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1 INTRODUCTION

1.1. Friedrich August von Hayek – person and influence

Friedrich August von Hayek was born in Vienna in 1899. He fought in the First World War and afterwards studied law, economy, political sciences and psychology. The biggest influence on his future views and works was exerted by private seminars of Ludwig von Mises who also introduced him to the economic doctrines of the so called Austrian School. In 1931 Hayek emigrated to England where he taught at the London School of Economics. Around that time started his famous debate with John Maynard Keynes concerning the extent of government intervention. After the incorporation of Austria into Nazi Germany Hayek became a British citizen. He was elected a member of the British Academy in 1944 and in 1947 he founded the Mont Pelerin Society whose members “include high government officials, Nobel prize recipients, journalists, economic and financial experts, and legal scholars from all over the world” who “see danger in the expansion of government, not least in state welfare, in the power of trade unions and business monopoly, and in the continuing threat and reality of inflation”¹. After the Second War World Hayek moved to United States where he taught at the University of Chicago. In 1974, together with Professor Gunnar Myrdal, he was awarded Nobel Prize in Economics for “their pioneering work in the theory of money and economic fluctuations and for their penetrating analysis of the interdependence of economic, social and institutional phenomena”². Hayek died in Germany in 1992.

With the publication of his *Road to Serfdom* Hayek gained popularity rarely experienced by academic theoreticians. He also exercised a direct influence on many leading politicians, for example Winston Churchill, Ronald Reagan and Margaret Thatcher, to name just the most prominent. It is a famous anecdote how Thatcher “tried once to end debate on Conservative Party policy by slamming a copy of Hayek’s [...] *The Constitution of Liberty* down on the table and exclaiming, ‘This is what we believe!’”³. Hayek’s works are also not forgotten today. Indeed, new developments in economics with their interdisciplinary, subjectivist and knowledge-centred approach draw from the tradition of the Austrian School generally and Hayek’s works in particular.

Hayek’s contribution is not only to the field of economics. In the history of human

1 <http://www.montpelerin.org/>

2 Nobel Foundation press release, http://nobelprize.org/nobel_prizes/economics/laureates/1974/press.html

3 Edward Fraser, Introduction to *The Cambridge Companion to Hayek*, Cambridge University Press, 2006; p. 1.

sciences he is known first and foremost for his fierce critique of socialism. Although educated in law and economics, he far from limited his studies to those two disciplines. On the contrary, it would be no exaggeration to call him a renaissance man – a man who researched different spheres of human life and could synthesise his ideas into an interdisciplinary theory. It is my belief that only in a similarly interdisciplinary way of reading can his philosophy be fully grasped. I will try to follow his thought by showing a parallel between the philosophical background and economic and political ideas he developed. It is my belief that although Hayek had no formal philosophical education, his works are based on common philosophical foundations and show a striking continuity and coherence over the years and throughout the different fields of his research. For example, his early economic writings are based on epistemological assumptions only later fully developed in his more philosophical papers and lectures.

1.2. Goal of this paper

Philosophy and economics are in my opinion two of the most miscellaneous of the human sciences and their heterogeneity allows a truly synthetic approach to particular questions. I would like to examine the ideas of Friedrich Hayek by looking both at the philosophical foundations of his economic concepts as well as at the economic consequences of his philosophical conceptions. I believe that there is a far reaching harmony and compatibility between his philosophical, political and economic doctrines because they are all based on his strong convictions concerning human beings. Therefore I intend to trace and analyse those basic philosophical ideas that form the foundation of Hayek's thought. My goal in this paper is to show that there are three such notions, usually perceived as core ideals of liberalism, that constitute the basis of his economic theories as well as of his political and ethical concepts. In this way I hope to be able to show the continuity and consistency of Hayek's critique of socialism and advocacy of liberalism.

The table below suggests how the basic ideas formulated in Hayek's works can be related to each other. The three philosophical principles that form the core of classical liberalism as advocated by Hayek require and entail specific political and economic solutions.

LIBERAL IDEALS	ECONOMY	POLITY
Individualism	multiple-ends catallaxy	authority of individuals
Negative Personal Freedom	private property	limited state
Formal Justice	no patterned redistribution; low proportional taxes and public spendings	Rule of Law no welfare state

In this paper I will discuss each of these philosophical principles, show their attributes and role specifically in the context of Hayek's thought and their consequences for politics and economy. I will also attempt to explain in what way all these conceptions are influenced by Hayek's original conceptions of epistemology and social evolution, as well as by his knowledge-centred approach and individualistic methodology. I believe that it is in this original conceptualisation that lies the greatest value of Hayek's philosophy.

1.3. Economic orders – disambiguation of terminology

1.3.1. Liberalism

Hayek is widely recognised as one of the most important defenders of liberalism in the 20th century therefore it would be helpful to start by explaining what does he himself understand by this term. The ambiguity of terminology on this subject, as Hayek points out, leads to growing controversies concerning the liberal movement. In my opinion one of the goals of his lifelong scholarly activity was freeing liberal thought from such uncertainties. Depending on what liberalism is contrasted with, it tends to mean different, indeed, sometimes quite opposite things. For example, when referred to as an ethical concept antonymous to conservatism, liberalism is understood as a denial of acknowledged norms and traditional forms of society. Classical liberalism descended from the European, mostly British tradition, on the other hand, was primarily a political conception meaning a social order based on free markets, limited government under the rule of law, and the primacy of individual freedom. A further notion of liberalism, sometimes referred to as the 'new liberalism' means quite the opposite in that it supports the welfare state and questions the relation between personal freedom and private property that is crucial in the classical understanding. The liberalism supported by Hayek is without doubt the first one.

I use throughout the term 'liberal' in the original, nineteenth-century sense in which it is still current in Britain. In current American usage it often means very nearly the opposite of this. It has been part of the camouflage of leftish movements in this country, helped by the muddleheadedness of many who really believe in liberty, that 'liberal' has come to mean the advocacy of almost every kind of government control. [...] This seems to be particularly regrettable because of the consequent tendency of many true liberals to describe themselves as conservatives.⁴

The liberalism of the English Whigs endorsed by Hayek was the source of political institutions that secured individual liberty acting through a 'government under law'. The liberty in question is mainly understood in the negative sense of Isaiah Berlin, that is, as a lack of arbitrary coercion, and not so much the positive freedom of self-determination that was the main concern of liberalism of the French tradition. British liberalism developed partly out of a struggle between hostile religious sects and in the end produced principles of tolerance which remained its characteristic in the future. Furthermore it has a tradition of condemning state interventionism and advocating minimal state as well as private initiative and “*autonomous efforts either of local government or of voluntary organizations*”⁵.

In his monograph on *The Iron cage of Liberty*, Andrew Gamble expresses a view that Hayek believed as firmly in scientific liberalism as any Marxist believed in scientific socialism.⁶ However, he does not elaborate on what he understands under the term of scientific liberalism. If it is supposed to mean that the theory is based on observation, as is in the case of natural sciences, than one can hardly criticise this statement. Usually, however, scientific socialism does not merely mean that it is based on observation, but it indicates that, in contrast to utopian socialisms, it is based on an economic calculus. In that case Hayek's liberalism would rather have to be called anti-scientific because he decisively rejects the possibility of such a calculus and finds basing national economy on its dubious results a fatal error. I therefore decline the term of scientific liberalism for Hayek's philosophy and maintain the categories that he himself preferred.

1.3.2 Economy and Catallaxy

The next disambiguation is required for the term of economy because Hayek believed that the misunderstanding of the term itself contributed highly to creating a problem that can be

4 Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, 2007; p. 45.

5 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 129.

6 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996; p. 9.

called the economy dilemma. The economy dilemma, as it was roughly understood in the 20th century, was a dilemma between planned economy and a free market system. Hayek rejects such a formulation of the problem basing his critique on the etymology of the word 'economy'.

*An economy, in the strict sense of the word in which a household, a farm or an enterprise can be called economies, consists of a complex of activities by which a given set of means is allocated in accordance with a unitary plan among the competing ends according to their relative importance.*⁷

Hayek's point is that if we use the term 'economy' to describe the activity of the market order then we automatically condemn it to socialism because only in this way a single end can be served. On the contrary, the market order is constituted by a multitude of such ends strived for by all participating economies, that is individuals or groups pursuing their own particular goals. Therefore Hayek insists on using the term *dirigism* when referring to central planning and introduces the term of *catallaxy* to describe the activity on the market and emphasises that, being a totally different thing, it should also be judged by different standards.

*The term 'catallactics' was derived from the Greek verb katallatein [...] which meant, significantly, not only 'to exchange' but also 'to admit into the community' and 'to change from enemy into friend'. [...] From this we can form an English term catallaxy which we shall use to describe the order brought about by the mutual adjustment of many individual economies in a market. A catallaxy is thus the special kind of spontaneous order produced by the market through people acting within the rules of the law of property, tort and contract.*⁸

What is achieved by the introduction of this new notion is the shifting of the dilemma itself. The dispute does not concern the question whether activities on the market should be planned or not because, as Hayek points out, some kind of planning always takes place. Rather, to put it in the authors own words: “*It is a dispute as to whether planning is to be done centrally, by one authority for the whole economic system, or is it to be divided among many individuals*”⁹. Based on his beliefs concerning human epistemic capacities as well as on the world view underlying economic philosophy of the Austrian School, Hayek strongly supports the position that we are far better off if the planning is not done centrally but left to the authority of numerous

7 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 107.

8 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 108.

9 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 79.

individuals. No single person is capable of planning the whole, because the knowledge they possess is '*imperfect, fragmented and local*'.¹⁰. Indeed, he maintains that the biggest error of socialist thinking is that it tries to conceive of the market order as a simple economy subjected to a single plan pursuing a single end.

1.3.3. Competition and Cooperation

A further commonly addressed opposition in terms, which Hayek finds to be a similar kind of misunderstanding, is the opposition between competition and cooperation. First and foremost these two terms cannot be treated as opposite because they refer to two utterly different levels or stages of economic activity. Competition in general is a method of adjustment to external conditions in a situation where these are not and cannot be fully known. It is a procedure of discovering the best in something, whether the best sportsman, best product or the best service.¹¹ Such a technical understanding of competition releases it from ethical valuation – it has a purely epistemological function and value. It is impersonal in that it does not favour particular people but relies on their actions and their outcomes. And indeed, as Hayek admits, “*the general beneficial effects of competition must include disappointing or defeating some particular expectations or intentions*”¹² but being simply a procedure and not extending '*to the prediction of particular facts*' competition is morally neutral. The point is that competition should be treated as a mere tool and as such it cannot be subjected to moral valuation. It is men's choices and their results that are judged. But only in a competitive environment are they able to make choices and bear their consequences.

Hayek calls competition a discovery procedure referring to the way it enables extraction and utilisation of knowledge that is widely dispersed in society and divided among all of its participants. What is meant by knowledge here concerns particular circumstances such as which goods or services are needed and where. I shall deal with the specific character of this knowledge in relation to Hayek's epistemological conceptions. It should be noted, however, that competition is precisely the answer to the state of imperfect knowledge that the Austrian school of economics assumes as its basic conception. Competition can be compared in their understanding to the function of a negative feedback, this means to a system of information about a performance that, by criticising flaws, re-establishes equilibrium. Clients, by choosing some offers over others,

10 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 38.

11 See Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 179.

12 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 180.

send a message about their needs and preferences, which is then available to all participants. They can adjust their offers accordingly and thus bring forward what is usually known in economics as the supply and demand equilibrium.

Competition is not an ideal but a practical procedure – it is a means of transferring information. Therefore there is no such thing as a perfect competition as defended by neoclassical economists – a state where all facts are known to all is impossible. Hayek dismisses the idea of a perfect competition with a statement that it would be absurd because in such a situation there would be really no more need for competition - *all its tasks have already been completed*¹³, there would be no more need for an information mechanism.

*„The sum of information reflected or precipitated in the prices is wholly the product of competition, or at least of the openness of the market to anyone who has relevant information about some source of demand or supply for the good in question. Competition operates as a discovery procedure not only by giving anyone who has the opportunity to exploit special circumstances the possibility to do so profitably, but also by conveying to the other parties the information that there is some such opportunity.“*¹⁴

As concerns the alleged opposition of competition and cooperation, at one point in his *Constitution of Liberty* Hayek observes that competition is not an exclusively individual process and that *„successful group relations also prove their effectiveness in competition among groups organized in different ways“*¹⁵. The basic difference between a competitive social order and a non-competitive one is in the possibility to experiment, in the allowance of a bottom-up initiative of changes and adjustments. *“Competition is important as a process of exploration in which prospectors search for unused opportunities that, when discovered, can also be used by others”*¹⁶. Hayek therefore stresses the civilising power of competition. According to him this system not only adjusts better to any new conditions and therefore helps the preservation of culture, but also itself creates new conditions continually and consequently prevents stagnation and stimulates constant evolution.

Although Hayek does not formulate it that way, I think that the apparent antagonism between competition and cooperation can be solved by saying that they are mechanisms

13 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 182.

14 Friedrich August von Hayek, *Law, Legislation and Liberty*, The University of Chicago Press, Chicago, 1976; p. 117.

15 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 33.

16 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 188.

operating on different levels of the market. While cooperation is a mechanism that binds two or more participants, and therefore operates on an interpersonal level, competition on the other hand should rather be thought of as operating between a particular participant and the system as a whole. Therefore one procedure is not in opposition to the other, but rather they compliment each other. And in fact modern research on the field of game theory indicate that cooperation is one of the most competitive strategies in the sense that it yields better results than strategies based on defection¹⁷.

1.3.4 Market order

In respect to competition regarded as a rule, market order can be understood as a competitive game that requires both skill and luck. This means that the outcome of this game, our remuneration, is dependent partly on us and the decisions we make and partly on chance. Furthermore it is not a zero-sum game – where my gain means a loss to my opponent – but a game “*through which, by playing it according to the rules, the pool to be shared is enlarged*”¹⁸.

The fact that the market is not subjected to a single plan does not mean that there is no order to it. There is a difference, however, between an order that has been established by a single will and forced upon the whole of the system, and an order that developed spontaneously, without coordination. The difference is that between hierarchical and non-hierarchical orders or, to use Hayek's own nomenclature, between a *taxis* and a *cosmos*.

*While the Great Society may contain many organizations within it, the secret of its success, in Hayek's view, is precisely that it has no single directing centre. The development of the society depends on no single will, but is the outcome of competition between many wills, the product of many experiments, many mistakes, many failures as well as many successes. There must be an order in society, but this order should be a cosmos rather than a taxis.*¹⁹

Hayek's conception of a society is therefore neither anarchist nor totally libertarian. In the field of economics it corresponds to his insistence against a purely *laisse-faire* system and in favour of a free market governed by rules. Market order is a spontaneous order, but an order nonetheless.

Andrew Gamble reproaches that this type of society is, similarly to the one described by

17 See Robert Axelrod, *The Evolution of Cooperation*, Basic Books, New York, 1994.

18 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 186.

19 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 37.

Adam Smith, immune to changes and further evolution²⁰. He means that, not unlike the socialism as devised by Marx, Hayek's system is depicted as the last stage, the ultimate solution with no alternatives. I might agree that for Hayek there exists no acceptable alternative to liberalism at the present level of the human development. He does not however regard market order a static structure. It developed in a series of spontaneous, small steps and I think it is continuously evolving in this way even now. That is why some rules and laws need to be constantly adjusted. Hayek does not object to changes in this sense. What he objects to are revolutionary changes intended to abolish the market order as such and introduce something completely new in its place.

The reason why there is no acceptable alternative to the market order in Hayek's eyes is that it is the only system able to support societies when populations exceed all the earlier ones to such a significant degree. It was a common view of Austrian economists that the size of human population requires an economic system no less efficient than the market order. In this sense Gamble's question: "*Whether or not the Great Society is desirable or represents an improvement on what went before*"²¹ is pointless because we have no means of comparing different systems working under different circumstances. The important question, however, is whether the size of population is the only reason to prefer liberal market order. Is it better only because it serves better current purposes? On the one hand Hayek tends to judge social arrangements only by the results they bring. On the other hand I think he believes in superiority of market order because it harmonizes and favours personal freedom. The market order and its mechanisms such as the competition or the price system are in Hayek's view all to be treated as operational procedures and not subjects to moral judgements. The market order lies outside the category of justice. Indeed, it is precisely the system that enables economic relations to be arranged without the arbitrariness.

Andrew Gamble formulates an important reproach against Hayek's analysis of the market order. Namely, he points out that the way Hayek presents it, the alternative between socialism and free market is an exclusive and exhaustive alternative.

It is essential to Hayek's argument that there is no third way. It allows him to identify socialism with central direction and liberalism with markets [...]. He never confronts the obvious objection that a combination of methods of co-ordination is not only possible but necessary, and that no system anywhere, not even in the Soviet Union or Hongkong, has ever relied just on central direction or just

20 Andrew Gamble, Hayek. *The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 27.

21 Andrew Gamble, Hayek. *The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 31.

It is true that Hayek does not provide any analytical argument for his assumption of the impossibility of the third way and Gamble's critique seems legitimate. But I think that Hayek's suspicion of any intermediate solution results from the worry that they may fall into an extreme position in the manner of a domino effect. *"Once the state begins expanding and imposing central direction in one sphere, it cannot stop until it has come to dominate the whole society"*²³. Therefore curbs should be put on any attempt of governmental control of the market and citizens' freedom.

1.3.5 Democracy

Hayek is clear about the fact that from the liberal principle of equality before the law the result is *"that all men should also have the same share in making the law"*²⁴. Yet, apart from this point, there are significant differences between the ideals of liberalism and democracy. Referring to two different problems – liberalism being *"a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law"* – they do not exclude the other's opposites: *"a democracy may well wield totalitarian powers, and it is conceivable that an authoritarian government may act on liberal principles"*²⁵.

Liberalism, because of these three underlying ideals, is for Hayek an indisputable political goal. Democracy, on the other hand, presents itself no such ultimate goal. It is to be treated as *"the best method of achieving certain ends, but not an end in itself"*²⁶. Therefore Hayek insists on judging it by the results it yields in particular situations. One of the advantages of a democracy is that it involves more individuals than other forms of governance. Its other value rests on the fact that it allows changes in a peaceful way but it is not impossible that men will discover yet a better procedure to achieve this. The third advantage, important from Hayek's perspective, is that democracy always played the role of a safeguard of individual liberty.

I would like to suggest that there is also a different dimension to democratic mechanism than its obvious procedure of political determination. I think that the formation of spontaneous orders can be treated as a collective process of decision making that is principally democratic in its character. It is a democratic procedure with no other parity than being active in society in

22 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 84.

23 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 85.

24 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 90.

25 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 90.

26 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 92.

some way. The basic difference between this 'emergence democracy' and the direct form of political democracy that we are used to is that it is stretched over in time – it is not the opinion of the current majority that prevails but the one that proved superior to the majority over a longer period of time. In Hayek's own words, the decision-making process of spontaneous social growth is characterised by a kind of 'super-individual wisdom' of cumulated experience that a simple majority rule lacks. Furthermore it does not have to resort to coercion to enforce itself to the minority. This feature has been noticed by several market theoreticians, including Milton Friedman, who noticed:

“The characteristic feature of action through political channels is that it tends to require or enforce substantial conformity. The great advantage of the market, on the other hand, is that it permits wide diversity. It is, in political terms, a system of proportional representation. Each man can vote, as it were, for the colour of the tie he wants to get; he does not have to see what colour the majority wants and then, if he is in the minority, submit.”²⁷

Let it be clear that hardly any sensible liberal suggests complete replacement of the government with market mechanisms. Both are essential for the proper functioning of the other. However, it is advisable that as much area as possible is subjugated to market procedures because they are not based on coercion of the majority.

1.4. Spontaneous orders versus social engineering

Hayek believed that the alleged dichotomy of the notions 'natural' and 'artificial' constitutes the background of controversies and misunderstandings concerning ethical traditions of constructivism and utilitarianism for example ²⁸. For Hayek the dichotomy of natural and artificial in the context of spontaneous orders is erroneous. Culture, for example, is neither natural nor artificial, it is neither transmitted genetically nor reasonably planned. Culture is rather a tradition of rules of behaviour that were never invented and moreover their purpose is usually not clear even to those who act by them. This means that one can speak of the wisdom of culture

²⁷ Milton Friedman, *Capitalism and Freedom*, The University of Chicago Press, Chicago and London, 2002; p. 15.

²⁸ „Hume is a particularly good example since he unfortunately chose for the moral traditions that I would really prefer to call natural the term 'artificial' [...]. Ironically, this led to his being regarded as the founder of utilitarianism, despite his having stressed that 'though the rules of justice be artificial they are not arbitrary', and that therefore it is even not 'improper to call them laws of nature'. He endeavoured to safeguard himself against constructivist misinterpretations by explaining that he 'only suppose[d] those reflections to be formed at once, which in fact arise insensibly an by degrees'. Friedrich August von Hayek, *The Fatal Conceit*, The University of Chicago Press, Chicago, 1988; Appendix A, p. 145.

only when using the same kind of metaphorical discourse as when speaking of the wisdom of nature.²⁹

It would be pointless to try to determine whether it is culture or rather reason that is primary. In Hayek's understanding the development of both was rather an effect of the mutual reaction of those two elements on each other. It is precisely in this sense that Hayek judges it to be equally right to say that the thinking man created the culture, as it is to say that the culture created the thinking man. That is to say, reason and culture developed jointly and simultaneously rather than successively. Hayek conceives this development as the following: the rules that were acquired through a learning process determined also the categorisation of spheres of our world and after some time embedded a certain world view that made it possible for the people to predict some external events and anticipate them in their own actions. This is, according to Hayek, what we call reason. Our mind allows us to receive culture but it is not able to design it. This 'third world', to use the expression of Sir Karl Popper, has been upheld through the ages by millions of individually participating minds.³⁰

The sort of 'knowledge of the world' that is passed on from generation to generation will thus consist in a great measure not of knowledge of cause and effect, but of rules of conduct adapted to the environment and acting like information about the environment although they do not say anything about it. Like scientific theories, they are preserved by proving themselves useful, but, in contrast to scientific theories, by a proof which no one needs to know, because the proof manifests itself in the resilience and progressive expansion of the order of society which it makes possible.³¹

This is in general how social systems and arrangements emerge, evolve and are upheld. The way Hayek sees it, most (if not all) expressions of human collective existence originate by way of spontaneously forming systems, or to use Hayek's term: patterns, though not planned by anyone in particular. These types of unforced formations, usually called spontaneous orders, were first made an issue by Scottish social philosophers, among others Adam Ferguson and Adam Smith, then taken up by economists of the Austrian School, to be finally fully theorized by Niklas Luhmann and it is in his work that a detailed and thorough analysis is to be found³². For the

29 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 10.

30 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 11-15.

31 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 10.

32 See e.g. Niklas Luhmann, *Einführung in die Systemtheorie*, Dirk Baecker (Hrsg.). -1. Aufl. - Heidelberg: Carl-Auer-Systeme-Verl. , 2002. An important notion that Luhmann introduces in this book is that of system interconnection – the relation between an emerging system and its environment depends on a coincidence. A system can evolve in an environment which generates accidental changes. Autopoietic adjustments assure a high

purpose of this work it is enough to say that for Hayek the mode of spontaneous orders is one of the most natural in human societies because this is how languages and moral codes have developed for example. Hayek speaks of twin ideas of evolution and spontaneous order. He thinks that the key to the preservation of an order lies in the ability of its elements to behave according to rules. In that way, even when influenced by some external factors not only is the whole able to adjust to the new circumstances, but does it while still maintaining its order.³³

“The possibility of forming structures by a process of replication gives those elements that have the capacity for doing so better chances of multiplying. These elements will be preferably selected for multiplication that are capable of forming into more complex structures, and the increase of their members will lead to the formation of still more such structures. Such a model, once it appeared, becomes as definite a constituent of the order of the world as any material object. In the structures of interaction, the patterns of activities of groups are determined by practices transmitted by individuals of one generation to those of the next; and these orders preserve their general character only by constant change (adaptation).”³⁴

The emergence of spontaneous orders is also a basic instrument of civilisation for it brought up such arrangements as money and the law – all results of spontaneous growth and not of the conscious design of men, according to Hayek³⁵. Another one of these self-forming orders, which is maybe most significant for Hayek's philosophy, is the worldwide division of labour. What this order achieves is a synchronisation of many diverse activities of men that otherwise do not know each other³⁶. It is the belief in the performance of this particular spontaneous order that allows Hayek and other advocates of the free market to argue its effectiveness and self-efficiency. If an order has the ability to adjust itself spontaneously to the changes there is no need for any invasive actions by social engineers. Moreover, such actions will only be treated as further intrusive changes to which the system will attempt to adjust according to its internal rules.

The greatest appeal that spontaneous orders have for liberal thinkers is that they exclude

level of coordination and interconnection between the two level – the system and the environment. Under the spontaneity of an order Luhmann understands that all processes and mechanism are immanent to the system and nothing is imported from outside. Historically determined state of the system evolves by means of self-organisation on the inducement of changes occurring outside of it.

33 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 16.

34 Friedrich August von Hayek, *The Fatal Conceit*, The University of Chicago Press, Chicago, 1988; Appendix C, p. 151.

35 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 25.

36 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 17.

coercion on the procedural level. “*What is important in this case is that all individuals observe the established rules of conduct without needing to be commanded to obey them. The order is spontaneous because it arises out of the individual wills of the participants*”³⁷. This happens mostly without the participants' conscious and, more to the point, without them knowing what the general plan or direction of the development is. Indeed, it is the fragmented knowledge of all participants that cumulates in the emerging order and particularly the purpose of the market order (if one can speak of a purpose of something that is not intentional) is “*to cope with the inevitable ignorance of everybody of most of the particular facts which determine this order*”³⁸.

I think that by situating market system next to such structures as language and morality Hayek placed it behind the scope of reasonable criticism. It is simply pointless to criticize languages and try to replace them with better solutions, although this has been tried more than once and the failure of these ventures shows my point best. Even if we would all agree that such artificial languages as Interlingua, Latino sine Flexione or Esperanto (the most popular constructed language) are better (in the sense of being easier and more logical) they will never be able to substitute our natural languages because they simply do not catch on. The fact that people use the complicated languages that were unpremeditatedly evolving through history rather than adopt simple languages deliberately invented by a single person or a small group of people may be hard to explain but it certainly shows that there is something uncontestedly useful and valuable in a system that is composed of uncountable tiny influences for all its users. And similarly, just as it would be hard to explain why language communication works, it is difficult for the market system as well. We are, however, well able to describe certain rules and mechanisms in work there. I think that whereas connotations and grammar rules are for language communication, price networks and competition are for the market system.

