (\$9.2 billion) for petroleum gas.⁷¹ Moreover, the Canadian government has granted exemptions to its carbon emissions tax scheme for key industries such as steel and chemicals, and about 70% of citizens will receive a tax refund to compensate for higher energy costs from new taxes on oil, coal, and gas.⁷² The end result of these policies is likely to shift the

problem of carbon emissions from the high-income countries to the energy hungry middle- and low-income countries by the end of the century without any noticeable drop in global emissions.

Third, while the adoption of BEVs by individual consumers (combined with decarbonization of electricity production) will reduce carbon emissions and help countries to meet their environmental goals, certain incentives—such as those used in Norway (e.g., exemption from turnpike tolls and ferry fees, annual road tax, and public parking fees)—can be counter-productive as states lose revenue needed for basic infrastructure maintenance. Privileges granted to owners of BEVs, such as using bus and collective lanes, can increase congestion and frustrate more environmentally sound mobility solutions.⁷³ In fact, purchasers of BEVs tend to reduce their usage of public transport and travel more by car after their purchase. In other words, purchase of electric vehicles comes at the expense of public transport (and bicycle) use.⁷⁴ Generous subsidies may also be incentivizing families to purchase a second automobile as a BEV.⁷⁵ If the purchase of a BEV is a supplement to an existing internal combustion engine (ICE) vehicle rather than a replacement of an existing ICE vehicle, then the goal of reducing greenhouse gas emissions by eliminating ICE vehicles is frustrated. Finally, there is no evidence to indicate that subsidizing the purchase of BEVs is reflective of or increasing environmental consciousness. In a comparative survey of Norway, Sweden, and Denmark, despite Norway's much higher rate of BEV adoption its citizens were not more environmentally motivated; the overwhelming majority of Norwegians cited economic rather than environmental reasons for wanting to purchase an electric vehicle.⁷⁶

The “common sense” narrative that intense state intervention in the market is necessary to promote rapid decarbonization is dramatically oversimplified even in the case of the most successful case study, Norway. It is worth noting that Norway began its BEV incentive program in 1990 by taxing ICE vehicles based on emissions and exempting imported BEVs from the registration tax.⁷⁷ Even activist campaigns that led to free parking in public lots and exemptions from paying tolls in the mid-nineties, had no significant effect on BEV purchases. Consumer purchases of BEVs did not markedly improve until after 2008 when there was a switch by industry to lithium-ion battery technology and a public works project for electricians led to a more extensive electric charging infrastructure. Prices for BEVs began to fall after 2013 when several car manufacturers brought viable products to the market. In other words, sales of BEV increased when producers met consumer expectations and the liberal state performed one of its core functions, supplying public infrastructure. In this context, subsidies and privileges granted to BEV drivers may have helped to nudge hesitant consumers to purchase a BEV over a comparably priced ICE vehicle. Originally, the registration tax exemption on BEVs (1990) and high tax on ICE vehicles as well as the VAT exemption for BEVs (2001), did not initially spur sales. However, it is true that once BEVs became more appealing to consumer needs, then these measures meant to reduce the price disadvantage of BEVs flipped over into granting BEVs a distinct price advantage after 2013.⁷⁸ The subsidies may explain the runaway adoption rates of BEVs in Norway today (along with the related pathologies discussed earlier), but did not spur increased adoption beyond a niche market for over two decades. Even with all these subsidies for BEVs, it is not often mentioned that 42% of private vehicles in Norway were powered by diesel engines and 31% were petrol engines in 2021. Only 16% of private vehicles are BEVs; the remaining vehicles are hybrids.⁷⁹

It is also important to note that Norwegian government subsidies were not responsible for bringing more refined products to the market. Norway, although it is one of the most prosperous economies in the world, is a relatively small market with roughly 2.5 million households and 2.9 million registered private cars.⁸⁰ The two local BEV manufacturers, Think and Buddy Electric went bankrupt as multinationals re-entered the BEV market in 2010.⁸¹ It is unlikely that preferential subsidies in the Norwegian car market alone would have been sufficient to spur research and development by large automobile manufacturers. In reality, corporations do not need state subsidies to accelerate improvements to battery technology since there is a wide range of industries that rely on batteries (e.g. laptops, tablets, mobile phones), and hence there is already sufficient monetary incentive and reward for companies that improve battery performance.⁸²

