Rational and moral action: a critical survey of rational choice theory

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Citation for published version (APA):
FREEDOM AND CHOICE

1. Introduction

The counterpart of the economic domain being embedded in society in which social processes influence economic processes is that reciprocally developments in the economic domain influence society. Even theoretical debates in economic science have an impact on public discourse. The discussion about the relation between markets and governments has, for instance, consequences for the attitudes towards political institutions.

In this epilogue I trace the development of the idea of liberty in connection with the idea of free markets. The free market is often pictured as a spontaneous order that is supposed to be superior to the order that governments create. In this view, strongly defended by Hayek and Friedman, the best government is the minimal government. I shall show that this vision of the relation between the market and the state is
based on a false perception of historical processes and on some kind of "domino theory" in which government intervention is seen as the first step to socialism that ultimately will end in a planned society. Rhetoric dominates the discussion about the interplay between markets and governments. Hayek and Friedman tended to transpose the Cold War rhetoric onto the discussions in economics about the market-state relation. This has had a negative influence on the public opinion regarding the functioning of the political system and potentially threatens the functioning of democratic institutions.406

I strike a different tone in this epilogue compared to the previous chapters, i.e., it is more polemical. The argument I present is, moreover, more schematic and associative since it is based on a small selection of books and articles.

2. Negative and positive liberty

In a famous essay, first published in 1958, Isaiah Berlin described two conceptions of liberty: negative and positive liberty.407 The conception of negative liberty tries to answer the question "what the domain must be in which the individual is free to do what he likes without interference by others." (Berlin, 1996, 41, my translation) For freedom cannot be unlimited and the question, therefore, is where the borders are between a private and a public domain. The positive conception of freedom derives from the wish of the individual to be his own master: how can I prevent to become an instrument of someone else? (Ib., 52) The political aspect of positive freedom refers to the capability of individuals to contribute to the provisioning of collective arrangements. Positive freedom, then, is the right to participate in the process by which one's life is controlled.

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406 For a description of the recent functioning of the political system in the USA see Zakaria, 2003.
407 References are to the Dutch translation of his essay "Two Concepts of Liberty". (Berlin, 1996)
Whereas the negative conception of liberty became well known, the positive conception remained a mystery. This is also due to Berlin's way of treating it. For when he comes to expound the conception, he gives a psychological instead of a political interpretation of being one’s own master, namely, self-determination, (the search for autonomy, the attempt to realize one's true, inner self). Together with the right to control political processes, we have suddenly two definitions of positive liberty. And that is not all, for there is still another conception, the one reached by rationalist reformers who saw a task for governments to inform individuals about their true needs.

There are thus three conceptions merged into one conception of positive liberty. Liberty designated as self-mastery; liberty as the recognition that there is only one way of rational life, the idealistic and rationalistic transformation of the first concept; and the democratic concept of liberty as taking part in the control of the political authority. I follow Macpherson in calling them respectively PL(1), PL(2) and PL(3). The distinction between negative liberty and PL(3) is sharp and clear. PL(3) is not necessarily hostile to negative liberty, it may even be helpful to it. The case that is argued by Berlin at length is that PL(1) tends to become PL(2). The main problem is why and in what circumstances does PL(1) transform in PL(2)? The only argument that Berlin offers for the transformation from a Kantian PL(1) into a totalitarian PL(2), as Macpherson so adequately describes it, is the conviction attributed to the Rationalists that there is only one truth and thus only a single solution. (see Macpherson, 1973, 111). Though Berlin said that he understood the positive aspects of the positive conception of liberty, he was in fact afraid that it carried with it the danger of paternalism or even authoritarianism and thus the oppression of liberty. But

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408 It is longtime doubted whether positive freedom was a political concept at all, didn't it belong to psychology?
409 This formulation underlines that in the view of Berlin both conceptions of liberty refer to the actions of the state. The fear is that the
Berlin offers no real argument for this claim. The positive conception of liberty disappeared out of sight to reappear as PL(1) in the cultural lifestyle of self-development in the roaring 1960s, or as PL(3) in discussions by liberal democrats or republicans.

The distinction between negative and positive freedom has encouraged seeing differences in accounts of freedom as resulting from differences in conceptions of freedom. This in turn has contributed to the confusion with regard to the conditions of freedom. Therefore, it is possible that "adherents of the negative conception of freedom, for example, hold that only the presence of something can render a person unfree, whereas writers adhering to the positive conception of freedom hold that the absence of something may also render a person unfree." (MacCallum, 1967, 320) The distinction between positive and negative freedom cannot distinguish two genuinely different kinds of freedom; it can only serve to emphasize one or the other of two features of every case of the freedom of agents. MacCallum, therefore, challenged the view that we may usefully distinguish between two kinds or conceptions of freedom: positive and negative. He saw the conceptions of positive and negative freedom as two aspects of the concept of freedom. In his view we should always regard freedom as a triadic relation. "(..) freedom is (..) always of something (an agent or agents), from something, to do, not do, become or not become something; it is a triadic relation." (Ib., 314) Freedom as a triadic relation is a relation between three things: an agent, certain preventing positive view of liberty will seduce the state to do well, and that the welldoing by the state results in paternalism or worse.

410 Berlin wrote that only a minority of the well-educated population probably always defended this ideal of negative liberty. The great majority, however, was prepared to trade it off in favor of other ends and values, such as security, justice, equality, values that are incompatible with the largest individual freedom for all. (Berlin, 1996, 87/88)

411 The fear and hope of Berlin did not come true. The appeal of self-mastery was neither transformed into control by the government, nor did it become self-control. Instead it degenerated into 'doing what you like'.
or enabling conditions and certain doings or becomings of the agent. Regarding freedom as a triadic relation enables us to discuss freedom in every situation as involving an agent, constraints or limitations, and ends that the agent is free or is not free to pursue. Thus any statement about freedom can be translated into a statement of the above form "by specifying a) what is free or unfree; b) from what it is free or unfree; and c) what is free or unfree to do or become." (Carter, 2003, 4)

Usually, two types of external constraints are distinguished: those that are brought about by other agents and those that arise from natural causes. "The second type of constraint may render me unable to do things; they do not render me unfree to do them." (Ib., 4) The distinction between social and natural forces is not absolute; there are grey areas. Historically, the discussion concentrated on economic forces (see the socialism debate). Do economic factors limit the freedom of people or do they merely constrain them. When we relate restrictions of freedom to intentional actions by other persons, then it is obvious that economic factors do not restrict people's freedom, though they make them unable to do many things. 412

Negative liberty, then, is the freedom not to be coerced on the part of others. Liberty in the positive sense refers to the right to participate in the political process. Positive and negative liberties are both aspects of the concept of liberty. The concept of liberty is a dual concept, and, moreover, it is a relational (social) concept.

