

# Hayek: A Critique

By Alain de Benoist

The “Club de l’Horloge” held its 5th annual meeting October 20-22 1989 in Nice, on “Liberalism at the People’s Service.” The general tone was “national liberal” conservative. According to the Club’s president, Henry de Lesquen, “there can be no authentic liberal society as long as the concept of man emerging from the Western, humanist and Christian tradition has not prevailed.”[1] The objective was to contrapose two liberal traditions: Locke’s vs. Hume’s and Burke’s, i.e., a “bad liberalism” leading to libertarian or anarcho-capitalist movements, and a “good liberalism” concerned with preserving tradition and thus reconcilable with a “nationalist” perspective. This politically opportunistic approach legitimates itself by appealing to a long gone author: Friedrich A. (von) Hayek. While the distinction[2] has recently been somewhat mitigated, “national liberalism” (or conservative liberalism) constantly reappears in the history of ideas.[3] A good way to approach this problem is to begin with Hayek’s works.

## I

Within liberal doctrines, there is no question about the originality of Hayek’s approach.[4] Distancing himself from “continental” liberalism (with the exception of that of Tocqueville and Benjamin Constant), Hayek seeks to return to the original Anglo-Scottish individualism and liberalism (Hume, Smith, Mandeville, Ferguson), while restricting notions such as reason, pure equilibrium, natural order and social contract. To do this, he paints a broad picture. Accordingly, throughout history humanity has adopted two socially and morally opposed systems. The first, the “tribal order,” reflects “primitive” conditions of life. It denotes a closed system whose members know one another and organize their conduct in terms of concrete objectives determined in a relatively homogeneous manner. In this society of face to face interactions arranged in terms of collective goals, human relations are largely determined by “instinct” and are essentially based on solidarity, reciprocity, and group altruism.

This “tribal order” gradually unravelled as personal ties dissolved into more impersonal social structures. It gave way to modern society, which Hayek first called a “grand society” and then an “extensive order”—something corresponding more or less to Popper’s “open society.” This modern society (where liberalism, capitalism, free exchange, individualism etc. are the predominant ideological forms) knows no limits. Thus social relations can no longer be regulated according to the face to face model. Within such a society, “instinctual” behavior becomes useless and is replaced by abstract contractual arrangements (except, perhaps, within very small groups such as families). Order does not come about as a result of wishes or intentions, but spontaneously and in the abstract, under the impact of multiple interrelations among the various agents. The “grand society” is a social system which spontaneously manages without a common goal.

While Mises regarded liberal institutions as the product of a conscious choice predicated on abstract rationality, Hayek claims that in the “grand society” these institutions were slowly selected by habit. In other words, men did not gradually master their environment and develop new institutions through logical deduction or even rational analysis. Rather, they did so by means

of rules (Hayek defines man as a “role following animal”) acquired by experience and sanctified by time. Reason is not the cause but the product of culture. Use is not sanctioned. It is imminent to the state of things. Thus it is impossible to locate the origin of institutions which have persisted over time. Culture results from the transmission of rules learned from the appropriate behavior-rules which were never invented and whose function remains uncomprehended by those who follow them.

For Hayek, modern society constitutes a “spontaneous order” which no human will could ever reproduce or surpass, which came into being according to a Darwinian model. Modern civilization is neither a product of nature nor an artifice but the result of cultural evolution where selection operates automatically. From this viewpoint, social rules play the role attributed to mutations in neo-Darwinian theory: certain rules are retained because they are “more efficient” and provide an advantage to those who adopt them (“rules of correct behavior”), while others are abandoned. According to Philippe Nemo, “rules are not invented *apriori*, but selected *a posteriori*, in terms of a process of trial and error and stabilization.”[5] A rule will be retained or rejected according to whether, through experience, it proves useful to the whole system constituted by already existing rules. Hayek writes: “It is the gradual selection of increasingly impersonal and abstract behavioral rules liberating individual free will while insuring a further domestication of instinct and drives inherited from preceding phases of social development which have permitted the coming into being of the “grand society,” rendering possible spontaneous coordination of the ever more widespread activities of human groups.” In fact, “if freedom has become a political morality, it follows from a natural selection, which means that society has gradually selected the value system responding best to the constraints of survival, which were those of the biggest number.” After all, before anything, culture is “memory of beneficial behavioral rules selected by the group.”[6]

The emergence of modernity is thus presented as the “natural” result of the evolution of a civilization which has gradually established individual freedom as both an abstract and general principle of collective discipline, i.e., as emancipation from traditional society and as a passage to “a system of abstract disciplines where the actions of each person toward others are guided by obedience, no longer with known goals, but with general and impersonal rules which were not deliberately established by man, and whose role is to allow for the construction of orders more complex than we can understand.” This Darwinian social vision is closely related to the ideology of progress. It implies an optimistic and utilitarian reading of history: “grand society” is worth more than the “tribal order,” and the proof that it is better is that it has displaced it.

After having posed diachronically, i.e., historically, the distinction between his two great models of society, Hayek redeploys it in synchronically by contraposing *taxis* and *kosmos*. The first of these terms, *taxis*, defines consciously instituted orders — all political projects associating collectivism with a common goal, all forms of planning, state intervention, the administered economy, etc. For Hayek, this is obviously a resurgence of the “tribal order.” The word *kosmos*, on the contrary, refers to “spontaneous,” self-engendered order, i.e., “naturally” stemming from the practices which characterize the “grand society.” This spontaneous order does not exist in relation to any goal. Its members participate in it while pursuing only their individual objectives, the interaction of their particular strategies determining mutual adjustment. Thus the *kosmos* comes about independently of human intentions and projects. According to the famous formula of Adam Ferguson (1723-1816), it “results from the actions of man, but not of his projects.”[7]

This definition of modern society as fundamentally and necessarily opaque leads Hayek to reject the classical definition of competition as a phenomenon presupposing, for its proper functioning, that economic and social players have information as complete as possible. Hayek rejects the idea of a transparent market: pertinent information can never be completely at the disposal of its agents. On the contrary, he claims that the best argument for the market economy is that information is always incomplete and imperfect, because in such conditions it is best to always leave each person to fend for himself with what he knows. Here competition is the result of *laissez-faire*, whereas in the classical model *laissez-faire* is implied by the hypothesis of pure and perfect competition.

The typical trait of the “grand society” is the structural excess of pertinent compared to available information. The so-called “synoptic” illusion consists in believing in the possibility of perfect information. Hayek’s reasoning is as follows: knowledge of social processes is necessarily limited because it is in a permanent state of collective formation. No individual or group has access to this. Thus no one can claim to have access to or to be able to take into account all of the parameters. Yet, effective social action demands complete familiarity with the pertinent facts. To the extent that such a familiarity is impossible, no one can claim to act on society according to his interests or even to undertake a perfectly adequate action in relation to the object in view. Hayek draws a sociological consequence from this epistemological state of affairs: some ignorance is inevitable; the incompleteness of information drives the impossibility to foresee the real consequences of actions, which leads to doubt about the operability of our knowledge. Since man is not omniscient, the best he can do is rely on tradition, i.e., habit sanctified by experience. According to Nemo: “real rationalism consists in recognizing the value of normative knowledge transmitted by tradition, despite its opacity and its irreducibility to logic.”[8]

The market is obviously the key to the entire system. In a society of individuals, exchange takes place within the context of the market, which is the only conceivable means of integration. For Smith and Mandeville, the market is an abstract mode of social regulation. It is governed by an “invisible hand” following objective laws which supposedly regulate relations among individuals, independently of any human authority. The market is intrinsically anti-hierarchical: it is a way of making decisions where no one decides for anyone other than oneself. Thus social order becomes confused with economic order, whose unintended results are actions undertaken by agents pursuing their best interest.

