

The Ideal of Freedom in Modern Times and Beyond. On Liberalism and Neoliberalism

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Introduction¹

At first glance, we would guess that there exists a measure of ideological continuity between the emergence of the first legal doctrines of subjective rights in the second part of the 12th century and the spread of bourgeois emancipation movement; the multiplication of peasant uprisings and struggles against serfdom; the flourishing of heresies and spiritual dissidences in the 14th and 15th centuries; the Renaissance and, finally, the Protestant Reformation that broke the hierocratic monopoly of the church. We can imagine that the same thrust towards freedom is still at work in the resistances against the centralization of power in the the absolute monarchies and the Empire, which began before, but almost followed, the religious wars of the 16th and the 17th centuries. The emergence of the natural rights philosophies and the social contract in Italy, then in Holland and England can be read as such resistances and as the path of utilitarian doctrines of the second half of the 18th century, even if these last ones may recuse the doctrines of natural law. Despite the geographical diversity of the schools of thought, the triumph of the self-conscious “liberalism” of the 19th century and its victory over the other great modern political tradition of republicanism, may appear as the achievement of a long movement of ideas that has been at work in the modern revolutions of Holland, England, America, and even France. At this point, liberalism views itself as the champion of individual freedom in the claim of “*the separation of church and state, the rejection of autocracy, the rejection of the inequality of law*” and the constant appeal for “*constitutional limitation on the exercise of political power.*”²

¹ I warmly thank my colleague André Drainville, Professor of Sociology at Laval University, who reviewed a first version of this paper in 2015, Razvan Amironesei, Post-doctoral Fellow at UC San Diego, and Caleb Scoville, Doctoral student at UC Berkeley, who agreed to review my two versions. I am indebted to all of them for their suggestions, helping me to make this text more readable and audible. Of course, the usual *caveat* applies for all the awkwardness and errors that are still present.

² See P.Bénéton, article *Libéralisme* in the *Encyclopédie Philosophique Universelle*, T.II, Vol. II, *Les Notions philosophiques*, PUF, Paris, 1990, p.1467 (my translation). The use of the adjective "liberal", in a political sense, is attested only in the late 18th century and the noun "liberalism" did not appear until 1815,

We can still suppose that, in response to the crisis of liberalism in the last part of the nineteenth century, which manifests in the strong pressures of the working class movement, “new liberalism” tried to save the humanist ideals of a tradition at risk. All this, while “social Darwinism” naturalized the principle of competition, which had emerged from the reality of English capitalism.³ The First World War, the Bolshevik revolution, the crash of 1929 and the Great Depression, Keynesian, Stalinist and Nazi planning, soon appear to spell the end of an ancient idealization of the “autonomy of the individual” and the collective recognition of its “natural freedom”. When the most serious threats weigh on it, the rise of “Ordo-liberalism” in Germany during 1930’s and, after the war, the formation of “neo-liberal” doctrines in Europe and the United-States, may be seen as a second “return to,” or as a deepening of the classical liberal views. The triumph of the neoliberal politics and the global economy in the last four decades, after post-war Keynesian politics appears to many to be no longer adapted to a new combination of inflation and feeble economic growth, and may be then thought of as nothing other than the logical return to the true process of modernity. In this case, modernity would be a process of the deepening of individual freedom, now experienced in all the new spheres opened by the successive technological revolutions. If we put aside the inevitable approximations and inaccuracies of such a broad sketch, we can say that this is not an incoherent vision, especially if we try to understand the logic of development of modernity in relation to freedom and its idealization.

