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# **The Freedom of the Prices: Hayek's Road to Serfdom Reassessed**

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# The Freedom of the Prices: Hayek's *Road to Serfdom* Reassessed

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Abstract: Recent debate has centered around the contemporary relevance and even the original validity of F. A. Hayek's *Road to Serfdom*. Was that book directed against command socialism only or against welfare-state interventionism as well? In either case, should the book even be read anymore? This essay takes a step back from the dichotomy between socialism and interventionism and explores two specific ideas of Hayek's which deserve renewed attention: first, his claim that economic liberty is the fundamental liberty and that political liberty is merely secondary in value. Second, Hayek's conception of the rule-of-law, which has implications for contemporary command-and-control regulation. Furthermore, that Hayek's normative defense of the rule-of-law in the *Road to Serfdom* is related to his positive theory of prices and economic calculation in "The Use of Knowledge in Society." While Hayek's specific target in the *Road to Serfdom* was command socialism, his book embodied arguments which are more widely applicable and relevant today.

Keywords: rule of law; liberty; freedom; rights; price system

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In a series of recent essays, Andrew Farrant and Edward McPhail have questioned the value of F. A. Hayek's *Road to Serfdom* (2007 [1944]).<sup>1</sup> Farrant and McPhail dispute Caldwell's (2007:30f), claim that Hayek's *Road to Serfdom* was directed solely against full-blown command planning and socialism.<sup>2</sup> Instead, Farrant and McPhail say, Hayek himself claimed, in subsequent writings, that his arguments in the *Road to Serfdom* applied to the contemporary welfare state or mixed economy as well. Because the welfare state has obviously not resulted in Soviet- or Nazi-style totalitarianism, Farrant and McPhail say, Hayek's arguments must be mistaken. Similarly, Farrant and McPhail also reject the claim (Caldwell 2011, Boettke and Snow 2012) that *Road to Serfdom*'s criticism of central planning must be distinguished from Hayek's milder criticism of the welfare state in *The Constitution of Liberty* (2011 [1960]) and in *Law, Legislation, and Liberty* (1973a, 1976a, 1979). Caldwell (2011, 1997:1866-1871) and Boettke and Snow (2012) argue that *Road to Serfdom* must be understood in its specific historical and institutional context – that it must not be confused with Hayek's later works, which are more relevant to the political situation today. Farrant and McPhail claim that Hayek himself considered all his works to relate to a single, ongoing theme, and that in Hayek's view, the same arguments apply against both command planning and the welfare state or mixed economy. Furthermore, they say, even if Caldwell is correct that *Road to Serfdom* was directed solely against command planning, this would render *Road to Serfdom* irrelevant to contemporary political issues. According to Farrant and McPhail, one cannot simultaneously argue – as Caldwell does – that *Road to Serfdom* was written about an obsolete, defunct form of socialism and yet that the book is also contemporarily relevant. In response, Boettke and Snow (2012) have argued that Farrant and McPhail misunderstand and under-appreciate Hayek's arguments.<sup>3</sup>

This essay will contribute to the defense of Hayek by Caldwell (2007, 2011), Boettke (1995), and Boettke and Snow (2012). Rather than replying point-by-point to Farrant and McPhail, instead, I will elaborate on two specific features of Hayek's works which I believe have been under-appreciated

or misunderstood. Thus, I will implicitly respond to Farrant and McPhail's claim that *Road to Serfdom* is irrelevant by highlighting features which I believe deserve renewed attention. I will point out only some of the broader implications, for my purpose is to be suggestive, not comprehensive. I do not aim to refute every single remark by Farrant and McPhail nor definitively defend Hayek, but instead, I hope to move the discussion of Hayek to another plane to facilitate constructive debate. Throughout this essay, I will be making constant reference to Hayek's other books and essays on political philosophy, for they constitute the continuation and culmination of the research program which Hayek began in the *Road to Serfdom*. Thus, I claim that while *Road to Serfdom* was indeed written about command planning (Caldwell 2007:30f., 2011; Boettke and Snow 2012; Godard 2013), it embodies novel claim about economics and politics which are more broadly relevant (cf. Boettk 1995). In his later writings, Hayek himself adapted his own arguments against command planning in *Road to Serfdom* and applied them to the contemporary mixed economy. Indeed, in postwar Germany, the *Road to Serfdom* was received, not as a conservative reaction against socialism, but as progressive and revolutionary advocacy for free-markets (Godard 2013). I hope to rehabilitate this German version of his legacy.

Section I demonstrates that according to Hayek, economic liberty is *the* fundamental liberty – that political liberty and democratic representation are merely secondary in value. In section II, I argue that Hayek's conception of the rule-of-law in the *Road to Serfdom* has important implications for the contemporary regulatory state because command-and-control regulation is a “light” form of command socialism. Furthermore, I argue that Hayek's normative defense of the rule-of-law is related to his positive economic views on economic calculation and the price-system.

## I. ECONOMIC AND POLITICAL LIBERTY

One of Hayek's central claims in *Road to Serfdom* is that *all* planning and economic intervention is necessarily coercive: it is impossible to interfere in the economy without interfering in

individual people's lives. Boettke (1995:11) takes brief notice of this feature but he does not explore it in any great detail, merely quoting one statement by Hayek without offering any commentary or explanation. Lawson and Clark (2010), in an empirical examination of the Hayek-Friedman claim that political freedom cannot endure without prior economic freedom, do not mention the importance Hayek placed on economic freedom for its own sake. In fact, they appear to imply that Hayek ranked political freedom particularly highly (Lawson and Clark 2010:231):

Hayek, writing immediately after World War II, appeared more concerned with the trappings of traditional political democracy: freedom to vote, run for office, organize political parties, etc. Friedman, writing in the early 1960s, appears equally concerned with a broader array of civil liberties and, indeed, often downplays the role of formal political rights like voting (e.g., in Hong Kong).

But in fact, Hayek – like Friedman – discounted the value of formal political rights, emphasizing instead the importance of economic rights. According to Hayek, economic planning and intervention entail making people's decisions for them. Crucially, this is true of both full-blown command planning as well as piecemeal intervention (Huerta de Soto 2010:83-87). As Hayek notes, many of the planners have failed to realize these facts. “The consolation our planners offer us is that this authoritarian direction will apply 'only' to economic matters” (2007 [1944]:124). But this reply is based on “the erroneous belief that there are purely economic ends separate from the other ends of life” (Hayek 2007 [1944]:125). Economics is simply choosing those means which are best at accomplishing given ends. Hayek thus agreed with Mises (1981 [1922]:107) that in this sense, every aspect of life is economic. For example, it is impossible to learn and obtain knowledge without access to physical books or classrooms. For government to plan the production of books and classrooms is to plan the terms and conditions on which people will be able to obtain knowledge. Or as Milton Friedman famously pointed out (1962:16-18), freedom of speech cannot be maintained when the government owns all the printing presses (cf. Hayek 1973c:149, Rothbard 1977:26, Mises 1981 [1922]:538).

Therefore, Hayek (2007 [1944]:126) states, economic planning raises the question of “whether it shall be we who decide what is more, and what is less, important for us, or whether this is to be decided by the planners.” “The authority directing all economic activity . . . would control the allocation of the limited means for all our ends” (Hayek 2007 [1944]:126). “Economic control is not merely control of a sector of human life which can be separated from the rest; it is the control of the means for all our ends” (Hayek 2007 [1944]:127, quoted in Boettke 1995:11).

Similarly, when Marx said that “in place of the government over persons comes the administration of things,” Mises (1981 [1922]:73) replied, “there can be no administration of goods which is not administration of men – i.e. the bending of one human will to another – and no direction of productive processes which is not the government over persons – i.e. domination of one human will by another.” Furthermore, Mises said (1981 [1922]:493),

Whatever people do in the market economy, is the execution of their own plans. In this sense every human action means planning. What those calling themselves planners advocate is not the substitution of planned action for letting things go. It is the substitution of the planner's own plan for the plans of his fellow men.

This passage by Mises is reminiscent of something Hayek often said, *viz.* that the question is not planning versus no planning, but rather, the question is, who plans? Are individuals permitted to plan their own lives, or will the government plan their lives for them? Hayek summarized his argument by prefacing his chapter (“Economic Control and Totalitarianism” in the *Road to Serfdom*) with this quotation from Hilaire Belloc: “The control of the production of wealth is the control of human life itself” (Hayek 2007 [1944]:124).

