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abstract

This paper shows how classical liberalism differs from neoliberalism with respect to the frames, concepts and ideas used to describe and clarify the concept of democracy. In short we argue that while classical liberalism provides central principles for the design of western democratic institutions, a neoliberal understanding of democracy tends to undermine these very same principles. To illustrate this claim we look at the differences between two main proponents of the revival of liberalism in the second part of the 20th century, namely F.A. Hayek and K.R. Popper, with respect to their vision of acceptable democratic conduct. The differences between these two thinkers illustrate the loss of liberalism's rather clear concept of democracy through its transformation to neoliberalism.

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„The form of politics preferred by [...] neoliberalism is relative democracy; democracy but not too much.“

(Unger 2001, 68)

“We live in a democracy [...] and we will find a way to ensure that parliamentary participation will conform to the standards imposed by the market.”

(Angela Merkel, September 1st. 2011, Translation by the authors)

1.) Introduction

Classical liberalism, as envisaged by its main historical proponents from Bacon, Locke, Hume, Kant, Rousseau, Mill or others, consists of two main streams of argument trying to align political and economic freedom (Gaus and Courtland 2010, Martin and Reidy 2011, Ulrich 2002): First, *political liberalism* stands for the division of power, the people’s right to speak up freely, to vote, to gather together for political reasons, to have privacy, to participate in the public sphere; in short it proposed an image of man as *citizen* in the modern sense of the word. Second, *economic liberalism* stands for free markets and free entrepreneurship as well as against tariffs and the economic intervention of the state; it perceived men as a *bourgeois* striving for unbounded economic leeway, implying laissez-faire politics. It is thereby quite obvious that this janiform conception was (and is) not without its internal tensions (Dewey 1935).¹ Both perspectives on liberalism may be compatible, or even complementary, concerning some questions (free entrepreneurship is a point in case), while being contradictory and, thus, indecisive in other cases (e.g. the question of taxation). Ludwig von Mises (1959, 596) as a prominent pioneer of neoliberalism criticizes the distinction between economic and political liberalism strongly, as for him such a distinction “misconceives the nature of liberalism.” For Mises the ambition to differentiate these two variants of liberalism as well as the possibility to interpret political liberalism as a stand-alone concept are products of socialist, collectivist or Marxist thinking.

Neoliberalism represents a modern approach of resolving this tension by putting a strong emphasis on economic liberalism, which attains a clear political priority in relation to political liberalism. In

¹ In the English-speaking area *economic liberalism* is often understood synonymously to *classical liberalism* (Gaus and Courtland 2010, Freeman 2002). We do not follow this terminology here for two reasons: First, the basic tension we refer to is already present in the works of those, who are normally considered to be classical liberals (this is most pronounced in the case of John Locke). Second, such a definition seems imprecise and lopsided, because it puts free markets before free individuals, while many accounts on liberalism – be they ‘classical’ or new – emphasize the idea of basic individual rights as a central starting point of liberal thinking. Thereby it is important to notice that some of these rights are indeed economic rights (e.g. private property), while others were of a more general nature (e.g. freedom of thought or free speech). Thus, terminologically equating classical with economic liberalism implies a loss of intellectual depth and conceptual clarity.

practice this implies that whenever there is a tension between economic liberalism and political liberalism in specific questions, neoliberalism, viewed as an ideological set of statements, decides in favor of the former (Olsen 1997). This attitude is already subtly present in Mises' account and draws on the argument that economic freedom is logically prior to political freedom. Many proponents of neoliberalism made extensive use of this argument, by stating that economic freedom is to be seen as a necessary condition for the emergence political freedom, where the latter cannot arise without the former (Friedman 1962, Hayek 1960). From this viewpoint, the development of democratic institutions and conduct essentially depends on the prevalence of economic freedom. Here, democracy is not to be implemented directly, but rather emerges out of a framework of economic freedom.² In such an interpretation democracy is understood as an end, rather than a mean, which stands in stark contrast to a classical liberal interpretation of democracy as a means for empowering the people to accomplish self-imposed ends. This reinterpretation in turn leads to a significant divergence with regard to the concept of democracy within the liberal spectrum.

This paper illustrates the above claim by drawing on the works of two major international proponents of (neo)liberalism in the second half of the twentieth century, namely F.A. Hayek and K.R. Popper. In the following we utilize their writings on the subject of interest – democracy as a political and ideological concept – to illustrate our main claim, that liberalism lost its relatively clear-cut concept of democracy with the emergence of neoliberalism. In this context Hayek serves as an example for a dedicated neoliberal, while Popper, although strongly sympathizing with the neoliberal claim for a revival of liberalism, represents the standpoint of classical liberalism. Following this line of argument our paper is structured as follows: First we provide a very brief historical review on Popper, Hayek and their personal relationship (section 2). Second we distillate some essential arguments on democracy of both authors – Popper and Hayek – in section 3 and 4 respectively. Section 5 discusses the differences of these two approaches and section 6 offers some concluding thoughts.

2.) Popper and Hayek: a historical sketch

There is a strong personal and intellectual relation between Popper and Hayek, which has been discussed at considerable length by many authors (Barry 1979, Birner 2012, Caldwell 2004, 2006, Ebenstein 2003, Hutchison 1981, Kresge and Wenar 1994, Nordmann 2005). Both started their academic career in the intellectual circles of Vienna in the 1920s. Hayek describes their common development in the following way:

² This attitude is most evident in cases like Chile, where the economically liberal junta was preferred to a socialist, but democratically elected government by leading neoliberal economists like Hayek and Milton Friedman (Valdes 1995.).

