

THE INSTITUTIONAL DIMENSION OF HAYEK'S WORK

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Abstract: *Hayek is not an institutionalist in the usual sense. As he did not belong to any school, the relationship with institutionalism was not an exception. However Hayek alone is a school, a world of ideas. One having powerful contact points or interference areas that are both the object and subject of a complex research called NIE (New Institutional Economics) for more than three decades. Influence is not our concern here. However, we believe that if neoinstitutionalists considered him as one of „their own”, as Adam Smith should proceed, they would have a lot to gain. Being close to their names would bring them more glory. They have enough reasons to do it. Topics such as spontaneous and manufactured order, the type of order in a free society, the rules – source of the state, the source of good rules of conduct, etc., the fertile dialogue with spirit aristocrats such as Hayek or Smith could bring only gains.*

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1. INTRODUCTION

There is not a special work written by Hayek and especially dedicated to institutionalism. However, in the intimate texture of his impressive theoretical construct, institutionalism is omnipresent; present for explaining in an innovative manner the origin and evolution of the free world (including the economic one), of its fundamental institutions, especially the market and the state.

We cannot proceed to an exhaustive approach of what is believed to be the institutionalist dimension of the Hayekian work in this study. We will only deal with some „strong” subjects, most of them approached by the great Economics philosopher in his trilogy, *Law, Legislation and Liberty*.

From this magnificent work Hayek's institutionalism is an induced, collateral, reachable, non ostentatious and a generous one in its economic, political, psychological and even legal theory on **rules** and **order**. These are the key words that put Hayek in line with his great forerunners – A. Smith with his “invisible hand” and C. Merger with his organic and pragmatic institutions. Hayek remains “an individualist (methodologically and ontologically speaking)” (Leroux&Livet, 2005, p. 193). Moreover, in order to underline once more the register in which the great

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economist exposes his theory asserting that the 1st volume of his trilogy, *Law, Legislation and Liberty*, called *Rules and Order* opens with a motto, taken from Montesquieu, *De l'esprit des lois*, I p. I and which emblematically reads: "Intelligent beings may have laws of their own making; but they also have some which they never made".

2. SPONTANEOUS ORDER AND MANUFACTURED ORDER

Stopping at these pages of the first volume of his well known trilogy, we find out that for Hayek "*order describes a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest, or at least some expectations which have a good chance of proving correct*" (Hayek, 1978, p. 36).

If we have in view the fact that in a society, individuals cooperate to satisfy their needs, "*this matching of the intentions and expectations that determine the actions of different individuals*" (Hayek, 1978, p. 36), i.e. particularly what he understood as order in social life occurs as an **objective need**; society, regardless of its shape and development level cannot subsist outside of an order.

The order referred to by Hayek is not a monolithic one. Two "*reasons*", that is two sources lead to two major types of social order. The former is **organized** (taxis) and the latter is **spontaneous** (*kosmos*).

The former is **exogenous**, pertaining to an **arrangement** operated by a specific person, an authority; anyway, it is doubtful, from this point of view for the supporters of freedom, yet according to the spirit of the partisans of authoritarianism; based on an **imposed hierarchy** and on **obedience relations** to the superiors' will. It is a **particular, artificial** order that promotes a **prior established purpose**, by one's deliberate act of will. It is a relatively **simple** order in which existential evolution may be intuitively pursued.

The latter, the spontaneous one is **endogenous**; it comes from the inside and is not related to any **social engineering**. It is a normal, self-imposed order (*kosmos*), not one's deliberate work. **No clearly and precisely determined purposes** and finalities which convince the individual to "promote an end which was no part of his intention. Nor it is always the worse for the society that it was no part of it" (Smith, 1836, p.112). The quoted lines belong to Smith and are used by Hayek, in his turn, to reveal the similitude between his spontaneous order and Smith's natural order that arises under the "*guidance of the invisible hand*". Then, there is a complex order "*based on purely abstract relations*" (Hayek, 1978, p. 38), impossible to grasp by means of the intellect of a single individual; and even less likely to be manipulated in this way. It is precisely the abstract character that ensures **permanence** to spontaneous order; it persists even if the elements that ensure its organic texture

change; “a certain structure of relationships is maintained” (Hayek, 1978, p. 39), even if a number of components change their role and place. Based on the elements that ensure permanence, Hayek asserts “the constitution of intentionality”, of some “behavioural regularities” that come to maintain order.