It may be difficult for some philosophers to understand why economic liberty is so important for its own sake according to Mises and Hayek. As Brennan (2014:80) notes, “Some philosophers – themselves never having owned a business – might have a hard time understanding these kinds of desires.” In response, Brennan (2014:78) explains that people “have ideas and visions that they want to

implement. Pursuing projects over the long term is often part (if not the only part) of what gives coherence and meaning to their lives.” Pursuing these projects requires physical means, and so “They also want to be able to use, give-away, sell, and in some cases, destroy these objects, as part of their pursuit of their visions of the good life” (Brennan 2014:79f.). Many philosophers believe that the fundamental human liberties are precisely those which a philosopher uses in his daily life to pursue his scholarly studies, such as the freedom of speech. They cannot understand why the freedom to own private property is so important. Brennan (2014:80) continues, “But if that philosopher can understand why one might want to write a book by oneself, rather than with co-authors or by a committee, the philosopher can similarly understand why someone might want to own a factory or a farm or a store.” It is private property which allows us to pursue our dreams, express ourselves, and achieve self-actualization. Citing John Tomasi, Brennan (2014:92) continues, “people have an interest in being 'self-authors,' that is, in choosing a conception of the good life and finding the means to achieve that conception.” Like Brennan, Mises and Hayek argue that economic liberty is essential because it implies the individual's freedom of access to the means for accomplishing his ends.

There is a second reason why the fundamental liberties ultimately reduce to economic liberties. All economic phenomena are interrelated, and any intervention in one area of the economy produces unintended consequences elsewhere. Mises (1996 [1929], 1998, 1974 [1950]) had famously argued that price-controls especially tend to produce this dynamic of interventionism. Price floors and ceilings lead to unintended and undesired shortages and surpluses, in turn motivating additional interventions to fix those problems caused by price-controls. According to Mises, one price-control leads to another until every price in the entire economy is controlled or supplanted by command-and-control, resulting in *de facto* socialism (cf. Mises 1974 [1950]). More generally, we can state that any intervention – not only price-controls – will lead to unintended consequences which often motivate additional interventions.<sup>4</sup> Hayek noted this in the *Road to Serfdom*, saying (2007 [1944]:137), “the close interdependence of all economic phenomena makes it difficult to stop planning just where we wish and that, once the free

working of the market is impeded beyond a certain degree, the planner will be forced to extend his controls until they become all-comprehensive.”<sup>5</sup> Hayek criticized J. S. “Mill's Muddle,” the mistaken notion that production and distribution could be disconnected from one another (Ebeling 1977:11, Hayek 1967c:91f.). The same market prices which distribute the product also incentivize its maximization. Therefore, interference with prices and market-based distribution will alter production as well, resulting in the production of a different amount – usually smaller – of different – usually inferior – goods.

Thus, while different interventions will have different consequences, the fundamental fact is – according to Hayek – that *all* interventions negate individual freedom to one degree or another. Price-controls, command-and-control regulation, and discriminatory taxation all deny freedom more than simple redistribution of wealth and neutral taxation, because they interfere more with the autonomy of individual decision-making and planning (cf. Ikeda 2015:409, 414). But above all, every government intervention entails making people's decisions for them – planning their lives in their steads. Moreover, one intervention tends to beget another due to the law of unintended consequences.

Hayek's argument is not merely that certain kinds of intervention tend to produce political side-effects which eventually lead to the non-democratic aspects totalitarianism – although Hayek certainly does believe this. Lawson and Clark (2010:231) say Hayek “appear[s] to adhere to a proto-public choice argument that 'power corrupts.'” Indeed, the famous quotation by Acton introduces Hayek's chapter on “Why the Worst Get on Top” (2007 [1944]:157).<sup>6</sup> But this is not the central argument of Hayek's book. Instead, and more importantly, Hayek argues that every economic intervention itself inherently and directly compromises freedom. It is not merely that democratic elections cannot be sustained after a long train of economic interventions – although Hayek does claim this – but rather, Hayek says, individual liberty is undermined by the economic interventions themselves. It is fundamentally mistaken to believe that Hayek criticizes economic interventions primarily because they tend to eventually compromise democracy and suffrage. Rather, Hayek argues that economic liberty is



the fundamental liberty, and political liberty is valuable only insofar as it helps guarantee economic liberty.

Consider what Hayek says about democracy in *The Road to Serfdom* (2007 [1944]: 110f.),

Democracy is essentially a means, a utilitarian device for safeguarding internal peace and individual freedom. As such it is by no means infallible or certain. . . . [There is] the misleading and unfounded belief that, so long as the ultimate source of power is the will of the majority, the power cannot be arbitrary. . . . If democracy resolves on a task which necessarily involves the use of power which cannot be guided by fixed rules, it must become an arbitrary power.

For Hayek, democracy and suffrage have merely instrumental value. The fundamental desideratum is economic liberty. Democratic participation in the political process is not valuable for its own sake, but only insofar as it restricts the scope of government power and reduces the extent of political intervention in the economy. According to Hayek, democracy is merely a means, not an end. The primary goal is limitation of government to preserve economic liberty. Thus, in *The Constitution of Liberty*, he added (2011 [1960]:167), “Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law. . . . [Liberalism] accepts majority rule as a method of deciding, but not as an authority for what the decision ought to be.” Democracy may be a valid and important means of limiting political power, but ultimately, political decisions are to be guided by the fundamental principle that economic liberty is sacrosanct.

This explains why, in an encyclopedia article on the liberal philosophy, in the section on democracy (1973c:142-144), Hayek devoted three paragraphs to discussing how limitation of power takes precedence over democracy, and only one paragraph to how democracy itself cannot survive – giving way to authoritarianism – when political power is not limited. The latter claim is often considered the heart of *Road to Serfdom*, but Hayek clearly believed this claim was of merely secondary importance. Furthermore, Hayek famously declared (1976b:154),

I must confess to preferring non-democratic government under the law to unlimited (and therefore essentially lawless) democratic government. Government under the law seems to me to be the higher value, which it was once hoped that democratic watch-dogs would preserve.

For Hayek, the truly important thing is that the government's activities be restricted by the rule-of-law in order to ensure economic liberty. Political liberty – meaning democracy and widespread suffrage – are valuable only insofar as they help guarantee economic liberty. Hayek lamented the fact that democratic suffrage was confused with limitation of government. In his words, (1976b:153; cf. Hayek 1979:3),<sup>7</sup>

Thus arose unlimited democracy . . . [from the belief] that the control of government by elected representatives of the majority made any other checks on the powers of government unnecessary, so that all the various constitutional safeguards which had been developed in the course of time could be dispensed with.

Thus, it is profound misinterpretation of Hayek to claim that he criticizes economic interventions merely because they tend to eventually require the abandonment of democracy. Such an interpretation assumes Hayek valued democracy *per se* more than he actually did. Nor was Hayek alone in discounting the value of democracy, for others as well have argued that limitation of political power is more important than democratic representation. For example, in a textbook on basic political theory, Hague and Harrop (2007: 49) write,

[L]iberal democracy is a compromise. Specifically, it seeks to integrate the authority of democratic governments with simultaneous limits on their scope. By definition, liberal democracy is limited government. ... Elected rulers are subject to constitutions that usually include a statement of individual rights. ... In these respects, a liberal democracy is democracy disarmed.

Hague and Harrop argue that liberal democracy is liberal precisely because it is not fully democratic.

Indeed, Hague and Harrop (2007: 49) say, the United States is “the most liberal (and perhaps the least democratic) of all the liberal democracies.” Liberal democracy, according to Hague and Harrop, implies that certain areas of life are excluded from democratic decision-making. This is in line with what was said by Hayek's fellow ordo-liberal (Kolev 2010), Wilhelm Röpke (1998 [1957]:69):

Democracy is, in the long run, compatible with freedom only on condition that all, or at least most, voters are agreed that certain supreme norms and principles of public life and economic order must remain outside the sphere of democratic decisions.

Furthermore, according to Hayek (1973b:108), this tension between limited government and democracy goes back to the founding of the liberal philosophy, which already placed precedence for the one over the other:

For Locke, and for the later theorists of Whiggism and the separation of powers, it was not so much the source from which the laws originated as their character of general rules of just conduct equally applicable to all which justified their coercive application.

Edward S. Corwin (1955: 4), discussing the foundational philosophy of America agrees, saying:

The attribution of supremacy to the Constitution on the ground solely of its rootage in popular will represents, however, a comparatively late outgrowth of American constitutional theory. Earlier the supremacy accorded to constitutions was ascribed less to their putative source than to their supposed content, to their embodiment of an essential and unchanging justice. . . . There are, it is predicated, certain principles of right and justice which are entitled to prevail of their own intrinsic excellence, all together regardless of the attitude of those who wield the physical resources of the community.

What Hayek argued was that human freedom and liberty require that a private sphere be carved out in which individuals may act for themselves and plan their own lives, safe from government interference. Political liberty, according to Hayek, exists insofar as the political system successfully

safeguards economic liberty. On the one hand, political liberty entails a government which promotes economic liberty by preventing such private crimes as murder, theft, and fraud as well as by enforcing contracts. But at the same time, political liberty implies protection against incursions by the government itself, such as illegitimate or excessive taxation and regulation. Thus, political liberty necessarily entails limitation of government but it does not necessarily imply democracy. Democracy is valuable only as a means to the higher end of limiting government. Sometimes, the limitation of political power actually requires the limitation of democracy.