Whereas the positive conception of liberty disappeared from the stage, the negative conception flourished and became dominant in liberal political theory. Hayek and Friedman became the most well known propagators of this conception in economic science.413

412 "The important point about Berlin's account is that it allows that even 'impersonal social forces' may be restrictive of (negative) freedom, always providing they are demonstrably avoidable and remediable." (Gray, 1980, 522)

413 I want to make it quite clear from the outset that I only discuss Hayek's political philosophy, and only as far as outlined in The Road to Serfdom and in The Constitution of Liberty. The view of Friedman is more
3. The constitution of liberty

From Hayek's point of view "(...) liberty is not merely one particular value but (...) is the source and condition of most moral values." (Hayek, 1960, 6) In his description of freedom it looks as if he joins the negative and positive conceptions of freedom. Hayek starts by noticing, "liberty is that condition of men in which coercion of some by others is reduced as much as possible in society." (Ib., 11) And he repeats that the question whether a person is free or unfree depends on the extent in which he is able to shape his own course of life in accordance with his own intentions. But then he adds that "freedom presupposes that the individual has some private sphere, that there is some set of circumstances in his environment in which others cannot interfere." (Ib., 13) Formulated in this way freedom refers both to the absence of coercion and to the presence of a private sphere.

Hayek's definition of liberty depends upon the meaning of the concept of coercion. "By "coercion" we mean such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another." (Ib., 19) In a free society the monopoly of coercion is conferred to the state. The law regulates the powers of the state. What Hayek particularly had in mind is that freedom implies that individuals are free from arbitrary actions by the state and to secure this they are allowed a private sphere.

One of his chief concerns is the conception of freedom under the law. His interest in this issue rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to anyone, we are not

\footnote{All references to Hayek (1960) are to the Routledge Classics edition of 2006.}
subjected to another man's will and are therefore free. "Because the rule is laid down in ignorance of the particular case and does not depend on someone's will to enforce it, the law is not arbitrary. This, however, is true only if by 'law' we mean the general rules that apply to everybody." (Ib., 135) Government by law and not by men is characteristic of a free society. Hayek takes it for granted that most of the rules embodied in the law have never been deliberately invented but have grown through a gradual process of trial and error in which the experience of successive generations has helped to make them what they are. "In most instances, therefore, nobody knows or has ever known all the reasons and considerations that have led to a rule being given a particular form. We must thus often endeavor to discover the functions that a rule actually serves." (Ib., 138)

Hayek believes that for centuries after the collapse of the Roman Empire it was recognized doctrine that rulers could only declare and modify existing laws, but could not create laws themselves. Only after the late Middle Ages did the convention of the deliberate creation of new law develop. In particular in the Anglo-Saxon countries the conception of a constitution became closely connected with the conception of representative government, in which the law strictly circumscribes the powers of the representative body.415

The rule of law is not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or a political idea. It should restrict the government primarily in its

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415 The 'law' under the rule of law is much broader than the constitution in most European countries, which formulates the basic constitutional principles. Under the rule of law also issues concerning abortion or school choice can be part of constitutional rules. The consequence is that judicial fights have become ever more important in the political sphere. The politics of racial equality or the right of abortion are decided in judicial fights for changes of the law. This has resulted in zero-sum games in which opponents radicalize, and slogans take over the political arguments. The consequences are twofold: these practices threaten to weaken the daily political decision-making and it becomes ever more important to have the power to elect the judges of the High Court. (see Zakaria, 2003)
coercive activities. For what distinguishes a free from an 
unfree country are two things: first that in a free society each 
individual has a recognized private sphere, and second, that 
all citizens are equal in the sense that the rules are equally 
applicable to all, including those who govern. The rule of law 
requires that the executive in its coercive actions be bound by 
rules that prescribe not only when and where it may use 
coercion but also in what manner it may do so. To ensure this 
all actions of executives are subjected to judicial review. The 
rule of law also provides the criterion for distinguishing 
between the measures that are and those that are not 
compatible with economic freedom, All measures that are 
aimed at the needs of the community, such as the services 
that the government provides for the citizens, from national 
defense to upkeep of roads, from sanitary safeguards to the 
policing of the streets, are permitted. For these tasks it is 
allowed definite means and its own paid servants. Hayek, 
thus, distinguishes the coercive measures of government and 
those pure service activities where coercion does not enter or 
does so only because of the need of financing them by 
taxation. Also the provisions of goods that the market cannot 
supply and regulations for goods with external effects are 
permitted. The government should also protect property 
rights, enforce contracts and prevent fraud. But what it may 
not do and what even is dangerous, is when the government 
intervenes with the price system or controls specific prices. 
Such controls not only are arbitrary, they endanger the 
function of the price mechanism and, therewith, the very 
function of a free market. 416

416 Friedman also discusses government intervention. Like Hayek he says 
that these all reduce to cases in which strictly voluntary exchange is 
either exceedingly costly or practically impossible. There are two general 
classes of such cases: monopoly and similar market imperfections and 
external effects. But the use of governmental power has itself extremely 
important external effects. "Every action of government intervention 
limits the area of individual freedom directly and threatens the 
preservation of freedom directly for reasons elaborated in the first 
chapter." (Friedman, 1962 (2002), 32) Friedman formulates a paradox:
Hayek's view on a free order is based on his conviction that a free order is a spontaneous order and this conviction is to a large degree based on his view of our basic ignorance vis-à-vis the complexities of our environment. In the next section I shall discuss the view that a spontaneous order is a necessary condition for a free order.

