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## THE ROAD TO FREEDOM: THE MARKET BEFORE POLITICS

In Search for a Transition to a Society that is less unfree  
- the "West" and the ex-communist countries<sup>1</sup>

by Gerard Radnitzky

"That freedom can be preserved only if treated as supreme principle ... was fully understood by the leading liberal thinkers of the nineteenth century ... Such is the chief burden of their warnings ... about 'pragmatism that contrary to the intentions of its representatives inexorably leads to socialism'."

Friedrich von Hayek\*

"Political liberty is good only so far as it produces private liberty."

Dr. Samuel Johnson\*\*

"Democracy's last dilemma is that the state must, but cannot, roll itself back."

Anthony de Jasay\*\*\*

The friends of the Free Society will be willing to make efforts to bring about, to facilitate and to support, a transition from the *status quo* - which nowhere exemplifies a paragon of freedom - to a society that is less unfree. Reflections on the project will include: a clarification of the *destination*, of the idea of a Free Society; an analysis of the point of departure, i.e., a diagnosis of the current situation, which involves a typological description of the societies we are interested in; and assessment of possible routes to the goal, of the *means* that can be used to increase the chances that the attempts to bring about a transition will be successful. Among the means a *Constitution of Liberty* plays an important role. However, it would be a dangerous illusion to think that a Constitution of Liberty can alone bring about freedom or preserve it.

# 1. The destination of the transition process - Explication of our intuitive idea of freedom

Clarification is important because our intellectual environment is polluted by much misleading freedom-speak, e.g., the twaddling about "positive" freedom (which confuses freedom and power and functions as a password to levelling and coercion), the importunate use of the semantic misfit 'welfare rights' (freedom from hunger, fear, etc.) for an unlimited list of claims, and so forth. For an adequate explication of the intuitive idea of Freedom we need a theory of the free society, a restatement of liberalism. I am taking inspiration from the recent outline of "strict liberalism" by Anthony de Jasay (1991a *Choice ...*). In classical liberalism the concept of freedom is a multi-place relationship. An individual chosen at random in a society *S* at a particular time *t* is *free to the extent* to which he is allowed to choose or not to choose any available option, in practice the options available to him at *t*, i.e., within his budget of resources (financial and material resources, knowledge and know-how, time, etc.), are secure in *S* at *t*, i.e., enforceable at moderate costs. These options include the meta-option of acquiring option rights (entitlements) by contracting for them (freedom of contract). Hence the degree of freedom that a particular society provides cannot be changed by transferring option rights from one individual to another or from one group to another. That the individual is "chosen at random" entails that only those restrictions are legitimate that are "necessary" for ensuring the same liberties for other. The explication of "necessary" is an unresolved problem because taxes are in many cases legitimized by claiming that a particular level of taxation is necessary to enable the state to carry out its protective function -- and many other functions as well.

The core of the *ideal type of a Free Society* is a society in which individuals peacefully can live their own lives, i.e., *a society in which it is a deontic postulate to REFRAIN from IMPOSING Pareto-inferior, "dominated" choices on other people.* Thus, in the ideal type of a Free Society it would be a moral imperative to respect the "non-domination" principle, which puts an obligation on the State and lower holistic

entities (though the latter may perhaps be less bad because they may compete among each other). In such a Society also the principle that property is private informs social life.<sup>1</sup>

Using the ideal type as a foil we can propose a comparative concept of Freedom. The degree of freedom exemplified by a particular society is clearly a function of the obstacles to doing all manner of things which individuals choose to do or choose not to do: i.e., freedom should be defined in terms of obstacles, but it would be misleading to add anything about the abilities or desires of agents to do what such obstacles might prevent them from doing. Hence the difference of freedom in two societies is reflected by the difference in the areas reserved in each for individual, as opposed to collective, decisions. If to that statement we add the definition of 'freedom' in terms of the "non-domination" principle, it follows that *A* will be less free than *B*.<sup>2</sup> **The most important characteristic of a society is the balance between private (individual) and collective decisions. Compared with this the distinction between elected and non-elected government is insignificant.**

To avoid conceptual confusion it is important clearly to distinguish between a concept (explication, definition) and the methods of ascertaining whether a particular real system exemplifies the property designated by the expression we use for the concept (and, if so, to what extent). (Consider as an example the concept of absolute truth in the sense of correspondence and the always fallible methods of finding out how close a particular statement comes to the truth, how "truth-like" it is.) A crude but handy indicator of the degree of freedom prevalent in a given society is the proportion of taxes in the GNP, which roughly indicates the extent to which decisions about material resources are made by individuals as individuals.

2. We are always en route to a "better" state of affairs in intellectual as well as in political life.

An idea can function as a regulative principle in spite of being unattainable. To disarm the usual objection to normative political theory, i.e., that it is "unrealistic", making a comparison of intellectual and political life can be helpful.

"It is criticism that, recognizing no position as final ... creates that serene philosophic temper which loves truth for its own sake, and loves it not less because it is unattainable."

That quotation could be from Protagoras, Popper or Bartley, but it is from Oscar Wilde. If you love knowledge for its own sake or for its instrumental value you will always make efforts to come "closer to the truth", though knowledge is in principle fallible. The immediate objective of research is scientific progress, and thus research is an unending process - transition in permanence. The objective is clarified by a special discipline, the methodology of research or philosophy of science. It also provides some rough guide lines for the permanent transition process. They are intended to increase the chances of success but do not offer any guarantee of success. To engage in research is the outcome of a *subjective* decision. But, if you have opted for it, respecting the rules of the game, the rules of rational problem solving in research is one of the necessary conditions for the possibility of success.

In political life committed to the Free Society the counterpart to the methodology of research is that part of political philosophy that presents the theory of "strict liberalism". It explicates the objective, the idea of a protective state, of a *Privatrechtsstaat*. That idea then guides the drafting of the Constitution of Liberty. As counterpart to the methodological rules in research the Constitution of Liberty offers guide lines that increase the chances of getting closer to the ideal type of a Free Society. As in the case of the methodology of research the Constitution *per se* cannot offer any guarantee of success. Ignoring the guide lines provided by the Constitution of Liberty precludes success in the striving for a less unfree society in the same way as ignoring the

methodological rules of rational problem solving precludes success (scientific progress) in the case of research.

There is yet another positive aspect to the analogy alluded to here. Wishing to live in a free society and being prepared to make efforts to get closer to the ideal is as much a *subjective* decision as the decision to engage in research. Those with a taste for life as a slave or as a slave holder will not take that opinion. Some philosophers consider refraining from imposing Pareto-inferior, "dominated" choices on other people to be a moral imperative (Jasey 1991 b, ch. 4, 2 (3)). I do not follow them because there is no way of ultimately justifying any moral precept (as there is no way of ultimately justifying truth claims with respect to concrete statements). There is no answer to the question "Why ought I be moral?". We can produce rational arguments in favor of opting for a free society and of a "Privacy Ethic", but such arguments can never be "compelling" in the sense in which pointing out an inconsistency in a system is and not even in the sense in which falsifying an empirical statement is (though falsification is itself fallible since it is relative to the epistemological status of the set of falsifying premises in a falsificatory argument).