Though it is far from being incoherent, such a perspective confronts us with, at least, four difficulties. First, is the risk of minimizing profound differences in the intents of

the French equivalent not before 1818, after the term was used in Spain in 1812. Of course, the use of the adjective devoid of any political connotation is much older. If we do not meet exactly the term *"artes liberal"* in Cicero, we find very similar expressions to designate the field of studies *"quae sunt dignae libero"* and are thus opposed to the *"artes servile"* devoted to slaves. This hierarchy of types of knowledge that combines the technical knowledge to knowledge worthy of a free man is inherited from Greek culture. The precise list of liberal arts appeared in the 1st century BC and was still valid in the 14th century, at the end of Middle Age. On the history of *"artes liberales"*, see the excellent note of Maria J. Grondek:

<http://www.ptta.pl/pef/haslaen/a/artes.pdf>

³ Catherine Audard, « Le “nouveau” libéralisme », *L'Économie politique* 4/2009 (n° 44), p. 6-27 URL : www.cairn.info/revue-l-economie-politique-2009-4-page-6.htm

discourses about freedom that belong to different epochs and contexts. Even if there was only one concept of freedom, the content to which the notion applies is always specific and reconfigured by the shapes and varied circumstances of actual practices and actual forms of domination and power. Thus, the ideal of freedom does not remain identical to itself from one period to another. Second, if we still choose to follow the sole path of the history of the ideal of freedom, we are confronted with the risk of being swayed by the retrospective view which founds the self-conscious liberalism that sees in the consciousness of freedom the real actor of history in modern times. In other words, we may overestimate the real efficiency of the sole ideal and be tempted to underestimate the weight of the evolutions of practices attached to labor, property, power and law, institutions which are all effective mediations of dominations and resistances. Third, if we take into account not the ideal, but what we think to be the reality of freedom, trying to grasp its deepening as the true engine of the dynamics of modernity, we nevertheless risk presupposing the deepening of a metahistorical and metaphysical entity which does not exist. Even if we then consider the institutional mediations just mentioned, we face the question of the autonomy of their proper evolution and effects. Fourth, if we invoke both the ideal and the reality of freedom, we still risk upholding the shift that exists between constellations such as “liberalism” and “neo-liberalism,” which are not reducible to the sole defense of the ideal of individual freedom. In a word, despite its attractiveness, the perspective we just considered may overestimate the continuity, the depth and the efficiency either of the pure idea of liberty or of the reality of freedom at work in the advent of modernity.

Foucault was certainly among the first contemporary thinkers to be aware of these difficulties.⁴ He did not dispute the fact that the belief in the value of individual freedom

⁴ The debate surrounding Foucault’s lectures on liberalism and neo-liberalism which has ensued since their publication first turned around the gaps in his historical reconstruction, the choices of the authors he insisted on, his alleged sympathy for liberal and neoliberal ideas, especially Becker’s notion of “human capital.” He has been criticized for his concept of “veridiction”- introduced to insist on the fact that a demarcation between true and false statements cannot exist unless historical techniques, not necessarily scientific paradigms, created that demarcation-, which some interpret as his approval of the market society; and his concept of “government of the self” which, for many, match perfectly with the neo-liberal ethic. Since 2014, year of the 30th anniversary of the death of the thinker, the number of commentaries has

or the claims for “liberties” have constituted important elements of modernity. As he emphasized in one of the first lectures of *Security, Territory, Population* of 1977-78, the thesis which states that freedom has been one of the conditions of emergence of liberalism and capitalism “cannot be false.”⁵ And, with Marx, we can add that a measure of “real freedom” has been an inescapable condition of the reproduction of industrial capital, through the exploitation of living workforce. The reason is that the employee is neither a slave nor a commodity, but an individual who gives “freely” use of its labor force against the “free” provision of wage. The interesting questions coming out from the Foucauldian analysis are as follows: what part of the real do we miss if we think of liberalism simply as a politics of freedom? What escapes us in the dynamics of modernity if we exclusively grasp it only as a progress in the realization of the ideal of freedom? In fact, Foucault’s first goal was to analyze the transformation of power from the “Territorial State” to a “Population State.” He invented the notion of governmentality and elaborated anew the notion of government which allowed him to discuss this shift.⁶

When the notion of “governmentality” was first introduced in 1978, it meant three things: “the set of institutions, procedures, analyzes and reflections, calculations and tactics” that allow the exercise of power over a population by using the dominant knowledge of

literally exploded. I have not the intention to get in any way in this debate. The best I can say is that today my interpretation is close of that Frédéric Gros *et al.*, in « Introduction », “Foucault et le néo-libéralisme”, *Raisons politiques*, 2013/4 N° 52, p. 5-11.