Hayek accepts Smith’s theory of the “invisible hand,” i.e., that totally impersonal mechanisms are at work in a free market. Yet Hayek makes some very important modifications. Smith operates on a macro-economic level: although operating in an apparently disorderly manner, individual acts end up miraculously contributing to the collective interest or to everyone’s well-being. This is why Smith allows for public intervention when individual aims do not bring about collective well-being. Hayek does not allow for this exception. Classical liberalism also claims that the competitive market allows for the optimal satisfaction of particular ends. Hayek argues that, since the ends cannot be known, they are never given. Thus it is not possible to give the market the ability to translate the hierarchy of values. Such a claim is tautological because “the relative intensity of the demand for goods and services, an intensity to which the market will adjust its production, is itself determined by the distribution of revenue determined by market mechanisms.” Having no priority, the market is not ordered according to goals: it leaves them undetermined and only deals with reconciling means. Furthermore, in classical theory the

optimal allocation of scarce resources is theoretically guaranteed by the adjustment of competitive markets forming a general balance. Following Mises and anticipating the critique eventually developed by G. L. S. Schackle and Ludwig Lachmann, Hayek rejects this static, Walras-inspired vision and tries his best to substitute an optimal institutional system for a socially optimal system of production, thus replacing the general static balance with a partially dynamic one.

Finally, Hayek claims that it is not the agents' freedom which makes exchange possible, but the other way around. This is crucial and has decisive consequences. From a classical viewpoint — the market in the strictest sense of the term — was still linked to the only economic sphere, while the state's role was to “complete the market” by guaranteeing its proper operation, even occasionally substituting for it. From the neo-liberal viewpoint, i.e., that of generalized economics, the market becomes an explicative model, an interpretative framework applicable to all human activity. Thus there is a marriage market, a crime market, etc. Politics itself is redefined as a market where entrepreneurs (politicians) try to be elected by responding to the demands of voters, themselves seeking to pursue their best interests. Hayek indirectly legitimates this vision by no longer posing the market merely as an economic mechanism allowing for the miraculous adjustment of individuals' private plans. Rather, it is an ordered formation, a spontaneously established order prior to and independent of all individual action, which through the price system allows for the optimal communication of information. Under these conditions, the market takes over the social. It is no longer just the model of human activity, but the activity itself. Far from dealing only with economic activity (Hayek tends to restrict the word ‘economy’ for elementary units such as enterprises and the home), it becomes a system of general social regulations, pompously called “catalaxis” (a neologism borrowed from Mises). It is no longer simply an economic mechanism for the optimal allocation of resources in a universe traditionally described as governed by scarcity — a mechanism ordered by some positive finality (individual happiness, wealth, well-being); rather, it is a sociological as well as political order, an instrumental formal support for the possibility of individuals to freely pursue their particular objectives. In short, it is a structure, i.e., a process with no subject, spontaneously managing the coexistence of the plurality of private goals, which imposes itself on everyone to the extent that, by nature, it prevents individuals as well as groups from trying to reform it.

The principle asserted here is obviously that of an individual activity closely associated with the market model of exchange. Freedom remains defined as the absence of constraints and coercion. It expresses “the situation where each person can use what he knows in view of what he wants to do” — a state of affairs guaranteed only by the order of the market. Freedom is no longer the means to achieve an objective through social action, but the impersonal gift historical evolution bestowed on men with the emergence of the abstract order of exchange. There is no freedom outside of the market!

Pierre Rosanvallon rightly claims that “somehow, liberalism turns the depersonalization of the world into the conditions for progress and freedom.”[9] Hayek's efforts are part and parcel of this vision to replace human power with social regulations as impersonal as possible. Locke had already argued that those in authority should set only general and universal rules. For Hayek, the social coherence that results not from sharing some collective goal but from the mutual adjustment of each person's anticipations is both logical and functional. A social state is coherent when its behavioral rules are not contradictory and conform with its evolution. In the same way

that for Popper one cannot establish the true but only eliminate the false (falsifiability), for Hayek, one cannot define fair rules but only determine those that are not fair. The least unfair rules are those which do not hinder the proper functioning of the market, which best conform to impersonal and abstract order, and which deviate the least from established practice. The good society is therefore one where the legislator's law (thesis) stays closest to the customs (nomos) which have allowed the emergence of the market. It follows that a constitution should not deal with substantial but only neutral and abstract rights, setting limits to legislative or executive action.

The law's objective is no longer to organize individual actions in terms of the common good or of some particular project, but to codify the rules whose only function is to protect individual freedom of action, i.e., to indicate "to each person what he can count on, which material objects or services he can use for his projects, and the kind of action he can engage in." According to Hayek, however, the legal order cannot protect the formation of individual anticipations in accord with the already instituted order of things. Conversely, only those individual anticipations in agreement with this instituted order can be regarded as legitimate. The rules will then be purely formal norms, without any substantial content -a necessary condition for them to be universally valid. Hayek emphasizes that "only if they are universally applicable, without any regard for their particular effects, will they be able to maintain the abstract order." Of course, individuals will all be set as equals in relation to these formal rules, but since they refer to a concrete reality which is nothing other than liberal capitalism, their equality will have no substance: formal equality will go hand in hand with real social inequality.

A society organized according to market exchange would be able to obtain the support of all without ever proposing any common goals. It would institute an order of pure means, leaving everyone responsible for their own goals. What aggregates men in the *catalaxis*, defined as "the order engendered by the mutual adjustment of numerous individual economies to the market,"[10] is not a community of goals but a community of means expressed in the abstract order of the law. Along with Hume and Montesquieu, Hayek also believed in the pacifying virtue of exchange. By avoiding the dangers of face to face relations typical of the "tribal order" and the debates concerning collective goals, the market would neutralize rivalries, calm passions, and put an end to conflicts. If all members of the "grand society" were aggregated within a system of means substituted for a debate concerning goals, oppositions would disappear or find their own solutions.

This social model immediately poses a problem of interpretation. At first glance, one could be tempted to consider the idea of a spontaneous order as an avatar of the natural order, as conceived by counter-revolutionary theoreticians most hostile to voluntarism. This, however, would be a mistake because Hayek does not present the spontaneous order as a return to a state both original and permanent, somehow constitutive of all social orders, but as an order acquired over time and culminating in the modern era. It is an order resulting from a "natural" evolution, but which is still not a "natural order." The manner Hayek posits the autonomy of the social gives his reasoning the appearance of holism -at least to the extent that he sees the market as a globalizing totality implying exchange relations between agents which are not attributes of the isolated individual. Finally, the idea of a spontaneous order seems to imply a systems theory notion of self-organization, and Hayek himself at various times sought to integrate his ideas with those of P. A. Weiss, with cybernetic models (Heinz von Forster), with concepts of complexity

(John von Neumann) and “auto-poesis” (Francisco Varela, H. Maturana), with the thermodynamic of open systems (Ilya Prigogine), etc. [11]

In fact, Hayek reformulates earlier ideas put forth by Mandeville, Smith, and Ferguson — the three founders of the new theory of “civil society.” Within the context of liberal thought, the originality of these authors was to distance themselves both from Jeremy Bentham’s naive utilitarianism and from the philosophy of natural right. Their contribution consists in no longer searching for the origin of society (what led Locke to postulate the social contract) but focusing on regulation or social functioning. Gautier has argued that this evolution corresponds to the shift from a vision of the world based on theodicy to one based on sociodicy.[12] The essential point is dismissal of the fiction of the contract and recognition of social ties as components of human nature. A society constituting the natural framework of human existence no longer needs to unveil the secret of its “origin” in a contractual agreement between isolated individuals. The market mechanism substitutes for the artifice of the contract as a foundation of social life. This avoids the aporias typical of contract theories inherited from Hobbes or Locke and is the foundation of the Smithian theory of the “invisible hand” — a theory which takes into account habits, customs and even the traditions which have accompanied the emergence of the market. To some extent, as with Ferguson, market exchange becomes the specific modality of social relations based on custom.