4. A free order as a spontaneous order

Individual freedom is from Hayek's point of view of utmost importance in the light of our basic ignorance vis-à-vis many of the factors that determine our well-being. "It is through the mutually adjusted efforts of many people that more knowledge is utilized than any one individual possesses or than it is possible to synthesize intellectually; and it is through such utilization of dispersed knowledge that achievements are made possible greater than any single mind can foresee. It is because freedom means the renunciation of direct control of individual efforts that a free society can make use of so much more knowledge than the mind of the wisest ruler could comprehend." (Ib., 28)

All devices that have been developed in the course of time had to prove themselves in competition with other devices, and in this evolutionary process the ineffective were discarded and the efficient retained. Hayek is very suspicious of those he calls 'rationalist' and who want to subject everything to human reason and therewith to human control. "The use of reason aims at control and predictability, but the process of the advance of reason rests on freedom and the unpredictability of human action." (Ib., 34)

Hayek refers to the two traditions in the theory of liberty at which Berlin also hinted: one empirical and unsystematic (British) and one speculative and rationalistic (Continental). "The first is based on an interpretation of traditions and government intervention is desirable in case of negative external effects, but this same intervention creates on its turn a negative external effect."
institutions which have spontaneously grown up and were but imperfectly understood, the other aims at the construction of an utopia, which has often been tried but never successfully." (Ib., 49) What has been called the 'British tradition' was made explicit by a group of Scottish philosophers led by Hume, Smith and Ferguson. Opposed to them was the tradition of the French Enlightenment deeply imbued with Cartesian rationalism, the Encyclopedists, the Physiocrats, Rousseau and Condorcet. Though these two groups are now lumped together as the founders of the Enlightenment and as the ancestors of the liberal doctrine, Hayek thought there contrast was enormous regarding their conception of the development of the social order.

Whereas the British philosophers stressed evolutionary (natural) selection, the rationalists had much faith in the creativity and design of the human being. The argument of the British philosophers is directed against the idea that some wise original legislator or an original 'social contract' formed civil society. "While the rationalistic traditions assumes that man was originally endowed with both the intellectual and the moral attributes that enabled him to fashion civilization deliberately, the evolutionists made it clear that civilization was the accumulated hard-earned result of trial and error, that it was the sum of experience, in part handed from generation to generation as explicit knowledge, but to a larger extent embodied in tools and institutions which had proved themselves successful." (Ib., 54) The greatest difference between the two views is their respective ideas about the role of traditions and the value of all the other products of unconscious growth proceeding throughout the ages. "Those who believe that all useful institutions are deliberate contrivances and who cannot conceive of anything serving a human purpose that has not been consciously designed are almost of necessity enemies of freedom. For them freedom means chaos." (Ib., 55) 417 The evolutionary

417 Whereas in Hayek's view tradition opposes reason, Popper thought that the relation between the two must be one of cooperation. This is so,
view is based on the understanding that people are able to successfully act on their plans because they adhere to firmly established habits and traditions. It is this submission to undesigned rules and conventions that is indispensable for the working of a free society.

The other pillar of Hayek's conviction that spontaneous orders are beneficial is his view of knowledge that he borrowed largely from Hume. Hume and other Scottish philosophers proposed a *sensualist* theory of human nature. "Sensualism is a philosophy of the mind that considers man as a *tabula rasa* upon which impressions received through the senses from the external world progressively gather and draw the shape of an individual." (Marciano, 2004, 27) There are two forms of perceptions: impressions and ideas. Impressions dominate ideas, as Hume repeatedly remarked; ideas are only copied or derived from impressions. "Human cognition is thus depicted as a process through which impressions are associated and connected into networks and groups of networks or classes. The formation of classes reduces the costs of cognition in separating the important out of an ongoing stream of impressions that are received." (Ib., 30) Individuals perceive selectively, noticing facts consistent with their beliefs more readily. Since their individual stories are unique, their beliefs are unique and thus subjective. The basic ignorance of human beings together with the subjectivity of their ideas complicates the coordination of plans. This fact has made Hayek to belief that institutions form the essence of

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he argued, because traditions are 'systems of reference' or define the 'logic of the situation' which are indispensable for rational action. Another contrast with Hayek -though they were close allies- is that Popper does not reject the innovation or design of institutions. Whereas Hayek taunts at 'men of science'. Popper thinks that science can offer politicians the knowledge they need for piece-meal social engineering. The main difference between Hayek and Popper seems to be that Hayek values freedom above democracy, whereas Popper puts democracy first. (see Kerstenetzky, 2007, 51)
spontaneous orders. Institutions harmonize expectations into a self-consistent pattern. Institutions begin on a small scale but gradually they evolve to be used on an ever-larger scale.

Hayek thought that the only worthwhile social theory is a theory that takes the existing order as given, tries to find out by which rules it operates and tries to explain (functionally) why they have generated this specific kind of social order. From his point of view it is an indication of megalomania to even talk about the transformation of society. Since a social order is not designed we should not believe that such a design is possible. We are not intelligent enough for that. Therefore, it is not feasible to make the transition from one order to another. (Sugden, 1993) 418

Two examples of spontaneous orders are the market and the common law. Hayek argues that the rules of the market order promote "the general welfare" or "the general good". In a free society the basic task of government is to facilitate the actions of the individuals in the pursuit of the good as they see it. If free exchange between partners is voluntary, it will not take place unless they believe they will benefit from it. Everyone is motivated to find out what the market wants. All the transactions on the market combine to create price signals, which communicate information as to the wants of people and to the availability of resources. Hayek's argument that the market order promotes the general welfare is central to his analysis that the forces of the market will tend to satisfy the (private) desires of individuals, whatever those may be.

After the market order the spontaneous order to which Hayek devotes the most attention is that of the common law. Hayek sees the common law as the codification of what Hume called the three fundamental laws of nature: property rights, the exchange of property rights and the honoring of

418 When he refers to design, he thinks about global transformations of a complete social order, and in fact he is referring to the revolutionary overthrow of the existing capitalist order. This obsession is a relic of the past in which he was in discussion with socialists about a plan economy.
promises. The welfare promoting properties of the common law are that they tend to generate the maximal coincidence of expectations.

