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Jacques Rueff, Friedrich Hayek, and the Emergence of Economic Order: the Case of the European Coal and Steel Community

Vincent Carret¹

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Abstract

The argument of this paper is that Jacques Rueff and F.A. Hayek can be made to have a constructive dialogue that informs our understanding of how both authors approached such issues as the role of government in society and the meaning of spontaneous order. Through an analysis of their uses of the price mechanism as an ordering principle, and an examination of how they both moved towards a legal-institutional approach to understand the world, the common elements in their systems are brought out and fitted in a longer liberal tradition concerned not only with the meaning of competition, but with the conditions fostering the emergence of social order in the midst of individual chaos. Rueff's involvement in the construction of the European Coal and Steel Community gives an interesting application of their systems to a concrete experiment in creating a rational economic order in postwar Europe. The examination of the case law of the Court of Justice of the Community demonstrates how much the principle of competition was subordinate to a political ideal of peace relying on limiting governments to prevent wars, a mechanism at the center of both Hayek's and Rueff's systems.

Keywords: Hayek, Rueff, European Coal and Steel Community, competition law, limited government

JEL Codes: B31, B53, N44, N74, K21

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I/ Two Windows onto the World

Jacques Rueff and Friedrich Hayek were born three years apart at the end of the 19th century, and went through much of the same events of the 20th century. They were both enmeshed in the World Wars, both traveled the world, and both led successful careers as economists. One might think that the similarity ends here. Rueff, a French inspector of finances, had a long and successful career in civil service that limited his academic endeavors, while Hayek spent most of his career in universities. From the point of view of their economics, they might seem even more distant; Rueff was fascinated by equilibrium as a heuristic approach to social phenomena throughout his life, while Hayek moved away from equilibrium concepts to give an account of the process of economic discovery and coordination (Caldwell, 1988). They're also separated by two cultures, and two educations. Rueff, the civil servant, went through the halls of the *École Polytechnique*, the same school that was exposed by Hayek as the “source of scientific hubris,” the original broth of ideas on the total organization of the economy which were in vogue when they were both writing in the middle of the century (Hayek, 2010: 169 ff.). And yet both authors were committed liberals, fighting their fight even in the lonely depths of the depression (Rueff, 1934). They met in the same circles, the same colloquia, the same conferences, and they exchanged several dozen letters throughout their lives. In the wake of renewed scholarship on liberalism and its twentieth century transformations, one wonders whether it was a simple belief in free markets, an opposition to central planning, or a strategic alliance that brought the two men together.

The literature on Rueff, Hayek, and the movement they were a part of, has presented them either as holding two positions incompatible with each other, or as both holding similar extreme views on the necessity of free markets, even when note is taken of their different methodologies

(Crozet, 2000). Some commentators have adopted a mixed approach, by arguing that Ludwig von Mises, Rueff, and Hayek shared the same attachment to free markets, but that Rueff was much more constructivist than the other two, and even guilty of the scientific approach that was denounced by Hayek (Chivvis, 2010). One other way that has been adopted to resolve the puzzle of their relationship is to say that they did not in fact share the same outlook; in this perspective, they rubbed shoulders only as a matter of strategic alliance because they believed in the same ideology of free markets to fight the rising Keynesian tide (Daou, 2019). Such an approach implies that the belief that a liberal society is superior to a planned society is just a belief, an ideology that does not rely on a serious inquiry into the nature of this superiority. But there is also an element of truth in all these accounts, because for all the differences in their outlooks, in their vantage points, in their upbringing, they were still experiencing the same events as individuals. As economists interested in social changes and the nature of reality, they were both dwellers of the same scientific edifice, although they looked out at the world from two different windows.²

Hayek and Rueff wrote about what they saw from those windows, and we should not confuse their windows with the content of their analysis. Going into the systems they developed, one is struck by their proximity, once the different framings have been partialled out. There is something that was shared by both writers and that explains their common commitment to a liberal outlook on the economy. Starting from different premises and following different paths, they reached similar conclusions because they were looking at the same reality, and shared the same substrate.

² The metaphor of windows was suggested by Nietzsche in *Beyond Good and Evil* and was popularized in an article by James Buchanan (1964: 217); see Munger (2018: 165) on Buchanan's use of the metaphor. That two thinkers seemingly very different can dialogue constructively, even though "their minds were cast in entirely different moulds" is a mark of the unity and diversity of the liberal tradition (Osborn, 1940: viii).

The common soil that they were sharing was at the root of economic thinking, even of economists themselves. It was the central discovery of the Scottish and British philosophers of the 18th century, the realization that in the preceding centuries a new solution to “the problem of survival,” the market system and its price mechanism, had emerged to replace authority and tradition as an organizing principle of western societies: “the market system is not just a means of exchanging goods; it is a mechanism for sustaining and maintaining an entire society” (Heilbroner, 1953: 10-18).

This empirical finding, that societies could survive without the weight of tradition, central command, or religious authority, but through the interplay of individuals exchanging in markets, was the defining point of economics as a science, and the starting point of Rueff and Hayek (Hayek, 1937: 49). This realization was embodied in Adam Smith’s “invisible hand,” in Adam Ferguson’s discovery that “nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design” (Ferguson, 1995: 119). It was expounded in Edmund Burke’s indictment of the French revolution and its bloody invention of a new order, against those who “think to force Nature, and the whole Order of her System, by a Compliance with our Pride, and Folly, to conform to our artificial Regulations” (Burke, 1982: 17). It was this vision of a new ordering principle that defined economics and economists. And it was against this vision that social planners, collectivists, utopians and socialists defined themselves, as they saw the consequences of this new order unfold around them, and reacted against the economists admiring the “cogs of the hidden mechanism” (Gide and Rist, 1947: 256).

Between collectivist utopias and abstract laws, middle ways arose. The doctrine of the Comte de Saint Simon, reacting with a “youthful enthusiasm” for science and its innovation, was productivist and opposed state interventions as much as possible: the State was limited to

“administering things, rather than governing men.” Saint-Simon’s posterity would nurture both socialist ideas on the organization of production, but also liberal arguments in favor of limiting government (Gide and Rist, 1947: 225-226). As the debate between two opposite positions became entrenched in the twentieth century, the original empirical insight became muddled in abstractions. Was it an empirical finding that certain historical events had led to a social order based on markets, or was it a natural fact that markets could organize society if left alone? In the 19th century, economists began to study and advocate, not the principles that had led to the emergence of a new ordering mechanism, but the behaviors that were the driving forces of this mechanism, extolling the virtues of “competition [which] is to the industrial world what the sun is to the physical world” (Guillaumin and Coquelin, 1852).

The debate between “Individualists” and “Organisers”, between “Economists” and “Socialists” (Pratt in Molinari, 1899: x), was continued between the two sides of the Socialist Calculation Debate in the first half of the twentieth century. Both sides suggested their own rationality for economic order, at a time when rationality and order were put more than ever into question, and “new” solutions were sought out. On the side of economists, now dubbed liberal, the 18th century roots were deeply buried, and it took the lifework of Hayek and many others to unearth this tradition and what brought it together. To be sure, the mechanism at work was much better understood, the role of prices and the origin of value had been explained much more cogently. Rueff was a master of this mechanism, and he could apply it to understand the economic world, predict its movements and advise governments on how to use it. Hayek illuminated some central aspects of the mechanism by switching the focus to information and knowledge and explaining why it was impossible to reproduce from the top down. But the sources of this mechanism, the conditions of its emergence and the relationship between political

principles and economic organization were largely forgotten or denied. Next to their mastery of the price mechanism, it was their common interest in the emergence of this mechanism that brought together Jacques Rueff and F.A. Hayek. Both writers evolved in their thoughts about the market economy, and both came to emphasize the role of institutions to foster and take advantage of the driving force of individual freedom, price indicators and market exchange. For both authors, this analysis led to a theory of the limits of government, harking back to another source of liberal thought, one that finds its origin in Montesquieu and its American followers.³ The question that they stumbled upon during their careers, which became their central concern and for which they sought an answer, was “whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force” (Hamilton et al., 1990: 6).

While Hayek, the academic economist, theorized in the postwar period the principles of a social order based on individual freedom, Rueff, the consummate civil servant, participated in the construction of new institutions explicitly aimed at creating the social order they both sought. As Prime Minister of Monaco, Judge of the Court of Justice of the European Communities, and advisor to French President Charles de Gaulle, Rueff contributed to the reconstruction of a liberal society, and interpreted some of the new institutional and political constructions of the 1950s as the triumphant return of these ideas. In particular, through his experience from 1952 to 1962 as a judge on the Court of Justice of the Coal and Steel Community (the Court of Justice of the European Communities after 1958), Rueff had a front-row seat to one of the defining experiments in political and economic association of the second half of the twentieth century.