As in any analogy we can discover also some negative aspects of the analogy. In the case of science it would be unreasonable to try to convince as many people as possible that they should opt for a life as researcher. Scientific progress has always been achieved thanks to a small minority of individuals. By contrast, a free society can exist and a transition to a society that is less unfree can only be successful if these ideas get sufficient supporters. For the friends of the Free society it is rational to invite everybody to join them in their efforts for a transition to a society that is less unfree and, in particular, to win a critical set of the population for supporting the Constitution of Liberty. What about the rest? In so far as it is free-riding while not opposing the transition it does no harm. If it does oppose the transition and cannot be convinced that more freedom and prosperity is a good thing, it constitutes a serious practical problem. Appeal to the "authority" of collective choice or the use of force are certainly not

attractive options. Probably the best remedy is *competition between states* combined with free movement of human capital and capital (at relatively low costs). Then people could choose between "more freedom, higher prosperity, more responsibility and less security" and "less freedom and prosperity combined with more equality of outcomes and more security".

¶ If you love freedom for its own sake or for its instrumental value for material or intellectual "wealth", you will *always* make efforts to get closer to the ideal type of a Free Society, though that ideal is unattainable, given human frailty. *From the viewpoint of strict liberalism all contemporary societies need to make efforts to come closer to the ideal*, though the urgency of the need of a transition from a less free to a more free society varies widely. The societies of East-Central-Europe that have recently emerged from a dictatorship make great efforts to de-socialize. The Western democracies, the so-called capitalist societies have almost for a century suffered from the growth of government, the growth of state expenditures as a share of the national product (e.g., in Sweden, the model welfare state, the public sector exceeds 64 percent of GNP), an insatiable appetite for government-provided goods and services, and so forth. They are increasingly beset by welfarism and state activism. So far the full wealth-creating potential of capitalism has not been realized anywhere (cf., e.g., Seldon 1990, p. xii). A few countries have made timid attempts to go into reverse over some nationalized industries, carried out some deregulations, etc. However, "there is little sign of any contemporary society really trying to kick the welfare habit", in spite of the recognition of the perverse effects of the redistributive welfare state (Jasay 1991b "A stocktaking ...", p. 538). All Western democracies need to roll back the tide of creeping socialism, need to embark on a transition to a society that is less unfree. Thus, wherever you are, if you love freedom, you will, in political life no less than in intellectual life, be *en route* to a better state of affairs.

### 3. A typology of starting points in the transition to a Free Society

#### 3.1. Limiting the tour d'horizon

I shall focus on the *Western democracies*, notably the EC, and on the *ex-Communist-countries of East-Central-Europe* ('ECCs' in short). But a few passing remarks about some other countries may be worthwhile. There are socialist dictatorships, e.g., Red China or Cuba, and other totalitarians that, at present, seem to be stuck with the *status quo*. At most they use the market the way a drunk uses a lamp post - for support not for light. It is a manifest truth that for the Third World the fastest way out of its misery is to introduce capitalism. But there is little sign of any of these states making serious efforts. The ideal type of the Totalitarian State offers an interesting contrary opposite to the Free Society. In it all life is politicized, at least officially. It is a state where social choices can always override individual rights, simply because (private) property rights are declared not to exist. Hence, there is a centralized command economy based on quasi-slave labor, and, typically, wholesale socialism is used as a legitimizing ideology.

The Soviet Union is a special case. Socialism there has a longer history than in the ECCs, and it is an endogenous development, whereas socialism was imposed on the East-Central-Europeans by force after they had been overrun by the Red Army - "tankie" socialism. The Soviet Union dissolved because it was not able to solve the problem of the constitutional position of the Communist Party in the Union nor the constitutional problem of union or confederation. The key obstacle was that the engineers of perestroika were the same people who would have to bear the costs: in a society based on free, private market economy the nomenclatura cannot retain its power. The Party remained centralistic and Gorbachev twaddled about a *renewal* of socialism. Economically, the USSR had been reduced to the status of a Third World civil economy.<sup>3</sup> Some of the republics will have a greater chance than others to make the transition to a society that is less unfree, if only they are allowed to go it on their own.

I will not deal with Japan, Taiwan, Singapore and Hong Kong either. They have achieved high and sustained rates of growth, are more market-oriented than the Western democracies, and have apparently suffered little from democratization. Yet, their situation and historical background are very different from those of the European countries and the USA. These successful countries appear to have at least one thing in common with the unsuccessful socialist countries: in their history they do not have an ideological tradition of classical liberalism. Very likely, they have taken to capitalism because, like people in the West, they want "to better their conditions".

### **3.2. The Western democracies - they too would need to embark on the march toward more market in a society that is less unfree**

All of them are suffering from creeping socialism, though in different degree. The United States and Britain are in this respect much better off than, for instance, *Sweden*.<sup>4</sup> In the model welfare state collective decisions have progressively crowded out private decisions and hence freedom of choice. The public sector takes over 64 percent of GNP. But Sweden turns out to be an interesting special case; its situation may be epitomized by the formula "Enterprises are free, individuals are socialized". You are free to start a factory, to sell commodities inside or outside the country; but you are not allowed, e.g., to start a school or a radio station, and you would find it very difficult to start a fee-paying private alternative to the state health care. The daily life of the citizen has been submerged under a gigantic insurance system, and the welfare system has almost abolished private choice. Sweden illustrates that a maximum of political freedom, understood as democratic institutions throughout, is compatible with very little individual choice and suggests that social-democratic values and freedom are incompatible. It is not "socialist" in the sense of a centrally-regulated economy; it is a transfer state legitimized by an egalitarian ideology. The lack of freedom has slowly eroded economic growth and efficiency. In 1990 the OECD expected that Sweden will be at the bottom of the list of per capita GDP growth.



Sweden is generally recognized to be an extreme example of the high tax society. Yet, sceptics (or realists?) ask whether countries like the *United States* and *Britain* can be rescued from the creeping paralysis caused by the ever-growing intrusion of the state into all walks of life. We cannot be sure that the Thatcher episode - which for many symbolized the march toward a free market in a free society - may not turn out to have been an interlude in a long history of decline. In 1990 the social expenditure of the *FRG* exceeded 700 billion DM, i.e., almost 30 percent of the GNP - the largest section of public expenditures. Their continuous growth progressively reduces the resources left to households for private use. To the direct transfer have to be added, the expenditures of enterprises for social benefits as well as the costs (scarcely measurable in monetary units) of various regulations like protection against dismissal. In September 1991 the German Minister of Economic Affairs drew attention to the costs of various protectionist measures. He pointed out that, for instance, every coal miner's job costs the taxpayer DM 76.000 *p.a.* in subsidies and special fees on electricity consumption ("Kohlepfennig") and that in 1991 German shipbuilding industry is receiving about 500 million DM from the state. These subsidies are labelled 'competition assistance' ("Wettbewerbshilfen") and not "protection against competition", which shows a certain sense of humor.