The Interventionist Route II: Constructed Markets

An alternate, and seemingly market-friendly, approach to induce deep decarbonization has been the state creation of markets for trading carbon emissions credits by industries. Nevertheless, these theoretically elegant “cap-and-trade” markets have generally failed to incentivize dramatic reductions in output in the real world. In fact, in 2019 the overwhelming majority of carbon credit (86.4%) lacked any price value and only a tiny fraction of emissions credits (0.1%) were valued above \$65 per ton of CO₂ equivalent.⁸³ Given that most experts believe carbon credits would only incentivize deep decarbonization when valued above \$100 per ton, why would prices remain so low after nearly three decades of experience managing these kinds of markets? As Danny Cullenward and David G. Victor layout in *Making Climate Policy Work*, the markets fail in most sectors of the economy because:

When policymakers design cap-and-trade programs, they adopt highly uneven and usually narrow sectoral coverage. Moreover, they develop allocation rules that are often highly distortionary and explicitly designed to blunt the impact of carbon prices on the most competitive sectors of the economy: those that are exposed to international trade. Although these interventions are intended to reduce incumbents’ political opposition to carbon pricing and accommodate legitimate competitiveness concerns, free allocations can metastasize to the point of *de facto* exemptions that “grandfather” legacy polluters’ economic positions—effectively relieving them of the obligation to make major emission cuts. Worse still, they send a clear message that market rules are endogenous to politics. Rather than constitute one-time compromises necessary to get a system off the ground, excessively generous handouts signal that market rules are up for continuous negotiations that favor incumbents.⁸⁴

In other words, politicians in democratic regimes have a strong interest in oversupplying carbon market credits (often through dubious “carbon offset” schemes) to reduce political resistance from industrialists. This discretionary power could be eliminated by auctioning credits, but politicians will resist any solution that eliminates their discretionary power. Additionally, a significant portion of the revenue generated from cap-and-trade markets is used for redistribution as “green” pork to special interest groups regardless of the actual impact on the environment.⁸⁵ Similarly, a border carbon adjustment (BCA) could theoretically permit politicians to move from subsidizing trade-exposed firms to imposing a carbon price on imports. However, in reality setting fees in accordance with the emissions associated with that imported product is difficult and there is a strong temptation to use a BCA as a protectionist measure.⁸⁶ Creating a minimally efficient carbon market provides the necessary optics for that segment of the electorate which demands politicians respond to the climate challenge by “doing something” but also permits most industries to operate without substantial changes. Cullenward and Victor credit environmental regulations rather than carbon markets for the little progress that has actually occurred in recent years. Overall, however, since countries began to address climate change in a sustained manner and a global scale beginning around 1990, world emissions have *risen* by two-thirds.⁸⁷

Perhaps, as Hayek warned, it is not so easy to reshape the world or the nation using policy instruments or to impose a ranked order of values on an often unconvinced and complex society. Even if costly subsidies do generate intended effects in one area, those subsidies are likely to incentivize uneconomic behavior in other areas. Similarly, artificial market solutions also appear flawed as they are vulnerable to political manipulation and constant renegotiation.

Critique I: Constructivism

In *The Fatal Conceit*, Hayek argues against the hubris of “constructive rationalism,” i.e. the belief that a social order can be wholly planned and directed through the use of reason. He counters with an evolution-

ary model of cultural/unconscious (as opposed to natural or artificial/intended) selection.⁸⁸ In other words, the social order of a complex society is the product of successful practices, acquired characteristics, and (often unplanned) institutions passed on from one generation to the next. Individual behaviors and collective ethics (e.g., private property, promise keeping, voluntary exchange) which help individuals and the group to flourish and coordinate activities are more likely to be selected. This does not exclude the possibility that a society could choose incorrectly or that choices which promote prosperity might have unforeseen consequences. However, for Hayek these institutions are not merely of historical significance—they are the key to preserving civilization in the face of adversity. He realized the importance of preserving the extended order of the market to sustain current population levels and to generate social stability and prosperity. As Hayek explains:

This book argues that our civilisation depends, not only for its origin but also for its preservation, on what can be precisely described only as the extended order of human cooperation, an order more commonly, if somewhat misleadingly, known as capitalism.⁸⁹

Despite his reputation as a “neo-liberal,” Hayek’s argument is not that individuals ought to be unconstrained except by market forces. Quite the opposite, Hayek understands freedom as the result of submission to the extended order of the market as well as respect for established social institutions—even if the functional utility of those institutions cannot be quickly ascertained through reason.