It is clear that throughout his work Hayek is offering some kind of defense, or justification, of the market order. But what could it be? Hayek rejects the notion that any kind of aggregation of individuals' separate welfare is possible. Thus it seems that the most that Hayek can say in justification of any institution is that it benefits each individual separately. This is indeed Hayek's criterion of general welfare. Individuals will approve a set of rules to the extent that it tends to assist them in the pursuit of their ends. Such a set of rules is also one that, when expressed as the terms of a social contract, everyone can agree to. What is significant is "that he seems to be appraising the spontaneous order of the common law in terms of the criterion for general welfare." (Sugden, 1993, 410)

Hayek described the evolving spontaneous order or its defining elements as beneficial for society as a whole and for the individuals living in that society. Was he even normative in promoting spontaneous orders as beneficial, efficient and advantageous? This is the subject of the next section.

5. Was Hayek a partisan theorist?

Hayek is clearly suggesting that spontaneous evolutionary processes lead to desirable outcomes. His most strategy for arguing that spontaneous orders are beneficial is to appeal to group selection. The idea is that different groups of people may follow different rules of conduct, but those groups that follow the most beneficial rules will tend to grow at the expense of the others.

Panglossianism is the assumption that natural selection favors adaptations that are good for species as a whole, rather than acting at the level of individuals. This also became known as the "group selection fallacy". In Hayek's approach individual actions are functional to the group. By serving
their individual interests, simultaneously the interests of the community as a whole are served. This is the kind of functionalist explanation that was renounced as incompatible with methodological individualism, but that has gained influence in evolutionary explanations. The explanation is that actions performed by individuals that are beneficial for the group or society are favored at the expense of less beneficial actions. Natural selection selects the rules that are favorable for a group. Denis quotes Hayek writing in *The Fatal Deceit* that "We need to show, with the help of economic analysis….how rules that emerge spontaneously tend to promote desirable outcomes." Denis' s comment is that Hayek does not say 'we have to enquire whether ...etc", but 'we have to show that they do'. That spontaneously processes lead to favorable outcomes is taken for granted. But this is what we need to show and taking it for granted is Panglossianism. (Denis, 2002, 281) Hayek's policy stance is a prescription of a free market and his economic and evolutionary theory underpins that policy prescription. "His evolutionary theory says that spontaneous processes, the institutions that we inherit, are those that have been selected according to the benefits they have conferred on the societies adopting them. This is Panglossian in the social sense: the institutional structure we inherit tends strongly to be desirable and attempts to improve it by conscious collective action are very much to be avoided. And it is Panglossian in the technical evolutionary sense that Hayek fails to realize the distinction between the individual and the group." (Ib., 284)

Not only Denis has thought that Hayek, in promoting spontaneous orders, propagated the belief that there is something desirable about them. For this reason, Hayek has been accused of trying to derive an 'ought' from an 'is'. It appears that Hayek was quite aware of this charge and vigorously disputed it. Bruce Caldwell, among others, has argued that Hayek in fact denied that evolved orders tend to be desirable. According to his reading, Hayek's theory of cultural evolution is a purely explanatory, not justificatory, device. But Angner supports Denis' view that Hayek
consistently described spontaneously evolved orders in terms that are highly normatively charged. In *The Constitution of Liberty* he says: "it is unlikely that any individual would succeed in rationally constructing rules which would be more effective for their purpose than those which have gradually evolved; (...)" (Hayek, 1960, 59) and "no institution will continue to survive unless it performs some useful function." (Ib., 377, note 21) The book contains a lengthy discussion about the impossibility of improving on spontaneous orders. (Ib., 53-58) Angner concludes that the prevalence and consistency of the quotes over time is notable and that they suggest a reading along the following lines. "There is something desirable, in an unambiguous normative sense, about orders that have evolved in a process of cultural evolution" (Angner, 2004, 352) Other Hayek scholars, however, have objected to the normative reading. Caldwell and Reiss claim that attributing the naturalistic fallacy to Hayek is a misreading of both Hayek and of evolutionary theory. Hayek did not believe that cultural evolution guarantees that spontaneous evolved orders are optimal and therefore desirable. They refute Angner's claim and say that quite contrary to what Angner has argued, that Hayek repeatedly insisted, when discussing cultural evolution, that what emerges through the evolutionary process is not necessarily optimal or good. But that is not Angner's point. He agrees that Hayek did not say that spontaneously evolved orders are optimal; he only argued that Hayek said that evolved orders tend to be desirable.

The arguments that Caldwell and Reiss employ are, moreover, not always to the point. They say for instance that Hayek rejects the notion of *laissez-faire*, and conclude from this fact that when he would think "that markets always render the best possible outcomes he would have advocated *laissez-faire*." (Caldwell and Reiss, 2006, 362). But of course Hayek did not promote *laissez-faire* for he knew that markets do not cope well with public goods and external effects. Nobody promotes *laissez-faire* 'tout court'. But Hayek promotes the free market with the idea that this limits the
powers of the state. Caldwell and Reiss go on to argue that Hayek in *The Constitution of Liberty* "took pains to emphasize that market outcomes need not, and typically, do not, accord with our prior notions of "merit."" (Caldwell and Reiss, 2006, 362) The suggestion is that this would underwrite Caldwell's and Reiss's argument that Hayek does not recommend the market as a desirable order in all respects. But the opposite is true. Hayek writes: "A society in which the position of individuals was made to correspond to human ideas of moral merit would therefore be the exact opposite of a free society. It would be a society in which people were rewarded for duty performed instead of for success, in which every move of every individual was guided by what other people thought he ought to do, and in which the individual was thus relieved of the responsibility and the risk of decision." (Hayek, 1960, 85) The suggestion is clear; a society in which people would be rewarded according to merit would be a society with a planned economy and/or an authoritarian state! Caldwell and Reiss admit "that Hayek sometimes made descriptive statements, and sometimes normative ones, when he talked about cultural evolution. The normative statements were based on arguments about the effects of specific social and economic institutions on individual liberty and on the discovery, preservation, transmission, and coordination of knowledge. He never claimed that such institutions were beneficial because they emerged through an evolutionary process, nor did he claim that all (or even most) institutions that emerge through an evolutionary process have to be beneficial." (Caldwell and Reiss, 2006, 366/7)