An interesting feature of spontaneous orders, especially when it concerns ordered groups of people of a significant size, is that in order to participate in them particular members have to obtain certain qualities. Otherwise mechanisms exist that arrange for those who do not submit to the pattern to be excluded.³⁹ I found an instructive and fresh way of analysing these mechanisms in the works of Robert Axelrod. He researches the rules of governing the game theory using computer simulations and tries to explain how the results can be applied in social orders. One of his well known experiments was a computer tournament of the Prisoners Dilemma. Scientist of

37 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 38. Included a quotation from Hayek, *Knowledge, Evolution and Society*.

38 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 38. Included a quotation from Hayek, *Knowledge, Evolution and Society*.

39 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 21.

different disciplines as well as non-professionals were invited to submit computer programs describing different strategies for the game. All submitted programs played against each other and the results were then submitted to complex mathematical and sociological analysis. Two outcomes that are mostly interesting from the point of view of this paper are as follows: 1) most successful were those strategies that cooperated with their opponents; 2) after more rounds of the tournament the cooperative strategies eliminated the uncooperative ones⁴⁰.

Believing in the self-organisatory capacity of social systems, it is surprising for Hayek that people generally find it easier to imagine a single mind overseeing the whole complexity of data and circumstances or a group of omniscient agents, than to imagine or understand a system that works as a *combination of fragments of knowledge*, to use Hayek's expression. He argues against the possibility of a conscious design as an origin of social orders.

*Such an order, leading to the utilisation of much more information than anyone possesses, could not have been 'invented'. This follows from the fact that the result could not have been foreseen. [...] All that man could do was to try to improve bit by bit on a process of mutually adjusting individual activities, by reducing conflicts through modifications to some of the inherited rules. All that he could deliberately design, he could and did create only within a system of rules, which he had not invented, and with the aim of improving the existent order.*⁴¹

This means that a particular person is well able to introduce singular changes and adjustments to the system as solutions to definite problems that he or she confronts. No particular person, however, is able to change or design the system as a whole. The reason for this is a double one. On one hand it follows from Hayek's epistemological assumptions that people are equipped only with limited epistemic capacities. On the other hand it results from the logic of the system itself – there is no external agent and therefore no God-perspective is possible. A functioning system cannot be frozen, rearranged and then started again. Neither can all innovations be introduced simultaneously. Each change, however small, causes unpredictable and uncountable outcomes which can turn out to be counter-productive to each other. In other words, social systems, in Hayek's opinion, cannot be approached from a holistic perspective – it cannot be determined and explained as a whole.

Hayek's argument against the logical possibility of social engineering is practically the same as the one of Sir Karl Popper. He argued that “*it is for many reasons quite impossible to*

40 For details of the Prisoner's Dilemma computer tournament and its analysis see Robert Axelrod, *The evolution of cooperation*, New York, Basic Books, 1996.

41 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 11.

control all, or nearly all these [social] relationships; if only because with every new control of social relations we create a host of new social relations to be controlled. In short, the impossibility is a logical impossibility”⁴². Popper's argument is basically that any attempt of an overall social reform would require such a number of particular actions that it would be impossible to foresee their results when joined and interrelated. Furthermore, once simultaneously implemented, those unitary reform would each yield some results but again it would be impossible to say which changes result from which reforms. The complexity of the social realm makes it impossible, according to Popper, to study it as a whole. The '*selectivity of all observation and description*' to which human agents are doomed by their epistemic capacities makes all attempts at holistic sciences futile. Hayek adopts a Popperian position in this regard and it might be suggested that this is the reason why their conceptions of liberalism have generally so much in common.

An important problem with social constructivism, according to Hayek, is that its principle can be formulated in a modest and innocent way, its implications however are serious and, in his view, false. The constructivist assumption is that men are the constructors of their own society and civilisation. As such they are also able to change their institutions according to their needs and wishes. Expressed in this way the formula of social constructivism sounds innocent enough, as with Hayek, but it is too often understood to mean something much less moderate. “*As soon as it is extended [...] to mean that man was able to do this [create the institutions of society and civilisation] because he was endowed with reason, the implications become questionable. Man did not possess reason before civilisation. The two evolved together.*”⁴³ Hayek's argument therefore is that the assumption of social constructivism implies that men have godlike abilities which to him is an absurdity, and, more importantly, an absurdity fatal in its consequences because it leads them to such experiments as the Soviet Union.

Andrew Gamble criticises Hayek for advocating spontaneous orders without demonstrating that they are always superior to orders consciously man-made⁴⁴. This is a legitimate critique strictly speaking, however I think that Hayek would reject it as meaningless for the following reason. He does not try to show that spontaneous orders are better than constructs would be because based on his epistemological assumptions social constructs on the scale of civilisation are not possible. It is no use trying to defend spontaneous orders because there exists no realistic alternative to them on the discussed level.

42 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 16. Included a quotation from Popper, *Poverty of Historicism*.

43 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge and Kegan Paul, London and Henley, 1978; p. 3.

44 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 39.

1.5. The Austrian School – anti-rationalism and subjective theory of value

The name 'Austrian School of Economics' refers to a group of economists who, working mostly at the Vienna University, developed theories of society and economics generally characterised by the application of methodological individualism in their analysis. This means that they worked under the conviction that only social phenomena can be approached only from the angle of rationally acting individuals. This was an approach contrary to those of Karl Marx and the German School who conceived accumulated entities as classes and nations as subjects of analysis. The originality of the Austrian School rests also in their rejection of common mathematical theories of equilibrium.

Carl Menger is regarded as the founder of the Austrian School. His work *Grundsätze der Volkswirtschaftslehre* formulated main ideas and methodology of the new approach. Among his direct students were Friedrich von Wieser and Eugen Böhm von Bawerk. The next generation of Austrian economists brought forth such thinkers as Joseph Schumpeter and Ludwig von Mises. Their work was continued by Oskar Morgenstern, who introduced game theory into economic analysis, and Friedrich von Hayek, who received a Nobel Prize in 1974. Most of them were not only academics but they were also publicly active. Most of the representatives of the Austrian School emigrated before World War II and continued their work in Great Britain and USA and nowadays Austrian economics is mostly present in the works of American representatives of radical liberal theories. They draw primarily on works of Mises and Hayek.⁴⁵

Menger's pioneer work was concerned with the theory of value. He insisted that the notion of value cannot be grasped objectively but only in its relation to marginal utility. Value is always determined for a certain quantity of a goods by a certain person under certain circumstances. The assessment of value is thus subjective. This insight explains the famous Paradox of Value: How is it possible that diamond, that has hardly any utility, is so expensive while water, indispensable to life, is practically worthless (in the sense of its price)? Analysed from the perspective of Menger's value theory the question is formulated in a wrong way because it concerns values of diamonds and water as a category itself. Value however is a reflection not only of the direct utility of an object, but also its scarcity and complex social interrelations.

Furthermore Austrian economists revolutionised the way of thinking about the relation between work and value. Traditional theories calculated value of an item on the ground of work time necessary for its production. Now it is widely accepted that the relation is reverse: work time is spend on production of goods because they are valuable.

⁴⁵ See *Wien und der Wiener Kreis*, hg. Volker Thurm, Facultas Verlag, WUV, Wien, 2003.

The representatives of the Austrian School were liberals as concerns political convictions. The limited role of the state in market activities was based on their theory of value: because value cannot be determined objectively, but all individuals have to act as consumers and suppliers based on their subjective assessments, any state intervention has to be seen as interference with the plans of its citizens. Also observations concerning money were an additional reason for rejection of a planned economy and conscious interference in the market. Menger and his followers pointed to the fact that the establishment of money as a means of payment occurred in an uncoordinated and spontaneous way. This development took place as a result of the fact that some goods have a larger value not due to their practical utility but due to the fact that they can be easily exchanged for other goods.

The significance of the Austrian school of economics is its unique way of posing a problem and formulating different questions than those generally asked by the mainstream economy. It was the shift of perspective that allowed Austrian economists to come up with theories that were revolutionary and while others, though based on classical thinkers, updated their ideas in modern times and circumstances. Peter Klein notices that

„throughout most of this century 'the economic problem' has been seen as the allocation of resources, the problem of finding a distribution of productive resources to supply a set of competing and potentially unlimited demands – for which a solution can in principle be computed by an outside observer (and, by implication, a central planner). For Hayek and the Austrians, by contrast, economics is about the coordination of plans, the means by which a 'highly complex order' of human cooperation emerges from the plans and decisions of isolated individuals, operating in the world of tacit and dispersed knowledge.⁴⁶

The general approach to the market understood it in a static, state-of-matters way and accordingly tried to describe them by means of developing theoretical equilibria that were supposed to correspond to the ideal characteristics of the market. On the contrary, Hayek and his Austrian colleagues treated the market as a dynamic, constantly changing, developing and adjusting mechanism. Therefore they focused on agent-relative features of the market and emphasised the significance of learning and discovery procedures involved in it. This subject-centred approach of the Austrian school resulted from the different methodological and epistemological assumptions but it was also related to what Klein describes as the „interdisciplinary flavour of the Austrian tradition“⁴⁷. This means that the analysed agent on the

46 *The Fortunes of Liberalism. Essays on Austrian Economics and the Ideal of Freedom*, edited by Peter G. Klein, Routledge, 1992, p. 1.

47 *The Fortunes of Liberalism. Essays on Austrian Economics and the Ideal of Freedom*, edited by Peter G. Klein,

market was not reduced to a homo economicus but rather treated in its complexity and with all his imperfections.

The unique and essential contribution that Hayek made to the Austrian tradition was his rejection of rationalism as the basis of epistemology. His predecessors, notably Ludwig von Mises, basically agreed with such socialist thinkers as Oskar Lange who believed that „*the function performed by the market could be understood intellectually, and therefore, in principle, improved upon*”⁴⁸. Hayek decisively rejected this rationalist assumption. He rejected the idea that the mind was allegedly capable of self-knowledge and of mastering the reality. By doing this, Gamble argues, “*Hayek challenged the epistemological basis of all modern economics*”⁴⁹. In a way Hayek radicalised the Austrian approach by his rejection of its rationalist foundation and by those means he drew a strict line between liberal and socialist economic theories.

Andrew Gamble points out that Hayek's turn towards anti-rationalism was not so much an introduction of a new perspective to the Austrian school, as a reintroduction of what he understood to be one of its traditional foundations - “*the anti-rationalism of the Scottish political economists and David Hume*”⁵⁰. It was this tradition that Hayek always averted to as the basis of true liberalism. An *infection with liberalism*, as Gamble formulates it, was the fundamental danger to all modern ideologies because it inexorably led to attempts of social engineering and thus to socialism and collectivism. Only anti-rationalist approach could secure the ideal of individualism and therefore was the only acceptable epistemology for a liberal theory of politics and economics.

Apart from the anti-rationalism, the Austrian tradition in economics is characterised by a strongly subjective approach. This is visible mostly in the theory of value developed by the Austrian economists. This theory abandons the classical notion of the intrinsic value of goods. No thing has objective value as such. The classical labour theories of value were wrong in trying to assess values of goods by calculating the time and effort needed for their production. Hayek and other Austrian economists argued that value, on the contrary, originates from a subjective relation between an individual and the good in question. The assessment of value therefore cannot be objective and definite because it is always based on subjective utility valuation made by each particular person separately. The price that is achieved on the market is simply an average estimation resulting from all subjective values.

By adopting the subjective theory of value rather than the classical labour theory Hayek

Routledge, 1992, p. 7.

48 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 18.

49 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 18.

50 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 18.

and his colleagues had to look for a new solution to the universal problem of economy. The question “*how to establish priority between a multiplicity of ends competing for a limited quantity of means*” had to be answered through “*analysis of the behaviour of the economic subject*”⁵¹ rather than by developing complicated calculi for the assessments of values and then by means of political coercion forcing them to the market. Such an approach, as Gamble notices, was damaging to the exchange mechanisms of the market because these are based on the fact that different individuals attribute different values to particular goods. Also the monopoly of productive resources in collectivist economies distorts the price system and prevents 'true' prices, those representing the subjective preferences of consumers, from being established⁵².

From these two basic ideas underlying Austrian economics Hayek developed his innovatory interpretation of a classical economic notion of equilibrium. In his essay *Economics and Knowledge* he emphasises that the only relevant equilibrium in the market circumstances is knowledge relative. The author points out that usually economists tend to overlook the significance of time and individual perspective when analysing market phenomena. This is often indicated by simplified models showing perfect (and impossible conditions) used for the analysis. Hayek points out the very limited usefulness of such models and therefore emphasises the simple fact that the subjective data available to individual actors on the market scene are never identical with the objective facts. The objective fact that on the market N number of a certain item is available is of very small importance. What counts on the real market (not its model simplification) is that X number of people know about the availability of Y number of this item. The problem, according to Hayek, is that economic analysis usually assumes “*that the subjective data coincide with the objective facts*”⁵³, although this is never the case.

The two assumptions: 1) irrationality of the agents, and 2) their imperfect knowledge of the market, lead to rejection of economic modelling in general. The use of such models is significantly limited and their employment for purposes of reform may lead to catastrophic results. Fortunately some representatives of contemporary economy, aware of this problem, develop what is known as Imperfect Knowledge Economics. The leading thinkers of this conception are Edmund Phelps and Roman Frydman. In my view the concepts developed by those economists can be seen as a continuation of the critique on the rational expectation approach as issued, among others, by Friedrich Hayek.

51 Andrew Gamble, Hayek. *The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 60. Included a quotation from Hayek, *Collectivist Economic Planning*.

52 Andrew Gamble, Hayek. *The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 61.

53 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 44.

1.6 Epistemology, dispersed knowledge theory

Seeing how important for the Austrian School and for Hayek especially the specific conception of knowledge is, I think it is necessary to give some more thought to this particular topic. Hayek, having recognised the significance of epistemology for the economic sciences developed his own conception and, similarly to Popper based on it his philosophy of liberalism. He worked with two major insights developed by the Austrian tradition: “*first, that knowledge is always imperfect in human societies, and second, that the cost of any economic activity is subjective*”⁵⁴. The importance of the assumption of imperfect knowledge is so crucial because it lies at the base of the two-sided debate that dominates modern economics:

*“The defenders of free markets are the 'new classical' economists, whose theories depend on the assumptions of hyper-rational human agents with 'rational expectations' and instantaneous market clearing; the sceptics, usually carrying some sort of 'Keynesian' label, view expectations as more problematic and prices as slow to adjust. Hayek, in stark contrast, bases a defence of the market not on human rationality, but on human ignorance!”*⁵⁵

The second assumption concerning the subjectivity of the economic value results, as already mentioned, from the rejection of the labour time calculus. To use a formulation of Andrew Gamble, it is “*in terms of the alternative output which the same resources could be used to produce*”⁵⁶ rather than in terms of the input of labour, that the value of goods should be assessed according to Austrian economists. This is the reason why the particular knowledge that is significant for Hayek's theory is the subjective type and, no less importantly, a decentralized type of that cannot be replaced by statistical data and is not accessible to any central authority.

Hayek's understanding of our cognitive skills can be summarized in a simple sentence: “*all man's mind can effectively comprehend are the facts of the narrow circle of which he is the centre*”⁵⁷. He also does not believe in the existence of anything like a Human Reason conceived as a singularity, as a collection of all human knowledge. The closest to the conception of such a Reason with a capital R is what Hayek calls an *interpersonal process*, which consists of an infinite number of individual cognitive actions that can be communicated to the others, can be used by the others, influenced and tested but, very importantly, it can never be apprehended as a

54 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 67.

55 *The Fortunes of Liberalism. Essays on Austrian Economics and the Ideal of Freedom*, edited by Peter G. Klein, Routledge, 1992, p. 6.

56 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 67.

57 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 14.

whole by a single person. Gamble also points out the significant role that the notion of abstraction plays in Hayek's epistemology – it is the faculty that enables men to deal with entities that otherwise are not accessible to them⁵⁸. The conclusion that Hayek derives from his epistemic theories for ethics and practical philosophy in general is that *“no man is qualified to pass final judgement on the capacities which other possesses or is to be allowed to exercise”*⁵⁹. This approach allows granting a de jure equality to all people in the exercise of their judgements, although de facto their abilities and natural endowments differ and are far from being equal.

The inequality of natural endowments, knowledge and judgement skills is, in Hayek's opinion, definitely a positive thing for human communities. He argues that thanks to this the diversity of our complex civilisation is possible without coercion. If we all had equal skills, than either we would all have to be doing the same thing or else someone would have to arbitrarily assign us to different functions and occupations. This not being the case, each individual is able to find a domene in which he or she is better skilled than the others, has a wider knowledge or a better approach. And even if a specific occupation in which one could fulfil ones capabilities in the best way does not yet exist, by the method of trial and error he is free to look for it, invent it and therefore enrich our civilisation with yet another new design. Such a creative and innovative development is possible only based on de facto differences. As Hayek writes, *“there is all the difference in the world between treating people equally and attempting to make them equal”*⁶⁰. The equality before the law by no means has to be based on actual equality of any particular human feature neither on the assumption of them possessing equal knowledge. Rather, a liberal society is arranged in such a way that law carries out the function of a cathalysator for the dispersed knowledge and particular actions based on it:

“If the law thus serves to enable the individual to act effectively on his own knowledge and for this purpose adds to his knowledge, it also embodies knowledge, or the results of past experience, that are utilized so long as men act under these rules. In fact, the collaboration of individuals under common rules rests on a sort of division of knowledge, where the individual must take account of particular circumstances but the law ensures that their action will be adapted to certain general or

58 Gamble also point out that abstraction *„resides in the general ruales of the market order, but it is also at the heart of modern science and social science”*. The explanaiton for this state of things could be that while the faculty of abstract thinking is so crucial in human perception of the world it is slao the one that emerges as a rule and procedure in most of spontaneous orders developed in the course of civilisation. See Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 45.

59 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 15.

60 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 16.

permanent characteristics of their society."⁶¹

There are specific mechanism that ensure proper functioning of a system based on dispersed knowledge used in bits by millions of individuals. One such mechanism is the famous Smithian invisible hand⁶² – a sort of negative feedback regulating prices and providing all participants of the market with information about their performance as well as about the demand and supply relations. The price systems collate all bits of knowledge that particular people have and integrate them into an information network accessible to all. The agents may not understand the structure of this network nor how the feedback mechanism works but, as Peter Klein observes, they are *rule followers* who learned in a process of evolution how to respond to the signals they observe⁶³.

In his study on Hayek's epistemology and market theory Andrew Gamble characterizes this individual knowledge relevant for economic decision as "*local, dispersed, fragmented, and much of it [...] tacit*"⁶⁴. This particular kind of knowledge is so significant owing to its details, nuances and attention to minor differences – all that is being lost in statistical knowledge can be used in central planning. In the process of generalisation of data it is precisely these little bits of information that are being lost that make all the difference when it comes to making right decisions. The limits of our cognitive capabilities make it impossible first to add up particular knowledge of all individuals without performing some serious abstractions and secondly to provide all individuals with the same knowledge. As Hayek emphasises, it is utterly unnecessary for all actors on the market scene to have the same knowledge in order to be able to cooperate or to trade with each other. "*The whole acts as one market, not because any of its members survey the whole field, but because their limited individual fields of vision sufficiently overlap so that through many intermediaries the relevant information is communicated to all*"⁶⁵.

Hayek tries to demonstrate that the economic problem of the society is, shortly speaking, "*a problem of the utilization of knowledge which is not given to anyone in its totality*"⁶⁶ and that

61 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 138.

62 The 'invisible hand', as Adam Smith calls it, is the mechanism by means of which egoistically inspired actions of individuals bring about common profit. In particular, so Hayek, it can refer to the way by which making use of my specific knowledge not only do I popularize it by putting it on the market (and so allow others to make a similar use of it), but I also provide others with a good or service which would not otherwise be accessible or even known to them.

63 *The Fortunes of Liberalism. Essays on Austrian Economics and the Ideal of Freedom*, edited by Peter G. Klein, Routledge, 1992, p. 6.

64 *The Cambridge Companion to Hayek*, ed. Edward Feser, Cambridge University Press, 2006; p. 115.

65 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 86.

66 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 78.

a competitive system is the answer to it. In his essay titled *The Use of Knowledge in Society* Hayek gives a following definition: “*Competition [...] means decentralized planning by many separate persons*”⁶⁷. The dispersed knowledge needs a decentralized kind of planning to be used efficiently and non-arbitrarily. It might be questionable whether decentralized planning with the lack of coordination it exercises could really make an efficient use of the information disseminated throughout the system. Hayek argues however, that for successful establishment of economic relations only a sufficiently high probability is required – shortfall and uncertainty are intrinsic features of the market and they do not stand in the way of effective integration of countless bits of information into a single order.

Hayek supposes that one of the reasons why some people find it hard to believe in smooth functioning of market economy is that it is not based on any expert knowledge. He thinks that being used to the high position and esteem of natural sciences in our world we are more likely to trust systems that work in a similar way. The high degree of specialisation of scientific knowledge favours the formation of expert authorities. And because this seems to be working well, we expect similar experts to design our economic relations. But Hayek reminds us that the scientific kind of knowledge is not the only kind, and not always the most relevant. For example, in case of any commercial enterprise the significant kind of knowledge is “*the knowledge of the particular circumstances of time and place*”⁶⁸. This kind of knowledge cannot be efficiently exercised by any other instance as by the *man on the spot*, as Hayek formulates it.

*“It is with respect to this [knowledge of particular circumstances] that practically every individual has some advantage over all others because he possesses unique information of which beneficial use might be made, but of which use might be made only if the decisions depending on it are left to him or are made with his active co-operation.”*⁶⁹

I hope that at this point it is clear why individualism goes hand in hand with market economy and why it is one of the three fundamental ideals of liberalism.

67 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 79.

68 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 80.

69 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 80.

2 INDIVIDUALISM

2.1. Methodological individualism

The debate between individualism and holistic theories revolves around the question whether the social dimension of human reality is subservient to the individuals or do the “*distinctive human properties emerge only when individuals come together*”⁷⁰. In the context of political philosophy individualist position states that rights of individuals are fundamental. Collectivist theories on the other hand maintain that some rights are social in their origin and thus independent of individual rights. “*According to communitarians, individuals are constituted by the institutions and practices of which they are a part, and their rights and obligations derive from those same institutions and practices*”⁷¹.

The term 'methodological individualism' stems from works of Max Weber and his student Joseph Schumpeter. As the Stanford Encyclopedia of Philosophy formulates, their doctrine demands that all kinds of collective entities always be understood as “*solely the resultants and modes of organization of the particular acts of individual persons, since these alone can be treated as agents in a course of subjectively understandable action*”⁷². Action is characterised by Weber as motivated by an intentional state. In his opinion it is also interpretatively accessible to the agent. It is essential to differentiate Weber's politically neutral position, which aims at interpreting social phenomena, from the political ideology of individualism as advocated by the Austrian School and traceable as far as Thomas Hobbes. The most significant influence of Weber's work on methodological individualism was in the field of sociology where his general theory of action had a big impact. Theories of the Austrian School, on the other hand, affected economic and political theories.

In regard of Weberian theory of action, economics developed a discussion on rational agency and the notion of so called homo economicus. Hayek's position within the Austrian School was exceptional in this context because he did not mind referring to intentional states of the agents on the market and emphasised only limited usefulness of statistical approach in economic analysis. “*Thus Hayek insists that, in effect, all macroeconomic analysis is incomplete*

70 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 4, p.484.

71 *The Cambridge Dictionary of Philosophy*, Second Edition, gen. ed. Robert Audi, Cambridge University Press, 1999; p. 719.

72 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/methodological-individualism/>

in the absence of “micro” foundations”⁷³. Significantly, despite his regard for intentionality, Hayek understood that the outcomes of peoples actions on the market were not its direct consequences (at least not from the individual's perspective) but emerged in an unpredictable way. The advantages of a decentralised economic system stem in great part from this epistemological circumstance and are best understood when seen from the perspective of individuals involved in it:

*“The problem with ignoring the agent's perspective, in Hayek's view, is that it can easily lead us to overestimate our powers of rational planning and control, and thus to fall into “rationalism.” By contrast, the central virtue of methodological individualism is that it helps us to see the limitations of our own reason.”*⁷⁴

In this regard Lorenzo Infantino notices in the preface to his book *Individualism in Modern Thought* that the reification of collective concepts performed by methodological collectivism is not only an obstacle to the understanding of social mechanism but it also constitutes a basis for harmful beliefs *“in the myth of the great Legislator or Planner who, sure of his ability to bend the situation to his own designs, aims at moulding and remoulding norms and institutions intentionally”*⁷⁵. He argues that, on the contrary, social arrangements, though results of intentional human actions, emerge independently of those intentions and take the form of *“cascades of unforeseeable events”*. In other words, social forms are unconscious compositions of decisions and actions taken up by all individuals. Moreover, these forms are seen as entities only because theories regard them as such. Social sciences, according to Hayek, *“do not deal with given ‘wholes’ but their task is to constitute these wholes by constructing models”*⁷⁶.

Hayek's reason for favouring methodological individualism over collectivism is related to his critique of the 'abuse of reason' and also to his belief in the possibility of bringing about spontaneous orders. These emerge as *“unintended consequences of intentional human actions”*⁷⁷. In this model, which Infantino calls Mandeville-Smith model, individuals are autonomous and motivated by their personal interests. The autonomy consists in the fact that there is no authority over the individuals supervising or ordering their actions. They do not have to submit to any

73 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/methodological-individualism/>

74 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/methodological-individualism/>

75 Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. xi.

76 Friedrich August Hayek, *Scientism and the Study of Society*, in *Modes of Individualism and Collectivism*, ed. John O'Neill, Gregg Revivals, Aldershot, Hampshire, 1992; p. 46.

77 Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 1.

intentional order but rather an unintentional order arises from their own actions.

The background of anti-individualist movement in all social sciences, from economy through sociology, up to philosophy, lies in the double claim of constructivism on one hand and in uncritical rationalism on the other, writes Infantino. The two claims of constructivism are “*that unintentional order is impossible and that, on the contrary, the conscious organization of a complex society is possible*”⁷⁸. The uncritical rationalism stems from Cartesian tradition and recognises hardly any limits of human reason and its power. It is the inclination towards utopian models that Hayek and other individualists reject in rationalism. Moreover, the collectivist approach assumes the kind of inequality of agents that bestows some of them the with ability to regulate lives of others. And, as Infantino rightly notices, “*this claim coincides precisely with the ambition to assert a 'privileged point of view on the world', to hand over the monopoly of truth to a class of 'chosen ones'*”⁷⁹. Hayek even argues that common grounds can be found here for such distinct philosophers as Comte and Hegel. They both seem to try to suppress the individual and subordinate it to a superior collective and both their philosophies gave foundations to totalitarian systems.