But this aspect of Hayek's thought has been neglected. As we have noted, Lawson and Clark (2010:231) argue that compared to Friedman, Hayek places a high value on formal political rights. In reality, Hayek is less concerned with the political side-effects of reductions of economic liberty. Instead, he is more concerned with the loss of economic liberty itself. The chief problem is not abuse of political power or suspension of democracy and suffrage – although Hayek is certainly concerned with these things. Instead, Hayek believed, economic liberty is itself *the* fundamental value, and any political side-effects are of secondary concern. Neither do Farrant and McPhail, in their several essays, offer any significant discussion of this aspect of Hayek's thought.

This misunderstanding of Hayek is evident in E. F. M. Durbin (1945)'s response to Hayek's *Road to Serfdom* as well. According to Durbin (1945:360), Hayek wrongly assumed that “planning” means comprehensive planning, specifying the precise quantities and destinations of every nut and bolt. But in fact, Durbin (1945:360) says, “planning” in the popular sense means only “a principle of administration and not an inflexible budget of production.” According to Durbin (1945:361),

The final responsibility for taking economic decisions is transferred from the private company or group of shareholders to the representatives of the community sitting upon the Board of a Public Corporation – who are, in their turn, answerable to some Supreme Economic Authority dependent on a Parliament freely elected by the people.

But Durbin does not answer the question which Hayek would have considered fundamental: will these

public officials make the same decisions as private market actors would have, or not? (cf. Leoni 2009 [1965]:67). If the political decisions differ from the private ones, then economic liberty has been compromised. Durbin believes he can refute Hayek by distinguishing between comprehensive planning and piecemeal intervention and regulation. But Hayek's argument was that any form of planning or intervention is objectionable simply because political decision-making displaces private decision-making. The more government plans, the less individuals can. Durbin claims it sufficient that the political authority will be democratically elected, but Hayek already argued this is irrelevant. The question is not whether the political officials are democratically elected or not, but whether they deny individuals the ability to make private economic decisions for themselves. Durbin pleads that *Road to Serfdom*'s criticism of comprehensive central-planning is misplaced because "[b]y 'economic planning,' I repeat, we mean a change in the direction of responsibility" (Durbin 1945:362). But it is precisely this "change in the direction of responsibility" which Hayek objected to. Durbin continues (1945:364) that, "We are politically free because we share in forming the laws, not because we can do what we like." But for Hayek, it is precisely when "we can do what we like" that we are free. Our "share in forming the laws" is valuable only insofar as it helps ensure that "we can do what we like." For Durbin, economic liberty is merely secondary in value, and it is democratic suffrage which takes precedence, whereas the exact opposite is true for Hayek. According to Durbin's logic, we could be politically free if we shared in forming the laws which enslaved us, even if we couldn't do what we like. Hayek might have responded that freedom means more than electing one's slavemaster.

Durbin does not merely disagree with Hayek, but rather, he fundamentally misunderstands his point. According to Durbin (1945:368), Hayek's argument on the relationship between economic and political liberty is "historical," based merely on the fact that historically, economic and political liberty have been expanded simultaneously. Therefore, Durbin (1945:368) says, Hayek's argument is "a plain case of *post hoc, ergo propter hoc*." But this is not at all what Hayek means. Hayek's claim is not that historically, economic and political liberty have grown up together. Instead, Hayek's claim is that

economic liberty alone is the true, fundamental form of liberty. His argument is not historical, but logical and philosophical. According to Hayek, economic liberty takes precedence over political liberty simply because economic liberty is more important. The individual's freedom to plan his own private economic decisions is more valuable than his ability to vote. In fact, the purpose of voting is merely to help the individual protect his own private economic autonomy.

For another example, consider David Schweickart's (1992:19, 22) proposal for an economic democracy to centrally direct investment.<sup>8</sup> Schweickart claims that this would avoid the totalitarian problem of comprehensive economic planning. But to control investment is to control everything. As Hayek said, "The basic decision must be at the center so long as the allocation of capital comes from the center. If nobody except for the government is allowed to own capital it is the government which decides all of the ultimate questions" (Ebeling 1977:11). Schweickart believes that as long as the government does not engage in Stalinist comprehensive planning, liberty is safe. But Hayek responds that the key is that whenever government – no matter how democratic – makes any decision at all, it threatens the abilities of individuals to privately make economic decisions in their own lives. Hence, the distinction between command planning and mere intervention evades the fundamental issue, *viz.*: that regardless of the specific political structure of decision-making, every political intervention denies the abilities of individual people to make private economic decisions (Huerta de Soto 2010:83-87). This is true even though not all interventions do so in the same way or to the same degree. Hayek would not have claimed that Schweickart's economic democracy would have necessarily led to gulags and concentration camps. Instead, Hayek would have simply replied that if government decides investment, then private individuals do not. Every additional decision made by government means one less economic decision made by a private individual in his own personal life. Or as Milton Friedman famously demonstrated, government fiscal policy crowds out private investment.

These two examples – Durbin and Schweickart – help us to reevaluate one of Farrant and McPhail's claims against Hayek. They (F&M 2011a:102 / M&F 2013:969, 2012:424) quote Toye's

statement that “Attlee government’s policy in the 1940’s was merely interventionism under the barest veneer of planning.” Like Durbin, Farrant and McPhail believe the distinction between intervention and comprehensive planning is crucial, and that Hayek’s arguments in the *Road to Serfdom* are relevant only to comprehensive planning but fail to make any mark against mere intervention. According to both Durbin as well as Farrant and McPhail, Hayek’s criticism of command planning was therefore irrelevant to contemporary interventionist Britain. But the question is, will political officials do the same things as the capitalist executives would have, or not? Will political interventions override individual decision-making, or not? If political officials make the same decisions as the capitalist executives would have, then they are superfluous. But if they make different decisions, then they override consumer sovereignty and violate economic liberty. Either the government’s arbitrary regulations, price-controls, and interventions overrule the market or they do not (cf. Leoni 2009 [1965]:67). As the socialist Maurice Dobb said “Either planning means overriding the autonomy of separate decisions, or it apparently means nothing at all” (quoted in Hoff 1981:267 and Huerta de Soto 2010:267n41; cf. Hayek 1948:158).<sup>9</sup> Therefore, Hayek claimed, if our goal is to maximize individual freedom, all forms of intervention are suspect – including social democracy, democratic socialism, market socialism, and economic democracy (cf. Huerta de Soto 2010:83-87).

Obviously, to explain Hayek is not necessarily to justify him, and some may still disagree with him. Perhaps some will insist that democratic suffrage really is more important than one’s ability to make private economic decisions. But before one can criticize Hayek, one must understand him. So far, the debates over Hayek’s legacy have failed to appreciate Hayek’s fundamental belief that regulations and economic interventions are inherently objectionable, not merely because they produce undesirably political side-effects – although they do – but primarily because economic liberty is *the* fundamental liberty. According to Hayek, economic liberty is valuable for its own sake, and political liberty possesses merely an instrumental value. Democracy and suffrage are desirable, according to Hayek, only insofar as they assist in limiting political power and the extent of political intervention in the

economy. Perhaps future debates over Hayek's legacy will be more fruitful if they explicitly take these facts into account.

## II. THE RULE-OF-LAW

The second idea of Hayek's which deserves renewed attention is his conception of the rule-of-law. In his 1956 preface to the *Road to Serfdom* (2007 [1944]:45), Hayek referred to this chapter (2007 [1944]:112-123) as the central chapter of the book. According to Hayek, the rule-of-law entails general, purpose-independent laws which apply to everyone equally. Being purpose-independent, these laws cannot single out specific individuals, nor can they specify the activities which individuals ought engage in. These are general rules of just conduct equally applicable to all, laying down a framework within which individuals are free to make decisions for themselves. Like the rules of sports, legitimate law must establish only the rules of game but refrain from commanding economic actors how to play the game. Or to take Hayek's own example, the rules of the road constrain the manner in which one must drive but do not specify any specific destination (Hayek 2007 [1944]:113). Individuals must be free to make decisions for themselves within the framework of the general, non-discriminatory rule-of-law.<sup>10</sup> Hayek's conception of the rule-of-law may be understood as providing the legal framework for limiting government in order to protect the economic liberty of individuals to make decisions for themselves.

According to Hayek, laws must be publicized, well-known, and impartially enforced. Moreover, there must be minimal opportunity for discretionary and arbitrary treatment by public officials. But this is far from sufficient, and not all publicized, impartially-enforced laws satisfy the rule-of-law. If the rule-of-law were merely formal or procedural, then unjust, immoral laws could easily satisfy the rule-of-law. For example, the government could order the death penalty for all members of a certain religious group. As long this death penalty is enshrined in publicized written law and impartially



enforced against all members of this religious group, then it satisfies the procedural rule-of-law. But the rule-of-law has a substantive component as well: not only must the law be well-known and impartially enforced, but it must be general and purpose-independent. Individuals must remain free to make decisions for themselves in their own lives. In “Principles of a Liberal Social Order,” an essay summarizing his political philosophy, Hayek distinguished between the formal and substantive aspects of the rule-of-law, saying (1966:165),

The 'rule of law' corresponds here to what in German is called *materieller Rechtsstaat* [material rule of law] as distinguished from the mere *formelle Rechtsstaat* [formal rule of law] which requires only that each act of government is authorized by legislation, whether such a law consists of a general rule of just conduct or not.