“Karl Popper is four or five years [actually, three years] my junior; so we did not belong to the same academic generation. But our environment in which we formed our ideas was very much the same. It was very largely dominated by discussion, on the one hand with Marxists and, on the other hand, with Freudians. Both these groups had one very irritating attribute: they insisted that their theories were, in principle, irrefutable.” (Hayek 1968 cited in: Ebenstein 2003, 172)

Beside some kind of a close professional friendship, especially in their common time at the London School of Economics (LSE) from 1949 (Birner 2012), Popper also relied on Hayek’s intervention during the hasty times of World War II in order to get an appointment as a professional academic, which he finally found in New Zealand. Hayek also played an important role in the publication of *The Open Society* as well as Popper’s return from New Zealand to the LSE (Nordmann 2005, Ebenstein 2003). At least in the beginning their relationship was not really balanced, but – due to differences in character, age, reputation and political background – Hayek can be understood as the dominant actor in their relationship³:

“Hayek advanced from the right-wing, liberal Mises-School attacking Marxism, Socialism, Social Democracy and state intervention right from the beginning. [...] Popper criticized Austrian Socialism, first via Anti-Marxism and second – in relation to the concept of a ‘mixed economy’ – by discussing the restrictions of interventionism. [...] In the major discourse concerning welfare state, mixed economy and Socialism Popper could more easily access classical liberal or even right-wing social democratic positions. In the internal liberal discourse anyway Hayek’s position was a decisive benchmark for Popper.” (Nordmann 2005, 12-13, Translation by the authors)

Popper moreover wrote some appreciation letters to Hayek, in which his worship for Hayek becomes apparent.⁴ Conversely Popper’s methodological approach also had an important influence on Hayek’s thinking. In this context Hutchison (1981) describes a U-turn in Hayek’s methodological views from a praxeological methodology inspired by Ludwig von Mises to Popper’s critical rationalism, while others (like Caldwell 2006, Birner 2012) put more emphasis on the differences in their methodology. Throughout this literature the relationship of Hayek and Popper is analyzed with respect to biographical connections and general methodological questions. The more specific aim of this paper, to illustrate their contravening conceptions of democracy and social order, is rather absent from past contributions comparing these two thinkers.

During the early 1940s both authors were preparing what should become one of their major contributions, not only to political philosophy, but also to the general political discourse. Both books

³ An example for their close relationship is that Hayek’s *Studies in Philosophy, Politics and Economics* (1967) are dedicated to Karl Popper, while Popper’s *Conjectures and Refutations* (2010b) are dedicated to Hayek.

⁴ Popper states for instance: „I think I have learned more from you than from any other living thinker, except perhaps Alfred Tarski“; or: „I do not consider myself intellectually your equal“. (Hayek Archives, Hoover Institution on War, Revolution and Peace, box 44/1 resp. 44/2, cited in Birner 2012:5)

– Popper’s *Open Society and its Enemies* (1945) and Hayek’s *Road to Serfdom* (1944) – had a clear tendency to promote a liberal and capitalist society, in order to prevent totalitarian regimes like the Soviet Union or the Nazi-Germany. On these grounds they also contributed to the Mont Pèlerin Society (founded in 1947), known as the first neoliberal think-tanks established after World War II (Walpen 2004). However, it is a too simple story to interpret Popper only as a mere follower of Hayek in political terms (Hacohen 2000, Hutchison 1981). Instead Popper was more of a classical liberal, while Hayek clearly deemed free markets to be a vastly superior mode of societal organization, thereby eventually implying the priority of laissez-faire policies (Hayek 1945a). In this context there was open disagreement between these two thinkers encouraging a series of direct and indirect debates, which occasionally even found their way into the membership meetings of the before-mentioned Mont Pèlerin Society (see for instance the indirect comments in Popper 1987b on Hayek 1949).

3.) Popper on democracy

Popper’s writings on political philosophy in general as well as liberalism and democracy in particular can be found in the *Open Society* (Popper 2009, 2010a), *Conjectures and Refutations* (Popper 2010b), *The Poverty of Historicism*⁵ as well as a series of public and academic lectures and speeches delivered at various occasions. At least in the German-speaking area these speeches have often been published as edited books (as for example in Popper 1987a, 2002b, 2005) making his views accessible to a broad audience.⁶ Throughout his texts Popper labels himself as a liberal, who turned to liberalism as a result of his personal experiences as a (very young) sympathizer of communist ideals. Popper explicitly mentions his perception of the communist party as authoritarian, dogmatic and uncompromising institution as an important signpost for his further academic and political thinking⁷ (as in Popper 1987c, Popper 1994). This experience led Popper to believe that western civilization embodies “albeit many deficits, the best form of societal organization we know” (Popper 1987d, 245, Translation by the authors).

However, Popper’s analysis is not only based on biographical experiences but also on a firm and consistent analysis of what is meant and implied by liberalism as a foundation of political thought. Popper explicitly attributes freedom and liberalism to the idea of the enlightenment, in a broad sense

⁵ *The Poverty of Historicism* was published first in 1944 in the form of three consecutive articles in *Economica* (Popper 1944a, 1944b, 1945) and later as a book (Popper 2002a).