2.2. Political theory of individualism – Lock, Kant, Smith, Bentham, Mill

This section is based on Michael Oakeshott's work *Morality and Politics in Modern Europe* and is intended as a short introduction of individualist positions in political philosophy prior to Hayek. These conceptions were, as Hayek himself emphasises, of great influence to his formulation of liberalism. I believe that a presentation of these positions will allow me to regard Hayek's philosophy in the right perspective.

In his book Oakeshott writes that political theory of individualism begins with the idea of the heterogeneity of individuals and the multiplicity of their activities and variety of their opinions. Those activities and opinions overlap and often collide with each other. This state of affairs does not have to be subject to positive or negative valuation but it simply has to be acknowledged. Subsequently a question has to be answered about the the kind of government that is proper in view of these circumstances. Michael Oakeshott emphasises in this context the desirability of an impartial government that is not itself involved in the collisions between individuals.

⁷⁸ Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 5.

⁷⁹ Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 6.

*“The office of government is not to impose other beliefs and activities upon its subjects, not to tutor or to educate them, not to make them better or happier in a way other than that which they have chosen for themselves, not to direct them, lead them or manage them; the office of government is merely to rule. And ruling is recognised as a specific and limited activity. The image of the ruler is not that of the manager but that of the umpire whose business it is to administer the rules of a game in which he does not himself participate.”*⁸⁰

Oakeshott argues that the ideal of individualism requires such a manner of governance that is able to unite all individual interests under the rule of common rights. From the historical point of view it required abrogation of the system of feudal and class privileges. Such governments started to appear in Europe already in 16th century but it was first the 17th century that brought philosophers who theorized this political experience. Hobbes and Locke have to be mentioned as thinkers who “*saw to the bottom of the task of anyone who wants to construct a political theory of individualism*”⁸¹. They both begin with an imaginative state of nature inhabited by free and independent individuals who pursue their own goals with no earthly authority superior to their own. An introduction of a new instance in a position of an impartial umpire occurs for reasons of convenience. In Locke's conception the government is not bestowed with sovereignty but its functions are strictly limited to umpirage.

*“[Government's] purpose is not to deprive a subject of his self-determination; it is to preserve his liberty and his property [...]. The ruler does not provide his subjects with rights and duties; these they already have from the Law of God and they need no others. What the ruler provides is a means of redress to any subject who is denied, by the action of his neighbour, the enjoyment of his rights.”*⁸²

In this regard, when Locke introduces a sort of 'common good' in the form of the “*maintenance of the authority of the umpire*” it is not to be understood in a purely collectivist way but rather as a good shared by all individuals. Moreover, Oakeshott emphasises Locke's insistence on the 'indestructible self-determination' of individuals articulated by the necessity of a consent to any kind of subordination and in this manner authorization of a ruler.

Oakeshott agrees that Locke's conception of individual, because of its reference to God, is

80 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 49.

81 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 53.

82 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 56.

not satisfactory from a philosophical point of view. It is however a testimony of “*the high level of individuality which emerged among Western European peoples as the counterpart of the desuetude of feudal societies*”⁸³. It bears witness to the fact that a philosophical theory of the individual in polity was needed. Later thinkers managed to develop it much further, Kant being maybe closest to achieving this goal. Not unlike Locke, Kant bases his theory on the conviction that human beings have a disposition to be self-determined, that is, to make their own choices and to act upon rational deliberation. It is significant for political reference that, according to this conception, the assumption of this disposition for oneself necessarily entails assumption of identical disposition for all other people. Oakeshott explains that

*“if a human being claims this right to be an individual, to be self-determined, it follows that each man must recognize a similar right in every other man. To deny the right of self-determination to others is to remove the foundation upon which a man claims it for himself, because he claims it for himself on account of his being a man [...]. Hence, the fundamental rule of the moral and rational human life is to cultivate one's own individuality and recognize the right of all other men to cultivate their own individualities.”*⁸⁴

What is interesting in this conception is that on the one hand individuals are primary (and “*a civil society is never more than an association of individuals*”), on the other hand individuality is a feature existent only among other individuals. In this regard, the task of a government is to “*limit by external laws the freedom on any individual to the extent of its agreement with the freedom of all other individuals*”⁸⁵. Oakeshott emphasises that the objective of a government is to facilitate rational and moral life through eliminating any arbitrary interference of others by means of exercising controlled nonarbitrary interference of law. The authority of the government is limited to guarding the law and does not extend to imposing substantive activities such as determining what a good life is supposed to be for example.

Smith develops a similar conception of individual although, as Oakeshott writes, he does it “*rather clumsily and empirically*” in comparison to Kant's logical reasoning. What is interesting in Smith's analysis is that he emphasises that natural beneficence and love of others are not necessary conditions for men to live and function in communities. Smith believes that a “*disposition not to injure one another*” is sufficient. The sense of utility of a society will allow

83 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 59.

84 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 60.

85 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 62.

its preservation, if its members will not show harmful inclinations towards each other. Thus justice can be defined as “*readiness to refrain from doing injury*”, and although it is a condition of upholding a society, it does not arise from a regard for multitude but from the regard for individuals qua individuals. Again not unlike Kant, Smith believes that the objective of a government is “*to provide the conditions of justice for its subjects*” and not to change the subjects themselves. Among its duties is setting down rules of conduct which respond to current problems and circumstances, providing means of exchange and preventing practices harmful to the enterprise, like monopolies and privileges⁸⁶.

The originality of Bentham's political theory of individual is that its is strongly concerned with the characters of rulers as well as with the characters of those being ruled. He presents individuals as rational and sentient beings who determine their conduct “*by a desire for pleasure and an aversion to pain*”. They are also the best judges of matters concerning their feelings and perceptions, yet they tend to be intolerant and try to impose upon others their own beliefs. Their activities are guided not by the aim of self-improvement but solely the improvement of their conditions. They are understood to be egocentric in that their primary concern is their own interest and good. Bentham is more radical than the previously discussed philosophers in stressing the separateness of individuals. “*They compose no 'community' which could be supposed to have an 'interest' or a 'good' of its own*”⁸⁷. Yet, they need to be subjected to a government which would secure conditions in which they all can enjoy their rights and make use of their abilities.

*“Not to allow each man to make his own choices for himself in respect of pleasure and pain is to deny his character as a sentient and rational being; but when men enjoy this right of making their own choices they are apt to exhibit a disastrous propensity to be intolerant – to disallow in others what they claim for themselves. And from this predicament springs both the need for government and the proper character of government.”*⁸⁸

Bentham conceives the role of government in a strictly utilitarian way – it is supposed to maintain the highest possible level of pleasure among its subjects by inflicting the lowest possible level of pain. “*In other words, government is a device for making intolerance unprofitable*”. Thus it seems that tolerance is for Bentham's theory the kind of normative

86 See Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 64-69.

87 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 75.

88 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 76.

principle that justice is in other theories. It does however indicate the radicality of Bentham's conception of the individual as particular and isolated.

Concerned not only with the characters of the individuals subject to a government, Bentham reflects also on the fact that the rulers themselves are human beings vulnerable to the same weaknesses. "*The power necessary for umpirage*" writes Oakeshott "*is all too easily diverted to the imposition upon their subjects of what rulers themselves believe to be good*"⁸⁹. The rulers may try to use their position to exercise intolerance although at least in theory their task is fully neutral. It is different to the political theory developed by John Stewart Mill who tried to improve Bentham's conception of rule, yet came to the conclusion that the objective of the government is to support the perfection of people.

Oakeshott believes that the theory formulated by Mill is only apparently a political theory of individualism while substantially it moves towards collectivism. The main difference between his philosophy and the one formulated by Bentham is that the former asserts the possibility of self-improvement of individuals while the latter insisted that only their circumstances could be improved. Mill believes in the progress of human kind and many of his political principles originate not from the concern for preserving individuals but for providing conditions for this development by means of trial and error. Yet the belief in the perfectability of men implies a teleological world view and in the end contradicts diversity of individuals.

*"[Mill] had no absolute objection to uniformity; he believed that in the end true opinions would establish themselves and that there was a single condition of well-being appropriate to all men, what he objected to was uniformity, the suppression of opinion and of individual efforts at self-improvement at the present time. For he understood the progress of mankind to be achieved by experiment [...]. In the final analysis, the individual for Mill is not an end in himself: he is an instrument and a servant of racial progress."*⁹⁰

Thus Mill not only removes the individual from the fundamental position in his political theory, but he also does not seem to sympathise with the conviction of most theoreticians of individualism that politically right is prior to good. As the priority of the right over the good is fundamental for liberal politics I will address it again in due course.

89 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 77.

90 Michael Oakeshott, *Morality and Politics in Modern Europe*, Yale University Press, New Haven and London, 1993; p. 82.

2.3. Liberal individualism

Isaiah Berlin believes that liberal individualist analysis of societies begins with John Stewart Mill and Jeremy Bentham. They claimed that properties of societies are a simple sum of the properties of their members with no new quality resulting from the composition. This radical individualism has been strongly criticised both by collectivist thinkers, as well as by some later liberals who recognised that indeed some form of a new quality emerges when individuals interrelate in a society and also that they themselves are influenced and to some extent shaped by it.

Yet the most characteristic feature of the individualism advocated by liberals and democrats which also explicitly separates it from Marxism and other collectivist theories is obviously its conception of the individual and its authority. *“From the democratic assumption that the ultimate and only source of authority for the rightness or wrongness of legislation and wider social action is the moral sense of the individual, there follows the basic concept of the inalienable right of the individual”*⁹¹. Alternative are those theories which profess that some individuals, experts, are *“wise enough to detect the direction of history”* or discover true answers to such questions as how to live and what to strive for. No inalienable rights can be found in such theories because they require individuals to submit to the course of history and to adopt a life compatible with the right answers to the questions above. Resistance is hardly possible because *“those who wish to act differently”* writes Isaiah Berlin, *“necessarily place themselves in opposition to the juggernaut of history, that is to say, are behaving suicidally, which proves that they are irrational, blind, mad, not worth listening to, and indeed a nuisance and, if incurably set on their path, to be swept away as an obstacle to progress.”*⁹² The result is that the community becomes detached from the individuals which make it up. It becomes impersonal and impervious to an individual's experience, wishes and needs. A danger related to this approach is also that it tends to sacrifice real individuals to abstract ideals.

Historically individualism can be associated with those periods of time which were influenced by the spirit of renaissance, while collectivist ideologies brought about totalitarian regimes. Hayek often points out that the Nazis referred to their socialist revolution as a *'counter-Renaissance'*. Hayek believes that this and similar political movements were a *“decisive step in the destruction of the individualist civilisation built up since Renaissance”*⁹³. Individualism for

91 Isaiah Berlin, *Democracy, Communism and the Individual*, p. 3, available at <http://berlin.wolf.ox.ac.uk/lists/nachlass/demcomind.pdf>

92 Isaiah Berlin, *Democracy, Communism and the Individual*, p. 4, available at <http://berlin.wolf.ox.ac.uk/lists/nachlass/demcomind.pdf>

93 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 79.

him is the central ideal of Western civilisation responsible for its character, development and spreading, and as such it is worth preserving.

But importantly, more than the historical analysis, economist thinkers significantly influenced the liberal theory of individualism. It is noticeable for example in the fact that several classical economy theoreticians play an important role in Infantino's recount of individualism. Particularly Bernard de Mandeville and Adam Smith appear as Hayek's predecessors. They all agree that the search for happiness is an individual venture and they ground this conviction in a general assumption concerning human nature. Man is an egocentric in his wishes as well as in the ability to take care of himself better than anyone else and he “*observes the world primarily from a personal perspective*”. Man is however also a social being and this he is in two senses. First, “*his humanisation is a product of the inter-subjective relationship, which continually produces outcomes which are not due to human planning and wisdom*”, and secondly, in a narrower sense, man is a social being because “*each of his actions contains 'limitations' and 'conditions'*”⁹⁴. What the author means by conditions of human actions is the necessary relationship between an individual and an Other who is seen through this personal perspective.

*“The objective of each is to fulfil his own plans, the services of the Other are a means towards this fulfilment; but the Other is also a series of 'limitations' and 'conditions' to which each must subordinate himself in order to have in exchange the availability of others without which his needs remain unsatisfied. [...] Yet, the fact of seeking the services of the Other obliges Ego to satisfy Other's demands. Their respective perspectives intersect.”*⁹⁵

This can also be interpreted by means of thinking of the individual as an autonomy and the Other as a condition of the individual's actions. In the social reality the autonomy of individual cannot be fully suppressed because it is the source of actions and thus of the social order itself. It is, however, always determined by its conditions. Individual's actions have to take place in a social reality, among other individuals that condition it, because otherwise the agent would not have any motivation to act and his actions would have no meaning.

94 Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 34.

95 Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 34.

2.4. Ethical pluralism

*“The separation between science and ethics”*⁹⁶ as well as the belief that each individual is equally entitled to search for his own answers to crucial questions about life and then to live according to his convictions leads to value pluralism. The postulate of such separation can be traced as far back as Humean distinction between facts and values. No 'ought' can be derived from an 'is'. Ethics cannot be conclusively derived from science or deduced by a single human reason. A similar stance is taken by Isaiah Berlin when he differentiates between natural sciences and humanistic disciplines. The former *“are concerned with types, [...] concentrate on similarities and look for regularities”*⁹⁷ while the latter deal with individuals. Their methodologies are distinct and not interchangeable. Thus it follows that values and their hierarchy cannot be found by means of a scientific method but have to be searched for by each individual separately.

Socialism is a doctrine with a single comprehensive ethical code to be applied to all members of a community. Hayek believes that it might have been of advantage in the early stages of human civilisation. The groups of hunter-gatherers needed a strong sense of collectivity without which individuals would not have been able to survive. On the present stage of human development however, *“socialism is an atavism”*⁹⁸. Hayek believes that different times demand different moralities. Though this can be easily criticised as the worst kind of moral relativism and even conformism, it is rather intended to mean that morality develops continually and together with all others manifestations of civilisation. It is one of the orders that emerge spontaneously in the course of individuals' decisions and actions. The conditions of social environment implicate certain modes and rules of conduct which change in response to the changes in the society. Andrew Gamble interprets this changes as going from natural instincts to abstract rules.

*The morality of the Great Society is one of individual freedom and responsibility. Over the course of many generations, according to Hayek, the 'good natural instincts' of the tribal band were gradually subdued by culturally developed rules of conduct which no longer concerned concrete ends and concrete needs of known people, but were purely 'abstract rules of behaviour having little to do with what our instincts told us to do'.*⁹⁹

96 Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 8.

97 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/berlin/>

98 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 26.

99 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 29.
Included quotation from Hayek, *Knowledge, Evolution and Society*.

Social arrangements and rules of conduct are thus to be understood as the “*accumulated wisdom of many generations*”. Their value is verified by the test of time. In evolutionary terminology, they have proven to yield best results for societies and thus they should not be lightly set aside or tempered with.

John Gray suggests that it was precisely the “*monist tradition in ethics and philosophy*” that influenced the development of liberal theories. Gray argues that it is this break that

*“motivates Berlin in assigning to liberty a privileged place among the political values he judges to be worthy of promotion. For, as Berlin sees it, it is an inexorable result of the truth that some basic moral and political goods are incommensurable, and the central excellences of human life competitive and sometimes uncombinable, that moral and political dilemmas are insusceptible of any definitively rational solution.”*¹⁰⁰

This basically agrees with Hayek's view that there can be no ultimate answer to ethical dilemmas that could be found by one person, presumably an authority, and then communicated to all the others. Hayek insists on plurality of liberal societies and the right of everyone to construct their own hierarchy of values.

2.5. Individualism in a liberal state

The reverence with which Hayek seems to treat traditional values, rules of conduct and social arrangements are not a sign of conservatism. As Gamble notices, “*a major gulf between conservative and liberal positions lies in their attitude to authority*”¹⁰¹. Hayek respects the ideals of freedom, individualism and justice because they resulted through an accumulation of dispersed knowledge and experience of all people. No single person however can have an authority to compare with it. In conservative, as well as in socialist world-views there is only one morality and one religion right. Liberals, on the other hand, insist that all individuals be allowed, especially in those spheres of life, far reaching freedom. It is a common characteristic of liberal theories that they generally recognize the priority of right to the good. This priority is meant in two senses: “*first, that individual rights cannot be sacrificed for the sake of the general good [...] and, second, that the principles of justice that specify these rights cannot be premised on any particular vision of the good life*”¹⁰². Thus the acknowledgement of the principle of

100 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 47.

101 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 103.

102 Michael Sandel, *The Procedural Republic and the Unencumbered Self*, in *Communitarianism and Individualism*, ed. Shlomo Avineri, Oxford University Press, 1992; p. 13.

individualism requires opposition to teleological political concepts.

The implications of the ideas gathered under the notion of individualism are profound for the constitutions of all communities, states in particular. Two main consequences of this ideal for the political structure of a liberal society are: 1) that individuals have to have a private sphere immune from any coercion, and 2) that they should be able to pursue their own plans of life and develop their particular talents. The second principle requires that all people have the same chance to educate themselves, the same access to posts and the same possibility of developing their plans. The achievement of their goals cannot be barred by any legislative obstacles other than the prohibition to harm others. *“The triumph of liberal civilisation, for Hayek, is measured by the extent to which these obstacles have been progressively removed”*¹⁰³.

Individualism also implies the sort of equality of all members of a community that requires the abolition of all privileges. It requires equality before the law but on no account does it require sameness. Indeed, Hayek often emphasises how advantageous for society as a whole is its diversity. Liberal society, rejecting coercion, is able to develop only by means of competition of different ways of life, beliefs etc. This renunciation of any monopolies is what motivates Hayek to adopt J.S. Mill's view on education. The importance of a common education and access to knowledge and its resources are of course undisputed, but if it is directed by a monopolized centre, it can be a dangerous weapon.

*„A general State education is a mere contrivance for moulding people to be exactly like one another: and the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation”*¹⁰⁴.

Whether we like it or not knowledge is one of the goods that is acquired at a certain price and it is probably the most important of all such goods. And this is just more the reason for not leaving it up to the judgement and decision of some singular person or group, but to let the competitive system strive for its variety, quality and usefulness. Hayek therefore supports the idea of private education establishments. By creating a competition for the state schools they would, first of all, provide the needed diversity and give the possibility to choose according to one's convictions and goals, and secondly stimulate development and a high level of education.

Not only education, but all other monopolistic social arrangements are bound to induce opposition. People are not homogeneous and their beliefs, wishes and needs are different. In all

103 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 80.

104 J.S. Mill, after Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, 2006; p. 325.

cases where this pluralism comes along, the alternatives are coercion or freedom of choice. Thus the ideal of individualism can be understood as one of the foundations for the cardinal ideal of personal freedom for any liberal theory and every liberal state.

*The privileged status of freedom among the ends of political life derives for Berlin from the constitutive role he conceives moral conflicts to have in political life, and from the source of such conflict in the ineradicable diversity of men's purposes. Berlin's advocacy of the priority of liberty is grounded, then, in the doctrine of value-pluralism, which he always promoted.*¹⁰⁵

2.6. Subjectivism

Subjectivism as the base of liberal political thought should be introduced in two ways. First of all it points to the origin of law that is elicited in the Kantian way from the autonomous subject. The law needs to have a categorical foundation and a general form. Otherwise law would favour certain ends and thus disrespect the autonomy of individuals. As Sandel points out, many liberal thinkers (especially from the Anglo-American tradition, to which Hayek can be assigned – especially in this context) attempt to implement this Kantian procedure without referring to any metaphysical background. Thus they work with the notion of an unencumbered self rather than with the transcendental subject. “*For the unencumbered self*” writes Sandel “*what matters above all, what is most essential to our personhood, are not the ends we choose but our capacity to choose them*”¹⁰⁶. The priority of the individual to its ends implicates the priority of the right to the good. Accordingly, a society that recognises the priority of the subject, a society governed by the principle of individualism cannot accept any constitutive¹⁰⁷ conceptions of community. The individual has to remain free and independent.

While in the sphere of politics individualism and subjectivism require a liberal society where people have secured as much freedom as possible, in economics they call for a microeconomic approach. Just as in all other social sciences, an attempt to grasp the object of studies as a collective unit without regard to the individuals assembled in it, can lead only to catastrophic results and misunderstandings. Thus Hayek recommends to formulate economic problems in terms of “*preferences, intentions, calculations, and choices of individual agents*”¹⁰⁸.

105 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 48.

106 Michael Sandel, *The Procedural Republic and the Unencubered Self*, in *Communitarianism and Individualism*, ed. Shlomo Avineri, Oxford University Press, 1992; p. 19.

107 Constitutive is understood here as opposite to merely cooperative.

108 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 153.

“The points which we want to stress are that [...] we must start from what men think and mean to do, from the fact that the individuals which compose society are guided in their actions by a classification of things or events in a system of sense qualities and concepts which has a common structure and which we know because we, too, are men, and that the concrete knowledge which different individuals possess will differ in important respects.”¹⁰⁹

The point that Hayek tries to make is that in all social sciences studied objects have to be approached always in relation to men and seen from their perspective. For economics this means that value is also a subjective quality of things. Value is “*a judgement economizing men make about the importance of the goods at their disposal for the maintenance of their lives and well-being*”¹¹⁰, writes Carl Menger. The processes of judgement, valuation and finally choice is a constitutive part of human condition and it cannot be eluded. Only immortals living in a world where goods are free and plentiful for all would be able to live without need. As it is, need is a fundamental experience of all individuals and it is ultimately subjective. Being unable to free themselves from need, individuals are compelled to choose among their possibilities and make economic calculations considering their means and the goals they want to achieve.

Subjectivism in economy has also its origin in the character of knowledge being employed on the market. Hayek supposes that one of the reasons why some people find it hard to believe in smooth functioning of market economy is that it is not based on any expert knowledge. He thinks that being used to the high position and esteem of natural sciences in our world we are more likely to trust systems that work in a similar way. The high degree of specialisation of scientific knowledge favours the formation of expert authorities. And because this seems to be working well, we expect similar experts to design our economic relations. But Hayek reminds that the scientific kind of knowledge is not the only kind, and not always the most relevant. For example in the case of any commercial enterprise the significant kind of knowledge is “*the knowledge of the particular circumstances of time and place*”¹¹¹. This kind of knowledge cannot be efficiently exercised by any other instance as by the *man on the spot*, as Hayek formulates it. From here it is easily seen why individualism goes hand in hand with market economy:

“It is with respect to this [knowledge of particular circumstances] that practically every individual

109 Friedrich August Hayek, *Scientism and the Study of Society*, in *Modes of Individualism and Collectivism*, ed. John O'Neill, Gregg Revivals, Aldershot, Hampshire, 1992; p. 35.

110 Carl Menger, *Problems of Economics and Sociology*, quote after Lorenzo Infantino, *Individualism in Modern Thought, From Adam Smith to Hayek*, Routledge, London and New York, 1998; p. 102.

111 Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 80.

has some advantage over all others because he possesses unique information of which beneficial use might be made, but of which use might be made only if the decisions depending on it are left to him or are made with his active co-operation”¹¹².

The particularity of knowledge available to all individuals makes them the ultimate authorities when it comes economic decisions. Similarly, the particularity of men in general implies their individual authority in the face of any circumstances that directly concern them.

2.7. Authority of the individual

Andrew Gamble believes that there is a crucial paradox underlying Hayek's philosophy. This paradox is to be seen in his alleged inconsistency in acknowledging individual's authority. Hayek and other liberals preach autonomy of individuals but when it comes to deciding about the kind of society they are to live in, they deny people the authority to change the status quo.

Liberal doctrine enshrines the sovereignty of the individual as its key organizing principle – in the polity, the economy, and the society. Hayek agrees that individuals are sovereign, but argues that individuals can be allowed to make their own choices only within the general rules which underpin a free society. Individuals cannot be allowed to choose those general rules without endangering freedom and prosperity. The paradox at the heart of Hayek's thought emerges once again. Individuals are sovereign in the market order [...] But individuals are not sovereign when it comes to determining the rules of that market order.¹¹³

The answer to this alleged paradox is that people have the authority in those dimensions which they can apprehend with their limited epistemic capacities and which they are actually able to change directly. Thus they are autonomous in their corresponding private spheres and have the authority to make individual decisions. These of course will have an influence on the whole society, most evidently the political decisions made within the framework of democratic procedures. Yet no single person has the authority to decide about the environment as such for all the others. Neither was market order invented and introduced in such an 'artificial' way. According to Hayek, it developed spontaneously out of uncountable decisions of autonomous individuals throughout the ages. Individual authority does not reach into this evolutionary and historical dimension.

¹¹² Friedrich August von Hayek, *Individualism and Economic Order*, The University of Chicago Press, Chicago, 1980; p. 80.

¹¹³ Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 113.

Another reproach that Gamble formulates against Hayek's theory is that he has no other conception of authority than “*authoritarian in form – top-down, centralized, and hierarchical*”. It seems that in Gamble's eyes Hayek is an anarchist who “*has no conception of other, more democratic forms that authority and governance*”¹¹⁴. But I would argue that it is precisely the kind of dispersed authority that can be found in the mechanisms of a free market that is a most democratic form of authority. This kind of authority lays the foundations for a special type of order which Hayek chooses to call 'cosmos'. In contrast to a 'taxis', which is an order designed consciously by men, cosmos arises spontaneously and is the result of more than just one conception. Cosmos is a spontaneous compromise between individual autonomies and their particular goals. There are however special situations that require other measures than depending on impulsive and automatic formation of compromises – situations such as the state of war.

2.8. How does socialism resemble a state of war

In *The Road to Serfdom*, in a chapter dedicated to showing why planned economy is incompatible with democracy, Hayek brings up the example of a military general who has been put in charge of a campaign and given the control of all the means he might need for the accomplishment of his task. Throughout history whenever a war was going on the command has always been delegated to a single person. Even in democratic societies in the face of war people mandate their power to a single person. What is their reason for acting in this way? Why do free people in a well functioning society decide to waive their sovereignty and agree to be autocratically governed by a single military man? Do they think that such a system of governance is generally better than the one they had before the war? Why do they suddenly trust his judgement more than they have trusted their own for the past years of peace and are thus prepared to yield their authority? It is because people realize that drawing up a successful military plan is an undertaking that requires coordination and skills. And they realize also that „*a complex whole in which all the parts must be most carefully adjusted to each other cannot be achieved through a compromise between conflicting views*“¹¹⁵.

The specifics of a state of war is that it is a pretty clear and contrasted, but unnaturally dichotomous situation. The range of choice is drastically narrowed and the number of ends is reduced to a single one – the victory. All possibilities, questions and values are suspended. They are up in the air depending on the result of the war. And in a situation, where everyone agrees on

114Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 37.

115Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 106.

this single dominant end (or rather, when such a single end is forced upon all by the threat of war) and moreover they know that it has to be worked against the clock, they realize that arguing about the means to achieve their specified end is no way to go. It is for this reason that they choose a specialist who is best qualified to achieve the goal they specified.