I think that, when it concerns spontaneously evolved orders, Hayek accepted the thesis (which Angner refers to as a weak normative reading), that evolved orders tend to be desirable, so leaving open the possibility that they may fail to be desirable and, anyway, that they fail to be optimal and thus do not represent the best of all possible worlds. But when Hayek compares evolved or designed institutions, there is no doubt that designed institutions are inferior compared to evolved institutions.
Besides being normative, Hayek is also more than once attacked for mixing politics and science. In his review of Caldwell's "Hayek Challenge", Mirowski criticizes Caldwell for down playing the extent in which Hayek's career was political driven instead of knowledge driven. (Mirowski, 2007) It cannot be denied that there was a close connection between Hayek's political interests and his development as a scholar. And Caldwell did not disguise this relation. He described how Hayek turned away from technical economics towards what he declared as the central problem -not only of economics but of all social sciences- namely the coordination problem. Why did he make this turn and when did it happen? "It was his participation in the socialist calculation debate which helped lead Hayek to realize the centrality of the question of knowledge (...)" (Caldwell, 1988, 515) Hayek turned to the question how there could be order in a social system in which knowledge is subjectively held and dispersed among many agents. "The rejection of the perfect knowledge assumption, the emphasis on subjectivism, and the attack on socialism found in Hayek's work in the late 1830s all went hand in hand." (Ib., 536) Mirowski's view is much sharper, he claims that "Hayek's entire career was driven (...) by faithful adherence to one unwavering teleological heuristic: namely socialism was bogus (...)." (Mirowski, 2007, 370)

6. Hayek on socialism and the welfare state

Hayek was enmeshed in debates with socialists (or rather Marxists) and Keynes. What Hayek saw as the common element in them was best represented by those whom he called the 'men of science': "those who believed that the tools of science could be put in the service of improving human social arrangements through planning the economy in some sort of way. (...) Hayek aimed to show that the belief that the social world could be redesigned with methods of science was itself unscientific because it assumed as a matter of faith that the progress of knowledge could be planned." (Horowitz,
The limits of the human mind imply that we must rely on traditional constitutional rules and on institutions to guide our actions in a world of structural uncertainty. Men must be withheld from acting in ways that would require knowledge that they could not possibly possess.

Hayek felt frustrated, not only because he could not get his opponents to understand and respect the position he was taking, but above all because he objected to proposals that suggested that in the post-war period politicians and economists were "planning for progress instead of creating conditions favorable for progress." He had hoped that, when the war was over, the United Kingdom would make a new start and (gradually) abandon government regulation. He felt that the "policy of freedom" was betrayed and in this spirit he wrote *The Road to Serfdom* in 1944. Hayek had a message to the citizens of the UK and this message was that government regulation would ultimately result in an authoritative state. He made ample use of the 'domino effect': you start with income distribution and you end with a planned economy. All distinctions (between communists, socialists, national-socialists or social-democrats) and nuances (between the abolition of private enterprise and progressive income tax) were jettisoned, as the following 'quotes' will show.

'The coming of socialism was to be the leap from the realm of necessity to the realm of freedom. To the great apostles of political freedom the word had meant freedom from coercion, freedom from the arbitrary power of other men. The new freedom promised however freedom from necessity. What the promise really amounted to was that the great existing disparities in the range of choice of different people were to disappear. The demand for the new freedom was thus only another name for the old demand for an equal distribution of wealth.'

While "progressives" were still deluding themselves that communism and fascism represented opposite poles, more and more people began to ask themselves whether these...

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419 All references are to *The Road to Serfdom*
new tyrannies were not the outcome of the same
tendencies. (20) What does socialism mean? It may refer to
the ideals of social justice, but it means also the abolition of
private enterprise (24)
Few are ready to recognize that the rise of Fascism and
Nazism was not a reaction against the socialist trends of
the preceding period, but a necessary outcome of those
tendencies. This is a truth which most people are unwilling
to see even when the similarities of many of the repellent
features of the internal regimes in communist Russia and
national-socialist Germany were widely recognized.
There is a great deal of truth in the often-heard statement
that Fascism and National Socialism is a sort of middle
class socialism. There can be little doubt that no single
factor has contributed more to help these movements than
the envy of the unsuccessful professional man, the
university trained engineer or lawyer, and of the "white
collared proletariat" in general.' (87)

In defense of Hayek it could be argued that he was writing a
polemical pamphlet in which he wanted to formulate a strong
statement. But 16 years later, in *The Constitution of Liberty* his
tone had not changed. Again socialism is the target to which
his polemic is directed. (All references are to CL)
The common aim of all socialist movements was the
nationalization of the 'means of production, distribution
and exchange'. But socialism in the old definite sense is

420 This statement needs to be qualified. The 'Sozial Demokratische Partei' had attracted many members from the educated labor class and intellectuals from the middle class. The 'National-sozialistische Deutscher Arbeiterpartei' was mainly formed by the lower classes, the labor class and especially by those from the lower middle class who had always been strongly anti-socialist (the self-employed, small farmers). Its vanguard was made up of plebeians and de-classed people from different ranks. The NSDAP symbolized the aggressive, vulgar and rancorous triumph of the little men. The national-conservative elite among which were many officers from the German army and several influential entrepreneurs supported the NSDAP. Neither the Nazi's in Germany, nor the Fascists in Italy abolished private enterprise.
now dead in the Western world. But though the characteristic methods of collectivist socialism have few defenders left in the West, its ultimate ends have lost little of their attraction. They still wish to manipulate the economy so that the distribution of income will be made to conform to their conception of social justice. (223) The socialist reformers are likely to be led to impose more and more control over economic decisions (though private property may be preserved in name) until we get that very system of central planning which few now wish to establish. (224)

All governments have made provisions for the indigent, unfortunate, and disabled and have concerned themselves with questions of health and the dissemination of knowledge. The reason why many of the new welfare activities of government are a threat to freedom, then, is that, though they are presented as merely service activities, they really constitute an exercise of the coercive powers of government and rest on its claiming exclusive rights in certain fields.