³ Federalist No. 43 and 47 (Hamilton et al., 1990), both written by James Madison, refer explicitly to the French thinker that the Founding Father could cite from memory (Spurlin, 1940: 179). Montesquieu was also very much in the same tradition as Burke, Smith and Ferguson; compare their quotations cited earlier with the beginning of *The Spirit of Laws*: “Particular intelligent beings may have laws of their own making, but they have some likewise which they never made” (Montesquieu, 1793: 2).

Looking through his eyes to this experiment gives us a concrete example of what exactly the liberal economist was looking for when he was thinking not only about the mechanism ordering society, but about the conditions leading to the functioning of this mechanism and the emergence of a harmonious order.

II/ The Price Mechanism and the Role of Government

The sources of order in social interactions, or in other terms the rationality of economic order, was the stumbling point between the two sides of the Socialist Calculation Debate. One side saw this rationality only in conscious design, while the argument that emerged from the other, and that harked back to Adam Smith's invisible hand, was that order could be obtained from a spontaneous alignment of forces following the price mechanism. The exploration of the price mechanism, its action in society and the sources of its functioning were at the heart of both Rueff's and Hayek's outlooks on society, although they started their enquiries from very different starting points. This inquiry led them both to a theory of the role of government in connection with this economic order, a theory that can be viewed as one of the limits on government.

A/ The Price Mechanism as an Ordering Principle

The question of the source of order in society was at the heart of the debate between liberal economists and social planners. Capping twenty years of debate, this was the question asked by Hayek at the beginning of his 1945 article: "What is the problem we wish to solve when we try to construct a rational economic order?" (Hayek, 1945: 519). It was the contribution of this debate, for him, to have shown that the price system was indispensable "for any rational calculation" (Hayek, 1945: 528). The problem could not be "purely one of logic," because knowledge of economic conditions was dispersed in a way that could not be centralized. Thus

rationality was not equated with the “scientific method” but with the phenomena at the heart of economic relations: the price mechanism. While the general equilibrium model can give us a hint at the solution of the problem, the fact that its data are not “given” in the real world means that the “economic problem of society” is more properly understood as that of securing “the best use of resources known to any of the members of society, for ends whose relative importance only these individuals know” (Hayek, 1945: 520). For Hayek, there is agency and design: but it is the agency of households and firms that is best suited to take advantage of its local knowledge, and the primary locale of planning should thus be found in small economic units.⁴

Local knowledge is sufficient to make decisions at the local level, and the coordination problem in a free society “can be solved, and in fact is being solved, by the price system” (Hayek, 1945: 525). The argument in favor of maintaining a decentralized adaptation is dynamic: it is because the data of the economic problem keep changing that it is more efficient to have an individual adaptation that is reflected in price changes, rather than a centralized direction of prices that can never keep up with every small adjustments needed in the allocation of resources (Hayek, 1945: 526). This led Hayek to reject “perfect competition” as a point of reference, and to embrace a view of competition as a process of discovery “If we consider the market for some kind of finished consumption goods and start with the position of its producers or sellers, we shall find, first, that they are assumed to know the lowest cost at which the commodity can be produced. Yet this knowledge which is assumed to be given to begin with is one of the main points where it is only through the process of competition that the facts will be discovered” (Hayek, 2014 [1948]: 108).

⁴ “Planning in the specific sense in which the term is used in contemporary controversy necessarily means central planning—direction of the whole economic system according to one unified plan. Competition, on the other hand, means decentralized planning by many separate persons” (Hayek, 1945: 521). See also Hayek (1976) which defends the same position in a different context.

As the price mechanism is used “for communicating information” to individuals who use this information to adjust their behaviors, blocking prices inevitably hinders this function. If the information reflected in prices does not correspond to an underlying reality of costs of production and individual preferences, but is the expression of the choices made by a central authority with a limited knowledge of both costs and preferences, the end result will inevitably be farther from what would have prevailed if prices were to reflect more fully the basic economic data of costs and preferences.

The point of this idea is that the price mechanism, although it can be understood in very broad terms of incentives, cannot be engineered because it relies on the complexity of the interrelationships of millions of economic units. This was also the point made by Jacques Rueff, who in 1935 compared the price mechanism and the movement of celestial bodies: “the problem [of prices] is exactly the same as that of celestial mechanics, which we do not know how to solve as soon as there are more than four bodies together, while every night, in the sky, a myriad of stars and planets find without hesitation the path they have to follow” (Rueff, 1935: 401).⁵

The idea that there was a “natural phenomenon” underlying the movements of prices and coordinating the economic activity of individual units was expounded in Rueff’s first paper, “Le change, phénomène naturel” (Rueff, 1922). After the inflation of World War I, the apparent disarray of international exchanges, and the massive interventions of States in their economies, it took a big leap to argue that exchange rates were determined through a natural phenomena. The first part of Rueff’s paper was a mathematical explanation of the movements of change, checked against the real movements in purchasing power, but Rueff did not stop there. The second part of

⁵ This metaphor was already present in Frederic Bastiat’s *Sophismes*: “the thought which put harmony in the movement of the celestial bodies knew how to implement it also in the internal mechanism of society” (Bastiat, 1854: 38). Bastiat is included by Barry (1982: 29 ff.) as a thinker in the tradition of spontaneous order, along with Molinari and Spencer in the 19th century.

his paper looked for “the place of exchange rates amongst natural phenomena”, and sought out to find “the stabilizing mechanism, ensuring the economic equilibrium of unequally endowed nations” (Rueff, 1922: 680). Rueff saw in this equilibrating mechanism a straightforward manifestation of the Le Chatelier principle, a concept pervasive in physical and biological sciences, which he enunciated like this: “When we produce a variation of one of the factors of the equilibrium of a system, there is produced a modification of this system, which, if it were accomplished alone, starting from the primitive state, would involve a variation inverse of the considered factor” (Rueff, 1922: 681).⁶

Rueff’s writings of the 1920s were explicitly based on this idea: he argued against Keynes that the organization of transfers was “an economic error” (Rueff, 1928; 1929) as the price mechanism would tend to adapt the level of prices in each country, to give Germany the means to pay reparations. He also applied it to the problem of unemployment in England (Rueff, 1925a; 1931), to the French inflation of the 1920s (Rueff, 1925b), and to the issues of tariffs that were erected in the early 1930s (Rueff, 1933); he had observed the balancing mechanism at work in the immediate postwar in the equilibration of the French commercial balance, after the US closed the gates to the wartime influx of capital.

In the third part of his 1922 paper, Rueff explored the political rationality behind government interventions on the price mechanism, and how these interventions affected the functioning of the mechanism. Rueff, who led parallel careers in academia and in the ministry of finance, was very much aware of the institutional framework that constrained choices. At the end of the 1930s, he argued that this experience of both academia and public service “led me to think that it

⁶ Samuelson argued later that the Le Chatelier principle was also at the basis of his *Foundations* (Samuelson, 1972: 253-257).

was the price mechanism, and not the conscious plan, that should be asked to establish and maintain economic equilibrium” (Rueff, 1979c: 33). This equilibrium was construed as the basis for social order and the sustainability of society, a reflection that culminated in his *L'ordre social* (Rueff, 1945). The interest of both writers in the price mechanism was however based on different methodologies, and in the case of Rueff, it was based on an approach marked by his time spent at the *Ecole Polytechnique*.

B/ Individuals, Institutions, and the Price Mechanism

Throughout his work, Rueff maintained an analogy between the molecules of a gas and the individual units of an economy: in both cases a variation of the Le Chatelier principle applied, and in both cases it was impossible to direct centrally the individual molecules to create order, even though this order emerged from their interactions. This led Rueff to a description of the price mechanism that can seem different to that of Hayek, but that nonetheless described the same principles. Rueff argued that “the laws of political economy are statistical laws ... comparable to the laws of gases, individuals playing in political economy the rôle of molecules in the kinetic theory [of gases]” (Rueff, 1929: 104). Hayek was more concerned with denouncing the use of statistical aggregate as a mean of centralizing information, because of the loss of information inherent in such a procedure (Hayek, 1945: 524); but Rueff’s application of statistical laws happened at a different level: it was used to interpret the emergence from individual chaos of a social order, and Rueff was less interested in the aggregate movement of statistical series as with the concept of equilibrium and how it emerged from atomistic interactions.