3. FREE SOCIETY AND THE COEXISTENCE OF THE TWO TYPES OF ORDER

Hayek's works, i.e. not only the aforementioned trilogy, but also in his entire work highlight without doubt his preference for **spontaneous order**. Methodological individualism and liberal philosophy are employed to prove that the open, great society is especially one of manufactured, non deliberate order when it comes to norms. It would be preferable for it to occupy the entire social space. Unfortunately, Hayek and others must admit that “*the spontaneous order is made up of individuals and organizations*” (Hayek, 1978, p. 46) and, in other words, the Great Society is based on the existence of two inner types of order, the imposed and the spontaneous one. To be more precise, “*the family, the farm, the plant, the firm, the corporation and the various associations, and all the public institutions, including government, are organizations which in turn are integrated into a more comprehensive spontaneous order*” (Hayek, 1978, p. 46). The borders between the society components are not clearly delimited. The degree to which they combine so as to form the social mixture called **Open Society** is not “*a product of our imagination*”. However, “*there will often be a nucleus or several nuclei, of more closely related individuals, occupying a central position*” (Hayek, 1978, p. 47). Hayek is convinced that this dominance is produced in the sense of spontaneity, “*the forces creating spontaneous order*” being always stronger than the ones leading to imposed order. Anyway, the principal thesis upon which Hayek builds his approach is that we will always deal with a combination between spontaneous order and organizations. Yet, an organization never came to occupy the entire field. If she succeeded, this has not occurred in a complex society, but in a “*rudimentary*” one that entrusted a single mind the science and will to see, know, and understand everything. Beyond such experiments, in a normal society, “*the detail to decide*” remains the work of the individual. Doing otherwise equals to the replacement of spontaneous order by an organization, an unbalanced fact for the social organism. This happens because “*the spontaneous order arises from each element balancing all the various factors operating on it... a balance which will be destroyed if some of the actions are determined by another agency on the basis of different knowledge and in the service of different ends*” (Hayek, 1978, p. 51).

Hayek's **conclusion** seems to be found not in the aforementioned trilogy, but in another work, written later, in 1988 in which, in a more conciliatory tone, he admits that within the *macro-order*, “*deliberated organization*” has its means and importance (Hayek, 1988, p. 71). Only the configuration and the dimension of

components change. The shape of the whole is not affected. Even if organizations become stronger and their aims are shown in a braver and uncompromising manner, their fulfilment takes place within the same game, i.e. spontaneous order, a greater one, yet sharing the same functional mechanics.

4. RULES – SOURCE OF ORDER. THE STATE

Regardless of the shape, either spontaneous or manufactured, order has its source: its components obey certain **rules**, in their movement and functioning. Not the same rules, this is understandable. Some induce spontaneous order and are completely different from the praxis-type organized structure. Yet, regardless of our perspective of seeing things, what is important is that their respect equals the framing of multiple and various individual components in a trend, i.e. the acquisition of a **regularity**. As a matter of fact, if we were to look at the etymology of the word, Hayek prefers the term **regularity** to **rule** especially in the case of rules that lead to spontaneous order.

Hayek's belonging to institutionalism is related to his concern to define, explicitate, categorize and underline **the origin of rules**. As in the case of the two types of order and strongly related to these "end products" obtained by obeying the rules, Hayek divides rules in two major groups: **thesis** or rules of deliberated organization and **nomos** or rules of spontaneous order. **The former are deliberately created**, fulfilling the aim of edicts, instructions, **directives**, with very precise and concretely formulated purposes of the organizations. Their **prescriptive** nature is obvious. The ones in **the latter** category do not result from the will and deliberated action of any particular person. They do not have definite aims, they are **abstract**, independent of their circumstantial factuality of time and space. Their formation is related to spontaneous, not intentional. Therefore, they do not have a normative, but a prohibitive dimension. They simply occur as "**rules of conduct**" and are worth following on the way to the open society.

It is understandable that due to the logic of things, once fascinated by spontaneous order, Hayek remains an admirer of rules and their respect leads to such an order. He believes that a **first**, essential **attribute** is that "*they are observed in action without being known to the acting person in articulated («verbalized» or explicit) form*" (Hayek, 1978, p. 19). In other words, Hayek's actors are aware that their action takes place with the respect of certain rules; they believe that what they do is part of a trend that most of them accessed, that their action is a normal and positive one. Yet, as "*children who, by learning of language, are able to produce correctly most complicated expressions they have never heard before*" (Hayek, 1978, p. 19), social actors are not able to "verbalize", give sense to their action, even if this time they understand the purpose and logical substance of their approach. This occurs due to the **abstract** character of spontaneous rules. Abstract, yet indirectly

unidentifiable. This would be the **second attribute** of spontaneous rules: *“such rules come to be observed because in fact they give the group in which they are practiced superior strengths and not because this effect is known to those who are guided by them”* (Hayek, 1978, p. 19). The relationship between the visible and invisible part of rules is masterly grasped by Hayek when he presents the spontaneous order of free market to us, a conclusive and undoubting instance of the way in which spontaneous order always brings profit to the ones that win, once they are initiated to this game, *“a confrontation which follows the rules”* and show their superiority with respect to *“ability, force and chance”*. Here, in this laboratory which is a representative sample of spontaneous order and is called market, each individual is driven by a visible gain, serving invisible needs (Hayek, 1976).