Some of the aims of the welfare state can be realized without detriment to individual liberty. There are all kinds of public amenities, which it may be in the interest of all members of the community to provide by common effort, such as parks and museums, theatres and facilities for sports. There is also the important issue of security, of protection against risks common to all, where government can either reduce these risks or assist people to provide against them. The government can secure a minimum income for all or use the powers of the state to insure a more even or more just distribution of goods. This is the kind of welfare state that aims at 'social justice' and becomes primarily a redistributor of income. It is bound to lead back to socialism and its coercive and essentially arbitrary methods. (226)

Though a redistribution of income was never the avowed initial purpose of the apparatus of social security, it has now become the actual and admitted aim everywhere. It is
as a means of socializing income, of creating a sort of household state that allocates benefits in money and kind to those who are thought to be most deserving, that the welfare state has become the substitute for old-fashioned socialism. (251) While we used to suffer from social evils, we now suffer from the remedies for them. (264)

Social reformers thought that the tax burden should be distributed according to the "ability to pay" in order to secure "equality of sacrifice", and that this would be best achieved by taxing incomes at progressive rates. What is required here is a rule that does not sanction a majority's imposing upon a minority whatever burden it regards as right. It is the great merit of proportional taxation that it raises no problem of a separate rule applying only to a minority. (273)

There is another problem which has assumed serious proportions in some European countries and that we ought to keep in mind, and this is the problem of having more intellectuals than we can profitably employ. "There are few greater dangers to political stability than the existence of an intellectual proletariat who find no outlet for their learning. " (331)

The terms of appointment on universities should specify that the occupant of such a position forfeit the privilege if he knowingly joins or supports any movement that is opposed to the very principles on which this privilege rests. "Tolerance should not include the advocacy of intolerance. On this ground I feel that a Communist should not be given "tenure" (…)." (337) 421

Another 16 years later when The Road to Serfdom was reprinted he wrote a new preface in which he said that in the

421 A general commitment to freedom comprehends a commitment to an open society in which rival modes of thought conflict and compete. "Hayek's view appears to be that a liberal social order may be, and perhaps must be a society in which a dominant moral and intellectual tradition drastically curtails the options open to its members." (Gray, 1980, 523)
interval of time (1944-1976) terminology has changed. At the time he wrote the book socialism meant unambiguously the nationalization of the means of production and central economic planning which made this possible and necessary.

"S]ocialism come to mean [now] chiefly the extensive re-distribution of income through taxation and the institutions of the welfare state. (...) I believe that the ultimate outcome tends to be very much the same, although the process by which it is brought about is not quite the same as that described in this book." (Hayek, 1960 (1976,viii)(italics added)

7. Have free markets evolved spontaneously?

Free markets are the product of spontaneously evolved social orders and the recognition of the rule of law. This is Hayek's claim. But do we have any historical evidence that free markets emerged this way?

Gray denies that there is such evidence. The free market that developed in Britain in the mid-nineteenth century did not occur by chance. State intervention was a vital prerequisite for the emergence of a laissez-faire economy. "Ideologues such as Hayek, who developed grand theories wherein market economies emerge by a slow evolution in which the state plays little role, not only generalize wildly from a single case, they misrepresented that case". (Gray, 2002, 8) It is not true that the Enclosures transformed England from a peasant society into a market economy. "A market economy pre-dated the Enclosure movement by centuries. Yet the Enclosures helped form the nineteenth-century agrarian capitalist economy of large landed estates. The mid-Victorian free market was an artifact of state coercion, exercised over several generations, in which property rights were created and destroyed by Parliament." (Ib., 8)

Not much less significant in the formation of the free market was the Poor Law Reform. The Poor Law Act of 1834 was a decisive attempt to create a free labor market. It set the subsistence level quite below the lowest wage, it stigmatized the recipient by attaching the harshest and most demeaning
conditions on relief, and it undermined the family by forcing women and children to take miserable jobs at the factories (in the beginning of the industrial revolution the majority of workers in factories were women and children). Gray concludes that "The removal of agricultural protection, the reform of the poor laws with the aim of constraining the poor to take work, and the removal of any remaining controls on wages were the three decisive steps in the construction of the free market in mid-nineteenth-century Britain." (Gray, 2002, 11)

Polyani’s thesis of a Great Transformation, the idea that England transformed between the 16th and the 19th century from a non-market, peasant society where economics is embedded in social relations to a modern capitalist system where economy and society broke up (Polyani, 1944), was not correct. A market economy had existed in England for many centuries, as Macfarlane documented some time ago. (Macfarlane, 1978) But Polanyi emphasized the emergence of a labor market as a prerequisite for the establishment of a free market.

With the creation of a free market in the 19th century England turned from a market economy into a market society. Gray argues that in no other country in Europe did a purely free market come into existence. In most countries economic relations remained embedded in social relations. The free market was - and remained - an Anglo-Saxon singularity. The free market existed in England from 1840s to the 1870s and again in the 1980s in Britain, the USA, Australia and New Zealand. The fate of the regime of deregulation and marketization that was installed in many countries in the 1980s is, in Gray’s view, likely to be similar of that of the nineteenth-century English free market.

The conclusion that Gray draws puts Hayek’s theory upside down. "First: the laissez-faire policies that produced the Great Transformation in nineteenth-century England were based on the theory that market freedoms are natural and political restraints on markets are artificial. The truth is that free markets are creatures of state power, and persist only so long as the state is able to prevent human needs for security and
the control of economic risk from finding political expression.
(。。) Second: encumbered markets are the norm in every society, whereas free markets are a product of artifice, design and political coercion. Laissez-faire must be centrally planned; regulated markets just happen. The free market is not, as New Right thinkers have imagined or claimed, a gift of social evolution. It is an end product of social engineering and unyielding political will. It was feasible in nineteenth century England only because, and for so long as, functioning democratic institutions were lacking." (Gray, ib., 17)

8. Free to choose

Hayek was not a liberal, neither was he conservative. He was, in his own words, an unrepentant Old Whig. Friedman called himself a liberal; though he was in fact a conservative. Both endorsed the faith in the neo-liberal or libertarian doctrine. The liberal faith is that human beings are free by nature. They are born as bearers of natural individual rights and liberties. In a state of nature reasonable individuals will enter into a social contract to produce a state that will protect these natural rights and liberties. Institutions that embody these rights and liberties will evolve spontaneously. Central to the liberal faith is the undisturbed enjoyment of natural rights. The constitutional limitation of the powers of the state is much more important than its democratic quality. The state only has to coordinate the exercise of the individual rights - that are the actions that follow from them - and has to observe a no-harm principle. The problem of justice is limited to a fair delineation and accommodation of natural rights and liberties. Relations between individuals appear as relations between property owners, who are free to dispose over their properties and trade or exchange them, as they like.

