

in Olsen, N. & Schulz-Forberg H. (eds)
*Re-Inventing Western Civilisation: Transnational Reconstructions of
Liberalism in Europe in the Twentieth Century*,
Cambridge Scholars Publishing, Cambridge 2014

CHAPTER THREE

THE MORAL ORDER OF CLASSICAL LIBERALISM

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Introduction

In the years following the Second World War an intense debate developed among political philosophers concerning what was thought to be a profound crisis of political theory. This lively debate contained a number of interesting criticisms of liberalism, which was considered partly responsible for not only the crisis of political theory but also the state of decline in Western civilisation, as witnessed by war and totalitarianism. Beyond the extent to which they seem relevant or convincing today, these criticisms formed an important part of contemporary political philosophy and identify a number of unresolved issues within the liberal tradition. They therefore represent an interesting starting point in investigating how a revival of liberalism occurred in the post-war years; and more generally when trying to better understand liberalism, that is, a tradition of thought as rich as it is diverse – and for this reason often contradictory.

The purpose of this chapter is to radically challenge the thesis of liberalism's responsibility for the "ethical crisis" of Western civilisation and to argue that the *classical liberalism* of the twentieth century is a political philosophy that confronts these issues by giving them a new vision and definition, thus opening a new important page in the philosophy of politics.¹ Here I attempt to analyse how classical liberal theory, far from being a relativist position, is an effort to elaborate on a political philosophy which offers a response to the classic questions of that discipline.

¹ Here the expression *classical liberalism* is used instead of *neoliberalism* in order to stress the rediscovery of some of the old roots of liberalism, which had been partially lost. On this issue see Antonio Masala, *Crisi e rinascita del liberalismo*

The Decay of Political Philosophy

The debate on the (alleged) crisis of political theory took place mainly in the United States, but began among German-speaking philosophers who had taken refuge in the new world during the Nazi period, bringing with them what has been called the “Weimar conversation”.² The influence of these scholars in American academia was remarkable, and in some ways continues today. Some of its most influential names were Leo Strauss, Eric Voegelin, and Hannah Arendt, but also the American philosophers Sheldon Wolin and John Hallowell. These thinkers, albeit in very different forms, agreed on the idea that a *long process of decay* was occurring in Western culture. If Western civilisation wanted to ensure that the defeat of totalitarianism was not just a fortuitous circumstance, it had to change course and deal with the “philosophical” roots of that evil.

These thinkers were united in their criticism of liberalism, considering it responsible for the loss of Western moral values, values without which it would be impossible to achieve the “good political order”. The criticisms against (modern) liberalism consisted precisely in considering it “indifferent” to the problem of ethics and guilty of thinking that the (political) problem of civil society could simply be resolved by “economic means”.³ In this view, liberalism had forgotten that without a reference to *values* and without the aim of improving humankind, even from a spiritual perspective, co-existence within society would be impossible. In (modern) liberalism, social and individual virtue was no longer an indispensable prerequisite for order, which would simply arise from free interaction among individuals and from the capacity of the market – and society with it – to self-regulate. This unlimited confidence in the automatic mechanism of the market and the weakening of reference to values would, according to critics of liberalism, pave the way for various forms of relativism, rationalism and positivism, which would inevitably lead to *totalitarianism*, the tyranny of the contemporary world.

The philosopher who most vigorously supported the idea that liberalism was responsible for the crisis of political philosophy – which coincided with the crisis of the contemporary world – was Leo Strauss. In his opinion, the “Jewish problem” was the clearest example of liberalism’s lack of a solution to what he called the “political problem” *par excellence*, namely the human problem. The Weimar Republic had attempted to solve the Jewish issue by following the principles of liberalism, which meant

² For a detailed account see John G. Gunnell, *The Descent of Political Theory: The Genealogy of an American Vocation*, Chicago, University of Chicago Press, 1993.

³ Leo Strauss, *What is Political Philosophy? and Other Studies*, Chicago, The

granting Jews full civil and political rights as German citizens of Jewish faith. Since religion is relegated to private affairs within liberal democracy, religious differences were thought to be irrelevant and therefore Jewish citizens should be considered equal citizens just as everyone else. Yet Strauss believed that this was not a real solution since legal equality had no effect on feelings towards Jews among other citizens. Unable to prevent discrimination within the private sphere – as non-interference in this sphere formed the basis of liberalism – the collapse of the Weimar Republic and the rise of national-socialism was a logical consequence. For Strauss, this development indicated that liberalism was unable to resolve the “political problem”.⁴

Strauss’ argument was therefore that, contrary to liberal claims, it is insufficient to put in place universal and non-discriminatory rules in order to achieve good political order. What is needed is also giving content to such norms meant to distinguish between good and evil: Therefore *virtue* had to be instilled in the hearts of citizens before being codified through law. A liberal democratic political regime which prohibits public discrimination but allows it in the private sphere – for instance because it respects the ideas of those who discriminate – rests on a foundation of sand and is therefore constantly exposed to the risk of being replaced by a different system, potentially leading to great crimes. The solution to the political problem should therefore not be sought only in legal or institutional arrangements, but in principles that must be internalised by mankind before being expressed through formal laws.

While not disregarding the numerous difficulties in achieving such a development, Strauss sought to identify a solution through a re-proposition of *natural law*, which rejects the idea that all laws may be considered *positive laws*, that is, as products of legislators. It is in fact necessary to hold an archetypal idea of right and wrong, which must be independent of positive law and thereby allows us to judge the value of positive law. This objective now seems to have been discarded by contemporary liberalism. Due to its “personal union” with the value free social sciences (modern political science), contemporary liberalism accepts the Weberian distinction between facts and values, consequently considering all values worth of respect and therefore abandoning the defence of natural law. The value free social sciences have the sole task of studying the relationship between means and ends, but explicitly refuse to distinguish between legitimate and illegitimate ends and therefore between good and bad.

It follows that our principles have our own *preferences* as their sole foundation and that these preferences determine our choices, all with equal legitimacy. The only ultimate principle to recognise is the “respect for diversity or individuality” and every other limit has to be rejected. Since

⁴ See Leo Strauss, *Liberalism Ancient and Modern*, London/New York, Basic

natural law imposed limits on individuals, liberalism had ultimately rejected it in favour of “a cult of individuals with no limits”. The consequence was to reverse the concept of tolerance, which “appeared as a value or ideal among many, and not as intrinsically superior to its opposite. In other words, intolerance appeared as a value equal in dignity to tolerance.”⁵ Absolute tolerance is unachievable, since it is destined to give rise to its opposite.

