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Liberalism beyond Hayek: On the Renewal of Liberalism and the Institutional Infrastructure of Freedom

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Abstract

This paper suggests that the challenge to renew liberalism today may be seen to share some similarities with the first attempt to renew liberalism at the Colloque Walter Lippmann in 1938. Besides sharing intellectual, political and institutional dimensions, liberalism is once again under severe attack on many fronts, and it is once again seen by many to suffer a combined legitimacy and effectiveness crisis, reminding us of the main topic discussed in 1938. The first central argument of the paper is to show why a realistic and inclusive conception of liberty needs to be grounded in an extended institutional infrastructure of freedom, based on the interdependent and balanced relations between its four major institutional pillars: the rule of law, democracy, the market economy and civil society. Following this discussion, the paper challenges Friedrich Hayek's attempt to rebuild liberalism based on a narrower conception of liberty and its institutional preconditions. The paper concludes by underpinning the need to move beyond Hayek in the renewal of liberalism in our time.

JEL Codes: A13, B25, B31, P11, P16

1. The First Attempt to Renew Liberalism

The Colloque Walter Lippmann (CWL) in Paris in 1938, organized by the philosopher Louis Rougier, has rightfully been assigned a unique place in the history of liberalism. This international meeting of 26 mostly liberal intellectuals, half of them French, took place at a critical juncture when liberalism was widely held to suffer both "a legitimacy crisis and an effectiveness crisis" (Reinhoudt and Audier 2018, 40). How could it be that liberal principles and ideas which had inspired so many political and economic reforms since the 18th century, and which had spread the beneficial effects of the rule of law, democracy, industry and free trade in steadily wider circles,

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would gradually turn irrelevant and unattractive to a fast expanding urban electorate in major European countries?

A majority of the participants at the CWL tended to agree with the American journalist Walter Lippmann, the author of *The Good Society* (1943 [1937]), the central point of reference in the meeting, that not all the problems of liberalism were due to exogenous causes like the advances of collectivist economic planning and authoritarian politics, nor on the social disintegration and human suffering that followed the upheavals of the World War, hyperinflation, protectionism, deflationary restoration of the gold standard and, more than anything else, the Great Depression. Lippmann's uncomfortable suggestion was that a big part of the problem was due to endogenous causes, in particular the stubborn neglect of reforming liberalism itself, mostly based on a false conception of *laissez-faire*, or non-intervention, with consequences that Lippmann did not shy away from calling politically "catastrophic." In Lippmann's own words:

> It became impossible for the latter-day liberals to ask the question, much less to find the answer, whether the existing law was good and how it could be reformed. That is why they lost the intellectual leadership of the progressive nations, and why the progressive movement turned its back on liberalism […] Liberal thinking was inhibited in the metaphysics of laissez-faire, and the effect was to make the political philosophy of liberalism a grand negation, a general non possumus, and a complacent defense of the dominant classes. […] when liberalism had become frozen in its own errors, it attracted an undue proportion of mediocre place-hunters and time-servers, and repelled the generous, the brave, and the discerning (1943 [1937], 192).

Lippmann's analysis resonated well with many of the European participants. Two of them, the Germans in exile Wilhelm Röpke and Alexander Rüstow, formulated their critique of the old liberalism as complementary to Lippmann's critique, centered on three areas of perceived neglect: 1) The institutional and political preconditions and limits of the market economy; 2) the sociological and cultural preconditions of a free society; and 3) the "social question," or the need to secure a satisfying life standard for as many as possible. To meet these requirements Röpke and Rüstow advocated an active policy agenda to secure and improve the institutional framework of the market economy, a tough competition policy, and a social policy of decentralization and personal empowerment (Rüstow 2009 [1939], 17–41; Röpke 1947; 1960, 222–261).

Walter Lippmann, the only American in the group, was even prepared to embrace a more ambitious program of social insurance and welfare services, to help "victims of progress" with reeducation, to find a new occupation or to settle in a new place, if needed. His belief was that a system of social insurance properly designed would facilitate innovation and technological change indirectly, by generally reducing the human resistance to economic change. He envisioned a virtuous circle, in which social insurance and productivity growth would reinforce each other (Lippmann 1943 [1937], 223–224).

The CWL was undoubtedly a rather heterogeneous group of liberal intellectuals and businessmen, and not everyone found it essential to criticize or reformulate traditional liberalism. Among them was the leading Austrian economist Ludwig von Mises (Graduate Institute, Geneva), and to a certain extent his more cautious and not so outspoken student, Friedrich Hayek (London School of Economics). Some of the later influential French participants, like the economists Jacques Rueff and Maurice Allais, the sociologist and political philosopher Raymond Aron, as well as the Hungarian-British philosopher Michael Polanyi, were all leaning more in the reformist, or "neoliberal" group, together with Lippmann, Rougier, Röpke and Rüstow. The same would likely have been the case for the great Italian liberal economist Luigi Einaudi, later the president of Italy, had he been able to attend (Einaudi 1945, 34–39). Some participants, mostly from France, even considered themselves close to the thinking of John Maynard Keynes, and some were even sympathetic to the Popular Front government of France at the time (Reinhoudt and Audier 2018, 53–78).