Of course, much like Adam Smith, who grounded his 18th century vision of commercial society on moral sentiments rather than an abstract rationality, Hayek is not opposed to reason. Institutional actors use reason in their decision making but the institution itself is likely to be a historical (i.e., evolutionary) artifact.⁹⁰ Where there is a conflict between rational designs and institutional strictures, the institutional limits ought to be considered carefully before being modified or eliminated. After all, institutions are not developed in isolation, human interaction encourages emulation and adaptation of successful institutions from other societies. Military conquest opens the prospect for imposed institutions, but in most cases institutions change slowly and the consequences of selecting suboptimal institutions for a given environment leads to gradual decline.

If we are to update Hayek for the present, the challenge is to explain how cultural institutions which have generated a social order that is economically prosperous but environmentally unsustainable can be transformed without abandoning key features that are vital and valuable even if not purely rational. Of course, this is not an argument for “business as usual,” Hayek agreed with the need for uniform regulation of industry to protect against pollution and even the use of (transparently allocated) public funds to preserve natural beauty. The *Fatal Conceit* crafts a defense of capitalism that prioritizes the ability of the market to devise spontaneous solutions to complex problems within a dynamic system.

Critique II: Uncertainty, Complexity, Spontaneity

If spontaneous markets are capable of crafting solutions to complex problems, then the logical next question is why haven’t markets found a solution to climate change already? Why have liberal-meritocratic capitalist economies dithered while threats to the global environment have gathered for decades?

The answer lies in the role of uncertainty, competition as a discovery procedure, and the nature of spontaneous markets. Competition is a useful procedure whenever we do not know with certainty the answer to a question in advance. If answers to questions were completely knowable in advance, there would be no point in holding a competition. Of course, much like any sports competition, while there are calculable statistical probabilities, the dynamics of the game can reveal hidden talent and capabilities or hidden deficiencies and obstacles. The sports metaphor should not be taken to imply that a competition is a simple exercise or quick process; a complex competition with multiple viable and intersubstitutable solu-

tions, operating at different scales (from the local to the planetary), with varied levels of financial backing and resource utilization may take several decades to resolve.

Market competition exposes flaws, strengths, and alternatives that would remain hidden in a static and abstract calculation, but the type of knowledge acquired is difficult to channel. Unlike scientific experimentation which aims to discover general and universal facts, economic competition reveals only transitory and contextual answers. Nevertheless, the knowledge gained from those transitory answers feed into future contests, which in turn feed into future iterations, and so on.⁹¹ However, one should not assume that this knowledge is necessarily cumulative in resolving a set social priority. As Hayek noted, a spontaneous order does not ensure that what most people regard as more important ends are satisfied before less important ones.⁹² By definition a spontaneous order, even though it facilitates rational and successful action by individuals, cannot be made to serve a particular objective or ranking of objectives. Market prices function through a negative feedback loop. As Hayek notes:

It is precisely through the disappointment of expectations that a high degree of agreement of expectations is brought about.⁹³

In other words, the market does not magically and instantly meet the predetermined needs of a society. It usually proceeds through disappointments of expectations to settle on a solution or mutual adjustment of individual plans.

Technologies for deep decarbonization are currently novel and untested at scale.⁹⁴ For investors in battery electric vehicle manufacturing, for example, it is unclear which type of battery (e.g., lithium-ion, lithium-sulfur, aluminum-ion, solid state batteries, and hydrogen fuel cells) will ultimately triumph in the consumer market, and whether customers will prefer fixed point charging, wireless car charging, or battery swap technologies. Technological preferences have implications for resource extraction, infrastructure, and manufacturing processes as well as safety and cost to consumers. Given the range of dynamic variables (since prices of raw materials, manufacturing processes, and transportation are constantly shifting), the best choice option is unknown in the abstract. It is even probable that an optimal solution will not be adopted; a feasible but suboptimal solution is likely to emerge once an infrastructure buildout intensifies and consumers become locked-in to a particular range of choices. In other words, far from dithering, markets have been witnessing intense competition that will limit the range of solutions on offer.

