

Constitutional Democracy and the Challenges of Anti-Liberalism

Lessons from Experience

EDITED BY

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EDUCatt

Milano 2023

UNIVERSITÀ CATTOLICA del Sacro Cuore

POLIDEMOS

Centro per lo studio della democrazia
e dei mutamenti politici

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Largo Gemelli 1, 20123 Milano – tel. 02.7234.22.35 – fax 02.80.53.215
e-mail: editoriale.dsu@educatt.it (produzione); librario.dsu@educatt.it (distribuzione)
web: www.educatt.it/libri
Associato all'AIE – Associazione Italiana Editori
ISBN: 979-12-5535-188-7

This research was supported by grants from the Italian Ministry of University and Research [PRIN 2020 New paradigms of unfreedom. Historical genealogies and critical strategies - Prot. 2020BYAP4_003]

copertina: progetto grafico Studio Editoriale EDUCatt.

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The Conservative Core of Hayek's (Neo)liberal Doctrine. Evolution, Tradition, and Authority in the Market Society

MATILDE CIOLLI¹

Abstract. This chapter aims to investigate the relationship between Friedrich von Hayek's (neo)liberal theory and conservative thought. Analyzing the concepts used by Hayek to distinguish his liberal doctrine from conservatism in the essay *Why I am not a Conservative* and contrasting them with their broader use in his most important works – *The Constitution of Liberty* (1960), *Law, Legislation and Liberty* (1982) and *The Fatal Conceit* (1988) – this chapter seeks to highlight the internal tensions and contradictions in the liberal principles defended by Hayek. The main hypothesis is that it is possible to find a conservative core within Hayek's thought that constitutes the fundamental ideological weapon employed in his "battle of ideas" against socialism. Conservative concepts, such as tradition, family, property, inequality, and religion, are therefore used to assert his market doctrine against the egalitarian and collectivist claim advanced by socialism. Following the antitheses drawn by Hayek to distinguish liberalism from conservatism, the chapter identifies the antirevolutionary conception of change, the authoritative role of tradition and religion, the disciplinary function of morals, the admission of the dictatorial exception, and the anti-democratic and anti-egalitarian stand as the conservative tools de-

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ployed by Hayek to think the conditions for the functioning and reproduction of the market order.

Keywords: market order; conservatism; evolution; tradition; dictatorship; morals; religion.

1. *Introduction*

In 1960, Friedrich A. Von Hayek added a postscript to one of his most important works, *The Constitution of Liberty*, titled *Why I am not a Conservative*. The short essay's stated intent – namely, distancing his doctrine from conservatism – might appear, at first glance, at once redundant and disorienting. On the one hand, in fact, it reiterated the plan initiated by Hayek in 1947 with the foundation of the Mont Pelerin Society (Kolev, Goldschmidt, Hesse, 2020) and pursued in all his works to theoretically and politically redefine and reaffirm liberalism. On the other hand, it identified a different polemical target: conservatism instead of socialism, which Hayek had been attacking since the 1930s (Caldwell, 1997). From his perspective, the advance of socialism, economic planning, and organized mass parties in the European context were drastically reducing the spaces of individual freedom and paving the way toward “totalitarianism” (Hayek, 1944). It was precisely the “battle of ideas” he engaged throughout his entire career against socialism that can explain both his engagement in the “intellectual revival of liberalism” (Hayek, 1948, p. 433) and his ambiguous relationship with conservatism. While Hayek disavowed the frequent association of his thinking with contemporary political or theoretical forms of conservatism, at the same time, this chapter argues that he employed in his works some conservative concepts to counter the egalitarian and collectivist claims of socialism and to affirm the incontestability of the market order.

In *The Road to Serfdom* (1944), assessing the Conservative Party's action in Britain between 1931 and 1939, that is, in the first period of his stay in London, Hayek had already stressed the need to distinguish liberalism from conservatism. After a sweeping electoral victory in 1931, the British Conservative Party had implemented a series of policies, such as the suspension of the gold standard and protectionist measures restricting free markets in various sectors and favoring goods produced within the British Empire, that Hayek felt the need to criticize (Webber, 1986). In these conservative policies, Hayek saw an "increasing veneration for the state, the admiration of power, [...] the enthusiasm for 'organization' of everything", which made them partly compatible with socialists and thus an obstacle in the spread of liberal thought (Hayek, 1944, p. 187). Indeed, in the 1960s postscript, Hayek defined conservatives as longstanding "advocates of the Middle Way", compromising with socialism and even "stealing its thunder" (p. 520).

The postscript, however, was published at the end of his decade-long stay in the United States, where the conservative doctrine had both a more complex and more ambiguous relationship with liberalism than in Britain. Arriving in Chicago in 1950 to teach Social Thought, Hayek witnessed the transformations brought about by the New Deal, denouncing President Roosevelt's "unlimited power in time of crisis" and the state's "paternalism" (Hayek, 1960) in guaranteeing infrastructure, employment, welfare and mediation with workers and unions (Gerstle, Fraser, 1989). It was precisely the new-dealers' appropriation and resignification of liberalism in an interventionist sense that prompted him to underline in the postscript the "liberticide" intentions of the "progressive movements" and social reformers, identifying support for

conservative parties as a mandatory and necessary choice to defend freedom (Hayek, 1960, p. 519).

In the United States, Hayek's works were soon classified as conservative, emerging as key textbooks among opponents of the New Deal (Donno, 2004). *The Road to Serfdom*, in particular, was interpreted by American conservatives as an unabashed condemnation of any state-regulated economic policy. Although his thought was not fully reflected in the different currents of American conservatism – traditionalists, libertarians and “fusionists”, who attempted to combine Burkean heritage, market economics and anti-communism (Nash, 1976; Rossiter, 1982) – it is possible to identify a connection in the shared persuasion that to face the transformations brought about by Rooseveltian liberalism, the defense of market and individual liberty required the use of conservative conceptual tools. In this respect, in the postscript Hayek recognized affinities between conservatism and the classical liberal tradition in US political history, in which, he believed, freedom and tradition were inseparable. Defending individual freedom thus necessarily implied preserving “long-established institutions” (Hayek, 1960, p. 521). The reluctance of US conservatives to define themselves as liberals was therefore “dated only from its abuse during the New Deal era” (Hayek, 1960, p. 519).