According to Strauss political philosophy had ceased to reflect on what should be the purposes of mankind and what should be the “best political order”. Liberal political philosophy had itself strongly contributed to this compromised stance toward mankind’s aims, first with Hobbes, who Strauss considered the true father of both liberalism and totalitarianism, and then with Locke. Locke, following the teachings of Machiavelli and Hobbes, believed that the problem of order must be solved by appealing to the passions and desires of men. He identified the most salient desire on which to rely not in the passion for glory (Machiavelli), nor in the desire for self-preservation as in the fear of a violent death (Hobbes), but rather in self-preservation understood as emancipation from poverty and the “ability to purchase”. Strauss wrote: “Here we have an utterly selfish passion whose satisfaction does not require the spilling of any blood and whose effect is the improvement of the lot of all. In other words, the solution of the political problem by economic means is the most elegant solution, once one accepts Machiavelli’s premise: economism is Machiavellianism come of age.”⁶ Strauss also attributes this “solution” to Burke, and through this critique he seems to take aim at those economic traditions of thought who hold that political order may arise “spontaneously” or without reliance on the conscious will of man.⁷

These reflections were later indirectly recalled by Sheldon Wolin, who in 1969 wrote *Politics and Vision*, an important work on political theory.⁸ In the tenth chapter, entitled *Liberalism and the Decline of Political Philosophy*, Wolin paints an interesting picture of modern liberalism. He focuses on how Locke initiated a process that consigns the political element to an ever-narrowing space, concluding by identifying it simply as the minimum amount of coercion necessary to ensure social transactions. By conceiving of an order which, following the example of economics,

⁵ Leo Strauss, *Natural Right and History*, Chicago, Chicago University Press, 1953, p. 5.

⁶ Strauss, *What is Political Philosophy?* p. 49.

⁷ In some passages Burke is criticised, but the criticism might be more appropriately addressed to Mandeville, see for example Strauss, *Natural Right and History*, pp. 314-15.

⁸ Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, New York, Little Brown and Co., 1960; *Politics and Vision: Continuity and Innovation in Western Political Thought*. 2nd edition. Princeton,

constitutes itself without coercion, he elaborates a “non-political model of society” out of which the modern crisis of political philosophy takes its origins.⁹ According to Wolin, the “lowering” of the tasks of philosophy begin with Locke; while classic political philosophers were aiming for the improvement of man, Locke relegates him to a “state of mediocrity” and limits the tasks and aims of political philosophy. Liberal political philosophy then became the *philosophy of the limits of human capabilities* and of the limits of political action. The consequence being that the purpose which it was supposed to aim for was no longer the achievement of the highest good and the good life, but instead the acquisition of a practical knowledge that allows the exploitation of the natural world in the aim of improving daily life. Basically, Locke reduced political philosophy to economics, a reduction characteristic of liberalism.

Another philosopher studying the internal evolution of liberal tradition and trying to understand how and when it had lost its ethical references was John Hallowell. In *The Decline of Liberalism as an Ideology* and in two following works, Hallowell articulates a position as that of a believer who identifies the cause of the great social and spiritual crisis of the modern world with the loss of faith in God.¹⁰

Hallowell reads the history of liberalism as a process of degeneration, distinguishing two types of liberalism: The first he calls “integral liberalism”, the liberalism of the origins, based on values held to be immutable and upon *natural law*. Integral liberalism is able to offer an unchanging standard of reference. It has its philosophical roots in ancient Greece, and its spiritual roots in Christianity, both clearly recognizable in the political conceptions of Locke and in the economic ideas of Smith. The fact that integral liberalism was historically dominant concealed its slow and gradual self-distancing from its Christian origins, in other words its “distancing from God”. By doing so this form of liberalism was opening the door to its own degeneration. In fact, already in the origins of liberalism, God is seen as the creator of the universe but no longer the “ruler”, since the universe is considered to have a sort of self-regulating mechanism where it is better to interfere as little as possible.

According to Hallowell, the ideas of *historicism* and *positivism* marked the final degeneration of liberalism. Historicism had denied the law any universal content, since it was a “national” and historical product. Positivism exalted the scientific method – which was also applied to the

⁹ “The decline of political categories and the ascendancy of social ones are the distinguishing marks of our contemporary situation where political philosophy has been eclipsed by other forms of knowledge”, Wolin, *Politics and Vision*, p. 261.

¹⁰ John H. Hallowell, *The Decline of Liberalism as an Ideology - with particular reference to German Political-Legal Thought*, London, Kegan Paul, 1943; *The Moral Foundation of Democracy*, Chicago, University of Chicago Press, Chicago 1954; *Main Currents in Modern Political Thought*. New York. Holt, Rinehart and

social sciences – in order to discover universal laws not through the search for a *cause* but through a purely empirical process. The result was that the possibility of a substantive law based on universal truths was forever undermined, and law became a mere description of reality, without any concept of universal justice. With the rise of positivism there would be nothing left of the old integral liberalism, and through this process *formal liberalism* is definitively established.

By considering this, Hallowell clearly questions the possibility of liberalism's survival without reference to absolute values or to a natural law based on faith and reason, a theme developed with greater emphasis by Eric Voegelin.¹¹

The idea of a crisis of political theory and of Western civilisation was, as mentioned, shared by many European thinkers. One of the most well-known views on the subject originated in Cambridge and was expressed in 1956 by Peter Laslett in the introduction to the essay collection *Philosophy, Politics and Society*. Here, Laslett recalled how the great works of political thought had often appeared in moments of crisis and in response to these moments, but after the tragedy of the World War there had not been any serious and original reflection on the foundations of political obligation. The tradition might one day be renewed, but “for the moment, anyway, political philosophy is dead”.¹² Laslett clearly indicated who had “assassinated” political philosophy in his view: the Logical Positivists. Inspired by the method of the natural sciences, the logical positivists believed that a solution of philosophical problems could be found by combining empirical investigation and the analysis of language, and therefore philosophy should not be *speculative* but consist of empirically based knowledge. The logical positivists, with their refusal to accept the possibility that there may be a *prescriptive* political theory, had put an end to political philosophy. The idea at the base of their vision was that democracy had been consolidated to such an extent that it put an end to the discussions on the best political regime or on the foundations of authority and power, instead finding its legitimisation in the technical knowledge possessed by political science.