The concept of a substantive rule-of-law has fallen into disrepute, and the rule-of-law has come to be associated with only its formal or procedural aspects. But this is merely a recent development. According to Hayek (1966:169f.),

the term 'law' itself, which in the older conception of the 'rule of law' had meant only rules of conduct equally applicable to all, came to mean any rule of organization or even any particular command, approved by the constitutionally appointed legislature. Such a conception of the rule of law which merely demands that a command be legitimately issued and not that it be a rule of justice equally applicable to all (what the Germans call the merely *formelle Rechtsstaat*), of course no longer provides any protection of individual freedom.

As David Bernstein (2011:9) similarly notes,

the idea that the guarantee of 'due process of law' regulates the substance of legislation as well as judicial procedure arose from the long-standing Anglo-American principle that the government has inherently limited powers and the individual citizen has inherent rights. . . .[C]ertain types of acts passed by legislatures could not be valid

legislation, which naturally led to the conclusion that enforcing them could not be due process *of law*.

Bernstein italicizes “of law” in the original to emphasize the following (Bernstein 2012):

[my critic] avers that “due process” quite clearly refers only to “a guarantee of procedural fairness,” i.e., “notice and a fair hearing before an impartial tribunal.” But in fact, this is not clear at all. The mistake [my critic] is making is to separate “due process” from “of law.” We live in a positivist age, where valid “law” is simply whatever the legislature passes and the governor signs. But the Fourteenth Amendment was not passed in such an age, but at a time when legislation that involved an arbitrary and capricious deprivation of people's rights was not considered to be proper “law” at all.

Or as Aquinas said, an unjust law is no law at all.

According to Hayek, the substantive conception of the rule-of-law has declined because of the twin influence of unlimited democracy and legal positivism (1967b:98). The law is whatever the people or their representatives have legislated, regardless of the content of that legislation. Furthermore, the separation of powers has failed, Hayek says, because law (private law) has been confused with government (public law) (1966b:153f.; 1973b:112; 1967b:98, 101, 1967c:93ff., 1966:169; cf. McIlwain 1947).<sup>11</sup>

Private law means general rules of just conduct, especially those discovered by common law judges (Hayek 1973b:113, 1967b:100, 1967c:79, Leoni 1991 [1961], Kern 1956 [1914], McIlwain 1947).<sup>12</sup> That private law is discovered implies that law is not true because the judge has stated it, but the judge has stated it because it is true; thus, the true law is independent of any man's will or decree (Hayek 1976b:158, Kern 1956 [1914]). Government (public law), however, is statutory law concerning the administration of the resources placed at the government's disposal – including both the provision of public services as well as the practical enforcement of the private law (Hayek 1976b:159, 1967b:99,

1966:168). While public law too must conform to the rule-of-law, the question of how to enforce the law is necessarily more discretionary and subjective than the principles of the law itself, and democratic political parties play their proper role in crafting government policy, not private law. To the extent that democracy and legal positivism are valid, they apply in the realm of public law, not private law. Thus, the original representative assemblies were concerned with government (public law) – especially taxation – not (private) law. But this distinction has broken down, and the separation of powers has failed because sovereign democratic legislatures have come to be entrusted with both law and government (1976b:153f.; 1973b:112; 1967b:98, 101, 1967c:93ff., 1966:169; cf. McIlwain 1947).<sup>13</sup>

On liberal principles, Hayek rejects the Hobbesian superstition that the sovereign must be unlimited, for the sovereign may be constrained by general principles of justice. Any legislation violating these principles may be declared unlawful (1976b:158, 1967b:98, 1967c:93). Unfortunately, Hayek says, the classical liberal writers rarely made their substantive conception of law explicit, but they merely tacitly assumed that “law” means general, universal rules (1973b:109, 1974b:138). Nevertheless, Hayek says, many of their arguments only make sense if we assume the rule-of-law is not merely procedural but substantive as well, constrained by general principles of justice.

Hayek's conception of the rule-of-law may be understood as the necessary legal framework for ensuring that economic liberties are safeguarded so that individuals may make private decisions for themselves. Hayek's general, abstract, purpose-independent rules of just conduct imply a free-market economy with liberty of contract and association. Command-and-control regulation is generally inadmissible. Most regulations are neither general nor purpose-independent because they require individuals to take specific actions in order to achieve specific outcomes. Only a market economy truly allows individuals to make decisions for themselves.

Moreover, according to Hayek, rent-seeking and log-rolling are unfortunately endemic under unlimited legal positivist democracy (1976b:156; 1973b:107; 1973c:143; 1967b:100; 1967c:93, 96). Where the rule-of-law is merely procedural, the legislature is empowered to grant privileges to special

interests. Moreover, when the legislature is able to grant special privileges, then it is impossible for any party to obtain a majority without promising such privileges. If the law were substantively limited to general, abstract, purpose-independent rules of just conduct, there would be little room for special interest legislation. Thus, while the procedural or formal aspects of Hayek's rule-of-law are taken for granted, the substantive aspects have startling and original implications.

Hayek's rule-of-law also implies that taxation should be as neutral as possible. Taxes should not politically reward and penalize specific behaviors, but instead, individuals should be free to make decisions according to the demands and desires of those with whom they trade and interact. When private individuals act, they should only have to take into account what willing and voluntary neighbors and partners ask of them, not what uninvolved third-parties – i.e. political officials – would like to see happen. In other words, discriminatory taxation is objectionable for the same reason as command-and-control regulation. Mises (1981 [1922]:230; cf. *ibid.* 447) noted that discriminatory taxation can amount to *de facto* regulation, saying,

Directly or indirectly through its taxation policy, [the socialist state] determines the conditions of labour, moves capital and labour from one branch of industry to another . . . These tasks falling to the State are the only important ones and they constitute the essence of economic control.

Thus, we should rank different forms of taxation according to how discriminatory they are. Progressive income taxation is more discriminatory than flat income taxation, which is in turn more discriminatory than flat per-capita (head) taxation. Hayek rejected the progressive income tax precisely because it is discriminatory and violates the rule-of-law (1966:175, 1973c:142, 2011 [1960]:430-450). But none of these systems of taxation is as discriminatory as taxing specific activities and persons.

Furthermore, if the purpose of the rule-of-law is to enable individuals to make decisions for themselves, then it is crucial for individuals to be permitted to freely adjust their behavior to the tax regime. The state should not demand behaviors which run counter to the incentives created by the taxes

– as if taxed products and activities are not taxed at all (cf. Mises (1981 [1922]:446). For example, suppose the state were to impose corporate taxes or artificially raise the costs of domestic labor and yet prohibit firms to relocate internationally, compelling them to remain where costs are higher. A command to behave as if taxation does not exist interferes with freedom and individual autonomy more than the taxation itself, and it entails more regulation which runs counter to the rule-of-law.

Remarkably, this interpretation Hayek's conception of the rule-of-law – including the chapter in the *Road to Serfdom* (2007 [1944]:112-123) – squares perfectly with Hayek's writings on the problem of economic calculation, especially his famous essay, “The Use of Knowledge in Society” (Hayek 1945).<sup>14</sup> According to Hayek, the price-system does not only allow individuals to coordinate their activities with each other, but it also enables every individual to bring his own unique knowledge to bear. As Hayek showed, it is the price-system which allows individuals to freely make decisions based on their own knowledge. Thus, Hayek's writings on the rule-of-law and the price-system turn out to share a common theme: both systems are essential to the individual's ability to plan his own life and make his own decisions for himself. Indeed, in a 1966 essay summarizing his philosophy, Hayek explicitly linked the two concepts, saying that “Liberalism . . . made it possible to to utilize the knowledge and skill of all members of society to a much greater extent than any order created by central direction.” (1966:162). This requires that “the coercive activities of government should be limited to the enforcement of such . . . universal rules of just conduct, protecting a recognizable private domain of individuals” (1966:162). Hayek distinguishes between a “spontaneous order based on abstract rules which leave individuals free to use their own knowledge for their own purposes, and an organization or arrangement based on commands” (1966:162). Hayek notes that “in contrast to an organization, neither has a spontaneous order a purpose nor need there be agreement on the concrete results it will produce” because a spontaneous order is “independent of any particular purpose” (1966:163).<sup>15</sup> Such “purpose independent ('formal') rules of just conduct . . . did not impose obligations for particular actions . . . but consisted solely in prohibitions from infringing the protected domain of

each . . . Liberalism is therefore inseparable from the institution of private property” (1966: 165).<sup>16</sup>

Thus, Hayek's conception of the rule-of-law implies a market economy based on private property, where prices communicate the unique, local knowledge of every individual. Furthermore, the rule-of-law so conceived implies that regulatory command-and-control will be eschewed in order that individuals are free to plan their own lives in accordance with the knowledge and data they subjectively perceive and apprehend.<sup>17</sup> Remarkably then, Hayek's political and his economic works turn out to share a common theme; “The Use of Knowledge in Society” turns out to be arguing much the same point as the chapter on the rule-of-law in *Road to Serfdom*.<sup>18</sup>

This close relationship between the rule-of-law and the price-system recalls Röpke's distinction between “compatible” and “incompatible” interventions (1992 [1942]:260; cf. 1987 [1951]:7f.; cf. Jackson 2010:138):

we find that a differentiation between two groups of state intervention is of foremost importance, for which we have suggested the terms “compatible” and “incompatible” interventions: i.e. those that are in harmony with an economic structure based on the market, and those which are not. Interventions which do not interfere with the price mechanism and with the automatism of the market derived from it are compatible, they let themselves be absorbed as new “data”; interventions which paralyse the price mechanism and therefore force us to replace it by a planned (collectivist) order, we call incompatible.