From the point of view of the molecule, it took an effort of abstraction to envision that its chaotic movement was part of a coherent whole, as Rueff argued in his 1927 *Théorie des*

Phénomènes Monétaires: “We are the molecules of an immense universe where, in a disordered agitation, innumerable individual activities develop. On our scale there is no economic phenomenon, but only elementary characteristics, unpredictable successions, and it would be as futile to hope to establish a political economy of the individual as a thermodynamics of the molecule” (Rueff, 1979b [1927]: 160). As the chemist measures the temperature and pressure of the gas, both properties related to the underlying activity of molecules, the political economist uses the “exchange rate or that of stocks [which] summarize in a unique number the individual operations of buying and selling and allow us to observe exchange phenomena at the scale at which we study gases, like a giant who would observe human phenomena” (Rueff, 1979b [1927]). The statistical aggregate in this metaphor is not so much a price index or an index of production used to direct activities at the central level, but rather the market price that reflects the multitudinous activities of the underlying economic units. Rueff’s vision is surprisingly close to that of Hayek, because it is grounded in the liberal recognition that order emerges from individual chaos through a spontaneous or natural mechanism. For Rueff, it is by trying to organize this chaos with price controls, rationing, and inflationary policies that governments prevent order to emerge: hence the prescription to maintain the atomistic chaos of competition, against most trends of the first half of the twentieth century.

Rueff and Hayek thus shared the same view of the price mechanism as a coordination mechanism essential to a free society, even if they approached it from a somewhat different angle. The differences in the definitions of what engineering is, or of what a spontaneous order is, came from different perspectives on these problems. Where one saw negative elements, the other saw positive elements: for instance Hayek viewed the work of the engineer as following a complete blueprint (Hayek, 2010: 157), while Rueff defined the work of the engineer as making

use of natural phenomena. This conceptual problem of different languages tied to different methodologies is one of the main drivers of the differences between the two authors; it also explains why some authors saw a substantial difference between Rueff and Hayek.

For instance, George Lane noted that Rueff quite literally said “I would like to point out that order is never spontaneous” (Lane, 1997: 430), and drew from this a clear difference with Hayek (see also Daou, 2019: 576-577). But the full quote of Rueff during his 1955 conference is that “A natural society, a society left to itself, would not be an ordered society. ... You all know that a society of men left to their own devices ... would be a savage society where the strong would appropriate the weak and where each would determine by force the domain of sovereignty” (Rueff, 1989 [1955]: 361).⁷ This is clearly a definition rooted in the idea that order does not spring alone from a state of nature and the rejection that such a state would be anything other than “nasty, brutish and short”, uttered at a time of large upheavals. But the idea of a spontaneous order in Hayek’s writings and in the liberal tradition is not rooted in a state of nature but in the observation that certain institutions foster the conditions for the emergence of order. Such an emergent institution was for instance the modern exchange market, whose existence was due to the protection of property rights. The way in which order emerged out of markets is through the price mechanism, which both authors recognized as a central ordering principle in society; and Hayek and Rueff went through a similar evolution from concerns over the description of the price mechanism towards a wider view of the social, economic and political order, and the role played by institutions in creating and maintaining the price mechanism.

Both authors evolved towards a concern for legal and judiciary institutions to organize and promote the functioning of the price mechanism, and more than that, to obtain positive

⁷ See also Rueff (1949: 13) and *infra*.

consequences from this mechanism.⁸ Rueff acknowledged the importance of his work at the Court of Justice in his understanding that the price mechanism, left to itself, was not sufficient, both because the order created could be ruthless, but also because the consequences of the natural phenomena were entangled with the social state in which they unfolded.⁹

One of the most well-known quotes of Rueff, “all the turpitudes of our regime, I have always found their source in the interventions of the State” (Rueff, 1934: 34), pronounced during a conference in front of the engineers of the École Polytechnique, has often been used to present him as an anarcho-liberal thinker against all government interventions. This is a misrepresentation, ignoring that Rueff had “no difficulty in conceiving a liberal Jacobin regime, where equal and rigorous justice, at the same time as active and generous charity, would be reconciled with a policy aimed solely at improving living standards, and therefore the fate of the greatest number” (Rueff, 1934: 34). The point, for him, is that a certain type of government interventions can hinder the functioning of the competition driving economic activity, and transmitted through the price mechanism; but he also maintained clearly that “[t]he assertion that there are immutable economic laws does not entail that we are their slaves. Weight exists, and yet airplanes move through the air. We will be able to draw from the knowledge of economic laws a whole art, politics itself, which will allow us to achieve such a goal that we have set ourselves” (Rueff, 1922: 185). For Rueff, those policies that tend to block the price mechanism, the source of order, can only give the appearance of what they promise. But rejecting those

⁸ “But the fact that most people follow this rule [the price mechanism] in their actions leaves the character of the resulting order yet very indeterminate, and it certainly does not by itself insure that this order will be of a beneficent character. For this it is necessary that people also obey certain conventional rules ... The common rules of morals and of law are the chief instance of this” (Hayek, 1964: 462).

⁹ “I have long professed, more or less consciously, this opinion [of *laissez-faire*]. Four years of experience and reflection at the Court of Justice of the CECA have convinced me of its inaccuracy” (Rueff, 1979a: 318). Note that in his *Cours*, followed by Rueff, Clément Colson argued that the liberal methodology is to “investigate the natural laws governing economic phenomena and their effects in various social states” (Colson, 1924: 150-151).

policies does not mean that no policy is ever justifiable, and that nothing can be built over and above the price mechanism.

C/ Engineering Society or Engineering Social Phenomena?

In the immediate postwar, the destructive forces of war had left a profound mark on the men that had fought, who stood in the horror of the millions of deaths and the widespread destruction. The willingness and momentum to organize a good and just society was powerful in the *Libération* movements around Europe, and they became the driving force behind the nationalization of entire industries, and the maintenance of price controls, as the chaos and uncertainty of the past decade and a half called for new social contracts. In the words of one of the architects of the French *Plan*:

Uncertainty and wavering take the place of the values that seemed most secured ... We thus better understand the disarray, sometimes even the anguish, which affect some of the men of our time, the most aware and at the same time the youngest, whose spirit is awakening, not as before in stability and certainties, but in questioning and in doubt. ... The world that we do not understand well becomes, in the extreme, that of absurdity and nonsense. It no longer even calls for revolt, which wants an intention and a hope. It imposes the refusal. (Massé, 1965: 16)

The refusal of the world bequeathed by the 19th century was the hallmark of interwar social thought, and the inspiration for broad controls, industrial management by the state and economic planning. In the postwar period in France, this organization implemented by social and economic planners became known as *dirigisme* and later indicative planning. In his 1949 *Épître aux Dirigistes (Letter to the Dirigists)*, while price controls were slowly withering away, Rueff implored these planners to see that he shared their goals but that the *dirigiste* approach could only lead to coercion, and that with “price controls, we have created societies where the purchasing power does not give the certitude of being able to buy, where the working force does not have the certainty of finding work” (Rueff, 1949: 28). Rueff argued that the maximum of

welfare could only be obtained through the price mechanism because “the desires of men, the conditions of production, the state of techniques are always evolving”, and the necessary transformation in the face of this evolution can only be obtained by the constant and necessarily efficient action ... of the price mechanism” (Rueff, 1949: 35). This certainly did not mean that people were slaves to the price mechanism, which “puts men in the world of realities, while allowing them to model it at their will” (Rueff, 1949: 34). This was consistent with the view that he had defended since the early 1920s that “politics can only be the art of using, for certain purposes, the laws the Political Economy discovers. ... Politics, thus considered, must be to political economy what the art of building motors is to classical thermodynamics” (Rueff, 1922: 683).

Rueff insisted that having a natural law governing monetary and economic phenomena did not preclude the “perfectly legitimate moral scruples, [which] can lead governments to sacrifice the search for natural equilibrium, either to ensure the subsistence of organisms that would otherwise disappear, or even to voluntarily cause a disruption of this equilibrium” (Rueff, 1922: 687). What he underlined was that a well-informed policy should be aware of its effects and how impeding the price mechanism impeded social welfare. Rather than try to organize the economy, he called politicians and economists to examine the source of order that came from the action of the price mechanism (Rueff, 1922: 686-687).

In 1935, during a discussion about the “crisis of capitalism” with his colleagues of the *Académie des Sciences Morales et Politiques*, Rueff drew a clear distinction between interventions acting on causes affecting prices, which let them reach freely their equilibrium level, “and exert their all powerful action on the factors of economic equilibrium” and those that seek to “determine prices or fix directly the volume of exchanges” (Rueff, 1935: 439). This

problem of the compatibility of certain interventions with the price mechanism was the problem tackled by Rueff during the Colloque Lippman (Audier, 2012: 493), and the principle at the basis of his theory of policy-making. In international trade, this would mean that while quotas would block the adjustment of the price mechanism, tariffs would only change the equilibrium obtained but not block the adjustment; they were thus compatible with the price mechanism, and they could be justified by military or political concerns, but it was wrong to see in them an improvement in social welfare (Rueff, 1977: 41). Thus his theory of policy both limited the action of the government to be in line with the price mechanism, but also opened the door to all redistribution policies as long as they maintained the equilibrium of the economy; otherwise, the equilibrium would be established through inflation.