This thesis was, in the next two collections of Laslett's essays, gradually revised. In 1962, it was stated that political philosophy could not yet be considered resurrected, “but the mood is very different and very much more favourable”.¹³ The next collection, published in 1967, showed even greater optimism, referring to the work of John Rawls about the theory of justice, which “promises to be a major contribution to

¹¹ Eric Voegelin, *The New Science of Politics*, Chicago, University of Chicago Press, 1952.

¹² Peter Laslett (ed.), *Philosophy, Politics and Society*, First Series, Oxford, Basil Blackwell, 1956, p. vii.

¹³ Peter Laslett and W.G. Runciman (eds.), *Philosophy, Politics and Society*.

contemporary political philosophy.”¹⁴ Finally, in the fourth series in 1972, the “pathological metaphors” were no longer considered useful. The “old tradition” had been restored.

Whether the death of classical liberal political philosophy had been ruled suicide (as per Hallowell) or murder (as per Laslett), the accepted explanation was that its disappearance was caused by the abandonment of references to universal values and principles. The reflection on the ethics and values that had characterised classical political philosophy had been left forgotten. Given the diffusion of this thesis, one might also explain the success of Rawls’ *A Theory of Justice*,¹⁵ a work which again stresses emphatically – and with a certain solemnity – the ethical problems of defining (social) justice and organising a fair and just society. Therefore, it is perhaps possible to argue that when we proclaim political philosophy reborn in 1971 to some extent we are pursuing the argument that without “ethics” (in the broadest sense of the term) political philosophy cannot exist.

Liberalism, Market and Morality

In the 1870s, as a result of a long process, liberalism had achieved predominance in most European countries. Yet it was precisely in these years that it appeared to have finished its task and turned from a “universal” movement, able to embody the interests of the entire nation, into a bourgeois political party movement. The Great Depression of 1873-96 challenged the confidence in the market’s ability to regulate itself, and perhaps more generally, jeopardised confidence in the market as the best way to produce wealth.

The change in liberal theory was particularly clear in the United Kingdom.¹⁶ The first major change within liberal tradition came with Jeremy Bentham’s utilitarianism¹⁷, which introduced the idea that a *rational reconstruction of society* according to the principles of reason would be possible. Bentham’s idea was that the individual’s experience of pleasure and pain could be subject to measurement carried out by the

¹⁴ Peter Laslett and W.G. Runciman (eds.), *Philosophy, Politics and Society*, Third Series, Oxford, Basil Blackwell, 1967, p. 1. In that collection Rawls published an essay entitled *Distributive Justice*, pp. 58-83.

¹⁵ John Rawls, *A Theory of Justice*, Cambridge, MA, Harvard University Press, 1971.

¹⁶ Interesting works on this topic are W.H. Greenleaf, *The British Political Tradition: The Rise of Collectivism*, London/New York, Meuthuen, 1983, and Shirley R. Letwin, *The Pursuit of Certainty*, Indianapolis, Liberty Fund, 1998 [1965].

¹⁷ See especially Jeremy Bentham, *Fragment of Government*, 1776, and

legislator, who would thus be able to realise, according to Bentham's well-known expression, "the greatest possible happiness of the greatest number". This idea had very destabilising consequences for liberalism in the long term.

After Bentham, John Stuart Mill paved the way to *New liberalism*. Within Mill's work the natural rights of individuals disappeared, and he made a distinction between the public and private sphere as well as between production and distribution of wealth. In *Principles of Political Economy* Mill proposed the use of "ethics laws" in the distribution of wealth, looking openly at socialist thought and at the use of the methods of the physical sciences to achieve an explanation of political phenomena.¹⁸ Mill's idea that, once having been produced, the goods may be distributed as desired – ignoring roughly that redistribution has always a strong impact on future production and on individual freedom – symbolised the tombstone of classical liberalism.

The final act of this transformation was the new liberalism of T.H. Green.¹⁹ Green's liberalism supported the idea that the state's duty is to assist those who could not make it without such support, even though Green maintained confidence in the "old" liberal tenant of individual responsibility. Through Green, Britain was introduced to German idealism and the idea that individuals rights cannot exist except as rights that emerge in society, a clear reversal of Lockean reasoning. These theories would lead other proponents of new liberalism to identify the state as an ethical actor with specific moral obligations toward its citizens and cause the new liberals to advocate the concept of positive freedom.²⁰ Due to this change, it is possible to understand why the members of the Fabian Society were also able to claim the label of liberal for themselves.

Despite these massive changes, "old" liberalism was still a "bogeyman" that needed to be kept at a distance for many, even those thinkers who defined themselves as classical liberals. This was also true for one of the greatest figures in twentieth-century liberalism, Wilhelm Röpke. His writings contain many of the criticisms of liberalism that we have analysed in the first section, in particular the ideas that liberalism had been affected by rationalism and that it had been responsible for the ethical crisis of Western culture. According to Röpke, the market relies on extra-

¹⁸ John S. Mill, *Principles of Political Economy*, London, Longman, 1871.

¹⁹ On *New liberalism* see Michael Freedon, *The New Liberalism: An Ideology of Social Reform*, Oxford, Clarendon Press, 1978; Richard Bellamy, *Rethinking Liberalism*, London, Pinter, 2000; and David Boucher and Andrew Vincent, *British Idealism and Political Theory*, Edinburgh, Edinburgh University Press, 2000.

²⁰ According to Hayek, "The decline of liberal doctrine, beginning in the 1870s, is closely connected with a reinterpretation of freedom as the command over, and usually the provision by the state of, the means of achieving a great variety of particular ends." F.A. Hayek, *New Studies in Philosophy, Economics and the*

economic conditions and the competition system requires moral and ethical qualities located outside the economy itself.²¹ At the foundations of the crisis of liberalism stood the “false use of reason” and the erroneous belief that it is possible to achieve a good social order only through appeal to reason, thus without a “safe spiritual orientation”. Liberalism became rationalistic when it had started to base the free market and the competition system on the “atomized” and completely free individual. It had become “doctrinaire” because it was no longer able to see the fundamental importance of the “frame” of the market economy, a frame which is legal-institutional but also cultural and ethical. Whilst not denying the value of the invisible hand mechanism, Röpke believed this mechanism, at least partially, a consequence of the *ethical behaviour* of people, behaviour which politics must promote.