Hayek often emphasises the difference between agreeing on the means and agreeing on the ends. In a normal situation people are not required to agree upon common ends. In fact this would be impossible in a large community of free individuals¹¹⁶. What makes them free is their ability to pursue their own plans in life. And given the heterogeneity of people, the diversity of their characters, needs and experience one cannot reasonably assume that they will all want the same. There is however a way of reconciling all the different ends (or at least a great majority of them) by agreeing upon the means. For many reasons for Hayek the agreement on the means is both much more desirable and possible. First of all it is technically impossible to know what ends all the others want to pursue. Secondly, even if we all knew what goals all other members of our society have, we would soon realize that many of them contradict one another. How should some be convinced to resign from their goals in order to allow others to pursue theirs? According to Hayek, *“what makes agreement and peace in such a society possible is that the individuals are not required to agree on ends but only on means which are capable of serving a great variety of purposes and which each hopes will assist him in the pursuit of his own purposes”*¹¹⁷.

Agreeing on means, that is setting some rules defining what ways of pursuing our goals are admissible, does not of course give anyone certainty whether it will benefit him in particular. It is the beauty of well formulated general rules that they are not specific in addressing individuals. Whenever the development of some situation is unforeseeable, whenever the future outcome can not be predicted with certainty, there is a room for changes left where individuals can work for their goals and hope to achieve them. By giving a person the chance to pursue his plan (but only the chance, and no certainty) a general rule gives this chance also to others. That is why,

*“when agreeing on such a rule, we say that ‘it is better for all of us if...’ we mean not that we are certain that it will on the end benefit all of us, but that, on the basis of our present knowledge, it gives us all a better chance, though some will certainly in the end be worse off than they would have been if a different rule had been adopted.”*¹¹⁸

¹¹⁶A different question is whether we would like to live in a world where all would have the same goal in mind.

¹¹⁷Friedrich August von Hayek, *Law, Legislation and Liberty*, The University of Chicago Press, Chicago, 1976; p. 3.

¹¹⁸Friedrich August von Hayek, *Law, Legislation and Liberty*, The University of Chicago Press, Chicago, 1976; p. 4.

The insistence on agreeing on common rules rather than on common ends, in fact does not give everyone equal chances but gives all the freedom of choosing their own goals. This is precisely the quality of life which is denied in the state of war, when the external conditions enforce people to renounce their private ends. And, according to Hayek, the same thing happens in the case of a planned economy. The difference is that it is not an external condition that imposes the single end, but some politician, a visionary and ingenious planner who dictates the common single goal.

“The various kinds of collectivism, communism, fascism, etc., differ among themselves in the nature of the goal toward which they want to direct the efforts of society. But they all differ from liberalism and individualism in wanting to organise the whole society and all its resources for this unitary end and in refusing to recognize autonomous spheres in which the ends of the individuals are supreme.”¹¹⁹

Hayek's argument is that in a scale of a country, a nation or any other community of such significant dimension (both, considering the number of people and the size of its territory) no plan can be realistically and reasonably drawn, unless this plan is to serve one single end only. In other words planning an entire economy is possible, but if one assumes that the only thing to be considered in such a plan is the victory in a war. The planner is then permitted to nationalize private property (e.g. fabrics, land) in order to incorporate them and their work into the war effort. He is authorized to order retraining of people and relegate them to works that he finds of the highest use and importance. He will probably even be allowed to control the media in order to secure the transmission of information, so crucial for security reasons, but also for example to prevent spreading panic in the society. And all this is possible only because the priority of the single end is commonly recognized and accepted.

In a state of peace, Hayek argues, in order to be able to plan the economy in a similar way, systems like communism or fascism needed to formulate a clear end and make sure of its dominance. For only if the whole economy has one precise aim is it possible to direct it with any efficiency. The question is however, why should the whole economic effort be directed as to the satisfaction of only one end? And more importantly, who should decide as to which end is to be pursued? There are no satisfying answers to those questions from the liberal point of view. The ideal of individualism cannot be reconciled with the regime of a single end economy in a free

¹¹⁹Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 100.

society during the times of peace.

3 FREEDOM

In this chapter I undertake the task of discussing the ideal of freedom underlying Hayek's conception of liberalism. I start with explaining the general notion of freedom and its systematics. The most important differentiation from the point of view of Hayek's philosophy is the differentiation of positive and negative freedom introduced by Isaiah Berlin and therefore I shall devote some more time to relating his vitally important *Four Essays on Liberty*. I shall present Berlin's theory in close reference to Hayek's conceptions in order to give first general idea about the latter's notion of freedom. Subsequently some more thought will be given to specific concepts that build essential features of personal negative freedom defended in Hayek's works. I will analyse the notions of coercion, power, arbitrariness and responsibility in context of Hayek's conception of personal freedom. In the section on freedom and law some thought will be given to the difference between the conceptions of autonomy of Hayek and Kant. In the section on private property I shall analyse the connection between economic freedom and personal freedom in general. The last section will be devoted to summarising Hayek's discussion of freedom as a political ideal and placing it in relation to other ideals of liberalism, as well as showing its place in the general perspective of the author's philosophy.

3.1. Notion of freedom

I will not deal with the distinction between the notions of freedom and liberty, which is sometimes made to indicate the difference between one's ability to do something and having permission to do so. Hayek, as well as Berlin and Mill, uses the terms 'freedom' and 'liberty' fully interchangeably and I shall do the same. Yet, "*there are at least two basic ideas in the conceptual complex we call 'freedom'*", states the Routledge Encyclopedia of Philosophy. First of those ideas is autonomy understood as rightful self-government, second is optionality – an "*overall ability to do, choose or achieve things*"¹²⁰. In both of these cases judgements concerning freedom can be correctly made in regard to individuals as well as in regard to communities such as nations. The difference between autonomy and optionality can be best explained with the example of slaves and slave owners. A slave who belongs to a kind and tolerant owner may have some freedom in the sense of optionality (e.g. he can choose how to dress, what to do in his off-

¹²⁰ *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 3, p.753.

duty time, etc.), yet he is not autonomous because his optionality is entirely dependent on the kindness of his master. A slave who belongs to a severe owner is neither autonomous nor free in the sense of having open options. The difference between autonomy and optionality can also be expressed as the difference between freedom de jure and freedom de facto.

In this context Hayek's notion of freedom is rather to be associated with optionality and its extent is to be measured with the number of possibilities that are open to an individual. Autonomy in sense of being able to pursue any goals that individual assumes for himself would be in Hayek's eyes too close to the ideal of positive freedom. However, he would by no means object to autonomy in the sense of "*right to act on one's own judgement about matters affecting one's life, without interference by others*"¹²¹. In this sense autonomy figures in liberal conceptions of justice as the demand of priority of right over the good. I believe that for Hayek the essential difference between those two notions of autonomy would be in the notion of coercing agency. In the second, negative and political understanding of autonomy, there is talk of *others* who interfere, a human agency exercising coercive influence which is absent in the definition of autonomy in the positive sense¹²².

As the distinction between negative and positive understandings of freedom results in being so crucial, for any further discussion on this topic I shall devote the following section to recount Isaiah Barlin's theory as formulated in his *Four Essays on Liberty*. I think it is necessary also for a second reason, namely that Hayek, being an economist and not a philosopher, sometimes fails to present a thorough analysis of philosophical notions which he uses in his political studies. This is the case with the notion of freedom which, although used sometimes inconsistently, is in my opinion closest to that presented by Berlin as negative freedom. Therefore I will try to present Berlin's analysis together with its reference in Hayek's thought.

3.1.1. Isaiah Berlin's distinction of positive and negative freedom

Isaiah Berlin provides us with a complex survey of the notion of freedom¹²³ in his *Four Essays on Liberty* and the two most important aspects in our context are his distinction between the positive and negative freedom as well as his account of John Stewart Mill's theory. The question of freedom remains now as ever because it is the ultimate political question that cannot

121 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 1, p.587.

122 More on Hayek's conception of autonomy and its difference to Kantian idea will be said in the section *Freedom and Law*.

123 Berlin uses the terms freedom and liberty synonymously, and Hayek similarly thinks that there is no referential difference between the two words.

be reduced to any kind of technical deliberation of means. Berlin recognises that freedom is an end in itself and that it is not reducible to any other value. I think that this can be seen as principally consistent with Hayek's understanding because the latter often emphasised that freedom should be understood not as a value as such, but rather as the basis for all other values¹²⁴. From the political point of view the questions that Berlin is concerned with are those of obedience and coercion. Why can I not live a life I wish to? Why should I obey anyone? If I do not obey, can the exercise of coercion upon me be justified? The way Isaiah Berlin sees it, distinct answers to the question of the permissible scope of coercion and limitation of personal freedom are what constitutes the basic difference between the two major political conceptions. Hayek, again, would agree because for him the fundamental difference between liberalism and socialism consists in their different regard and valuation of personal freedom. This might have been more obvious in the time of the Cold War but it remains, in my view, unaltered till today.

For the sake of further analysis it is important to clarify first what Berlin understands under the term of coercion because his definition of freedom will result from it. He defines coercion as a deliberate interference in a sphere that was independent and unrestricted otherwise. A political coercion therefore means that one is obstructed in achieving his end. The precondition of deliberate interference rules out all those situations where we are stopped from achieving our goals by reasons independent from anyone's will, like natural disasters or endowments – in this sense there is no point of speaking of a lack of freedom to read if one is blind. My freedom to read can be limited only by a rational and conscious agent who, for example, censors the books. This probably does not bring up any controversies yet. However, it becomes problematic when it comes to such questions as those of poverty and social justice. Berlin states clearly that one can understand economic inability as a sort of slavery only if one believes that the the lack of economic means is a direct result of other peoples' decisions and moves. One would have to see a clear line of consequence between someone's actions and someone else's shortage of money. The author generally does not believe that such a direct consequence exists and he therefore does not accept tempering with freedom as a solution to economic problems. The earlier mentioned irreducibility of freedom to any other value such as social justice, happiness or fairness means that reduction of individual freedom, which may bring about increase for example of justice, but no increase of personal freedom of anyone else, is an absolute loss of freedom as such. Isaiah Berlin believes that notions of 'social freedom' or 'economic freedom' are but misleading conceptual constructs that cannot compensate the loss of actual personal freedom. To use a not fully canonical formulation, inspired by the game theory, one could say that both, for Berlin and

124 See introduction to Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006.

Hayek, only such changes are acceptable, which bring about a Pareto improvement concerning the individual freedom. In the game theory a Pareto improvement is defined as a change that, while making one participant better off, does not make any other worse off. This means that not only the amount of freedom as a sum is higher but also that no single person loses because of this change.

PERSONAL FREEDOM

It should be strictly distinguished between what could be called an 'inner freedom' and the freedom in its normal sense, as a practical independence from the coercion of others. Berlin is convinced that should this difference be not clearly realised, it can lead not only to a theoretical confusion, but more importantly to “*justification of oppression in the name of freedom*”¹²⁵. It would be temptingly easy to rule a society of ascetics but that does not mean that they would be free in a political sense. For in this sense freedom is measured not with fulfilled desires but with the desires that are potentially fulfillable. The freedom that we are concerned with is the “*opportunity to act, not the act itself*”¹²⁶. It does not matter, if one wants to go a certain way or not. What matters is how many ways are open to him. Only these ways that are opened or closed as a result of human activity count for this determination of the scope of freedom, whereas in order to be justly called an oppression or violation of freedom a way has to be closed as a result of a conscious action of another person¹²⁷. It is precisely in this sense that Hayek speaks of freedom as a relation of men to men.

Personal freedom understood as above is what in Berlin's nomenclature is called 'freedom from' and which in Mill's opinion is the only kind of freedom that deserves this name¹²⁸. Clearly in practice it cannot be unlimited because it interacts with personal freedom of other members of society. Therefore in order to secure some room for freedom of one person, the freedom of all the others has to be limited accordingly. This limitation of freedom, as Mill, Berlin and Hayek all agree, is a justification for coercion if necessary – importantly, it is the only justification for coercive limitation of personal freedom. It is interesting to point out that the conception of individual freedom in a political context is a fairly modern idea. As Berlin notices, it does not appear in the ancient Roman legislation, which after all is one of the bases of our contemporary law. I think that beginnings of political personal freedom are rather to be looked for in British

125 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 41. My translation.

126 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 44. My translation.

127 See Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 42.

128 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 207.

law – especially such legislative achievements as *Magna Carta Libertatum* and *Habeas Corpus Act*¹²⁹.

The ideal of individual freedom is not an issue in the legal thought of ancient Greeks, founders of democracy, either. And although it might now seem to us contra-intuitive, freedom indeed does not require democratic environment. Berlin argues that individual freedom principally can be reconciled with authoritarian political systems. He emphasises that the important issue is not *who* is controlling me and interfering in my private sphere, but rather *how much* control does he have and how radical the interference is¹³⁰. A tyranny of majority can be just as bad and coercive – or maybe even worse through its overwhelmingness – than a tyranny of a single despot. The relationship between freedom and democracy is a complicated one: it is a mistake, according to the author, to identify the „*desire for sphere where one can act freely*“ with „*a desire for political self-determination*“¹³¹. The latter, often confusingly also called freedom, is a freedom of a totally different kind than the former one, the basic liberal ideal – it is not a 'freedom from' but a 'freedom to'. The conflict between these types of freedom and privileging one of them as a main goal on the political agenda was in Berlin's eyes the ground of the biggest ideological antagonism of the 20th century.¹³²

The 'freedom to', also called by Berlin 'positive freedom', rises from the desire of being one's own master, the desire of leading a life defined and determined only by oneself. It may be helpful to think of 'positive freedom' as answering the question: “*Who is the master?*”, while 'negative freedom' concerns the question: “*In which area am I the master?*”¹³³. The fine yet most significant difference between this understanding of freedom and the negative one, the freedom from coercion, can be easily overseen. Just as the author notices himself, “*the freedom that consists of being one's own master and the freedom that consists of having one's decisions not interfered by others may at a first sight look as two logically close concepts, one formulated*

129I feel obliged to mention at this point that similar bills have been issued in the Kingdom of Poland around that time. Although hardly as famous as the English documents, Polish acts also stated liberty of king's subjects (obviously only the male nobility part of population), illegality of internment without trial and other limitations of the sovereign's power.

130 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 209. It is typical to blame particular politicians for the oppression of their people, and they naturally bear the responsibility for their decisions, but the real problem is not in the character and disposition of particular individuals holding power – for these qualities are rather hard, if not impossible to change. The problem is in the power itself that these people have and are able to use for coercion. Agreeing with Benjamin Constant the author of *Four Essays on Liberty* believes that too much power in one hand will always lead to harm. See p. 246.

131 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 210. My translation.

132 Not only the 20th century, but also such historical moments as the French Revolution are great examples that the freedom in the positive sense can destroy much of what freedom in the negative sense stands for. The self-government which is the main postulate of democracy does not necessarily mean 'the government of each by himself' but rather means 'the government of each by all the others'. See Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 245.

133 See Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 46. My translation.

positively, the other negatively, that mean basically the same thing”¹³⁴. Berlin however thinks that, from the historical point of view these two ideas have developed in opposite and even conflicting directions. He shows how from the notion of positive freedom, which he calls a metaphor for self-mastery, in order to evade problems with 'slavery to nature' etc. a philosopher has to introduce some division of the subject separating the lower, empirical part from the higher, reasonable one which he conceives as independent of the slaving forces of nature. The philosopher might even go as far as to introduce a higher instance of some kind, for example a community, that stands over the individual and therefore its freedom prevails over personal freedom. From here it takes only a small step to the exercise of coercion on individuals justified by communal ends treated as a higher good.

FREEDOM IN THE CONTEXT OF POLITICS AND ETHICS

It is remarkable that under such conditions it is so much easier to imagine a 'wise and enlightened person' who would claim to know what is best for the others. If people are but elements of a greater whole, in order to be able to make judgements as to the true goal and purpose of men, all one has to grasp is this one whole, and not the plurality of individuals. Characteristic for this line of thought is that it is assumed that “*rational goals of the 'real' nature of all men coincide or that they should be brought to such unanimity [...]. Doing irrational, stupid and wrong things is not part of freedom. Forcing the empirical self to the right ... is not tyranny but liberation*”¹³⁵. Isaiah Berlin points to the fact that as soon as one manages to convince oneself that the real goal of men is identical with their freedom, one can easily ignore their actual desires and subject them to oppression. From this argumentation it should be clear that for Berlin, and similarly for Hayek, the two basic liberal ideals, the ideals of freedom and of individualism, coincide – both in the sense of agreeing logically as well as simultaneously taking place in social reality.

Another problem with the understanding of freedom as a possibility to do what one desires is that it leads to a kind of stoical self-denial: if I cannot do something, I simply have to let go of this desire and in this way become free. This technique of Epictetus may work in case of natural restraints, as mentioned above, but it obviously has no use in the political sphere. Berlin admits however that there is one point that makes the notion of positive freedom useful for

134 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 211. My translation.

135 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 229. My translation.

Berlin accredits this view to both scholastic and communist thinkers, as well as to Jacobins but also to Spinoza, Locke and Montesquieu.

political struggle of liberals: *“the main value of a political, 'positive' right to participation in government rests on the fact that with its help liberals are able to protect what they hold to be the ultimate value – the individual 'negative' freedom”*¹³⁶.

Even if one would lean toward the opinion that rational powers of man should govern his emotional, empirical, weaker side, the passage from the individual to the social level is more than dubious. According to Berlin there is no justification for the view that some higher elements of a community have right or duty to govern and suppress others or to force the irrational to act rationally. It would indeed be highly paternalistic. The author argues that *“what concerns questions of ethics there can be no experts, because ethics and morals are no special sciences [...] but rather they concern the right use of universal human abilities”*¹³⁷. This argument is analogous to Hayek's rejection of specialists' authority in the area of economics based on his epistemological assumptions¹³⁸. It also agrees, in my opinion with Hayek's insistence that *“knowledge exists only as the knowledge of individuals”* and that *“the sum of the knowledge of all the individuals exists nowhere as an integrated whole”*¹³⁹. From this he concludes that there can be no case for oppression of freedom on grounds of expert knowledge.

A helpful way of analysing a theory of freedom seems to be by looking at its reference to law. Isaiah Berlin notices that most of the 18th century declarations of human rights, or speaking more generally, all conceptions that conceive of societies as being outcomes of a design, whether it be according to rational laws, to the laws of nature, of history or any higher instance, tend to regard law as a liberating principle¹⁴⁰. Even Kant in Berlin's interpretation believed that men find their true freedom in giving up the primary boundless and lawless freedom and submitting themselves to law. Berlin agrees rather with Bentham, who stresses that *“it is not the task of law to liberate, but to limit”*¹⁴¹. I think that it is also quite similar to the position defended by Hayek. Law, limiting the scope of free action of an individual is a necessary interference, its purpose being securing spheres of free action of other members of society. Law, only however when in its proper dimension of abstract general rules, assures that *“we are not subject to another man's will and are therefore free”*¹⁴².

Isaiah Berlin believes that the moral legitimacy of those limits on personal freedom, that secure the same scope of freedom for others, enjoys a universal recognition. The author also

136 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 248. My translation.

137 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 234. My translation.

138 See the section on dispersed knowledge.

139 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 23.

140 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 230.

141 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 230. My translation.

142 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 134.

shows with the examples of Constant, Mill and Tocqueville that this universal principle is one of the two basic principles of liberal tradition. This rule says that “*there are limits to the inviolability of men and that these limits are not affectedly drawn but result from rules which have been accepted for such a long time and so universally, that the obedience to them is a part of our conceptions of a normal human being and also of an inhuman action*”¹⁴³. The second principle of the liberal tradition positions law over all power – only the law has an absolute validity and this means that “*all men, regardless of what rules them, have an unconditional right to avoid inhuman handling*”¹⁴⁴. Only application of these two principles – absolute Rule of Law and limitation of inviolability – constitutes what the liberals believe to be a truly free society.

Isaiah Berlin ends his essay *Two Concepts of Liberty* with a critique of monistic conceptions according to which there exists a single ultimate answer to moral and political questions. Similarly to Hayek, who by means of his epistemological theory rejects the possibility of any comprehensive and definite solutions in domains concerning human beings – Berlin defends plurality. He criticizes “*the assumption that all values could be arranged on a single scale*”¹⁴⁵ which would mean that one only needs to look at this scale to see which of the values is the highest of all. First of all this would mean that our moral decisions are nothing more than simple calculations. But the real subversive danger of such an assumption lies in the depreciation of freedom. To support this opinion the author brings forward argumentation of Lord Acton who believed that “*the necessity of choice between absolute claims is an inevitable feature of human existence. This gives to liberty its value – liberty is an end in itself*”¹⁴⁶.

FREEDOM IN THE CONTEXT OF ECONOMY

This, so far, were the most significant points of Berlin's theory in regards to ethics and politics. However, he does not limit his analysis to those two contexts, but is also concerned with freedom in its economic aspect. It happens only too often, he writes, that proponents of liberalism and who advocate the priority of negative freedom are believed to be enthusiasts of *laissez-faire*. The author decisively renounces this doctrine and argues that it actually leads to grave violations of negative freedom. As he often does in his argumentation, Berlin adduces historical facts to support his points. He reminds that unhindered *laissez-faire* brings about violations of basic human rights understood as protection against oppression and that legal

143 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 248. My translation.

144 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 248. My translation.

145 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 255. My translation.

146 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 252. My translation.

systems that facilitate this economic regime clearly have failed to secure the exercise of negative freedom by vast groups of people. At this point it is however essential to not commit the error of over-interpretation – even in a situation in which as a result of poverty or lack of proper knowledge an individual is not able to exercise his basic negative freedom, however secured for him by the law, it does not mean that it becomes less essential. Berlin finds it important to stress the difference between preconditions of freedom and the freedom itself because he thinks that, in their eagerness to create social and economic conditions in which freedom would have its proper value and accessibility, people forget the freedom itself. The end does not justify the means. It is not permissible to try and achieve a social system where all could enjoy their freedom by violating the freedom already existent on the way¹⁴⁷.

What could be seen as an opposite of *laissez-faire* on a simple scale measuring freedom would be a society with a disproportionately strong government. Again the views of Berlin and Hayek are much the same. Both the philosopher and the economist think that too much power in one agency necessarily ends with reduction of personal freedom. There have been many philosophers, beginning with Plato and ending with Marx, who believed that accumulation of power is desirable as long as it is used in a rational way. Oligarchy of enlightened philosophers and scientific central planning have at least one thing in common: people under those systems are subjected to an overwhelming control in nearly all spheres of their lives. I would even venture to say that in Hayek's eyes both of these systems would be socialist, because as Kukathas rightly notices “*the distinctive feature of socialism, in his understanding, is its aspiration to organize society in accordance with some common purpose*”¹⁴⁸. A common purpose can hardly ever, with the possible exceptions of the state of war, truly be the purpose of all. Necessarily it contradicts goals of some citizens and therefore a coercive imposition of a common goal violates the personal freedom of some. Also, Berlin rejects the assumption of rational use of accumulated power with the following argumentation: “*all paternalistic regimes, no matter how benevolent, cautious, impartial and rational, have always in the end leaned towards treating the majority of people as subordinate, as incurably foolish or irresponsible*”¹⁴⁹. As a consequence of this alleged immaturity of people it was justified to postpone their liberation *ad infinitum*.

147 See Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p.55-57.

148 *The Cambridge Companion to Hayek*, ed. Edward Fraser, Cambridge University Press, 2006; p. 182.

149 Isaiah Berlin, *Freiheit. Vier Versuche*, Verlag S. Fischer, Frankfurt am Main, 1995; p. 65. My translation.

3.2. Hayek's notion of freedom

Throughout his life Hayek has defended the notion of freedom as negative personal freedom in the understanding of classical liberals. Interestingly his reason for that was of an epistemological origin. “*The case for individual freedom*” writes Hayek in the first chapter of *The Constitution of Liberty* “rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends”¹⁵⁰. Bluntly formulated, people need liberty because they are not omniscient and therefore they need to “leave room for the unforeseeable and unpredictable” and because they can never know which one of them is right. In Hayek's opinion leaving individuals free to engage in the process of trial and error increases the chances of improvement and innovation as well as of finding a balance in social cohabitation.

Significantly, Hayek's case for freedom as he calls it, is formulated from a somewhat utilitarian perspective. He speaks extensively about the benefits that society draws from individuals' freedom and the benefits that individuals draw from freedom of others.

*“The benefits I derive from freedom are thus largely the result of the uses of freedom by others, and mostly of those uses of freedom that I could never avail myself of. It is therefore not necessarily freedom that I can exercise myself that is most important for me. [...] What is important is [...] what freedom some person may need in order to do things beneficial to society. This freedom we can assure to the unknown person only by giving it to all.”*¹⁵¹

Thus from the perspective of utility and from the belief in the value of progress of humanity Hayek arrives at a demand for universal individual freedom. All people have a claim for freedom which should be recognised not only on the basis of their condition of being human, autonomous and rational, but also on this practical reason that its recognition is more beneficial for all.

3.2.1. Status, value and neutrality of freedom

I have already mentioned that Hayek suggests understanding of freedom as a basis for values rather than as a value itself and that in my opinion Berlin's conception of freedom, although he does call it a 'value', is similar in its meaning. In the introduction to his *Four Essays on Liberty* Berlin states clearly that there are various types of negative freedom that are not

150 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 27.

151 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 29.

desirable. To use some of his own examples, freedom of a slave holder to use his slaves in an arbitrary way and the freedom of an employer to exploit his workers are both examples of negative freedom. This is an analytical fact, Berlin suggests, and it makes no sense to try and tamper with the definition of freedom in such a way as to have it mean exclusively good. Freedom encompasses all possible things, both desirable and undesirable. Therefore I would like to suggest that freedom, especially the freedom in Hayek's philosophy, should not be interpreted as a simple value, but that it should be regarded in a procedural rather than a substantial way. Its value, for lack of a different word, lies in the role it plays in the evolution of civilisation and development of values.

“It is one of the characteristics of a free society that man's goals are open, that new ends of conscious effort can spring up [...]. It is a fact which we must recognize that even what we regard as good or beautiful is changeable – if not in any recognizable manner that would entitle us to take a relativistic position, then in the sense that in many respects we do not know what will appear as good or beautiful to another generation. Nor do we know why we regard this or that as good or who is right when people differ as to whether something is good or not.”¹⁵²

Hayek believes that it is only in the environment of freedom that, first of all, values can emerge as a part of civilisation, and secondly, that problems concerning them can be solved by the method of trial and error. In this sense it can be said that *“it is in a regime of liberty that human purposes are best served and other important goods most effectively promoted”¹⁵³.*

Thus positioning freedom at the very base of human civilisation and making it a condition of development of values, Hayek needs to assume its neutrality. By the same token he also grants a certain priority to freedom as 'chronologically' the origin of all values. Considered synchronically however, the priority and the privileged position of freedom among political goals is rather due to Hayek's belief in value-pluralism. In his essays on liberalism John Gray agrees that *“indeed, Hayek seems generally to want to work with a concept of individual freedom that is value-neutral inasmuch as it is intelligible and useful to all, regardless of their view of the nature and sources of liberty's value”¹⁵⁴*. In Gray's interpretation it is characteristic of liberal philosophies in general, and of philosophies of Hayek and Berlin in particular, that they ground priority of liberty in their rejection of ethical monism and in their doctrine of political individualism.