For the Western democracies to embark on a transition to more market in a free society would mean recovering some of the ground they have lost. It is well-known that at least from the last third of the 19th century - neatly coinciding with the gradual democratization of politics - *we observe in the West a trend of shifting the public-private balance more and more in favor of collective decisions*: the share of total government expenditure in GDP grows, and, publicly provided goods tend to crowd out private ones. (cf., e.g., Jasay 1989a and 1989c). *The state turns into a vast engine of overt and covert redistribution.* "The costly failures of welfarist redistribution and their corrosive effects on the fibers of society are not seriously in dispute" (Jasay 1991a, 538). Yet, there is little sign of any society searching for a transition to more market and

less politics, really trying to roll back the tide of creeping socialism. Public choice can easily explain why this is so (cf., e.g., Tullock 1983 and 1986). "Majoritarian" democracy tends to maximize the scope of redistributive legislation because of the expected gains from politics. Politicians in such a system are dependent on public opinion. Adherents of creeping socialism staff government-owned media, they are influential in Western universities, the mainline Churches (who have lost their normal customers and attempt to attract a new clientele), the welfare administrative apparatus, the educational system, etc. Socialism, nowadays in creeping or furtive form, remains the justifying ideology of the New Class, the actual and would-be *nomenklatura* of redistribution. This is an earthbound reason why in the Western democracies socialism remains an acute threat to freedom.

The assorted social democrats, Christian democrats and the liberal democrats call the system they recommend by various names according to local electoral tactics 'social democracy', 'democratic socialism', and so forth. The label that has been canonized and that best expresses the current mood in Western Europe is 'social market order'. *Social democrats and most, if not all, of the Christian democrats in Western Europe, particularly in West Germany, have made the concept of "Social Market Economy" their guiding star.* In Germany it has become the great sacred cow. No political party would allow its think-tank to conduct a critical analysis of the concept. Such topics are tabooed. And the *London Economist* of 25 May 1991 (p.28) reports that the Conservative Party's new chairman, Chris Patten, has proclaimed "his interest in the German idea of a 'social market'". The idea of a "Social Market Economy" is also exportable. On 17 July 1991 the *Collegium Budapest* was founded. It is claimed to be the first Institute for Advanced Study in East-Central-Europe and is sponsored by a combination of state agencies and private foundations in an inter-European cooperation. One of its main projects is "*the transition from a centrally-planned economy to a Social Market Economy*". Hence, those who in the ECCs are searching for a transition to a free society need critically to examine the doctrine of "Social Market Economy".

**"Social Market Economy" - Is it an empty formula, a magic formula or a sorcerer's apprentice formula?**

The formula has to do with the market order and with redistribution. Let us first distinguish it from "socialist market economy" or "market socialism". In ideal-typical wholesale socialism the problem of redistribution does not arise. The state distributes everything, hence redistribution would be meaningless. Because the bankruptcy of wholesale socialism can no longer be explained away, in their flexible retreat avowed socialists operate with the idea of "market socialism". It is based on the assumption that you can have an efficient economic system without private property rights, that the problems of information and of motivation can be solved without economic freedom and a wide distribution of private property rights. By inventing the idea of "market socialism" this sort of socialists have "sharpened" that false assumption to a logical inconsistency. "Market order" without an adjective means efficient allocation based on private property and decentralized decisions. This concept is logically incompatible with the idea of "socialism", that is, some (ill-defined) system of *non-private* ownership and *centralized* decisions. Once it has been demonstrated that 'market socialism' is a contradiction in terms, the concept a "square circle" - as Anthony de Jasay has done in a recent study (Jasay 1990) - the concept is no longer of any interest to political philosophy.

Redistribution makes sense only if there is an original distribution and that distribution is evaluated as not satisfactory. The various *theories legitimizing* the Social Market have a common core:

- (1) an empirical premiss stating that the market order without an adjective (short for free, private market order) is more wealth-creating than any other known system; and
- (2) a set of value judgments:

(2.1.) prosperity, material wealth, growth, ect. are valued, and hence freedom is implicitly valued for its instrumental value (but not given supremacy in political life), and

(2.2.) the state of affairs after redistribution is judged to be preferable to the state of affairs before redistribution. Thus, while acknowledging the wealth-creating potential of the free, competitive market, it does not recognize that only the market can tame the state (see, e.g., Seldon 1990). Instead that type of doctrine holds that the state ought to redress the result of the market process, "tame the market".

There exist several versions of this doctrine.

(1) "No cost theories" - by practising Social Market Economy you gain something without loosing anything.

(1.1.) The populist version recommends a have-your-cake-and-eat-it policy. (Cf. Jasay 1987, " social democracy ...").

(1.2.) More sophisticated is the doctrine that claims that efficiency can be preserved and the state of affairs "socially" improved if the redistribution is "in line with the market" ("*marktkonform*" in the original German coinage of Müller-Armack). Thus, for instance, according to this view rent control is not in line with the market while subsidies are. This subtype of Social Market Economy doctrines is held by many economists and politicians who make a point of being no socialists. I am indebted to Anthony de Jasay for explaining to me that the assumption underlying this doctrine is false, i.e., that there is no redistribution in agreement with the market. The additional tax required for financing the subsidies necessarily increases the difference between the net price (supply price) and the gross price (demand price). The loss in efficiency is furtive, creeping, but in the long run probably not less than the loss incurred through rent control, a loss limited to the housing sector. The "agreeing with the market" ("*marktkonform*") type of doctrine can easily be modified to become an intermediate form between "no cost theories" and "tradeoff theories" - you only need to replace `no costs` by `negligeable costs`.

(2) "Compensated cost theories" or "tradeoff within the economic dimension theories" where 'economic' is taken in the narrow sense of financial, commercial, of concerning material wealth. According to this doctrine redistribution causes a loss in efficiency, but this cost is necessary for producing "Social Peace" or even willing cooperation. Thus, it may in some cases even lead to an increase in efficiency (as, e.g. John Rawls, the Rousseau *redutivus*, claims). Jasay rightly subsumes this doctrine under contractarianism (Jasay 1991 a. 539). If generalized, the underlying assumption is falsified. For instance in Sweden massive redistribution has led to a noticeable reduction in cooperativeness (e.g. absentism in Volvo's Gothenburg factory is six times as high as that in Volvo's factory in Belgium). Redistribution in England in the 60s and 70s was accompanied by an increase in the total volume of strikes. However, in my opinion the main objection to the "No cost or compensated costs" type of doctrines is that they camouflage the value issue (something that appears to be typical of contractarian theories, cf., e.g., Radnitzky 1991 d).