Röpke, in brief, tried to reform liberalism on the basis of “ethics”. By doing so he was changing the real meaning of the invisible hand mechanism, which in his work seems to be the result of men's conscientious behaviour. This is a major change in classical liberal theory. In fact, even though every classical liberal could agree to the existence of shared moral values as an important requisite for the survival of a liberal society, for classical liberalism the social order is not based on moral values: Liberalism is an attempt to explain the possibility of social order not with reference to ethical criteria, but by through the *natural compatibility and convergence* of individuals pursuing their own interests. To paraphrase a famous sentence of Smith, we might say that the benevolence of the butcher and the brewer, who provide good products at the best price, does not affect the market mechanism (they may assist it) yet the revolutionary impact of liberal theory is precisely in the fact that benevolence is not necessary for the proper functioning of that mechanism.

Here, *the main issue with classical liberalism* is how much importance is placed upon the invisible hand mechanism (the harmony of interests) and its fundamental role in the liberal tradition. If it is believed that a foundation in a pre-existing morality must exist, then liberalism has lost the capacity to explain the formation and preservation of the social order; the market order is no longer an example of how to form a social order and it is no longer a mechanism that – even if it requires favourable circumstances and occasional political intervention – places the free market economy as a specific case of a more general theory.²² Röpke's

²¹ See especially Wilhelm Röpke, *The Social Crisis of Our Time*, Chicago, The University of Chicago Press, 1950 [1942]; *A Human Economy. The Social Framework of the free Market*, Chicago, Henry Regnery Company, 1960 [1944].

²² For a comprehensive discussion on the importance and the (also moral) value of the free market economy, see Enrico Colombatto, *Markets, Morals and Policy-*

position is emblematic: In his thinking, order – even civilisation itself – seems to depend upon a set of moral values that must exist in the human soul. They have nothing to do with man’s freedom to pursue his goals and interests. Moreover, Röpke saw freedom is a possibility only if those values were shared by all men. Only in a “good society” is the freedom of individuals possible, and the society is good only when all its individuals have accepted moral values.

Ludwig von Mises was among the few “old liberals” of the inter-war period still advocating the historical merits and positive ethical consequences of classical liberalism, attributing the crisis of his time to an abandonment of liberalism.²³ Mises saw that the market economy was creating a general wealth when it realised an “open society”, that is a dynamic society where each achievement might be questioned. However, many who had achieved wealth due to liberal society had then started calling for state intervention in order to protect them from the same competition mechanism that had previously rewarded them, now dismissing this competition as “inhuman”. Many liberal thinkers had the same attitude, Mises saw, looking to politics as a tool to limit the evils of the capitalist market and achieve a more humane capitalism. Mises, although not denying the existence of certain inhumane aspects of competition, never failed to reassert that wealth had been created by the market and *only* by the market. He continued to remind his reader that even the most humble worker in contemporary Western societies was living infinitely better than previous generations, and that this was only the case thanks to progress. But progress was not an independent variable for Mises; rather, it would not be achievable without freedom and the free market.

It cannot be denied that Mises sometimes presented a utopian view of the market, treating it as the realm of equal freedom and equal opportunity, free from interference and conflict among individuals. However, other liberal thinkers might be criticised for making the opposite mistake: They were trying to place responsibility for societal problems on the mechanism of the market and sought the solution in massive political intervention aimed at transforming the market. By doing this, such liberals committed a serious error in reasoning, since this prescription precluded the possibility of examining the hypothesis that many of the sins attributed to the market were, in fact, the responsibility of *politics*. According to Mises, liberalism became distorted because it sought an increase in political power as the solution to “new” societal problems, thus ignoring the nature of liberalism

2011, and Paul J. Zack (ed.), *Moral Markets: The Critical Role of Values in the Economy*, Princeton, Princeton University Press, 2008.

²³ See Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, Indianapolis, Liberty Fund, 1981 [1922]; and *Liberalism: The Classical Tradition*,

itself, that is, its roots as a theory on the limitations of political power. Liberalism had forgotten that the market and liberty were primarily creators of wealth, and it had begun to think that welfare could be obtained with an increase in redistribution.

Another cause of the decline of liberalism was the excessive optimism of the old liberals. They had been convinced *a priori* that society would progress for the better, and that political and economic liberalism was the final conquest.²⁴ This belief was based on the positive view of man's ability to rationally recognise the best solution to social problems as offered by science. In this sense society did not have to fear the spread of wrong ideas, because after being examined by reasonable individuals they would soon be identified as erroneous. History had shown that this was not the case, that wrong ideas can triumph. The harmony of interests and the power of social cooperation, based on the division of labour, were for Mises the fundamental principles of liberalism, although they are principles that human reasoning might not always understand and easily agree upon.

Thus, to "save" liberalism, "healthy ideologies" would be needed. The scientific process leading to the formulation of proper social and economic theories must be accompanied by the ability to spread and affirm those ideas, which must be accepted by intellectuals. Through their influence they would be accepted not only by governments but also by common people. Mises believed in the power of ideas, in the *consequences of ideas*, and despite his understandable pessimism in the face of historical events he never lost the conviction that the right ideas, sooner or later, would prevail.

It may be interesting to compare this position with the position of Strauss. Mises' idea was that if individuals are in the wrong, it is because they have *failed* to recognise their own interests and did not understand what he called the *principle of the harmony of their interests*. Liberal thinkers would have to work to make this principle better understood. Strauss' belief was that individuals must be *educated to virtue*, and only this way they can overcome their animal nature. The schism then becomes one that exists between Mises' harmony of interest and Strauss' confidence in the fact that men can be educated by those who recognise the right values, conceiving this process as a sort of struggle against human nature.

The different ideas of Strauss and Mises are well illustrated by liberal conceptions on the nature of the "Jewish problem" in Nazi Germany. We have seen Strauss' idea, in which liberalism failed to curb the private discrimination that Germans carried out against the Jews – private discrimination which was then transformed into political discrimination.

²⁴ Ludwig von Mises. *The Historical Setting of the Austrian School of Economics*.