Nevertheless, despite Hayek's broad appreciation by conservatives and his own recognition of certain affinities, he considered the reduction of his doctrine to mere conservatism inappropriate, feeling the need to distance himself from it. While socialism was able to offer a “competitive picture of the future society at which they [socialists] were aiming” with “the very courage to indulge in Utopian thought” (Hayek, 1949, p. 428), conservatism could not, in his opinion, disclose “an alternative to the direction in which we are moving”

(Hayek, 1960, p. 520). It may “succeed by its resistance to current tendencies in slowing down undesirable developments”, but it “cannot prevent their continuance” (p. 520). Conservatism, therefore, lacked “imagination concerning anything except that which experience has already proved” and that deprived it of “the weapons needed in the struggle of ideas” (Hayek, 1960, p. 526). Indeed, on the eve of the 1960s, in the face of growing social turmoil, the appropriation of the conservative label risked hindering his ambition to offer a hegemonic alternative to current progressive and interventionist reformism. The postscript thus presented itself as a sort of manifesto for the liberalism he advocated, explicitly distinct from rationalistic liberalism – a “pacemakers of socialism” (p. 520) – and defined in opposition to the main concepts with which he identified conservatism.

The postscript was soon successful among neoliberal thinkers, who were, nevertheless, divided in their interpretation of it through either the liberal or conservative label. Two years later, Milton Friedman, inspired by it, clarified his liberal affiliation writing in *Capitalism and Freedom* (1962, p. 6):

Because of the corruption of the term liberalism, the views that formerly went under that name are now often labeled conservative. But, this is not a satisfactory alternative. The nineteenth century liberal was a radical, both in the etymological sense of going to the root of the matter and in the political sense of favoring major changes in social institutions. So too must be his modern heir.

Forty years later, James M. Buchanan, author of the public choice theory, making explicit reference to Hayek's postscript, entitled a collection of his essays *Why I, too, am not a conservative*. There, he referred his works to classical liberalism and attributed to conservatism “dirigisme and paternalism”

(Buchanan, 2005). On the other hand, while Margaret Thatcher, when questioned on the positions taken by Hayek in the postscript, stated that he would have agreed with her conservative political program, important neoliberal think tanks such as the American Enterprise Institute (2019) and the Adam Smith Institute (2020) cited Hayek's postscript to affirm the conservative nature of his thinking.

The divergent classifications, within the same neoliberal front, of Hayek's thought reflect an ambiguity of the postscript that this chapter seeks to clarify. The postscript has long been used by scholarship interested in investigating Hayek's belonging to the liberal tradition (Gray, 1982; Kukathas, 1991; Shearmur, 1996), but it also opened a debate about his relationship with conservatism. Paul B. Cliteur, in an article entitled 'Why Hayek is a Conservative' (1990), identified a conservative essence in Hayek's anthropological pessimism, traditionalism, empiricism, and constitutionalism, attributing them in Samuel P. Huntington's words to "situational conservatism" (1957). Paolo Ecolani, giving the same title as Cliteur to his article (2008), ascribed Hayek's closure to the democratic conquests of twentieth-century liberalism the conservative character of his doctrine. Hannes Gissurarson (1987) and Kenneth Dyson (2021) considered Hayek a "conservative liberal": Gissurarson defined "conservatism liberalism" as the intellectual tradition that, through Hume, Smith, Burke, Constant, Tocqueville, Lord Acton, Menger and Hayek, combined recognition of individual reason's limits with faith in the market's spontaneous order. Dyson, instead, used the term to distinguish the liberalism that claimed its Nineteenth century roots from that which advocated, in 1940s England, the emergence of the welfare state and social plans. Finally, Linda C. Reader (1997) and Claudio Martinelli

(2015) highlighted the legacy of Edmund Burke, father of conservatism, in Hayekian thought.

Taking part in this debate, this chapter argues that, despite what he declared in his postscript, it is possible to find a conservative core within his thought that constitutes the fundamental ideological weapon employed in his “battle of ideas” against socialism. The main hypothesis is, therefore, that Hayek, in making ideology the battleground to assert freedom against equality, the market against planning, and tradition against revolution, used conservative ideas – tradition, family, property, inequality and religion – as the ideological tools necessary to assert his market doctrine against the egalitarian and radically transformative claims advanced by socialism. This hypothesis will be tested by examining the concepts Hayek used in the postscript to show the differences between his own liberalism and conservatism and comparing them with their broader and more articulate use in *The Constitution of Liberty* but also in his two following works, *Law, Legislation and Liberty* (1982) and *The Fatal Conceit* (1988). Through this analysis, this chapter aims to shed light on the internal tensions and contradictions within the liberal principles defended by Hayek in the postscript and more generally throughout the entire body of his works.

2. Hayek's dichotomies on liberalism and conservatism

The postscript of *The Constitution of Liberty* is structured around antitheses and schematically exposes the differences between conservatism and liberalism by contrasting the two doctrines around five antithetical concepts: immobilism – movement; authoritarian order – spontaneous order; coercive and arbitrary power – limitation of power; substantial and tel-

eological morals – formal morals; and fixed hierarchies – mobile inequalities.