According to Hayek's conception of the rule-of-law and its relationship to the price-system and private property, we should expect Hayek – like Röpke – to generally favor interventions which are “compatible” with prices and to criticize “incompatible” ones (cf. Jackson 2010:139).<sup>19</sup> Like the German ordoliberals, Hayek sought to furnish a “framework”, an “economic order” within which the competitive “economic process” could operate (Kolev 2010:10-16; cf. Hayek 1947). Hayek stated that his conception of the rule-of-law did allow for a minimum social safety net provided that it was

“outside the market” (Hayek 1976a:87, 1973b:114, 1966:175, 1967c:92). The government could furnish public services provided that these services were for the benefit of all not and not merely sectional groups, that the government possessed no monopoly, and that it assessed taxes uniformly (non-progressively) (1973b:111, 1973c:144f., 1966:175). Thus, the rule-of-law has implications for discretionary public law as well. This seems to favor forms of welfare and social assistance which provide benefits with minimal administration so that they seamlessly integrate with the market. For example, Milton Friedman (1962) famously said that government could promote education through vouchers without actually operating any public schools. Similarly, for example, Hayek would probably consider it preferable to offer vouchers for healthcare to the poor, to be spent on unregulated private insurance, rather than to regulate private insurance.

Hence, although the *Road to Serfdom* was written in response to full-blown command socialism (Caldwell 2007:30f, 2011; Godard 2013), if we wish to assess its contemporary relevance and applicability, it would be more helpful to take a more nuanced view of economic policies and systems, putting them on a continuum rather than dichotomous poles, assessing how compatible each is with the competitive market process. For example, it would be fruitless to debate whether Hayek would have supported public education or school vouchers if we insist on categorizing public education as “socialism” and vouchers as “mixed economy.” Instead, we should recognize that vouchers are more compatible with private property, non-discriminatory law, competition, and the price-system. Similarly, the multidimensional nature of the Fraser Institute's Economic Freedom of the World (EFW) Index allows us to avoid sterile debates between socialism and the mixed economy.<sup>20</sup> Rather than trying to pigeonhole actually existent economies into one category or the other, we may recognize that different interventions have different effects, affecting freedom and prices in different ways. All interventions – whether “socialist” or “mixed” – compromise freedom the autonomy of individual decision-making in similar yet different ways (Huerta de Soto 2010:83-87). Thus, without rigidly and awkwardly distinguishing between socialism and the mixed-economy, we may recognize that regulatory command-

and-control and discriminatory taxation are more damaging to freedom and the price-system than neutral taxation and general, abstract, purpose-independent law.

Therefore, in judging Hayek's response to a given regulation, tax, or intervention, we should assess the degree to which the intervention is compatible with the rule-of-law – i.e. whether it is general and neutral, or whether it is specific and discriminatory – and how much it constrains individual autonomy and decision-making. Indeed, Lawson and Clark (2010:235) note that

the Hayek–Friedman hypothesis is confirmed most strongly when looking at the legal structure and property rights and the regulation areas of the EFW [Economic Freedom of the World] index. These two areas are more closely identified with political and civil liberties than the other areas of the EFW index (fiscal size of government, monetary policy, and trade policy).

Thus, Hayek's arguments were institutionally contingent: Hayek criticized a given system or policy insofar as it interfered with the price-system, including individuals' abilities to make decisions in the light of facts as they subjectively appeared to them. Socialism and the mixed-economy interfere with prices and individual decision-making in different ways and so they produce similar but different effects. Farrant and McPhail are completely right to criticize those who conflate Obamacare with Stalin's Five Year Plans and who condemn the Obama administration as equivalent to Hitler (F&M 2010a, 2010b, 2012:95; M&F 2012:423f., 2013:967). But Farrant and McPhail (2010b) argue – wrongly, I claim – that Hayek himself would have agreed with those who ignorantly make the comparison. Farrant and McPhail claim that Hayek's claims in the *Road to Serfdom* must be wrong because the contemporary welfare state has not taken us down the road to serfdom. But a better explanation is that taxation and redistribution of income do not interfere with freedom and the price-system the way discriminatory taxation and command-and-control do (Ikeda 2015:409, 414).

This interpretation of the *Road to Serfdom* as a defense of the price-system and a criticism of arbitrary command-and-control regulation robs Durbin (1945)'s criticism of much of its force. Durbin



argues that the system of market socialism allows the government to direct the economy while preserving the role of prices and avoiding the problem of totalitarianism. In Durbin's words (1945:361, 364),

There is no formal or logical contradiction between planning and pricing. It is perfectly possible for a centralised authority to order a price system to appear and to follow the guidance it necessarily gives. There is no necessary connection between the form of the authority by which decisions are taken and the principles according to which the decisions are made. . . . The theory of value and economic accountancy has been generalised to such a degree that it applies as much, or as little, to a centrally directed economic system as to any other.

For example, says Durbin, market socialism makes it unnecessary for the socialist state to “conscript the necessary number of workers to man the industry and direct them to live in certain places and work for certain wages [and] to force them into obedience” (Durbin 1945:363). Of course, Mises (1981 [1922]:119-123, 192-194) and Hayek (1940, 1982) disputed the feasibility of market socialism, arguing that it embodied insoluble contradictions (cf. Leoni 2009 [1965], Lavoie 1985b, Steele 1992, Huerta de Soto 2010). But let us suppose, for the sake of argument, that Durbin is right. What Durbin does not realize is that he has conceded nearly the entire argument to Hayek. Hayek's claim is that without private property and market prices, freedom is impossible. Durbin's response is that the socialist government can perfectly simulate markets and prices. In other words, Durbin proposes that freedom can be maintained under socialism – contra Hayek – as long as socialism is nothing but an imitation of the very same regime which Hayek advocated. As Huerta de Soto (2010:174) notes, “socialist theorists were forced to withdraw to a weak second line of defense, one built on precisely the essential elements of that economic system they so hated and wished to destroy . . . In contrast, they now strive, with comic insistence, to justify socialism with the argument that it permits the preservation of the market.” W. H. Hutt (1975 [1954]:131) went so far as to say, “The so-called 'socialist economists' were clearly

attempting to restore the market and the power of substitution. So much was this so, that I believed the result of their labours would ultimately be the re-building of laissez-faire institutions, in elaborate disguises of name and superficial form.”

Moreover, while Durbin (1945:357) calls himself a “democratic socialist,” his system of market socialism actually has very little place for democracy. If the socialist government is to imitate the market and institute economic equilibrium, then it is mathematics, not the democratic will of the people which is authoritative. The system of market socialism has no place for democratic input or discretion (cf. Steele 1992: 157).<sup>21</sup> Thus, Durbin's advocacy of market socialism undermines his own claim that, “We are politically free because we share in forming the laws” (1945:364). Durbin's criticisms of Hayek amount to a tacit admission that Hayek was right all along.

This interpretation of Hayek also turns the example of Sweden completely on its head. Samuelson and Sachs – cited by Farrant and McPhail (2009:5,9,11,12; 2010a:98, 107; 2010b:84; 2012:101) – argue that if Hayek were correct, we may have expected Scandinavian socialism to have turned totalitarian by now. But if we understand Hayek to be criticizing regulatory command-and-control and interference with the price-system, we see that this criticism misses the point entirely.<sup>22</sup> The Scandinavian system relies more on taxation and redistribution than regulation or nationalization (Stein 1991, Sanandaji 2011, Sumner 2015, Tupy 2016, Mitchell 2016, Iacono 2016). Scandinavian countries have historically offered a high degree of protection of private property and freedom to internationally trade. While Scandinavian countries tax at extremely high rates, they have also been engaging in widespread privatization and deregulation. Sweden even has a nationwide school voucher program. To a large degree, Scandinavian socialism has entailed giving some individuals an income subsidy and then allowing them free rein to spend this income in a free market. In many ways, Sweden is more pro-market than the United States. This is *not* the socialism which Hayek criticized, as Hayek noted in 1976 (2007 [1944]:54):

At the time I wrote, socialism meant unambiguously the nationalization of the means of

production and the central economic planning which this made possible and necessary.

In this sense Sweden, for instance, is today very much less socialistically organized than Great Britain or Austria, though Sweden is commonly regarded as much more socialistic.<sup>23</sup>

If anything, Scandinavian “socialism” has vindicated Hayek precisely it has generally eschewed command-and-control regulation; its relative success is built upon a maintenance of the price-system. This suggests that it is not safety nets which make robust markets viable – by protecting the least-well-off from the vagaries of markets – but the opposite: it is robust markets which produce the wealth which makes safety nets affordable.<sup>24</sup> This explains why Sweden can afford its welfare system while Greece and Venezuela cannot. Highly-regulated economies cannot absorb the costs of extensive welfare states.

