

**POSITIVE 'CONSTITUTIONS OF LIBERTY'
VERSUS
DESCRIPTIVE THEORIES.**

**COMMENTS ON
ALBERTO BENEGAS LYNCH 'S
« TOWARDS A
THEORY OF AUTOGOVERNEMENT ».**

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Alberto BENEGAS LYNCH has presented a superb article and I strongly agree with its ideological orientation. It deals with the problem of autogovernment, which is the title and the scope of Pr. BENEGAS LYNCH's last book. This paper shows at a general level the direction towards a "constitution of liberty" based upon autogovernment in demarcating itself from other theories about the problems of enforcement and monopoly of force. Let me first summarize the main points. According to Pr BENEGAS LYNCH, the solution 'autogovernment' excludes the monopoly of force and the institutionalized violence through taxes : autogovernment is intended to reflect "a situation where rules are privately produced and enforced" (p 15). In this context, transactions are limited to voluntary and free exchanges, force is used only as a defense against aggression. Even though there is no leading organization in the arguments of the paper, it is possible to divide it into two different parts. There is on one hand the recusation of any way institutionalizing the monopoly of force, and on the other hand, a justification of autogovernment linked to the evolutionary elements of the Hayekian theory of spontaneous order. If Alberto BENEGAS LYNCH wanted to re-construct an ideological classical liberal 'constitution of liberty', then he achieved his goal, and I even confess his piece in positive political economy is rather seducing. I am on the contrary convinced that his secret task was to provide a scientific background to this positive ideological purpose. If his task was that one, then my point is he missed his goal. This paper is great and valuable, but nowhere in this anthology are the scientific developments which explains the links between the ideological and scientific parts of classical liberalism. I would like to expose first why the scientific argumentation cannot pass with some methodological remarks. In a second comment, I will expose why the problematic of liberty makes inconsistent any positive presentation of a "constitution of liberty" with the question of liberty itself.

COMMENT ONE :

AN ANTHOLOGY IS NOT AN EXPLANATION.

The accumulation of references and quotations in the argumentation leading to autogovernment does not build in itself an explanation of the use and the pertinence of the concept. One will not find out his way easily in this paper, because the various points and the impressive amount of quotations cover vast parts of the literature about modern classical liberalism and institutional analysis. At the end the proliferation is rather confusing. My first point is about this confusion. In appealing to such amounts of arguments and in replacing the debate inside the mainstream of classical liberal literature, Alberto BENEGAS LYNCH is ignoring the nuances that make the richness and the force of classical liberalism. The point is important, because these nuances are the reflection of philosophical and epistemological foundations upon which the schools composing classical liberalism exclude each other. This mixture opens the door to misinterpretations.

We know from the earliest lines of the paper that it deals so to say with the general problem of the existence and emergence of the state, of the difference between law and legislation. Besides the title we need to wait 15 pages long, that is the half of the article, for mentioning the word autogovernment and some elements linked to its use. This is in the seventh section, which is dedicated to the monopoly of force. In comparison to this main task of the article, let us list the problems evocated shortly in the huge first section : man's action and the problem of rationality, humane values, instrumentalism of values, subjectivity, utility and valuation, objectivity and truth, ignorance and the theory of knowledge, relativism of subjective values and relativism in science, action and choice in respect with the questions of freedom and liberty, historicism and the historic character of scientific laws, causation and the status of scientific laws. All these problems are alluded to in the same section, without anything more than a long list of references. Obviously one can agree with the points made. I am glad to read for instance some strong arguments against relativism on page 2. I am even gladder to recognize that this technical literature is well known to a faculty in economics. It is

still so rare in France and I am becoming a bit jealous because of it. Though it is not so easy to deal in a short paper with epistemology and philosophy in order to explain the relevancy of a demonstration, I just would like to point out nowhere Pr. BENEGAS LYNCH explained precisely the links that make these points relevant to the present argumentation about auto-government, especially conceiving the *building* of a theory of it. Nowhere I am able to guess why it was necessary to start *ab ovo*, from the earliest stages of life and science.