⁵ Foucault, M. *Security, Territory, Population.*, Lectures at the Collège de France, Seuil / Gallimard, Paris, 2004, translated by Graham Burchell, Palgrave Macmillan, 2007, (STP, English electronic edition p.70). The core of the developments which interest us today are from 1978-1979 and published under the title “*Naissance de la Biopolitique*” (NBP), Gallimard/Seuil, 2004. The English translation of these last lectures, still by Graham Burchell, was published in 2008 (BBP). I will refer to the English translations or the french edition. The entire passage of STP goes like this: “The game of liberalism – not interfering, allowing free movement, letting things follow their course; *laisser faire, passer et aller* – basically and fundamentally means acting so that reality develops, goes its way, and follows its own course according to the laws, principles, and mechanisms of reality itself. So this problem of freedom, [to which] I hope to return next week, can, I think, be considered and grasped in different ways. For sure, we can say – and I don’t think it would be false, it cannot be false – that this ideology of freedom really was one of the conditions of development of modern or, if you like, capitalist forms of the economy. This is undeniable.” (*Idem*, p.70)

⁶ *Security, Territory, Population*, op.quoted, p.456. He coined the second notion in his lectures at the *College de France*, given in 1977-78, published under the title “*Sécurité, Territoire, Population*” Gallimard/Seuil, (STP), 2004. The notion of “government” had already be introduced in the lectures of 1975 on *The Anormals*, (French edition, p.45), but it acquires a political meaning only in the lectures I discuss today.

political economy and the techniques of security devices; the trend to the preeminence of this kind of power over sovereignty and discipline; and the long process of transformation of the “State of Justice” to “administrative State.”⁷ It does not matter to us today that the notion has been considerably simplified afterward and its meaning extended as soon as the first lectures of 1979-80.⁸ Whereas the notion of *governmentality* already has a profound historical content in both *Security, Territory, Population* and *The Birth of Biopolitics*, at the time Foucault discussed liberalism and neoliberalism, its definition involved the kind of awkwardness which results from claiming to making “the history of governmentality.” Whether we consider this formulation as a slip or not, the meaning it conveys to us is that “making the history of governmentality” meant focusing on the successive forms taken by the “art of government,” namely the successive ways to objectify and rationalize the “conduct of the conducts” of others in using economic knowledge. Foucault’s objective is to analyze the objectification and rationalization that grasp the conducts of others in a temporal dimension which is not immanent to them. At the same time, the purpose of this art is to modify the practice of power in a continuous way. It is precisely this first elaboration of the notion of governmentality which gives us the crux of the definition of liberalism that Foucault adopted.

In order to understand liberalism, Foucault does not refer to the history of ideas as a framework of analysis. After all, he could have proposed, in a long parenthesis, his version of the story of liberalism as a story of the successive idealizations of freedom in the field of political theory. On the contrary, in pursuing his inquiry on the objectification and rationalization of the practices of power, he suggested that ideas emerge from the effectiveness of the practices and their actual relations. With such a perspective, we do not start from a stable Ideal, a Kantian Idea or a practical principle, to grasp the forms of its realization in the movement of history. We have to try to capture the emergence of the representation of practices themselves and, among them, the representation the practice

⁷ Foucault, STP, op. quoted, p.144

⁸ In Foucault, *On the Government of the Living*, Lectures at the College de France, 1979-1980. The lectures were published in English (OGL) in 2014.