Gautier is right, therefore, in speaking of an “impure individualism” to describe this new liberal process which seeks to found “the relation of cogenesis of the one and the whole on a specific anthropology” in order to reconcile individual interest and the social whole without recourse to a social contract. The consequences are crucial. If the market model alone explains the functioning of society, then the economy is the best way to realize the political. This implies an indictment of public power, because if man is naturally social it is no longer necessary to “force” him to live in society: “The state is no longer constitutive of social bonds, it only guarantees their permanence.” Better yet, public power must always be “neutralized” in order to prevent it from “invading” civil society. Politicians are thereby delegitimated in their attempt to realize particular goals. By rejecting the social contract and by focusing on a spontaneous order beyond nature and artifice, Hayek places himself squarely within this school. This explains the holistic appearance of his system: the market is assimilated to the social “whole” and constitutes the highest form of regulation on a supra-individual level.

Here appearances must not mislead. One can speak of holism only when the whole has its own logic and goal, i.e., characteristics different from those of its constituent elements. But this is precisely what Hayek rejects as typical of a “tribal order.” Even though the individual is never entirely isolated, since he is always in society and, from a moral viewpoint, fully human only in relation to his fellow human beings, in the “grand society” social relations can be understood solely in terms of the multiplicity of its parts. Society is organized only in terms of its individuals, in the same way that the market is seen only as an aggregation of individual preferences: society is constituted by the interaction of particular interests. The social is thus deduced from the individual, not the other way around. The individual is the ultimate irreducible unit. It follows that the intelligence of the whole is a function of its parts and that there cannot be any collective entity, such as a people, a culture or a nation, with an identity different from that of the sum of its individual components. Finally, individuals’ behavior is governed only by the goals they pose for themselves. The members of society are social atoms “free to use their own

knowledge for their own objectives.” What guides their choices is obviously the pursuit of their best interest. Hayek is not so naive as to believe that everyone behaves rationally. He does claim, however, that such behavior is advantageous in that, in a society where it is comparatively more profitable to act rationally, rational behavior will gradually spread by selection or imitation. Thus, in social life the individual is compelled to behave as an economic agent in the market. This is all within the paradigms of methodological individualism and homo oeconomicus.

Hayek actually poses the individual less autonomous than independent since, as Jean-Pierre Dupuy points out, “autonomy is compatible with the submission to a universally-valid, supra-individual sphere — to a normative law limiting individuals according to rules of a self-grounded normativity — while independent individuals are unable to willingly or consciously pose an order as a project.”[13] Beyond all consideration of the formation of structures ordered in terms of aleatory fluctuations, this distinction indicates the limits of a possible reconciliation between Hayek’s ideas and the systems theory notion of self-organization: the latter implies an anti-reductionist vision where the whole inevitably exceeds the sum of its parts.

## II

Having defined the “grand society,” Hayek goes on to study the ideology he opposes, which he calls “constructivism.” This ideology, he says, is the result of a “synoptic illusion.” It consists in believing that social arrangements can be the result of man’s voluntary intentions and actions, i.e., that it is possible to construct or reform society according to some project. Constructivism claims that “human institutions will only serve human designs if they have been deliberately elaborated according to these designs.” Yet, Hayek maintains it is impossible to relate institutions to willful acts, since this requires the kind of complete information which is never available. Thus constructivism systematically overestimates the possible role of social engineers, reformers and politicians.

Hayek first located the source of constructivism in scientism, in the human sciences’ “servile imitation” of the concepts, methods and objectives of the physical sciences. He next went to Descartes. The Cartesian mechanistic approach, which he considers a French disease, calls for logico-mathematical intelligibility in the social sciences as well as elsewhere and that, from this perspective, institutions can be constructed and reconstructed at will, like so many means devised to achieve particular goals. Hayek regards this as a “presumption of reason” because allegedly reason cannot determine the right goals conducive to the common good but only the formal conditions of the agents’ activity. [14]

For Hayek, the archetype of constructivism is socialism, which represents the resurgence of the “tribal order” at the very heart of the “grand society.” Accordingly, the success of socialism results from the fact that it emphasizes “atavistic instincts” of solidarity and altruism which today have become anachronistic. From Hayek’s viewpoint, however, “socialism” must be understood in a broad sense. It gradually comes to designate all kinds of “social engineering” and all types of political and economic projects. Hayek criticizes Descartes’ followers, as well as the advocates of a holistic or organicist concept of society, the counter-revolutionaries as well as the romantics. According to him, in a strict sense, socialism, Marxism, fascism and social democracy are all the result of the same “constructivism,” which begins with the most modest kinds of state intervention or social reform. Assigning a goal to production, imposing solidarity, redistributing

revenues to benefit the least privileged, legislating on the environment or social protection, progressive taxation, imposing any type of economic protection — all this is the result of “constructivism,” which can only lead to catastrophe because the order of the market by definition forbids any attempt to intentionally act on social realities. Hayek constantly reiterates that there can be no collective agreement concerning goals, and one should not try to find one, because all such efforts would result in failure. All managerialism, all planning and all political projects are latently totalitarian! This is what leads Hayek to extremely radical positions, as when he advocates privatizing the issuing of money, [15] justifies monopolies,[16] rejects all macro-economic analysis and goes so far as to assume, in his last book (*Fatal Presumption*), that all socialist systems are doomed to starve their populations to death.[17]

The classical liberal school retained the idea of social justice, at least in the sense of supporting transitory regulations. Hayek completely rejects this in one of the most violent critiques ever written.[18] Social justice, he claims, is a “mirage,” an “inept incantation,” an “anthropomorphic illusion,” an “ontological absurdity.” In short, it is a meaningless expression, except in the “tribal order,” i.e., within a social space instituted by people with well-defined objectives. To prove this, Hayek redefines *catalaxis* as a social game. Being impersonal, the rules of the game are the same for everyone. In this sense, all the players are equal. Obviously, that does not imply that they can all win, since in any game there are winners and losers. In addition, since only human behavior resulting from deliberate choices can be regarded as “just” or “injust,” it is a logical error to apply these terms to things other than voluntary human acts. Social order can thus be declared just or unjust only if it results from voluntary acts. However, Hayek goes out of his way to show that this is not the case. Since the social game has no author, no one is responsible for its results, and it is both childish and ridiculous to claim that it produces “unjustice.” Actually, it is no more “injust” to be unemployed than to have failed to choose the winning number in the lottery, because only the players’ behavior can be considered just or unjust, not the results of such behavior. As the social is not the result of intentions or projects, no one is responsible for the fact that the most underprivileged did not win first prize. Thus “losers” are wrong to complain. Rather than giving in to “atavistic instincts,” which lead them to believe naively that every phenomenon has an identifiable cause, or looking for those responsible for the “injustice” they suffer, they would be better off to blame themselves or to admit that their “bad luck” is in the order of things.