In the postwar period, several of the leading neoliberals from CWL would go on to become influential in the liberal reform processes in continental Europe. About half of the participants would also later join the Mont Pèlerin Society (MPS), an important offshoot from the CWL, after this international network of liberal intellectuals was founded in 1947, on the joint initiative of Friedrich Hayek and Wilhelm Röpke.

There were no participants at the CWL, either from Denmark, Sweden, Norway or the Netherlands. Besides, the UK was only represented by two outsiders, Hayek and Polanyi, although Lionel Robbins had been invited. These countries shared two characteristics of some comparative interest: The liberal political parties in these countries tended to fare much better in elections in the interwar period, and their programs also tended to be much more in line with the "neoliberal" majority at the CWL (Mjeldheim 2006, 591–602).

The internal debate among liberal intellectuals on the future direction of liberalism continued after CWL and after the founding of MPS in 1947, and still continues today. Eighty years after CWL, liberalism is once again on the defensive, facing attacks on several fronts. Meanwhile, a fast changing world is showing signs of social and international disintegration, eroding institutions, and is witness to new forms of nationalist and authoritarian politics. The renewal of liberalism is once again a pressing challenge.

My aim here is not to give an account of the recent debate, but rather to suggest a way to think about liberalism that may facilitate the discussion of its renewal, and also to structure the main dimensions of my following critique of some elements in the liberal thinking of Friedrich Hayek.

2. The Different Manifestations of Liberalism

I will take it for granted that the identity of a liberal is uniquely defined by upholding individual liberty as the leading value, but not necessarily the only value, worth pursuing in our attempts to improve the open society. On the question of what we mean by liberty, I will accept Hayek's negative conception of liberty, as the absence of coercion by others, but only as a starting point. Besides, I will assume that freedom cannot be only economic or only political in nature, but must be both at the same time, grounded in the indivisible freedom of the individual person. This will hopefully prove sufficiently clarifying to my next purpose of introducing the main manifestations of liberalism.

2.1 Intellectual Liberalism

The liberal intellectuals who participated in the CWL were essentially engaged in studying the preconditions, possibilities and limitations of liberty. They can typically be said to have manifested what I call intellectual liberalism. Their perspective on liberalism was not primarily directed at day-to-day politics, but rather on a theory of liberty in society, covering a wide range of dimensions, from philosophy to history, economics, sociology, political science and law – in the hope of inspiring and indirectly influencing the world of politics in a liberal direction. A few quotes from Walter Lippmann's opening address will illustrate this point:

> It is important to succeed by virtue of […] our responsibility as intellectuals. […] the first task of liberals consists today, not of creating presentations and propaganda, but by seeking and thinking. […] It is a long term task that requires sustained efforts, sustained support, and the noble patience of those who sincerely and humbly seek the truth. […] Let us also seek not to teach an old doctrine, but to contribute within our means to the formation of a doctrine of which none of us has more than a vague notion at the present moment (Reinhoudt and Audier 2018, 102, 104, 105, 106).

2.2 Political Liberalism

Political liberalism is the subject matter of liberal parties and politicians, but also of governments, civil servants and others involved in the process of developing, communicating, carrying out and improving institutions, regulations and other political actions. There is essentially no other way for liberalism to have direct influence on society, other than by succeeding in the competitive struggle of democratic politics. It may be convenient to distinguish between two types of politics. On the one hand, there is constitutional politics, or the politics of developing and reforming the framework of the social order and its institutional forms, corresponding to James Buchanan's terminology of "choice among rules." On the other hand, there is normal politics, the ordinary day-to-day activities of politicians involved in debating, negotiating and

decision making, corresponding to Buchanan's "choice among alternatives within rules," always under the influence of interests, political opinions and preferences (Dahrendorf 2014 [1990], 34; Brennan and Buchanan 2000 [1985], 33).

Usually we find a natural division of labor between the intellectual and political manifestations of liberalism. It is exceptional to find persons that have been actively involved in both spheres at a high level. Four relevant examples are Luigi Einaudi, Jacques Rueff, Ludwig Erhard and Ralf Dahrendorf.

Liberalism has tended to be most influential where we find a symbiotic and mutually reinforcing relationship between its intellectual and political manifestations. Historically, political liberalism has tended to be narrower in scope and content, and tended to be weaker and more vulnerable, compared with its intellectual complement.

Paradoxically, liberal policies do not always require liberal parties, as could be witnessed by the liberal economic reforms carried out by the Christian democratic-led coalitions in West Germany after WWII, and later by the conservative government of Margaret Thatcher in the UK. The significant liberal economic reforms carried out in the 1980s and 90s in Australia, Norway and Sweden, even under social democratic governments, also come to mind. A more detailed account of these examples would also have shown that reforms of important institutions can sometimes move in the same direction for many years, even under governments of different color – a strong indication of democracy's evolutionary capacity to learn from mistakes and to reform itself (Karlson 2017).

This brings me to the third manifestation of liberalism – institutional liberalism.