Mises transforms that idea to suggest that *no discrimination exists* in the free market, or rather, the individual is free to discriminate, but this belongs under freedom of choice, not discrimination.²⁵ The real discrimination can be realised only by political intervention, which promotes the interests of some to the detriment of others, as is the case with tariffs on foreign products, or e.g. by preventing Jewish access to certain professions. These discriminations have nothing to do with the free market and are in fact violations of consumer rights. The real discrimination can only exist where there are interventionist policies. For example, in order to implement discrimination against Jews in Nazi Germany laws were passed to prohibit the purchase of goods in Jewish-owned stores.. These were enacted because other Germans continued to trade with Jews despite the campaign of hatred occurring. The actual discrimination was therefore not the result of racism, but of political interventionism.

Mises ideas about the free market transcended a simple economic dimension. His defence of the free market is based on the belief that *only free society can function despite its members disagreeing on certain value judgments*; an idea of liberalism very different from Straussian definition of liberalism as the “solution of the political problem by economic means”. With Mises the idea that the cause of the crisis of the West should be found not in liberalism, but in its *absence*, began to emerge. Classical liberals claimed that to recover the true meaning of liberalism it was necessary to show how socialism and nationalism belonged in the same *genus*, how they were a negation of liberalism. It was necessary to demonstrate how they were political theories that, from the point of view of liberalism, had more consonances than differences. This idea was developed with works such as *Omnipotent Government* by Mises and *The Road to Serfdom* by Friedrich A. Hayek.

According to Mises, totalitarianism is the logical consequence of the tendency of the government to manage all human problems.²⁶ One of the main characteristics of totalitarianism was to abandon the market economy, that is, to abandon the idea that private social cooperation stands at the foundations of society. In their denial of social cooperation and its replacement through state organisations, all totalitarianisms appear similar, descended from a common origin, and among them only differences of degree exist. If there is no trust in the harmony of interests, whereby utility and morality ultimately coincide, an inevitable antagonism appears between individual and collective interests, and between nation and society as a whole. This antagonism is destined to cause conflict.

²⁵ See Ludwig von Mises, *Omnipotent Government. The Rise of the Total State and the Total War*. Indianapolis. Liberty Fund. 2009 [1944]. especially Ch. 8.

For Hayek, the key to interpreting Nazism is its continuity with the socialist mentality popular in Germany. Socialism is only a particular case of a more extensive category, *collectivism*. The rise of the collectivist mentality marked the end of liberalism and represented a real turning point in the conception of social order. To understand Hayek's reflection, the role of the economy must first be understood as much more than just the production of goods and creation of wealth. According to him, personal and political freedom cannot exist without economic freedom, and there are no "purely economic" purposes distinct from the other purposes of life. This is why it is not possible to be free without economic freedom. If you are being controlled on "economic matters" you are being controlled in all aspects of life.²⁷

With their analysis of totalitarianism, Mises and Hayek raised the problem of the crisis of Western civilisation; a crisis rooted in positivism and historicism or, to use the Hayekian language, in *scientism*. These thinkers worked on important classical problems of political philosophy, such as justice, ethics and the right order, but in a very new and original way. Mises, for example, proposed an equation between justice and utility, based on the belief that only behaviour compatible with social cooperation could be considered just:

"All ethical doctrines have failed to comprehend that there is, outside of social bonds and preceding, temporally or logically, the existence of society, nothing to which the epithet "just" can be given. [...] In social cooperation with other men the individual is forced to abstain from conduct incompatible with life in society. Only then does the distinction between what is just and what is unjust emerge. It invariably refers to interhuman social relations. [...] The ultimate yardstick of justice is conduciveness to the preservation of social cooperation. Conduct suited to preserve social cooperation is just, conduct detrimental to the preservation of society is unjust. There cannot be any question of organizing society according to the postulates of an arbitrary preconceived idea of justice. The problem is to organize society for the best possible realization of those ends which men want to attain by social cooperation. Social utility is the only standard of justice. It is the sole guide of legislation."²⁸

The equation between right and social utility was also developed by Hayek. He defined free political systems as based on the rule of law,

²⁷ "Economic control is not merely control of a sector of human life which can be separated from the rest; it is the control of the means for all our ends. And whoever has control of the means must also determine which ends are to be served, which values are to be rated higher and which lower, in short, what men should believe and strive for," F.A. Hayek, *The Road to Serfdom*, B. Caldwell (ed.), Chicago, The University of Chicago Press, 2007 [1944], p. 127.

²⁸ Ludwig von Mises *Theory and History*. New Haven. Yale University Press.

formal and instrumental rules which do not realise the wishes of the people but make it possible to predict the consequences of human actions. Planned economies are opposed to these systems, because the rules have specific purposes – they are orders handed down by the government to individuals in order to shape society. For Hayek, the concept of justice coincides with *impartiality*. A rule is “right” when it permits people to make predictions about the behaviour of others, and when it can be used by unknown individuals for purposes that are not pre-given. The law does not have the task of realising the goals of individuals, but the task of empowering everyone to pursue their goals. Since the values and purposes of individuals are always different, a universal moral standard accepted by all cannot be achieved; there cannot be an agreed-upon criterion for planning and redistribution. This is why the only workable moral standard is supplied to us by *competition*. Competition is “right” because it is impartial and “blind” – it does not have the task of ensuring that the specific purposes of individuals are met, but rather the task of allowing everyone to pursue them.²⁹

In a sense, Mises and Hayek are *inverting* the classical concept of ethics, which sees justice as an attribute of state and law. For them, the idea that the state and its laws should have ethical content paves the way to totalitarianism. The issue is not what the moral values of the state are, but rather if the state can be the bearer of (any) morality. When the state enacts laws according to moral criteria, it signifies both the imposition of moral opinion on the public and the disappearance of the impartiality of the law. Since the moral values of men are different, and because there is no way to identify with certainty the content of a morality shared by all, a moral state and moral laws are no more than the imposition of morality of certain people upon others. Thus the state must not be moral, but it must be *right*, meaning impartial, not an instrument of moral content. The only just rules are those which enable people to live according to their own values and to pursue their own ends.

Mises and Hayek both worked on justice, ethics and values, but from a completely different perspective from that of Strauss and the philosophers analysed in the first section, considering the idea that the state should implement ethical values a serious risk, whatever these values may be. Classical liberals as Mises and Hayek had criticised ideas of state based on ethical foundations, and it may be possible to suggest that they re-articulated and incorporated classical notion of the *good political order* into a new and different framework: The idea of an *impartial social order*; a societal order which does not express ethical values, but which is “good” because it allows everyone to pursue what they think are right within a framework of formal rules that safeguard the equal rights of others.