This analysis is just another manifestation of Rueff's concern throughout his life with equilibrium and the Le Chatelier principle: if equilibrium cannot be obtained because a price is blocked somewhere in the economy, there will be an imbalance that will lead to other discrepancies on other markets. This is how Rueff distinguished between "good" and "bad" interventions on the economy: those that block prices and prevent an equilibrium from forming are unequivocally rejected, while other interventions acting on the causes determining equilibrium prices are acceptable for him, which means that economic policies can technically obtain a completely inefficient equilibrium, with little relation to costs and preferences, as long as equilibrium is obtained. The question then becomes how much efficiency a society is willing to sacrifice to try to reach more egalitarian goals, and if there is a possible balance between those goals, but this question goes beyond this paper.

Rueff was not straying much from the French liberal tradition when he presented this social engineering of natural phenomena; his teacher at the École Polytechnique, Clément Colson,

wrote in his *Cours* that “Political economy seeks to determine the laws that govern phenomena. [...] When these laws are known, men seek to take advantage of them to indirectly modify the effects which do not depend directly on their will, by acting on the causes which govern them, so as to give a more complete satisfaction to their needs” (Colson, 1924: 146). It would seem more controversial that this was an approach shared by Hayek, and yet the whole point of a spontaneous order was precisely that the institutions built around it could yield good and bad outcomes, that is, a society could obtain different results according to its institutions.

Hayek’s denunciation of scientism, constructivism and the engineering approach of the economy have tended to obscure the fact that he was well aware of the necessity to construct the conditions of a spontaneous order leading to a liberal society. Hayek’s position, or Rueff’s for that matter, cannot be properly understood if taken out of the context in which they were written: as much in the *Road to Serfdom* as in the *Epître aux Dirigistes*, both economists were reacting against a policy that was not merely interventionist, but that sought to organize the whole economy by fixing prices and production, or even to “exercise control over the jobs which people could take” (Friedman, 1961: 5) in England through the 1947 Control of Engagement Order. Rueff reacted against a central power publishing every week dozens of pages containing thousands of prices for as many goods, at a time of economy-wide rationing and inflation.¹⁰

Hayek was not far from Rueff in his institutional approach of the functioning of the price system, insofar as we understand that what he was denouncing was the complete organization and planification of the economy by social planners who believed they were more apt to allocate resources than market mechanisms. In fact, Hayek used an engineering metaphor to explain the rationality of spontaneous orders in a very consistent manner: in 1945, he described “the price

¹⁰ <https://www.retronews.fr/journal/bulletin-officiel-des-services-des-prix/24-mai-1946/1903/4880048/4>.

system as a kind of machinery for registering change, or a system of telecommunications which enables individual producers to watch merely the movements of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement” (Hayek, 1945: 527). In a formula strikingly similar to Rueff and Colson’s description of the “art of politics”, albeit more pessimistic, Hayek stated that “The price system is just one of those formations which man has learned to use (though he is still very far from having learned to make the best use of it) after he had stumbled upon it without understanding it” (Hayek, 1945: 528).

Twenty years later, in the middle of the 1960s, while explaining the difference between “spontaneous” and “designed” order, Hayek argued that spontaneous orders were characterized by constructions far more complex than could be produced by “putting the individual pieces in their appropriate places”: “All this is familiar in the physical and biological field. We could never produce a crystal by directly placing the individual molecules from which it is built up. But we can create the conditions under which such a crystal will form itself. If for that purpose we make use of known forces, we can, however, not determine the position an individual molecule will occupy within a crystal, or even the size or position of the several crystals. ... The same applies to spontaneous orders” (Hayek, 1964: 459). Again, those “known forces” are akin to the thermodynamic forces which Rueff underlined that engineers had learned to use to build motors.

Fifteen more years ahead, during a 1981 conference, Hayek threaded a metaphor of the capitalistic system as a stream of goods and services (Hayek, 2012). Against the idea that the relationship between the inflow and the outflow can be engineered (by Keynesian policies e.g.), Hayek argued that spontaneous forces must be liberated before they can be used: “Once we have again cleared the road for the more powerful spontaneous forces, we shall be able to return to the

slower and more delicate efforts of improving the framework within which the market will function more effectively and beneficially” (Hayek, 2012: 344). There are in fact two engineering positions, to which we will go back in the conclusion, which either take the position that the mechanism itself has to be engineered, or that seek to use the available natural mechanism to build a social order.

The same metaphor was used by Hayek in *The Constitution of Liberty*, when he argued that “we can produce the conditions for the formation of an order in society, but we cannot arrange the manner in which its elements will order themselves under appropriate conditions. ... As in nature, to induce the establishment of such an order does not require that we be able to predict the behavior of the individual atom ... All that is required is a limited regularity in its behavior; and the purpose of human laws we enforce is to secure such limited regularity as will make the formation of an order possible” (Hayek, [1960] 2011: 230). Hayek had turned in this book towards the conditions of the emergence of order from atomistic chaos, and the metaphor helped him determine what exactly was the role of policy in this respect, in the same way as Rueff.

In both Rueff’s and Hayek’s works, it is clear that there is an underlying phenomena, uncontrolled and natural-esque, whose translation as a price signal underlines the necessity to have an accurate price system reflecting human interactions and wants. This price system can in turn be used as a basis to engineer the institutions of a free society, as a driving force propelling forward the formidable construction of modern economies. Blocking the flow, stopping the underlying mechanism, equates to killing this innate force that Rueff called “la vie” (Rueff, 1967). It was precisely the opening of the gates through the limitations imposed on governments in 17th century England, in Revolutionary America, and in 1980s China that liberated this

driving force that launched our modern societies.¹¹ And in 1950s Europe, it was an experiment in limiting national governments that was designed by the founders of the European Community, and enforced by the Court of Justice where Rueff took his seat in 1952.

III/ An Experiment in Engineering Spontaneous Order: the C.E.C.A.¹²

A spontaneous order, if understood as a solution to a problem in the coordination of activities (O'Driscoll, 1977), can develop from any set of interactions, without informing any normative judgment on its character. But the point of the liberal experiments conducted since the 17th and 18th century is more ambitious than simple coordination: it starts from the hopeful expectation that there is a relationship “between principles, their translation into political forms or structures and such values as human welfare, liberty, safety and happiness” (Ostrom, 1976: 2).

Understood as such an experiment, similar to the American Constitutional Experiment, the European project of a Common Market was emphatically not a technical, purely economic enterprise. Without losing ourselves in the details of the elaborate integration theories constructed during the 1950s, we can remark two things: one is that the creation of the Common Market was situated at a particular moment in history when a new enterprise in institutional construction was called for, and reflections were conducted on the form to give to these institutions. The second is that there was a long process of institutional evolution that led to the selection of a common market whose main feature was to limit the possible interventions of national governments, somewhat against the political current, and yet a durable choice. The expression of this choice of principles into acts was the point of the Paris Treaty signed in July

¹¹ Montinola et al. (1995) for China; market-preserving federalism as a check on economic policymaking (Weingast, 1995).

¹² The “Communauté Européenne du Charbon et de l’Acier” had an official name in Dutch, French, German and Italian, but none in English. In the following we use the French acronym CECA for consistency, and because of the author’s bias.

1952, and it found its translation in the activity of the *Haute Autorité* in charge of ensuring the competitive nature of the common markets for coal and steel, and in the jurisprudence of the Court of Justice created by the Treaty.¹³

A/ Principles

There is something particularly odd in the fact that the father of French planning, Jean Monnet, is also behind the impetus for the construction of the Common Market. The two projects could not be more widely divergent in their principles, but in both cases they are examples of the willingness to create a rational order in a moment of despair and chaos: on one side, this order relied on the conscious design of a plan. The Constitution of 1946, creating in France the Fourth Republic, consecrated in its Article 25 “the establishment of a national economic plan having as its object the full employment of men and the rational use of material resources.” On the other side, this order was based on the spontaneous coordination of the price mechanism. The Treaty of Paris, ratified in 1952, created a Community whose role was to “bring about the establishment of conditions ensuring by themselves the most rational distribution of production at the highest level of productivity” (Art. 2 of the Treaty of Paris).