Hayek identifies the most problematic element of conservatism in its attachment to inherited ideas that induce a “backward-looking” attitude, evident in “a fear of change, a timid distrust of the new as such” (Hayek, 1960, p. 521). This “distrust of the new and the strange” leads conservatives to use government powers to prevent transformations or reduce their scope, convinced that only authority can keep “the change orderly”. Authority is, thus, a pillar to be preserved at the cost of legitimizing its coercive and arbitrary exercise of power. The problem for conservatives, then, is not limiting the powers of the state but defining “who is in control”. According to Hayek, it is the “fondness for authority” and the resulting “lack of understanding of economic forces” that prevented conservatives from trusting, on the one hand, “abstract theories and general principles” and, on the other hand, the “spontaneous forces on which a policy of freedom relies”. Precisely this vertical conception of order was the cause, according to Hayek, of the conservatives’ lack of a theory of society as result of coordinated efforts and spontaneous economic mechanisms. Moreover, Hayek distances himself from the substantive and finalistic conception of conservative morality, which does not allow, in his view, cooperation with those who had different moral values. Finally, he criticizes the defense of fixed social hierarchies protected by authority and legitimized through the belief that in every society, there are people recognized as superior, “whose inherited standards and values and position ought to be protected and who should have a greater influence on public affairs than others” (p. 524).

Hayek’s definition of liberalism is precisely built around the opposition to this doctrine. First, liberalism is described as

a doctrine of movement: “it wants to go elsewhere, not to stand still” (p. 521), constantly improving institutions without hindering evolution and change. It must be thought of as “the party of life, which favors free growth and spontaneous evolution” through “caution and slow process”. For liberals, it is the self-regulated forces of the market, not authority nor a plan, that “will bring about the required adjustments to new conditions”. For this reason, the limitation of government intervention is crucial: when spontaneous development is stifled by public controls, “the obstacles to free growth must be swept away”. From this point of view, the chief evil for liberal thought is not democracy – which for Hayek is nothing more than “a means” and “a method of peaceful change” (p. 525) – but unlimited government. The distinctive element of liberalism is, however, in his perspective, the noncoercive character of moral beliefs concerning matters of conduct that do not directly interfere with other persons’ protected sphere. Finally, liberalism rejected egalitarianism but at the same time disallowed the defense, through the authority’s arbitrariness, of hierarchies.

Although the postscript is structured around the figure of antithesis, Hayek also identifies some points of convergence between liberalism and conservatism, which open up a fault line from which it is possible to question his sharp distinction between the two doctrines.

First, for Hayek, “conservatism proper is a *legitimate*, probably *necessary*, and certainly widespread attitude of opposition to drastic change” (p. 519). Therefore, if obstruction to an evolutionary process by conservatives remains a problem, opposition to radical transformations, on the other hand, is legitimate and shared. As the third paragraph will show, the theory of the spontaneous order, claimed by Hayek as a liberal *unicum*, was born from the very same critique of “drastic

change” introduced by the French Revolution and supported by the pretense to rationally know, understand, and therefore even overturn the whole social order. “A distrust of reason” and the skeptical acceptance of its cognitive and epistemic limitations are, in fact, acknowledged by Hayek, who therefore seeks “assistance from whatever nonrational institutions or habits have proved their worth”. Conservative thinkers such as Coleridge, de Bonald, de Maistre, Justus Möser or Donoso Cortès offered, according to Hayek, through “their loving and reverential study of the value of grown institutions” an important contribution to “our understanding of a free society”. Finally, in the postscript, Hayek claims the influence of Lord Acton, Smith, Macaulay, Tocqueville, and Burke, whom he defines as the “true liberals” despite being the same philosophers that conservatives use as fundamental sources.

Taking up what in 1948 he had defined “true individualism” – which referred to a tradition he “invented” (Hobsbawm, Ranger, 1983), combining figures such as Mandeville, Burke, Acton, Constant and Tocqueville – Hayek writes that, far from “any political movement that goes under that name today”, the “true” liberalism has its origins in the “ideals of the English Whigs” (Hayek, 1960, p. 530). The task of the true liberals is, therefore, to enfranchise the Whig tradition from the “crude and militant rationalism of the French Revolution” and from the “overrationalistic, nationalistic, and socialistic influences which have intruded into it”. That is why he concludes the postscript by calling himself “an unrepentant Old Whig” (p. 531), that is, using the very same attribute bestowed on Burke, later taken up in his autobiography, where he explicitly called himself “Burkean Whig” (Hayek, 1994, p. 12).

The elements just outlined – the anti-revolutionary thought, the theory of spontaneous and evolutionary formation of institutions, the fallible and limited conception of

reason, and the recourse to Anglo-Saxon and Scottish sources of the Seventeenth-Nineteenth centuries – allow us to bring to light the rift through which a conservative nucleus insinuates into Hayek's liberal thought. The simplistic categorization of the two doctrines used in the postscript ends up erasing the complexity and polysemy of the concepts on which he builds his liberal theory in his other works. Comparison of the concepts set forth here, employed to distinguish liberalism and conservatism, with their more articulate elaboration in the texts already mentioned – *The Constitution of Liberty*, *Law, Legislation and Liberty* and *The Fatal Conceit* – allows us to interrogate the internal coherence of the political categories employed, as well as the political function that conservative thought played in Hayek's doctrine.

3. Organicity of change: evolution and tradition

The first difference Hayek identifies between liberalism and conservatism is that between a doctrine devoted to “movement” and one “fearing change”. The origins of conservatism, however, hardly allow it to be defined as a doctrine of stasis. It was born in the modern era and was therefore forced to confront Enlightenment and natural law thought, taking a dialectical posture in relation to the dynamic movement of modernity. Conservatism took shape, since the Eighteenth century, as a “countermovement” (Mannheim, 1986) in response to the proliferation of progressive elements in the historical experience and political thought. As Hayek acknowledges in the postscript, it depended “on the direction of existing tendencies”. Faced with the constant liberal quest for novelty and progress, conservatism therefore had to adapt to change while not endorsing radical transformations of the societal

structure. Russell Kirk, the father of American conservatism, whom Hayek refused access to the Mont Pelerin Society, in a text written precisely in response to Hayek, entitled “Why I am a Conservative”, stated:

The intelligent conservative does not set his face against reform. Prudent social change is the means for renewing society’s vitality, much as the human body is perpetually renewing itself and yet retains its identity. Without judicious change, we perish. But, change itself cannot be the end of existence: without permanence, we perish. Burke’s standard of statesmanship was the union in one man of a disposition to preserve and an ability to reform. In some ages, the task of reformation looms gigantic; in other times, the task of conservation takes precedence (Kirk, 1963, p. 129).