152 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 32.

153 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 90.

154 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 90.

To support the thesis of value-neutrality of Hayek's notion of freedom Gray adduces the example which “*compares the situation of a conscripted soldier; well-fed and comfortably housed, with that of a wandering vagabond, dependent for his survival on his wits*”. It may be that the vagabond does not value his freedom highly. Yet it does not change the fact “*that it is his freedom that is lost when he is eventually conscripted*”¹⁵⁵.

3.2.2. Coercion

“*Coercion is a technique for forcing people to act as the coercer wants them to act, and presumably contrary to their own preferences*”, reads the definition in Routledge Encyclopedia of Philosophy. Coercion is usually exercised by means of a threat or a dire consequence that will follow in case of not acting according to the coercer's demand. In contrast to compulsion, which makes “*alternatives physically impossible*”, coercion “*does not destroy the preferred alternative as much as destroy its appeal by increasing its cost*”¹⁵⁶. For the purpose of this work however the more important distinction is that made by David Zimmerman between coercion and exploitation. In his understanding the specific feature of coercion is that it necessarily restricts freedom whereas exploitation is merely making use of a situation in an opportunistic way. Let me quote an example explaining this difference.

*“A kidnaps B, brings him to the island where A's factory is located, and abandons him on the beach. All the jobs in A's factory are considerably worse than those available on the mainland. The next day A approaches B with the proposal 'Take a job in my factory and I won't let you starve'. This example is a genuine coercive offer, according to Zimmerman, but of there were two factories on the island, and the owner of the second learns of B's plight and rushes to the beach before A can get there in order to make the same kind of offer to the kidnapped worker, then A's offer is merely opportunistic exploitation.”*¹⁵⁷

Zimmerman's point is that although the effect of both offers is the same for the victim, the first is a result of deliberate action. The first factory owner deliberately robs the worker of his freedom while the second only takes advantage of the worker's situation of limited freedom. Although we might find both cases morally reproachable, it cannot be denied that they differ in respect to

155 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 55.

156 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 2, p.387.

157 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 2, p.389.

agency and responsibility. This difference is crucial for Hayek's discussion of freedom because, as was already mentioned in the discussion of Berlin's philosophy, both Hayek and Berlin define freedom as absence of coercion only in the sense of being done intentionally and inflicted by men.

For Hayek the existence of a human agency is a necessary condition of coercion which separates it from simply being compelled by circumstances. "*Coercion occurs when one man's actions are made to serve another man's purpose*", writes Hayek. Similarly to Zimmerman, Hayek emphasises that coercion does not eliminate choice fully but "*the alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one*"¹⁵⁸. Moreover, coercion is conditioned not only by the existence of a human agent, but it also requires certain intentionality of his action. Again like Zimmerman, Hayek believes that only such action that is exercised with the purpose of using someone else for one's goal can be rightly defined as coercion.

Coercion plays such an important role in Hayek's philosophy because he believes that "*political power usually means the power to coerce*". It is precisely what makes this type of power different and more dangerous than others. He argues that "*it is not power in the sense of an extension of our capacities which corrupts, but the subjection of other human wills to ours, the use of other men against their will for our purpose*"¹⁵⁹. This is a point crucially important for Hayek because it indicates that not all power is bad. There is, for example, nothing wrong with the power wielded by a director of a company whose workers submit their efforts voluntarily. Also, Hayek continues, coercion has to be distinguished from "*the conditions or terms on which our fellow men are willing to render us specific services or benefits*". Unconditional life in a society is impossible. To satisfy our needs and wishes we all depend upon others and have to accept the condition upon which they agree to render us their services. Yet as long as the society is free and pluralistic, "*these mutual services are voluntary, and each can determine to whom he wants to render services and on what terms*"¹⁶⁰. In a free and pluralistic society no one is coerced by some conditions of a service even, and this may seem counter-intuitive, if this service is available only by a monopolist provider. Hayek's reason for this is the following:

"If, for instance, I would very much like to be painted by a famous artist and if he refuses to paint me for less than a very high fee, it would be absurd to say that I am coerced. The same is true of any other commodity or service that I can do without. So long as the services of a particular person are

158 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p.117.

159 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 119.

160 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 119.

not crucial to my existence or the preservation of what I most value, the conditions he exacts for rendering these services cannot properly be called coercion.”¹⁶¹

It thus becomes clear that for Hayek coercion requires not only intentionality and the impossibility to evade it, but it also requires that the subject of coercion be grave and indeed a critical one. In this manner a monopolist owner of a spring in an oasis, to use again one of Hayek's examples, denying water to someone can rightly be called a coercer.

There are basically two ways of preventing coercion: one is formal equality, the other is plurality. “*Whenever there is a danger of a monopolist's acquiring coercive power*”, writes Hayek, “*the most expedient and effective method of preventing this is probably to require him to treat all customers alike*”¹⁶². According to the author this method has proven successful in curbing coercive political powers. He does not however discuss any particular reasons why it should work in other cases too. The second method of preventing coercion seems to me less controversial. Plurality on the market automatically and necessarily produces competition and a competitive environment, in its nature, is irreconcilable with coercion. This holds true also for plurality and monopoly in regard to politics. “*A complete monopoly of employment, such as would exist in a fully socialist state in which the government was the only employer and the owner of all the instruments of production, would possess unlimited powers of coercion*” writes Hayek and quotes Leon Trotsky who said that “*In a country where the sole employer is the State, opposition means death by slow starvation*”¹⁶³. Thus socialism appears to be the ultimate source of coercion and in consequence a system fundamentally incompatible, indeed destructive to freedom. But socialism is only one particular example of collectivism that endangers freedom. Hayek discusses also another one, namely the collectivism represented by labour unions. As Andrew Gamble notices,

*“Unions offend Hayek because, although they begun as voluntary associations, they have developed into coercive organizations which restrict the freedom of their own members, and which are employed to persuade governments of the merits either of general collectivist schemes or of measures that will provide particular benefits for their members”.*¹⁶⁴

Unions are in fact an interesting example of coercive institutions that developed out of spontaneous orders. Yet they have lost their purpose and value the moment they became sources

161 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 119.

162 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 120.

163 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 120.

164 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 171.

of monopolistic power controlling the supply of a certain type of labour. By preventing competition unions not only exercise coercion on employers but also on all workers who do not want to submit to them.

Additionally to the two methods of preventing coercion mentioned earlier, formal equality and plurality, Hayek discusses a further method that is commonly applied in liberal societies, namely having a secure private sphere where the individual is protected from others' interference. In order to exist and fulfil its function properly, the private sphere needs to be secured by private property and rights and laws of ownership. I will discuss those in more detail in a separate section of this chapter.

3.2.3. Government and arbitrariness

In the view of liberals such as Hayek, the basic political action to be undertaken in order to prevent the most dangerous art of coercion was keeping central power in check and therefore he always pleaded for some kind of federal government. He believed that dividing power was the most natural way of limiting it¹⁶⁵ and he shared this view with such political theoreticians as Lord Acton, Alexis de Tocqueville and Burckhardt. Andrew Gamble calls them “*the three patron saints of Hayek's liberal international*”¹⁶⁶. All of them strongly opposed any form of centralism believing that such a power was the arch-enemy of personal liberty. Therefore they advocated small, and if possible multinational states, because in such circumstances it is more difficult for any strong centres of dominance to develop.

The postulated limitation of governmental power is the reason why Hayek is concerned with democratic institutions. He goes as far as to speak of an “*irreconcilable conflict between democracy and capitalism*”. The problem with democracy, he believes, is not so much an intrinsic characteristic of this system, but a shape it took in the accidental curse of historical development. He points out that “*it is now generally taken for granted that in a democracy the powers of the majority must be unlimited, and that a government with unlimited powers will be forced to secure the continued support of a majority, to use its unlimited powers in the service of special interests*”.¹⁶⁷ The reason for this is not because all politicians believe in state interventionism or because they all from the start have autocratic inclinations. Rather, the mechanisms and rules of the political game force them to try to expand the power in order to

165 See Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 142.

166 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 130.

167 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 107.

keep it at all.

*“The ruling party would not retain a majority if it did not buy the support of particular groups by the promise of special benefits. [...] The root of the evil is thus the unlimited power of the legislature in modern democracies, a power which the majority will be constantly forced to use in a manner that most of its members may not desire.”*¹⁶⁸

This regrettable development of the democratic movement was mostly due to the fact that people believed that once the power was taken away from arbitrary kings, aristocracies and other narrow groups of influence, and given to whole of society there was no more danger of it being misused. It was believed that the will of majority will be “*an adequate test of justice*”. But, according to Hayek, these beliefs failed to notice two crucial things. First of all they failed to notice that “*in practice this majority opinion usually represents no more than the result of bargaining rather than a genuine agreement on principles*”¹⁶⁹ and is thus vulnerable to pressure, manipulation and other expressions of power. Secondly, they failed to notice that rule of majority can be just as arbitrary as the rule of any autocrat. There is no difference in the way a minority discriminates a majority and the way a majority discriminates a minority.

Hayek admits that modern times require a different and possibly even more comprehensive form of government as it was the ideal of classical British liberals. For example he agrees that the increased population density in modern societies resulted in the increased number of collective needs which should be satisfied by a government. Thus it follows that the extent of governmental authority needs to be enlarged in comparison to the classical ideals. Hayek however emphasises that despite this fact there remain certain rules that cannot be violated by any government of a free society, no matter what changes have occurred. He names three such rules:

1. “government does not claim a monopoly and new methods of rendering services through the market [...] are not prevented;
2. the means are raised by taxation of uniform principles and taxation is not used as an instrument for the redistribution of income; and,
3. the wants satisfied are collective wants of the community as a whole and not merely collective wants of particular groups”¹⁷⁰

168 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 108.

169 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 109.

170 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*,

In my opinion the first two points seem clear and consistent with the rest of Hayek's theory. The formulation of the last rule however may be problematic. I find it unclear what is meant by the 'community as a whole'. Obviously it would be hard to find needs shared by all members of a community with no exceptions. If however it does not mean every last one of the community's members, how many members are enough to constitute a legitimate need?

However imperfect, Hayek's attempt at formulating minimal rules deciding the extent of a government are aimed at limiting its power. For it is an opinion generally shared by liberal thinkers that '*it is not the source but the limitation of power which prevents it from being arbitrary*'¹⁷¹. Therefore they all postulate that all kinds of power should be limited. For one thing it means that as much authority as possible should be in the hands of local institutions rather than in the hands of a central government. This also means – and it rarely seems obvious to contemporary theoreticians who are used to positivist conceptions of law – that even the state legislative power has to be limited. The restriction of the power of legislative bodies that Hayek proposes is that they should be able to pass only laws in the form of general rules. He argues that no laws are legitimate, if they affect specific groups or aim for specific results.

3.2.4. Freedom and law

It is necessary to say more on the relation between freedom and law in Hayek's philosophy. In this regard Hayek often adduces, very often not explicitly, the theory of Immanuel Kant. He is however interested only in the legal doctrine connected to a man's freedom of action and does not deal with ethics and inner freedom. Also, his manner of analysis is completely different from the Kantian method. For one thing, Hayek's reasoning lacks the Kantian complexity but is more straight forward and commonsensical. Still, there are several fundamental ideas that, though developed in somewhat different ways, provide a common denominator for both theories. For one thing both philosophers analyse the conditions that allow people to coexist at the same time maintaining their individual freedom. They are also both concerned with the need of restriction of governmental authority¹⁷².

In his *Groundwork of the Metaphysics of Morals* Kant writes that the only unconditioned and natural right is "*freedom (independence from being constrained by another's choice), insofar*

Routledge & Kegan Paul, London and Henley, 1978; p. 111.

171 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 135.

Included a quotation from Hayek, *The Road to Serfdom*.

172 See Otfried Höffe, *Immanuel Kant*, Verlag C.H.Beck, München, 2006; p. 208-239.

as it can coexist with the freedom of every other in accordance with a universal law"¹⁷³ and that for this reason freedom is the only legitimate basis for the state. He argues further that only freedom of the citizens, and not for example the imposition of any particular conception of happiness, is its rightful purpose. He also determines that law is the limitation of an individual's freedom so far as it is necessary to make it compatible with equal freedom of others¹⁷⁴. Thus Hayek is basically in agreement with Kant when he writes:

*"It should be remembered that, so far as man's actions toward other persons are concerned, freedom can never mean more than that they are restricted only by general rules since there is no kind of action that may not interfere with another person's protected sphere, neither speech, nor the press, nor the exercise of religion can be completely free. In all these fields [...] freedom does mean and can mean only that what we may do is not dependent on the approval of any person or authority and is limited only by the same abstract rules that apply equally to all."*¹⁷⁵

This means that law is to be seen both as a restriction of freedom, as well as its condition as far as people are social beings, living and acting always among other people.

There are, however, also some differences between the conceptions of the origins of law in Kant's and Hayek's philosophies. As already mentioned, Hayek does not write much on the topic of moral laws (apart for mentioning that morality is one of many spontaneous orders). Therefore Kant's conception of autonomy as self-legislation, of *"the self-imposition of universal moral law"* is not a notion that can be directly related to Hayek's theory. Further differences, in my opinion, can be found between Kantian discussion of social contract and Hayek's belief in the spontaneous development of social orders. *"The second discussion of social contract comes in [Kant's] essay 'Theory and Practice' in the context of an a priori restriction on the legitimate policies the sovereign may pursue"*. The original contract is understood there as an idea of reason as opposed to a factual historical event. Yet it has to be recognised as forcing *"the sovereign to 'give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will'"*¹⁷⁶. I find this conception incompatible with Hayek's strong rejection of any collective notions such as the *general will* that is at the basis of Kantian theory of social contract. Furthermore, in Kant's doctrine the origin of social contract is apart from any empirical experience. For Hayek, on the other hand, the law, although neither a result of any particular

173 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/kant-social-political/>

174 See Herlinde Pauer-Studer, *Autonom leben*, Suhrkamp Verlag, Frankfurt am Main, 2000; p. 127.

175 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 136.

176 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/kant-social-political/>

design nor of a decision of an actual person, it is a consequence of the actual historical development of humanity. Law in the sense of general abstract rules developed gradually in a transition from specificity to generality, from *privi-leges* to *leges*; according to Hayek the institution of the Rule of Law, which can be understood as a counterpart to Kantian social contract, developed precisely on the basis of the experience of generations.

Despite this serious theoretical difference Hayek recognises the importance of the German tradition of *Rechtsstaat* and of Kantian contribution to social philosophy among other movements promoting political freedom. In *The Constitution of Liberty* the author acknowledges that:

*“[Kant's] chief contribution is indeed a general theory of morals which made the principle of the rule of law appear as a special application of a more general principle. His celebrated 'categorical imperative', the rule that man should always “act only on that maxim whereby thou canst at the same time will that it should become universal law”, is in fact an extension to the general field of ethics of the basic idea underlying the rule of law. It provides, as does the rule of law, merely one criterion to which particular rules must conform in order to be just.”*¹⁷⁷

As concerns the origins of particular legal systems, Hayek believes that they can no more be results of deliberate design than moral rules are. It is more correct, in Hayek's opinion, to think of rules of conduct in a similar way as of the laws of nature – they are not man-made but men can endeavour to find them. A scientist investigates nature in order to find out the laws that govern our physical reality. Respectively, it is the task of the social scientist to discover the corresponding laws that govern social reality.

3.2.5. Responsibility

A further crucial dimension of freedom in Hayek's view is responsibility for taken actions. In the *Constitution of Liberty* he writes that these two concepts are indeed inseparable¹⁷⁸. Therefore, depriving someone of freedom, does not mean only depriving him from the opportunities it brings but also from the burden which is inseparable from it, the burden of bearing consequences for one's actions. Responsibility, on one hand, is the criterion on the basis of which it can be decided if an individual is capable of freedom. On the other hand it is the basic tool that allows him to make any rational use of it. Any contemporary philosopher formulating a

¹⁷⁷ Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 172.

¹⁷⁸ See Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 63.

criterion of freedom based on individual responsibility would meet with the critique of being discriminating towards all those incapable of such a responsibility. Clearly, on these grounds at least such groups of people as children, senile and mentally ill are left out. Yet I believe that this critique would not bother Hayek much. He would probably answer that it is precisely because we believe some individuals incapable of bearing the consequences of their actions that we decide it is legitimate for others to restrain their freedom, for instance, by placing custody over them.

Further Hayek argues the significance of the notion of responsibility, both in the fields of morality and economics, by pointing to the fact that no judgement or comparison would make sense without clear view of the nature of consequences. In an essay on the sources of moral values Hayek writes that morality rules presuppose striving for excellency as well as awareness that some people are more successful at it than others¹⁷⁹. In other words morality would not make sense at all without the notion of comparison because moral esteem would not be possible without both the assumption of personal responsibility and the tool of comparison. But ethical considerations were not central in Hayek's works as he was mainly interested in questions considering social arrangements. Therefore the freedom he was analysing was not a subject of ethics or ontology but it was freedom in a political and juridical sense. His were the practical, even procedural categories, not ethical or ontological and so he focused on the tasks of responsibility in the reality of market economy, analysing it in a corresponding way. He stressed that *“it is of the essence of a free society that a man's value and remuneration depend not on capacity in the abstract but on success on turning it into concrete service which is useful to others who can reciprocate”*¹⁸⁰. Thus, as Hayek emphasises, it is the subjective judgement of other members of the society, their estimation of our achievements that decide what we are subjected to.

The freedom of action subordinated to the responsibility for one's choices in the reality of a free market means that, as long as there are no discriminatory laws, there is no one else to blame or praise for the situation of an individual except from him or herself. Therefore the task of law and the government is perceived by liberals only as protection of people while they strive to achieve their goals; it is neither the task of the government, nor is it the purpose of law to secure some particular outcome or result in the actions of citizens. Hayek states clearly that *“while the protection of the law was to assist all in the pursuit of their aims, government was not supposed to guarantee to the individuals particular results of their efforts”*¹⁸¹.

179 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 40.

180 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 71.

181 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 133.

Furthermore, thanks to the fact that we have the notion of responsibility for our actions, in other words that we perceive our actions as highly influencing the results we achieve, we can be induced without coercion to make contribution to the welfare of the whole community. This occurs in a following way: an individual, conscious of the fact that, apart from uncontrollable chance factors, he is the main architect of his own fortune. He naturally directs his attention to those factors which he can control or influence in some way and therefore invests in his work all available effort, knowledge and skills. These however do not get lost once used by him but they add to the pool of the market from which all its participants share. Although the share is never equal, the bigger the pool, the higher the gains that all participants may expect. In this sense liberal theoreticians always believed that only by means of personal responsibility best efforts and therefore best economic results can be achieved without the need of coercively forcing people to work. Hayek writes that:

*“to enable the individual to use his knowledge and abilities in the pursuit of his self-chosen aims was regarded both as the greatest benefit government could secure to all, as well as the best way of inducing these individuals to make the greatest contribution to the welfare of others. To bring forth the best efforts for which an individual was enabled by his particular circumstances and capabilities, of which no authority could know, was thought to be the chief advantage which the freedom of each would confer on all others.”*¹⁸²

In this context freedom appears to be not only a value or a basis for other values, but also its worth lies in its usefulness for the functioning of societies. Free action induced by the consciousness of responsibility plays the role of a knowledge catalyst enabling its flow among different members of a community and a market.

3.2.6. Freedom and the market system

At this point it is clear why for Hayek the market system is not only working hand in hand with the ideal of individualism but also with the liberal ideal of freedom. From his perspective, where the problem of division of labour is replaced by the problem of division of knowledge, the power relations are also differently defined. By making the best use of dispersed knowledge, the competitive system of a free market prevents the formation of authoritative power. It efficiently stimulates cooperation and exchange of knowledge and other goods without

¹⁸² Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 133.

the need for coercion. The sphere of personal freedom is well secured by the mechanism of competition, where dispersion of knowledge implicates the dispersion of power. According to Hayek it is only such a system of decentralized power that allows cooperation without coercion – people freely choose their occupation, ways and methods of work and freely enter into contracts or partnerships. Peoples' choices being governed by their own judgement and their profits being direct results of their decisions, the system of competition is best reconcilable with the liberal understanding of freedom.

A critique of Hayek's theory of a competitive market system often issued by socialist or left-wing thinkers maintains that even such a system does not defend us from the authoritative power of a planning board because exactly the same power is being exercised by the group of capitalists. However Hayek answers to this that the quality of power of a single planning board, as in a socialist state, cannot be compared with the quality of power exercised by all singular capitalists added together. As long as these capitalists do not form some kind of a council and act individually following their particular ends no such power monopoly arises.

3.2.7. Drawing the line

Obviously all actions of men living in a society and interacting with other men necessarily have some effect on others. No human action takes place in a vacuum. The big question however is where to draw the line – which consequences are admissible and which are an unacceptable threat to the freedom of others? Many thinkers tend to imagine this line as an objective, analytical outcome of the definition of freedom. I do not think this to be true. In my opinion it is rather strongly dependent on historically accidental circumstances. Recall the example of birth control that J.S.Mill gives in his *On Liberty* as a permissible restriction of personal freedom. As many in his times, Mill is strongly concerned with the possibility of overpopulation of the earth. He argues therefore that introduction of some kind of 'child licences' would be a reasonable way of dealing with the problem. He finds that a law limiting the number of children a couple is allowed to have is a justified restriction of their freedom, for if they had more children, these would be a threat to the rest of the population – for example concerning food supply and scarcity of employment. Considered however from our contemporary perspective a law limiting the number of children would most likely be seen as the harshest kind of intrusion into the private sphere of the individual, a sphere that is by contemporary liberals understood as a temple of inviolable freedom.

John Gray in his essay on J.S.Mill rightly notices that

*“in laying down a necessary condition of legitimate limitation of liberty, [Mill's principle of liberty] disallows an indefinitely large range of interferences with personal freedom [...]. These are: restrictions of liberty designed to prevent individuals from causing harm to themselves; and restrictions designed to bring an individual into conformity with the received moral ideas of his community.”*¹⁸³

Generally speaking Hayek agrees with Mill's formulation. The first group of restrictions would not be compatible with his ideal of responsibility. The second group of restrictions would be contradictory to the moral pluralism of liberal society.

As concerns specific rules restricting personal freedom in accordance with Mill's principle, I believe that Hayek would object to the idea of defining them by means of rational deliberation. He would rather say that they should be 'discovered' in the same way as scientists discover rules of nature. The spontaneous order expressed in customs and traditions is the only dimension of social reality and it evolved in parallel with freedom. Its limits therefore should be found within the order itself. Indeed, at one point Hayek refers to freedom as the biggest benefit of tradition¹⁸⁴. He supposes that *“a successful free society will always in a large measure be a tradition-bound society”*¹⁸⁵. These views are an expression of Hayek's anti-rationalist approach to social sciences. His *“esteem for tradition and custom, of grown institutions, and of rules whose origins and rationale we do not know [...] is based on the insight that the result of the experimentation of many generations may embody more experience than any one man possesses”*¹⁸⁶.

3.2.8. Private property

Hayek is very clear about the nature of goals worth pursuing and he believes that these are hardly ever purely economic goals. An economy however is so essential because material wealth is in most cases indispensable to the achievement of, for the lack of a better expression called, higher goals. Economic goals, in his opinion, are never ultimate ends for men, but always means for the achievement of other ends. Yet it means that freedom as such is hardly possible without economic freedom. Hayek also emphasises:

183 John Gray, *Liberalisms. Essays in Political Philosophy*, Routledge, London and New York, 1991; p. 2.

184 Friedrich August von Hayek, *The Fatal Conceit*, The University of Chicago Press, Chicago, 1988; p. 63.

185 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 55.

186 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 55.

“For the British tradition [political and economic liberalism] are inseparable because the basic principle of the limitation of the coercive powers of government to the enforcement of general rules of just conduct deprives government of the power of directing or controlling the economic activities of the individuals, while the conferment of such powers gives government essentially arbitrary and discretionary power which cannot but restrict even the freedom in the choice of individual aims which all liberals want to secure. Freedom under the law implies economic freedom, while economic control, as the control of the means for all purposes, makes a restriction of all freedom possible.”¹⁸⁷

Hayek makes two different points here. On the one hand, Rule of Law secures personal freedom of individuals by limiting the coercive power of government and by submitting people only to general abstract laws. This means that they are able to pursue their goals freely and independently from central authority and that they are free to use their time and resources in accordance with their own ideas. On the other hand, economic freedom, “*by multiplying the number of decision-making centres*” supports the dispersion of power and allows people to “*to create spheres of autonomy which were relatively free from control by traditional power centres*”¹⁸⁸. Private property means having the means to achieve the goals one chooses independently of all others. Making economic decisions is possible and makes sense only with the assumption of private property. In this sense it can be said that personal freedom requires economic freedom which, in turn, requires the institution of private ownership.

There is a problem closely related to the area of freedom and private property with which Hayek is very concerned in many of his writings. It is the idea of equal incomes advocated by socialist ideologists. Hayek finds it highly destructive for the economy and civilisation for one thing because such an arrangement would take away the signals that otherwise make it possible for people to choose in which direction they should invest their energy and, even more importantly, it would take away from them the only incentive by which free people can be made to follow moral rules – namely the different esteem they receive from others¹⁸⁹. Thus inequality of remuneration is for Hayek a sort of double incentive – it stimulates economic activity without the need of exercising coercion, and it also constitutes the material evidence of a successful life. This seems to be a thought in the tradition of protestant ethics and it is probably not wrong to read Hayek also in this way. However he himself does not speak of any particular morality or ethical system in this regard. He argues that all moral rules are based on a different valuation that

187 Friedrich August von Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, Routledge & Kegan Paul, London and Henley, 1978; p. 132.

188 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 70.

189 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 38.

we show to different people depending how well their behaviour complies with common moral views and beliefs. In this way a moral behaviour becomes a subject of social valuation¹⁹⁰. For Hayek, the ability to judge different actions and behaviours in different ways is the condition of morality as such.

Although the above argument on the necessary connection between moral systems and inequality of remuneration may be controversial, most people agree with Hayek's point that socialist politics of equal incomes was not able to provide a stimulation for economic activity.