Hayek also writes: “The manner in which advantages and burdens are affected by market mechanisms should in many cases be regarded as very unfair if this allocation resulted from the deliberate decision of a particular person. But this is not the case.” Once this is admitted, the consequence follows. To demand social justice is unrealistic and illusory. To seek social justice is an absurdity which results in the ruin of the legal system (*l’Etat de droit*). Thus Nemo writes matter-of-factly that social justice is “profoundly immoral.”[19] The traditional notion of distributive justice is immediately challenged. All notions of instituted solidarity, predicated on the notion of the common good, are also condemned as “tribal archaic revenge.” According to Hayek, “the ‘grand society’ has nothing to do with, and cannot be reconciled with, solidarity in the true sense of the pursuit of common, known goals.” Hayek even rejects equality of luck, for this would nullify differences between “players” before the beginning of the game, which would falsify the results. Of course, unions must also disappear, for they are “incompatible with the foundation of a society of free men.” As for those who complain of being alienated by the market order, they are “non-domesticated, non-civilized beings.”[20] Here is “liberalism at the



service of the people”!

The theory claiming that the market is never unfair because of its impersonal and abstract nature obviously has the advantage of forbidding the measure of reality in terms of concrete results. With the general interest reduced, at best, to maintaining public order and to providing some collective services, and with justice defined in terms of formal-universal rules limited to regulating the agents’ behavior, the market cannot be evaluated in terms of its substantial dimension, i.e., according to its results. The same goes for justice, which would have no substantial content because goals do not have their own normativity. In society there is no life “content.” Furthermore, since social justice cannot be defined positively, any debate about its essence is useless. The system is thus perfectly “locked.” One has to obey the market order because it has not been wanted by anyone and it simply imposed itself. One must follow the established order without trying to understand it or rebelling against it. Similarly, “losers” must develop a new moral whereby “it is only normal to accept the course of events, even when they are unfavorable.” This is an unqualified apology for success, no matter what the cause, and at the same time the radical denial of equity in the traditional sense of the term. It is also a perfect way to soothe the conscience of “winners” and to enjoin “losers” from revolting. Hayek’s viewpoint thus leads to a “veritable theorization of indifference toward human unhappiness.”[21] Ultimately, the market replaces the Leviathan.

The “grand society” turns out to be as unpolitical (impolitique) as possible.[22] Public order is seen as resulting without any intentions and no big political project can be grounded on will or reason because there is no social master of the historical process. Ultimately, the rule of the market tends to deprive public power of an object. Against Carl Schmitt, who makes law dependent on authority and political decision, Hayek claims that authority cannot and must not be obeyed except when it applies the law. (There is, however, considerable discretion concerning the nature of legal obligation). At the same time, against Hans Kelsen’s legal positivism, which identifies norms (loi) with the legislator’s decision and as the essential source of law (droit) and justice, he declares that law has always existed — before legislators’ and the state’s authority. His praise of common law seeks to demonstrate that law preceded all legislation, which is the foundation of the theory of legal normativism. This is the new basis of the legal system (Etat de droit), where the state’s only role is to preserve society’s “spontaneous order” and to manage its resources. Within such a context, the politician is reduced, at best, to the role of a lifeguard of formal legal rules and to the administrative management of a civil society already ordered by the market. He does not have to produce this society, assign it a goal, spread values or generate cohesion. Hayek vigorously rejects the notion of sovereignty, traditionally defined as indivisible authority (whether the prince’s or the people’s), in which he sees only a “constructivist superstition”: the society which functions best is the one in which no one rules. “In a society of free men,” he writes, “in normal times the highest authority must have no power to rule or give any orders whatsoever.”[23] Its essential goal is to place public power at the disposal of the “nomocracy.” He even denies that there can be “political necessities.” Nemo adds: “All things considered, the mere idea of political power is incompatible with the concept of a society of free men.”[24] Since there is no politics without power, this is clearly a call for the total elimination of the political.

Here democracy is defined in a purely legal and formal manner. Furthermore, Hayek openly claims that his liberalism is only conditionally compatible with democracy. More precisely, he

adheres to constitutionalism and to the theory of a representative and limited government. But he has no theory of the state. He knows only “government,” which he defines as the “administrator of common resources,” i.e., a purely utilitarian device. He adds that democracy is only acceptable as a method of government which does not question any liberal principles. In fact, Hayek’s postulate ends up denying democracy understood as a regime with a substantial content (an identity between the ruler and the ruled) and resting on popular sovereignty. Like the market, democracy (or what remains of it) becomes a matter of impersonal rules and of formal procedures without any content.[25] Hayek vigorously criticizes majority rule, which he sees as an arbitrary principle opposed to individual freedom. According to Nemo, majority rule is valuable as a “method of decision, but not as a source of authority to determine the very content of the decision.”[26] From this follows the rejection of the notion of people as a political category, the denial of the idea of national sovereignty (“there is no will of the social body that can be sovereign”) and the refusal of all forms of direct democracy.[27]

Paradoxically, this “unpolitical” ideal brings Hayek’s ideas close to Marxist “constructivism,” which criticizes Hegel on the basis of Smith by proclaiming the self-sufficiency of civil society. In the classless society, the withering away of the state ultimately leads to the obsolescence of politics. Marx, who never entirely breaks with a certain individualism, does not consider man as a social being except to the extent that he participates in the construction of society. “Within the Marxist framework,” writes Bertrand Nezeys, “socialism must represent the triumph of an individualist society or simply of individualism –private society representing only an alienated form of it.”[28] Rosanvallon, who has no problem seeing Marx as “the direct heir of Adam Smith,” remarks that “anti-capitalism has become synonymous with anti-liberalism, so that socialism has no other real objective than to fulfill the program of the liberal utopia.” Furthermore, “utopian socialism rejects capitalism entirely, but remains blind to the profound meaning of the economic ideology within which it functions. Similarly, liberalism denounces collectivism, but does not see it other than as a radical despotism; it does not analyze it in relation to individualism, in so far as it also conveys the illusion of a depolitized society within which democracy reduces to consensus.”[29] It remains to be seen how this ideal is not fundamentally totalitarian, at least if one admits, with Hannah Arendt, that totalitarianism is the desire to dissolve politics more than the desire to extend it everywhere.

### III

Hayek’s critique of constructivism is closely linked to the representation of the social as an ensemble concerning which individuals can only have incomplete information. But does he draw the right conclusions from this? Obviously, human information is always incomplete. Contrary to Hayek, however, this is also true for the “tribal order,” even if the number of parameters is smaller. Furthermore, under the impact of slow processes, of interactions with no clearly identifiable author, human society generates many social facts impossible to link to any particular intentions or projects. Cybernetics and systems theory provide a convincing account of this predicament in ways which relate it to certain intuitions of organicist thought. Moreover, one cannot deny the value of traditions validated by historical experience. Finally, it is obvious that there is frequently a gap between a project and its fulfillment — resulting in unforeseen consequences often regarded as “perverse effects.” Yet, this in no way implies the logical impossibility of undertaking any social or political action, or of trying to shape a social order according to a particular goal, without all voluntary actions seeking improvement necessarily

making things worse.