Reformism was, therefore, part of conservative thought since its very beginning. While it was characterized by the defense of existing institutions, this defense could imply partial and organic changes, conforming to the stage of consciousness and social evolution and preserving the general order of society (Huntington, 1957). According to the British conservative Michael Oakeshott, “the more closely an innovation resembles growth (that is, the more clearly it is intimated in and not merely imposed upon the situation) the less likely it is to result in a preponderance of loss” (Oakeshott, 1962, p. 172). Conservatism, therefore, was not simply an ideology of the *status quo* but accepted the modern thesis of a continuous development of humanity, however denying the historical autonomy of the individual in directing it. In the words of Michael Freedon, “it is an ideology that focuses above all on the problem of change: it does not propose to eliminate it, but to make it safe” (Freedon, 1998, p. 332). A fundamental conservative tool for controlling change was a specific diachronic

construct, tradition, whose observance over time granted that transformations in the present did not produce sudden breaks with the past.

The Hayekian “movement doctrine”, although defined as eminently liberal, rests on a conception of evolution that tends to coincide with the conservative idea of change. The Whig tradition to which Hayek refers conceived institutions not as the outcome of a human project but as the survival of those that proved to be most successful. This means that institutions evolved through a process of cumulative growth during which the human mind transformed and evolved, adjusting its habits. The mind, for Hayek, is thus not the presupposition but the product of the customs it inherits and therefore does not have the faculty to fully understand and control social development (Gray, 1980).

At any one stage of our evolution, the system of values into which we are born supplies the ends that our reason must serve. This givenness of the value framework implies that, although we must always strive to improve our institutions, we can never aim to remake them as a whole and that, in our efforts to improve them, we must take for granted much that we do not understand (Hayek, 1960, p. 124).

In this framework, progress does not coincide with the achievement of specific goals but with the evolutionary process and cumulative development guaranteed by adaptive intelligence, which transforms itself while preserving cultural traditions and heritages: “paradoxical as it may appear, it is probably true that a successful free society will always in a large measure be a tradition-bound society” (Hayek, 1960, p. 122). Thus, tradition acts as the testamentary bond of society during its evolution, making the past the perpetual guarantor of future development. It is a kind of “thread which safely

guided us through the vast realms of the past, but it is also the chain fettering each successive generation to a predetermined aspect of the past” (Arendt, 1961, p. 94). Evolution is, therefore, an “essentially conservative process” (Feser, 2003), in which the criterion to examine its reformed rules is the “consistency or compatibility with the rest of the system from the angle of their effectiveness in contributing to the formation of the same kind of overall order of actions which all the other rules serve” (Hayek, 1973).

For Hayek, law is a fundamental example of “conservative evolutionism” proceeding through organic changes. It “arises from customs and precedents” and, through them, guides the expectations of individual actions.

The experience embodied in the law that individuals utilize by observing rules is difficult to discuss since it is ordinarily not known to them or to any one person. Most of these rules have never been deliberately invented but have grown through a gradual process of trial and error in which the experience of successive generations has helped to make them what they are (Hayek, 1960, p. 225).

Later, in *Law, Legislation and Liberty*, Hayek distinguishes “*nomos*” – that is, the set of higher norms or “rules of just conduct”, not invented but simply “discovered” – from “*thesis*”, that is, the provision that establishes legislations or decrees. This juxtaposition reintroduces the traditional distinction between customary law and statutory law. Against legal positivism, which conceives law as a result of volitional acts and an instrument to design a concrete order, Hayek understands it as common law, that is, as the outcome of the spontaneous evolution of customs (Portinaro, 1982). Inspired by Burke’s notion of an “ancient constitution” (1790), which reactivated, through law, customs and traditions that had long been in

place, and Matthew Hale's (1739) conception of law as an ever-evolving institution that refers to precedent as an accumulated and stratified wisdom (Simonazzi, 2018), Hayek reactivates an "empirical and traditional way of thought" (Pocock, 1960, p. 133) that finds in common law its original core.

Overall, then, while on the one hand evolution by selective mechanisms requires the rules' continuous adaptation to changing circumstances, on the other hand the production of novelty is subordinated to a principle of consistency with traditions and customs, which become the governing instruments of change. If, therefore, as Hayek writes in the post-script, "liberalism wants to move", movement must result, just as with conservatism, in organic change, which, while defying "fixity", guarantees "stability" (Gray, 1984). Through "conservative evolutionism", then, Hayek opens conservation to the future, removing it from the exclusive domain of the past, thus being able to challenge socialism on an equivalent, but fundamentally different, promise of the future.

4. The spontaneous order of the market and the regulatory authority of tradition

The second antithesis Hayek uses to differentiate conservatism and liberalism contrasts an authority that governs, organizes and safeguards the social order on the one hand and a self-regulating and spontaneous order on the other hand.

The Hayekian theory of spontaneous order (Petsoulas, 2001; Horowitz, 2021; McNamara, Hunt, 2007) stands at the very core of his theoretical opposition to all forms of political constructivism. It has its intellectual roots in the "evolutionary rationalism" identified in the Scottish Enlightenment and in Burke's thought, moving from the assumption of the limits of

human knowledge, which, because of its fragmented nature, cannot realize economic and social planning. It is precisely the spontaneous order – that is, an anonymous and impersonal process of unintentional interactions among a multiplicity of individuals – the mechanism that allows us to overcome the limits of human reason by composing an overall knowledge that individuals alone would not be able to dispose of. To Hayek, while every society “must have its own order”, there are two fundamentally different forms of it: *taxis*, which is an “artificially constructed” order, dominated by a vertical authority that individuals obey, and *kosmos*, which is a spontaneous order, characterized by “endogenous equilibrium” (Hayek, 1973). Whereas *taxis* is a “simple”, “concrete” order, graspable by the human mind, *kosmos* is a “complex” and “abstract” order, over which less power and control can be exercised. Order, understood as *kosmos*, is an intangible system that regularizes the actions of individuals and makes them predictable because only those actions that allow individuals to survive are reproduced over time, while those that endanger order are progressively curbed as ineffective.