During a 1963 colloquium on the jurisprudence of the Court of Justice, Rueff insisted on the importance of the formula of Article 2 of the Treaty: “by themselves—this precision is very important, if it were not there, the orientation of the Treaty would be quite different from what it is; if we said, for example, ensuring through the intervention of a central planning authority, the Treaty would be quite different from what it is” (Rueff, 1965: 16). These two words were a humble recognition that the price mechanism could help bring about a rational order in production, without the conscious design or centralization of knowledge characteristic of a

¹³ The *Haute Autorité* (High Authority) was the ancestor of the European Commission in the CECA.

planning institution, but through the “interplay of competition,” as was underlined by the Advocate General Maurice Lagrange (1961: 401). The Treaty creating the CECA, later expanded into the Common Market by the Treaty of Rome (1958), was based on the operation of the price mechanism, and this was for Rueff the main feature of this institution, and the vindication of the free society defended by liberals. In 1958, in an introduction to a special issue of the *Revue d'Économie Politique* about the Common Market, Rueff underlined these principles and his hopes: “The institutional market is thus the outcome and crowning achievement of the effort to renovate liberal thought, which began some twenty years ago, which, under the name of neo-liberalism or social liberalism, or even liberal socialism, gradually became aware of its aspirations and of the methods capable of satisfying them” (Rueff, 1958: 8).

The opening of his 1963 speech shows clearly that the idea of engineering a spontaneous order is at the root of his interpretation of the Common Market, its laws and the intentions of its founders. Keeping with the metaphors of the previous section, Rueff argued that

Automobile engines use the phenomena of thermodynamics, but these phenomena take place in a framework which has been freely chosen by the manufacturer. In constructing his motor, he determined not the nature of the phenomena that he uses, but their form, which is different depending on whether these phenomena are placed in such or such institutional framework. ... The same applies in economic matters. It is the institutional framework in which the actors of economic life are placed, which fixes the form of the economic phenomena driving the production and distribution of wealth, that is to say of all the phenomena studied by political economy. (Rueff, 1965: 14)

Rueff's experience at the Court had taught him the “contingency” of economic phenomena and their reliance on institutions to express their forms; while he maintained that there was an underlying, natural phenomenon akin to the forces of thermodynamics, he also argued that the expression of this phenomenon could be very different according to the institutions built around it.

But for Rueff, the greatest innovation of the new European institutions was their realism: instead of trying to impose a purely economic rationality of free movements towards highest productivity, the transition was helped by the institutions and by national policies: “The authors of the Treaty recognized that these shifts in production could inflict severe hardship on populations and, during the period of adjustment, deprivation and suffering. They saw in the fear of these disturbances and their social and human consequences, the cause of the refusal which the people opposed to all the projects of tariff reduction prepared, tirelessly, by the League of Nations, between 1920 and 1939” (Rueff, 1958: 2). While the price mechanism would have induced those changes, he recognized that although working in (economic) theory, these changes would not happen without resistance and that they needed to be accompanied by a social policy able to bring about the new equilibrium corresponding to the new conditions of a common market where tariffs and barriers have been struck down. After Colson, who attacked the idea that “we have to do something”, and that it was better to “let society suffer momentarily from certain shortcomings rather than extinguish the spirit of enterprise or charity” (Colson, 1924: 168-169), Rueff was thus taking stock of the fact that social and political factors played a role in economics that could not be abstracted away.

For Rueff, the organization created was thus an “institutional market” characterized by three elements: the diminution of unnatural differences in production that were hindering efficiency and productivity (thus a limitation of government interventions in the market), the diminution of social and human consequences during the transition, and the attribution to supranational institutions of powers to defend the markets against cartels and government interventions. This was thus an inherently political project, both in limiting government and in giving it the role to

help the transition, something which was explicitly advocated both by Rueff and by the founders of the Treaty.

This political project of limited government was indeed central to the CECA, and this origin and its reason (and successes) has been somewhat lost in the current commentary on European construction during the past forty years. Ruggie (1982) followed Polanyi (1944) to argue that the postwar international order created an era of “embedded liberalism,” multilateral in character but “predicated upon domestic interventionism” (Ruggie, 1982: 393). This “compromise” became increasingly strained during the 1970s, leading to what Ruggie called a “regime change” in the relationship between international relations and domestic policies. An enormous literature followed these two authors, a literature which has enshrined a structural break between the “golden age” (Hobsbawm, 1994: 258) era of “embedded” liberalism coinciding with the postwar years of high Western European economic growth, and the onset of “neoliberalism” after the crises of the 1970s, leading to the “insulation” or “encasement” of the economy from national legislations aimed at disrupting capital flows (Slobodian, 2018: 12-13). Much of this literature argues that the latter part of the 20th century thus saw the emergence of a so-called “neoliberal” order subordinating political and social concerns to market rationalities (under the broad idea of competition), or in other terms a form of disembeddedness of political and economic concerns (Buch-Hansen and Wigger, 2010; Dardot and Laval, 2010). Following such accounts, the liberal or “neoliberal” project only started resurfacing when the “regime change” was enacted during the 1980s by the rise to power of neoconservatives in Great-Britain, the United States, or the “austerity turn” in France (Milligham, 2003). Such an account ignores that someone like Rueff saw in the common market the triumph of the renovation of liberal thought (Rueff, 1958: 8), it

also ignores that the construction of the CECA was already going against voluntarist and nationalist governments by limiting the purview of their economic interventions.

But in the early 1950s, the limits imposed on governments were not so much the expression of a concern to impose market exchanges and competition as an all-encompassing way of life, they were not just an “ideological goal and a childhood idyll” (Slobodian, 2018: 187). Limiting governments’ purviews was proposed as a new social contract to quench the “age-old rivalries” and “bloody divisions,” that characterized the history of Europe (Schuman Declaration), in the same way that the Declaration of Independence listed twenty-seven grievances regarding the abuses of the King of England to justify the establishment of a new polity where powers were so distributed as to neutralize each other. The first point of the preamble of the Treaty, which translated the ideas of the founding fathers of peace in Europe, Monnet, Schuman, Adenauer, thus affirmed that “world peace can only be safeguarded by creative efforts commensurate with the dangers which threaten it” (Treaty of Paris, 1952: 11). Rather than abstract notions of competitive markets or complete planning, the Declaration and the Treaty argued that “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity” (Schuman Declaration).

The Schuman Declaration came as a surprise, maybe because French politicians were better known for their abstract statements, their “metaphysic declarations wantonly made and shamefully retracted” (Burke, 1937: 352), than for trying to root their principles in “concrete achievements.” This novel approach grounded the Treaty in a tradition much closer to the American Constitution than to the frequently repeated exercises in constitutional choice in France. In a preface to the first dissection of the Treaty by one of its architects, Paul Reuter, Schuman argued himself that “The scope of the powers of the High Authority is not that of a

reinforced dirigisme” (Schuman in Reuter, 1953: 6). For Schuman, the idea of a “supranational” order was situated between the sovereign individualism of nations in international relations, and a federalism repeating a new coercive State at a higher level; the supranational order made possible some abdications of sovereignty, without abdicating it all. A more precise content was given to this idea by Reuter, who underlined that this supranational order was the recognition that “there existed in Europe a group of six States, ready to agree to give more importance to the Europe of abdications of sovereignty” (Reuter, 1953: 28).

Both Schuman and Reuter gave a sense of how much the development of a European cooperation was littered with failed experiments in direct control, and other plans of production quotas that were “never applied” (Reuter, 1953: 18). The institutions of the new Community were designed to foster the experiment of a different kind of order, and in this respect the Court of Justice played the essential role of upholding the principles that were enshrined in the Treaty.

B/ Translation

Ensuring competition

The CECA was created by the Treaty itself, with its 100 articles, its institutions launched by the accompanying protocols, and the transition period detailed in a special convention. After those basic “rules of the game” were set, it was the role of the Haute Autorité to interact with governments and firms on the market to prevent cartels, discriminations and government subsidies, and that of the Court of Justice to ensure that the rules were respected by all the players. As one of the original judges of the Court, Rueff was in a privileged position to observe

the functioning of this new market and ensure the smooth working of the price mechanism through the implementation of the competition called for by the Treaty.¹⁴

Several commentators have argued that the construction of the European project around a common market, first for coal and steel, then for many other goods and services, was the beginning of a “neoliberal” period, and that the institutions evolved toward the enforcement of competition rather than a concern for state-led economic development (Buch-Hansen and Wigger, 2011; Denord, 2008). It is true as we have seen that the rationality of the Treaty was economic, and that the forces of competition were relied upon to bring about “the most rational distribution of production” (Paris Treaty, Art. 2). One of the first decisions that the Court had to take concerned a central problem in this respect, that of the freedom of prices.