At first, Hayek pretends to believe that all constructivism is rationalism, which betrays his “technistic” concept of voluntary acts. Human practice is rarely the result of reasoned examinations of pros and cons. This is clearly the case in the “tribal order,” concerning which Hayek says that “instincts” are king. But it is also true of the “grand society,” especially in the political domain, where determination of collective goals is inevitably a function of value judgments rarely founded on reason. Next, Hayek argues as if human decisions require knowledge of all parameters, which alone would allow the proper evaluation of consequences and results. This is predicated on complete ignorance of decisions, notably of the fact that, far from translating through a purely linear effect reflecting a kind of omniscience, they constantly undergo corrections — men being always able, after the initial decisions, to multiply subsidiary decisions meant to modify the chain of cause and effect according to new information and preliminary results. “Contrary to what Hayek claims,” writes Gerard Roland, “the success of an action does not necessarily depend on complete knowledge of pertinent facts. One can assume that some scientific, technical, economic, political, social, or other action, undertaken during the history of humanity, was not based on such complete knowledge. This is perhaps why no action is totally exempt from error in relation to its initial intention, but this relative lack of knowledge has never been an absolute obstacle to the success of an individual or collective human action ... The process of knowledge is not and has never been totally prior to action. On the contrary, it is closely and dialectically interwoven with it. The failure and success of past actions provide knowledge for future actions, which will succeed or fail in view of this new knowledge, and so on, in a process not necessarily linear and ,unpredictable, but always marked with the goals people set for themselves.”[30]

Actually, the critique of constructivism clashes with common sense, according to which “to analyze suffering, a crisis, or evil, is always to analyze them as a problem, as one which can be solved and whose solution is technical.”[31] In this respect, to claim that one cannot or, better yet, must not, correct a situation for which no one is originally responsible, is a pure paralogism. It is actually irresponsible not to act on effects, even if no one is responsible for their cause. Thus the question is not to know if a situation can be judged “just” or “unjust,” according to abstract criteria, but rather if it is “just” to accept what is not acceptable for ethical, political or other reasons. Is it imaginable to fail to improve the security of boats or planes under the pretext that “no one is responsible” for the nature of the oceans or of space? By shifting the criteria of “justice” from human subjectivity to the objectivity of the situation, by claiming that a situation has no identifiable culprit in order to conclude that it is impossible to change it, Hayek reveals his personal preferences. But he does not demonstrates that man is by definition powerless in relation to a social fact no one wanted.

Finally, Hayek seems to argue that man is not omniscient in order to render him powerless. Yet, man’s ability to modify a state of affairs depends much more on the means at his disposal than on the extent of his “information.” With Hayek, it is as if the only alternative was between an actually utopian will to reconstruct the whole social order from the bottom up, making a “tabula rasa of the past,” and a total acceptance of the established order (or disorder). Within this logic of all or nothing — metaphysical because of its aim toward the absolute, all political projects, all will to reform or transform can only appear as an unbearable disruption [rupturalisme]. Such an approach feeds into the classical liberal condemnation of the autonomy of politics for the simple

reason that, since politics is primarily project and decision, ultimately there is no politics which is not constructivist. But it is also a process that can turn against its author. If, as Hayek says, it is actually impossible to anticipate the real results of human actions, so that the most logical attitude is to do nothing to try to change society, it is unclear why it is necessary to try to establish the liberal order, which should unavoidably come about because of its intrinsic excellence and of the advantage it provides to the society which adopts it. It is equally unclear why one should follow Hayek's ideas, e.g., his monetary or constitutional proposals,[32] which entail a more or less radical rupture in relation to the present situation.

Hayek's critique thus boils down to an incapacitating system, destined to comfort the worst conservatism. To claim that the market is neither fair nor unfair is tantamount to claiming that its effects should not be judged, that it is the new divinity — the new God in front of which one must bow. Then one must no longer look for values to realize in society, but simply recognize the existing value system which allows one to be a member. One must mind one's own business without ever calling into question the social order or worrying about the course of history, which can unfold best only without human interference. This is the kind of individual "autonomy" Hayek allows. The individual is emancipated from political power exercised in the name of the social totality only to end up unable to undertake any projects with his peers. Hayek puts it quite forcefully: "Man is not the master of his destiny and never will be." Man can do what he wants, but he will not know how to want what he does. The object of a society which only functions well on its own is thus defined in terms of powerlessness and submission. According to Hayek, freedom can only be exercised within the context of that which denies it. Thus it is not an exaggeration to say that man is thereby deprived of his humanity because, if there is a fundamental characteristic which distinguishes human beings from animals, it is the ability to conceive and realize collective projects. By depriving humanity of this ability, by turning market monotheism into the new "empire of necessity," Hayek surreptitiously regresses to the "pre-tribal" stage of pure animality.[33]

Here it is clear that it is impossible to use Hayek's analysis to return to tradition. Actually, Hayek only praises tradition in an instrumental context, in order to legitimate an order based on the market. In his eyes, traditions can only be valuable if they constitute "pre-rational regulations," which have favored the emergence of an impersonal and abstract order where the market constitutes the most advanced result. When he speaks about traditions favorably, it is to evoke the slow evolution of societies toward modernity, the sedimentation of usages which have allowed (at least in the West) the "grand society" to triumph. Thus all other traditions can only be rejected. There is, however, a contradiction in principle between traditions that, by definition, are always part of particular cultures, and the universality of the formal rules Hayek advocates. Since, as it is commonly admitted, Western modernity has rolled over all traditions everywhere, it is easy to see here that Hayek's "traditionalism" only relates to the tradition ... of the extinction of traditions.

In this regard, Hayek remains true to some of his predecessors' perspectives, in particular David Hume's, to whom he frequently refers. In the 18th century, in his Political Essays, Hume already criticized Locke and those like him, who accorded too important a place to reason: by itself, reason is unable to oppose the passions. The latter can only be channeled by "non arbitrary artifices," which are not the result of a preestablished design. Among these non-arbitrary artifices are habits, customs and institutions sanctified by use. Justice is itself a "grown institution," while

custom turns out to be the best substitute for reason in guiding human practice. Thus the emphasis on traditions allows him to hold back passions, all the while economizing on the fiction of the social contract. For Hume, however, institutions are not the result of a “selection” during the course of history. If they are not arbitrary, it is because they correspond to the general principles of understanding.[34]

The real nature of Hayek’s “traditionalism” clearly appears in his critique of the “tribal order,” whose different forms of constructivism constitute so many anachronistic resurgences. The “tribal order” is actually nothing more than traditional society as opposed to modern society, or community as opposed to society. In fact, all of the organic and holistic characteristics of traditional and communitarian societies are condemned by Hayek as traits antagonistic to the “grand society.” The tradition he defends knows neither collective goals nor the common good; neither social values nor a shared symbolical imaginary. In short, it is a “tradition” deemed valuable only to the extent that it is born out of the break-up of “archaic” societies. Paradoxically, it is anti-traditional thought camouflaged as the “defense of traditions”!