⁶ While some of these texts have been published in English and German (as for example his 1954-speech [Popper 1987b] on liberalism is published in Popper 1987a as well as in and Popper 2010b, 467-476), most of them are only accessible in German.

⁷ “With seventeen years I was anti-Marxist. I grasped the dogmatic character of Marxism and its intellectual pretension.” (Popper 1994, 42)

of intellectual empowerment (Popper 2002c). Simultaneously, he argues that there is no final or natural justification for either liberalism or democracy, since both are to be seen as convictions, with shaky theoretical foundations and only thin prospects for empirical success.⁸ Consequentially, for Popper there exists no pure liberalism devoid of any habitual aspects and traditional idiosyncrasies; the idea of a “liberal utopia” (as expressed in Hayek 1949) strikes him as oxymoronic and inconsistent (Popper 2010b, 472-473) and leads him to emphasize, that “liberalism is an evolutionary rather than a revolutionary creed” (Popper 2010b, 473), something that is to be developed rather than planned or constructed. Justification can therefore only be pragmatic and partial and must be led by values, that is, normative premises. Since for Popper any set of premises may (and should) be questioned or connected with even higher or more general premises, there is *always* ample room for (further) debate.

In his conception of liberalism Popper considers the state, especially its monopoly on force, as an ambivalent institution, a “necessary evil,” which represents a precondition of as well as a danger to individual freedom.

“It is easy to see why the state must be a constant danger. [...] For if the state is to fulfill its function, it must have more power at any single private citizen or public corporation; and although we might design institutions to minimize the danger that this powers will be misused, we can never eliminate this danger completely. On the contrary, it seems that most men will always have to pay for the protection of the state; [...]. The thing is not to pay too heavily for it.” (Popper 2010b, 471-472; see also: Popper 2009, 117-118)

In the course of this description Popper addresses the question of democracy and emphasizes the role of reforms, the importance of the modification of existing institutions and the necessity of attachment to certain beneficial cultural traditions or moral standards.

More generally, Popper also invokes the idea that there is no final or definite justification for liberalism as an ideological viewpoint in analogy to his theory of knowledge. Since *fallibilism* implies that there is no ultimate justification for knowledge, Popper also transgresses this idea to the realm of political philosophy. The common denominator in both fields is the concept of a determining instance: In philosophy of science there exists, or rather existed, an age-old struggle on what whether perception or thinking should determine our knowledge. According to Popper the analogous question in political philosophy is “Who shall rule?” (Popper 1987e). Since both formulations ask for a

⁸ „The old idea of a powerful philosopher-king who would put into practice some carefully thought out plans was a feudal fairy-tale, the democratic equivalent of which is the superstition that enough people of good will may be persuaded by rational argument to planned action. History shows that the social reality is quite different. The course of historical development is never dominated by theoretical constructions, however excellent [they are].“ (Popper 1944a, 100; see also: Becker 2001)

determining entity as a substitute for critical debate Popper deems both questions to be misleading at best.

By combining this approach to political philosophy with his conception of liberalism, he finally arrives at the viewpoint of *political liberalism*. Instead of asking the simple question “Who shall rule?” he proposes to answer the more subtle question, how to design political institutions in order to ensure that the state may fulfill its role by utilizing only a minimal amount of oppression (Popper 1987d; Popper 2009, 130-133; Popper 2010a, 140-142, 178). This is Popper’s main normative premise. Strongly tied to this approach are the ideas of division of power, of free speech and open discourse, of public control over governmental institutions and of human dignity, which points to the importance of extensive minority rights.⁹ This leads Popper to the postulate that the people should be able to ‘dismiss’ their government by means of the institutional political setting, that is, without the use of force. This last aspect is to be seen as the foundational stone of his conception of democracy.

Consequently, Popper bases his conception of democracy on a fundamental differentiation between ‘democracy’ and ‘tyranny,’ where only the former exhibits the desired institutional properties.

“We need only distinguish between two forms of government[: those which] possess institutions of this kind, and all others; i.e. democracies and tyrannies.” (Popper 2010a, 176)

This dichotomous view is based on just another, more basic observation regarding the nature of social conflict.

“There are many kinds of disagreement in social life which must be decided one way or another. [...] How can a decision be reached? There are, in the main, only two possible ways: argument and violence.” (Popper 2010b, 478)

If conflicts are unavoidable and can only be resolved in these two ways, than it is indeed desirable to attach a monopoly of force to the state, and thereby provide citizens with the possibility to engage in non-violent conflict-resolution (see also Buchanan 2002). Force is perceived as an inevitable element of social life, which cannot be eliminated but must be restrained as far as possible. Therefore the acceptance of a state’s monopoly on force clings – again – to its institutional setting: If it is not democratic or in danger of losing its democratic character the application of force by the individual might be legitimate or even morally obliging (Popper 2010a, 166-167).

⁹ These attitudes also foster scientific progress according to Popper (2009), which again illustrates the similarities between his political and his epistemological approach.