The paradigm of spontaneous order coincides, according to Hayek, with the market, which he deems superior to any other form of organization because of the absence of shared ends that preemptively direct its management, because it cannot be controlled from above, and because it guarantees, to a greater extent than other institutions, the possibility of achieving individual ends (Caldwell, 2022). Although embedded in a network of relationships and exchanges, each individual within the market order is paradoxically a social individual but split from any collective aggregate or project. The market rests on the mechanism of prices and competition revealing to consumers which goods and services are most convenient. These data are subject to continuous change and

thus require the continuous adaptation of all activities to shifting circumstances, systematically producing an increase in the wealth of some at the cost of a decrease in that of others. Indeed, the characteristic feature of the Hayekian order is that, presenting itself as a form of free coordination, it erases the power relations it presupposes to produce voluntary dependence that is both subjugation and exchange. The freedom that the market's spontaneous order is supposed to expand thus hinders "collective power over circumstances" (Hayek, 1960) and resolves itself in the acceptance of the asymmetries it constitutively produces and in the prior control of individual choices to the point of demanding obedience and loyalty (De Carolis, 2017; Whyte, 2019). If, thus, freedom becomes a mere function of the market order, this "discipline" (Ricciardi, 2019) is what prevents the imagination of a collective plan aimed at questioning its rules.

Although Hayek identifies the inability of conservatives to grasp spontaneous market forces as a relevant difference from liberalism, the alleged self-regulation of these forces in the Hayekian *kosmos* is contradicted by the need to govern that order through norms that presuppose the observance of specific principles, determining a very specific order. If the market's functioning needs "people acting within the rules of the law of property, tort and contract" (Hayek, 1973, vol. 2, p. 109), society as a whole needs, in order for its interactions not to result in anarchy, "norms of just conduct", i.e., an "inherited system of values" revolving, as it will be shown, around private property. Such norms constitute the presupposition of the *kosmos* that allows Hayek to legitimize the distinction between the ordering authority of conservatism and the spontaneous order of liberalism.

However, the concept of authority is not absent from Hayekian thought, but it has its own specific semantics. The au-

thority Hayek invokes does not rest, as in Weber, on the legitimacy of the exercise of power and force, and its agent is not a leader, a party, or the state. In contrast, it functions precisely when it does not need to resort to force or persuasion to be obeyed. What best embodies authority in the Hayekian order is tradition, which legitimizes specific practices and norms, giving them “the mantle of incontestability and symbolic truth”, serving at the same time as “a limit on the political” (Brown, 2019, p. 102). Because of tradition’s inherent reference to wisdom accumulated in the past, norms are voluntarily obeyed, avoiding the use of coercion: “freedom has never worked without deeply ingrained moral beliefs and coercion can be reduced to a minimum only where individuals can be expected as a rule to conform voluntarily to certain principles” (Hayek, 1960, p. 123).

Obedience to traditionally passed down norms is, in fact, allowed by their assumption as “common sense” and, therefore, as “unreasoned prejudices” and “unconscious habits” (Hayek, 1973) that indicate the conduct to be kept. The authoritative character of tradition lies in the undisputed paradigmatic value it assumes in the conduct of each individual. This value is justified by Hayek, first, through the evolutionist argument, i.e., as the outcome of selection due to the greater effectiveness of a specific set of norms and customs; second, through the civilizational argument, that is, through the identification of tradition with the backbone of Western civilization, whereby the questioning of one implies the challenge of the other. This implies that the fundamental rules that, according to Hayek, guided the development of Western civilization – respect for private property, contract, rule of law, customs associated with family – are those that anyone wishing to preserve the material well-being of modern society must uphold: “the development of the whole order of actions

on which modern civilization depends was made possible only by the institution of property” (Hayek, 1973, vol. 1, p. 121). Private property is thus the fundamental and irrevocable ideological object without which order is unthinkable: it constitutes the frame of reference of social action whose ends and forms of expression it determines (Ricciardi, 2017, p. 743). As much as Hayek presents norms and tradition as universal, nonprescriptive constructs pertaining to the “realm of impersonality”, the content of tradition is not neutral but is valid and authoritative to the extent that it conforms to market principles (Beddeleem, Colin-Jaeger, 2019).

Although authority is not treated in terms of the command and organization attributed to conservatism, Hayek thus retains the use of the traditional authority of proprietary logic to ensure the maintenance of the market order.

5. Demarchy, dictatorship, and economic freedom

The third antinomy concerns, on the one hand, the conservative legitimization of coercion and arbitrary power of the State, when exercised for just purposes, and, on the other hand, the liberal limitation of government powers.

Faced with the threat posed by socialist forms of government and state interventionism bent on popular demands, Hayek theorizes a “government of laws and not of men” (Hayek, 1960), providing for the limitation of state intervention through the rule of law. Hayek conceives laws as general, abstract, universal norms, established without regard to the differential effects of their application. The legislative assembly, which must represent “the opinion of the people about which sorts of government actions are just and which are not”, has to be clearly separated from the governmental as-

sembly, which has to be guided “by the will of the people on the particular measures to be taken within the frame of rules laid down by the first” (Hayek, 1973, vol. 3, p. 104). The Hayekian rule of law is a three-order system of representative bodies: the first oversees the semipermanent framework, namely, the constitution, and is to act only at long intervals; the second manages to gradually improve and adapt the general rules of just conduct; and the third is in charge of the daily administration of resources (Hayek, 1973). This system requires that “all laws conform to certain principles”, namely, freedom of contract, inviolability of property and payment for compensation, which are the “essential contents of any private law system” (Dardot, Laval, 2009).