“The real problem for socialism which Hayek identifies was not whether a socialist economy could set equilibrium prices, but whether a socialist economy could provide the incentives required to allow dispersed information to be utilized in producing goods and services. Kornai argues that the market, competition and private property are inextricably linked. Only capitalist institutions can ensure that market co-ordination will actually deliver an efficient economy. The problem of knowledge, or information is therefore a problem also of incentives.”¹⁹¹

Gamble thus recognises the accuracy of Hayek's critique of socialist economies based on the one hand, on the conviction that only free market is able to make good use of knowledge dispersed throughout the society, and, on the other hand, on the observation that only free market naturally motivated people to effort. It is a problem widely observed in socialist countries – people did not feel motivated to work for something that did not belong to them. If something belongs to all, it does not belong to anyone, was a common phrase. So in order to achieve any economic results, people had to be coerced to work. This resulted with no unemployment, but also with very low efficiency. In this sense Hayek's argument is a historical one: experience suggests that only private ownership provides a strong creative incentive without the need of coercion.

There are several critiques concerning Hayek's theory of private property and I would like here to address some of them. First of them involves the distinction of positive and negative freedom and was formulated by Andrew Gamble in his monograph on Hayek's liberalism. He writes that

“There is [...] a suspicion of positive freedom in Hayek's fourth condition, freedom to own and acquire property. In a society in which the opportunities to own and acquire property were limited not by the arbitrary decision of rulers but by laws which allowed only members of one minority group to hold property, would it be justifiable to advocate the redistribution of property to increase

190 See Friedrich August von Hayek, *Die drei Quellen der menschlichen Werte*, J.C.B Mohr (Paul Siebeck) Tuebingen, 1979; p. 39.

191 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 69.

I am convinced that Hayek's answer to this question would be a resounding no – redistribution of property would not be justified even in that case. It would however be advisable to change the laws so that all were equal before them. Moreover, I do not think that Hayek would agree to interpret freedom to own property as a positive freedom. This would mean that every last person should have unlimited means to purchase whatever they dream of, which is obviously absurd. I think he rather means the freedom of private ownership which is necessary for securing a private sphere where the individual is independent from others and from the government, and which enables him to participate in the market exchange. This freedom is non-restriction of options meaning that no one should be restricted by law or by others in using his money and other means, acquiring and owning property. It does not mean however that an income of those means should be secured by the state or in any other way.

The formal design of institutions would also be, I think, Hayek's answer to a second reproach that Andrew Gamble formulates in his study *The Iron Cage of Liberty*, where he expresses his concern that it is not so much the power of the state that we should be worried about, but the real power exercised nowadays by large-scale international companies¹⁹³. The author points out that in the case of such companies the ideal of dispersed knowledge is simply not any more the case. Surprisingly Hayek does not deal with the problem of monopolies as influencing knowledge (and therefore power relations). He is critical of monopolies only in so far as they make it difficult for others to enter the market. It thus means that he recognises the restriction of freedom but does not see that it occurs by means of coercive exclusion rather than natural scarcity. I agree with Gamble that Hayek does not attribute sufficient importance to the problem of enterprise monopolies. It may be that it is only recently that this phenomenon has become so grave. Still, Hayek's solution to the problem lays in the legislature - “*gradual improvement of our law of corporations, patents, and taxation*”¹⁹⁴. Reproachable however is that he fails to enunciate what reforms exactly could be introduced.

192 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 41.

193 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, 1996; p. 72.

194 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 231.

3.3. Freedom as a relation of men to other men

The first chapter of *The Constitution of Liberty* deals with the disambiguation of the notion of freedom. The author clearly states that what he understands under this term is neither a metaphysical property of human beings, nor a natural quality that accrues to men in the minute of their birth. Hayek does not deal with any such ontological deliberations, rather he is interested rather with the social reality of human life and all significant conditions of this reality are results of social interactions. Therefore what is described with the concept of freedom is for Hayek not „the range of physical possibilities“¹⁹⁵ but the ability of acting according to one's own will rather than upon the will of others.

Hayek agrees that the question as to how many possibilities of action an individual has is a very important one, but his freedom does not depend upon the answer to it. In his understanding „the only infringement on [freedom] is coercion by men“¹⁹⁶ and so Hayek maintains that „freedom presupposes that the individual has some assured private sphere, that there is some set of circumstances in his environment with which others cannot interfere“¹⁹⁷. Such a formulation clearly belongs to the tradition of English political philosophy. For example, John Stewart Mill recognizes a sphere of man's life, in which the society has no or only indirect interest and in which the man is not subjected to its restrictions. According to Mill this sphere of freedom consists of the liberty of consciousness and expression, but also, more importantly in Hayek's context, it „requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow“¹⁹⁸.

The talk of a life plan is especially close to Hayek's approach. For him it is crucial that men are able to draw up projects (economic, but not exclusively¹⁹⁹) on the basis of the existing law and circumstances and then to sensibly expect the results of their actions. I think it can be reasonably suggested that the whole of Hayek's ethics is based on these two fundamental concepts: freedom and responsibility. An individual is free to choose his ends as well as the ways of achieving them – but the price of such a freedom is the irrevocability of the consequences²⁰⁰.

195 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 12.

196 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 12.

197 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 13.

198 John Stewart Mill, *On Liberty*, Dover Publications, Inc., Mineola, New York, 2002; p. 10.

199 Hayek rejects the common view according to which the economic in our lives is distinct from the other life spheres. In *The Road to Serfdom* (p. 125) he maintains that there is no such thing as a strictly economic end. He thinks that for reasonable people all economic activities and gains are nothing but means for other, non-economic ends.

200 See: Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York,

According to Hayek the recognition of this principle is the guarantee of a free society.

This principle, however, can be easily abused when interpreted in a purely libertarian way, as done, for example, by Robert Nozick. I shall not dwell on Nozick's extravagant libertarian philosophy more than is necessary to make my point here. I just need to mention that his conception of freedom as formulated in *Anarchy, State and Utopia* is quite controversial, for one thing, because it is defined in terms of rights, particularly property rights, in contrast to most theories of freedom in which liberty is primary and fundamental to rights. He argues basically that whenever a person is capable and ready to repay for the negative results of his actions towards others, there is no legitimate ground of forbidding or stopping him from doing it. If, for example, society establishes that retribution for a broken arm is 10 000 Euro, than as long as one has this amount of money, there is no reason why he should not simply go around breaking other people's arms and paying them off²⁰¹. Such a line of reasoning is not very appealing for at least two reasons. First of all Nozick fully disregards in his example the freedom of the victims. What if one of them prefers an unbroken arm over the 10 000 Euro? Yet the freedom of which Hayek speaks is rather a freedom of entering into contracts with each other and not an infantile understanding of freedom as doing whatever one wants.

The second criticism against Nozick's argument is that he mixes two different things: the liberty of action seen from the perspective of the perpetrator and the consequences from the perspective of the affected person. In the chapter on *Limits to the Authority of Society over the Individual* Mill draws a very crucial distinction which is maybe best illustrated by his own example:

*If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated, and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagance.*²⁰²

I am convinced that this would also be the position taken by Hayek. The deed is never to be punished or forbidden as such but always only because it affects others in an inadmissible way.

2006; p. 63.

201 In Chapter 4 of his *Anarchy, State, and Utopia* Nozick deals with the questions of prohibition, risk and compensation. He analysis situations in which two persons, X and Y are involved, and finally he adopts a conception of compensation which „presumes reasonable precautions and adjusting activities by X. These activities would place X (given Y's acts) on a certain indifference curve I; Y is required to raise X above his actual position by an amount equal to the difference between his position on I and his original position. Y compensates X for how much worse off Y's action would have made a reasonably prudently acting X.“ (Robert Nozick, *Anarchy, State and Utopia*, Blackwell, Oxford, 1980; p. 58)

202 John Stewart Mill, *On Liberty*, Dover Publications, Inc., Mineola, New York, 2002; p. 68.

So basically the personal freedom of one individual ends where the same personal freedom of another begins.

The basic premise underlying the principle of individual freedom and responsibility is the belief that the individuals in question are rational beings. „*It presupposes that a person is capable of learning from experience and of guiding his actions by knowledge thus acquired*“²⁰³. As Hayek admits, this premise is not something we know for sure but it is rather a belief that we share with others, it is a sort of reciprocal acknowledgement between the participants of a society. But what this intersubjective relation has to implicate is also a mutual recognition of judgement capacity of others. This reciprocity of freedom yielded upon one another that constitutes this social concept of Hayek can be based both on moral as well as on epistemological reflection.

The first of these considerations is based on a certain humbleness which requires us to respect the values of others, even if we do not approve neither understand them – it is based on one of the other liberal ideals, the ideal of individualism. Because, as Hayek writes:

*„Believing in freedom means that we do not regard ourselves as the ultimate judges of another person's values, that we do not feel entitled to prevent him from pursuing his ends which we disapprove so long as he does not infringe the equally protected sphere of others. A society that does not recognize that each individual has values of his own which he is entitled to follow can have no respect for the dignity of the individual and cannot really know freedom.“*²⁰⁴.

A similar humbleness, as I call it, may also result from the consciousness of our cognitive limitation. According to Hayek such a disposition is also characteristic for the individualist approach. In his interview with Franz Kreuzer he explains how he understands the difference between this and a collectivist approach. A collectivist thinker assumes that individual reason is able to comprehend the whole intelligence, while an individualist believes that limited individual reason is able to unfold in ways that are not fully comprehensible to itself any more. This means that individualism is based on the view that epistemic capabilities of individuals are quite limited²⁰⁵. In this sense, as Hayek further explains, the cooperation or simply interaction of many individual minds leads to a structure of a higher order – to something that cannot be grasped by a

203 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 68. There the author admits that individuals who do not fulfil this requirement cannot be granted freedom to the same extent. And this is actually so in most of the societies where children and insane do not have civil rights and remain under the control of their parents or custodians.

204 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 69.

205 See: *Markt, Plan, Freiheit. Franz Kreuzer im Gespräch mit Friedrich von Hayek und Ralf Dahrendorf*, Franz Deuticke Verlagsgesellschaft m. b. H., Wien, 1983; p. 27.

single mind any more. The collectivist approach on the contrary assumes that the human mind is able of grasping and comprehending this aggregated reason. Needless to say, Hayek supports the individualist view²⁰⁶.

An individualist epistemology as shortly described above in my opinion implies the possibility of only individual responsibility. And I think also that Hayek is right when he states that „responsibility, to be effective, must be individual responsibility“²⁰⁷. This does not however consequently deprive Hayek's notion of responsibility and freedom of their social dimension. For it is this concrete and objective environment that will make the evaluation and eventually judge a man's actions.

*„It is of the essence of a free society that a man's value and remuneration depend not on capacity in the abstract but on success in turning it into concrete service which is useful to others who can reciprocate. And the chief aim of freedom is to provide both the opportunity and the inducement to insure the maximum use of the knowledge that an individual can acquire.“*²⁰⁸

It might, at the beginning, seem odd to speak of freedom as a means rather than as a value as such – but that is precisely how Hayek understands it. For him freedom is not simply a value, but more a ground for other values. I think he sees it as a sort of Darwinian mechanism that was invented by societies to help their preservation. It is thus remarkable that in Hayek's view freedom is a consequence of human activity – it is the historical result of a political struggle of generations of men, it is a right established by people for themselves. This historical origin is only a further argument supporting our sociological understanding of freedom.

In favour of his historical approach Hayek adduces ancient Greek constitutions that

*„have taken it for granted that liberty is a state's highest good and for this reason alone make property belong specifically to those who acquire it [...]. An important aspect of this freedom [...] was made possible not only by the separate control of various means of production, but also by another practice, virtually inseparable from the first: the recognition of approved methods of transferring this control.“*²⁰⁹

206 This, I am convinced, is one of the reasons why Hayek believes that an economy directed from numerous decision centers simultaneously works better than a centrally planned one. An economy constituted by myriads of catallaxies is a system of a higher order that could be grasped by any planners mind or minds.

207 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 73.

208 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 71.

209 Friedrich August von Hayek, *The Fatal Conceit*, The University of Chicago Press, Routledge, London, 1991; p. 30. In other works, however, Hayek argues that it was first the Schotish Enlightenment that developed a clear idea of personal freedom, which was absent in both in Greek philosophy and Roman legislative thought. But

This notion of personal freedom derives also from a Greek distinction between the public and private spheres. Hayek argues that the recognition of the private sphere together with the private ownership was a necessary condition for the formation of trade and larger social groups. In this sense the recognition of personal freedom and private property is seen as a civilizing factor. Also from his reflections on the historical developments of cultures, the author comes to the conclusion that it was often the exceedingly powerful governments that led to the decline and collapse of their countries. Instead of protecting the citizens and their properties these governments tended to abuse their power and „effectively suppressed private initiative”²¹⁰.

Given this conception of right to freedom it is understandable why for Hayek the socialist economy in particular, and any kind of collectivism are in general major threats to it. First of all they tend to substitute (in the sphere of economics, but then consequently in all other spheres of life also) the individual subject with a collective one. Adopting a public, social or any other common end, means choosing one particular system of values over all others and consequently dictating how and what lives people should lead – necessarily in many cases against their will and beliefs. This leads to such obvious acts of dictation as condescending assignments of occupation, place of residence etc., but also consumption or entertainment possibilities. So generally it can be said that all collectivist systems necessarily patronize their subjects.

More importantly however these systems drastically restrict peoples' personal freedom by exercising control over too broad a scope. Hayek is convinced that “*in modern society [...] the essential requisite for the protection of the individual against coercion is not that he possess property but that the material means which enable him to pursue any plan of action should not be all in the exclusive control of one other agent*”²¹¹. This basic principle is obviously being broken by systems that centrally control the economy and where the means of production belong to the state. All branches of the economy (and for that sake of life as well) are clearly strongly interrelated and therefore once the point when too much depends upon too few decision makers is exceeded, then everything is indirectly under their control. It is not possible to speak of any freedom left in such a situation – at least not of a freedom as Hayek understands it. To me this is a conception somewhat similar to the one of a world-state as objected to by Hannah Arendt – in

whichever of these options one chooses, Hayek is always certain that personal freedom developed as a result of the evolution of civilisation, it developed alongside men and their always more complex societies and interrelations.

210 Friedrich August von Hayek, *The Fatal Conceit*, The University of Chicago Press, Routledge, London, 1991; p. 32.

211 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 123.

both cases the objection is directed against a totalitarian control: in a world-state the control extensive is so to say – over the whole physical realm of the earth; in a socialist state the control is in a sense intensive – involving all spheres of life.

It seems thus that independence, in the sense of the lack of control by others, is crucial for Hayek's conception of personal and economic freedom. He goes even so far as to assert, that precisely the indifference towards others is what secures the freedom:

*„it should be mentioned that we are independent of the will of those whose services we need because they serve us for their own purposes and are normally little interested in the uses we make of their services. We should be very dependent on the beliefs of our fellows if they were prepared to sell their products to us only when they approved of our ends and not for their own advantage.“*²¹²

To express it in Kantian terms, it is desirable that people treat themselves (at least when it concerns their economic relations) sometimes as means only and not always as ends. This is so because such an egocentric attitude leads in consequence to disinterested (meaning both: indifferent as well as impartial and unselfish) help and cooperation between complete strangers. This thought is nothing new in the philosophy of economics. Indeed, it was famously formulated by Adam Smith in his *Inquiry into the Nature and Causes of the Wealth of Nations* where he writes:

*“It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard for their own interest. We address ourselves not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages. Nobody but a beggar chooses to depend chiefly upon the benevolence of his fellow citizens.“*²¹³

This example shows why I argued that Hayek seems to place market activities and mechanism outside the scope of moral judgement and rational critique. It is an order like the natural one, whose rules are not based on ethical considerations but evolved with the purpose of maintaining the order and facilitating its functioning. For example, a rule not to cheat customers, although it might seem to us now a moral norm, had a purely pragmatic origin – a cheating salesman would lose all customers who, having realised his practices, would eventually choose other salesmen. In this context Gamble reminds us about Hayek's theory of spontaneous orders and points to the way in which these relate to personal freedom.

212 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006 ; p. 124.

213 Adam Smith, *The Wealth of Nations*, Bantam Classic, New York, 2003; p. 23.

*“Civilisation has been built not on transparent rational foundations, but on the evolution of rules and institutions the rationale for which no one has ever fully understood. Hayek's argument is that it is not necessary to understand them. In seeking to understand them, human beings are too ready to denounce submission to the impersonal forces of the market, without realizing that the alternative to submitting to those impersonal and seemingly irrational forces is submission to 'an equally uncontrollable and therefore arbitrary power of other men'.”*²¹⁴

Summarising, in Hayek's view, the rules and mechanisms of the market have emerged in course of the evolution of civilisation. People are subordinate to them in a way that can be compared to the way they are subordinate to physical laws. In a liberal understanding of the word it cannot be said that one is unfree because gravitation attracts him down to earth, and market laws should be treated in the same way. Being dependent on judgements and decisions of a single person, on the other hand, has all characteristics of arbitrariness and coercion and therefore is to be regarded as a limitation or violation of freedom.

²¹⁴ Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 45.
Included a quotation from Hayek, *The Road to Serfdom*.

4. JUSTICE

*“Justice does require that those conditions of people's lives that are determined by government be provided equally for all. But equality of those conditions must lead to inequality of results.”*²¹⁵

This, in short, is the main thesis of Hayek's conception of justice. In this chapter I will try to show the grounds of this belief and his argumentation in favour of this statement. I shall start by clarifying the general notion of justice and by placing it in philosophical and juridical contexts. For this purpose I will shortly explain different positions in the philosophy of law, such as conventionalism and natural law theory. Then I will proceed to fundamental systematics of justice differentiating between formal and substantive justice and showing Hayek's position in this respect. I shall discuss separately the notion of social justice and explain why Hayek finds it obscure and for this reason rejects it as a political goal. As an example of a theory of justice with a strong notion of distributive justice I will shortly discuss Rawls' conception of justice as fairness. Then, before proceeding to Hayek's critique of distributive justice, I shall devote some paragraphs to the relation between justice and law because it is crucial to formal justice and to Hayek's understanding of the Rule of Law. The critique of distributive justice itself encompasses rejection of equality and of merit as possible criteria of distributive justice, as well as Hayek's argument that distributive and formal justice contradict each other in practice.

4.1. The notion of justice

In the most general sense of the word justice encompasses the whole of reciprocal claims, obligations and liabilities as well as moral rights and duties that people have towards each other. Justice relates on one hand to human actions and on the other hand to the rules and norms guiding those actions²¹⁶. *Suum cuique tribuere* is the classical Latin definition of justice. The Cambridge Dictionary of Philosophy defines justice as “*each getting what he or she is due*”²¹⁷. It also states that traditionally justice is associated with fair treatment. Several kinds of justice can be distinguished in connection to spheres of life they are concerned with. The types of justice that will be most important in regard to Hayek's philosophy are distributive justice and formal

215 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p 87.

216 See Peter Koller, *Theorie des Rechts*, Boehlau Verlag, Wien, Koeln, Weimar, 1992; p. 279-280.

217 *The Cambridge Dictionary of Philosophy*, Second Edition, gen. ed. Robert Audi, Cambridge University Press, 1999; p. 456.

justice. The former describes valuation of the distribution of resources and is closely related to commutative justice which deals with wages, prices and exchange. Formal justice on the other hand does not deal with the content of rules but only with the way they are applied – whether they are exercised in a consistent and impartial way. The impartiality is one of the basic principles of justice. I suppose that this is the reason why art represents justice allegorically as a blindfolded woman – blind to all human particularities.

In antiquity justice was widely understood not only as a principle ordering social life and institutions but also a principle responsible for the order of soul. This notion may be seen as corresponding to the modern idea that in order for societies to be just, citizens and especially public office holders have to be characterised by personal justice²¹⁸.

As a philosophical conception justice and its valuation belong to the sphere of rationality. When we judge something as just or unjust we do this in relation to something else. The judgement thus requires awareness of parallels and similarities between particular actions and behaviours²¹⁹. The question that concerns law-makers especially in this respect is which analogies and equalities in which respect are to be considered as crucial. Justice, not unlike equality, is a rather meaningless notion without a determination in regard to what it is considered²²⁰, because both these notions are relational. We say that someone is equally tall to someone else, equally educated or has equal rights. Similarly justice has to be referred to some particular circumstance: just behaviour, just treatment, just distribution etc.

Two moral notions closely related to the virtue of justice are equality and desert. Shortly speaking, “*rewards and punishments are justly distributed if they go to those who deserve them. But in the absence of different desert claims, justice demands equal treatment*”²²¹. The question to be answered at this point, however, is how and who decides what is due to whom. There are several approaches to this problem. Conventionalists, for example, point to the common understanding and customary procedures of particular societies. In this sense, what is due to an individual depends on established social and semiotic conventions²²². There are several problems with this approach. First of all, societies are hardly ever homogenous enough to produce only one coherent set of conventions. Secondly, a universal principle of justice is theoretically

218 Otfried Höffe, *Gerechtigkeit*, Verlag C.H. Beck, München, 2001ö p. 31.

219 *Recht und Moral, Texte zur Rechtsphilosophie*, Hg. Von Norbert Hoerster, Deutscher Taschenbuch Verlag, München, 1977; p. 122.

220 See Herlinde Pauer-Studer, *Autonom leben*, Suhrkamp Verlag, Frankfurt am Main, 2000; p. 26.

221 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 141.

222 I use the term 'semiotic' in the anthropological meaning of Umberto Eco who explains all cultural phenomena in terms of communication between individuals. Semiotic conventions are those that originate from the use of certain names and language constructions. For example, owing respect to those individuals who are labelled with certain titles is a semiotic convention.

inaccessible on the assumption that justice is internally dependent on social and, as such, accidental conventions. Thirdly, the problem with conventionalism is that it attempts to derive an 'ought-statement' from an 'is-statement' and so falls under the famous critique of Hume's guillotine.

In opposition to conventionalists, natural law theoreticians believe that the law of man has to be coherent with natural law in order to be just. According to this approach there is a universal and unchanging principle of justice which is accessible to human reason. This approach is probably the oldest tradition of theories of justice. The belief that there is some higher obligation that all men are bound to and that it is prior to any man's authority is expressed as early as in ancient Greek tragedies (for example Sophocles' *Antigone*)²²³. The problem that arises to the proponents of the natural law theory is that in order to give an account of their philosophy they need to make a reference to some external cause, usually a deity. Some sort of a secular equivalent for this theory is utilitarianism which declares maximizing utility as the highest virtue. The problem with utilitarianism, however, is its counter-intuitive procedure that distributes what is due to a person not in regard to this person but in regard to a calculus of general state of affairs. Or otherwise, utilitarian philosophy concentrated on the maximizing of welfare fails to answer the question how this welfare is to be distributed. A critique issued against utilitarianism by John Rawls pointed to the fact that at its basis it lacked a conception of man as a separate person and treated him rather as a part of a bigger whole.

An interesting concept is to be found in the works of David Hume. His is a sort of combination of conventionalist and utilitarian approaches. Justice is specified as 'artificial virtue' which contributes to “*utility not directly (as an act of benevolence would) but indirectly qua adherence to an institution that was on the whole beneficial. Hume's examples were respect for property, chastity (in women), allegiance to the government and promise-keeping. For Hume, then, justice was a convention – but it made sense to ask what good was served by following it*”²²⁴.

Another attempt at a definition of the principle of justice is formulated in terms of practical rules and based on individualistic conception of human. This theory known as justice as mutual advantage assumes that “*each person has a conception of their own good*” and postulates that justice be thus understood as an agreement giving “*everyone the best chance of achieving their good that they can reasonably expect, given that others are simultaneously trying to*

223 Otfried Höffe, *Gerechtigkeit*, Verlag C.H. Beck, München, 2001ö p. 40.

224 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 143.

achieve their (different) good”²²⁵. In this view the rules at the foundation of justice are not unchangeable and bear a rather strong resemblance to truces – for the lack of other principles of agreement they are based on 'relative bargaining strengths of cooperators'. Thus one of the fundamental problems of this theory is that its conception of justice cannot prove stable in practice.

The idea formulated by John Rawls has a similar starting point to this conception. His theory of justice as fairness has as strong notion of distributive justice which is basically criticised and rejected by Hayek. Therefore I will deal with Rawlsian conception more extensively later on. Now let me address a distinction fundamental for systematics of justice, namely the distinction between formal and substantive justice.

4.2. Formal and substantive justice

The principle of formal justice requires that all should be treated equally under equal circumstances. No difference in the exercise of law on the grounds of sex, religion, ethnicity or economic status is permissible. This principle thus requires application of general rules with the purpose of achieving universality and impartiality of treatment. The principle of formal justice is in itself formal because it leaves the content of the rules undefined. It is what makes it so widely acceptable and universally coherent with many theories of justice. Formal justice is however only the necessary condition of justice in general, but it is not sufficient. It allows any norms of action as long as they are applied universally, yet these norms could be unjust themselves. This deficiency is corrected with introduction of substantive justice and specific norms although the universal acceptability is being lost in course.

A way of overcoming this particular problem is by dividing the whole sphere of human actions into smaller categories and searching for principles of substantive justice corresponding to them. Peter Koller suggests following four forms of social action and appropriate types of justice related to them. 1) Trade relations require a principle of commutative justice that implies property rights and voluntary participation in exchange. A commonly accepted principle of justice for this domain states that an exchange is just when objects or services in question have an equivalent value. This however assumes that those things have an objective or at least universally recognized values. Traditionally this value was calculated on the basis of labour time involved in the production. Nowadays the principle of commutative justice has a more

²²⁵ *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 144.

procedural approach based on fair circumstances of trade – voluntary participations of parties having equal rights²²⁶. 2) Community and business relations are guided by distributive justice. Its norms regulate duties that participants have towards other members as well as the allocation of resources and products of their cooperation. A modern approach to distributive justice is based on the belief that all people are born as equal and therefore any disproportions of allocation must be justified by universally acceptable grounds. Such generally acceptable reasons may encompass specific achievements as well as particular needs. On the whole, this is known as the principle of equal treatment of distributive justice. 3) Authority and power relations build the third of Koller's suggested categories subjected to the principles of political justice. Interestingly, the notions of political power and sovereignty already implies some sort of entitlement – the conviction of a majority that a particular person or group has the authority to make binding decisions for others. The factuality of political power however does not necessarily imply its justice. Political justice requires that the exercise of authority serves the establishment of just and universally advantageous social coexistence. 4) Retributive justice accounts for the last form of social interactions characterised by violation of rules, encroachment upon rights and liberties of others etc. It deals with punishment and making amends whereas the degree and measure of both has to be proportionate to severity of violation. Clearly, human interactions being highly complex require that all those principles of justice are treated as complementary and mutually conditional. For the purpose of this work distributive justice will be most relevant because Hayek is strongly concerned with it as conflicting with formal justice. In short his argument is as follows: Formal justice requires equal treatment of all people in spite of all differences that may occur between them. Equal treatment of different people will necessarily bring about different results – for example, some will earn more money and achieve better positions than others. This, in turn, will result in economic inequality. Distributive justice on the other hand regards economic inequality as wrong. Its principle thus will require redistribution of goods based on some kind of a pattern (according to needs, according to merits etc.). Yet no patterned distribution can be compatible with the principle of formal justice. The pattern means that people are regarded through a prism of some particular characteristic and not irrespectively of all features, as required by formal justice.