of power gives to itself. Foucault showed us that Liberalism is a constant appeal to the limitation of action of those who govern. This idea is in itself perfectly banal. However, it is less trivial to argue that a call to the limitation of power emerged from within the art of government. This art of government is understood as a progressive construction of the idea of political economy and the birth of the modern market in reaction to a previous doctrine which made the “principle of police” the tool of the maximization of the “sovereign power” of the monarch.⁹ But, in my view, what is interesting from the the Foucauldian line of inquiry is this: relying on Rosanvallon’s works¹⁰ on the history of the idea of the market, Foucault suggests that liberalism consists in a transfer of rationality applied to the domain of economy. This notion of transfer must not be understood as a simple neutralization of the new political rationality or as the internal resorption of the old one. This transfer must be seen in analogy with the transfer of pastoral power to sovereign power. In our case, the transfer takes place via a displacement which supposes precisely the actualization of a new political rationality which literally invents the alleged pure economy as a natural sphere.¹¹ Foucault thought that liberalism may be approached as an art of government which first crystallized around three main beliefs: a) the market is a technique of “veridiction,” b) the calculus involving utility of decisions is a tool of the limitation of power, and c) Europe can be the subject of unlimited economic growth inside a world market.¹² The veridiction principle is central in a liberal economy because the market is thought giving not the “just” prices of the goods but the “true” prices.¹³ The belief that the fluctuation of prices tend to stabilize in an equilibrium, which is supposed to maximize the well-being of the greatest number, dispenses the government to act on what is supposed to regulate by itself.

⁹ Foucault, STP (French edition), pp.327-330

¹⁰ Note that Rosanvallon is the sole of his contemporaries repeatedly quoted by Foucault in the lectures of 1978-79.

¹¹ This kind of transfer from pastoral power to Biopolitics have been remarkably approached by Razvan Amironesei in his doctoral thesis *Biopouvoir et Nihilisme à partir de l'oeuvre de Michel Foucault*, Laval University, 2013.

¹² Foucault, NBP, p.327.

¹³ As soon we enter in the modern economic field the displacement of the question of just price to the question of true price is at work in Foucault, STP (French edition, pages 30-44).

I stated that Foucault did not entirely reject the classical view which claims that the ideal and the ideology of freedom play a key role in the movement of history, but wanted to frame another way of thinking about the relation between practice and ideal. However, in order to establish the possibility and the relevance of approaching liberalism as an art of government, he had to reject the belief that the history of modernity has to be thought of as a deepening of “real freedom.” He mobilized two arguments against this perspective. First, he argued that it is very difficult to compare and evaluate the quantity of liberty present in different systems of power.¹⁴ For example, the French monarchy in the seventeenth and the eighteenth centuries was anything but liberal. In fact, it was a heavy system of statutory privileges and of vast arbitrary relations. Yet, it is difficult to compare the multiplicity of powers it includes, leaving at the same time many areas of life outside the scope of its intervention, with a contemporary liberal system of power which continually takes in charge new aspects of the lives of the individuals. This first argument is relatively weak, even as it points to a real difficulty from the point of view of the historian, because, as we will see in an instant, in each historical period there is still a collective evaluation of the evolution of freedom. The second argument is more fundamental, according to Foucault himself. It poses that we cannot conceive of freedom as a universal that particularized itself in time and space, as an entity that would manifest quantitative variations, or more or less serious amputations, a universal which would accomplish a gradual completion.¹⁵ This argument is stronger. But it remains in fact suspended from the validity of the alternate definition of freedom proposed to us. Foucault thumps: “*Freedom is never anything other-but this is already a great deal-than an actual relation between governors and governed, a relation in which the measure of the ‘too little’ existing freedom is given by the ‘even more’ freedom demanded.*”¹⁶ We have immediately to note that Foucault gives us a strict social definition of freedom. We can add that all the ways of speaking about freedom, without giving a word about the

¹⁴ Foucault, BBP, p.62

¹⁵ Foucault, BBP, p.64

¹⁶ Foucault, B.BP, p.63

social relation it implies, are strongly negated: “...never anything other but.” As some have also remarked, the notion seems to reappear in its proper definition, which would deserve to be justified.¹⁷ But, as we are going to see, it is a mistake to declare that the definition of freedom Foucault gave us is a false one, since what is reappearing is not exactly what we define. Finally, we have to remark that just a moment ago the quantitative aspect of freedom was denied as the property of an objective universal, but now, the quantitative aspect appears to be the pure manifestation of freedom itself. How is it possible? Why all these remarkable determinations? Because of the presence of a subjective experience within the relation of power.