2.3 Institutional Liberalism

The further we move from a formal conception of negative freedom toward a positive concept of freedom as a living practice, the more relevant becomes the following question: Which main institutional pillars must be in place to enable as many as possible to live self-determined lives? In essence, it is liberal institutions (understood as rules of the game) that create the important bridge between freedom as a purely philosophical concept, on the one hand, and the living reality of freedom for the ordinary citizen on the other. The function of liberal institutions is precisely to establish and maintain a sustainable infrastructure, enabling individuals to make active use of their formally guaranteed liberal rights and freedoms (Dahrendorf 2003, 127–130; Popper 1972 [1963], 351).

In passing, we may note that Hayek hesitated to pursue this active and freedom-enabling dimension of liberal institutions. Hayek instead tended toward a single-minded focus on the rule of law, based exclusively on formal negative liberty, and seemed to be quite satisfied after making sure that all laws should comply with "general rules of just conduct," equally applied and enforced for everyone (Hayek 1976 [1960], 205–219).

Ralf Dahrendorf shared Hayek's insistence on negative liberty as a liberal imperative, but only as a starting point. Dahrendorf considered Hayek's position insufficient, arguing that the survival of freedom in real life cannot be secured only on the basis of a formally protected negative liberty, but that it ultimately rests on the citizen's active and open-ended use of their freedom, forming a mutually reinforcing culture of freedom. This sociological insight from Dahrendorf lends support to an extended liberal order, embracing a wider set of freedom-enabling liberal institutions. In the following, I will pursue further the spirit of Dahrendorf's thinking (2003; 2007).

But what liberal institutions should we be concerned about in particular? My suggested answer is an attempt to capture the spirit of Dahrendorf, and his conception of an extended *Constitution of Liberty*, and then add an economic dimension, mainly inspired by Walter Eucken's ordoliberal thinking. This will provide some useful points of reference for a more systematic exposition of the relevant institutional interdependencies and the need for a balanced infrastructure of freedom. Given the complex nature of the subject, this attempt must be non-exhaustive.

3. The Infrastructure of Liberty

An institutional infrastructure that enables and empowers individuals to practice freedom should reasonably be expected to support a wide range of arenas for human development and flourishing. This requires a workable approach to reduce the complex multiplicity of relevant institutions. I therefore suggest thinking of the main liberal institutions in terms of groups or ensembles of closely related institutions, reflecting a high degree of internal dependency. These ensembles correspond to the term *orders* (German: *Ordnungen*). Seen through the lens of mutual interdependency (Eucken's *Interdependenz der Ordnungen*) they can be interpreted as an integrated infrastructure of liberty.

The question of institutions also raises the question of incentives. I regard all the institutions we are here concerned with, and not only the economic institutions, to frame incentives, which in turn influences individual freedom as a living practice.

My suggested infrastructure of freedom is based on four main pillars: The rule of law, democracy, the market economy and civil society (Nordbakken 2006, 99 – 107 and 2017, 207 – 223).

The essential content of each pillar is summed up below:

- *The rule of law:* This is the cornerstone of *The Constitution of Liberty* in the narrow sense, containing a comprehensive set of guaranteed liberal freedoms and rights for all citizens, the basic organizing and operating regulations of political and judicial institutions, the division of governmental powers and their checks and balances. The rule of law sets limits on the use of political power by a democratic majority. Everyone is equal before the law, no one is above the law, and the law is applied to

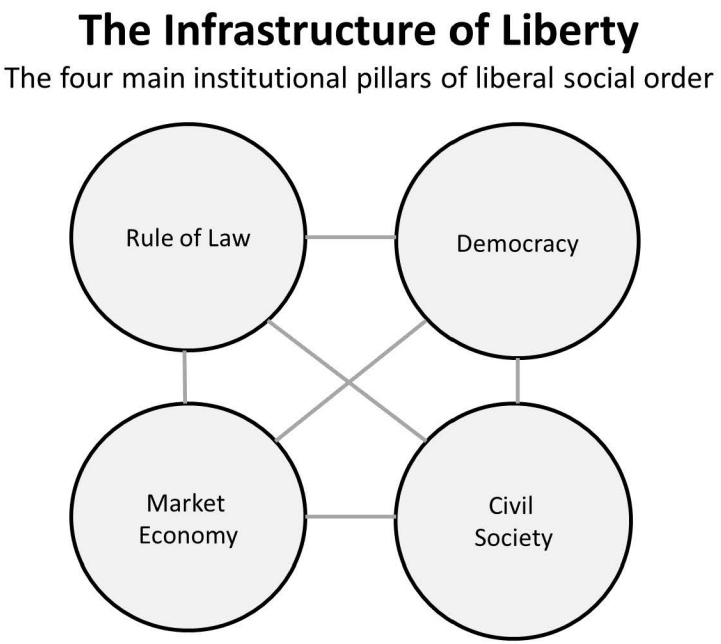

Figure 1: The Infrastructure of Liberty

everyone on equal terms and is administered impartially, consistently and efficiently (Hayek 1976 [1960], 205–212; Dahrendorf 2003, 111–112; 128–129).