Property, contract, and competition, thus, constitute for Hayek the infrastructure of individual freedom and the essential tools for avoiding coercion and preserving the “personal protected sphere” from interference. In this framework, the state does not have to rectify the effects of the market but, providing social services, must adopt the same proprietary and competitive rationale that informs the ultimate principles on which the Hayekian rule of law is based. That is why democracy must be prevented from allowing its mechanisms to interfere with those principles. Indeed, democracy, for Hayek, must be nothing more than “a convention that mainly serves to prevent harm”, that is, to protect individuals from despotism and tyranny, and a “method or procedure for certain political decisions”, but not for establishing their substantive quality or purpose (Hayek, 1973, vol. 3, p. 133). If democracy – such as peace, justice, and freedom – is a negative value, the actual democratic forms in place in both the United States and Europe have instead led to the superimposition of democracy on the idea of equality. In fact, the main problems posed by contemporary democracy and its socialist de-

generations are, for Hayek, popular sovereignty and the excessive power that comes to the majority.

Although Hayek defines the legislative and governmental assemblies as representative spaces of people's will, popular sovereignty is considered a "constructivist superstition" as "promoting the will of the people to the rank of the sole source of legitimacy for the action of the rulers" (Dardot, Laval, 2016). Indeed, the idea of governing society by following the majority opinion reverses, according to Hayek, "the principle through which civilization developed": progress was led by the few who then convinced the many, allowing the majority to learn from the example of the minority. For Hayek, representative democracy always runs the risk of turning into a "reactive democracy" (Biebricher, 2019) that responds to the pressures of different social groups, bowing to their demands for social justice and transforming itself into a "bureaucratic machine" aimed at correcting inequalities produced by the market. This "demophobia" (Dardot, Guéguen, Laval, Sauvetre, 2021, pp. 55-72) leads Hayek to fiercely criticize all those democratic forms that can establish political connections between individuals other than those created by the market, thus endangering the stability of the economic and social order. The true aim of Hayek's critique of popular sovereignty is therefore the attempt – which makes manifest the conservative core of his thought – to deny "that collective forms of action can modify the order of the system" (Ricciardi, 2020, p. 286).

The concept of "demarchy", which refers to "the ideal of an equal law for all" and provides for the limitation of people's will through the rules of private law, is conceived by Hayek to avoid involutions of democracy. Hayek envisions an "ideal model constitution" whose basic rule should be that "in normal times, and apart from certain clearly defined emer-

gency situations, 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, 1973). The “clearly defined emergency situations” that legitimize the exception to the clause are spelled out by Hayek in these terms:

The basic principle of a free society, that the coercive powers of government are restricted to the enforcement of universal rules of just conduct and cannot be used for the achievement of particular purposes, although essential to the normal working of such a society, may yet have to be *temporarily suspended when the long-run preservation of that order is itself threatened*. Although individuals normally need to be concerned only with their own concrete aims and in pursuing them will best serve the common welfare, there may temporarily arise circumstances when the preservation of the overall order becomes the overruling common purpose and when the *spontaneous order, on a local or national scale, must for a time be converted into an organization*. When an external enemy threatens, when rebellion or lawless violence has broken out, or a natural catastrophe requires quick action by whatever means can be secured, powers of compulsory organization, which normally nobody possesses, must be granted to somebody. Like an animal in flight from mortal danger society may in such situations have to suspend temporarily even vital functions on which in the long run its existence depends if it is to escape destruction (Hayek, 1973, vol. 3, p. 124).

Thus, in the same text in which Hayek theorizes the constitutional arrangement to be given to a free society, he defines the exceptional conditions under which coercive powers, held by a dictator, are permitted. Therefore, although Hayek considers the support of authoritarian and coercive governments

a conservative tendency, even his rule of law yields exceptionalist authoritarianism when social and economic order are threatened.

Indeed, it was exactly this chapter of *Law, Legislation and Liberty* concerning the “model constitution”, including the justification of the state of exception, that Hayek delivered to General Augusto Pinochet when he was received in Santiago on November 18, 1977 (Chamayou, 2018). Interviewed soon after by the newspaper “El Mercurio”, Hayek said he was surprised by the development and liberalization of the Chilean economy, praising the government’s willingness to lead the country without falling prey to popular political demands (Filip, 2018). When confronted with questions regarding unemployment and the social costs of the monetarist reforms initiated between 1974 and 1975 (Stabili, 2021), Hayek replied that these were short-lived problems that nevertheless pointed in the right direction (Caldwell, Montes, 2015). The problem was not, in his view, the dictatorship per se but the economic policies it chose to adopt, which were the prerequisite for future freedom. In fact, the following year, in a letter written to “The Times”, Hayek supported Margaret Thatcher, stating that her conception of the market, rather than the ballot box, as a space for exercising freedom of choice, was nothing more than an obvious assumption of the inseparability of the former and not the latter from individual freedom. For this reason, according to Hayek, “free choice can exist under a dictatorship that can set limits on itself, but not under the government of an unlimited democracy” (*The Times*, 3/8/1978). Accused on “The Times” by William Wallace of supporting authoritarian regimes, Hayek replied that while he did not believe that authoritarian governments were generally more likely to secure individual liberty than democratic ones, “in some historical circumstances personal liberty may have been

better protected under an authoritarian than democratic government”. In this sense, in Chile, he stated, “personal freedom was much greater under Pinochet than it had been under Allende”. Although limited democracy was the best form of government, he continued, it “does not mean that we can have it everywhere, or even that it is itself a supreme value rather than the best means to secure peace”. Except in direct democracy, “a democracy can never create itself but must always be the product of the authoritarian decision of a few”. After all, he concluded, “some democracies have been made possible only by the military power of some generals” (*The Times*, 3/8/1978).

Invited again in 1981, Hayek reiterated that dictatorships can be “a necessary system for a transitional period”, which, as in the case of Chile, can act as a bridge from a dictatorial government to a liberal one.