Historically, a common “short cut” solution to avoid prolonged economic competition is to defer to the state bureaucracy to devise a solution to the “coordination problem” through industrial policy. The assumption is that market actors are waiting for a clear investment signal and the government’s active policy support and infrastructural investment is essential. Although this outlook misunderstands the function of competition in a market order, the logic is somewhat compelling at the domestic scale until one considers the existence of an interdependent global marketplace and a dearth of coordination mechanisms to set standards and expand deployment, particularly in highly competitive and globally oriented industrial sectors. But even at the domestic scale, there have been major miscalculations as the state attempted to “pick winners” through industrial policy.

For example, in the US under the Barack Obama administration from 2009 to 2017, several technology and energy firms received government grants or loan guarantees through the American Recovery and Reinvestment Act of 2009, as well the \$25 billion Advanced Technology Vehicles Manufacturing Loan Program. A few of these firms eventually filed for bankruptcy, for example, Solyndra (an advanced solar panel manufacturer), Nevada Geothermal Power, Ener1 (a battery manufacturer), Beacon Power (an energy storage company), Abound Solar (solar panel manufacturer), Fisker Automotive (a battery electric vehicle manufacturer), etc.⁹⁵ Rapidly advancing technologies and volatile prices of inputs eroded the finances of many companies in this period, even those with strong government backing. Although the overall failure rate is small relative to the total number of companies funded, the fact of major bankruptcies at taxpayer expense creates political leverage against the incumbent administration. More importantly, the subsi-

dies continued a pattern of attempting to “pick winners” that face limited accountability when projects fail. Under the George W. Bush administration from 2001 to 2009, for example, the government backed (highly-inefficient) hydrogen fuel cell vehicles through the “Freedom CAR” program with \$1.2 billion in research grants—an initiative which two decades later has still failed to excite any consumer interest, except for a very small and still highly subsidized market in California. The Bush administration’s decision to promote hydrogen fuel cell vehicles also killed off the Clinton administration’s eight year long, \$1.5 billion subsidy program, the “Partnership for a New Generation of Vehicles,” to develop a family sedan which provided 80 mpg by 2004.

Although states with larger markets may be able to shape technologies and set standards that influence states with smaller markets, the risks and complexity of issues may hamstring even the most capable state bureaucracies. In particular, market forces and technological advancements may render the state’s choice obsolete or economically unfeasible even before projects come to fruition. Moreover, the effort of private actors with a first mover advantage to create vertical monopolies and build out proprietary infrastructure can pose challenges to public policy making in a liberal society. In this context, the state does not appear omniscient and has constrained ability to shape which technologies, production processes, and infrastructure are adopted.

A more practical, liberal solution, as the Nobel Laureate Paul Romer argues, would be to impose (through democratic means) a very low tax on greenhouse gases immediately and commit to increase the tax gradually but inexorably. This should spur innovators to invest in helping individuals to secure their desired utility without paying the tax. Moreover, the tax would encourage a transfer of investment away from fossil fuel extraction.⁹⁶ Such a tax would avoid both the constructivist rationalism of centralized planning and government-imposed coordination through an industrial policy solution since the tax incentivizes spontaneous, private sector innovation. Of course, politicians will resist any mechanical policy solution that does not permit the exercise of discretionary authority to accumulate rents and business interests will lobby against a tax which incentivizes innovation and creative destruction over business-as-usual practices. This political resistance might be countered by redistributing tax revenue from firms to citizens as a dividend, but passing the policy would still be unlikely in the face of opposition from unprincipled politicians and dominant corporations.

Developmentalist Ambitions

Regardless of the feasibility of alternate liberal solutions, a decision maker eager to accelerate an extremely rapid adaptation to climate change will not be persuaded to adopt a gradual, decentralized, incentive-led policy approach. In this light, the Chinese use of long-range industrial policy in areas like Battery Electric Vehicles (BEVs) or the EU’s Green Deal merits greater scrutiny.

It should be noted at the outset, however, that Hayek did not oppose the existence of state-owned enterprises, but he believed they needed to be narrowly circumscribed if the aim was to preserve individual freedom:

But this does not mean that all state enterprise must be excluded from a free system. Certainly it ought to be kept within narrow limits; it may become a real danger to liberty if too large a section of economic activity comes to be subject to the direct control of the state. But what is objectionable here is not state enterprise as such but state monopoly.⁹⁷

Thus, liberal states need not view state owned enterprises as anathema to liberalism, but the state must not use its coercive capabilities to transform a state enterprise into a state monopoly. While the Chinese approach to electric vehicle manufacturing cannot be understood as a state monopoly, Hayek would be unlikely to look favorably on the Chinese strategy as it is deeply illiberal.