²⁹ See F.A. Hayek, *The Constitution of Liberty*. R. Hamowy (ed.). London.

Foundations of social order

For a better understanding of classical liberalism's answer to the problem of social order and its perspective on defending liberty, it is useful to distinguish between two outlooks on traditional political philosophy.

The *first* comes from Thomas Hobbes, who finds the possibility of order only in "external power", a problem that has to be taken seriously. Namely, it is the problem of "exasperated individualism", which he saw as a political consequence of Lutheran theory. If every person has the right to follow his conscience through the free interpretation of the Holy Bible, everyone is the judge of right and wrong, between what is rational and what is not. However, in this situation individuals cannot mutually understand each other and communication becomes impossible. Thus, for Hobbes it is impossible to realise a social order beginning with individuals, and the solution is not to be found in human nature but in the "artifice". By this, he means the politics of "objective reason" based on the fear of violence and death.

What are the consequences of Hobbes' theory? Basically, if order is generated by man, it is possible to modify it at will. The tradition of constitutionalism is not in direct contrast with the Hobbesian point of view, since Hobbes did not foresee the possibility of a separation of powers within society. Utilitarianism and democratic theory also accept the Hobbesian theory of order, albeit changing radically its form and realisation. There is a sovereign able to identify what is the common wealth, and it is the democratic sovereign (the people themselves) who governs and produces rules through the will of the people and in their interest. The wealth of the people is not, as in Hobbes, a power preventing the clash between different ideas of right and wrong, but an attempt to achieve "fairness". There are different ideas about what is "fair", but the idea that it is possible to reach this aim through politics is accepted. Following this theory of rational order produced by man, it is also possible to have "libertarian feelings", yet theoretically there are no good arguments against redistribution and socialism, and it is possible to agree on the use of ethical criteria to redistribute the wealth that society is producing (for example, J.S. Mill or T.H. Green).

The *second* outlook comes from Mandeville and is improved later by Carl Menger. It is the theory of the *spontaneous order*, which claims that the best social order cannot be created by man, but it is possible for men to discover if and when they are free.³⁰ We cannot fix the best social order

³⁰ On the theory of the spontaneous order detailed account are Louis Hunt and Patrick McNamara, *Liberalism, Conservatism, and Hayek's Idea of Spontaneous Order*. Basingstoke. Palgrave Macmillan. 2007; Christina Petsoulas. *Hayek's*

and the good of society through majority decision or collective action, since this order is not rationally created by man. In Mandeville's theory, cooperation between man is not imposed by rational choice but is a natural fact. This order departs from the limits of reason, by an evolutionary process which protects "universalizable" rules (the rules which make us capable of understanding and foreseeing the behaviour of other people) and eliminates other rules. In this process freedom is necessary, not incidental. Only when the process remains open is it possible to discover the best social order, since it is not rationally created but (non-consciously) discovered by free people.

The rebirth of classical liberalism after the Second World War is based upon the rediscovery and implementation of this idea of spontaneous order.

In *Economics and Knowledge*, Hayek expressed the idea that a system of individual liberty based on competition is capable – more so than any other system – of coordinating the actions and efforts of individuals.³¹ With this work, Hayek began to explain the consequences of the social order of his economic theory, taking a path that would mature in the following decades, passing to the study of political thought and legal philosophy. In his economic writings, he had come to the conclusion that a complex society based on the division of labour and on dispersed knowledge, only competition would be able to utilise the different knowledge of individuals efficiently. This mechanism of *spontaneous coordination*, discovered in economics, explains how a social order is possible, and makes up the very essence of classical liberal theory.

Hayek located the collectivist mentality as the idea's opposite; this is based upon the principle of organisation, a "total restructuring" of society which has profoundly changed Western civilisation and led to the replacement of liberal principles with collectivism and totalitarianism. The core of Hayek's philosophy is the idea that not everything can be known and organised in a completely rational and conscious way, and the "forces of society" can therefore not be mastered. Dedicated to this theme is *The Counter-Revolution of Science: Studies on the Abuse of Reason*. Hayek describes *scientism* as the disastrous idea tasking the social sciences with the conscious control of society. Scientism represents the reversal of the true task of the social sciences: "[H]ow it is possible that institutions which serve the common welfare and are most important for its

Enlightenment, London, Routledge, 2001; and Lorenzo Infantino, *Individualism in Modern Political Thought: From Adam Smith to Hayek*, London, Routledge, 1998.

³¹ F.A. Hayek, "Economics and Knowledge" [1937], in *Individualism and Economic Order*, Chicago, The University of Chicago Press, 1980 [1948]. Many of his intuitions come from his studies on the functioning of the human mind, F.A. Hayek, *The Sensory Order*, London, Routledge, 1952, and according with Hayek the main idea of that book was already clear in his mind in the 1920s, before his

advancement can arise without a common will aiming at their creation is still the significant, perhaps the most significant, problem of the social sciences.”³²

Hayek revitalises the strand of classical liberalism which has its first origin in *The Fable of the Bees* by Mandeville, a work that first presented a rudimentary form of the idea of the “unintentional” birth of social institutions. These institutions (language, market, money, morality, etc.) are seen as products of human action but not of an intentional design. It is certainly possible to improve rationally the institutions themselves, but is a mistake to think of replacing them with an organisation founded *only* on reason and conscious control. The process of civilisation is not the exclusive result of a conscious reason. It is a process in which individuals, who do not fully understand their role – or are unaware of the interactions of their knowledge – achieve something much greater than a single mind could achieve.

An important part of twentieth century classical liberalism, the Austrian School has been largely responsible for reviving and rethinking the idea that the social order is not the product of human artifice but is instead the result of the actions of men who are not consciously directed towards that end. The process of production and selection of rules of coexistence is defined as a social process of discovery, called *catallaxy*. This process is well exemplified by the exchange of information through prices in the market, without forgetting that the market is just a special field of catallaxy. In such a context, the role of the state is mainly embodied in preserving order, punishing those who commit actions against the freedom of others, and to accelerate the transmitting of knowledge of rules that are created by the catallaxy process. Any other type of intervention seems in danger of altering the proper functioning of the process, just as government intervention in the economy make economic calculation impossible for agents.³³ This is the main reason why the spontaneous social order is difficult to reconcile with the possibility of realising ethical objectives politically – among them social justice – through a process of collective decisions binding on the whole community.