Rueff underlined that most of the 162 decisions of the Court in the period 1952-1962 were concerned with economic problems. One of the roles of the Court in these decisions was to define the terms employed by the Treaty to give them a practical meaning. For example, article 60 of the Treaty compelled firms to publish their prices and to follow these prices in their business transaction. When it was realized that some producers were straying away from these public prices, the High Authority adopted a lenient position that was attacked in front of the Court by the French government. The question was whether the “free establishment of prices” could accommodate with a rather strict adherence to published prices. The High Authority argued that a normal situation of competition with a free formation of prices would be difficult to accommodate with the obligation to publish every small changes in price, and that some leeway around the published price could be given. The Advocate General sided with the High Authority

¹⁴ In particular in Articles 2 to 5, and in Chapter VII “Atteintes aux Conditions de la Concurrence” (“Breaches of the Conditions of Competition”).

(Lagrange, 1961: 409), on the same ground that competition entailed a spontaneous and frequent adaptation of prices, but Rueff and the Court took a different position on the problem and eventually sided with the French government. Rueff underlined that the decision was related to the problem of market transparency, that is, of publicly known prices that ensure that firms cannot adopt discriminatory practices, a problem that Rueff brought together with the American pricing policy and concept of basing point (Rueff, 1965: 19). In its judgment, the Court argued that:

The Court has been particularly concerned that prices shall be allowed to find their own level; but this cannot justify its reaching another decision. The Treaty is based on the assumption that the freedom given to undertakings to fix their own prices and to publish new price-lists whenever they wish to amend them will ensure that prices find their own level. If current market trends change producers will have to amend their price-lists accordingly, and in this way 'the market makes the price'. But, notwithstanding the basic assumption that prices are to be allowed to find their own level, it must not be forgotten that the Treaty forbids any kind of discrimination and that it provides for the right to align prices. This is why the Treaty has laid down the rule that there should be compulsory and prior publication of price-lists and conditions of sale. It is not for the Court to express a view as to the desirability of this system; it can only record that this rule is laid down by the Treaty which (whether rightly or wrongly) does not contain any words which might permit a certain flexibility in the price-lists in the event of minor or temporary fluctuations.¹⁵

This judgment, the first one given by the Court on a decision made by the High Authority, goes to show how difficult it can be to reconcile different features of competition. The Court took the road of sticking to the Treaty's words, but it was already evident how much the freedom of prices was contingent on other requirements.

¹⁵ *République française contre Haute Autorité de la Communauté européenne du charbon et de l'acier*, 1/54, Official English Translation pp. 14-15, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61954CJ0001&from=FR>

Defining the concepts of the Treaty

Much of the Court's work during those early decisions was concerned with similar problems, that is, of giving a concrete meaning to concepts and principles that were enshrined in the Treaty. After the freedom of prices, other terms whose interpretation came in front of the Court were the "special charges", "subsidies" and "discrimination" forbidden by Article 4 of the Treaty. The jurisprudence of the Court helped define those general principles and give them a concrete meaning substantiating the idea of establishing and maintaining "normal conditions of competition" (Article 5 of the Treaty).

The Court defined a special charge as one "affecting unequally the production costs of comparably placed producers, [that] introduces into the distribution of production distortions which do not result from changes in productivity."¹⁶ As pointed out by Rueff (1965: 17), the Court defined similarly what constituted a subsidy, and enlarged this judgment to define what constituted a discrimination, again construed as an intervention from a government or the High Authority that would widen differences in production cost unrelated to variations in productivity: "any intervention attempting to distort or actually distorting competition artificially and significantly must be regarded as discriminatory and incompatible with the Treaty."¹⁷

Rueff argued that these different judgments contributed to define the Court's jurisprudence on three key points, the normal conditions of concurrence, the rational distribution of production, and the notion of a production cost. The first one was based on the idea that there were natural conditions of production which could be used as a baseline to determine an undue help given by

¹⁶ *Groupement des Industries Sidérurgiques Luxembourgeoises contre Haute Autorité de la Communauté européenne du charbon et de l'acier*, 7-54 and 9-54, Official English Translation p. 196, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61954CJ0007&from=FR>

¹⁷ *Société nouvelle des usines de Pontlieue - Aciéries du Temple (S.N.U.P.A.T.) contre Haute Autorité de la Communauté européenne du charbon et de l'acier*, 32/58 and 33/58, Official English Translation p. 143, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61958CJ0032&from=FR>.

a government to its national industry; the idea of rational distribution was for Rueff a consequence of competition rather than the design of a central agency, and the Court followed him by arguing that “the most rational distribution of production in accordance with Article 2 is that which is based in particular upon the composition of production costs resulting from output, that is, from the physical and technical conditions particular to the various producers.”¹⁸

The Court had the opportunity to define more precisely what constituted a “natural” cost of production when it examined the problem posed by a bonus paid to German miners, a bonus that was not reflected on the output price because it was financed by the Federal government (Rueff, 1965: 18). The High Authority had been asked by a group of Dutch firms to strike down the bonus, but the Authority had refused and its refusal was now being challenged in front of the Court. In its decision, the Court established that because of this bonus paid by the Federal government, “production costs are not the true costs of the coal which it has actually mined. This artificial reduction in accountable production costs places the coal industry which benefits from it in a privileged competitive position compared with that of coal industries which have to pay for the whole of their production costs on their own.”¹⁹ Thus the interaction of subsidies and production costs contributed to define the meaning of competition and enforce the rules of the common market for coal and steel.

According to the Advocate General, Maurice Lagrange, governments, individuals and firms complied with the Court’s decisions during this period (Lagrange, 1967: 715); this does not necessarily mean that the interaction of the High Authority and the Court led to a situation of

¹⁸ *Groupement des Industries Sidérurgiques Luxembourgeoises contre Haute Autorité de la Communauté européenne du charbon et de l’acier*, 7-54 and 9-54, Official English Translation p. 196, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61954CJ0007&from=FR>

¹⁹ *De Gezamenlijke Steenkolenmijnen in Limburg contre Haute Autorité de la Communauté européenne du charbon et de l’acier*, 30/59, Official English Translation p. 29, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61959CJ0030&from=FR>.

perfect competition, as economic conditions and the Treaty's intention could conflict with such an abstract state of affairs.

The limits to antitrust and competition law

The first case that the Court decided, on price-lists, had already given way to divergent interpretation of how to best ensure competition, whether it was market transparency or price freedom that was emphasized. The limits in the translation of the concept of competition into facts were also apparent in other cases, for instance in the case of the Ruhr cartels that Rueff solved with an appeal to the modern concepts of oligopolistic competition. The problem faced by the Court was a request by a group of coal mining firms in Germany that sought the annulment of a decision of the High Authority preventing them from selling their product from a unique outlet. In more concrete terms, it was a problem of whether it was possible for those firms to form a cartel or whether this went against the objectives of the Treaty. In 1965, Rueff underlined that this problem of the “modern forms of competition”, that is, of “oligopolistic” competition, where firms have enough market power to fix prices and exploit a market came up in front of the Court for the first time during this judgment. Rueff was the reporting judge on that case and sought to inspire his reasoning by “a realism that brings economic theory directly into legal doctrine” (Rueff, 1965: 25). Drawing on the modern theories of imperfect competition (Rueff, 1977: 221) and even on game theory (Rueff, 1965: 25), Rueff's argument that even in the presence of an oligopolistic market an indispensable measure of competition (*dose de concurrence indispensable*) ought to be maintained was used by the Court to reject the cartel's request and decide in favor of the High Authority's rejection of the common selling point.²⁰

²⁰ In 1962 Rueff wrote to Edward Chamberlin with whom he had a somewhat regular correspondence that “I often think of you in the cartel trials that we have to judge” (Rueff to Chamberlin, March 8, 1962, Edward Chamberlin Papers, Duke University).

While Rueff was satisfied with his use of imperfect competition to take into account the condition of the real market for coal in the interpretation of the meaning of competition, Lagrange argued that the action of the High Authority in the matters of anti-trust enforcement were “insufficiently vigorous and speedy”, and that “since the Treaty entered into force, no satisfactory solution for this problem has been found; and this has enabled the interested groups to consolidate their position” (Lagrange, 1961: 417). Thus the construction of a competitive market was much more complex than what the original principles can let on if taken on their own; the organization of competition was much harder to pin down than what is sometimes argued when the European project is construed as built around the sole idea of competition. Rueff himself emphasized the intricate problem of conciliating interventions (by governments, by the High Authority) with the idea of competition, and argued that the solution emerging in the jurisprudence of the Court was to create an area of “laissez-passer” but certainly not one of “laissez-faire”, as an economic policy was still possible as long as it did not create undue distortions in the relative positions of firms sited in different countries (Rueff, 1965: 22).