- *Democracy:* An ensemble of institutions which makes it possible to change governments, laws and regulations without the use of force, which makes it possible to control all use of political power and to protect the citizens against the misuse of power, through a multiplicity of checks and balances, and that gives the people the right to elect who should be entrusted with political power, and also the opportunity to take part in the execution of political power. Freedom of expression, academic freedom, free and independent media and open arenas for public discussion and opinion formation provide indispensable preconditions for a well-functioning democracy (Dahrendorf 2003, 106–130; Hayek 1976 [1960], 108–109). We should not be surprised to register that one of the main sources of anxiety among the CWL participants, exemplified by the introductions by Rougier and Lippmann, were the imminent threats to the survival of liberal parliamentary democracy, conditioned by the rule of law (Reinhoudt and Audier 2018, 39).
- *The market economy:* The economic system of the free society, grounded in a set of constitutive and regulating principles underpinning the fundamental principles of free competition and free price formation (Eucken 2004 [1952]): private property rights, freedom of contract, accountability, open markets and free trade, a stable monetary and fiscal framework and a high level of predictability in economic

policymaking. The regulating principles cover a wide range of policies to protect the integrity and legitimacy of the market economy, by providing effective competition, productive incentives, public goods, and the correction for externalities and counterproductive levels of inequality of power and income (*ibid.*, 254 – 324). Many of these ordoliberal themes were hot topics at the CWL, and the discussions pointed distinctly in the direction of the normative concept which Walter Eucken later systematized with great success. This was particularly evident in the contributions of Lippmann, Röpke and Rueff, and most likely also by Hayek, whose main contributions were unfortunately not recorded.

- *Civil society:* All forms of voluntary activity in free associations, where citizens of a free society cooperate to cultivate common interests and ideals, to solve common problems or realize common opportunities and aspirations – independent of the state and the market. Civil society is also the great, open and inclusive arena where people meet across a wide range of formal and informal differences to create mutually beneficial relations and outcomes based on a wide range of common interests and shared solidarity. A lively and decentralized civil society also provide a steady stream of vital impulses to, among other things, the cultural, moral, social and political development of a free and open society – and not to forget, to social integration and human development (Dahrendorf 1992). Perhaps the closest parallel to the treatment of the civil society in the CWL were the persistent efforts of Rüstow and Röpke to stress liberalism's serious neglect of man's vital needs of meaning and belonging. Rüstow's accusation ran as follows: "Liberalism ignored and neglected, unfortunately, the central role of vital irrational needs and, specifically, that of the integration of man." And as to "the most important economic-social task," according to Rüstow: "not […] to provide to the greatest possible number of men the highest possible income, but rather a living situation that is as satisfying as possible" (Reinhoudt and Audier 2018, 158).

These four institutional pillars can be seen to form a polycentric social order, and will under appropriate conditions also act as a decentralized and open-ended discovery procedure (Hayek 1976, 179 – 190), both separately and in concert, reinforcing the spontaneous growth of knowledge that we rely on to cultivate a prosperous, dynamic and inclusive society. It may be useful to exemplify some of the core characteristics that allow these beneficial outcomes to emerge.

First, a proper balance between the four pillars must be in place. This requires a minimum of autonomy for each of the pillars, combined with a set of well-functioning checks and balances. If for example business interests in the market economy can buy privileges or votes, that will seriously undermine the integrity of democracy, the principle of political equality, and at the same time erode the institutional preconditions of a liberal market economy (Lindsey and Teles 2017). Or consider the equally real danger of a self-serving parliamentary majority capturing the state apparatus, overruling the independence of the courts, and who tries to silence the op-

position by means of arbitrary regulatory harassments, intrusive surveillance, censorship, and monopolizing television media (Müller 2016).

Second, once in proper balance, the institutions will enter into a multilateral relationship, acting as mutually countervailing powers, checking and balancing each other. This state of affairs is particularly favorable for wide diffusion and decentralization of power throughout society; an extended and high-powered version of the constitutional principles of *checks and balances* and Montesquieu's *division of powers*. The *modus operandi* of the interdependent relations between the four institutional pillars can be illustrated by a few examples:

- The institutional framework of the market economy is provided by the rule of law and by democracy, in concert. The market economy pays back in terms of spreading trust through the combined effect of confirming the rules of the game in practice, by producing widespread prosperity, and by contributing to cultivate a favorable environment for innovation, growth of knowledge, human development and personal growth.
- By taking care of the operation and coordination of the economy at large, the market economy relieves both government and parliament from an impossible task, and thereby facilitates a well-functioning democracy, by allowing democracy to concentrate on more productive and legitimate political activities – such as improving and reforming the institutional framework of the market, or executing an effective and market-conforming climate policy.
- The rule of law acts as the protector of last resort for minorities, when threatened by a parliamentary majority setting out to rob the minority of their rights.
- Civil society is the never-ending "school of mankind," which cultivates and promotes moral standards, civic behavior, social trust, democratic culture, and a steady stream of inspirations, motivating purposes, creativity and innovations – the humanistic vitamins for the entire infrastructure of freedom. Civil society's only demand on the other institutions is light-handed regulation, sufficient autonomy, time, and private resources to carry on with the good works.