In sum, the best way to tame force is to attach it to a democratic institutional structure (a state), while the best way to tame power is to design institutions, which allow for political change. This argument also provides a coherent answer to the “puzzle [...] of modern constitutionalism”, which asks for the reason why we treat “some collective decisions as binding on other collective decisions” (Nedelsky 1994, 500). Here the argument is that those elements, which ensure the possibility of political change and societal transformation, are constitutive for any democratic conduct and, thus, are to be treated as binding. In this context Popper perceives democracy as a playing field to introduce social reforms and to improve public institutions, which should only restrict those ambitions, which are in opposition to its democratic character.

„A consistent democratic constitution should exclude only one type of change in the legal system, namely a change which would endanger its democratic character. [Thereby,] democracy [...] permits reform without violence“ (Popper 2010a, 176-177; see also: Popper 2009, 293)

From this it follows that the central demarcation criterion for differentiating the two main types of political regimes – democracies and tyrannies – is that the former offers the institutional possibility to dismiss a government without resorting to violence as a mode of conflict resolution. The preservation of such institutions is, thus, at the very heart of democratic conduct.

“Democracy can not be fully characterized as the rule of majority, although the institution of general elections is most important. [...] In a democracy, the power of the rulers must be limited; and the criterion of a democracy is this: In a democracy, the rulers – that is to say, the government – can be dismissed by the ruled without bloodshed. Thus if the men in power do not safeguard those institutions, which secure to the minority the possibility of working for a peaceful change, then their rule is a tyranny.” (Popper 2010a, 176)¹⁰

This emphasis on the importance of basic individual liberties granted by political liberalism as a foundation for democratic conduct illustrates how these basic individual liberties are contained in Popper’s conception of a democratic state. Since, without formal equality of citizens (non-discrimination), free discussion, the right of assembly or the absence of censorship, essential institutions for organizing such a government’s dismissal would be absent.

¹⁰ Popper’s conception of democracy is very clear, with one major exception: The cited passage contains – in its original version – the following ambiguous remark: „For the majority might rule in a tyrannical way. (The majority of those who are less than 6 ft. high may decide that the minority of those over 6 ft. shall pay all taxes.)“ Why is such a regime perceived as *tyrannical*? This is not perfectly clear, since a preference for decisions by majority voting, would imply a rejection of a tyrannical state of affairs (as implied by Popper himself). The example in brackets seems to suggest the reason is related to economic or distributional issues. However, such issues do not prominently appear in Popper’s conception; on the contrary he explicitly separates the political and the economic sphere in his discussion of Marxist thought (Popper 2009, Popper 2010a). The most reasonable answer compatible with Popper’s stance is that such a rule would be in conflict with some basic institutional principles of democratic systems – in this case with the formal non-discrimination of minorities based on physical properties or ethnic origins.

Similarly, this requirement sheds some light on Popper's preference for a majority voting system in contrast to the model of proportional representation (Popper 2002d). Popper basically argues for sharpening the central institutional tool for the 'dismissal of government,' because in a system of proportional representation a deselected party might re-enter government via intransparent coalition-forming. Similarly, his critique of some aspects of direct democracy (Popper 2002e) can be understood as an attempt to emphasize the importance of a series of basic rights, most importantly including minority rights, which should not be subject of popular decisions. This latter emphasis on the importance on individual liberties and minority rights is due to Popper's efforts to resolve the traditional tension between democratic procedures, i.e. majority voting, and personal freedom (Thompson 1999).

Popper's conception of democracy is thereby mainly motivated by a profound skepticism against any kind of 'societal elites,' which has its roots in his critique of Plato's political views. The emphasis on the possibility of institutional dismissal is also an argument against the establishment of stable power coalitions, i.e. elitist arrangements. This skepticism play a prominent role in his political argument. More specifically, Popper denies the alleged superiority of societal elites and speaks of a 'myth of the elite' (cf. Popper 2010b, 470).

"The platonic idea of the rule of the 'wise' or the 'best' is to be rejected from my point of view. The crucial question is, who decides about the presence or absence of 'wisdom'? Have not the 'wise' and 'best' been crucified – by those, who were deemed to be wise and smart? [...] Perceived as a practical political question the problem of the elite is hopeless. Elite and clique are practically indistinguishable." (Popper 1987d, 252, Translation by the authors)

Popper conceives the very idea of an elite as suspicious (Popper 1987b, 1987d, 1987f), since the definition elite is self-contained and circular, because, in the last resort, elites define who elites are. In this respect we find another parallel here to his epistemological arguments. The aspect of circularity in combination with the fact the elites may acquire greater amounts of power than other people are constitutive of his skepticism, since power is a delicate concept, whose distribution should be subject to transparent institutional rules instead of informal agreements based on invalid reasoning. The Popperian imperative in this context is not to construct, not to acknowledge and not to privilege any kinds of societal elites, be in the realm of philosophy, science or politics. This general rejection of elites as a social phenomenon is an often overlooked, but supposedly important property of the Popperian conception of politics and society in general and democracy in particular.

This argument contains a strong link to Popper's criticism of Plato and Marx, undertaken in the *Open Society*: Popper emphasizes, that there must not be a group of influential politicians, who believe that it is right to rule without opportunity for the people to intervene. Both – the platonic idea of an ideal

state of philosophers and one interpretation of the Marxian analysis, namely that some kind of *cadre* has to install a dictatorship of proletarians in order to guarantee society's progress – failed to fulfill Popper's criteria for being part of an open society. Their strong reliance on elites renders these conceptions principally incompatible with the idea of an open society.