According to Yvan Blot, “a liberalism of the traditionalist kind is national, because the nation itself comes out of tradition and not from an arbitrary construction of the spirit.”[35] This statement presupposes a double misunderstanding. On the one hand, the modern idea of the nation is truly an “arbitrary construction of the spirit,” because it is first and foremost a creation of Enlightenment philosophy and of the French Revolution — the kingdom of France, which historically preceded it, having itself been constructed in a manner necessarily voluntarist and “constructivist” by the Capetian dynasty. On the other hand, it is common knowledge that Hayek’s or any other liberalism cannot assign a privileged place to the nation, because its concept of the social does not operate in a politically bound territory but in a market. For the mercantilists, the “national” territory and economic space were still confused and Smith, in his *Wealth of Nations*, sharply differentiates these two concepts. For Smith, the boundaries of the market are constantly constructed and modified, no longer coinciding with the static boundaries of the nation or the kingdom: it is the domain of the market, no longer that of the territory, which is the real key to wealth. As such, as Rosanvallon put it, Smith is “the first consistent internationalist.” After Smith, the same postulate will be advocated once again by the whole liberal tradition. While the nation can provide citizens with an identity, it cannot become the criterion of economic activity nor can it control or limit exchanges. Consequently, it is impossible to bring together legal, political, and economic spaces within a given territory and under a particular authority. From the viewpoint of economic activity, there cannot be any boundaries: *laissez-faire*, *laissez-passer*. Correlatively, the merchant is no longer anything but an economic entity. According to Smith: “A merchant is not necessarily a citizen of any particular country. He is largely indifferent where he carries out his business, and only the slightest disgust is necessary for him to decide to take his capital from one country to another, and with it all the industry that capital financed.”[36] This statement captures all the ambiguity of “national-liberalism.”

#### IV

Coming back to Hayek’s concept of the market, by instrumentalizing traditions, to resolve the question of the foundation of obligation in the social pact by the legitimacy of the market. This is a constant preoccupation in liberal thought. The point is always to find a natural foundation for the social order: “sympathy” with Smith, “custom” for Hume, etc. This poses the problem of the

“state of nature” hypothesis, which in Locke’s thought is resolved by means of the deployment of the fiction of a primitive scene: the social contract. As already indicated, in Smith’s line of thought, this fiction is useless: the “invisible hand,” whose intervention produces the necessary market adjustments, also explains the permanence of the social order. Unlike other liberal authors, however, Hayek does not simply regard the market as “natural.” On the contrary, he recognizes that it comes about at a particular time in history. Yet, it is only this coming into being that he considers natural: without originally being a natural phenomenon, the market is supposed to appear “naturally” under the impact of a gradual automatic selection. Hayek’s naturalism relies on the idea of inevitable progress based on objective laws unshackled by cultural evolution.

Hayek’s cleverness consists in this: by combining the evolutionist theory and the doctrine of the “invisible hand,” the “naturalness” of the market is established without having to posit it as original. He does away with the idea of a natural order or self-evident truth. At the same time, he appropriates the liberal postulate according to which there are objective laws such as the free interaction of individual strategies leading not only to order but to the best possible one. As such, however, he does not avoid the classic aporia of liberal thought in explaining how a viable social order can be constituted solely on the basis of individual sovereignty. The difficulty is “to presuppose the presence of the whole in each part. If the social was not already, in any way, contained in the parts, it is hard to see how they could agree.”[37] Then the necessary postulate is that of a continuity of the parts with the whole. However, this does not work, if for no other reason than Bertrand Russell’s theory of logical types (“a class cannot be a member of itself, anymore than one of its members can be the class”). In other words, there is necessarily a discontinuity between the whole and its parts, and this poses problems for liberal pretenses.

Hayek’s vision of a “primitive” man living in the “tribal order,” while rather different from that of Hobbes or Locke, or even Rousseau, is otherwise anthropologically trivial. To regard traditional societies as privileging voluntarist (“constructivist”) behavior is questionable, because these societies are governed precisely by traditions seeking to reproduce themselves. On the contrary, it can be argued that it is the “grand society” which welcomes new projects and deliberate designs. In other words, it is traditional and “tribal” societies which come about spontaneously, while modern societies are instituted. *Alain* Caille rightly observes that, to make freedom a function of conformity to the traditional order “leads paradoxically to the conclusion that the only just society conceivable is a closed one rather than the Liberal Grand Society.”[38] By definition, the society whose “themis” is closest to “nomos” is actually a closed traditional society (open, however, to the cosmos): from Hayek’s viewpoint, it is even more “just” (or, rather, even less “unjust”) in that it seeks to perpetuate its identity by founding itself on usage.

The idea according to which long-lasting institutions are the result of “men’s action, but not their designs,” is not any less questionable. The English Right, frequently cited as a typical example of an institution based on custom, was really born in a relatively authoritarian and brutal manner “following royal and parliamentary interventions, and it is the result of the creative work of lawyers belonging to the centralized administration of justice.”[39] More generally, the whole English liberal order is the result of the 17th century conflict between Parliament and the Crown rather than of spontaneous evolution.

As for the market, if it is not the natural form of exchange. Its birth cannot be related to a slow evolution of customs and institutions free of all “constructivism.” Rather, the opposite is the

case: the market constituting a typical example of an instituted order. As already indicated, the logic of the market, a phenomenon both particular and recent, does not come into being until the end of the Middle Ages, when the emerging states, concerned with monetarizing economies in order to increase their fiscal resources, began to unify local and long distance commerce at the heart of “national” markets they could more easily control. In Western Europe, France in particular, the market, far from being a reaction against the state, came into being through its initiative. Only subsequently did it emancipate itself from “national” borders and constraints, with the gradual growth of the autonomy of economics. Strictly a voluntary creation, at the beginning the market was one of the means the nation-state used to dispose of the feudal order. It sought to facilitate fiscal practices in the modern sense of the term (non-market, intra-communitarian exchanges were intractable). This entailed the gradual elimination of autonomous organic communities and, consequently, centralization. In this way, both the nation-state and the market favored an atomized society where individuals are gradually disentangled from all intermediary socialization.

Finally, Hayek’s dichotomy between spontaneous and instituted order is untenable. It simply never existed. To say that society evolves spontaneously amounts to claiming that it is transformed by the sole impact of man’s voluntary actions. The claim that the logic of spontaneous order could not interfere with that of the instituted order without resulting in catastrophic consequences is also completely arbitrary. The history of humanity is the result of such an interplay. The claim that the formation of the social order is the result of “unconscious” practices, independent of all goals or collective aims, is simply wrong. There has never been such a society. The self-organization of society is both more complex and less spontaneous than Hayek claims. If rules and traditions influence human life, one cannot overlook, without falling into a purely linear and mechanical vision, that men, in turn, also affect rules and traditions. When all is said and done, Hayek does not see that societies are never instituted only on the basis of spontaneous practices and individual interests, but first in the symbolic order, on the basis of values whose representation always implies a gap with respect to this practice.

The question also arises concerning how one moves from the “tribal” and traditional order to that of the “grand society.” Although essential for his argument, Hayek does not elaborate this point. How could a particular society, say, a communitarian and holistic one, “naturally” give birth to an essentially individualistic society — a society of the opposite type? It is possible to answer this question by following Louis Dumont, i.e., by describing the emergence of modernity as the result of the slow process of secularization of Christian ideology. But Hayek never pays much attention to ideological factors and, at any rate, it would be problematic for his thesis to claim that the “grand society” came out of a “constructivist” rapture. (Actually, what is more constructivist than the will to create a new religion?). This is why he falls back on the evolutionist scheme, i.e., to a social Darwinism entailed by the idea of progress.