Third, institutionalized and well-functioning procedures must be in place to carry out democratically legitimized reforms and improvements of the liberal institutions in response to significant changes, or even deep transformations, in technology, power relations, the natural environment and a whole range of freedom-threatening changes. If institutions are not maintained or reformed in response to such changes they are bound to erode and turn dysfunctional (North 2005, 155–165). This propensity to neglect the reform of liberal institutions in response to a changing environment is unfortunately very common, and should be seen as a fundamental threat to liberty (Dahrendorf 2004, 62–65).

4. The Road to Hayek's Constitution of Liberty

Friedrich Hayek was arguably the most important liberal intellectual and thinker, from the 1940s through the 1970s. His thinking is therefore relevant in an attempt to reassess the need to renew liberalism in our time. As already mentioned, almost nothing has been recorded of Hayek's contributions to the CWL. However he was instrumental in helping Rougier to invite relevant liberals, and based on information from private communication between Rüstow and Röpke, Hayek's position was perceived to be close to that of Mises (Plickert 2008, 105). Hayek apparently did not leave any traces from his participation in the CWL indicating any urgent need to reform liberalism at the time. However, some traces can be detected in his essay from early 1939, *Freedom and the Economic System*, written in fresh memory of CWL, just about six months later. As the following citation suggests, Hayek may in the meantime have changed his mind. The following words might just as well have been quipped by Walter Lippmann (1943 [1937]) or even Alexander Rüstow (2009 [1939]):

> Unfortunately, many of the nineteenth-century liberals […] were on the whole content to accept the law in its existing formulation, as if this was the only conceivable and natural one. A certain dogmatism in this respect, which often had the appearance of an unwillingness to reason on these problems, brought the development of planning [Hayek implies here planning the framework conditions for freedom] to an early standstill and has tended to throw the whole liberal doctrine into discredit (Hayek 1939, 11 – 12).

But what was Hayek's own vision? On the basis of the main theme of his forthcoming influential bestseller *The Road to Serfdom (RTS)* from 1944, mainly about the multiple threat to liberty and democracy arising from ambitious collectivist and state interventionist economic planning and regulation, we should not be too surprised to register that Hayek only left us with some hints in this book. But the hints are nevertheless of interest, not least because their content was later to be considerably modified.

Concerning economic policy we find in *RTS* a strong reaffirmation of Hayek's earlier critique of old-style *laissez-faire*, and also a very nuanced and balanced view on the liberal alternative. Hayek's position on issues like the framework conditions for effective competition, the role of the state, the provision of public goods, even the need for a robust social safety net and need to counteract concentration and abuse of private power, are remarkably close to the positions of the majority in the CWL, and very close to the ordoliberal thinking of Walter Eucken, Wilhelm Röpke and Alexander Rüstow:

> In no system that could be rationally defended would the state just do nothing. An effective competitive system needs an intelligently designed and continuously adjusted legal framework as much as any other […] Nor does it [i. e. the liberal argument] deny that where it is impossible to create the conditions necessary to make competition work, we must resort to other methods of guiding economic policy (Hayek 1976 [1944], 27, 29).

And his treatment of the prospects of international order in the last chapter showed how closely Hayek's understanding of liberal democracy and market economy was embedded in a federalist and cosmopolitan outlook, pointing clearly towards the future development of the free trade organization GATT (now WTO), and perhaps most interestingly, the EU and the European internal market, even with a common currency. Hayek seems to have pursued similar lines of argument in his writings up to the founding meeting of the MPS in 1947, where Hayek and Eucken, almost in tandem, pursued the ordoliberal argument as a foundational doctrine (Hayek 1967, 148 – 159; Plickert 2008, 139 – 142).

After turning nearly full time to political philosophy in the 1950s, Hayek started to concentrate more of his attention on the positive program of liberalism, after having for many years pursued the negative program. This new direction in Hayek's intellectual development coincided with his increasing interest in theories on social evolution and the formation of spontaneous orders.

When Hayek's great work in political philosophy, *The Constitution of Liberty (CL)*, was published in 1960, we encounter, perhaps somewhat surprisingly, that the book first of all is an attempt to present an updated and systematic reinterpretation of the principles of classical liberalism, not of CWL-style "neoliberalism." Leaving aside the choice of words, Hayek obviously meant this to be a necessary one step back, in order to take two steps forward (Ebenstein 2003, 139 – 155).

CL was written in a more measured and optimistic tone and spirit, compared with *RTS*, and resonated well with this generally prosperous and optimistic period in the Western world. Not only was the postwar international institutional settlement, based as it was on a renewed common understanding of the values that defined the West, largely in harmony with a liberal outlook. Hayek could also register several success stories around him with strong intellectual links to prominent members of the MPS. The German *Wirtschaftswunder* based on Ludwig Erhard's reform program and the thinking of both Eucken and Röpke, was, at least since 1957, considered a great success. In France, Jacques Rueff had been the chief architect of the economic reforms introduced in 1958. In Italy, Luigi Einaudi, the liberal economist who first conceptualized the European internal market, had already served the new Italian republic in several high-ranking capacities, even as its first elected president, and had been instrumental in creating the institutional foundations of the no less remarkable "Italian Economic Miracle" of the 1950s and 1960s. And of course, multilateral free trade, NATO, and a new era of peaceful political and economic cooperation in Europe reinforced both the belief and the reality of the progress of the West. After having overcome the real and attempted totalitarian tyrannies of fascism, National Socialism and communism, how could the West possibly fail again, especially after such a promising restart?