The Swedish model has much in common with the German ordo-liberal program of combining robust markets, prices, property, and competition with a minimum social safety net – instead of relying on quasi-socialist command-and-control regulation and nationalization. When we consider that the ordo-liberals in Germany were inspired by the *Road to Serfdom* (Godard 2013:378-382) and that Hayek was arguably an ordo-liberal himself (Kolev 2010), we realize that it is not merely mistaken to point to the Scandinavian model as refuting Hayek, but it is downright perverse. To the degree that the Scandinavian model has succeeded, it is precisely because it has relatively so much in common with what Hayek advocated. Sweden does not refute Hayek; it vindicates him.

### III. CONCLUSION

A variety of authors have either misinterpreted or under-appreciated Hayek's claims. For example, Lawson and Clark (2010:231) argue that Hayek chiefly placed value on formal political rights, not economic rights. Shleifer and Vishny (1994:168, 170) cite Hayek only to justify why he will

not be discussed. Andrew Farrant and Edward McPhail are highly critical of Hayek, arguing that according to Hayek himself, the *Road to Serfdom* applied not only to command planning but also to the contemporary welfare state or mixed economy as well. Because the welfare state has obviously not resulted in Soviet- or Nazi-style totalitarianism, Farrant and McPhail say, Hayek's arguments must be mistaken. Caldwell (2011, 1997:1866-1871) and Boettke and Snow (2012) reply that the *Road to Serfdom* must be understood in its specific historical and institutional context of command planning (cf. Godard 2013) and that it must not be confused with Hayek's later works, which are more relevant to the political situation today. All of these authors assume that we must sharply distinguish between socialism on the one hand and the mixed economy or welfare state on the other. Their argument reduces to a debate over how Hayek evaluated the members of this dichotomous set. But I have argued that it is better to understand Hayek as criticizing any intervention which interferes with private property and the functioning of the price-system (cf. Huerta de Soto 2010:83-87). Hayek's argument is an institutionally contingent one, and whether a given intervention will lead us down the road to serfdom depends how compatible a given intervention is with the functioning of the price-system. All interventions necessarily substitute political decision-making for individual autonomy. But the degree to which this is true varies depending on the nature of the intervention.<sup>25</sup>

According to Hayek, economic liberty is *the* fundamental liberty, and any intervention which compromises economic liberty, inhibits individuals' abilities to access and utilize the means for accomplish their diverse, individual ends. Hayek was less concerned with how the denial of economic liberty would eventually tend to compromise democratic suffrage. According to him, democracy possesses merely instrumental value, whereas economic liberty is valuable in itself. Hayek's conception of the rule-of-law implies a market system where prices communicate the unique, local information and knowledge of individuals so that individuals are free to make decisions for themselves in light of the data as they subjectively appear to them. Hayek's philosophical defense of the rule-of-law dovetails with his economic analysis of socialist calculation. Furthermore, the Hayekian conception of the rule-

of-law entails that the law must not merely satisfy formal, procedural requirements – such as that the law must be well-known and impartially enforced – but furthermore, the law must satisfy substantive requirements as well, for an unjust law is no law at all. These substantive requirements largely correspond to the principles of economic liberty. This conception of the rule-of-law implies a criticism of command-and-control regulation as well as discriminatory taxation. Instead, Hayek would favor a market- and price-based system where taxation is neutral and laws serve only to prevent coercion and thus maximize economic liberty. Social welfare policies should be “outside the market,” or as Röpke said, “compatible” with the price-system. Farrant and McPhail claim that Hayek must be wrong because Scandinavian socialism has not turned totalitarianism, but my argument turns this claim on its head. Scandinavian “socialism” is characterized by a high degree of protection of private property and a low degree of regulation. Thus, the success of the Scandinavian system actually corroborates Hayek.

While I have not said everything there is to be said about Hayek, I hope to have demonstrated a few neglected points of interest. Even though the *Road to Serfdom* was written in response to full-blown command socialism (Caldwell 2007:30f., 2011; Godard 2013), it embodies arguments which apply to other policies and systems as well (Boettke 1995). Hopefully, the debate over Hayek's legacy can now move constructively forward. Just as Hayek's revolutionary and progressive ideas inspired the postwar German miracle (Godard 2013:378-382), hopefully, they can inspire us today as well.

#### Works Cited

- Aranson, Peter H. (1988). “Bruno Leoni in Retrospect.” *Harvard Journal of Law and Public Policy* 11: 661-711
- Bernstein, David E. (2012). “David Bernstein's Reply,” in, “A CRB discussion of *Lochner v. New York*.” *Claremont Review of Books*. <<http://www.claremont.org/crb/basicpage/a-crb-discussion-of-lochner-v-new-york/>> [accessed: 9 June 2016].
- (2011). *Rehabilitating Lochner: Defending Individual Rights against Progressive Reform*.

Chicago: University of Chicago Press.

Block, Walter E. "Hayek's *Road to Serfdom*." *Journal of Libertarian Studies* 12(2):339-365.

Boaz, David. (2005). "The Man Who Told the Truth: Robert Heilbroner fessed up to the failure of socialism." *Reason*. 21 Sept. <<http://reason.com/archives/2005/01/21/the-man-who-told-the-truth>> [accessed:17 Feb. 2016]

----- (2016). "What Socialism Requires." *Huffington Post*. 22 Sept. <[http://www.huffingtonpost.com/david-boaz/bernie-sanders-democratic-socialism\\_b\\_9055290.html](http://www.huffingtonpost.com/david-boaz/bernie-sanders-democratic-socialism_b_9055290.html)> [accessed:17 Feb. 2016]

Boettke, Peter J. (1995). "Hayek's *The Road to Serfdom* Revisited: Government Failure in the Argument Against Socialism." *Eastern Economic Journal* 21:1 (Winter):7-26. Rpt. in Boettke, *Calculation and Coordination*, London/NY: Routledge:47-65.

Boettke, Peter J. and Nicholas A. Snow. (2012). "The Servants of Obama's Machinery: F.A. Hayek's *The Road to Serfdom* Revisited?—A Reply." *Eastern Economic Journal* 38(4):428-433.

Brennan, Jason. (2014). *Why Not Capitalism?*. NY / London: Routledge.

Caldwell, Bruce. (2011). "Hayek on Socialism and on the Welfare State: A Comment on Farrant and McPhail's 'Does F.A. Hayek's *Road to Serfdom* Deserve to Make a Comeback?'" *Challenge* 54(1):82-97.

----- (2007). "Introduction" to Hayek (2007 [1944]):1–33.

----- (1997). "Hayek and Socialism." *Journal of Economic Literature* 35(4):1856-1890.

Capaldi, Nicholas and Gordon Lloyd. (2011). *The Two Narratives of Political Economy*. Hoboken, New Jersey: John Wiley and Salem, Massachusetts: Scrivener.

Corwin, Edward S. (1955). *The "Higher Law" Background of American Constitutional Law*. Ithaca/London: Cornell University Press. (Rpt. from *Harvard Law Review* 42 (1928-1929): 149-185, 365-409.)

Durbin, E. F. M. (1945). "Professor Hayek on Economic Planning and Political Liberty." *Economic*

*Journal* 55(220):357-370.

Ebeling, Richard. (1977). "An Interview with Friedrich Hayek." *Libertarian Review*. September: 10-16.

Farrant, Andrew, and Edward McPhail. (2012). "Supporters are Wrong: Hayek Did Not Favor a Welfare state." *Challenge* 55(5):94-105.

----- (2011a). "A Response to Caldwell on F.A. Hayek and *The Road to Serfdom*." *Challenge* 54(1):98-112.

----- (2011b). "A Substitute End for Socialism? F.A. Hayek and Keynesian Full-Employment Policy." *The Historical Journal* 54(4):1115-1123.

----- (2011c). "Hayek, Keynesian economics, and Planning Against Competition: A Caveat?." *History of Economics Review* 53 (2011):1-9.

----- (2010a). "Does F.A. Hayek's *Road to Serfdom* Deserve to Make a Comeback?." *Challenge* 53(4):96-120.

----- (2010b). "Hayek's New Popularity: The False Claims That He Was Right." *Challenge* 53(5):78-91.

----- (2009). "Hayek, Samuelson, and the Logic of the Mixed Economy?" *Journal of Economic Behavior & Organization* 69(1):5-16.

Friedman, Milton. (1962). *Capitalism and Freedom*. Chicago & London: University of Chicago Press.

Godard, François. (2013). "*The Road to Serfdom*'s Economistic Worldview." *Critical Review* 25(3-4): 364-385.

Hague, Rod and Martin Harrop. (2007). *Comparative Government and Politics: An Introduction*. 7<sup>th</sup> edition. Basingstroke, UK: Palgrave-Macmillan.