³² F.A. Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason*, Glencoe, The Free Press, 1952, p. 83; compare Carl Menger, *Investigations into the Method of the Social Sciences*, New York, New York University, 1985 [1883]. On how the criticism of the scientism is one of the bases of Hayek’s thinking on social order, see Bruce Caldwell, *Hayek’s Challenge: An Intellectual Biography of F.A. Hayek*, Chicago, The University of Chicago Press, 2004, Ch. 11.

³³ On this topic interesting remarks are in Peter J. Boettke, “Hayek and Market Socialism”, in Edward Feser (ed.), *The Cambridge Companion to Hayek*.

The problem of order is seen as better solved by a selection process among social norms.³⁴

This explanation of order can be considered as one of the strongest philosophical foundations of liberalism. In fact, it is only when political order is seen as born from the spontaneous cooperation of free individuals that it can be assumed that the only real task of political power is safeguarding the freedom of individuals. What liberalism rediscovered in the twentieth century is the teachings of Hume and the classics: The task of the government is to maintain peace and order, not to pursue an ideal of justice. The search for morality and fairness belongs only to human beings (alone or associated in voluntary communities). The classical liberals denounce the idea of the “moral” role of politics and arrive at the conclusion that the model of unintentional formation of order is the only real guarantee of freedom, with moral and material progress depending only on individual freedom. Classical liberalism therefore represents an attempt to answer the question about what is the best political order, and why it must be based on individual freedom.

What now remains is to deal with Leo Strauss’ criticisms and clarify why classical liberalism’s model of order is not relativistic. Lastly, I will try to explain why the system of common law could be considered compatible with some of the aims set out by the supporters of natural law.

In the first section we have seen how certain important political philosophers considered the main cause of the crisis of the West the attempt of liberalism to establish the social order on natural rights; an order which replaced duty (classic foundation of natural law) with individual rights. It was, according to Strauss, an attempt to build the “right order” starting with individual rights. But those rights were open to subjective interpretation, and from these different interpretations sprang relativism and nihilism.

The question here is if those criticisms really address a model of spontaneous order. In fact, classical liberalism derives from the rejection of constructivism, the idea that man can build the political order. It is true that classical liberalism is not looking for natural law as understood by Strauss, but for the “subjective rights” that he was criticising. But then *these rights are certainly not relativistic*, because they can be guaranteed only if there is a precise form of political order – an order that allows all individuals to make their own choices with respect to law. In this kind of order nobody (not even political power) is allowed to use coercion, if not to make the protection of individual liberty.

Such a model of order is therefore not compatible with a political regime that considers it lawful to decide what is good, because in this way

³⁴ See Raimondo Cubeddu, “The ‘Irrelevance’ of Ethics for the Austrian School”, in Peter Koslowski (ed.), *Methodology of the Social Sciences. Ethics, and*

the possibility to seek what an individual thinks is good disappears. In this sense, a good political regime is one that reduces collective choices to a minimum and employs coercion to a minimal degree. When these choices are reduced, what remains are the “good rules”, the rules which allow for the coexistence of different purposes. These rules are the “common good” that a society must have, the common good of a liberal society.

The emergence of good rules can only be achieved whilst holding the rights to life, liberty and property, and the value of these rights cannot be determined by majority vote. Particularly an important point is the right to *property*, undoubtedly a key element of the classical liberal tradition. Thus, if this tradition can really be reduced to the “trinity” of life, liberty and property, is it possible to argue that the latter implicitly contains the other two. It is therefore important to understand why property is so essential in this tradition, and why its protection, especially today’s complex societies, can be seen as a way to resolve disputes and provide a common ground for dialogue.

First we need to clarify exactly what classical liberalism considers the right to property. When Levellers (predating Locke) claimed that right as essential, this allowed every person to claim their right to the fruits of their work. The right to property was considered a logical extension of the right to one’s own ideas, one’s own body and their use. It was not so much a material dimension (possession) as the possibility of identifying a sphere of individual autonomy, which, if recognised, provides equality before the law and prevents discrimination. The equal right of every person to be the holder of property was a way of claiming equality before the law and overcoming caste privileges. It was a way of resolving disputes and preventing religious discrimination, e.g. the fact that some religions were prevented certain types of business came to be considered a violation of the right to property. It also gave rise to the freedom to express one’s own ideas, such the right to print religious texts. Declaring the “sacred and inviolable” right of property was a way to proclaim the equality of rights and make inviolable the freedom of the individuals. Property was thus understood as a function of freedom, depending on the definition of a sphere inviolable by other men – and therefore also by collective decisions – and able to guarantee the coexistence of people with differing ways of life and religious beliefs.

Therefore, when a liberal political system enforces property rights, it is protecting and promoting the values of *tolerance*, which is perhaps the main characteristic of liberalism.³⁵ Since the respect for property creates

³⁵ Hayek, *The Road to Serfdom*, pp. 68-69: “‘Tolerance’ is perhaps the only word which still preserves the full meaning [of freedom]”; Mises, *Liberalism*, p. 34: “Liberalism demands tolerance as a matter of principle, not from opportunism. It demands toleration even of obviously nonsensical teachings, absurd forms of heterodoxy, and childishly silly superstitions. It demands toleration for doctrines

an environment in which tolerance may flourish, Strauss' criticism that liberalism cannot prevent private discrimination – with the inevitable consequence of the degradation of all forms of virtue, ending in totalitarianism – seems unfounded.