The idea that competition needed to be “organized” was in this perspective much more a product of the past forty years which had seen new and massive interventions of national governments in their economy via subventions, controls, quotas and tariffs, rather than a natural problem that could only be solved by an independent authority needed to ensure that somewhat abstract “rules” of competition were respected by all the players, when it is not evident where those rules are supposed to be found. It was against the economic nationalism of the six associated States that the High Authority and the Court were most successful, in limiting the possibility of interventions of these States into their economy and ensuring that the economic nationalism characteristic of the 1930s did not resurface.

Limiting economic nationalism

This success was illustrated in the decision against the bonus given by the Federal Republic of Germany to its miners seen earlier; another good illustration can be found in a judgment concerning transportation subsidies, given in May 1960.²¹ The problem considered was whether the *Bundesbahn*, the nationalized German railway authority, could subsidize the carriage by rail of mineral fuels to the iron and steel industries situated in the same Länder, in light of Article 70 of the Treaty which prohibited discriminations in the price rates of transportations between the participant countries; that is, a country could not charge a higher rate for a train doing a similar route from Germany to Belgium than for a train whose route was not international. The last alinea of Article 70 stipulated clearly that the pricing policy of transports was still within the purview of each member State, which could potentially have different rates when the competition was between different modes of transportation rather than within different countries.

The High Authority, in a series of decisions transmitted to the German Government in February 1958, asked the authorities in charge of the *Bundesbahn* to remove the special rates that were deemed discriminatory and thus contrary to the Treaty. In their argument against the High Authority's decision, the German government replied that the establishment of a common market for coal and steel did not preclude the national government to ensure the prosperity of their national economies based on Article 70 of the Treaty, to which the Court followed the High Authority by answering that:

the provisions of Article 4 and also the other paragraphs of Article 70 run directly counter to the idea that the Member States are free to include the coal and steel industry in any policy for the siting of industries, or to continue the practice of subsidies in the form of the grant of special rates and conditions to undertakings producing coal and steel. For if this power remained available to the six Member States it could prevent the establishment

²¹ *Government of the Federal Republic of Germany v. High Authority*, 19/58, *Barbara Erzbergbau et al. v. Haute Autorite*, 3-18/58, 25-26/58.

of the Common Market, particularly since the principles of general transport policy adopted in the six countries are different.²²

In other words, the Court argued that a voluntarist industrial policy aiming at developing the coal and steel industry of a region by means of direct subsidies was clearly contrary to the Treaty.

When the German government tried to argue that this was not a discriminatory practice, the Court again gave reason to the High Authority, by judging the subsidy as discriminatory and “unnatural” in the sense that it was not a natural condition of production. This was also the position taken by the Advocate General:

one of the fundamental principles which in the minds of the authors of the Treaty govern the common market is based on the concept of equality before “natural” conditions, and in particular on respect for what is called geographical protection. Here we meet an error, and a fundamental one I think, on the part of most of the applicants. Their reasoning presupposes that transport rates could — if not must — take the location of the undertakings into account as a given fact and be adjusted accordingly. ... But in my opinion it is the contrary which is true: it is the transport which is a given fact to which the undertakings must adapt themselves, and it is the transport itself which must be conceived in such a way that it is not discriminatory: the abolition of discrimination may involve structural alterations and the relocation of production, and all precautions must of course be taken to cushion the effects of such moves which would otherwise be too disruptive. Such is the condition judged necessary by the Treaty in order to “progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity”, to use the wording of Article 2, meaning a real common market in the basic products existing on the European scale.²³

These conclusions are worth citing at length as they show how much the organization of the market and the interpretation of the Treaty imposed a constraint on the economic policy that could be led by member states. The Court clearly shared the same view, by emphasizing that

²² *Barbara Erzbergbau et al. v. Haute Autorité*, 3-18/58 and 25-26/58, Official English Translation p. 193, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61958CJ0003&from=fr>.

²³ Conclusions jointes de l'Avocat général Lagrange présentées le 19 janvier 1960, *Barbara Erzbergbau AG et autres contre Haute Autorité de la Communauté européenne du charbon et de l'acier*, 3/58 to 18/58, 25/58 and 26-58, Official English Translation p. 211, https://eur-lex.europa.eu/resource.html?uri=cellar:f6c2ef96-5351-4c5c-b5e3-bd7cd8f909b3.0002.02/DOC_1&format=PDF.

preventing governments from subsidizing their national industries was not contrary to the goal of the Treaty set out in Articles 2 and 3 to ensure the development of employment, the national standard of living, and production:

The fact that the contested decisions might result in a temporary reduction in employment and in the closure of some undertakings cannot render these decisions illegal on grounds of infringement of Articles 2 and 3. It could even be argued that, on the contrary, such measures are necessary in order to enable the Common Market to achieve its stated objectives, since the disappearance of undertakings which could not continue to exist by their own unaided efforts, but only with the help of constant and massive subsidies, would strengthen its resistance to crises.²⁴

What was surfacing in this decision and in the arguments of the different parties was again a debate on what constituted the “most rational” allocation of resources. The German government had argued that “[t]he most rational distribution of production exists when reasonable economic considerations justify the initial introduction and the maintenance of production in given conditions”, to which the High Authority replied that:

the applicants fail to understand the purpose stated in the second paragraph of Article 2. According to the Treaty the most rational distribution of production must be guaranteed by taking into consideration the conditions, such as they are, of the Common Market. This 'economic principle' of the Treaty completely excludes the falsification of the geographical location and natural conditions affecting undertakings by manipulating transport rates and conditions.²⁵

This decision tied together the principles defined earlier about what constituted “natural conditions” for the cost of production and what constituted subsidies and special charges, with a limitation of the possibility by a member state to intervene to stop the adjustment of production towards the sites of highest productivity. As noted by Lagrange (1961: 415-416), the German government adopted a normalized policy for its rates of transportation at the time of the decision,

²⁴ Barbara Erzbergbau et al. v. Haute Autorité, 3-18/58 and 25-26/58, Official English Translation p. 194, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61958CJ0003&from=fr>.

²⁵ Barbara Erzbergbau et al. v. Haute Autorité, 3-18/58 and 25-26/58, Official English Translation p. 182-183, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61958CJ0003&from=fr>.

the solution advocated by the High Authority. One should note that these limits to economic nationalism in the coal and steel industries did not prevent an overall social policy, as long as it was applied over the whole economic territory in a consistent manner; as one observer of the time remarked about the establishment of the European Economic Community, “[s]uch cost differences are part of the basic data of the economic system in the same way as the lack or abundance of mineral reserves, or high or low living standards” (B., 1957: 55).

A new balance of powers

The delineation of the new balance of powers implemented by the CECA was also made through the examination by the Court of the limits to the powers of the High Authority; “safeguarding Member States and enterprises against possible *abuse of power* on the part of the High Authority” being one of the most important tasks set out by the Treaty (Lagrange, 1961: 416). In a 1958 decision, the Court argued that the powers conferred to the High Authority under Article 8, “are however limited by the specific provisions set out in Title III of the Treaty.”²⁶ This echoed the concerns of the advocate general, who underlined that this decision on the limits of the powers of the “Community executive arm ... delineate the extent of judicial control over discretionary executive power, This in turn requires the Court to achieve a balance of power between the executive and the judiciary within the Community, a constitutional problem of the greatest magnitude” (Lagrange, 1967: 723).

In the case of the German railway judgment, Lagrange pointed out that the High Authority lacked the power to force the government to adopt normalized tariff, but it was the judgment of the Court that led this reluctant government to adopt the general rates advocated by the High

²⁶ *Groupement des hauts fourneaux et aciéries belges contre Haute Autorité de la Communauté européenne du charbon et de l'acier*, 8/57, Official English Translation p. 255, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61957CJ0008&from=FR>.

Authority and “grant substantial reductions applicable without any discriminations whatsoever as to any transport of coal to the steel producers, including those situated in Lorraine”, that is, across the French border (Lagrange, 1961: 415-416).

These decisions were important because they contributed to delineate the perimeter of intervention of the High Authority and of the governments of member states, and what constituted possible interventions in the markets for coal and steel. While some interventions, those that were clearly preventing the price mechanism to reflect underlying conditions, were deemed clearly illegal under the Treaty law, broad interventions on the economy, even if they influenced the particular markets of coal and steel, were construed as part of the “natural conditions” of production that were to guide producers in the allocation of resources towards those sites with the highest productivity. There was thus put into place a double mechanism to limit the interventions of government: a positive one acting directly to prevent them from giving direct subsidies to their national industries; and an indirect one acting through the competition between national social and economic legislations acting, for instance, on minimum wages. The establishment of a new balance of power between the national and supranational levels was the great innovation of the Treaties, and the mechanism that ensured the creation of a peaceful area of economic and political cooperation.