226 See Peter Koller, *Theorie des Rechts*, Boehlau Verlag, Wien, Koeln, Weimar, 1992; p. 288. The requirements of the procedural principle of commutative justice are entirely fulfilled only in an ideal market order. The condition of their fulfilment is however, that there is a sufficient number of suppliers and providers (so that no one is able to dictate prices authoritatively). It means also that no participant of exchange under such circumstances is entitled to question its results.

4.3. Social justice

Peter Koller maintains that “*social justice indicates all claims of justice that refer to institutional orders and basic social relations*”²²⁷. This means that, strictly speaking, the notion of social justice spans all four discussed types of substantive justice. However, in general use social justice refers primarily to the principles of distributive justice applied to public institutions and social arrangements. Thus the principle of social justice can be formulated as a claim that all members of a society have the same share of social goods as well as burdens as long as there are no generally acceptable grounds to justify another distribution. This principle refers to those goods and burdens that come as a result of collective efforts of the whole society. Koller believes that these can be systematized in three groups. 1) General rights and duties that all people are vested with independently from any particular circumstances belong to the first group. In this case there can be no grounds to justify distribution other than equally because it would contradict the principle of equal rights. 2) Political rights and individual liberties, belonging to the second category, give people the possibility to arrange their lives according to their own plans and wishes and to take part in the collective decision making. These rights can be limited only in exceptional cases such as immaturity or mental illness. 3) As concerns the third category, that of economic goods, it is regulated by particular rights of ownership. These particular rights however have to be based on general rights of equality maintains Koller. The economic goods are social as far as they are a result of social cooperation. Apart from that, the work invested by particular individuals gives them a privileged right of ownership. Yet even those goods do not cease to be social in some sense because their generation required use of natural resources as well as skills and knowledge being part of the legacy of the whole community. For example, a writer draws inspiration and knowledge from works of previous artists and in this sense it could be said that they contribute to the production of his book. However, such influences are practically impossible to determine in any conclusive manner and therefore have no impact on rights of ownership. Furthermore, growing complexity of work and therefore specialisation results in overlapping of particular economic activities making a strict partition of inputs impossible.

There are several generally acceptable grounds justifying disproportion in distribution of economic goods. Koller writes that special achievements and merits as well as specific needs (for example resulting from handicap) are among such reasons²²⁸. Another possible justification was formulated by Rawls in his aforementioned famous Difference Principle which says that

227 Peter Koller, *Theorie des Rechts*, Boehlau Verlag, Wien, Koeln, Weimar, 1992; p. 293. My translation.

228 Peter Koller, *Theorie des Rechts*, Boehlau Verlag, Wien, Koeln, Weimar, 1992; p. 294.

inequalities in distribution of goods are permitted only if they are to the benefit of the worst-off members of the society.

A crucial fact about social justice is that it does not demand equal results. The first reason for this is that whatever the opportunities are, one can squander them on one's own hook. Many inequalities are results of peoples' own decisions and actions. For these differences there can be no compensation expected from the rest of the community. Further inequalities stem from their differences in talent, diligence and other such accidental characteristics and in this case it is questionable whether the society has the duty of compensation. Rather, it seems reasonable that society should provide its members with equal opportunities but not carry the responsibility for their outcomes.

In the second volume of *Law, Legislation and Liberty* Hayek formulates a very crucial methodological argument against the notion of social justice because he believes that it is a fundamentally ambiguous term. He argues that it is one of those notions that gains sudden popularity but lack a true meaning. The evasiveness of social justice is, according to Hayek, due to an erroneous belief that underlies it.

*“Social justice (or sometimes 'economic' justice) came to be regarded as an attribute which the 'actions' of society, or the 'treatment' of individuals and groups by society, ought to possess. As primitive thinking usually does when first noticing some regular processes, the results of the spontaneous ordering of the market were interpreted as if some thinking being deliberately directed them, or as if the particular benefits or harm different persons derived from them were determined by deliberate acts of will, and could therefore be guided by moral rules.”*²²⁹

In this way Hayek argues that the concept of social justice is an anthropomorphism and a result of the “immaturity of our minds”. The error of personification of a social collective makes the whole idea practically inapplicable. “The demand for 'social justice' is addressed not to the individual but to society” Hayek explains. The problem, however, is that “society, in the strict sense in which it must be distinguished from the apparatus of government, is incapable of acting for a specific purpose”²³⁰. Hayek therefore insists that the distribution of wealth could be called just or unjust only if it was a result of a deliberate allocation mandated by particular person or a group of people. This however is not the case. In his view the distribution of wealth is an outcome of an impersonal, spontaneous and unforeseeable process and as such cannot be subject to moral

229 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 62.

230 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 64.

evaluation.

4.4. Justice as fairness

Justice as fairness has a similar starting point as the conception of justice as a mutual advantage. It recognizes that different people have different value hierarchies and pursue different goals and that the principle of justice needs to be universal enough as to accommodate those differences. It also recognizes that all people have core inviolable rights that cannot be overruled in the name of the welfare of the society. Basic notions that this theory works with are the 'initial equal claim to consideration' and 'a fair set of opportunities to pursue their idea of the good life'. It is, however, developed in fairly different directions by different philosophers. An example of two essentially distinct theories are Robert Nozick's entitlement theory and the conception of John Rawls. Nozick draws on Lockean tradition and assumes that things originally in their natural state are ownerless and that it is the work of man that gives origin to ownership rights. These are for Nozick undeniable and absolute and therefore any interference with them is against justice. Any redistribution in order to be just has to be based on voluntary transfers. He does not accept any other justification of redistribution. Nozick and other advocates of libertarianism

“rarely see the market as a means to some desired pattern, since the principle(s) they advocate do not ostensibly propose a ‘pattern’ at all, but instead describe the sorts of acquisitions or exchanges which are themselves just. The market will be just, not as a means to some pattern, but insofar as the exchanges permitted in the market satisfy the conditions of just exchange described by the principles. For Libertarians, just outcomes are those arrived at by the separate just actions of individuals; a particular distributive pattern is not required for justice.”²³¹

Rawls, on the other hand, emphasises the importance of equality in the original position. This means that all individuals require not only equal rights but also equal opportunities. The famous difference principle states that the only justification for unequal treatment is when it is to the benefit of the least advantaged.

Rawls' theory being possibly the most influential 20th century theory of justice calls for a more detailed elaboration, yet I am not able here to indicate more than is necessary how his position is different to this of Hayek. Rawls takes up the notion of justice as a subject of rational deliberation and starts his discussion with rational choice. He does so by asking the question

²³¹ Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/justice-distributive/>

“What terms of cooperation would free and equal citizens agree to under fair conditions?”²³² The fair conditions under which his rational agents deliberate are very specific circumstances of the 'original position' which are designed to assure that they come up with non-egoistic principles of justice. A 'veil of ignorance' hides before them any particularities of their condition – age, sex, state of health, endowment, education etc. Rawls argues that under such conditions every rational person would agree to such principles that would be fair to all in the actual world. He believes that those principles will be as follows:

*“1) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all. 2) Social and economic inequalities are to satisfy two conditions: a) first they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and b) second, they are to be to the greatest benefit of the least-advantaged members of society.”*²³³

As Otfried Höffe observes, while the principles 1) and 2a) are generally recognized, 2b) known as the difference principle is controversial²³⁴. There are also several polemics concerning the assumptions of Rawlsian original position. It can be questioned for example how an argument starting with a counterfactual situation of a thought experiment is supposed to bring binding conclusions. Some also reproach that an agreement on principles made by real people, who are much more complex than simply rational choice makers, could be very different from the two suggested principles²³⁵.

Hayek himself was rather cautious of criticising Rawlsian theory openly. He even made an attempt at reconciling his theory with that of John Rawls by showing that, in fact, there are no fundamental disagreement between them. He regrets that Rawls uses the term 'social justice' which, as explained earlier, is a void notion in Hayek's opinion. Yet he states that he has

“no basic quarrel with an author who, before he proceeds to that problem, acknowledges that the task of selecting specific systems or distributions of desired things as just must be 'abandoned as mistaken in principle, and it is, in any case, not capable of a definite answer. Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons

232 Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/rawls/>

233 John Rawls, *Justice as Fairness*, The Belknap Press of Harvard University, Cambridge, Massachusetts, 2001; p. 42. The talk of *adequate scheme of equal rights* is a revision of his formulation appearing in *A Theory of Justice*, where Rawls took a more egalitarian position and demanded that “each person is to have an equal right to the most extensive scheme of equal basic liberties”.

234 Otfried Höffe, *Gerechtigkeit*, Verlag C.H. Beck, München, 2001; p. 67.

235 See *Recht und Moral, Texte zur Rechtsphilosophie*, Hg. Von Norbert Hoerster, Deutscher Taschenbuch Verlag, München; p. 127.

engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just'. ”²³⁶

Despite this similarity in application of justice to social institutions rather than to social collectives or spontaneous orders, there is a fundamental difference at the very base of the theories of these two philosophers. Rawls' conception encompasses a principle of distributive justice formulated as an equal of claim of all individuals to a fair share of basic goods²³⁷. In Hayek's theory there is no such claim. In fact, even a claim of equality of opportunities is problematic for Hayek because he believes it to be impossible in a free society and conceivable only under severe governmental control of the whole human environment²³⁸.

4.5. Justice and law

The general purpose of introducing laws is providing justice. The modus operandi of law is through general and abstractly formulated rules. This requirement guarantees impartiality of the law. However, the relation between law and justice is not as unambiguous. For example, by not taking into account any particularities and special circumstances, just laws may nonetheless lead to unjust outcomes. Thus justice is a concept predominant to law: although their aim is justice, being fallible, laws are themselves checked against its principles. In case when law is to bring about an unjust result (though being just in itself) the principle of equity “*justifies a departure from the strict letter of the legal rule, and a resort to its animating purpose or intention, in order to secure justice. Equity thus mediates between positive law and justice by importing an element of flexibility and context-sensitivity into legal adjudication*”²³⁹. Apart from rectifying law where its generality proves problematic, the principle of equity also enables such differentiations as the one between crime and error.

English common law is a significant example of how the notion of equity was applied in practical enforcement of law. Between the fifteenth and nineteenth century there existed in England so called Courts of Chancery that dealt with cases where justice could not be achieved by simple application of laws. The Aristotelian tradition of equity also appears in contemporary

236 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 100; included a quotation from John Rawls, *Constitutional Liberty and the Concept of Justice*.

237 See Herlinde Pauer-Studer, *Autonom leben*, Suhrkamp Verlag, Frankfurt am Main, 2000; p. 159.

238 See Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, The University of Chicago Press, Chicago and London, 1976; p. 84.

239 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 149.

philosophy among others in feminist theories that emphasise discretion in legal reasoning. A similar approach is represented by Martha Nussbaum who advocates a sympathetic appraisal of action *“in relation to the motives and intentions that animate them as well as the broader personal and social context in which they occur”*²⁴⁰.

The idea of equity, however, appears problematic when contrasted with the ideal of the Rule of Law because it does not fulfil the requirement of legality. Also, abandoning general rules creates a situation where people are not able to plan their actions based on their predictable legal conditions. In other words, equity in legal practices unavoidably brings forth an element of arbitrariness. The conflict appears to be *“between 'formal' legal justice (which may be expressed in the injunction to 'treat like cases alike', where the criterion of likeness is determined by features picked out in advance by general legal rules) and 'substantive' justice in the particular case, which is the concern of equity”*²⁴¹. It seems however, that in practice some sort of compromise between legality and equity is inevitable and indeed expedient, although giving this compromise institutional form may pose a serious problem.

4.6. Rule of Law

In short Rule of Law means general submission to laws. It is an essential conception of liberal philosophy which claims that all political agents and institutions are limited by law. Rule of Law emphasises the supremacy of legal obligation over discretionary judgements and policy objectives. The stress on fairness in the administration of laws makes it an essential precondition of justice and the emphasis on generality of laws provides citizens with protection against arbitrary treatment. Some philosophers argue moreover that the Rule of Law additionally requires what they call 'inner morality of Law'²⁴². This means that the content of laws has to be publicly known and that particular laws have to be coherent with each other. The requirement of legality is not fulfilled if what the laws require is impossible.

Rule of Law is based on the principle of formal justice which means that all citizens are equal before the law. This principle embraces two basic ideas: 1) that no one can be discriminated or treated arbitrarily, and 2) that law has to be exercised in a fair, uniform and impartial way. These features are what is necessary for a political system to be legitimate.

240 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 150.

241 *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 5, p. 151.

242 See *Routledge Encyclopedia of Philosophy*, gen. ed. Edward Craig, Routledge, London and New York, 1998; vol. 8, p. 389.

Without recognition “*that individuals will obey the state not because they are coerced to do so or because they perceive it as in their interest, but because they regard the state as legitimate*”²⁴³ there can be no state whose citizens could be called free.

As additional to those general characteristics of the Rule of Law Hayek also emphasises its predictability. Law cannot be subjected to constant changes which would make it impossible to oversee and follow it. The ability to predict what kind of legal outcome one's activity will bring is a necessary precondition of any state based on the Rule of Law and governed in a legitimate way. It is so important for Hayek because it enables individuals to make economic decisions based on their knowledge of law and circumstances. If they did not have the certainty concerning the legality of their actions, they would not be able to undertake any enterprise. It has to be made clear, however, that the predictability does not mean that one can foretell beforehand who will be affected by law in what way but only what kind of action will bring what legal results. This is the demand of impartiality:

*„That it is impossible to foretell who will be the lucky ones or whom disaster will strike, that rewards and penalties are not shared out according to somebody's views about the merits or demerits of different people but depend on their capacity and their luck, is as important as that, in framing legal rules we should not be able to predict which particular person will gain and which will lose by their application.“*²⁴⁴

The fact that the Rule of Law is, as mentioned earlier, based on the principle of formal justice means for Hayek that it poses a “*limitation upon all legislation*”. This means that Rule of Law is paramount to any laws passed by a legislator or, as Hayek formulates it, it is a meta-legal doctrine²⁴⁵. As such it is a limitation upon government that has as its purpose the protection of individual liberty. Hayek argues that a government bound by the Rule of Law cannot achieve any particular goals, such as determining material position of particular people.

“If the government is to determine how particular people ought to be situated, it must be in a position to determine also the direction of individual efforts. [...] The restrictions which the rule of law imposes upon government thus preclude all those measures which would be necessary to insure that individuals will be rewarded according to another's conception of merit or desert rather than

243 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 142.

244 Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 134.

245 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 181.

according to the value that their services have for their fellows."²⁴⁶

It is for this reason that Hayek believes that the meta-legal ideal of the Rule of Law rules out the possibility of governmental pursuit of distributive justice. An institution that is bound by the Rule of Law, and thus has to treat all its subjects equally, cannot introduce any laws that would redistribute wealth by taking it from some and giving it to others. Progressive taxes are precisely such a way of allocation of wealth and therefore Hayek strongly objects against them.

4.7. The basis of Hayek's position

The question of justice is a strictly social concept in that it describes relations between men and arrangements of institutions. Therefore, before addressing it, a clarification concerning Hayek's views on individual and society is necessary. There are basically two positions in regard to their dependence – individualism and collectivism. As these were addressed in more detail in the second chapter, here I will only revisit their basic claims in short. Individualism states that collectives are not proper entities but only theoretic constructs and that they are secondary in regard to autonomous individuals. Communities evolve with the purpose of advancing cooperation and their welfare cannot take priority over the interests and rights of its particular members. This is the position defended by Hayek. He rejects the second, collectivist view which holds communities as essentially constitutional to its members in the sense that belonging to a community influences the constitutive features of its member individuals. Also, the collectivist approach puts the interests of the community over those of its individuals and in this sense endorses subordination of an individual to the group it belongs to.

Hayek recognises, similarly to Rawls and Nozick, that individuals differ in their particular hierarchies of values and that they are free to pursue different goals, each to his choice. Therefore he advocates a theory of justice that is general and wide enough as to be able to accommodate all those differences and to be compatible with the value pluralism characterising liberal philosophies. His emphasis on formal justice as befitting liberal societies results from the interrelation of other two ideals of liberalism: the ideal of personal freedom and individualism. The requirement of neutrality of a principle of justice is moreover rooted in Hayek's anti-rationalistic approach which claims that values cannot be conclusively determined by reason but that they continuously and spontaneously evolve together with the rest of man's

²⁴⁶ Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London & New York, 2006; p. 203.

civilisation.

4.8. Against distributive justice

In this section I will introduce Hayek's general reproach against the idea of distributive justice as threatening to freedom. The two following sections will be dedicated to his discussion and rejection of two possible criteria of distributive justice. Subsequently I will elaborate on Hayek's argument that distributive justice is irreconcilable with the formal justice.

Basically, Hayek's rejection of any form of state introduced distributive justice is based on the fact that he embraces only the idea of equality with respect to the execution of law. There is however, says Hoerster, a similarly important ideal of equality with respect to the formulation of law. This is the moment that requires some perspective on specific characteristics of men and their particular situations. As an example Hoerster brings the case of inheritance law. He asks how can it possibly be considered without some notion of distribution and distributive justice. Yet Hayek, as will be shown later on, deals with the question of inheritance rather in terms of personal freedom of those who wish to leave their children a bequest, rather than in terms of distributive justice. Individual freedom always has precedence in his philosophy.

Therefore the reason why Hayek endorses equality only as an equality before the law is that he believes that it is also an instrument of preservation of freedom. In his opinion no other postulate of freedom can be secured "*without destroying liberty*" because liberty itself produces inequality. His argument states basically that the actual differences among people are no justification for a government to treat them differently. On the contrary, the diversity of people is understood as a ground for equal treatment. Hayek also believes "*if the result of individual liberty did not demonstrate that some manners of living are more successful than others, much of the case for it would vanish*"²⁴⁷. It is the Rule of Law that allows people to pursue their different ways of life. If it were the object of a government to assure equal positions to all its citizens it would have to treat them differently. Hayek rejects theories that derive formal equality from the assumption of factual equality of all men. "*It is of the essence of the demand for equality before the law that people should be treated alike in spite of the fact that they are different*"²⁴⁸.

An argument against introducing the principle of distributive justice is that it is dangerous to freedom and other ideals of liberalism because of its comprehensive character. Hayek fears that once introduced "*it would not be fulfilled until the whole society was organized in*

247Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 75.

248Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 76.

*accordance with it*²⁴⁹. There would be hardly any sphere left for the individuals to exercise their judgement and freedom. The government authority would stretch nearly limitless. The principle of distributive justice is in Hayek's opinion just as comprehensive in the extensive meaning, as well as in the intensive meaning. By the extensive comprehensiveness I mean that the control would have to be extended over all spheres of life, whereas the intensive comprehensiveness means that each of these spheres would have to be controlled practically in a total way. Furthermore, Hayek also believes, that once it is agreed that all members of a nation have a claim to this nation's wealth, there is no reason why members of other nations should not have the same claim to the wealth of the whole world.

*“There are good reasons why we should endeavour to use whatever political organization we have at our disposal to make provision for the weak or infirm or for the victims of unforeseeable disaster. [...] It is an entirely different matter, however, to suggest that those who are poor, merely in the sense that there are those in the same community who are richer, are entitled to a share in the wealth of the latter”*²⁵⁰.

Hayek does not specify what kind of reasons there are to support the poorer and weaker. I suppose that one of those reasons may follow from the asymmetry that characterises individuals or groups of very different economic position when confronted on the market. In this regard the current discussion on the problem of how prosperous industrial nations exploit the global poor can serve as a good demonstration. Indisputably there exists a strong asymmetry of bargaining powers that characterises any trade between giant and prosperous economies, like for example the USA, and economies of the developing nations. In my opinion this asymmetry would make up for a good reason for such political arrangements that would provide at least better opportunities for the weaker party in these bargains.

4.9. Equality as criterion of distributive justice

Hayek presents two main arguments against regarding equality of men as a criterion of distributive justice. First of all he argues that it is an unacceptable violation of personal freedom and secondly he shows that it is based on an inconsequent distinction between inborn and conditional differences²⁵¹. Hayek indeed believes that the biggest difference between the

249Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 88.

250 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 88.

251*Recht und Moral, Texte zur Rechtsphilosophie*, ed. Norbert Hoerster, Deutscher Taschenbuch Verlag, München; p. 126.

inequalities being the result of 'nature' and those being the result of 'nurture' is that the former “are due to circumstances clearly beyond human control, while the latter are due to factors which we might be able to alter”²⁵². There are two questions that need answering in this regard. The first one is whether it is really of advantage to abolish differences stemming from the environment. The second question is, does it mean that, if one person has some particular advantage, another is deprived of it. Do all “unfulfilled desires have a claim on the community”, Hayek asks. If the answers to those questions were positive, then the idea of individual responsibility would lose its meaning. In this regard Hayek brings the example of an approach to the institution of family and he argues its inconsequence. On the one hand, he says, we tend to see family as a great value and esteem the role it plays for its members as well as a core unit of society. On the other hand however, when it comes to differences in material and intellectual backgrounds provided by family, it is often subjected to fierce critiques. Hayek argues that if we recognize the role of family as transmitting morals, traditions and knowledge, we cannot object to the transmission of material property because the “continuity of standards, of the external forms of life” is essential²⁵³. There is also a pragmatic argument in favour of inheritance. Assuming that it is a natural instinct of the parents to provide what is best for their children, it is only sensible to allow them to do this by means of bequest. The alternative would be for example “placing them in positions which might bring them the income and the prestige that a fortune would have done; and this would cause a waste of resources and an injustice much greater than is caused by the inheritance of property”²⁵⁴.

There is a further significant argument against the ideal of equality as a basis for the requirement of distributive justice which I find important. It has been delivered by Harry Frankfurt in an article *Equality as a Moral Ideal* and I think it fits well with Hayek's philosophy. Frankfurt, like Hayek, recognises the potential harm of the ideal of equality to the ideal of freedom. He also writes that it is a mistake to consider economic equality as a moral value itself. In his opinion it is not morally relevant what differences there are between economic positions of different people. “What is important from the moral point of view is not that everyone should have the same but that each should have enough”²⁵⁵. Thus the sufficiency principle, as it may be called, states that in order for a society to be justly arranged all its members have to have sufficient means necessary to lead a good life. It is not however the aim of this arrangement that all have an equal share in welfare. According to this conception there is no need or justification

252 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 78.

253 See Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 79.

254 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 80.

255 *Equality as a Moral Ideal*, Harry Frankfurt, in *Ethics*, 98, 1987; p. 21.

for a constant effort to improve the material situation of the worst-off. On the contrary, it simply demands that a certain threshold is reached in case of all people²⁵⁶. The comparison of wealth has its application only from the point of view of economic and social competition. If, however, this comparison starts to play a substantial role in people's lives, it results in their alienation from truly important needs and goals. I believe that Hayek would basically agree with the sufficiency principle proposed by Frankfurt, although he might add to it a further condition. Hayek maintained namely that the state should provide a “*uniform minimum*”, but only to those citizens “*who are unable to maintain themselves*”²⁵⁷.

4.10. Merit as criterion of distributive justice

Hayek also objects adopting merit as a criterion of distributive justice, if merit is understood as an “*attribute of conduct that makes it deserving of praise, that is, the moral character of the action*”²⁵⁸. First and foremost merit is not a quality that can be measured in any objective way. As opposed to unmeasurable merit, value is something that can be easily established through market processes. Moreover, Hayek believes that value and merit do not necessarily depend on one another. Out of these two possible criteria for distribution of wealth Hayek thinks it is the “*value which a person's capacities or services have for us and for which he is recompensed*” which is the appropriate criterion. He argues that it is “*desirable that people should enjoy advantages in proportion to the benefits which their fellows derive from their activities [rather than] the distribution of these advantages should be based on other men's views of their merits*”²⁵⁹. We would certainly find it unjust if two same services were rewarded differently on the basis of someone's judgement of merit involved.

The case against merit is primarily pragmatic: there is no way of objective assessment of merit. It cannot be measured in regard to the outcome because this can be purely accidental. Outcome ruled out, one would have to find a way of measuring subjective effort but this is obviously impossible, Hayek argues, without the knowledge of some very specific circumstances of each particular individual. And it is precisely for the reason that no one else is in possession of this specific knowledge that people are better-off acting upon their own decisions and not submitted to bigger plan.

A further problem to be taken under consideration in this context is the reward for

256 See Herlinde Pauer-Studer, *Autonom leben*, Suhrkamp Verlag, Frankfurt am Main, 2000; p. 35.

257 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 262.

258 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 82.

259 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 83.

pursuing uncertain and risky goals. In areas of research, exploration, invention and speculation, where the outcome is particularly uncertain, merit simply cannot serve as the criterion for prize. *“For the same reason that nobody can know beforehand who will be the successful ones, nobody can say who has earned greater merit”*²⁶⁰. It is only the fact that the remuneration one receives for one's risks matches what other judge to be its value for them that one is able to decide in the first place whether a goal is worth pursuing or not.

4.11. Formal justice versus distributive justice

Hayek is convinced that the ideals of formal and distributive justice are opposite in the sense that they mutually exclude each other. *“From the fact that people are very different”* writes Hayek *“it follows that, if we treat them equally, the result must be inequality in their actual position, and that the only way to place them in an equal position would be to treat them differently”*²⁶¹. Freedom – the highest ideal in Hayek's eyes – demands equality before the law and therefore it is the formal justice that has to be given precedence over distributive justice. Material equality of all citizens could be achieved only by means of coercion on the side of government. But the liberal perspective cannot accept the egalitarian demands as justification for limitation of freedom.

It is not equality as such that is objected by Hayek. He does not argue that a more even distribution of wealth is not desirable. It is his view, however, that it cannot be realised without the imposition of some sort of patterned system of distribution of goods. *“But if we wish to preserve a free society, it is essential that we recognize that the desirability of a particular object is not sufficient justification for the use of coercion”*²⁶². An even distribution of wealth can well be a part of political effort as long as it does not dominate it and overthrow the Rule of Law. The demand of distributive justice requires not simply a just exercise of governmental powers but it also requires that the government has additional powers to those acceptable in a liberal state.

“When the choice is [...] between a genuine market order, which does not and cannot achieve a distribution corresponding to any standard of material justice, and a system in which government uses its power to put some such standard into effect, the question is not whether government ought to exercise, justly or unjustly, powers it must exercise in any case, but whether government should possess and exercise additional powers which can be used to determine the shares of the different

260 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 84.

261 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 76.

262 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 77.