Aiming for spontaneous order to completely cover the economic and social organism, Hayek similarly seeks the ideal state on this set of rules defined by the exclusive right to existence for spontaneous rules. He hates constraint and is forced to admit it only when a common good is involved. Here, in this point, Hayek is tempted to put the identity mark between common utility and justice (see Elleboode&Houliez, 2006, p. 49), underlining that *“it was well understood through most of history that the prime public concern must be directed not towards particular known needs but towards the conditions for the preservation of a spontaneous order which enables the individuals to provide for their needs in manners not known to authority”* (Hayek, 1976, p. 2). In other words, justice is a common good that all individuals should benefit from, people's actions being the only ones considered as just or unjust. Not order, either spontaneous or not is the one to receive the feature of just. According to Hayek, only the individuals' actions carried out according to the rules that lead to spontaneous order are just. Within such a democracy, Hayek comes to talk about *“the mirage of social justice”*, a major theme of the second volume of his trilogy.

Dreaming at the ideal state, Hayek is forced to admit that, even in the case of rules, the spontaneous feature is not the only one, regardless of its importance. Consequently, he is forced to admit that for society to exist and social life to be possible, a certain order is needed. In other words, there are rules beyond our understanding that make social life possible. But this is not all. It is not only a question of the power of understanding, but also of the will of certain members of the citadel. Hayek is convinced that the good functioning of society depends on the individuals' acceptance and respect of rules stipulating conventions, norms, and not to the way in which they take the shape on *“their spirit”*. In order to exemplify this, Hayek does not hesitate when asserting that *“some such rules all individuals of a society will obey because of the similar manner in which their environment represents itself to their minds. Other they will follow spontaneously because they will be part of their common cultural tradition. But there will be still others which*

they may have to be made to obey, since, although it would be in the interest of each to disregard them, the overall order on which the success of their actions depends will arise only if these rules are generally followed" (Hayek, 1978, p. 45).

Rules that individuals "are forced to obey" are especially those concerning them all, and not each of them in part, rules related to norms, without any direct link to the individuals' particular wishes. According to Hayek, these are the "**rules of law**" with a "*deliberate origin*", necessary to carry out "*the balance work*" with respect to the life of the citadel; asked only where, by their abstract character, the individual does not see the factors that the achievement of his particular interest depends on and the way in which fulfilling this goal may have effects on others.

"*Ungrateful*" in their nature, the rules of law must be **imposed**. The government is entrusted this mission. It has "*the task of enforcing the rules on which the order rests*" (Hayek, 1978, p. 48). This is **one** of the functions of government, the **coercive**, unwanted but requisite one. This is a function that, once assumed, ensures the government the character of **warrant of the laws**, their formality, sanction, perfection and appliance. However, the government has one more function, i.e. a **service** one, which, in Hayek's opinion resembles that of a "*factory service*", the "*factory*" being the society, in this case. The government has the possibility to be a service provider because, in its turn, it is an "*organized order*" based on rules, instruments and operational structures. This is one of those organizations which may turn against society, precisely due to its degree of perfection or its perception as distinct unit beyond people who actually bring it to life, as Mises also underlines. Moreover, this may be due to its possessive, suffocating force that can be identified with the socialist "*barrack society*", instruments of monstrosity. In order to concisely reveal the monstrosity of any totalitarian ideology promoted by such an organization of the acquisitive State-government, Hayek quotes the founder of the first totalitarian state in a motto. We call him V.I. Lenin who, as ruler of the first state that successfully proclaimed its freedom, strongly claimed:

"The whole society will have become a single office and a single factory with equality of work and equality of pay" (quoted by Hayek, 2001, p. 123).

Hayek based his argument on the fact that such tendencies will be prevented by the prior set-up of the state, government, its perception as an organization, among others and its **inclusion** in the general spontaneous order; its submission to common laws, with its internal and organizational regulations and work instruments. Only this is the true state. The other, opposed path is servitude. As the process of government "*autonomizing*" within spontaneous order such as the identification of the government with the state, or even society in order to show that the first one is an organization and the second means spontaneous order (Hayek, 1978, p. 48).

There are current issues, even tempting ones for some and Hayek needs to explicate, once more and speak about the two functions as belonging to the same

organization – the government, only within the globalizing framework that spontaneous order gives.

5. THE SOURCE OF GOOD RULES OF CONDUCT

Hayek may be claimed by institutionalists not only for his efficient concerns on the classification of rules and the two types of social order determined by these rules. He was particularly interested in the origin of rules. In the context in which he considered the origin of deliberated rules as a common place that is easy to understand, he believed it was interesting to make the sources of abstract rules leading to spontaneous order known.