Let us take a first example. Pr. BENEGAS LYNCH deals with the difference between natural and social sciences in the eighth section (p 18), which is dedicated to the different kinds of order. I will come back later to this particular point. Pr. BENEGAS LYNCH refers here to Frank KNIGHT, Israël KIRZNER, Ludwig von MISES and Jacques RUEFF for making a difference between the conception and the conceptualization of man in both sciences. He seems to be warning the dangers of social engineering (MISES) and of the positivist conception of science (KNIGHT). Wholism and the problem of measurement in sciences (RUEFF) are even referred to. Pr. BENEGAS LYNCH is referring to an old paper about the methodology of the Austrian school where KIRZNER does not make any difference between the different ways of the essentialism Carl MENGGER and MISES used, and between themselves and the Hayekian methodology. KIRZNER does not work at all in this paper for aiming at the same goal than BENEGAS LYNCH. If the question were to provide a scientific background for the ideological concept of autogovernment, the arguments should rather escape from the same economic literature justified by few limited essentialist or a-priorist arguments. For reaching a scientific level, one would rather need a discussion between the epistemological and methodological status of "hard" and "soft" sciences, especially because of the points about measurement. Though his knowledge about POPPER, Pr. BENEGAS LYNCH is ignoring the position in philosophy of science arguing in favor of the strong epistemological unity between the problems dealt with by both social and natural sciences, even though methodological differences could exist. (RADNITZKY, 1992 : 13 ; 1979-1987). The reader is inevitably disappointed.

It is hardly possible to draw near the arguments scientifically necessary to set up limited government (Jasay 1989) or autogovernment on the general statement about the monopoly of force. In order to avoid the justificationism BENEGAS LYNCH cannot but accept, I would prefer the position hold by Anthony de JASAY. At the end of his paper he presented his personal conviction that "enduring limited government is only possible in conjunction with unreasoning acceptance [...] of certain metaphysical positions" (JASAY 1989, p 307). The more I am able to point out justificationist problems in the demonstrations arguing in favor of ideological classical liberalism, the less complexes I have myself to recognize and adhere to its ideological status.

There is a potential solution to avoid the justificationist ideological problem, starting from the problem of liberty and freedom. Liberty refers to the abstract meaning of the word, while freedom is rather linked to the concrete aspects of the exercise of rights linked to this idea. Both are important in this perspective. Insisting on that point has a great importance because the thought process usually comes directly from the question of freedom to the discussion of the rights individuals hold to manifest it. Without coming inside the debate about liberty, the scientific discussion has to show first an internal consistency. The epistemological and methodological coherence has to start from the question of liberty because the philosophical question of determinism underlines the debate.

Let us come to a second example. If one wants to analyze an open-ended question in institutional analysis with the help of game theory, then he has to choose his tools according to this opening onto new action possibilities for individuals. Choosing a prisoner dilemma as Robert Sugden did for illustrating spontaneous order is therefore irrelevant. A prisoner dilemma technically precludes all situations but the one the scientist put inside the game before. If one wants to explain the superiority of classical liberalism and the legitimacy of any monopoly of coercion, the market is the general frame for all incentives and coordination,

what Hayekians call catallaxy. Choosing a zero-sum game would be a great mistake because this conception of the market carries in itself the idea of a positive-sum game. The public goods problem is often presented under the form of a prisoner's dilemma. Conceiving of cooperation, Pr. BENEGAS LYNCH argues (p 7) that a zero-sum game is only possible in the particular framework of the monopoly of force, that is out of the normal market situation. His point is about the incentives, which are cut off by the state or any monopolizing institution because coercion makes possible a simple transfer among citizens without any sure payoff. Obviously the one who gets the public service is not automatically aware of getting some public service. Some transfers have been provided priceless by the state for so long time that nobody is able to distinguish it as a public service. Then it is even more difficult to recognize it as a disservices and to start again thinking about it in a coherent economic reasoning.

In paying attention to this particular point, Pr. BENEGAS LYNCH draws an exercise in general political philosophy rather than a discussion of the market (TULLOCK, 1985 : 1080, about HIRSCHMAN's Exit, Voice, Loyalty). Drawing further BENEGAS LYNCH 's argument, the lack in information conceiving of these particular services (or disservices) becomes obvious at a macroeconomic level. Relative prices do not exist anymore. Insofar as the notion of social cost has subjective contents, the destruction of institutions is a kind of social loss (JASAY 1994: 31). This point would turn directly the described zero-sum game into a negative-sum game ; there is no reason explaining why to use a repetitive prisoner's dilemma formalization and why to stop at the step of the zero-sum game, as does Pr. BENEGAS LYNCH. Here is one first problem. Gordon Tullock (1985) already listed arguments pointing out the strong limits of the prisoner's dilemma matrix for the explanation of cooperation between individuals. But it is even possible to find a counterfactual. In organizing this cooperative problem as an extensive game where the agent interacts with the state, and has open latitude to react to the payoffs given by the state, the output matrix could transform the game into a positive-sum game. Here one could advocate that Pr. BENEGAS LYNCH used the terminology of the game theory in a wrong context, so to say by extension. I come therefore to another point. In misusing words in that way, Pr. BENEGAS LYNCH implicitly acknowledges the relevancy of the notion of social cost. This is completely irrelevant to the description made in the introduction, where he stressed out subjectivism as his methodological foundation. Thereby Pr. BENEGAS LYNCH does not correct any of the defaults of the use of game theory in the institutional analysis : in looking for an institutional analysis of choices that seem irrational inside the framework of the individual rationality, game theory necessarily rests upon existing institutions, even though the problem is to explain the emergence of new rules and new institutions (TAYLOR, 1990 ; MAITRE, 1995, introduction). The main problem is to be consistent with methodological individualism, whereas Pr. BENEGAS LYNCH came close to wholism in this article.