China's BEVs

As the world's largest market for automobiles and even electric vehicles, China has used the powers of the authoritarian political capitalist state to accelerate the transition to battery electric vehicles. The policies include using state owned enterprises in production, obliging foreign automakers to partner with domestic firms, installing infrastructure, setting sales and technical performance milestones and targets,⁹⁸ providing subsidies to manufacturers, consumers, and pilot cities; funding R&D and requiring foreign firms to transfer technology to domestic partner firms; using tariff rates and protectionist measures to raise the cost of imported vehicles; using licensing and registration policies to frustrate owners of ICE vehicles, etc.⁹⁹ While these measures yielded an astonishing 86-fold increase in the number of electric vehicles on the road in China in the seven years from 2013 to 2020, the government has clearly sacrificed quality and safety for quantity. As Trencher et al. note:

The pursuit of aggressive targets for vehicle sales sacrificed quality for quantity. This resulted in battery-safety problems like spontaneous fires or explosions, and low-performance vehicles whereby subsidies paid per unit of output reduced the incentive for firms to invest in R&D and technological improvement ... Subsidies also triggered overproduction and excessive entry of new firms with similar technologies and poor economic competitiveness. Some manufacturers cheated by over-reporting sales when applying for public subsidies. Also, although protectionist instruments ... such as the joint-venture requirement have allowed domestic automakers to flourish, many over-rely on technology transferred from foreign partners.¹⁰⁰

The pursuit of quantitative targets was motivated in part by environmental concerns but also due to the realization that manufacturing electric vehicles is relatively simpler than conventional internal combustion engine vehicles, which conferred an advantage to domestic automobile manufacturers. It would appear that China has curbed subsidies for electric vehicles (starting in 2020) and permitted more imports, at least in part, to cull weaker and lower quality domestic manufacturers which entered the market.

Europe's Renewable Energy Sector

Similar to China's centrally coordinated approach, the Europeans have succumbed to a top-down model for addressing climate change. In 2020, the European Commission approved a plan to seize the commanding heights of climate policy through the European Green Deal, with the aim to achieve net zero climate emissions by 2050 in the European Union (EU) with the exception of coal-dependent Poland. Nevertheless, as Wang et al. argue:

The Commission seeks to transform the RE [renewable energy]-oriented economy in a centralized way with a top-down scheme. Therefore, it resorts to policy actions such as the elaboration of a European Climate Law or to finance the investment plan of the Green Deal through funds managed mainly by government institutions. More concretely, for the energy transition, the Deal aims to transform the current linear and wasteful energy system into a circular, integrated approach in which waste energy can be captured and re-used. With that goal in mind, the Commission mainly resorts to legal tools to set different targets. Moreover, the EU policy also proposes affordable energy prices. These targets are related to the various member states' environmental performance. Such a centralized policy program ultimately assumes that the political institutions could conduct and implement efficient resource allocation.¹⁰¹

To the extent that Wang et al. paint an accurate portrait of the European Green Deal, the assumption that a centralized institution can efficiently allocate resources repeats the errors of failed socialist regimes

in the 20th century. Of course, the policy is still in its infancy (due in part to the economic impact of the COVID-19 Pandemic) and there is reason to believe coal-dependent Hungary and the Czech Republic might also seek exemptions alongside Poland. The irony of the initiative, as Hayek would undoubtedly note, is that within Europe there are successful models of market-oriented environmentalism in the renewable energy sector of Germany, Denmark, and Great Britain. As discussed below, these states have (episodically) emphasized deregulation of the renewable energy market and liberalization of electricity production beginning in the 1990s.

Free-market Environmentalism

The environmental results from liberalization of energy markets since the nineties to encourage renewable energy production and lower greenhouse gas emissions have been remarkable in Germany, Denmark, and the United Kingdom, even though there has been consistent backsliding toward state regulation, price distortion, and limits on competition in each country in the last decade.

Germany achieved a 10.03% share of green electricity in gross energy production by 2011, up from 3.9% in 1990 due in large part to market deregulation. After 2011, the German energy market was re-regulated by the state and increased state investments paradoxically led to both increased CO₂ emissions and increased prices for consumers with only a marginal increase in gross energy production (to 12.46%). The rate hike was partly due to the adoption of a FIT (feed-in tariff) which guarantees above market prices to small scale producers of renewable energy for twenty years. Approximately half of installed capacity for onshore wind energy is in the hands of private citizens. Private citizens generate 40% of Germany's renewable energy.¹⁰² Despite these accomplishments in renewable energy, the German state has resisted liberalization of the electricity and gas markets.