Hazlitt, Henry. (1966 [1951]). *Time Will Run Back*. New Rochelle: Arlington. (Orig. *The Great Idea*. New York: Appleton-Century-Crofts, 1951.)

Hayek, F. A. (2011 [1960]). *The Constitution of Liberty*. Chicago / London: University of Chicago Press.

- (2007 [1944]). *The Road to Serfdom*. Chicago: Chicago University Press.
- (1997 [1939]). "Freedom and the Economic System." In: Caldwell (ed.), *Socialism and War*. Indianapolis: Liberty Fund: 189-211. Rpt. from Chicago: University of Chicago Press.
- (1992 [1977].) "The Road from Serfdom: An Interview with F.A. Hayek." *Reason.com* <<http://reason.com/archives/1992/07/01/the-road-from-serfdom/>> [accessed: 12 May 2016].
- (1982). "Two Pages of Fiction: The Impossibility of Socialist Calculation." *Economic Affairs* 2(3): 135-142. Rpt. in Nishiyama and Leube (eds.), *The Essence of Hayek*. Stanford, CA: Stanford University Press, 1984, pp. 53-61.
- (1979). *Law, Legislation and Liberty, Volume 3: The Political Order of a Free People*. Chicago / London: Chicago University Press.
- (1978). *New Studies in Philosophy, Politics, Economics, and the History of Ideas*. London: Routledge.
- (1976a). *Law, Legislation and Liberty, Volume 2: The Mirage of Social Justice*. Chicago / London: Chicago University Press.
- (1976b). "Whither Democracy?." In: Hayek (1978:152-162).
- (1976c). "Socialism and Science." In: Hayek (1978:295-308).
- (1973a). *Law, Legislation and Liberty, Volume 1: Rules and Order*. Chicago / London: Chicago University Press.
- (1973b). "Economic Freedom and Representative Government." In: Hayek (1978:105-118).
- (1973c). "Liberalism." In: Hayek (1978:119-151).
- (1967a). *Studies in Philosophy, Politics, and Economics*. London: Routledge and Kegan Paul.
- (1967b). "The Constitution of a Liberal State." *Il Politico* 32(3):455-461. Rpt. Hayek (1978:98-104).
- (1967c). "The Confusion of Language in Political Thought." In: Hayek (1978:71-97).
- (1966). "The Principles of a Liberal Social Order." In: Hayek (1967a:160-177). Rpt. from *Il*



*Politico* 31:4 (Dec.):601-618.

----- (1948). *Individualism and the Economic Order*. Chicago & London: University of Chicago Press.

----- (1947). "'Free' Enterprise and Competitive Order." In: Hayek (1948:107-118).

----- (1945). "The Use of Knowledge in Society." *American Economic Review* 35(4):519-530. Rpt. in Hayek (1948:77-91).

----- (1940). "Socialist Calculation: The Competitive 'Solution.'" *Economica* 7(26):125-149. Rpt. in Hayek (1948:181-208).

----- (1937). "Economics and Knowledge." *Economica* 4(13): 33-54. Rpt. Hayek (1948:33-56).

----- (ed.) (1935). *Collectivist Economic Planning*. London: Routledge.

Heilbroner, Robert L. (1978). "What is Socialism?" *Dissent* 25:3 (Summer):341-348.

----- (1986). *The Nature and Logic of Capitalism*. NY & London: W. W. Norton & Company.

Hoff, Trygve J. B. (1981). *Economic Calculation in the Socialist Society*. Indianapolis: Liberty Fund.  
(Rpt. from London / Edinburgh / Glasgow: William Hodge, 1949. Trans. M. A. Michael from the orig. *Økonomisk Kalkulasjon i Socialistiske Samfund*. Oslo: H. Aschehoug, 1938.)

Huerta de Soto, Jesús. (2010). *Socialism, Economic Calculation and Entrepreneurship*. Cheltenham, UK / Northampton, MA: Edward Elgar.

Hutt, William T. (1975 [1954]). "The Significance of Price Flexibility." In: Svetozar Pejovich and David Klingaman (eds.), *Individual Freedom: Selected Works of William H. Hutt*. Westport, CT / London: Greenwood:130-146. Rpt. from *Southern African Journal of Economics* 22(1):40-51.

Iacono, Corey. (2016). "The Myth of Scandinavian Socialism." *The Freeman*.

<<https://fee.org/articles/the-myth-of-scandinavian-socialism/>> [accessed: 9 June 2016].

Ikeda, Sanford. (2015). "Dynamics of Interventionism." in: Peter J. Boettke and Christopher J. Coyne, eds. *The Oxford Handbook of Austrian Economics*. Oxford / NY: Oxford University Press:393-416.

- Jackson, Ben. (2010). "At the Origins of Neo-Liberalism: The Free Economy and the Strong State, 1930–1947." *Historical Journal* 53(1):129-151.
- Kern, Fritz. (1956 [1914]). *Kingship and Law in the Middle Ages*. Trans. S. B. Chrimes. Oxford: Basil Blackwell.
- Kolev, Stefan (2010). "F. A. Hayek as an Ordo-liberal." HWWI Research Paper, No. 5-11.  
<<http://hdl.handle.net/10419/48214>> [accessed: 7 June 2016].
- Lavoie, Don. (1985a.) *National Economic Planning: What is Left?*. Cambridge, MA: Ballinger.
- . (1985b). *Rivalry and Central Planning: The Socialist Calculation Debate Reconsidered*.  
Cambridge / London / NY / New Rochelle / Melbourne / Sydney: Cambridge University Press.
- Lawson, Robert A. and Jeff R. Clark. (2010). "Examining the Hayek–Friedman Hypothesis on Economic and Political Freedom." *Journal of Economic Behavior & Organization* 74(3):230-239.
- Leoni, Bruno. (2009 [1965]). "The Problem of Economic Calculation in a Planned Economy," in Carlo Lottieri (ed.), *Law, Liberty and the Competitive Market*. New Brunswick, NJ: Transaction, pp. 39-82. (Orig. "Il problema del calcolo economico in un'economica di piano." *Il Politico* 30(3) (1965):415-460.)
- (1991 [1961]). *Freedom and the Law*. Indianapolis: Liberty Fund. Orig. William Volker Fund, 1961. Rpt. Fairfax: Institute for Humane Studies, 1972.
- Liggio, Leonard P., and Tom G. Palmer. (1988) "Freedom and the Law: A Comment on Professor Aranson's Article." *Harvard Journal of Law and Public Policy* 11: 713-725
- Makovi, Michael. (2016a). "Two Opposing Literary Critiques of Socialism: George Orwell Versus Eugen Richter and Henry Hazlitt." Forthcoming in the *International Journal of Pluralism and Economics Education (IJPEE)*.
- (2016b). "Interest Groups and the Impossibility of Democratic Socialism: Hayek, Jewkes, and the Arrow Theorem." Unpublished working paper. <<https://mpra.ub.uni->

[muenchen.de/id/eprint/70173](http://muenchen.de/id/eprint/70173)> [accessed: 20 March 2016].

McIlwain, Charles Howard. (1947). *Constitutionalism: Ancient and Modern*. Ithaca: Cornell University Press.

Mises, Ludwig von. (1996 [1929]). *A Critique of Interventionism*. Irvington-on-Hudson, NY: Foundation for Economic Education. (Orig. *Kritik des Interventionismus*. Jena: Gustav Fischer, 1929).

----- (1998). *Interventionism: An Economic Analysis*. Irvington-on-Hudson, NY: Foundation for Economic Education. (Trans. from unpublished German manuscript written in 1940.)

----- (1981 [1922]). *Socialism*. Indianapolis, Indiana: Liberty Classics. Rpt. from previous editions of London: Jonathan Cape (1936), Yale University Press (1951), and London: Jonathan Cape (1969). All English editions translated by J. Kahane from the orig. *De Gemeinwirtschaft* (1922).

----- (1974 [1950]). "Middle-of-the-Road Policy Leads to Socialism." In Mises, *Planning for Freedom* (South Holland, IL: Libertarian Press):18-35.

McPhail, Edward, and Andrew Farrant. (2013). "Hayek and the Sorcerer's Apprentice: Whither the Hayekian Logic of Intervention?." *American Journal of Economics and Sociology* 72(4):966-982.

----- (2012). "The Servants of Obama's Machinery: F.A. Hayek's *The Road to Serfdom* Revisited?." *Eastern Economic Journal* 38(4):423-427.

Mitchell, Daniel. (2016). "Sweden Isn't a Good Role Model for Bernie Sanders." Blog.

<<https://danieljmitchell.wordpress.com/2016/04/08/sweden-isnt-a-good-role-model-for-bernie-sanders/>> [accessed: 8 April 2016].

Richter, Eugen. (2010 [1891]). *Pictures of the Socialistic Future*. Auburn: Mises Institute. (Orig. *Sozialdemokratische Zukunftsbilder*, 1891. Trans. Henry Wright. London: Swan Sonnenschein, 1893.)

Röpke (Roepke), Wilhelm. (1998 [1957]). *A Humane Economy*. Wilmington, DE: Intercollegiate

Studies Institute Books.