Of course, Hayek does not fall into a crude biologism. His Social Darwinism, carefully outlined in *The Constitution of Liberty*, consists primarily in positing human history as the reflection of a cultural evolution functioning according to the model of biological evolution. As in all liberalism, economic competition is seen as advancing progress just as, in the animal kingdom, the “struggle for life” is supposed to pave the way for selection. Traditions, institutions and social facts are also explained in this manner. Similarly, there is a constant surreptitious shift from facts to norms: liberal society and the market economy are values since they have been

“naturally selected” in the course of evolution. Value is thus a function of success. This view is particularly explicit in Hayek’s last book,[40] where capitalism is seen not so much in terms of its economic efficiency but as the non plus ultra of human evolution. This identification of value with success is typical of all evolutionary visions of history. If evolution “selects” what is best adapted to the conditions of the moment, all that has happened in history can only be regarded in an approving and optimistic manner. Selection sanctifies the best — the proof that they are the best being that they have been selected. The replacement of the “tribal order” by the “grand society,” the rise of modernity, the success of individualism over holism, are thus part of the order of things. In other words, the state of evolution reflects exactly what must be. Human history can then be read as progress, reinterpreted by Hayek as the march of “freedom.”[41] “In a universe without progress,” writes Henri Lepage, “freedom would have no *raison d’être* ...”

Obviously, the parallel between cultural and biological evolution raises methodological problems, beginning with the question as to what the liberal order is best “adapted.” From this viewpoint, Hayek’s almost mechanical application of the theory of natural selection to social values and institutions does not escape the criticism that the theory is tautological. As Frydman remarks, “the utilitarian-evolutionary perspective which inscribes cultural developments in a finalized sequence is either trivial or unverifiable. It is trivial because human institutions are necessarily adequate for the goals or the survival of each society that produces them. It is unverifiable because, if it is proper to claim that institutions are adapted, and not even necessarily as a whole and always relatively in terms of particular objectives, there is no escape from this vicious circle in order to be able to say that these are the best, or the fittest which were ultimately selected.”[42] According to Jean-Pierre Dupuy, if Hayek “had followed to the end logical and systems theories of self-organization, of which he was from the beginning an advocate, he would have understood that they cannot be accommodated to the vicious circles of neo-Darwinism on the subject of the survival of the fittest.”[43]

This evolutionary model also clashes with Western particularity which, as in all ethnocentric viewpoints, is posed as the embodiment of normality, while, on the contrary, it is the exception. Hayek never explains why the liberal order and the market were not “selected” as the most adequate forms of life in any society other than in the West. He also does not explain why, in other parts of the world, social order “spontaneously” evolved in other directions ... or did not evolve at all.[44] More generally, Hayek does not seem to realize that all forms of “spontaneous” order, including those in the West, are not necessarily compatible with liberal principles. A social system can evolve “spontaneously” toward a traditional or “reactionary” order as well as toward a liberal one. It is also by arguing for the “natural character” of traditions that the counter-revolutionary school, represented mainly by Bonald and Maistre, develops its critique of liberalism and pleads for theocracy and absolute monarchy. Hayek reasons as if common sense were spontaneously liberal, which clashes with historical experience, and as if it developed autonomously, while one of the characteristics of modern society is precisely its heteronomy. It cannot be otherwise: if the rise of the liberal order is not solely explained by “natural selection,” its entire system immediately collapses.

In fact, however, the market order has not been “selected” everywhere. Then how can one claim that the selection from which this order is supposed to result is “natural?” Moreover, how can one show that this order is the best there is? Here, the difficulty for Hayek is to go from stating a supposed fact to stating a norm. From the claim that institutions cannot be the product of



voluntary human designs (allegedly a fact), he concludes that there must be no attempt to transform them (a norm). From the claim that institutions are the result of a cultural evolution functioning according to the model of biological evolution (allegedly a fact), he concludes that such a result necessarily constitutes progress (a norm). But then he becomes caught in a classic aporia: “is” is not equivalent to “should be.” In reality, Hayek knows very well that his preference for a system of particular values, in this case the liberal order, cannot be logically grounded. This is why he conceals his choice behind evolutionary considerations, which confers upon his reasoning an air of objectivity. Furthermore, there is a contradiction between claiming that all moral rules are equal in that they result from a “selection” guaranteeing their adaptation to social life, and Hayek’s need to show that liberal society is objectively the best. The question here is whether the liberal order is the best because of its intrinsic qualities, or because it has been “sanctified” by evolution. These are totally different things. If the answer is that the liberal order is the best because it has been “naturally selected” in the course of history, it is then necessary to explain why it was not selected everywhere and why, moreover, completely different orders were selected. If, on the other hand, the answer is that it is the best because of its own merits (the position of the classic liberal school), then the market is no longer a norm but a model, i.e., a system among others, and it is no longer possible to demonstrate its excellence by relying on a fact external to these virtues, in this case, evolution.

Hayek cannot escape this dilemma other than by falling back once again on that utilitarianism which he claimed to have left behind, i.e., by claiming that the market no longer constitutes a means to coordinate all human activities without any plans, that it is simply the generic model of organization most conducive to human development. Thus he does not avoid recourse to this process when he explains that the “grand society” came about “because the most efficient institutions prevailed in a competitive process.” But such reasoning implies a double inconvenience. On the one hand, it leads back to a totally arbitrary judgement: to claim that all human aspirations boil down to a principle of efficiency which allows the best to materially enrich themselves is simply another way of saying that there is no higher value than this enrichment (while Hayek claims that the economy does not have as its main goal the creation of wealth). But then, on the other hand, it is no longer clear what is the advantage of a market defined as an epistemological tool allowing access to a global order. If the superiority of the market actually rests only in its ability to produce wealth, and if the first priority is self-enrichment, there is no longer any reason for those who fail to be satisfied with their lot or to find the unequal distribution of goods “normal.” Thus Caille poses the right question: “Does not making market efficiency the criteria and the goal of justice amount to reintroducing in its very definition considerations allegedly done away with?”[45] By falling back on a utilitarian appreciation of the market, Hayek renders null and void all he has said about the “non-injustice” of the “grand society.”

Hayek’s critique of utilitarianism appears the least ambiguous. Linked, along with that of rationalism and positivism, to the denunciation of “constructivism,” it aims at best for the “straight utilitarianism” of a Jeremy Bentham, who defines general happiness as the happiness of the greatest number. According to Hayek, this definition remains too tied to the idea of the common good. It actually legitimates the logic of sacrifice, which it closely relates to a numeric quantity. Pareto proposed the principle that, if some people can bring about a social transformation without others suffering from it, then this transformation is to be recommended. Bentham’s utilitarianism transgresses this principle by going too far. If what is essential is the

satisfaction of the majority, it can be argued that a transformation which improves the gains of the greatest number while worsening the losses of a small number is still justified. Hayek rejects the idea that the sacrifice of a few is legitimate if it contributes to the advantage of all others (which is also one of the points of the victimological mechanism of the theory of the scapegoat),[46] simply because he does not allow the notion of “collective utility,” even if defined as the simple aggregation of individual utilities. Here his position is indistinguishable from that of Robert Nozick or even John Rawls, according to whom: “each person possesses an inviolability founded on justice upon which even the good of society considered as a whole cannot prevail. For this reason, the deprivation of the freedom of some people cannot be justified by a larger good that others would receive in return. It is incompatible with freedom to admit that sacrifices imposed on some people can be compensated by the increase of the advantages that a large number would receive.”[47] But is this refusal sincere? When Hayek proposes to the losers in the catalactic “game” that they should accept their lot as the least “unfair” option, is he not somehow calling on them to sacrifice themselves for the proper functioning of the general order of the market? There is an ambiguity here which leads back to the already discussed “impure individualism.” Hayek opposes individualism to utilitarianism but, despite himself, he falls into this same utilitarianism each time he boasts of the efficiency of the “invisible hand,” each time he legitimates the market in terms of its intrinsic merits, or when he identifies success as the highest value.[48]