Finally we may investigate the relationship between classical liberalism and *natural law*, keeping in mind that for Strauss and other thinkers the main fallacy of liberalism was the abandonment of natural law. It is quite surprising to realise that in the works of Hayek one finds a criticism of *modern* natural law not so distanced from the criticism made by Strauss. When Hayek, considering the rule of law, criticises “reason” and “natural law”, he does so because the meaning of these two concepts have been changed completely:

““Reason”, which had included the capacity of the mind to distinguish between good and evil, that is between what was and what was not in accordance with established rule, came to mean a capacity to construct such rules by deduction from explicit premises. The conception of natural law was thereby turned into that of a “law of reason” and thus almost into the opposite of what it had meant. This new rationalistic law of nature of Grotius and his successors, indeed, shared with its positivist antagonists the conception that all law was made by reason or could at least be fully justified by it, and differed from it only in the assumption that law could be logically derived from *a priori* premises, while positivism regarded it as a deliberate construction based on empirical knowledge of the effects it would have on the achievement of desirable human purposes.”³⁶

Hayek was not opposed to the use of reason, but, as the subtitle of his book clarifies, to the “abuse of reason”. The *proper use of reason* lay in the capacity to recognise the rules that best serve the needs of the social order, rules which are not necessarily created by human will and therefore by reason itself, but which emerge in a long process as the best solutions to solve problems and disputes. Extending this Hayekian attitude to the problem of natural law it may be argued that he was not opposing to a properly understood natural law, because he saw nature closely linked to the concept of evolution, as it appears clearly in the first volume of *Law, Legislation and Liberty*. In this regard, it is interesting what he wrote in his final book, *The Fatal Conceit*.

movements that it indefatigably combats. For what impels liberalism to demand and accord toleration is not consideration for the content of the doctrine to be tolerated, but the knowledge that only tolerance can create and preserve the condition of social peace without which humanity must relapse into the barbarism and penury of centuries long past.”

³⁶ F.A. Hayek, *Law, Legislation and Liberty, vol. 1*, New York, Routledge, 1973.

“The original meaning of the Latin root of “natural”, as well as the Greek root of its equivalent “physical”, derive from verbs describing kinds of growth [...] so that it would be legitimate to describe as “natural” anything that has grown spontaneously and not been deliberately designed by a mind. In this sense our traditional, spontaneously evolved morals are perfectly natural rather than artificial, and it would seem fitting to call such traditional rules “natural law”.³⁷

In this way we can see Hayek as a defender of a kind of natural law, possibly framed as a result of human evolution.³⁸ Hayekian natural law is similar to the *common law* of Edward Coke and William Blackstone, who saw it as a result of the use of human reason in historical process, in which natural law is carried out. Only history can tell us when human reason is right in recognising natural law and when it is wrong. Human reasoning can always fail, and we cannot shape reality by using only reason.³⁹

Conclusion

³⁷ F.A. Hayek, *The Fatal Conceit*, W.W. Bartley (ed.), New York, Routledge, 1988, p. 143.

³⁸ The relation between Hayek’s ideas and natural law is explored by Erik Angner, *Hayek and Natural Law*, New York, Routledge, 2007; and by Charles Covell, *The Defence of Natural Law*, Basingstoke, Palgrave Macmillan, 1992.

³⁹ The Italian jurist Bruno Leoni was proposing a recovery of common law, the law created by judges, in opposition to legislation, the law produced by parliament. He was doing it also suggesting to consider the common law as an “empirical” reinterpretation of the theories of natural law. In a private letter to Hayek, sent on 27 July 1965, Leoni wrote: “It would probably be worthwhile to trace back to Coke the concept of “artificial” employed by Hume and contrasted by him with that of “arbitrary” rules. Coke used to say that common law is due to *artificial* reason, as contrasted with natural reason. What he obviously meant (against Hobbes and James the first) was that the use of reason *in abstracto* is not sufficient to work out the legal rules as Hobbes and James the first (a disciple of Hobbes on this matter) maintained.” Leoni’s idea is interesting because it is potentially capable of “defusing” conflict when different people, using their subjective reasoning, discover different natural laws. Leoni was very influential on Hayek, but unfortunately the premature decease interrupted his reflection. He was also a mindful scholar on Greek legal thought. His studies on this topic were known by Hayek, who mention them in Leoni’s commemoration in Pavia, in 1968; see F.A. Hayek, “Bruno Leoni the Scholar”, in *The Fortunes of Liberalism – The Collected Works of F. A. Hayek*, IV, Indianapolis, Liberty Fund, 1992, pp. 253-58, 1992. We can argue that Hayek developed Leoni’s ideas in the first volume of *Law, Legislation and Liberty*, where, by the way, Leoni is not quoted on this issue. On Leoni see Antonio Masala, *Il liberalismo di Bruno Leoni*, Soveria Mannelli, Rubbettino, 2003; and Carlo Lottieri, *Le ragioni del diritto. Libertà individuale e*

After the Second World War, a “rebirth” of classical liberalism was introduced, that is, a rediscovery of the liberal tradition which has its philosophical assumptions in the concepts of spontaneous order as well as in the rights of property in the Lockean sense. This form of liberalism and its philosophical foundation had gradually, since the mid-nineteenth century, suffered a loss of interest and attractiveness in favour of a different liberalism aimed at making “good order” on the basis of ethical criteria, which must necessarily be imposed upon the whole of society.

Classical liberalism was reborn through the Austrian School and confronted with the problem of the foundation of a “good society”, seeks an answer to the classic question of political philosophy: What is the best political regime? This attempt was not always understood and sufficiently appreciated, perhaps due to its extremely innovative and original approach to understanding and dealing with some of the classic issues of political philosophy, such as law, justice, ethics and freedom. In this originality and this attempt to innovate “classical” solutions it is possible to see the importance of the contribution of classical liberalism in the twentieth century. It is also worth considering whether the revival of the discussions on such questions might be more usefully based on the Austrian liberalism (in its different branches) or the Rawlsian project, which was itself reviving, once again, the prospect of a rational morality able to build a form of universal civilisation.

However, classical liberalism does not believe that civilisation – or simply life within society – can be constructed by “rational morality”, but instead believes that it is based on the idea that good political order is the unintentional result of individual actions and choices. It emerges and changes from a *continuous process of discovery*, which must always remain open, since only in a system which protects and enhances individual freedom is it possible to find the best solutions.

A society that is truly respectful of human diversity is not a society organised and regulated according to one single understanding of morality, a society that aims to satisfy the desires of every single person; it is – perhaps more modestly – a society where people are free to live according to their principles yet accept that these principles cannot be imposed on others. If it is impossible to defend and promote the idea of this kind of society, and the principles of tolerance and freedom that give it substance, we simply have to admit that the only other solution is the prevalence of the will of the majority on every aspect of life, and entrust to a process of collective choices the selection of the good moral values for society as a whole.

This is certainly not the perspective of political philosophy, or at least not the perspective of classical liberalism, which excludes coercion – even if approved by the majority – as the solution to the problem of achieving the best political order.