At a time when most countries had made the choice to nationalize many of their industries, including those producing coal and steel, the risk was important that conflicts over these resources could lead to renewed tensions between the countries around the Rhine river. The organization of competition, if not always efficient in practice, was a crucial factor in ensuring an era of peace and prosperity by limiting the possibilities that national governments had to weaponize their industries; when compared to the laborious application of antitrust policy and

the construction of an unwieldy competition policy, this subordination of economic interventions to the logic of nondiscrimination seems a much more important success of the early European Community, one that falls in line with Hayek's view of federalism in 1939 as a mechanism to impose limitations "upon the economic policy of the individual states" (Hayek, 1939). This approach to delineating economic interventions also corresponds with the description by Rueff of legitimate price interventions, and in the end, it is a truly liberal construction, not in the sense that it promoted free markets and competition, but in the sense that it constrained governments, and led to a new distribution of power between national and supranational institutions, a distribution aimed at fostering economic and political liberty which exist "only when there is no abuse of power; ... To prevent this abuse, ... power should be a check to power" (Montesquieu, 1793: 112).

IV/ Conclusion: Liberalism and Limited Government

A dialogue between Rueff and Hayek offers a series of answers to key questions about the roles of institutions, design and the emergence of order in society, and to interpret the intention and application of the Treaty creating the European Coal and Steel Community. Understanding the definitions given by both authors for concepts like "spontaneous" or "designed", shows that their differences lie much more in the terms employed and the methodology, the products of different paths, than in the concepts and the outlook on the world behind these words.

Hayek's position and arguments have often been derided and their scientific basis attacked because it was not clear to readers where design starts and where it ends.²⁷ But Hayek was always clear that the problem with planning was the way it was used without being defined, and that people using the term planning used it to mean something which they were not making

²⁷ For a modern criticism see Sandefur (2009); for criticisms during Hayek's lifetime, see e.g. Caldwell (2016: 10).

precise (Hayek 1976; see also Caldwell, 2004: 269). Aside from this, the idea of a spontaneous order did not mean that from a state of nature sprung harmony, a position that neither classical liberals nor Hayek defended (Hayek, 2010: 58-59; Caldwell, 2004: 348). Rueff's liberal engineering perspective gives us answers to question such as the extent of the role of government in the economy, and the way in which spontaneity and institutions interact; on the other hand, Hayek's emphasis of the spontaneous order as an organizing principle in society gives a clue to understand why Rueff continually opposed planners that seemed to come from the same background as he did.

A question raised is why, from such apparently divergent starting points, they both reached a similar outlook on the economy? One of the answers given is that there is a strong liberal tradition in France, which molded Rueff's thought during his studies, and which is connected to the source of Hayek's reflection. Bastiat for instance, a source of Rueff's thinking, is one of the rare drivers of the reflection on spontaneous order in the 19th century (Barry, 1982: 29). But Bastiat was not alone in late nineteenth-century France, and liberalism was still alive in the *Grandes Écoles* where economics was taught, in particular in Colson's *Cours*. The survival of the French liberal tradition, amongst the ranks of the engineers denounced by Hayek, is a historical puzzle that deserves more scrutiny.

There are two approaches corresponding to the engineers, one concerned with the meticulous organization of society (the Laplacian view), the other, married with a liberal tradition, to use the natural phenomena of exchanges to build a free society (finding its expression with Colson and Rueff in particular). These two strands of engineering have not been sufficiently separated and have contributed to throw the baby with the bathwater, to discard the contribution of engineers to the liberal tradition and the understanding of the price mechanism.

Rist had already noted this subtle but profound difference between the two strands of engineering, when he wrote that Saint-Simonists, “to the spontaneous conciliation of interests, [...] oppose their artificial conciliation. Henceforth countless efforts were made to discover a new mechanism capable of replacing the spontaneous mechanism” (Gide and Rist, 1947: 256). Rueff is not looking for a new mechanism, but for the institutional machinery able to use the natural mechanism: “Mr. Rueff invites the Socialists to steer, to manipulate the price mechanism, instead of striving to break it” (Villey, 1967: 167).

In the 1950s, Rueff’s involvement in the CECA led him to restate his approach of liberalism to insist more on the institutional aspects in which the price mechanism was unfolding. Institutions were important both to ensure the efficiency of the price mechanism, but also to obtain positive effects from the interplay of competition, especially by limiting the possibilities that national governments had to lead voluntarist economic policies, when they were prevented from distorting the competition of the common market. It should be emphasized again how much it was the political concern for peace that drove the establishment of a limiting mechanism, rather than the other way around; the concern to defend “the global rights of capital” (Slobodian, 2018: 13) was emphatically not the primary driver to impose limits on governments.

If the Community was successful in fostering a peaceful order, what emerged from the competition policy put into place was less successful in convincing the denizens of the old Continent that the experiment was a success. One of the defining characteristics of the European Community was that its action was orchestrated around the role played by the High Authority, whose decisions were challenged in front of the Court. The importance taken by the European Commission in today’s Europe is a direct consequence of this initial choice of organization and balance of powers. That particular form of organization is on a different plane from the

collectivist / free markets divide, but it was inscribed in the long-term evolution of the structure of government in Western societies. It has been noted that the US government encouraged the creation of the Coal and Steel Community, but it is less obvious that the structure of the Community is also reminiscent of the development in American government, and especially of the development of the administrative state (Waldo, 1948). In the US, such a development began during the second part of the 19th Century with the problem of trusts, which led to the creation of the Interstate Commerce Commission, one of the first of a number of agencies that form today the backbone of the structure of the US federal state (Tarbell, 1905: viii). In the late 19th century, the scholar-president Woodrow Wilson was one of the main drivers of the development of this conception of the state by linking it to the idea of efficiency (Wilson, 1901). Today, the idea that the development of a bureaucracy of independent agencies was meant to drive efficiency in administering government is somewhat ironic, and much of the criticism levied against the European Union, its technocratic structure and its lack of accountability is of the same nature as the reaction against the development of the administrative state in the United States. The Interstate Commerce Commission, and US antitrust law were frequently referred to in the Court's decision, and the resemblance between the development in both continents of this fourth power are striking. A comparative analysis of the consequences of both developments on the balance of powers is worth more serious inquiries, especially in relation to the questions of the limits to government, and to understand why, in the latter part of the 20th century, "a system which nobody wanted" began to emerge (Hayek, 2022: 17; see also Ruggie, 1982: 408).

Were the European institutions the bridgehead of liberalism, and are they today the expression of "neo-liberalism" (Denord, 2008)? In a very real sense, yes, but they are not the cabal that is sometimes portrayed. There is a more important sense in which these institutions were liberal, as

the embodiment of a political project of limited government, that is, the liberalism that they embodied was as much political as it was economic. The lesson of classical liberals is that the driving force of economic action is situated in individuals. As the institutional structure around the price mechanism is developed and becomes more complex, there is always a risk that it smothers this primordial force, and that commentators lose sight of this force, mistaking the structure around it as the real driving force. For Rueff, once this force is stopped or stymied, this will inevitably lead to imbalances, inflation and upheavals, or in Hayek's words, a road to serfdom.

The European project is today castigated from all sides, by conservatives, for instance on the issues of immigration and sovereignty, by liberals who see in it a vast and inefficient bureaucracy, and by interventionists on the left, who would like to see less constraints on budget rules and public spending. Some rare voices have defended the success of the liberal project of limiting government power, wars, and promoting individual freedom (Rohac, 2016). Most commentators see in the current state of the European project a subordination of political democracy to an economic rationality out of which they want to escape. But they should keep in mind that in its original form, the political project of limiting government was designed to create a good society, when good is not intended only to mean "more goods" but also peace and the pursuit of happiness. In the immediate postwar, it was an instrument to limit the threat of war, in a way that can be construed both positively and negatively: either as building a community of people tied together by their cultural, social and economic exchanges, or as a check on the political power wielded by governments. The choice of coal and steel in this respect was far from random: coal was the main source of energy, the engine of war, and steel the building block for machines of destruction. The region between France, Germany, Luxemburg and Belgium was a

hotly contested terrain, rich of natural resources at the center of their economies, a Middle East of the first half of the twentieth century. When oil replaced coal, the center of disputes moved away, but the ties between the Nations at war for centuries remained, and can only remain as long as its people believe in the idea of a Common Europe: “An object of competition and a source of conflict, can this border become a link and see the establishment of lasting cooperation between rival nations?” (Schuman in Reuter, 1953: 8).

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