There are two necessary conditions for the potential adequacy of a Social Market doctrine: Firstly, it must admit that there are costs in efficiency and freedom resulting from redistribution, and, secondly, it must make the value issue explicit. Only then can the value questions be critically discussed. Any attempt to evade the value issue will involve a variation of the so-called naturalistic fallacy, i.e., inferring from the statement that the perverse effects of the welfare state are "accepted" in the sense of "socially chosen" (being voted for) the value judgement that they are acceptable, worthy of being accepted. (I disregard here from the underlying false assumption that voting makes manifest what would be "socially preferred", if the individuals were informed about the individual costs.)

(3) Thus the only serious challenge to classical liberals is the third subtype of Social Market doctrines: "'Justified' tradeoff doctrine". <sup>It</sup> justifies a deliberate tradeoff of economic values in the narrow sense of 'economic' (material wealth, efficiency etc.) against realization of *other values* (extra-economic values). Since

freedom is instrumental for efficiency (and since this is acknowledged by the proponents of doctrine No.3), freedom is not one of these other values. On the contrary not only efficiency but also freedom is traded off. These other values could be labelled "social-democratic values". In the political rhetoric the pet formula under which these values are subsumed is '*Social Justice*'. Hayek described this slogan as the best means of destroying our prosperity and freedom.<sup>5</sup> Since nobody can explain what distinguishes "social justice" from justice, the empty formula is typically construed as more equality of outcome for all groups. The slogan then requires that we abandon "the taboos of property and contract", which are the norms of justice, and hence "Social Justice" is no more a kind of justice than 'positive' freedom is a kind of freedom (Flew 1989). Sometimes the accompanying rhetoric may stress 'compassion' or 'caring'; seldom the reduction of envy is mentioned although this is a most powerful motive. A redistributive fiscal system churns income flows among rent-seeking interest groups "horizontally" - therefore Jasey labelled it the 'Churning Society'- but does little to help the really poor, who have no lobby. Even in its most sophisticated form the doctrine of Social Market cannot provide a guiding principle. The doctrine is inconsistent in the sense that the more you realize of prosperity/efficiency the less you can (for empirical reasons) realize of "Social Justice" in the sense of equality of outcomes for all groups - and vice versa. The doctrine cannot guide the search for an answer to the problem to which it leads, namely the *problem of how to determine the "right" stopping point*, the "right" tradeoff or balance between efficiency and freedom on the one hand and more equality of outcomes on the other hand. We know what we mean by 'stopping point'<sup>or</sup> by 'balance' in this context, and we also have a rough indicator of the size of the tradeoff: the share of taxes of all sorts in the national product is a rough but handy measure of redistribution and at the same time of inefficiency. But we do not know how to justify a value judgement about the "right" tradeoff or balance. The idea of a Social Market Economy turned out to be a Pandora's box.

Ideally, if there were a market of states, competition among states for the most productive, innovative human capital, individuals could choose that state in which the placement of the frontier between the domain of private and the domain of collective decision best corresponds to their tastes. In the subjective decision these values are made commensurable. If there is no such market of states or the moving costs are evaluated as "too" high, the problem of how to determine the stopping point has to be solved by collective choice. The advice to stop before the economy is ruined is not helpful. It reminds one of the parable of the villagers who, having built a large city hall with few windows, wanted to have more light (more "compassion", more quality of outcomes); so they progressively increased the number of windows, until eventually the whole structure collapsed. Typically the proposal is made that with the help of the democratic method we can find out the "right" tradeoff. This proposal comes close to the above-mentioned naturalistic fallacy, even if it does commit it. The inherent dynamics of the democratic method of collective decision refutes this proposal (Jasay 1989, 1991a). (The gist of Jasey's game-theoretical arguments is intimated below on page 27.) The dynamics inherent in democracy reduces democratic government to a sort of sorcerer's apprentice (*Zauberlehrling*). In an advanced, *in an aging Social Market Democracy the free market will fade away like the Cheshire Cat*. Socialism will come in through the backdoor of democracy, and in the long run it will destroy the market order and with it one of the necessary conditions for democracy. In the end the social-democratic compromise will lead to bankruptcy and leave little room for freedom. Ludwig von Mises foresaw this development as early as in 1940.<sup>6</sup> He criticized the idea of a Social market Economy even before it was christened by the German Christian Democrats. He called the idea "*hampered*" market economy (in the 1949 English translation of the German original of 1940, Mises 1949, p. 714). And in the 1966 edition of *Human Action* he concluded: "Thus the doctrine and practice of interventionism (whose most recent variety is the German 'soziale Marktwirtschaft')

ultimately tend to abandon what originally distinguished them from outright socialism" (p. 723 of the 1966 edition of *Human Action*).

In summary, if we love freedom we should beware of the democratic illusion. We should frankly admit that the problem of the distribution of decision rights in collective choice has yet to be solved. But we know something: for instance, that a necessary condition for a free society is a minimal state, that among the means that can increase the chances that a Constitution of Liberty is maintained are educating the educable section of the populace about the political economy of a free society, moral education about the value of freedom, of property rights and personal sovereignty, and that the best way of disciplining Leviathan is a market of states, competition at all levels.

Can the EC provide a model for countries wishing to embark on the march towards a Free Society? In 1992 the EC will be at a crossroads. The future is open. But we can discern two main possible scenarios: Europe's future may evolve through evolutionary competition or it may be the result of constructivistic design, of *ex ante* artificial "harmonization". We could epitomize the two as a 'Hayekian Europe' and 'l'Europe Delorienne' - a Europe of free societies or a centralist, dirigist and protectionist "fortress Europe". Harmonization in the sense of evolutionary adaptation and cooperation (making best use of the diversity of capabilities) can arise only through the use of free, private markets. It is the excesses of majoritarian (log-rolling special interest) democracy that enables federal government to stifle the market. At the moment the tide appears to go rather in the latter direction.<sup>7</sup> If in a European federation or confederation national regulations were replaced by regulations generated by a European Parliament, the system would become increasingly sensitive to interest-group blackmail. (The Common Agricultural Policy is a drastic example already. It consumes over 90 percent of the EC budget, though the interest group profiting from it accounts for only a few percent of the EC's population.) A Eurocentralist superstate, an old-style nation state writ large, would have much to offer and be sensitive to transnational interest groups. A transnational corporatism would soon develop.



The climate of opinion tends to move toward faith in the benevolent state, the *panem-et-circenses welfariat*.<sup>8</sup> If a "European Constitution" were designed now, it very likely would be "federal" much more in the sense of centralism, *dirigisme* and *étatisme* as represented by the socialist Delors than in the sense of Peter Bernholz or Denis de Rougemont (Petroni 1991).

In summary, *it would be a most dangerous illusion to believe that in "the West" socialism has been overcome.* The ex-Communist countries that are on the march towards a Free Society would be ill-advised if they took the EC as paragon to imitate or to emulate, since the EC suffers from creeping socialism and its future - evolving or constructed that is here the question - is highly uncertain. For the EC an early association of those East-Central-European states that have become free-market economies could be wholesome. The larger the geographic area and the demographic mix of cultures, the more impractical it is to create a "super-state writ large" - except by coercion that the very diversity of cultures would resist or evade. It is also worth considering the prospect that political decentralism would resist economic centralism.