The relation of power is thought of as “real,” but within this relation a subject evaluates the “too little” of actual freedom by the “even more” of an ideal one, which appears at the same time as a “natural growth” of the actual one. “Human” freedom, framed within an actual relation of power, contains irremediably the subjective evaluation of itself which is widening the difference between the actual and ideal freedom to come. The affirmation of the real presence of the subjective ideal of freedom is not entirely new. Kant, for example, had already stated at the end of the *Critique of Judgment*, that the Idea of freedom is the only one which is at the same time a fact among the facts even if we are never able to intuit it.¹⁸ But the ideal of freedom which appears in Foucault’s definition is still more impressive since it emerges from the actual and not the opposite. I think this definition which invites us to always consider the gap between ideal and actual freedom historically offers a good point of departure, but at the same time merits to be explored, criticized, enriched and reformulated. My presentation today may be treated as a work on the difficulties and the advantages we encounter in our understanding of freedom as subjective evaluation of its actuality.

¹⁷ Sardinha, « La découverte de la liberté », *Labyrinthe* [En ligne], 22 | 2005 (3), mis en ligne le 22 juillet 2008, consulté le 15 janvier 2016. URL : <http://labyrinthe.revues.org/1037>

¹⁸ Kant, I. “Critique of Judgment”, (English translation J.H Bernard, 1892), #91, The online library of liberty, p.274

My presentation will turn around four points, the first two to be used in the development of the next two. I begin by suggesting some etymological and historical considerations on the birth of the notion of liberty in ancient Greece. This means that we have to consider the invention of the notion of freedom and the collective crystallization of an ideal which took place in the Greece of 5th BC has something to teach us about the formation of the modern ideal of freedom. Unfortunately, this subject raises important questions that I can address only superficially today. Second, I propose a typology of the ways in which common sense and theory question freedom. Each way of questioning contains itself a large number of “problematizations.” I show that in our philosophical tradition we have to distinguish four main ways of inquiring freedom ; each way being independent enough from the others to allow that the approach adopted by one philosopher within a certain type of inquiry does not force the approach he eventually takes in questioning in another one. It is important to note that I am not going to distinguish “designs” inside which we could articulate allegedly positive or negative philosophical constructions.¹⁹ I am not going to distinguish either types of liberties, as did for example Orlando Patterson, who, in one of his great works, separated personal freedom, civic freedom and political freedom.²⁰ My point is different: once the prodigious innovation which threw the ideal of freedom in the cultural and political arena of the social life of ancient Greeks and Romans is realized, the notion which henceforth circulates in the speeches of men as a value becomes a symbol. My claim is that as freedom becomes a cultural entity, one does not have a comprehensive view of what it means. It functions like a sign and embodies a collective proposition. The cultural value becomes a necessarily source of questions for men. In my view, it is not a specific property of the abstract notion of freedom. All the symbols are in the same situation. They are embodiments of collective propositions, which tend to silence those who use them at the time they serve to each of them as means to reach the others, whether in speeches or symptoms, which are always destined to others. This is precisely for this reason, whatever they know or not the fact, they try to

¹⁹ Berlin, I. “Two Concepts of Liberty.” In Isaiah Berlin *Four Essays on Liberty*, Oxford University Press, Oxford, 1969.

²⁰ Patterson, O. *Freedom in the Making of western culture*, Cambridge, Harvard University Press 1991.

share the questions about them which are at work in their speeches and their symptoms. But in this precise case, the questioning is insistent because it is impossible to really think and speak about freedom in a strict univocal way. The collective elaboration of the notion of freedom thus leads to a separation between the notion itself and the recognition of what is thought of as its “exercise.” Each of these moments generates a new separation: the first, between the pure notion and the notion of human freedom, the second, between legal recognition and its historical condition, namely the political relations of power and domination. Thus, I will argue that in our philosophical tradition there exists four main ways to question the nature of freedom.

In a third moment, building on Foucault’s account of liberalism as a specific and historically determined art of government, I will show that the dynamics of modernity owes less to the continuous realization of a stable ideal of freedom than to the discontinuous transformation of relations between practices, mediated by institutions such as property, labor, law and political power. Fourth, I shall argue that the neoliberal definition of freedom we find, for example, in Hayek’s opus magnum, *The Constitution of Liberty* (1960), rests on the presupposition that one can compare ways of questioning freedom which are precisely not comparable or reducible to one another and that it is grounded in an archaic statutory opposition to slavery. His conception articulates a pre-philosophical definition of freedom to the injunction to obey the rules which ensure the competitiveness of all attempts of better adaptation to the market. In other words, I will show that the neoliberal ideal of freedom elaborates an ideological rationalization by drawing a veil on the increasing mutual dependence of all our actions and new global forms of domination which are the real determinants of our collective destiny.