As you will understand, it is possible for a dictator to govern in a liberal way. It is also possible for a democracy to govern with a total lack of liberalism. Personally, I prefer a liberal dictator to a democratic government lacking liberalism (*El Mercurio*, 12/4/1981).

Under Pinochet, not even the most basic civil liberties were guaranteed, so the only notion of freedom granted was economic freedom, which after all – as stated in relation to Thatcher’s neoliberalism – is, for Hayek, the fundamental one, preceding any other (Farrant, E. McPhail, S. Berger, 2012). The defense of economic freedom from the “political tyranny of rational organization” may then require the intervention of a military dictatorship that represses political and social freedoms to coercively reassert a liberal market order. The expedient of the transitional exception is hardly able to reckon with the contradictory conception of coercion, dele-

gitimized as an impediment to the exercise of political freedom but legitimized as a means of reaffirming economic freedom. Authoritarian exceptionalism thus reveals a real short circuit in the Hayekian discourse, which, to eradicate certain constructivist institutional forms, finds itself coercively prescribing freedom, making the latter an ideological product that changes over time.

Dictatorship suspends not only democracy and individual freedom – preserving it, at most, in its economic and proprietary form – but also the spontaneous, evolutionary, and traditionalist mechanisms on which Hayek had hitherto founded and distinguished his liberal theory. By entrusting the dictator with the mere task of suspending the constitution to reestablish a limited democracy (Iving, 2018), Hayek attempts to avoid Schmittian decisionism. However, he ends up yielding at the theoretical level to a “commissar dictatorship” (Schmitt, 1964) embedded in a constitutional framework but, as a matter of fact, at the historical level to “sovereign dictatorships”, which see “in the whole existing order a state to be removed” to impose a new authentic constitution (Portinaro, 2019). The admission of dictatorial rule, which involves the violation of legal form by executive practice (Galli, 1996), reveals the point of fracture and failure of the Hayekian “constitution of liberty”, the defense of which requires leveraging those elements of conservatism that he had always rejected: the verticality of command and authority, the government of men and not of laws, the dependence on an arbitrary will, and the total denial of freedom of choice.

6. *The morals and religion of property*

The fourth antinomy concerns conservatism and liberalism's conception of morals, defined by Hayek, in the former case, in essentialist terms, and in the latter, in formal, impersonal and ateleological terms. If for conservatives, according to Hayek, it is not possible to mediate with those whose moral values differ from their own, for liberals, moral or religious ideals cannot be the object of coercion. In *The Fatal Conceit*, Hayek's last major work, he analyzes the relationship between religion, tradition, and norms of just conduct, reaffirming the force and cogency of moral tradition beyond any contingent act of will. Here, Hayek shows an intimate conflict in human beings between two antithetical attitudes that have informed the "history of civilization". On the one hand, there are "archaic", "primitive" and "tribal" instincts of small groups that learned to pursue common goals, laying the foundation for early communism and social justice. On the other hand, there is an interaction among large numbers of people competitively engaged in cooperation, pursuing different ends while respecting institutions that evolved throughout history.

As he already argued in *Law, Legislation and Liberty*, the moral progress that allowed the "open society" to evolve was achieved by the abandonment of the pursuit of "the welfare of other members of the same group" and the assumption of impersonal justice based on formal norms, which allowed the emergence of "market morality" (Hayek, 1973). The preservation, in an "extended order", of this kind of norms, challenged by solidaristic instincts, was due not only to the evolutionary process selecting those groups best suited to them but also by "totems and taboos, or magical or religious beliefs" that facilitated their observance (Hayek, 1988, p. 136). Religion is, for Hayek, "an ideological force" (Henry, 2016) able

to instill values necessary to uphold civilization (Dekkar, 2014) and shield it against the rationalist and constructivist danger. It is envisaged as the “guardian of tradition”, proving their historical relationship by the fact that only those religions “that uphold property and family”, that is, principles and institutions that traditionally shaped our civilization, have survived. Hayek does not deepen the questions concerning the existence of God or the content of religion, but he “instrumentally” (Kley, 1994) conceives religious belief as another relevant ideological operator of spontaneous order, that is, as a “false reason influencing men to do what was required to maintain the order” (Hayek, 1988). Indeed, fideistic reverence predisposes individuals to submit to tradition and its moral norms. In this respect, in a 1979 interview, Hayek affirmed, “I have never publicly argued against religion because I agree that probably most people need it. It is probably the only way in which certain things, certain traditions, can be maintained which are essential” (Hayek, 1979). Therefore, while it is true that religion is not prescribed by Hayekian liberalism coercively and in substantive terms, it is nevertheless valued, as many conservatives do, as a disciplining tool to make obedience to moral norms effective.

However, although Hayek gives moral norms a formal character, tradition and religion are used to justify a specific “civilization” whose principles do not necessarily “allow one to work”, as Hayek argues in the postscript, “with those whose moral values differ from his own”. As already shown, the conflict between atavistic moral instincts and coordination through competition must be resolved to ensure the global functioning of society in favor of the latter: solidarity and altruism must be subordinated to the pursuit of self-interest and competition. The discipline of freedom is induced by norms that for Hayek are “abstract and impersonal” but none-

theless have the specific purpose of “enabling each individual to try to build for himself a protected domain with which nobody else is allowed to interfere and within which he can use his own knowledge for his own purposes” (Hayek, 1973, vol. 3, p. 163). Through the arguments of evolution, tradition, and civilization, a specific economic order and its related morals are, therefore, justified: the proprietary and market order. Tradition has, in fact, handed down a “traditional morality concerning sex and family” but also “specific moral traditions such as private property, saving, exchange, honesty, truthfulness, contract” (Hayek, 1988, p. 67). The market agent, as a moral subject, is:

The prudent man, the good husbandman and provider who looked after the future of his family and his business by building up capital, was guided less by the desire to be able to consume much than by the wish to be regarded as successful by his fellows who pursued similar aims (Hayek, 1973, vol. 3, p. 165).