COMMENT TWO : POSITIVE OR DESCRIPTIVE THEORIES ?

In the second comment, I would like to come to the second justification of autogovernment made by Pr. BENEGAS LYNCH, resting upon the evolutionary elements of the Hayekian theory of spontaneous order. The section devoted to order starts with the sentence "For man to act, he must first assume the existence of a certain order". It seems to me the discussion of the general framework of spontaneous order does not have to deal with such problem, which is only a late consequence of it. This position is mixing *ratio essendi* and *ratio cognoscendi*, and this confusion seems a category mistake. Meaning that order is a logical implication of humane action only refers to individual psychology. It does not represent any logical pre-requisit to an analysis of man's behavior. The eighth section about order remains in this confusing implications. It is not so obvious that the discussion about causality, implicate causality and "significant coincidences" should be so important to explain man's action. Pr. BENEGAS LYNCH is talking about chance and demarcates it from randomness. He is obviously right in explaining that uncertainty remains in Heisenberg's principle at the level of the explanation, that is of the *ratio cognoscendi*. There is no

implication about *ratio essendi* here, because we do not assume any rational purpose for the electron's behavior. On the contrary, the Hayekian explanation of man's action in a spontaneous order benefits from the combination of both positions, and HAYEK plays with the confusion between first-order orders and second-order orders -in using JASAY 's words. Man's action is analyzed in the general framework of the Popperian zero-point method accepted by HAYEK. The refutation of HAYEK 's cultural evolutionism does neither come out of *ratio essendi*. When Angelo PETRONI explains (PETRONI 1992 : 482) the inconsistency of a description of the same individual, following rules without any critical interrogation and, at the same moment, behaving as an entrepreneur, the critic remains inside the *ratio essendi*. Obviously the refutation belongs to *ratio cognoscendi*, but both categories are never mixed, what does Pr. BENEGAS LYNCH starting from section 7.

In the Austrian refutation of constructed orders remains some latent contradiction which can be found in Pr. BENEGAS LYNCH 's paper. It is usually assumed that the general reasoning is relevant according to methodological individualism because its general orientation remains in the framework of *ratio essendi*. Coming inside the details will allow us to find strong nuances. First let us avoid Michael POLANYI 's one, which argues about technical points (POLANYI 1951). In explaining that constructed orders are as impossible as a cat crossing the Atlantic swimming, POLANYI introduces a problem of scale or of technical adequacy that an Austrian cannot accept. The other argument is due to HAYEK and MISES and points out subjectivity. In doing so, the impossibility is not technical anymore but becomes logical (BARTLEY 1984) and explains the late title "*Fatal Conceit*". There seems not to be any great difference inside the Austrian School, between Popperians and Hayekians conceiving of this point. It has to be discussed.