4.) Hayek on democracy

The aim of this section is to present Hayek's conception of democracy and to illustrate the main differences to Popper's approach. As a starting point it is quite enlightening that Hayek's attitude towards democratic systems is a rather reserved one as he points out in the third volume of *Law, Legislation and Liberty*:

„I must frankly admit, that if democracy is taken to mean government by the unrestrained will of the majority I am not democrat, and even regard such government as pernicious and in the long run unworkable.“ (Hayek 1979, 39)

The fear that a democratic political system unavoidably guides to a “Road to Serfdom” is highly present in this quote, although its basic intention – to raise scepticism about the unrestrained rule of the majority – is principally compatible with Popper. However, both draw very different conclusions from this observation: While Popper emphasized the importance of basic liberties, minority rights and institutional safeguards to restrict the rule of the majority on essential questions, Hayek is led to distinguish two forms of democracy: a restricted and an unrestricted democracy where the latter is mainly characterized by a government which is legitimized by majority voting. This distinction is coupled with a forceful rejection of “unrestricted democracy”, that is majority voting in general.

“An unrestricted authority, which is not – due to tradition or law – forbidden to implement selective and discriminatory sanctions, like tariffs, taxes or subsidies, can't prevent such behavior. [...] It is not democracy if a majority agrees how to distribute the prey stolen from a minority, or at least not a concept of democracy, which can be morally legitimized. [...] I want emphasize that it is not democracy as such, but the case of unrestricted democracy, which doesn't seem to be superior to any other kind of unrestricted, political force.“ (Hayek 1977, 14-15, Translation by the authors)

This principal rejection of a rule of the majority is not only due to his strong emphasis on economic rights, especially private property, and his disapproving attitude towards any means of redistribution (Hayek 1960, Hayek 1973, Hayek 1979, Hayek 1988). Another central point in Hayek's argument is the emphasis on the evolution of traditions – rules that somehow evolved over the time to organize the coexistence of individuals in groups – in an evolutionary selection process. For Hayek this process serves to develop a system of “rules of conduct”, which in the first place “makes social life possible” (Hayek 1973, 44). Thereby, it remains unclear how this evolution of rules takes place and, even more crucial, how these rules eventually get embedded in a given society. Hayek addresses this blind spot

in his conception of a social order by referring to a process of *spontaneous order* (Hayek 1973, 35 or Hayek 1960, 217), which is too complex to decipher ex post and far too complicated to be subject to planned decisions. Its results, however, are to be seen as superior guidelines for organizing social affairs.¹¹

“In a social order the particular circumstances to which each individual will react will be those known to him. But the individual responses to particular circumstances will result in an overall order only if the individuals obey such rules as will produce an order. Such an order will always constitute an adaptation to the multitude of circumstances which are not known to all the members of that society taken together but which are not known as a whole to any one person.” (Hayek 1973:44)

In a process of *spontaneous order* – following the idea of unintended consequences of intended action – independent individual actions lead to a functional and balanced social order. The concept of *spontaneous order* serves to bridge the gap between the normative postulates of a liberal social order and individual liberty, by imposing a causal relationship leading from the latter – unrestrained individual action - to the former, i.e. a truly liberal state of affairs. Liberalism itself for Hayek (1967, 162) “thus derives from the discovery of a self-generating or spontaneous order in social affairs”. Following Hayek, it is therefore essential for a liberal society, that the *rules of conduct* are interpreted in a way that does not interfere with free decision making processes of the individuals. This apparent ambivalence between individual freedom and superior evolutionary rules leads Hayek to the already mentioned conception of an evolution of traditions feeding on the manifoldness of individual actions.

The central argument for Hayek’s “society of a free people” – the label he uses to describe an ideal political order (Hayek 1979) – is that it is the only possibility to ensure individual freedom. As already indicated, Hayek’s conception of individual liberty has a strong focus on economic freedom rights (Hayek 1960, Hayek 1973, Hayek 1979, Hayek 1988) because he envisages the process of *spontaneous order* in the market system as an archetype for the efficient coordination of individual desires. Yet in the condensed version of *The Road to Serfdom* in 1945, which was popularized via the Reader’s Digest Hayek stresses the superiority of economic freedom over all other kinds of freedom:

“The economic freedom which is the prerequisite of any other freedom cannot be the freedom from economic care which the socialists promise us and which can be obtained only by relieving the individual at the same time of the necessity and of the power of

¹¹ In the postscript of Hayek’s *Constitution of Liberty* he clarifies that he favors no party except perhaps “the party of life, the party that favors free growth and *spontaneous evolution*”. (Hayek cited in: Miller 2010, 13, emphasis added by the authors). In the first volume of *Law, Legislation and Liberty* (1973) as well as in *Studies in Philosophy, Politics and Economics* (1967) Hayek more clearly distinguishes between the grown order that forms itself (*spontaneous order*) and the order made by individuals (*organization*). Referring to Michel Polanyi – also a founding member of the Mont Pèlerin Society – he also describes this distinction “as that between a monocentric and a polycentric order” (Hayek 1967, 73).

choice: it must be the freedom of economic activity which, with the right of choice, inevitably also carries the risk and the responsibility of that right.” (Hayek 1945b, 35)