A last introductory remark is necessary here. In using the notion of “ideology” and the expression “ideological rationalization,” I have to specify what I intend to mean, especially since my purpose today builds on the works of Foucault, and, to a lesser

extent, on the Foucauldian analysis of Dardot and Laval.²¹ Central in the views shared by these authors is indeed the distinction between rationality and ideology. Most of the time Foucault himself was reluctant to use a concept which recalled him the Marxist Vulgate. And when he used it nevertheless, it is most of the time to point to a simple game of interests, an excess of irrationality or a pure moral justification, never to express a rationalization or a true expression of experience.²² The conceptual dichotomy we face here has ancient roots in French epistemological tradition and Marxist dogmatism. So, I may say, perhaps brutally: on one hand, Foucault avoided using the concept, and on the other, when he does, it is in a manner that always reproduces the conceptual dichotomy between science and ideology present in Althusser's thought and still at work in Dardot and Laval. In my view, any ideology refers to reality because it emerges from it. The reality we consider here always consists of a set of individual, determinate and subjective practices. It includes the actual existing relations between subjective practices. I have to add that by the "reality" of the relations between the practices, I mean differentiation and ordination, complementarity and functional prioritization. But in my view, an ideology is not by necessity linked to power or domination or to be more specific, an ideology is not necessarily linked to the legitimation of power as such, or to the legitimation of class domination as such, even if it may perform these functions. Ideology in the very broad sense of the concept may be a cultural system, for example. In the broad sense, as culture which reproduces a structure of practices, or in a narrower sense, as legitimation of power or of domination, each ideology is by necessity both a "knowledge" and a "false

²¹ Dardot and Laval have recently published a work actualizing Foucault's perspective on neo-liberalism that adopt this orientation. Their work clarified and deepened Foucault's analysis in *La Nouvelle Raison du Monde. Essai sur la Société Néo-libérale*, just translated in English in 2014, as *The New Way of the World: On Neo-liberal Society*. On this difference between ideology and reason see for example Dardot et Laval, *La Nouvelle Raison du Monde*, p. 17.

²² Foucault, *Society Must be Defended*, Lectures at the College de France, 1975-1976, Picador, New-York, 2003, p.33. In the lectures of 1977-1978, for example, we find several references to "liberal ideology" in opposition to mercantilism and the views of the "Cameralists", those who practices cameral science, exactly as at the beginning of the lectures of 1979-1980 we find a strong attack against the use of the concept. See STP (French edition), pp. 45-50

representation.”²³ Ideology is knowledge, and eventually “rational” if self-reflexive, since the act of representing translates and expresses in the world of significations the real conditions of practices, the real relations between the practices in a determined context. But the content of the representation is precisely not these conditions, nor the real relations, but a substitute to them, what I call an “ideality” or a “system of idealities.” For example, in classical theory, value is said to emerge from the real relations between practices of production and exchange. In neoclassical theory, it is thought to emerge from practices of consumption and exchange. But, in both cases, value as the representational content of the act of representation is still a pure ideal quantity, which does not exist in the real relations just evoked, nor in the practices themselves, since the quantities involved in them are at most a “quantity of work” or a “quantity of utility,” not value itself. In fact, the content of the representation, the ideal quantity, has been substituted to the real basis of the act of representation, the relations between the practices, by the act of representation itself. I think we can generalize this claim to all systems of idealities or ideologies.