Friedman sincerely believes that it is precisely the central defect of government measures that they seek people to act against their own immediate interests in order to promote a supposedly general interest. "They substitute the values of outsiders for the values of participants; either telling what is
good for them, or the government taking from some to benefit others. But these measures are countered by one of the strongest and most creative forces known to man; the attempt by millions of individuals to promote their own interests, to live their lives by their own values. This is one of the major strengths of a free society and explains why governmental regulation does not strangle it." (Friedman, 1962, 200)

Conceptions of the good belong to the private domain. A good government, therefore, only cares about the good functioning of markets.

Like Hayek, Friedman believes that the fundamental threat to freedom is the power to coerce, be it by a dictator or by a momentary majority. The great advantage of the market is that it permits wide diversity. "It is this feature of the market we refer to when we say that the market provides economic freedom." (Ib., 15) "An essential part of economic freedom is freedom to choose how to use your income: how much to spend on yourselves and on what items; how much to save and in what form; how much to give away and to whom." (Friedman and Friedman, 1980, 65)

As so many liberals Friedman tends to equate the absence of coercion with the opportunity to choose and in this way to confuse freedom with freedom to choose. Of course, freedom to choose is an aspect of freedom. Freedom of choice emphasizes an individual's autonomy and to have a choice implies competition and competition is seen as a precondition for economic and political freedom. But it is, in the view of Sen, also based on confusion between an opportunity concept of choice and an exercise concept of choice. The opportunity concept emphasizes the real opportunities one has in achieving things that one does value. The exercise or process concept emphasizes the decisional autonomy of choice and the immunity from interference by others. The exercise or process aspect is closely related to the conception of negative liberty. (see Sen, 1993b, 525)422 The exercise concept of making

422 Carter, on the other hand, defines freedom of choice as an opportunity concept, as 'having' freedom of choice, in contrast to an exercise concept
A choice refers to the reasonable selection of items out of a choice-menu. I suggest that we call this exercise concept the concept of a free choice. The extent of a free choice depends on the range of qualitative different alternatives that are open to an agent. The chooser does not choose the choice-set.

"Choosing takes place in a field of non-choice, that is, against the background from what is from the perspective of choosing an arbitrary or coercive delimiting of options and possibilities." (Dan-Cohen, 1992, 223) The choice-set is determined by the quantity and quality of relevant options and these depend on someone's resources (including his human and social capital). The possession of comparatively few resources is, however, not a sign of lack of freedom, but a sign of lacking social power; being poor relatively.

"Preventing violations of negative freedom can coexist with hardship and misery in the lives of those who lack social power." (Sen, 1988, 275) From this point of view it is inadequate to focus attention solely on someone's freedom to choose and not pay attention to his or her opportunities, i.e., what individuals are able to do or to be. (Sen, 1988)

To enhance the opportunities for the less-well-to-do the state can supply public services by financing this through progressive taxes. However, there is a danger for which Hayek and Friedman justly warn; when the marginal tax rates become too high the incentives to cheat will increase and the stronger will be the temptation for governments to build up elaborate information and intervention systems. An advanced welfare state could in this way turn into control state and "use more and more of its legal and police forces to 'fight crimes against the state' rather than 'crimes against

423 There are more differences between liberty and the concept of a free choice. First, liberty always refers to the relation between individuals and the state. Individuals do not enjoy liberty separately but together. Second, liberty is a relational (social) concept. Free choice is not. And third, the value of liberty is independent of preferences in a way that the value of a free choice is not.
individuals" (Lindbeck, 1988, 313). There is an alternative to the control state, namely a state that accepts some 'slack' in the system and, contrary to Hayek's fears, Lindbeck speaking from personal experience thinks that as a rule democratic societies tend to opt for some combination of control and slack. Of course, personal liberty is reduced by the interventions of the state but this is accepted by a majority of the population as a reasonable trade-off between individual freedom and economic security, anyhow in Sweden. (Lindbeck, 1988, 316)

9. Positive liberty and liberal democracy

Theorists have often attempted to go beyond the conception of negative freedom, arguing that liberty is not merely the enjoyment of a sphere of non-interference but the enjoyment of certain democratic conditions in which such rights as non-interference are guaranteed. These conditions include the presence of democratic institutions and a series of safeguards against a government that uses its powers arbitrarily and against the interests of its citizens. It insists that it is the political culture of political and social participation that gives democracy its stability and efficacy. I call this view liberal democracy; it has some correspondence with republicanism.

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424 Friedman's defense of (negative) liberty is both that power is dispersed (allowing the freedom to choose) as well as that competition furthers productivity and, therefore, welfare. But when we take life expectancy of British citizens as criterion for well-being, then the best periods appear to be those periods in which government regulation was prominent. When we look at the expansion of life expectancy at birth in England and Wales (1901-1960) then it appears that it shows a greater increase in the decades between 1911 and 1921 and between 1941 and 1951 than in the other periods. In these periods we had World War I and World War II. The explanation is that along with the hardships of war came the planned distribution system of basic essentials, including food, medical care and education. (Sen, 1988, 282) This example tells us that under specific circumstances (rationing of basic goods) state regulation is efficient. It also contradicts Hayek's belief that once state regulation is introduced there is no way back.
(see Carter, 2003; Van de Putte, 2003; and Pettit, 2001). From the point of view of liberal democrats liberty is not a product that emerged from a state of nature, but is a status created by political-juridical institutions. Liberty is not characterized by a condition of non-interference but by protection by the law against the dominance of others. The freedom of the individual does not take place in opposition to the law, but through the law. The legal order is not an enemy of the individual but a pre-condition for the development of his or her talents. Liberty is the equality of the rights and liberties admitted by law and the guarantee that these rights and liberties are not violated by anyone. On this republican concept of freedom I am free only if I live in a society with the kinds of political institutions that guarantee non-interference. 425

Liberty is not only connected with democracy, but also with fairness. Without fairness there is no freedom, no res publica, but a state in which dominance has taken the form of law. (Van de Putte, 2003, 647) One is free when one has the power to block interference to which one ought not to be subjected. Interference that ought to occur, that has the appropriate normative license, does not compromise liberty as non-domination. Interference has the appropriate license if it tracks the common avowable interests of the citizens. People should realize that liberty is foremost a political (social) concept. The liberty of the consumer is limited. You can choose which car you want to drive (considering your budget) or which toothpaste you want to use. But you cannot choose your own transport system or health care. The most important choices are social choices. The individual as consumer only takes care of his own interests, but as a citizen he reflects about his needs in relation to those of his fellow-citizens. He is looking for what they share, for what they have in common. The citizen does not exchange his individuality for the community, but he or she understands

425 As Raz says: "(..) an individual's freedom (..) can be obtained only through collective goods which do not benefit anyone unless they benefit everyone." (Raz, 1986, 250)
that the freedom of the individual takes shape in participation in processes that control the public choices. Citizenship is a matter of active self-rule. A citizen is not just a passive bearer of rights, but a participant in public life.