The restrictions of democratic conduct Hayek imposes primarily apply to the sphere of economic freedom. The central argument for Hayek’s effort to establish a liberal society is, thus, the claim for individual *economic* freedom. In this context Hayek’s main system of reference is the free market system, because the coordination process on the market for Hayek is the best example for the superiority of an evolutionary process of *spontaneous order*. Hayek explicitly speaks of a “moral of the market” which means the “moral of property, of honesty and of adherence to a contract” (Habermann 2008, 69, translation by the authors). Hayek, moreover, clarifies that “the morals of the market do lead us to benefit others, not by our intending to do so, but by making us act in a manner which, nonetheless, will have just that effect” (Hayek 1988, 81). At the same time Hayek stresses that as a consequence of “man’s limited knowledge [...] individuals cannot be expected to have moral obligations to society as a whole” (as cited in Barry 1979, 9), because such an assumption would contravene the process of spontaneous order. The belief in the superiority of the market system is based on Hayek’s understanding of evolutionary process of spontaneous order and serves as one of the strongest links between leading neoliberal thinkers. Milton Friedman for instance, like Hayek and Popper member of the Mont Pèlerin society, also refers to the market system as a guiding principle of societal organization, although Friedman’s monetarist economic approach is remarkably different from Hayek’s (Ötsch 2009).¹²

Influenced by prominent thinkers of the Scottish Enlightenment, like David Hume, Adam Ferguson or Adam Smith (Petsoulas 2001, Turner 2007), Hayek stresses that from an evolutionary perspective legal institutions as well as morals and other instruments that constitute systems of social order lie prior to reason and the conscious design of institutions (Hayek 1960, 124). Hayek emphasizes the role of these eighteenth-century British thinkers in developing a body of social theory that,

“showed how, in the relations among men, complex and orderly and, in a very definite sense, purposive institutions might grow up which owed little to design, which were not invented but arose from the separate actions of many men who did not know what they were doing.” (Hayek 1960, 115)

As a consequence all attempts to form institutions or legislate rules in case of laws – and therefore in the end any kind of political decision making – contravene the concept of *spontaneous order*. Hayek’s

¹² Nevertheless there was a close relationship between Friedman and Hayek because Friedman admired Hayek as the grand philosopher of neoliberalism. This is especially evident in Friedman’s dedication to Hayek’s *Fatal Conceit. The Errors of Socialism*: “I think the Adam Smith role was played in this cycle [i.e. the late twentieth century collapse of socialism in which the idea of free-markets succeeded first, and then special events catalyzed a complete change of socio-political policy in countries around the world] by Friedrich Hayek’s *The Road to Serfdom*.” (Hayek 1988, 2) Hayek and Friedman together also played an important role in the neoliberal turn in Chile under the regime of Pinochet, as noted above.

presupposition that liberalism is the most superior organizational form developed by spontaneous order is thereby self-contradictory, since it imposes a static optimal result (a liberal social order) on a dynamic framework (evolutionary thinking). Nonetheless it serves as the missing link between his evolutionary thinking and Hayek's strong opposition to any kind of planning. The latter rests in his conviction that the claim for individual liberty is the only possibility to avoid that political leaders misuse their power in a democratic system to oppress the people and install an authoritarian state as pointed out most clearly in his famous and influential book *Road to Serfdom* (Hayek 1944). Indeed, according to Hayek any viable form of social organization should arise completely unintended.

In this context the conviction that political decisions to a certain extent reflect the will of the majority, which is at least one central building principle of a democratic system, seemed dangerous to Hayek, because it opens the door for collectivist rationales. First, people could – under the influence of propaganda – decide to abolish their individual freedom themselves. Second, Hayek is convinced that such a society will be stagnant, since “the majority view will always be the reactionary, stationary view and that the merit of competition is precisely that it gives a minority the chance to prevail” (Hayek 1948, 21). Third, a democratic system is always in danger of degenerating to a “tyranny of the majority”. These three critiques to a large extent also reflect the traditional liberal resentments against collective decision-making processes. The fear of a “tyranny of the majority” imposing restrictions on the free development of individuals is also present in the thinking of John Stuart Mill (1977) or Isaiah Berlin (1969).

Hayek's rejection of democratic processes and especially democratic governments is, however, quite fundamental. From a historical perspective he states that the unrestricted democratic systems in the second half of the 20th century have nothing in common with the old ancient ideal of *isonomy*, meaning “equal laws for all and responsibility for the magistrates”¹³ (Hayek 1960, 239). Referring to Plato Hayek declares that the concept of *isonomy* was rather seen as a contrast to democracy and after some time „democratic governments soon came to disregard the very equality before the law from which it had derived its justification” (Hayek 1960, 241). Based on this observation Hayek develops a conception of democracy, where government and legislation are completely separated and all government-activities are restricted by the *rule of law*¹⁴, which according to Hayek represents the legislative equivalent to the concept of *isonomy*. Similarly to the state of equal laws for all in the concept of *isonomy* the *rule of law* should guarantee that individual freedom remains untouched by

¹³ It is important to note that the concept of *isonomy* itself was quite elitist, because “equal laws for all” was restricted to a very small group of male, free, propertied, Athenian citizens. Women, slaves, poor and foreign people were excluded from this right of equality.