### 3.3. The ex-Communist countries

The ECCs could also be labelled *East-Central-European countries* ('ECEs') since by history, tradition and intellectual climate they are an integral part of Europe. (This can scarcely be said of the other countries of the former East bloc.) It appears that many of those who have lived under "really existing socialism" have, through *personal experience*, been immunized against the lure of the idea of a "social market". By contrast to the West, there is in the ECCs an incipient ideological mass movement that believes in "a market without adjectives", i.e., in the free, private market. This movement is led by practical politicians like, e.g., Václav Klaus in the CFSR or Leszek Balcerowicz in Poland. Many in the ECCs appear to realize that for relatively wealthy countries the fastest way to the economic backwardness of the Third World is to

implement social-democratic values. Hence, they can withstand the temptation of the "Third Way". If they made vigorous attempts to realize as much of capitalism as possible - which also means reducing the role of politics to a minimum - *they could become a paragon for the Western democracies to imitate*. In capitalism in its most developed form the importance of the State decreases since the State is trimmed, in scope, to its protective function, to minimal government.

Each historical situation is unique. But this does not preclude that *sometimes one may learn something from historical precedents*. It is a safe claim that *the economic reorganization and revival in the ECCs would require the same sort of political framework conditions that Ludwig Erhard profited from in 1948*. It follows that the chances of success in the ECCs will roughly correspond to the extent to which the decision makers can replicate some of the essential features of the situation in which the so-called "German Economic Miracle" took place. The salient features of that turn were that it was an *imposed solution*, i.e., a solution that need not buy off the wage-earners, that government managerial class, the pensioners, and so forth, that it was executed *in one fell swoop*, almost over night. Erhard introduced his sweeping liberalization almost single-handedly and against the wills of the Social Democrats and the labor unions, of most of the Christian Democrats and of the Free Democrats, and against the will of the Allied Administration.<sup>9</sup> Erhard himself stressed that he could never have carried out the sweeping liberalization if he had been dependent on a democracy or a bureaucracy.

The most important of the political framework conditions that made possible the "Economic Miracle" were the following: (a) Erhard was practically independent from democratic decision making, thanks to special parliamentary decree. (b) The particular climate of opinion. People knew that there was nothing to be gained from redistribution because there was nothing to redistribute, so that only work ethic and old-fashioned virtues could achieve an improvement of the desperate situation.<sup>10</sup> The Marshall plan facilitated the development. However, it was relatively small, West Germany was only the fourth largest recipient, and, since it went from government to government and not

to enterprises, it lost much of its potential efficiency. It was but a small help to self-help. (c) There were no powerful interest groups, labor unions and employers unions, entrenched bureaucracy, etc., that could effectively sabotage Erhard's liberalization. (The National Socialist German Workers Party had destroyed practically all the formerly existing organizations, and then the Allies abolished the organizations established by the National Socialists.) There was a temporary vacuum, and Erhard acted too quickly for any effective resistance to his plans to get organized.

Another interesting historical example might be Chile's transformation of a socialist, centralized economy that was bankrupt to a relatively well-functioning free-market economy. Its economic success is not in dispute despite the derision by the Left of the Chicago economists who emerged in Chile as ministers under General Pinochet. *De-socialization* reduced the share of the public sector from 40 percent in 1973 to 24 percent in 1981. From 1985 on a second wave of *de-socialization* took place involving 24 state enterprises, in particular *telecommunication, air traffic, electric energy production and distribution*. (From this the EC could learn a lot.) Chile soon achieved the highest growth rate in Latin America and the lowest national debt per caput. However, only now are successful efforts being made to privatize (and in part to liquidate) the most important part of the remaining inefficient state sector, the Corporación del Cobre, which accounts for almost a quarter of total export income. Chile's case also shows that a free, private market order is compatible with autocracy, something which is often disputed.

#### **4. The Constitution of Liberty**

Only the market can tame Leviathan. Capitalism can fully develop its wealth-creating potential only if the political process is confined to the minimal duties of the State. Among the various possible means that might keep Leviathan's mandate limited but at the same time make sure that he is sufficiently strong to fulfill his protective function

liberals (in the classical sense) see first and foremost to constitutional limitations of the area of collective choice - to minimal rather than to "limited" government (which is much too vague).

A constitution is basically a system of meta or master rules for rule-making in collective decision. It sets out the "deontology of the State", outlining "what the State *must*, *may* and *must not* do" (Jasay's apt formulation). There is no neutral constitution. Any constitution favors certain identifiable interests (Jasay 1989 "Limited government ..."). The Constitution of Liberty is intended to increase the chances that society keeps moving towards the ideal type of a Free Society. Designing a constitution of liberty is relatively easy compared with the practical problem of making it likely that the constitution will be respected and even defended. (For a Hayekian designing a constitution may perhaps smack too much of social engineering, of constructivism, and it might seem a better alternative to look for ways to make room for spontaneous orders to emerge.)<sup>11</sup> If only private property rights are protected markets will spring up spontaneously. It matters little whether they are legal or illegal; they provide an escape from political coercion. Capitalist property relations - and only they - create a wealth-creating market as a by-product, i.e., they spontaneously produce a self-enforcing tendency to efficiency. Can we hope that the Constitution of Liberty will emerge from the political process, the "democratic", majoritarian political process, the faults of which produce the dangers (domination of producer over consumer interests, etc.) it is designed to prevent? May we not have to rely (also) on the spontaneous emergency of markets OUTSIDE the law created by majorities? Nonetheless when reflecting on a constitution of liberty we will have to face such tough questions as "When is it legitimate from the viewpoint of "strict liberalism", if ever it is, for some people (princes or parliaments) to coerce others into accepting their choices, e.g., the tax burden they have decided on?" (Jasay 1991b). Very likely we will have to accept that there will be no *optimal* constitution, because in practice the choice is between the risks of *over*-government and *under*-government. Classical or strict liberals prefer the

consequences of *too little* rather than *too much* government that even the best princes or politicians would impose (Seldon 1990).

*The regulative principles guiding the design of a constitution of liberty* are not in dispute. (1) *Minimize the need for collective choice!* This will at the same time reduce the temptation to refer matters to the political process in order to further one's own interest, and thereby reduce the incentives to invest in the political process rather than in productive activities. (2) In the domain of collective choices that appears indispensable avoid any method of collective choice making that has a built-in-bias that automatically will make the domain of collective choice grow! This implies that the democratic method of collective decision making has to be used with the greatest caution (see below). (3) Redistribution should be done in overt form, not in the covert form of publicly provided goods and service, subsidies or other protectionist measures. In summary, *the constitution should ensure the sovereignty of the individual not only as earner, saver, investor, etc.*, but also, and above all, as consumer. In a free society each citizen as consumer should prevail over himself (herself) as producer (including earner, saver, etc.) (cf. Seldon 1990, esp. p. 121 et passim). (4) Changes to the constitution are permissible only if they do not reduce the "private rights", the property rights, freedom of contract, etc.