"The principle of liberty is eternal vigilance." (Van de Putte, ib., 653) A democratic state, interested in promoting autonomy, might be allowed considerable space for providing basic services for health and education, financial assistance and the like, subsidizing some activities and financing this through taxation. And of course, I am free only when I live in a society with the kind of political institutions that guarantee non-dominance and non-interference by others and by the state firmly and consequentially. We do not need a minimal state, but a strong democratic state.

There is an approach in economic science in which the concepts of well-being and liberty are intertwined. This is an extended version of Sen's capability approach in which well-being is related to liberty. As we know Sen distinguished between well-being and agency. (Sen, 1985b) When we combine this distinction with the distinction between achievement and freedom, then we have four combinations.

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<th>Well-being</th>
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<td>Achievement</td>
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<td>Freedom</td>
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An evaluation of how well-to-do a person is, has to take the form of an assessment of these constituent elements. Well-being achievement (what the agent achieves), agency-achievement (success in the pursuit of one's objectives), well-being freedom (a person's capability to enjoy well-being associated with different potential functionings), and agency freedom (what the person is free to do and achieve in pursuit
of whatever goals or values he or she regards as important). (Sen, 1993a, 35)

Well-being achievement contributes directly to a person's well-being. What an agent can achieve depends on the number and variety of functioning options. And these options depend partly on the personal resources of the person (his opulence, but also his human capital and mental state), partly on public resources and public arrangements and partly on the resources that are at his disposal though they are neither his own nor public property (his social capital). Well-being freedom carries with it the notion of freedom to be able to do all kinds of things. It refers to the freedom of doing and being. Well-being achievement and well-being freedom largely determine a person's well-being as it is commonly understood. 426

The agency aspect also contributes to the agent's advantage. Agency achievement reflects the agent's disposition to assume responsibility, in positive and negative ways, for his actions. This is the disposition to reflect upon one's ends, to accept duties and obligations and to respect virtues. The degree in which a person succeeds in preserving his self-integrity will co-determine how well someone feels. Agency freedom refers to the advantage of living in a democratic society, a society in which they participate in the political process, in which the law protects people, in which human rights are honored and people can become the persons they want to be. Agency freedom contributes indirectly to both agency achievement and to well-being freedom since it can enlarge the potential functionings.

10. Conclusion

After having pleaded for a minimal state, based on the arguments of negative liberty, free market economists have pushed the debate about the relationship between markets

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426 In this extended form of the capability approach liberty is an expression of agency freedom.
and government in a wholly new and disturbing direction in the second half of the 20th century. Extrapolating from the economic model of man, they have found new arguments in rational choice theory to belittle politics as well as government, because of their common, allegedly negative effects of their actions on the efficiency of the market. Political scientists, employing 'homo economicus', demonstrated that governments are not run at all by people for the common good, but by a small handful of insiders who are only interested in their own power and enrichment. Politics was treated as a degraded form of the market. The market made good on freedom of choice substantially more efficiently than did the ballot box. Rational people wouldn't vote, because the benefit (exercising influence) was far outweighed by the costs to go to the voting office.

When rational choice theorists claim that voting is not rational, they damage the exercise of freedom by trivializing the idea that freedom is a public good and dependent on the participation in political decision-making. Those who initiated this approach to politics were economists or scientist from neighboring disciplines who applied the economic model of rational agents in their own domain. In his *An Economic Theory of Democracy*, Anthony Downs argued that the usual conception of political democracy was illusory. Citizens did not pursue a common good. As in economic life, they pursued self-interest. Politicians should be seen as individuals whose principal motivation is to be elected in order to extract windfalls from the collectivity. (Downs, 1957)

But economists also have done their best to belittle even democratic governments. "In public choice theory, the demonized state makes an almost perfect Manichean mirror image of the idealized market. (...) The conclusion then inevitably follows is that the most prudent course is to make the political and the governmental realm as narrow as possible." (Kuttner, 1997, 333) Buchanan and Tullock pushed further on the idea of the individual in the political arena as seeking to maximize his individual benefits and shift costs to others. A central premise of their theory is the ubiquity of
'rent-seeking'. A political rent is a benefit that a rational voter would not willingly confer but that a wily interest group or bureaucrat is able to extract from a naïve or disorganized electorate. (Buchanan and Tullock, 1962) In the work of Nozick and Friedman government taxation, public outlay, or income transfer are understood as nothing more than theft. Friedman opposes government measures because these measures require people to act against their own immediate interests in order to promote a *supposedly* general interest.

In the view of neo-liberals, the free market is the underlying essence of the concrete collection of economic institutions that has become burdened by successive attempts of governments to regulate economic processes. In his postscript to *The Constitution of Liberty* Hayek writes about the need "to free the process of spontaneous growth from the obstacles and encumbrances that human folly has erected, (..)." (Hayek, 1960, 354) This is Hayek's utopia.

When the Wall fell and the demise of communism was complete, you would expect that utopian dreams of whatever conviction came to an end. But in reality it gave ample room for the ambitions of free marketers. What they called a free market is in fact a proposal for complete decentralization. Now the free marketers and the new conservatives have joined their political and cultural ambitions and have a dream that history is moving to a final destiny. They are the last heirs of the apocalyptical tradition. What was first promoted as a bottom up development of spontaneous forces has now become a new utopian dream that must be realized by all means. (see Gray, 2007)\(^427\)

\(^{427}\) See also the latest book by Naomi Klein, *The Shock Doctrine. The rise of Disaster Capitalism*, She presents a similar point of view as Gray, namely that neoliberal shock programs of the recent past all tried the same: to stalemate a population in order to transform their societies according to a utopian ideal.

(This was written before the collapse of the financial sector in 2008.)