For Hayek, the greatest threat still came from the same kind of creeping socialism he had warned about in *RTS*, animated by high political ambitions to substitute "blind and irrational market forces" with "rational planning," nationalization of core in-

dustries and a whole range of direct interventions and regulations, ending up in a centrally planned economy with totalitarian characteristics (Hayek 1976 [1944], 42–53).

By 1960, most social-democratic parties had in fact already given up on their most utopian planning ambitions, and some, like the West German SPD, had already embraced their own version of Erhard's *Soziale Marktwirtschaft,* in the so called Godesberger Program from 1959, with the slogan "Competition as far as possible. Planning as far as necessary" (Croach 2013, 24–25).

Based on these developments Hayek directed his worries more to a related welfare state interventionist dynamic, which can be summed up as a viscous cycle of government expansion, steeply increasing public expenditures, an increasing tax level, resulting in unsustainable deficit-spending, followed by monetary inflation, wage and price controls, ending up in a severe stagflation-recession. In a macro-perspective Hayek was later proven remarkably right, as many countries were hit by the stagflation crisis during the 1970s (Hayek 1976 [1960], 253–284; 1978, 191–218).

The same cannot be said about Hayek's long time opposition to Beveridge-inspired social insurance and welfare state policies, and his unbalanced treatment of labor unions. In *RTS*, Hayek had warned that the creation of the welfare state would necessarily lead down the road to totalitarianism. A claim very few would take seriously today. Even more problematic, when taken to extremes, was Hayek's tendency to see the problems he worried about as the *inevitable* outcome of what Hayek considered to be modern unlimited democracy, as a product of the interplay of social democratic politics and organized interests. Hayek was no doubt a democrat, but his democratic pessimism in the 1970s may also reflect a certain sense of ambivalence in his views on democracy, and was in more than one way reminiscent of Joseph Schumpeter's pessimistic prophesy that socialism would inevitably replace capitalism (Hayek 1978, 105–118; Schumpeter 1976 [1942], 156–163).

What Hayek had overlooked or devalued was something that his fellow liberals Karl Popper, Luigi Einaudi and Raymond Aron had been stressing for a long time: That the market is not the only self-regulating and genuinely corrigible institution in society. Democracy, too, has a built-in learning capacity, and a sophisticated ability to correct policy mistakes, and even to change governments if necessary, and to implement reforms (Anderson 1997; Popper 1972 [1963], 350–353; Einaudi 2014, 53–84). The deep liberalizing economic reforms that were implemented during the 1980s and 1990s in many Western countries, for example in the UK, Norway, Sweden and Denmark, all of which were overburdened by some of the problems that Hayek had worried about, is only one of many available cases, indicating that Hayek was overstating his case.

5. Hayek's Return to Liberal Minimalism

In light of Hayek's later writings, following up on themes covered in *CL*, it is hard to avoid the conclusion that *CL*, despite its measured optimism and its admirably open-ended and measured treatment of many political issues, yet proved to be a step backwards, taking liberalism once again back onto a narrow path, with the risk of creating a moderate version of the old *laissez-faire* problem that was discussed at the CWL.

To start with, Hayek insists on a narrow definition of freedom, a purely negative conception of liberty defined as the absence of coercion. This strictly limited concept of liberty frames Hayek's brand of liberal minimalism with some non-trivial consequences. One problem with Hayek's narrow definition of freedom was pointed out by Ralf Dahrendorf: that it offers very little in support of a realistic concept of freedom which captures the reality of being free to make substantive choices in one's own life. This real and active form of freedom is a much more demanding concept than simply the protection against coercion by others, in so far as it also presupposes the existence of life options and certain minimal capabilities needed to make such choices a living reality for ordinary people (Dahrendorf 1979, 60–63; Dahrendorf 2007, 37).

A consequence of Hayek's minimalist definition of freedom is that it tends to nurture some of the typical and deep-seated problems of old-style liberalism that were eagerly discussed in CWL, particularly its insensitivity to the questions of the social, economic, political, cultural and moral preconditions for an inclusive and free society. Once again we are back to some of the "serious anxieties" mentioned by Röpke and Rüstow at the CWL, or in more modern liberal terms, to the imperative of empowering individuals to live free, self-determined and responsible lives. The pivotal question remains: is freedom from coercion a sufficient condition for liberal empowerment?

Seen through the lens of the institutional infrastructure of liberty in chapter 3, Hayek's *CL* is little more than the rule of law, and even Hayek's conception of the rule of law is surprisingly narrow. For Hayek, the only thing we need is to constitute society based on a conception of the rule of law that conforms strictly to universal rules of just conduct, applicable to all regardless of circumstances. As long as this single criterion is fulfilled, obeyed by the democratically elected legislature, and upheld by the impartial administration of justice, Hayek (1976 [1960], 205–233) seems to be satisfied in his belief that he has made the world safe for liberty. As Hayek (1979, 109–111) later reasoned, there was strictly speaking not even any need for the constitution to spell out the specifically guaranteed individual rights and liberties.