Similarly, in Denmark 175,000 private household owned 80% of wind turbines through neighborhood cooperatives by the late nineties. Wind power constituted nearly half of Denmark's power usage in 2019. After a period of government regulation, which did see increases in gross electricity production, but also increases in greenhouse gas emissions; the market was partially liberalized in the 2000s. By 2010, gross electricity production increased to 31.98% and emissions decreased by 10.34% from 2000 levels.¹⁰³ Despite these achievements, and much like the German case, Denmark has again returned to a highly state-oriented energy market.

The UK liberalized its energy markets beginning in 1990. However, initial efforts to diversify energy production were hampered by price caps. Wang et al. found that as the system became progressively more liberalized, the share of renewable energy in electricity production rose, although prices for households also increased dramatically even though the UK has been more successful in generating affordability than Germany or Denmark.¹⁰⁴ Government regulation still inhibits new entrants and small producers which are essential in any market-led transition to renewable energy.

The point to take away from these brief case studies is that environmentalism and free market approaches can help to address climate change challenges. This is not merely a theoretical claim; it is supported by detailed empirical evidence from the real world. High taxes, subsidies, and limits to competition by small producers do continue to pose challenges for consumer affordability in this area, but this can be tackled with tax reduction and further liberalization.¹⁰⁵

CONCLUSION

This paper has attempted to sketch out an argument that Hayekian insights remain relevant for addressing the two most important challenges of the 21st century: rising nativist populism in the face of a declining manufacturing sector and adapting to climate change. First, the political and cultural backlash toward liberalism in the wake of deindustrialization and wage stagnation is both overstated and unwarranted. The factors that have contributed to the contemporary malaise haunting liberal meritocratic capitalist regimes

is not a consequence of the “neoliberal” neglect of the “losers” of globalization, but the efforts of politicians to pursue “embedded liberal” and inflationary strategies which have only distorted market incentives for workers to adapt to a changing global economy. Second, adapting to climate change need not require extensive market-intervening strategies, the creation of Potemkin markets, or centralized industrial policies. While Hayek may not provide a blueprint for contemporary environmental policies, his insights on complexity, competition, and uncertainty should inform policies to avoid perverse consequences and rigidity while preserving as much individual autonomy as possible. Contrary to popular belief, there is ample evidence that bottom-up solutions to advance adaptation to climate change are practical. Hayek remains relevant for the challenges of the 21st century.

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NOTES

- 1 For a definition of liberal meritocratic capitalism and political capitalism, see Yadav 2023; Milanovic 2019.
- 2 Cited in Hayek 2011, p. 482.
- 3 Patrick J. Deneen, *Why Liberalism Failed*, Politics and Culture (New Haven, CT: Yale University Press, 2018), 70.
- 4 Deneen, 15, 29, 35, 47, 70–71, 126, 129; Daniel Susskind, *Growth: A History and A Reckoning* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2024), 44.
- 5 Deneen, *Why Liberalism Failed*, 105–6, 189–90.
- 6 Richard E. Baldwin, *The Great Convergence: Information Technology and the New Globalization* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2016).
- 7 Baldwin, 111–76.
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Editorial Information

Aims and Scope

Cosmos + Taxis (C+T) offers a forum to those concerned that the presuppositions of the liberal tradition have been severely corroded, neglected, or misappropriated by overly rationalistic and constructivist approaches. The hardest-won achievements of the *classical* liberal tradition have been the wrestling of epistemic independence from overwhelming concentrations of power, monopolies and capricious zealotries.

C+T publishes papers on complexity, broadly conceived in a manner that is accessible to a general readership with particular emphasis on political economy and social philosophy. C+T is not committed to any particular school of philosophical thought or philosophical style.

C+T offers a forum distinctively engaging the growing confluence of interest in **situated and distributed** liberalism emanating from the Scottish tradition, Austrian economics, and non-Cartesian philosophy.

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In addition to articles and reviews, C+T offers an opportunity for guest editors to lead thematic issues, book symposia and *festschriften*. Inquiries should be addressed to the Managing Editor.

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