¹⁴ Hayek bases his understanding of an evolutionary process of *spontaneous order* on the growth of legal institutions in the US, Great Britain and Germany. Rationalistic approaches to the law as represented by Rousseau's *Social Contract* “run counter to a free society” (Miller 2010, 19) according to Hayek.

arbitrary decisions of any sovereign government. While in his earlier writings (Hayek 1944, Hayek 1948, Hayek 1960) Hayek suggest to implement the *rule of law* as a guiding principle of any democratic conduct, in the third volume of *Law, Legislation and Liberty* (Hayek 1979) he advances the neologism “*demarchy*” instead of democracy, because this term would describe the “old ideal by a name that is not tainted by long abuse” (Hayek 1973, 41). Since positive legislation by a government is man-made and consciously planned it has to be constrained to a minimum or even abolished. The rule of law for Hayek therefore is a means to ensure that a government’s legislative power is minimized so that the self-regulated evolution of rules and morals may shape the path of social change.

This approach leads in its most pronounced form to a complete re-conception of the political realm, where governments are devoid of any regulatory powers but only responsible for a country’s administration and all legislative powers are concentrated in a certain “council of wise and honorable men” (Hayek 1977). Although this council is supposed to be constituted by some kind of elective procedure – specifically, Hayek suggest that once a life at the age 40 or 45 people vote among the “best” of their cohorts and endues the successful candidate with a mandate in this council for 15 years – the conception itself is apparently Platonic in character. In turn, this senate of the wise, is supposed to guarantee the rule of law. In his *New Studies in Philosophy, Politics, Economics and the History of Ideas* Hayek explicitly describes the envisaged senate of the wise in the following way:

“The law-making assembly would thus be composed of men and women between their fortieth and fifty-fifth year (...), elected by their contemporaries after they had an opportunity to prove themselves in ordinary life and required to leave their business concerns for a honorific position for the rest of their lives. I imagine that such a system of election by the contemporaries, who are always the best judges for a man’s ability, as a sort of prize awarded to ‘the most successful members of the class’, would come nearer the producing the ideal of political theorists, a senate of the wise, than any system yet tried. It would certainly for the first time make possible a real separation of powers, a government under the law and an effective rule of law.” (Hayek 1978, 103)

The procedure of only one election of individuals per generation should secure that the influence of parties is reduced to a minimum.¹⁵ Hayek delineates a system in which the specific elite decides the most important questions. Thereby the composition of this elite group can only be changed very slowly and its meritocratic nomination procedure seems quite exclusionary. This apparent similarity between the Hayekian conception of democracy and Plato’s ideal state ruled by philosophers is a hallmark regarding the cleavage concerning democracy within the neoliberal spectrum.

¹⁵ In *Economic Freedom* Hayek (1991, 395) explicitly excludes “those who had occupied positions in the governmental assembly or other political or party organisations” from a nomination for the *senate of the wise*.

5.) Discussion

The common vantage point of Hayek and Popper is a skeptic attitude towards the state and especially its ability to monopolize force and power. This ability renders the state into a potential instrument of suppression, thereby restricting individual freedom. Collectivism as an ideology, where the state in general and the maxims of its leaders in particular occupy a major role in the formation of society, is seen as the most pronounced form of abusing governmental authority. However, despite this common origin of their arguments, which is strongly related to their biographical context, a closer look exposes a series of significant differences in their conceptualization of normatively acceptable democratic conduct.

In summarizing these diverging attitudes to democracy three key elements can be differentiated. First, Popper and Hayek differ in their opinion with regard to the legitimacy attributed to certain societal orders. Second, they employ rather antagonistic conceptions when analyzing the role of elites in society. Third, one finds significantly different approaches to the question how to organize democratic conduct.

With regard to the first point, Hayek attributes the utmost importance to accepting the natural superiority of what he regards as naturally grown, spontaneously evolving orders (*nomos*) in contrast to „man-made“ rules and laws (*thesis*). Therefore positive Legislation should always be subordinated to the rule of law, where the latter is understood as an outcome of higher-order processes (like evolution or the market). This is especially evident in Hayek's definition of „coercion“, which is directly tied to this dichotomy, since evolutionary or market-based outcomes are, according to Hayek's definition, never the source of coercion (Petsoulas 2001, 28-29). Following Hayek it makes only sense to speak of coercion in the context of man-made rules. Therefore, coercion can only be implemented by man-made orders (*thesis*). Consequentially, any man-made order is by definition an antipode to individual liberty, since the latter is constituted by spontaneously evolving orders (*nomos*). This highly idiosyncratic concept of individual liberty is even contested among today's closest followers of Hayek, i.e. those researchers associated with the Austrian school of economics (see Buillon 1997, 57 for an explicit example). It is, however, obviously incompatible to Karl Popper's approach, who strongly emphasizes that the quality of arguments as well as the adequacy of institutions is to be decided empirically and not by recourse to the origins of a specific concept (Popper 2009).

Based on his conceptions of individual liberty and coercion Hayek advances the argument, that liberalism is naturally superior state of affairs, since it most strongly relies on *nomos* while generally rejecting institutional settings based on *thesis*. In contrast to this Popper emphasized that any normative argument on the question, which modes of societal organization should prevail has to be

based on normative considerations – considerations on important values, on human rights, on living a good life and so forth – and thus may be contested and challenged. For Popper, Hayek’s tendency to scientifically underwrite the superiority of liberalism is intransparent at best (since it does not clearly state the underlying moral preferences) or highly unethical at worst (since it takes science as means for ideology; see: Popper 1987b, Popper 1987d, Popper 2009).