The rough *outlines* of such an *ideal* constitution are likewise well-known. (1) The constitution should prohibit budget deficits (whether financed by borrowing or by printing money). Ideally, the monetary constitution should remove government influence from the monetary system and from controlling the stock of money. (2) Taxation should be treated as a constitutional matter. (3) Constitutional limits to revenues (in times of peace revenues must not exceed a stated percentage of the national income). (4) Constitutional limits to borrowing, i.e., to capital projects that constitute productive social investments. (5) Ideally, the constitution should prohibit direct taxation of income. (6) Redistribution is allowed only to really "poor" citizens - "poverty" being defined in absolute terms (which poses the well-known problem of

defining subsistence), not redefined as the relative shortfall from the average income. It should be tackled by constitutional means and not left to democratic decision making (to avoid blackmailing by rent-seeking interest groups). (7) The constitution should secure the free movement of goods and services, of capital and human capital anywhere. (8) The constitution should outlaw all sorts of protectionism (quotas, subsidies, etc.).

If the system in question is a confederation of sovereign states, the competence of the federal government should be strictly limited to the following tasks (cf., e.g., Bernholz 1990). (1) Enforcement of free intra-community movement of human capital, capital, goods and services, anti-cartel and anti-monopoly policy. (2) Community or "confederal" activities (limited mainly to defense and foreign policy) should be financed by a value added tax, and increases in the tax rate should be subject to unanimous consent of the member states. Since "Sovereignty" is a unitary concept (like, e.g., pregnancy), a common foreign policy and defence policy is only possible if based on unanimity. Hence, in practice it will seldom be realizable. (3) To secure competition at all levels each member state must be free to make its own jurisdiction in taxation, labor regulations, currency, social policy, company structures, courts, etc. Only such a diversity can make possible the evolutionary competition that can lead to innovation and improvement of quality. Ideally, a confederal system should provide a free market of states. (4) If there is a Central Bank it must be fully independent, and its only goal must be the preservation of a stable currency. However, a competition of currencies is by far preferable because of its disciplining effect - ideally, competition also of private currencies (cf., e.g., Seldon 1990, pp. 181, 240). (5) Each member state and even each province of the federation or confederation should have the right of secession -- this appears to follow from the idea of a *confederation*. This is not only an important limitation of the power of the central system, but already the threat of secession is a disciplining force on the central system in the same way as the threat of emigration is a

disciplining force on each state (it becomes afraid of losing good customers, taxpayers, etc.).

From the viewpoint of "strict liberalism", the ideal would be an open world order with free trade. Under an advancing "strict liberalism" there would be a progressive reduction in the relevance of all government; sovereignty and frontiers would become increasingly less important. Ideally, frontiers should serve exclusively to keep out unwanted elements, those among the would-be immigrants who are likely to free ride on the welfariat.

## **5. Constitutional change - the durability of the constitution**

### **Constitution, socialism and democracy**

Creeping socialism is a permanent threat to liberty if only because large segments of the "intellectual class", who in Europe staff government-owned media (and also elsewhere the media are staffed predominantly by "liberals" in the US sense of the word), and who everywhere are influential in the universities, the mainline churches, etc.), favor the growth of government, because the more the market replaces politics the less their influence. However, if - *mirabile dictu* - socialism had disappeared, there still would remain a serious threat to freedom, i.e., from democracy or at least from the way we conduct it now.

*If people are not disposed to keep to its rules, the constitution will be circumvented or changed.* (cf., e.g., Jasay 1985 *The State*, 1991a "Stocktaking ..."). A constitution of liberty will have a chance of being respected and "lived" only so long as the political climate of the country is congenial with its thrust. Society in the 19th century, particularly in the Anglo-Saxon world, functioned well (in spite of democracy), achieved great things while leaving individuals a good deal of autonomy, *not* because countries had good constitutions, but because people believed in the right set of norms - what Anthony de Jasay calls "taboos" (cf., e.g., 1991b *Contract ...*, p. 124). They

believed in an ethic based on traditional virtues: work ethic, spend only what you have earned, no deficits, do not "print money", help only the "deserving poor", and so forth - the contrary to social-democratic values and "social rights" (demands addressed to the taxpayer or to unspecified addressees). Democracy worked well in the early America thanks to a very strong independent, i.e., private, proprietary sector in whose interest it was that the government remained minimal.

Jasay's analysis of the dynamics of democracy provides the following picture (cf. Jasay 1989b, esp. pp. 300-304, and 1991a, esp. p. 543). In the framework of a democratic constitution a decisive coalition can get redistributive *direct* payoffs through collective decisions (when shaping legislation and imposing policies). Redistributive *indirect* payoffs become available from amending the constitution, changing the meta rules with respect to the domain ("what policies may be imposed") and with respect to the size of the decisive coalition ("who is entitled to impose them") (Jasay 1991a, p. 541). Majorities will soon learn to choose a constitution that maximizes the scope for redistributive legislation (Jasay 1991a, p. 543). Assuming that voters act as rational players maximizing payoffs, the outcome will be an "unlimited" democracy, popular sovereignty with bare majority rule and unrestricted domain, the choice rules operating over the entire set of possible alternatives. In unlimited bare-majority democracy "no minority right subsists without majority consent",<sup>12</sup> and "no potential winning coalition can hope to augment its redistributive spoils by getting agreement to change the rules (the constitution) any further" (Jasay 1991a "A stocktaking ...", p. 542). Yet. I am still not sure whether a redistributive pattern may not necessarily be unstable, whether there really is a core under a democratic constitution (e.g., the poorer 50% + 1 vote) whose exploitation of the richer 50% - 1 vote is a stable state of affairs. At any rate the individual members of the decisive coalition may change.

Jasay has likened a constitution to a chastity belt of which the lady herself possesses the key. Perhaps one can also view it as something like a fortress: a normal garrison with a good fortress has a better chance than what would be the case without the fortress



(*ceteris paribus*), while the fortress makes no difference if the garrison is not willing to defend it.

In summary, *it may be a dangerous illusion to believe that constitutions can protect liberty against creeping socialism and "creeping democratization"*. Rather than accepting the false sense of security provided by this illusion, it behoves us to seek ways, if there are any, for developing non-illusory defenses of liberty. Concentration of political power (decisive coalitions) will find ways around the political control of the Constitution. The market - legal or illegal - is a better assurance of escape from political coercions (cf. Seldon 1990, p. xii et passim). For instance, the Russians were better able to escape from tyranny into the unofficial, the underground economy than by the liberal Constitution of 1935.