Hayek was not in favour of “deliberately adopted” rules. He rather stops on the first and second floor (especially on the second one) to approach the birth and affirmation process of the institutions (rules) from an **evolutionist** perspective in his works suggestively called *Process of Cultural Evolution*, *Evolution of Self Maintaining Complex Systems* and *The Stratification of Rules of Conduct* (Hayek, 1981). Notions such as **cultural evolution, practice filtering, selection, imitation or individual innovations** are key words which synthetically define Hayekian discourse. It is a discourse in which the author is not ashamed of proclaiming his line of thought as compatible to Darwin's one. On the contrary, he even believes that Darwinism was inspired from social theory and not vice versa.

In their primary origin, good rules of conduct are “*individual innovations*”; they start from individuals and spread only when important groups which are significant as a quota sample put them into practice, thus imposing a distinct “*cultural tradition*”. After their appliance and pursuit, when that particular group gains ascendance and prosperity, other groups **imitate** it and rules of conduct spread. It is precisely success, the final result which usually gives to “*the cultural heritage...a complex of practices or rules of conduct*” the character of worthy generalizing **institution**. “*These rules of conduct have, thus, not developed as the recognized conditions for the achievement of a known purpose, but have evolved because the groups who practiced them were more successful and displaced others*” (Hayek, 1978, p. 18). Hayek's almost excessive care to clear out the sense of the process, its “rise” must be observed and remembered here; the fact that it naturally and commonly “flows”, departing from individual innovations and continuing with their institutionalizing only in the context of success. There is no **establishment process** and such a process could not be omitted; all is the result of an evolution process in which evolution and selection operates on and from the results obtained by certain social groups by using particular initially specific, individual rules. Following the Darwinist line and approaching Menger to justify his assertions, Hayek clearly fixes the origin, sense and final result of the process in which

individual, even genetically accountable rules become general good rules of conduct.

Hence **selection**, **adaptation** and **imitation** are not omitted from the explanatory Hayekian framework. Selection acts at the level of “detail circumstances”. Individual responses to these individual circumstances acquire the status of a rule when the latter is likely to produce an order. How can individual responses start resembling and how can they acquire an abstract dimension? By means of the other groups’ imitation of the rules that brought success to the initial group. Imitation and generalization, by extension, is the way in which an intuitively discovered rule or transmitted through “*cultural evolution*” may acquire universal features, generating a new spontaneous and evolution of the society. And all this in a process which is spontaneous in itself, starting in an individual innovation, filtered by the gain differences which prove to be the most efficient for the social organism.

6. SHORT ASSESSMENTS AND CRITIQUES

Hayekian intuition in the discovery of spontaneous order and rule origin, on the path of social causality, on which such an order rests proved to be prolific and inspiring. All evolutionist neoinstitutionalists followed him, without hesitating to invoke both him and Darwin when they needed a sustaining argument. Those who employ game theory to explain the origin and behaviour of institutions, similarly refer to Hayekian “*biology*” to render their discourse more trustworthy. Then all that try to explain the internal dynamics of free world, the rise of open society, starting from Karl Popper must also use Hayek.

This does not mean that there are no detractors. Usually, the assumed incompatibility between methodological Hayekian individualism, on one hand and the appeal of the most anti group, anti whole and anti collective discourse, on the other hand is made at the level of “*social groups*”. Who will read his entire work will easily notice that the aforementioned incompatibility is only apparent.

There are also attempts to question the evolutionist theory and the pretended Hayekian rationalism in the cultural evolution of societies. For instance, Hans Hermann Hoppe claims that “*Hayek’s anti-rationalism is expressed in his «theory of social evolution» where purposeful action and self-interest, trial, error and learning, force and freedom as well as state and market (society) have been systematically eliminated as explanatory factors of social change and replaced with an obscure «spontaneity» and a collectivistic-holistic-organizistic principle of «cultural group selection»*” (Hoppe, 1994, p. 73-74).

The “*force*” of Hopper’s critique which I considered as representative for this type of critiques brought to Hayek (also see Salerno, 1990) is based on a well known principle that is, decontextualization. If he were to refer to the whole, he would see

that his words do not stand a chance in diminishing the grandeur and logics of the construction. Hayek is difficult to read and understand. He may seem obscure but this is only due to his unequalled power of abstractization and not due to the fact that he lacked correct understanding of things. Yet, even if he does not admit these critiques, Hayek is forgiven for the presumptive methodological and explanatory gaps pertaining to the force of things and the evolution of facts. And this evolution “flows” from the inside, through the selection that “*cultural groups*” operate according to the principle of result efficiency, without exogenous interferences.

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