----- (1992 [1942]). *The Social Crisis of Our Time*. New Brunswick, NJ: Transaction Publishers.

----- (1987 [1951]). *2 Essays by Wilhelm Roepke*. Lanham, MD: University Press of America.

Rothbard, Murray. (1977). "The Myth of Democratic Socialism." *Libertarian Review*. September: pp. 24-27, 45. <<http://www.paulbogdanor.com/left/rothbard.pdf>> [accessed:17 March 2016].

Sanandaji, Nima. (2011). *The Swedish Model Reassessed: Affluence Despite the Welfare State*.

Helsinki, Finland: Libera Foundation.

<[https://web.archive.org/web/20150105192615/http://www.libera.fi/wp-content/uploads/2011/10/Libera\\_The-Swedish-model.pdf](https://web.archive.org/web/20150105192615/http://www.libera.fi/wp-content/uploads/2011/10/Libera_The-Swedish-model.pdf)> [accessed:2 Feb. 2015]

Schweickart, David. (1992). "Economic democracy: A worthy socialism that would really work." *Science & Society* 56(1): 9-38.

Sumner, Scott. (2015). "Bernie's Nordic fantasy." *Money Illusion* (blog).

<<http://www.themoneyillusion.com/?p=31156>> [accessed: 9 June 2016].

Steele, David Ramsay. (1992). *From Marx to Mises: Post-Capitalist Society and the Challenge of Economic Calculation*. La Salle: Open Court.

Stein, Peter. (1991). "Sweden: From Capitalist Success to Welfare-State Sclerosis." *Cato Institute Policy Analysis* no. 160. <<http://www.cato.org/publications/policy-analysis/sweden-capitalist-success-welfarestate-sclerosis>> [accessed:25 Feb. 2015]

Tupy, Marian. (2016). "Bernie Is Not a Socialist and America Is Not Capitalist: Scandinavia is, by one measure, a freer market than the United States." *The Atlantic*. <<http://www.theatlantic.com/international/archive/2016/03/bernie-sanders-democratic-socialism/471630/>> [accessed:21 March 2016]

Witt, Ulrich. (1992). "The Endogenous Public Choice Theorist." *Public Choice* 73(1):117-129.

- <sup>1</sup> See Farrant and McPhail (2012, 2011a, 2011b, 2011c, 2010a, 2010b, 2009), McPhail and Farrant (2013, 2012).
- <sup>2</sup> Godard (2013) implicitly agrees with Caldwell, while Farrant and McPhail (2012) is particularly apt as an implicit response to Godard.
- <sup>3</sup> Boettke (1995) is the best elucidation of Hayek's *Road to Serfdom* I know of. According to Boettke, *The Road to Serfdom* anticipated at least three basic teachings of Public Choice: first, the logic of collective action which enables special interests to obtain privileges. Second, that political behavior is conditioned by the institutional constraints and incentives of the office (“why the worst get on top”). Third, Arrow's Impossibility Theorem (cf. Boettke and Leeson 2002, Boettke and Snow 2012, Huerta de Soto 2010:268n53, Makovi 2016b). Boettke also discerns in Hayek the claimed impossibility of maintaining political freedom without economic freedom (cf. Lawson and Clark 2010).
- <sup>4</sup> Ikeda (2015) updates Mises theory of interventionism.
- <sup>5</sup> Cf. Hayek (1976c:300): “Though the process may be gradual, a government which begins to control prices to secure popular conceptions of justice is bound to be driven step by step towards the control of all prices; and, since this must destroy the functioning of the market, to a central direction of the economy.”
- <sup>6</sup> While Shleifer and Vishny (1994) use Public Choice to criticize market socialism, they neglect Hayek, mentioning him only to say that he will not be discussed (1994:168, 170).
- <sup>7</sup> Cf. Mises (1981 [1922]:64f.).
- <sup>8</sup> Lavoie (1985a:125-171) evaluates the economic implications of similar schemes.
- <sup>9</sup> Cf. H. D. Dickinson: “even if a socialist planner wished to realize freedom he could not do so and remain a planner” (quoted in Hayek 1948:206). Likewise Heilbroner (1978, 1986:126), quoted by Boaz (2005, 2016).
- <sup>10</sup> Kolev (2010:12-15) interprets Hayek's conception of the rule-of-law as part of the German

ordoliberal program for furnishing a “framework” for competition. Cf. Godard (2013:378-382).

- <sup>11</sup> Hayek's distinction between “law” and “government” (1967b:101) corresponds to that which Hayek elsewhere drew between “private law” and “public law” (Hayek 1966:168f., 1967c:78) and to McIlwain (1947 *passim*)'s distinction between *jurisdictio* and *gubernaculum*.
- <sup>12</sup> On Leoni (1991 [1961]), see Aranson (1988) and Liggio and Palmer (1988).
- <sup>13</sup> Hayek proposed constitutional reform to separate the two tasks of law-making (private law) and government (legislation, public law) into two separate bodies (1979:105ff., 1976b:159ff., 1973b:115ff., 1967b:102ff., 1967c:95f.).
- <sup>14</sup> In a 1939 article presaging *The Road to Serfdom*, Hayek explicitly linked his discussion of the rule-of-law with his article on “Economics and Knowledge” (Hayek 1997 [1939]:194n9 citing Hayek 1937). Interestingly, no such explicit reference is made in *Road to Serfdom*.
- <sup>15</sup> Hayek's distinction between purpose-independent “spontaneous order” and planned, purposeful “organization” is similar to that which Oakeshott drew between a civic association and an enterprise association (Capaldi and Lloyd 2011:xxiii; cf Hayek 1967c:89).
- <sup>16</sup> Cf. Hayek (1973c:135f.): The “general rules of individual conduct” are “inseparable from the institution of several property” and ensure the individual is “free to use his own knowledge and skills in the pursuit of his own purposes.” A spontaneous order thus “left the individual free to pursue their own purposes” and “made possible the[ir] utilization of the widely dispersed knowledge.”
- <sup>17</sup> Hayek (1967c) invented several new terms to help convey his arguments: a *cosmos* is a purpose-independent spontaneous order where individuals pursue their own ends while a *taxis* is a deliberately-formed organization with a single, enforced hierarchy of ends; *nomos* are general, abstract, purpose-independent rules (compatible with the rule-of-law) while *thesis* are specific regulations and commands; a *nomocracy* is a *cosmos* of *nomos*-laws while a *teleocracy* is a *taxis* of *thesis*-laws; *demarchy* is a democratic *nomocracy*; an *economy* is a type of *taxis* (think “household

economy”) while a *catallaxy* is a market-based *cosmos* (what we usually call “the economy”).

<sup>18</sup> Cf. Farrant and McPhail (2009:10n17, 2010a:118n13), who briefly remark that Hayek approvingly cites Ludwig von Mises’s criticism of price-controls in *Kritik des Interventionismus* (Mises 1996 [1929]; cf. Mises 1998). But they do not explore the significance of this citation.

<sup>19</sup> It is true that in *Road to Serfdom*, Hayek endorsed many non-libertarian interventions (Hoppe 1994, Block 1996), moderately distancing himself from Misesian *laissez-faire* (Jackson 2010, Kolev 2010). But in 1976, Hayek said of *Road to Serfdom*, “I had not wholly freed myself from all the current interventionist superstitions, and in consequence still made various concessions which I now think unwarranted” (2007 [1944]:55; cf. Jackson 2010:139n31, Kolev 2010:9). Moreover, Hayek’s theories often lead to more libertarian conclusions than Hayek himself drew (Boettke 1995:22n1).

<sup>20</sup> I owe this point to Daniel J. D’Amico.

<sup>21</sup> Schweickart’s system calls for a “democratic, market-conforming plan” (1992:19). Perhaps a four-sided triangle as well.

<sup>22</sup> But I will concede to Farrant and McPhail that Hayek apparently misapplied his own theories, for I use Hayek’s theories to judge Sweden differently than Hayek himself did. As Farrant and McPhail (2009:22n; cf. 2010a:116n3) note, “In a 1977 interview, when asked why ‘do Sweden and many Scandinavian welfare states seem to be prospering?’, Hayek suggests that ‘[t]he standard feeling that life is really not worth living is very strong in Sweden’” (Hayek 1992 [1977]:9). I defend Hayek differently than he did himself.

<sup>23</sup> Farrant and McPhail (F&M 2009:15, 2010a:111, 2010b:86; M&F 2013:980n1) note that this passage continues to express a prediction that Swedish socialism will “slowly, indirectly, and imperfectly” bring about the same consequences as full-blown planning.

<sup>24</sup> I owe this argument to Phillip W. Magness.

<sup>25</sup> Insofar as Hayek wrongly predicted that the welfare state would pursue totalitarian policies, this does not negate the validity of his theories. While Hayek may not have predicted the future

accurately, Hayek's analysis of given policies is not wrong simply because the government adopted different policies – especially if we consider that Hayek's warnings were falsified largely because they were heeded (cf. Witt 1992, Caldwell 1997:1868f, Boettke and Snow 2012, Jackson 2010:150), especially in Germany (Godard 2013:378-382).