Witness the example of the US Constitution. Originally it was a rule system classical liberals used to admire. In our century it has been transformed into a constitution where "modern American liberalism has all the elbow room it may desire for its redistributive exercises" (Jasay 1991a, p. 543). In all cases the constitutional rules must be interpreted to some degree. Whether or not a Constitutional Court is an advantage will depend upon the integrity of the judges and their commitment to liberty. It may be naive to assume that they and the people who select them will for long remain unaffected by the climate of opinion. In the case of the USA, the Supreme Court has helped to transform American politics from "constitutional" to "majoritarian" democracy and eroded property rights and the constitution (cf., e.g., Dorn and Manne (eds.). 1987, Niskanen 1988, Dorn 1991). The FRG, for instance, is not much better off. However, there are also cases where constitutional courts have made interpretations informed by legal scholarship and integrity. In particular, the sentences of the European Court have so far been the most effective way of preserving the four freedoms of the EEC Treaty and hence of implementing a free market in Europe (Petroni 1991, pp. 24f.). The rulings of the Court pleasantly contrast with the decisions of the Commission and the Council,

which were mostly informed by a dirigistic view of the economy and by compromises of national interests.

## 6. Are there other means of keeping society on the road to freedom?

The practical problem is how to achieve a change in the climate of opinion, in "the tides in the affairs of men". *Educating the educable section of the public about the political economy of the Free Society* is urgently needed in order to create a climate of opinion that will persuade political powers to maintain free markets. (Publications like Seldon's *Capitalism* are invaluable.) Free-market think-tanks deliver here an educational service that the universities do not provide. Pointing out the consequences, the costs of practising the democratic method the way we have done it so far (in Germany, Britain, the USA, and so forth) is part of the task.

Another, perhaps even more important means, is moral education. Respect for truth, for "Promises shall be kept", for property, and so forth, constitute a social capital for the society in which they are internalized by many. ("Un curé vaut vingt gendarmes.") hence, those who wished to undermine property rights like, e.g., the School of Swedish Realism, which forms the intellectual basis of Swedish Social Democracy, consistently derided the "taboos of property and contract". Hayek mentions Gunnar Myrdal as an example (cf. Hayek 1988 *The Fatal Conceit*, p. 50). Very likely the only efficient remedy against creeping socialism and creeping democracy putting us on the road back to serfdom is *a deontological rule that in the political arena gives priority to freedom, to the "non-domination" principle*, and hence accepts responsibility for one's actions. A deontological rule is a rule that prohibits actions of a certain kind independent of the imagined consequences in the particular instance (cf., e.g., Hayek 1978, *New Studies*, p. 8). If a deontological rule guides our behavior, it is psychologically impossible to do certain things (a "taboo" on certain kinds of actions such as, e.g., stealing). The rule overrides the pure utility calculus. "Do not try to decide on the merits of the case", just

exclude certain types of political actions - simply because it is "psychologically impossible" to break the rule. (For instance, "Budget deficit is impossible", it is not done.) Jasay is probably right when he claims *that only such deontological rules can save us*.

## 7. On the democratic method of collective decision

"... political democracy is not enough. The market is a better guarantee of popular freedom ... Yet, if capitalism is to yield its best results, *so far unrealized anywhere*, the political process must be confined to the *minimal* duties of the state."

Arthur Seldon (1990, p. xii)

The possible constitutional rules can be classified into voting procedures and non-voting procedures. There is a spectrum of voting procedures ranging from "oligarchic" (a committee of at least two persons - as opposed to a "committee" of *all* persons in the set for which decisions are made) to unlimited democratic method (unqualified franchise, bare majority rule, unrestricted domain). If a "democratic" constitutional rule is practised only a few times, any outcome is possible. The longer it is practised the clearer its built-in bias will come through. In the absence of a deontological rule that gives primacy to freedom, the democratic method has as an inevitable by-product creeping socialism. Creeping socialism will progressively hamper and eventually destroy the free, private market order and abolish the freedom that goes with it. Since the free market order is one of the necessary conditions for the existence of democracy, the method is, in the long run, self-destructive.

Only a change in the political and moral climate could abolish the taboo on questions about the costs of democracy and about possible alternatives. (A taboo on questions is always obscurantist; it must not be confused with a taboo on certain types of actions.) Such a change might make it possible to reform the way in which we practice the

democratic method. However, talking about the way seems to imply that it is a contingent fact that we have practised democracy this way rather than that way. More caution appears advisable. It cannot be excluded that democracy has an internal logic which commands that there is only one equilibrium way of practising it, namely unlimited majority rule. If so, we would have to concede that the problem of distributing decision rights in a way favorable to the Free Society has not yet been solved. A systematic cost-benefit analysis of competing methods of collective decision making, for various problem areas, would be a first step to be taken.

Very likely in the countries that today are the ECCs democratization-speak was extremely valuable, perhaps indispensable, as one of the means of getting rid of the Communist rulers. The holistic myth of the "Divine Right of *the* People" was successfully opposed to the holistic myth of the avantgarde of the Party. Moreover, it may be that for many "democracy" functioned much like a Cargo Cult. For instance, the inhabitants of the former Soviet Germany or "German Democratic Republik" observed daily life in West Germany through television. They associated prosperity (economic democracy of the market), civil liberties (freedom of movement, etc.) with political democracy (vaguely defined as the myth of active citizenship - a myth that disregards the fact that shopping is more important to the citizen than voting - or undefined). Masses and opinion leaders may have made the hypothesis that it was mainly the democratic method that was the main cause of the two afore-said benefits. In addition their worship of "democracy" (undefined) secured them the sympathy of Western media and gave them an ideological weapon against bankrupt wholesale socialism.

An unhurried view of democratic constitutions might prompt one to submit the following proposals for consideration. (1) No representation without taxation (related to the accountability of elected bodies). (2) No right to vote without a certain experience of economic life - in competitive markets serving the costumer, not in "public" (political) services, where monopoly weakens or destroys the inducements to serve the costumer. To my knowledge the only argument in favor of *un*qualified franchise is that the method

of head counting is simpler than any other method of "selection". (3) For each problem to be solved by means of collective choice the question should be raised what qualifications of the participants in the decision process, the "voters", are relevant and required for increasing the chances that the decision will be "rational" or reasonable. (4) Recommendable is a second chamber that, as proposed by Hayek, is instituted in such a way as to counteract the short-termism of today's parliamentary democracy <sup>and</sup> shielded off ~~and~~ as well as possible from the blackmailing potential of rent-seeking interest groups.

In particular for the *transition* period the constitution of liberty should be kept at a distance from the democratic process. Otherwise the inevitable hardships of the transition to a free market will lead to attempts to push through changes of the Constitution of Liberty that would function as gates giving access to redistributive direct payoffs.

## Footnotes

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<sup>\*</sup> 1973, Vol. I, p. 57. Hayek refers to Carl Menger's *Probleme der Ökonomie und der Soziologie*, German original 1883.

<sup>\*\*</sup> As quoted in Boswell 1924, p. 351.

<sup>\*\*\*</sup> 1985, p. 232.