As long as the reasoning remains in the framework of the refutation, consistency exists on both sides. The refutation of socialist calculation consists not only of a technological impossibility but even of a logical one (BARTLEY, 1984). The opposition between *cosmos* and *taxis* is interpreted by HAYEK under the light of his methodological individualism, based upon subjectivity and diversity of plans. Then the slight difference between the positive and negative concepts of liberty allows the scientific to present an instrumental version of the concept of liberty dedicated to the practical use of goods or the practical exercise of rights. Coming inside the political part of the classical liberalism, the problem can be transformed into a theory of social order as built up by free individual incentives (NEMO 1989 : 15) without any logical implication about individualism. The nuance is not easy, but appears in an explicit way when the theory is solely dedicated to an explanation of the preservation of the "spontaneous, automatic, self-adjusting, self-coordinated orders" and forgets gradually the individuals composing the society. (See for instance the quotation from Law Legislation Liberty made by BENEGAS LYNCH on page 19). Slips such as made by RADNITZKY in his article about HAYEK 's legacy are of great significance : "Only recently have we become able to understand [...] **how spontaneous order emerges out from chaos**" (RADNITZKY 1992: 222 or 1994:69 - insistence added by the author in the French publication of the English text). By discussing the question of freedom and liberty we cannot but take note of the confusion between freedom and power in HAYEK 's oeuvre, even though he emphasized himself the disastrous confusion between both notions (BOUILLON 1994). If we come back closer to the epistemological issues, there appears a causal inconsistency between any situation where the positive acception of liberty is respected and any situation where the negative one is respected. This conclusion does not depend on the contents of the theory of rights which is used in the explanation. (Cf PETRONI 1993).

I assume this point is enough strong to imply automatically a positive construction if one would work towards a "constitution of liberty". Reciprocally, any positive theory will come sooner or later to the methodological problem of justification (Letztbegründung) because it will have to solve the problem of the enforcement of all rules which do not participate to the abstract order in HAYEK 's terminology, or of the rules belonging to second-order orders in JASAY's words.

Spontaneous order, evolution or emergence do not in themselves more explain life than the word "life" explains nutrition or reproduction. They remain of semantic power. Leaving the positive statements linked to the spontaneous order concept, we come back to his descriptive and logical content. First we do not refer anymore to the problem of order, but we start from a mere individualism which originates from ontology. The individual is presented as an entrepreneur, who always is behaving accordingly to a conscious trial and error process. The problem of order is really not the starting point of the analysis anymore. A theory of law can obviously exist here. But Bruno LEONI 's theory is far more able to produce a real explanation than HAYEK 's one, because it does neither rely on a concept of liberty resulting unconsciously from superior abstract rules (first-order order), nor on rules that are more efficient than others, nor on a value choice. Freedom is not confused anymore with its manifestations (ARANSON 1988 : 682).

In this descriptive context, the departure point is not political anymore : we start from "the primacy of abstract" in a way that is not the essentialist Hayekian one (HAYEK 1968-1978 : 44). Our task is to reconstruct the reasoning of an individual (or of an animal) faced to social features in order to understand his social behavior. Now we are "behind the mirror" to understand the variation and selective retention process. The process building up the "nested hierarchy of vicarious knowledge processes" is never random, it is blind. The word *blind* is relevant in this context (POPPER 1974 : 1062, note 123 p 1063 ; 1974-1981 : 253) because we are consistent with the Popperian refutation of induction. A knowledge about reality and *a fortiori* about rules is consciously *created* by the individual. As past knowledge and experience are necessary for creating a new experience, the reference to the (subjective and individual) past leads to and makes possible the trial and errors process. Therefore the analogy is justified with the Lamarckian vertically explained evolutionary process. But this does not preclude the Darwinian aspect of the selective retention in the trial and error process and might indicate why POPPER insisted on it so strongly.

Such a research program does not only work in the mere domain of biology and evolution theory (see LORENZ 1973, REICHHOLF 1990). It is also able to explain esthetics, and GOMBRICH 's work is of great value on both levels of the scientific research and of the methodology of research. Obviously the political discussion has to follow, and the point made by JASAY is always relevant though quite obvious now : there is a logical anteriority for the market before the state, just as there is a logical anteriority for individuals to interact before rules emerging. A political science will here reconstruct the means and purposes of individuals trading for politics. No politic behavior will be considered in a normative way (so the use of the word by economists), including the free riding behavior. Though there are some exchanges between the actors, politics does not represent any market *per se* (SEBAGH, 1995a) and competition conceiving of institutions and rules does not hold the same form (BUCHANAN 1982 in 1986) : on markets all goods are at disposition at the same time whereas in institutional analysis, evolution can only happen *from precedent to precedent* (LEONI 1961). The structure of the individual' knowledge is strictly Lamarckian. Conceiving of the rise of the services provided by the state, the task will remain descriptive in explaining how and why individuals can be abused and seduced by priceless disservices. Ideologically speaking, this does not forbid any fight in favor of the classical liberalism. The program Pr. BENEGAS LYNCH argued for in eight steps in his last section is quite seducing, and one cannot but agree with the hierarchical pre-eminence of the educational task. But this is only a piece of positive science, or - if we are not afraid by the word - the task of a political party.

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