However, the problem with those new powers is, according to Hayek, that they would have to be in conflict with the rules of conduct which the principle of formal justice demands from a government. “*Since people will differ in many attributes which government cannot alter, to secure for them the same material position would require that government treat them very differently*”, Hayek insists.

Apart from this obvious contradiction between formal and distributive justice, there is another reason why these two principles are not compatible. Hayek's argument is as follows. Once individual's reward does not reflect the value of his work for the others (as is the case in a free market), but is arbitrarily determined and equal to the reward of all other people, the individual has no guidance as to what kind of enterprise to undertake. With no guidance and signals from the market he cannot decide what to do. Therefore he would require someone else to tell him this authoritatively. Every single individual would need to be directed in such a manner and in result a central planning board would be required to coordinate these decisions. “*A central planning office would, however, have to decide on the tasks to be allotted to the different groups of individuals wholly on the grounds of expediency or efficiency*”²⁶⁴. Hayek's point is therefore that the needs of efficiency would overrule requirements of justice if economy was subjected to central planning. And this indeed proved to be true in countries of the Eastern Block. Although most citizens had equal earnings, some had to work extremely hard while others occupied redundant positions requiring no effort or commitment.

Hayek believes that some form of substantial injustice is inevitable in a society consisting of heterogeneous individuals. He is however convinced that it is infinitely better to be submitted to a kind of inequality that arises from the “*interactions of individual skills in an impersonal process*” than to a kind that results from the “*uncontradictable decision of authority*”²⁶⁵.

4.12. Justice on the market

Is there anything like a just price of a commodity? Manfred Pirsching in his article *Gerechte Ungerechtigkeiten* notices that for Hayek the notion of justice has no application in the

263 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, *Mirage of Social Justice*, The University of Chicago Press, Chicago and London, 1976; p. 81.

264 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, *Mirage of Social Justice*, The University of Chicago Press, Chicago and London, 1976; p. 82.

265 Friedrich August von Hayek, *Law, Legislation and Liberty*, vol. 2, *Mirage of Social Justice*, The University of Chicago Press, Chicago and London, 1976; p. 83.

reality of a free market. He brings an example of a small grocery store that is put out of business by a new superstore opened around the corner. In fact there is no one to blame for the grocery store owner's misfortune. Neither the owner of the superstore can be blamed for supplying goods with lower prices, nor the customers can be blamed for choosing to buy them²⁶⁶.

The specific of dealings on the free market is that they are neither just nor unjust because no patterned distribution takes place. The performance of the market is a result of a mutual consent between the parties who are not accountable to anyone else. There is no one making binding decisions for others²⁶⁷. This concerns the question of remuneration as well. Although it is a common belief that a reward higher than deserved is unjust, Hayek argues that it is not possible to defend this view because it is based on a false assumption.

*“It presumes that we are able to judge in every individual instance how well people use the different opportunities and talents given to them and how meritorious their achievements are in the light of all the circumstances which have made them possible. It presumes that some human beings are in a position to determine conclusively what a person is worth and are entitled to determine what he may achieve.”*²⁶⁸

Such presuppositions are unacceptable for Hayek on the grounds of his epistemological conception. Moreover he cannot accept a society that would be based on the correspondence of remuneration to judgements of merit and desert because it would be fundamentally contradictory to the ideal of freedom. He believes that it would create a situation where a single hierarchy of merits, and thus a single morality, was coerced upon the whole society. Yet, because nobody has knowledge of circumstances of others' actions comprehensive enough to be able to guide them effectively, it follows that also no one is “*competent to reward all efforts according to merit*”.

Although no judgements concerning distributive justice can be issued from the perspective of a free market, it does not mean that other judgements, for example concerning usefulness or desirability cannot either. For instance, Hayek argues that gains of one member of a community must always be regarded as a benefit of the whole community. This may not come uncontested and in fact “*it is true that particular people may be worse off because of the superior ability of some new competitor in their field; but any such additional ability in the community is likely to benefit the majority*”²⁶⁹. This kind of argumentation is probably what

266 See *Gerechte Ungerechtigkeiten*, Manfred Pirsching, in *Gerechtigkeit im politischen Diskurs der Gegenwart*, ed. Peter Koller, Passagen Verlag, Wien, 2001; p. 201.

267 See *Gerechtigkeit in Gesundheitswesen angesichts neuartiger Problemlagen*, Volker H. Schmidt, in *Gerechtigkeit im politischen Diskurs der Gegenwart*, ed. Peter Koller, Passagen Verlag, Wien, 2001; p. 291.

268 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 85.

269 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 78.

provoked Hoerster to criticize Hayek for leaning towards utilitarianism²⁷⁰.

What way is there to make sure that the market order and its outcomes are just? The only acceptable way from the liberal point of view is a procedural one. It is the methods and rules of conduct of the market that can be subject to the scrutiny of justice. Hayek adopts those rules from David Hume: “*stability of possession; its transference by consent, and the fulfilment of promises. He retitles them freedom of contract, inviolability of property, and the duty to compensate another for damage. So long as these are maintained, the outcomes of the market order will be just.*”²⁷¹ Thus the justice that liberalism advocates for the free market is not any kind of patterned distributive justice but rather commutative justice – justice of contracts and exchange.

4.13. Redistribution and taxation

To conclude the chapter on justice I would like to address a practical question that often comes up in actual political discussions nowadays – the question of progressive taxes. First of all it has to be stated clearly that Hayek does recognise the need of taxation in general and that he does not share the view of libertarian philosophers like Nozick, who argue that taxes are a means of enslavement and that if their purpose is providing welfare they are indeed equal to theft. On the contrary, Hayek understands that there are services that, though essential and desired by people, cannot be provided by private enterprise simply due to the fact that they would be unprofitable. For the sake of such services it is desirable that the government taxes the citizens and with the gathered means provides those services.

Hayek is however strongly opposed to the idea of progressive taxation because he believes it to be a method of unjustified redistribution. He is convinced that the only acceptable mode of taxation is a one ruled by the principle of proportionality.

*“Unlike proportionality, progression provides no principle which tells us what the relative burden of different persons ought to be. It is no more than a rejection of proportionality in favour of a discrimination against the wealthy without any criterion for limiting the extent of this discrimination.”*²⁷²

Thus he rejects the proposition of progressive taxes primarily on the ground that it cannot serve

270 *Recht und Moral, Texte zur Rechtsphilosophie*, Hg. Von Norbert Hoerster, Deutscher Taschenbuch Verlag, München, 1977; p. 127.

271 Andrew Gamble, *Hayek. The Iron Cage of Liberty*, Westview Press, Boulder, Colorado, USA, 1996, p. 48.

272 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 272.

as a just and clear principle for determination of actual amount of money that a person should pay. Progression is not a just principle and the form it takes is an expression of a “*current state of opinion shaped by past policy*”. Proportionality, on the other hand, “*provides a rule which is likely to be agreed upon by those who will pay absolutely more and those who will pay absolutely less and which, once adopted, raises no problem of a separate rule applying only to a minority*”²⁷³. A further strong objection against progressive taxation is that it is an arbitrary and discriminating procedure. The way by which individuals who are to be taxed at a higher rate are chosen is far from being agreeable with the principle of equality before the law. Hayek asks whether it is acceptable that a majority determines the amount of taxation and then lays most of the burden on a minority. The author believes that it is an example of an abuse of democratic procedures and an unjustified discrimination of a minority group. It discriminates particular individuals by “*introducing a distinction which aims at shifting the burden from those who determine the rates onto others*”²⁷⁴.

Hayek argues furthermore that progressive taxes offend not only the principle of formal justice but also the principle of economic justice which could be formulated as ‘*equal pay for equal work*’. He explains his point with the example of two lawyers who, among other assignments, provide the same service. In this example one of the lawyers takes many jobs and, as a result, earns a lot of money in the course of the year. The other lawyer takes fewer assignments, earns less and does not reach the threshold over which he would have to pay higher taxes.

*“If what each of two lawyers will be allowed to retain from his fees for conducting exactly the same kind of case as the other depends on his other earnings during the year – they will, in fact, often derive very different gains from similar efforts. A man who has worked very hard, or for some reason is in greater demand, may receive a much smaller reward for further effort than one who has been idle or less lucky. Indeed, the more the consumers value a man's service, the less worthwhile will it be for him to exert himself further.”*²⁷⁵

Hayek believes that such an outcome contradicts our fundamental convictions concerning justice of remuneration as well as the principle of formal justice. Additionally it sends a signal that hard work and diligence are not worthwhile. This has disastrous results for the spirit of entrepreneurship and for the whole economy.

273 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 273.

274 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 273.

275 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 273.

5. CONCLUSION

The three ideals that constitute the basis of liberalism as advocated by Hayek converge and imply each other. The principle of individualism demands respect for people in their whole variety and with all their differences and particularities. Therefore it necessitates rule of law and formal justice because “*the ideal of equality of the law is aimed at equally improving the chances of yet unknown people*”. The rule of law and formal justice in turn “*provide the most effective protection against infringement of individual liberty*”²⁷⁶. But apart from this internal coherence I believe that Hayek's philosophy is also characterised by a certain continuity and consistency in the sense that the same ideals underlie his political conceptions as well as his economic analysis and that these are logically supported by his epistemological convictions.

In this last section of my thesis I would like to restate some of the most important ideas of Hayek's philosophy and show how they all were developed with the purpose of arguing the superiority of liberalism over socialism. This is indeed what Hayek himself regarded as his mission. In my reading his case against socialism I distinguish two parallel but completing lines of argumentation: one that is situated in the field of economy and other that is concerned mainly with ethical and sociological problems. Although these two discourses are simultaneously present in Hayek's writing, I find it useful to look at them separately, because then one can see clearly the comprehensiveness of his critique of socialism. In the way I interpret his work the first line of argumentation (I) is an economic critique of methods applied in the construction of socialist society, whereas the second discourse (II) deals mainly with criticism of ethical ends of this system. To conclude my thesis I shall outline the most important points of these two courses of reasoning.

I. CRITIQUE OF PLANNED ECONOMY

- Hayek prefers to use the French terminus *dirigism* rather than the more popular term *planned economy* because planning an economic activity does not have to refer to state planning or any other form of central coercion – every individual is bound to plan his life and his economic activities accordingly and this kind of planning is for Hayek not only positive in its results but it is also indispensable.
- Hayek compares economic methods used by all kinds of collectivisms with those employed in any state during war periods. It is characteristic for the war time that all the effort is subdued to one common end – the victory. It is generally accepted that private

²⁷⁶ Friedrich August von Hayek, *The Constitution of Liberty*, Routledge, London and New York, 2006; p. 184.

property can be confiscated and used for the war effort, people can be retrained for certain tasks and centrally relegated to specified works. All this is possible only because the priority of this single end is commonly recognized and accepted. Hayek argues that in order to conduct in a similar way (nationalization, central planning, etc.) systems like communism or fascism need to formulate a clear end and make sure of its dominance. Only if the whole economy has one precise aim, is it possible to direct it with any efficiency.

- An important point in Hayek's critique of centrally planned economy is the inferiority of its efficiency compared to the free market. In his opinion only the system of free competition is able to answer with necessary swiftness to the changes on the market. The dynamics of demand and supply can be balanced only in an likely dynamic system, that is in one consisting of countless independent agents observing the market (or those parts of it that directly concern them) and adjusting their actions. Any centralized system of price control is too rigid to answer quickly to the changes.

Hayek also argues that it is mainly thanks to the competition that humanity has achieved such a level of civilisation. On the one hand competition stimulates creativity and rewards invention, and on the other hand it provokes specialisation and diversity. Furthermore, once a certain level of complexity is reached, the whole cannot be supervised and directed from a single centre. Such comprehensive economic planning according to Hayek is bound to fail because the number of factors influencing economy (from atmospheric conditions and natural disasters to subjective and irrational decisions of individuals) is simply too high (indefinite really) to be introduced into any kind of matrix or function whose outcome would allow the planner to make appropriate decisions.

- Hayek's position on property relations can be well illustrated with two specific discussions. The first discussion deals with the so called commanding heights of economy: the question is whether such significant and strategic areas of industry as energy, mining, communication and banking, should be in private hands or rather controlled by the state. Hayek generally believes that governmental economic activity should be limited only to those spheres which are necessary for the society but which are not profitable enough to encourage private enterprise. Yet in all cases it is favourable that there is more than just one provider because state monopoly is always a waste and a threat. The second problem concerns taxes, their legitimacy as such and the justification of the progressive income tax. In short, Hayek recognises the need of taxation with the

purpose of providing such services by the state that could not be effectively provided by anyone else. Progressive taxation however is in his opinion not only harmful to the economy but also fundamentally conflicting with the principle of formal justice requiring equal treatment of all citizens.

II. CRITIQUE OF COLLECTIVISM

- One of the main objections that Hayek expresses against all collectivist doctrines is that they tend to substitute the individual subject with a collective one. The goals of individuals are subordinated to some arbitrarily defined good of an abstract group entity. Yet „*the welfare and happiness of millions cannot be measured on a single scale of less and more*“ and therefore it „*cannot be adequately expressed as a single end*“²⁷⁷. Only an individual person is able and authorised to decide what his or her particular end is to be. Hayek points out that planning a state's economy would have to mean controlling „*the entry into the different trades and occupations, or the terms of remuneration, or both*“²⁷⁸. Clearly this would leave citizens with a very limited share of autonomy enforcing on them particular ways of life and retrieving of a whole range of choices and possibilities.
- It is argued that in order to formulate a single end which would serve the community as such rather than its particular members and which would be dominant and pursued by all people „*a complete ethical code in which all the different human values are allotted their due place*“ would have to be adopted. But for Hayek such a common ethical code comprehensive enough to determine a unitary economic plan, would necessarily mean the end of personal freedom. And freedom is for him the ultimate ideal. In his understanding freedom is neither a natural right nor a quality that we are born with. People as such are neither free nor equal. Freedom is to be understood as a sociological concept (it „*refers solely to a relation of men to men*“²⁷⁹ as individuals) and the right to freedom is a historical result of a political struggle of generations of men.
- Equality is also understood as a relational ideal and not an independent quality of men. Hayek acknowledges the claim for equality before the law but he does not accept the claim for economic equality. For him formal justice (Rule of Law) and distributive justice cannot fully be reconciled because the latter requires treating different people in different

277 Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 101.

278 Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 129.

279 Friedrich August von Hayek, *The Constitution of Liberty*, Routledge Classics, London and New York, 2006; p. 12.

ways and this is contradictory to the former. He does recognize that political freedom is meaningless without economic freedom, but it cannot be understood as freedom from economic care. It is rather the freedom to „*economic activity, with the right of choice*“²⁸⁰ but also inevitably with whole the risk and responsibility.

- Collectivist and holistic approaches in social sciences necessarily result with certain reductionism. Hayek rejects these methods and this, in my opinion, makes his analysis especially attractive for a contemporary reader. Only accepting and appreciating the complexity of men and their world is it possible to approach the truth about them. Hayek's critique of socialism is an expression of his refusal of generalisation and discrimination of individual ends. His emphasis on freedom and responsibility in the realm of economy takes into account the diversity and subjectivity of those ends and thus treats human beings not simply as rational agents. Such an approach, although not popular in economics in last decades, is lately gaining on popularity – to name just a few new trends: research of micro-foundations in macroeconomics by professor Phelps and innovative developments such as the Imperfect Knowledge Economy.

280 Friedrich August von Hayek, *The Road to Serfdom*, The University of Chicago Press, Routledge, London, 2007; p. 133.

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ENGLISH ABSTRACT

This paper examines philosophical backgrounds of political and economic theories of Friedrich August von Hayek. This Austrian economist was one of the most prominent representatives of liberalism in 20th century and a fierce critic of socialism. His concepts are based on classical British liberalism and supported by an original epistemology drawing from the tradition of the Austrian School of Economics.

In this paper I analyse three philosophical ideals that form the basis of Hayek's liberalism. These ideals are individualism, freedom and justice. Individualism is regarded both as a methodological principle as well as political ideal. Freedom advocated by Hayek can be referred to as a negative personal freedom defined as lack of coercion. The promoted concept of justice is first and foremost formal justice understood as equality before the law. Distributive justice is argued to be incompatible with the principle of formal justice.

My goal in this paper is to show continuity and consistency of Hayek's political and economic theories. Both his critique of collectivism as well as his rejection of socialist economy are supported by the three philosophical ideals and by his anti-rationalist and individualist epistemology.

GERMAN ABSTRACT

Friedrich Hayek war einer der einflussreichsten politischen Denker des zwanzigsten Jahrhunderts. Seine leidenschaftliche Kritik des Sozialismus und Verteidigung des liberalen Staats haben einen Widerhall sowohl bei Politikern, als auch bei weiteren Kreisen der Gesellschaft gefunden. Seine ökonomischen Theorien sind in großen Teilen von der Österreichischen Schule der Ökonomie inspiriert, welche sich im Wesentlichen dem methodologischen Individualismus auf antirationalistischer Weise widmet. In Verbindung mit diesen Annahmen befürwortet Hayek eine mikroökonomische Analyse des freien Marktes. Seine politischen Theorien wiederum basieren auf dem klassischen Liberalismus der britischen Tradition, der sich gegen staatlichen Interventionismus und für einen Minimalstaat und private Unternehmen ausspricht. In dieser Arbeit versuche ich, die philosophischen Grundlagen dieser Theorien zu thematisieren.

Die Kritik des Sozialismus beginnt Hayek mit einem Wechsel der Begrifflichkeit und, in Folge dessen, einer neuen Problemstellung. Er weist darauf hin, dass das Wort *Ökonomie* eine Gruppe von Handlungen darstellt, die, mit Hilfe gegebener Mitteln, eine Reihe von Zielen zu erreichen versuchen. Die Ziele sind laut einem einheitlichen Plan geordnet. Eine Ordnung, die hingegen aus mehreren, einzelnen Ökonomien auf dem freien Markt entsteht, ist, laut Hayek, richtiger als *Katallaxie* zu bezeichnen. Mit Hilfe dieser Terminologie verändert er die Bedeutung von Ökonomie. Der Streit zwischen der Planwirtschaft und der Marktwirtschaft präsentiert sich als ein Dilemma von zentraler und dezentraler Planung. Hayek lehnt zentrale Planung aufgrund seiner epistemologischen Überzeugungen ab. Er behauptet nämlich, dass die Menschen nur ein begrenztes Erkenntnisvermögen haben. Niemand ist im Stande, alle Daten zu sammeln und zu bearbeiten, die für eine effiziente Planung der Nationalökonomie notwendig wären. Konkrete Informationen und Kenntnisse eines „*man on the spot*“ sind in Statistiken und makroökonomischen Gleichgewichtsanalysen unerfassbar. Hayek argumentiert, dass aufgrund epistemischer Beschränktheit kein Mensch im Stande sei, soziale Ordnungen vollständig auf dem Reißbrett zu entwerfen und erfolgreich zu implementieren. Im Gegenteil, solche Einrichtungen wie der Markt, das Geldsystem, aber auch Sprache und Kultur, sind emergente Ordnungen, die spontan und unvorhersehbar aus unzähligen Handlungen der Individuen in Folge von Jahrhunderten entstehen.

Abgesehen von der epistemologisch begründeten Kritik der Möglichkeit einer sozialistischen Wirtschaft, entfaltet Hayek auch eine politische Kritik an sozialistischen

Gesellschaftssystemen. Seine philosophische Kritik basiert auf Argumenten des klassischen Liberalismus. Meine These lautet, dass es drei philosophische Grundkonzepte gibt, die den Liberalismus Hayeks charakterisieren: Individualismus, Freiheit und Gerechtigkeit. Ich beschäftige mich mit diesen Grundprinzipien in den aufeinander folgenden Kapiteln meiner Diplomarbeit.

INDIVIDUALISMUS

Der Individualismus beruht auf der Annahme der Priorität des Individuums vor dem Kollektiv. Die Rechte der Individuen sind auf die Rechte der Gesellschaft nicht reduzierbar und dürfen nicht für ein kollektiv Gutes geopfert werden. Der methodologische Individualismus spricht sich gegen eine Reifikation von kollektiven Entitäten aus. Hayek argumentiert, dass kollektive Entitäten und Institutionen nicht als personifizierte Subjekte von Handlungen gelten können. Nur Individuen sind in der Hinsicht autonom, dass sie des intentionalen Handelns fähig sind. Die Priorität der Individuen besagt auch, dass sie keinen anderen Zwecken untergeordnet werden dürfen. Individuen sind in bester Kantischer Tradition als „Zweck-an-sich“ zu betrachten.

Die Grundlagen des Individualismus für die politische Philosophie wurden, unter anderen, von Locke, Kant, Smith und Mill gelegt. Diese Denker haben zum Beispiel betont, dass der Aufgabenbereich von Regierungen sich lediglich auf unparteiliche Schiedssprüche beschränken müsse. Das Aufzwingen substantieller Normen ist in der Konzeption des politischen Individualismus nicht legitim. Der Kantische Beitrag besteht darin, dass er die Reziprozität der Autonomieanerkennung unter Individuen klar machte. Eine weitere individualtheoretische Annahme, nämlich, dass jede Person dazu berechtigt ist, das eigene Leben laut eigenen Werten und Plänen zu gestalten, bringt einen ethischen Pluralismus hervor. Hayek glaubt, dass dieser Pluralismus nur in einem liberalen Staat möglich ist. Im Gegensatz dazu beruht laut Hayek die sozialistische Ideologie auf einem monistischen und umfassenden Moralkodex. Hayek vergleicht den sozialistischen Staat mit dem eines Kriegszustandes. In beiden Fällen schränkt der Staat die Freiheit der Bürger ein und benutzt sie für die Erreichung eines einzigen Ziels, das der Staat selbst festgelegt hat.

Die individualistischen Annahmen implizieren nach Hayek jedoch, dass ein liberaler Staat folgende Bedingungen gewährleisten muss: 1) alle Personen müssen eine Privatsphäre haben, in der sie vor staatlichem, gesellschaftlichen oder irgendwelchen anderen Zwängen geschützt sind; 2) Personen sollen die Möglichkeit haben, eigene Lebenspläne zu verfolgen und ihre besondere Talente zu entfalten. 3) Weiters impliziert der Individualismus auch die Gleichheit

vor dem Gesetz. Für die Ökonomie bedeutet das Prinzip des Individualismus eine mikroökonomische Herangehensweise und die Anerkennung der subjektiven Ursachen wirtschaftlicher Phänomene.

FREIHEIT

Die von Hayek vertretene Konzeption der Freiheit kann als negative, persönliche Freiheit im Sinne der Unabhängigkeit von Zwang beschrieben werden. Das Ausmaß solcher Freiheit wird mit der Zahl der Möglichkeiten gemessen, die für das Individuum offen bleiben. Die Frage der Freiheit für Hayek besteht nur in Bezug auf zwischenmenschliche Beziehungen. Freiheit versteht er als Freiheit von Zwang: Zwang bedeutet hier konkret, dass eine Person x gegen ihren Willen durch eine intentionale Handlung von Person y, die ihre eigenen Interessen verfolgt, zu einer Handlung oder Unterlassung gezwungen wird. Hayek erwähnt drei Maßnahmen gegen Zwang: formale Gleichheit, Pluralismus und Sicherung der Privatsphäre. Besonders was den politischen Zwang betrifft, ist Hayek ein starker Befürworter von Machtbeschränkung in Bezug auf Regierungen. Er glaubt, dass so viel Befugnisse wie möglich in der Hand von lokalen Autoritäten sein soll.

Die ökonomische Freiheit bleibt im Allgemeinen in enger Beziehung zur persönlichen Freiheit. Ökonomische Ziele sind, laut Hayek, keine direkten Ziele, sondern eher Mittel, die man braucht, um nicht ökonomische Ziele zu erreichen. Darüber hinaus besteht die Wichtigkeit der Ökonomie und des Privateigentums darin, dass diese die Sicherung der Privatsphäre gewährleisten. Das heißt also, dass das Privateigentum den Menschen eigene Lebenspläne zu verfolgen erlaubt. Auf diese Weise erlangt man eine Form der Unabhängigkeit von anderen. Hayek argumentiert auch, dass, je mehr Entscheidungszentren in Form von Privatbesitzer und Privatunternehmer in einer Gesellschaft agieren, desto beschränkter ist jegliche Zentralmacht.

Hayek anerkennt natürlich die Bedingung, die im berühmten Mill'schen Prinzip ausgedrückt ist: dass die persönliche Freiheit jeder Person mit der gleichen Freiheit der anderen beschränkt sein muss. Er begreift aber auch, dass die Freiheit der anderen mit der Anerkennung eigener epistemischen Grenzen verbunden ist. Keine andere Person ist epistemologisch besser im Stande, Entscheidungen über jemanden zu treffen, als das konkrete Individuum, das mit diesen Entscheidungen betroffen ist.

GERECHTIGKEIT

Hinsichtlich des Prinzips der Gerechtigkeit ist Hayek überzeugt, dass es die formale Gerechtigkeit ist, die grundsätzlich mit einer liberalen Politik vereinbar ist. Die formale

Gerechtigkeit fordert eine gleiche Behandlung aller Menschen vor dem Gesetz. Hayek glaubt, dass das Prinzip distributiver Gerechtigkeit mit dem der formalen Gerechtigkeit unvereinbar ist: alle Menschen sind unterschiedlich und deswegen führt gleiche Behandlung notwendigerweise zu unterschiedlichen Ergebnissen. Dies erklärt die ökonomische Ungleichheit unter Menschen, obwohl sie formal gleich gestellt sind. Wollte man zum Beispiel, dass alle dasselbe verdienen, dann müsste man unterschiedliche Aufwände gleich belohnen.

Hayek kritisiert die Anwendung des Begriffes der sozialen Gerechtigkeit. Er ist der Meinung, dass die häufigste Bedeutung dieses Begriffes sich auf die Aktivitäten der Gesellschaft bezieht. Der Fehler solchen Denkens besteht aber darin, dass kollektive Entitäten personifiziert werden und als Subjekte der Handlungen betrachtet werden. Hayek betont, dass die Distribution des Vermögens nur dann als ungerecht bezeichnet werden könnte, wenn sie ein Resultat absichtlicher Verteilung wäre. Er glaubt aber, dass keine bestimmte Person oder Gruppe für die bestehende Verteilung verantwortlich ist, sondern dass diese aus einem unpersönlichen und unvorhersehbaren Prozess der Evolution resultiert.

Hayek hebt hervor, dass der liberale Staat ein Rechtsstaatsprinzip erfordert. Dieses bedeutet, dass jede Person der rechtlichen Ordnung gleichermaßen unterliegt. Die Menschen sind aus eigener Anerkennung dessen Legitimität unterworfen und nicht weil sie dazu gezwungen sind. Hayek betont aber auch, dass das Prinzip der Rechtsstaatlichkeit als Metarechtslehre betrachtet werden soll, weil es auf diese Weise dem Gesetz eine Grenze aufwirft.

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