<sup>1</sup> The expression 'collective property' is an oxymoron since the core of the idea of Property is the identity of decision-maker, cost-bearer and benefit-receiver. 'Collective ownership' is a usage parasitic on the correct use of the expression and the concept of Property. Cf. Jasay 1991, ch. 4.

<sup>2</sup> 'Private rights' and 'privacy ethic', terms used by Jack Hirshleifer, are very appealing. Yet perhaps it should be pointed out that strictly speaking 'private rights' is a harmless pleonasm useful in communication. There are no collective rights. The same holds for the expression 'private property'. Strictly speaking, it is a pleonasm used to emphasize the core of the concept. Cf. the preceeding footnote.

<sup>3</sup> In the West the prevailing academic opinion does not appear to have turned around. It is amusing to read in the 13th edition of 1989 (sic!) of Paul A. Samuelson's famous textbook *Economics* that "... the Soviet economy is proof that, contrary to what many sceptics had earlier believed, a socialist command economy can function and even thrive." (p. 837). This dictum sounds like a late echo of Thomas Balogh (who became Economic Advisor to Harold Wilson in 1964) who wrote: "In Russia, the Communists have succeeded brilliantly ... It is this challenge which must in the end enforce modifications in our present policies". (*New Statesman* 12 December 1959). Incidentally, they have never apologized for their errors.

<sup>4</sup> Even Switzerland, often juxtaposed to the Swedish high tax society, has increasingly been suffering from creeping socialism. Cf., e.g., Moser 1991, Schwarz 1991, pp. 221-240.

<sup>5</sup> Hayek has always warned against the "destructive effect which the invocation of 'social justice' has had on our moral sensitivity" and told us: "... I have come to feel strongly that the greatest service I can still render to my fellow men would be that I could make the speakers and writers among them thoroughly ashamed ever again to employ the term 'social justice'." Hayek 1976, p. 97.

<sup>6</sup> That means even before the label 'Soziale Marktwirtschaft' was coined. For the history of the German concept see, e.g., Peacock and Willgerodt (eds.), 1989, Radnitzky 1991a.

<sup>7</sup> Sir Alfred Sherman, who was an advisor to the Thatcher government, pointed out that the electoral contest that brought her down "was precipitated by her defense of Britain's sovereignty against European importunities" (Sherman 1991, p. 517).

<sup>8</sup> Thus the *Eurobarometer* (Brussels: EC Commission, June 1990) reports that the "Community Charter of Social Rights" is considered to be "a good thing" by 75% in Holland, 60% in Germany, 67% in England, that 92% were in favor of EC regulations in health and safety work, 80% in favor of EC regulation on minimum income, 81% for workers participation ("Mitbestimmung" - a German invention and coinage like "Soziale Marktwirtschaft").

<sup>9</sup> Mr. J. K. Galbraith (later famous television economist and Professor at Harvard) then Chief of the Division of Occupied Areas in the U.S. State Department declared in March 1948 that "there never has been the slightest possibility of getting German recovery by this wholesale repeal" (Erhard's repeal of central planning and command economy) and by Erhard's recommendation that "the German economy should be freed from .. price controls ...". Cf. Galbraith 1948, pp. 94ff.

<sup>10</sup> In a lecture delivered in Antwerp in 1947 Erhard reported that the statistics showed that the purchasing power per caput in Germany was such that it permitted the purchase of a plate every 5 years, of a pair of shoes every 12 years, and of a suit every 50 years. The context of the turn of 1948 is described and analyzed in Lenel 1991. Cf. also Vaubel 1991.

<sup>11</sup> Of course, there is no guarantee that a spontaneous order is the best solution for the individual, the species or for a free society; but for a rule system that has evolved "spontaneously" the probability that it will foster freedom is greater than for a rule system that has been designed.

<sup>12</sup> For instance, according to the School of Swedish Realism (Hägerström, Lundstedt, Undén, Hammarskjöld) the individual has exactly those property rights that the majority of the day thinks he should have. No wonder that the Swedish Social Democratic Party has adopted the philosophy of that School as its intellectual basis and developed the doctrine of "socialism of function" (*funktionssocialism*).

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## ABSTRACT

### IN SEARCH FOR A TRANSITION TO A FREE SOCIETY

#### THE MARKET BEFORE POLITICS

(focus on EC and the ex-Communist countries)

Transition as a project involves three main problems: specifying the destination (i.e., explicating the concept of a free society, as an ideal type), identifying the point of departure (i.e., a diagnosis of the status quo in the countries under investigation), and an inventory of the means that might enable us to reach the destination. A tour d'horizon gives the impression that ALL existing societies need to make efforts to move in the direction of a less unfree society, that this search for a transition is a general task for the friends of the Free Society.

Section 1 clarifies the ideal type of Free Society. The type can function as a regulative principle even if it is unattainable. 2: To disarm the usual objection to normative political theory, that <sup>it</sup> is "unrealistic", political life is compared with intellectual life. 3: The distance from the ideal type varies widely. The focus of the paper is on "the West", the EC, and the ex-Communist countries, the ECCs. 3.2.: The political philosophy of the West (EC and also the USA) is dominated by the double myth of Social Market and Democratization. Democratization tends to strengthen the social component of the Social market; and eventually the free, private market may fade away like the Cheshire cat. Hence the West cannot provide a paragon for the ECCs. 3.3: On the other hand, it is not unlikely that in the ECCs sections of the population have been, through personal experience, immunized against the lure of all sorts of socialism,

including the creeping socialism of the Social Market. 4: Examination of the idea of a Social Market leads to the problem of the relationship between free, private market order and democracy. Clarifying the concept of democracy leads to the idea of a Constitution Liberty. Capitalism can fully develop its wealth-creating potential only if the political process is confined to the minimal duties of the state. The main instrument for keeping Leviathan's mandate limited, preferably minimal, is the Constitution of Liberty, a set of meta rules for rule making in collective decision that is guided by the idea of freedom. It sets out the "deontology of the State", outlining what the State <sup>(Anthony de Jasay's apt term)</sup> MUST, MAY and MUST NOT do. 5: However, if people are not disposed to keep to its rules, the constitution will be circumvented or changed. It may be a dangerous illusion to believe that constitutions can protect liberty against the creeping socialism that comes in through the backdoor of democracy, the trend towards unlimited democracy. The problem of the durability of the constitution leads to an examination of the dynamics of democracy (Jasey 1985, 1989, 1991). Everthing depends on the climate of opinion. 6: Hence, the classical liberals and libertarians, and the friends of the free society in general, who first placed their hope in the constitution will look around for other means. Educating the educable part of the population about the political economy of the Free Society is one of them. Moral education, i.e., outlining the values underlying capitalism and the free society, is another. It is an open question how<sup>1</sup> long a society without deontological rules can preserve freedom and even preserve itself. The choice remains subjective. Competition among states for valuable human capital is perhaps the best discipling force for all sorts of rulers (priests, princes, parliaments). Introducing a deontological element that in the political arena gives priority to freedom, to the "non-domination" principle, is another.