## V

This is how Caille defines the two aporias of liberal critical rationalism: “The first comes from the fact that critical reason is not self-sufficient. In order to be critical, reason must find something other than itself to criticize and this something cannot be something purely negative. The second aporia follows from the first. Critical reason does not come to believe it can exhaust the real, unless it supposes that it boils down to a negative rationale, which would constitute its only identity. Liberal critical reason is thus based on an identitarian representation of social relations, which contradicts the idea of freedom.”[49]

Max Weber has shown that there is always a contradiction between formal and substantial rationality, and that the two can always come into conflict. Thus the problem of the substantial content of freedom cannot be dealt with by simply focusing of the procedures which are supposed to guarantee it. Here the hypothesis of spontaneous adjustments of the economic and social agents’ various competing projects within a context of total freedom of exchange — optimal adjustments not in an ideal but in a possible sense, i.e., in reference to the real cognitive life-conditions of the social members — presupposing there are no irreducible antagonisms concerning interests, destructive market crises, etc., turns out to be profoundly utopian. In fact, the very idea that the values of freedom and of a spontaneous order arising out of practice can be fused rests on a representation of society without any public space.

As already indicated, Hayek does not hesitate to claim, along with classical liberals, that the market maximizes the well-being of all. He claims it constitutes a “game” which increases the chances of all players, considered individually, to achieve their individual goals. This claim clashes with an obvious objection: how can the market maximize the chances of individuals to achieve their goals if in principle these goals cannot be known? At any rate, as Caille writes, “if such were the case ... it would be easy to maintain that the market economy has multiplied the goals of individuals more than their means to realize these goals; it has, according to the

psychological mechanism analyzed by Tocqueville, increased dissatisfaction. This is a sort of reminder that the goals of individuals do not fall from the sky but come from the social and cultural system within which they find themselves. Thus it is unclear why, e.g., the members of a savage society could not have infinitely more chances to realize their individual goals than those of the “grand society.” Hayek would probably reply that the savages were not ‘free’ to choose their own objectives. This would be as difficult to demonstrate as that modern individuals determine themselves.”[50]

The representation of catallaxis as a game providing “impersonal” chances and in which it is normal for there to be winners and losers is in reality untenable. The existence of abstract rules does not actually suffice to guarantee that everyone will have the same chance to win or lose. Hayek forgets that the chance to win is not the same for all, and that the losers are often always the same ones. Hence, the results of the game cannot be regarded as uncertain. In order for them to become uncertain, it would be necessary for the game to be “corrected” by the willful intervention of public power, which Hayek vigorously rejects. What is one to think of a game where, as if by chance, the winners keep winning, while the losers keep losing? According to Hayek, to charge that the spontaneous order is “unjust” is tantamount to falling into anthropomorphism or “animism,” even in the logic of the scapegoat, because it would be like looking for someone responsible or guilty, where no one is. But, as Jean-Pierre Dupuy has noted, here the argument backfires because, if there is a decisive acquisition in the process of social evolution, it is that it is now generally acknowledged that it is not fair to condemn an innocent person. From this viewpoint, it is rather the denial of the mere notion of social injustice which calls for pause. In seeking to avoid the logic of the scapegoat, Hayek himself becomes guilty of it: in his system, not only are scapegoats simply the victims of social injustice, they are even forbidden to complain. To claim that social justice means nothing amounts to transforming the victims of injustice into scapegoats of a theory of its legitimation. Then the sophism consists in saying that social order is neither just nor unjust, while concluding that we must accept it as it is, i.e., as though it were just.

Here, the ambiguity comes from occasionally posing the market as intrinsically the creator of freedom (the basis of his thesis), while at times posing freedom as a means of the generalized efficiency of the market. But, then, what is the real goal — individual freedom or economic efficiency? Hayek would probably say that these two objectives are really only one and the same. Yet, it has to be shown how they operate in relation to one another. In fact, Hayek’s definition of freedom shows how ultimately it is the latter, whose function is to guarantee the market, which becomes an end in itself. For Hayek, freedom is neither an attribute of human nature nor a complement of reason but an historical achievement, a value brought into being by the “grand society.” Furthermore, it is a purely individual, negative and homogenous freedom. Hayek goes so far as to say that freedom is suffocated where various freedoms are pleaded.[51] Thus the market only creates the conditions for freedom because freedom is put at the market’s disposal. As such, the ethic of freedom is turned into the ethic of well-being, which amounts to falling once again into utilitarianism. Hayek proposes only one instrumental vision of freedom: it is valuable only to the extent that it allows the functioning of the market.

Lastly, to identify the market with the social order reveals a most reductive economism. As Frydman put it: “The market is inevitably an economy. It forms a system which presupposes continuity between a social arrangement and the objectives it can satisfy. In order for the market

to function, it must itself be founded on a social relation able to translate itself into quantifiable language and be able to propose market ends, or at least transform them into monetary and profitable guidelines for enterprises. As such, we cannot avoid the obligation to ground a market society on its economic performance, and in return to select the rules of fair play according to these same objectives.”[52] When all is said and done, the only thing defensible is “legislation adequate to the mode of existence of products of human activity such as commodities, worked out within a competitive process.”[53] Such is also Caille’s conclusion: “The slight of hand of liberal ideology, of which Hayek provides the best example, is in the identification of a state based on law with the market, in its reduction to the role of the market. As such, the plea for individual freedom boils down to real obligations, which is to have no other goals than those of the market.”[54]

Liberal doctrine claims that all can be bought and sold in a self-regulated market. As Rosanvallon put it, this economistic ideology “translates the fact that relations between men are understood as relations between market values.” As such, it subscribes to the denial of the traditional difference, recognized at least since Aristotle, between economics and politics or, rather, it only grasps this difference in order to invert relations of subordination between the first and the second. It leads, then, to what Lepage calls the “generalized economy,” i.e., the reduction of the social dimension to an economic (liberal) model, by means of a process founded on a methodological individualism which legitimates itself with the conviction that, “if, as economic theory claims, economic agents behave in as relatively rational way and generally pursue their best preference in matters of producing, investing, consuming, there is no reason to think that it works differently in other social activities; e.g., when it is a matter of electing a representative, choosing a profession, then a career, taking a spouse, having children, foreseeing their education ... The paradigm of homo oeconomicus is thus used not only to explain the logic of production or consumption but also to explore the ensemble of social relations based on the interaction of decisions and individual actions.”[55]

Hayek’s efforts differ from classical liberalism because of his attempt to re-ground the doctrine at the highest possible level without recourse to the fiction of the social contract and by attempting to avoid the critiques usually made of rationalism, utilitarianism, the postulate of a general equilibrium or of pure and perfect competition founded on the transparency of information. In order to do this, Hayek is forced to raise the stakes and to turn the market into a global concept necessary because of its totalizing character. The result is a new utopia, predicated on as many paralogisms and contradictions. Actually, as Caille put it, were it not for “the welfare state’s failure to achieve social peace, the market order would have been swept away a long time ago.” A society based on Hayek’s principles would explode in a short time. Furthermore, its institution can only be the product of a pure “constructivism” and would undoubtedly require a dictatorial state. As Albert O. Hirschman writes, “this allegedly idyllic privatized citizenship, which only pays attention to its economic interests and indirectly serves the public interest without ever playing a direct role — all of this can only be achieved within nightmarish political conditions.”[56] That today “national thought” is being reinvigorated by this type of theory says a lot about the collapse of this thought.

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