It is Hayek’s dual believe in the natural superiority of liberalism on the one and the principal inaptness of any kind of human planning and, thus, government interventions, on the other hand that mark the divide to a more Popperian, that is more classical and less neoliberal, approach to democracy.

The second main difference between these two thinkers resides in their divergent attitudes towards social elites. In this context Hayek seems to believe that social elites are themselves to be seen as a result of a foregone evolutionary process. At least such an attitude is tacitly present in his writing when emphasizing that one should choose only the best and wisest people for executing governmental authority (Hayek 1978, Hayek 1991). Hayek explicitly refers to those people as having “had an opportunity to prove themselves in ordinary life” and, thereby, have assigned their seat in the *senate of the wise* by their “contemporaries, who are always the best judges for a man’s ability, as a sort of prize awarded to ‘the most successful members of the class’” (Hayek 1978, 103). There are two premises in this argument, which are incompatible with Popper’s political stance. First, there is the inherent presumption that one should aim to find the most well-equipped people to administrate a nation, and, thereby, strongly resembles the question ‘who shall rule’, which Popper characterized as completely misleading. Second, when applying Hayek’s idiosyncratic evolutionary logic it is save to assume that the most appropriate people are to be found among already existing social and economic elites. The implicit assumption is, thus, to take success in “ordinary life” as a suitable proxy for worthiness. This presumption is in stark contrast to Popper’s general rejection of conventional authorities (in moral, science and politics) and his strong denial of any kind of superiority of social elites.

A third and final characteristic difference between Popper’s and Hayek’s views on democracy is related to the specific institutional design they suggest. In Popper’s account this issue is rather clear-cut stating the ability to get rid of a given government without physical violence as a prime condition, which allows for a distinction of utmost importance, namely that between democracy and tyranny. It is quite consequent of Popper to suggest this kind of minimal institutional restrictions, since the conceptualization of ideal political systems bears the potential of totalitarianism. Hayek on the other hand aims to develop such an ideal system (for instance, the title of one of his central books is *The Constitution of Liberty*) aiming to construct a “liberal utopia” (Hayek 1949). Ironically, the resulting conception is completely at odds with the Popperian standpoint in a twofold way. First, by envisaging

his senate of the wise, Hayek resembles Platonic attitudes, like the idea of finding and choosing a collection of the “most able” men and women in a relatively stable constellation. Popper, however, strongly rejected such attitudes in his *Open Society and its Enemies* (2009), and, moreover, explicitly referred to Plato as an archetype for totalitarian thinking disguised in Utopian terms (see also: Hayek 1949). Given Hayek’s publications on this issue, stemming from three decades later, Popper could well have extended his criticism to Hayek in later editions. Second, Hayek explicitly composes a central authority, whose composition changes only very slowly. This conception falls short compared to the options offered by existing democratic settings in terms of the Popperian criterion, that is, the possibility to expense a given government.

The conservative nature resembled by an institution like the Hayekian *senate of the wise* points to another departure between Popper and Hayek. The latter interprets *conservation* as something positive since he depicts it primarily as the conservation of successful evolutionary rules. Two such examples are given by the family and the institution of private property. With explicit regards to the latter he aims to strongly restrict government authority by delegitimizing the idea of “discriminatory” (Hayek 1977, 14) taxes or other dues in general and the concepts of progressive taxation and redistribution in particular. Thus, Hayek favors a “restricted” government, which, essentially, takes the incontestability of private property as its ultimate directive, leaving only a minimal scope for public funding – e.g. through lump-sum taxation. This marks another stark difference between these two thinkers, since Popper, who was also favoring economic liberalism, found no grounds for generally opposing progressive taxation or redistributive efforts.

The central feature of Hayek’s “restricted” government is basically to curtail “the rule the people”, i.e. the influence of majority voting. This attitude leads him to “prefer a liberal dictator to democratic government lacking in liberalism” (Hayek cited in: Fabrant, McPhail and Berger 2012, 521) and signifies his clear prioritization of *economic over political liberalism*. His ideal of a government “under the law” (Hayek 1960, Hayek 1973) narrows the sphere for elected governments to questions of practical application of the more abstract and superior sphere of the *nomos*.

6.) Conclusion

In this paper we exposed an unbridgeable difference regarding the concept of democracy between two main proponents of liberalism in the second part of the 20th century. The differences between Popper and Hayek illustrate the loss of a clear conception of democracy within the (neo)liberal political spectrum. In this context Popper can be understood as an archetype for trying to bridge conflicting ideas of political and economic liberalism within an integrated view of acceptable

democratic conduct, while Hayek favored a clear prioritization of economic liberalism over political liberalism. In this light the many tensions embedded in the ambivalent relationship of neoliberalism and democracy – a relationship fluctuating between promoting dictatorships, if they propose a liberal economic regime, and arguing for more direct democracy and oscillating between the insistence on privatization of state industries and the reduction of state power and the defense of private property, private action and, thus, the power of corporations and influential individuals and groups – can be understood and clarified.

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