Thus, in the spontaneous order, freedom is not an abstract concept or mere absence of coercion but coincides with individual ownership and responsibility. Therefore, what Hayek defends is not so much an order capable of bringing divergent beliefs together but rather a market order, with proprietary and individualist morals defended in the name of civilization against egalitarian atavism. The inseparability of liberty, property, and tradition in the Hayekian liberal morals, as in the conservative morals, is the main tool allowing us to counter the “fatal conceit” of collectivist and egalitarian principles. As Wendy Brown observes, in Hayek’s thought, “liberty, more than limited by moral tradition, is partly constituted by it. Conversely, moral freedom, more than challenged by politically imposed justice schemes, is destroyed by them” (Brown, 2019, p. 97).

7. Inheritance, hierarchies, and the market

The last antithesis identified in the postscript revolves around the conception of hierarchy, which, according to Hayek, is conceived by conservatives as fixed and preserved through authority and by liberals as “mobile inequality” between individuals, which must not be transformed by the state into privilege. “The liberal”, Hayek acknowledges, “is not an egalitarian” because “freedom necessarily produces inequality” (Hayek, 1960, p. 524). The only meaning of equality accepted, as setting the conditions for freedom, is that of “equality before the law”.

Although Hayek is careful to condemn differences in status as positions resulting from privilege, he does not hesitate to deny “that all men are equal” because their position is determined by institutions such as the family, patrimonial inheritance, and education (Hayek, 1960). The family background is what grants benefits that “may operate cumulatively through several generations”, both as a form of material and cultural inheritance, that is, as a set of “morals, tastes and knowledge” through which individuals are asymmetrically placed in society. The family is, therefore, the conservative and patriarchal organ that reproduces differentiated forms of private wealth while ensuring, through transmission of cultural heritage, continuity with past generations. Indeed, the family, for Hayek, could hardly admit the sexual revolution (Feser, 2003) – that began to make its way when *The Constitution of Liberty* was published – since it completely overthrows practices and customs that informed both family and society. The family, as well as the community, are valued by Hayek as institutions that through “voluntary cooperation” can privately offer, without coercive and leveling effects, what is usually demanded to the state, namely, welfare (Cooper, 2018).

Inequalities produced by family inheritance, considered “inevitable” by Hayek (Hayek, 1973), are associated with ability, luck and specific circumstances that determine the different social positioning of each individual. In commercial and social transactions, the risk of loss must be assumed, knowing that the market works only if there are asymmetries to be continually valued. Consequently, a free society can function or preserve itself, Hayek points out, only if its members deem it right that each individual occupies the place consequent to his own action and accept it as such (Hayek, 1960). The position each person occupies is, therefore, not only personal responsibility but also the nonnegotiable outcome of the exercise of individual freedom.

Consequently, the claim to material equality ends up undermining legal equality, that is, as already mentioned, the only true form of equality: it is in this sense that, for Hayek, social justice threatens the “Great Society”, which is how Hayek calls the global market society, in which institutional arrangements allow individuals to pursue their own purposes (Hayek, 1973). In fact, equality prevents competition, leads to condemning the pursuit of individual interests as an antisocial attitude and leaves room for discretionary and discriminatory powers. The consequence of rewarding groups affected by particular difficulties is, on the one hand, the opening to the unlimited requests of all those who consider their position threatened, thus guaranteeing them privileges; on the other hand, the consolidation of the welfare state, potentially “totalitarian” and certainly “paternalistic” (Hayek, 1973).

The most dangerous threat to the rule of law is represented for Hayek by workers’ unions. As a collective subject, bearer of egalitarian demands and a claim to redistributive justice, the union is a strong threat to the market order and is in fact presented as an agent of “coercion against all principles of

freedom under the law". By setting wages above what would be determined by the market, the union would prevent all laborers who wish to work from doing so and impose wage increases exclusively for its members at the expense of others. By creating "monopoly effects in the supply of different types of labor, unions prevent competition from acting as an effective regulator of resource allocation" and reduce labor mobility and productivity, thus hindering the functioning of the market (Hayek, 1960, p. 391).

Overall, although Hayek does not theorize natural and fixed hierarchies and considers coordination and not subordination as the only possible relation in the market, his staunch anti-egalitarianism leads him to recognize, on the one hand, the inequalities produced by family and inheritance and, on the other hand, those produced by the "sovereignty of the law" and the "harsh discipline of the market". Inequalities are, in fact, both a condition and an ineradicable product of the market, which must not, therefore, be corrected. The crusade waged against the welfare state confirms that the political system is far from indifferent to societal processes, and even if the activity of government does not have to change the order of society, it confirms its dynamics, power positions and structures of domination (Ricciardi, 2020).

8. *Conclusions*

The comparison developed thus far between the liberalism defended in the postscript of *The Constitution of Liberty* and that elaborated in Hayek's three major works – the remainder of *The Constitution of Liberty*, *Law, Legislation and Liberty* and *The Fatal Conceit* – allowed us to bring out the internal contradictions of Hayek's doctrine that displace the dichotomous

use of the categories of liberalism and conservatism, highlighting their points of convergence and articulation.

More precisely, this comparison showed the presence of a conservative core in Hayek's theory of market society, ideologically used to set the political conditions of its order. This conservative nucleus, in fact, allows the same principles – first and foremost property – needed to ground and guarantee the market order against the regime of equality to be asserted as traditional values sedimented over time and proven by selection and civilization. In this sense, the reformist but anti-revolutionary evolutionism, the authority of tradition and religion, the centrality of the family, and the admission of authoritarian exceptionalism allow Hayek to affirm the unquestionable efficacy of the proprietary order. The spontaneous functioning of market order and the “voluntary obedience” to his mechanisms is, therefore, the result of the delimitation of the Great Society's evolution within the perimeter defined by specific traditional norms that guarantee its endurance over time. Thus, freedom must develop in compliance with property and responsibility, innovation with inheritance, evolution with stability, coordination with authority, and democracy with market principles.

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