Of course, Hayek was always very critical about any positive concept of liberty, and tended to see positive liberty as a dangerous threat to negative liberty. He understood all attempts to introduce a positive concept of freedom as a hidden way to legitimize a concept of social justice, setting in motion the familiar Hayekian cycle of economic redistribution, the expansionary welfare state, deficit-spending, inflation and resulting economic crisis (Hayek 1976 [1960], 231–233; Hayek 1973, 101–

144). It never occurred to Hayek, as it did to other liberals, from Röpke to Popper, Berlin, Aron, Sen and Dahrendorf, that the liberal aim of maximizing individual freedom may best be served by a prudential synthesis of negative and real liberty, even if this aim can never be realized perfectly (Anderson 1997, 185 – 186). But such messy ideas did not fit easily with Hayek's purity of thought, and neither with his propensity to think in terms of opposite categories: true vs. false, spontaneous vs. constructed, and so on. It is relatively easy to see that this all-or-nothing and reduction-to-essences style of thinking is vulnerable to create blind spots in confrontation with reality. Röpke issued a relevant warning in *Civitas Humana:*

> What has had to be said about these critics [i. e. of the market economy] counts just as much for the others who approve our economic programme but who on the other hand reject the socio-political one. These unregenerate Liberals of the old school are the precise opposite of the unregenerate illiberals. Both are blind in one eye. Both misunderstand the necessary interdependence of these two aspects of the matter (1996 [1948], 33).

6. Blind Spots and Reality Gaps

Another related blind spot in Hayek's thinking, particularly after *CL*, was his tendency to neglect the problem of private power, private power concentration, and the coercive abuse of private power (Gamble 1996, 191). This is noteworthy, given the high priority attached to this concern among the ordoliberals around Walter Eucken.

Hayek's rejection of the term social justice, as meaningless in a free society, is another example. Hayek (1978, 57 – 68) based this judgement on the theoretical claim that since an individual's income in a market order was determined by the spontaneous interplay of anonymous forces of supply and demand, no one can be said to have acted unjustly regarding the outcome. Theoretically, Hayek's argument is watertight. But in the public-political context, the pursuit of this argument was perceived as proof of Hayek's insensitivity to the social questions of his time. He could never accept that many real political issues, even if they looked theoretically messy, can in fact find their reasonable and legitimate resolution through the ordinary democratic process, even in a way that builds wide public support for the market economy at large (Acemoglu and Robinson 2019, 464 – 476). Aron's critique of Hayek for "abstracting away from politics," and for neglecting the importance of the civic preconditions to the success and flourishing of liberal democracy, also comes to full light in this context (cited from Anderson 1997, 182).

Perhaps the most problematic and controversial idea in Hayek's constitutional thinking is to be found in volume 3 of *Law, Legislation and Liberty* (1979, 105 – 127). Here, Hayek provided an extraordinary constitutional answer to his lasting engagement with the problem of "unlimited government," nearly preempting parliamentary democracy of its lawmaking powers. Hayek was, not without reason, widely criticized for proposing a "model constitution" where "power should be delegated as much as

possible to political bodies insulated from the people – that is to say, from pressure groups and elections" (Müller 2011, 222). Two decades earlier, Ralf Dahrendorf, who shared many of Hayek's ideas on liberal constitutionalism, had criticized Hayek for his tendency to over-constitutionalize politics, in a way that led Dahrendorf to question Hayek's credibility as a genuine liberal:

> Not everything that is disagreeable to some, or to me, or to Hayek, has by the same token constitutional status. Whatever is raised to that plane is thereby removed from the day-to-day struggles of normal politics, until in the end a total constitution emerges in which there is nothing left to disagree about, a total society, another totalitarianism (2014 [1990], 36).

Based on my concept of the infrastructure of freedom, with its four institutional pillars, it is evident that Hayek's blind spots and controversial constitutionalism does something to the balance of this integrated liberal infrastructure, in the direction of weakening both the democratic pillar and the general ambition to reduce and decentralize power in society.

Hayek's liberal project can be seen as an attempt to save liberalism through a narrow conception of "true" liberalism, and to warn against "false" liberalism. The false versions were based on constructivist rationalism, or as Hayek expressed it in *The Fatal Conceit*, the belief "that man is able to shape the world around him according to his wishes" (1990 [1988], 27). The real tragedy of the minimal liberalism of Hayek's later writings is that it tended to undermine the promise of liberal democracy, as the indispensable means of reforming the infrastructure of freedom (Popper 1972 [1963], 351; 1974 [1945] Vol. I, 201). And since all liberal reforms are necessarily policy constructs based on our ability to reason, motivated by a wish to shape our world in a more liberal direction, Hayek's positive program ended up on thin ice. Dahrendorf added that it was also found wanting in courage, ambition and human aspirations (1979, 61–63, 124–133), reflecting a similar sentiment expressed by Michael Polanyi when he described the ongoing movement for social and economic reform: "It largely embodies our hopes for a good society" (Polanyi 1998 [1951], 230).

But Hayek's undermining of the promise of liberal democracy is not without paradoxes. In his listing of arguments in justification of democracy in *CL*, Hayek had this to say:

> The third argument rests on the effect which the existence of democratic institutions will have on the general level of understanding of public affairs. This seems to me the most powerful […] democracy is the only effective method of educating the majority. […] Democracy is, above all, a process of forming opinion. Its chief advantage lies not in its method of selecting those who govern but in the fact that, because a great part of the population takes an active part in the formation of opinion, a correspondingly wide range of persons is available from which to select. […] It is in its dynamic, rather than its static, aspects that the value of democracy proves itself (1976 [1960], 108–109).

Another paradox must be mentioned. A wide gap opens up when we compare Hayek's reasoning on the appropriate role of government in the *CL* with his strict limitation of justified government interference in the affairs of men to the protection of

negative liberty by preventing coercion of one by another against his will. My main point here is to point to the fact that Hayek's list of government responsibilities is quite long and open-ended, it includes measures of both redistribution and health services, and goes far beyond what is called for to protect Hayekian negative liberty. As a consistent liberal, one would expect Hayek to ground his defense of a wide range of government responsibilities in a set of liberal principles, in line with his concept of negative liberty. But Hayek made no attempt in this direction. Instead he appeals to what is widely recognized as beneficial, what is "clearly desirable," or in the common interest, or to what can be generalized into rules, or "make the market economy work as beneficially as it could" (Hayek 1976, 222–231). This gap in Hayek's thinking begs the question: Is something missing in Hayek's understanding of liberty?

7. Concluding Remarks

The renewal of liberalism is an ongoing task with important intellectual, political and institutional dimensions. At a time when liberalism is once again under severe attack on many fronts, even if its prospects look better today than at the time of CWL in 1938, we are, now as then, faced with the common challenge to renew liberalism in a more realistic, relevant and attractive direction. Friedrich Hayek's attempt to restore liberalism through a narrow and minimalist conception of liberty and its institutional preconditions has in this context proven to be insufficiently able to inspire a new liberal revival.

The scope and size of the liberal deficiencies in Hayek's thinking has been shown to be significant, particularly when seen through the lens of an institutional infrastructure of freedom, based on the interdependent and balanced relations between its four major institutional pillars; the rule of law, democracy, the market economy and civil society. This conception of the institutional preconditions of a realistic and inclusive concept of freedom has strong affinities to the thinking of Ralf Dahrendorf, and also shares with Dahrendorf the need for a concept of individual freedom that is ultimately also conceived as a living practice, and not only as a protected formal negative liberty. Dahrendorf may not have been far off the mark when he expressed the view that he considered Hayek's *Constitution of Liberty* "only a half-way liberal book," (1979, 61) given Hayek's narrow and unrealistic concept of liberty and its institutional preconditions. Hayek's later writings seem to have added weight to this assessment. We have also seen that some paradoxical gaps between Hayek's concept of negative liberty and his own views on more practical and derivative matters, such as appropriate government responsibilities and activities, seem to point in the same direction as Dahrendorf's critique, and indeed to confirm the shortcomings of Hayek's narrow concept of liberty and its institutional preconditions.

The discussions in this paper reflect a general philosophical view on the fundamental relationship between theory and history: that ideas not only matter, but are in

fact the driving force of history, particularly in their institutionalized form (Hayek 1976, 112; Mises 1969 [1957], 225). The history of liberalism is no exception. This sounds quite obvious as long as we reflect on the supply side of liberalism, and in particular on liberals as public intellectuals. But in the final analysis it is public opinion that ultimately decides the fate of liberalism. And here, another challenge emerges. The public does not only evaluate and decide among alternative ideas and policy proposals; it also decides on the basis of experience and future prospects, particularly relating to social and economic outcomes. So outcomes and perceptions of outcomes also matter.

Liberalism is once again at a critical juncture, as it was at the time of the CWL, and it may be said to suffer a similar "effectiveness crisis" and "legitimization crisis." With the help of hindsight we can safely conclude today that not even Friedrich Hayek, the leading liberal intellectual between the CWL and the 1980s, succeeded on the supply side. The same may well be the case with Ralf Dahrendorf, a leading European liberal intellectual since the 1960s.

A constructive response that easily suggests itself is further theoretical and empirical research and analysis on the correspondence of different economic and political institutions with different outcomes for liberty, human dignity and prosperity (Buchanan 1978, 157). What we are most likely to learn, along such an open-ended quest for new liberal questions and answers which respond to a changing world, may well be that there are many roads to liberty, and not only one. We may never be able to identify a perfectly liberal and just social arrangement, but we may come to attach much greater importance to an extended and balanced "constitution of liberty," with a multiplicity of checks and balances on both private and public power, acting as a dynamic discovery process in the service of human liberty.

A renewed liberalism, fit for the 21st century, should still be "capable of providing questions and answers that might satisfy everyone," to quote Walter Lippmann's ambitious statement in his concluding talk on the last day of the CWL. This necessarily means moving beyond Hayek, and it will most likely also come to mean moving beyond Dahrendorf.

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