I. The invention of the notion of freedom

Let me begin with some etymological remarks and sociological considerations on the birth of the ideal of liberty in ancient Greece. The words “*liberté*” and “*liberty*” come from the Latin *libertatem*, accusative of *Libertas*, which refers to the statute of “free man,” as opposed to the slave.²⁴ A similar meaning is present in the old German “*frei*,” we find in “*Freiheit*” or “*freedom*,” and the term refers to belonging to the tribe of who is not a slave.²⁵ So, both in Latin and old German, the root first recalls a statutory dimension. Today it is estimated possible that the Indo-European root “*lib*,” we hear in *libido*, or Russian *lioubitie* and German *lieben*, for “to love,” or in the Czech *libit*, which means, inter alia, “to please itself to,” give also to *libertas* its most common meaning of

²³ On this question and many others, I am largely in debt of Michel Freitag, *Dialectique et Société*, 3 Volumes, Montréal, 2011. I also build here on the great work of Michel Henry, *Marx*, 2 volumes, Gallimard, Paris, 1976. (See especially the fifth chapter of the first volume).

²⁴ Benveniste, E *Vocabulary of Indo-European institutions*, Minuit, Paris 1969, p. 321 and following pages.

²⁵ Hayek, *The Constitution of Liberty*, 1960, Note 5, p.424

“doing what one like.” In French “*liberté*” would thus inherit and merge two old meanings which are perfectly compatible. Whereas the English language retains both meanings and distributes them onto two words of different origin, *freedom*, perhaps to further designate the statutory sense, legal or political, and *liberty*, to mean more often the “do as you please.”²⁶ From its earliest documented appearance, the Greek *eleutheria* associated the same both meanings. We have to note that the ancient Greeks first used the adjective (*eleutheros*) without the noun and then used the adjective “*as a nominal, ‘the free,’ and only much more later as an abstract noun (freedom),*” namely the noun *eleutheria*.²⁷ It is perhaps only in the 5th BC that appears the Greek noun with all its abstract meaning and just after it gained its plain political one, which reflects itself in the religious sphere. The Indo-European radical *Leudh*, which ‘*in Slavic and Germanic, gave the words meaning ‘people*’ (cf. *Leute in modern German*), and has also provided verbs meaning to grow’ is perhaps itself the source of the “*lib*” root.²⁸ The use of the term *eleutheros*, in Plato in particular, which is the first to heavily introduce it in philosophical discourse, since there are about two hundred and twenty six occurrences of the word and its immediate derivatives in the corpus.²⁹ The notion refers sometimes just to the fact of “not being a slave” and sometimes to “do what you like,” sometimes to the growth without hindering or to the fact to manifest some individualistic behavior, not to be

²⁶ Hanna Fenichel Pitkin “Are Freedom and Liberty Twins?” *Political Theory*, Vol. 16, No. 4, 1988 pp. 523-552.

²⁷ See the masterful work of Kurt Raaflaub, *The Discovery of Freedom in Ancient Greece*, Chicago, 2004, p.9 and p.55. For a more recent, brief and systematic clarification of the use of words *eleutheros* and *eleutheria* in conventional sources from Homer to Aristotle, that recognizes the decisive contribution of Raaflaub, one can read the excellent first part of the article entitled “Democratic Freedom and the Concept of Freedom in Plato and Aristotle” by Mogens Herman Hansen, in *Greek, Roman, and Byzantine Studies*, 50, 2010, 1-27. The author identifies nine meanings of *eleutheros*. However, despite the esteem I have for the philological work in this last text, I cannot follow the author's interpretation of the concept of freedom in Plato and Aristotle, because in my view it carried too far the idea of pure and simple renewal of the usual meaning of the notion in classical philosophy.

²⁸ Robert Muller, *La doctrine platonicienne de la liberté*, Vrin, Paris, 1997, p.49, and Raaflaub, *The Discovery of Freedom in Ancient Greece*, opus quoted, p.287. If we make a strict analogy with the conception of *Physis*, we can imagine that the sole notion of natural growth, that the etymology of *eleutheria* seems confirm, is sufficient to think of the elaboration of a personified Ideal of freedom in Greek thought. The point deserves to be discussed deeper than I do here immediately. On the construction of a personified Ideal of *Physis*, see Pierre Hadot *The Veil of Isis, An essay on the history of idea of nature*, translated and edited by Michael Chase, Harvard University Press, Cambridge, London, 2006, p. 17 and following.

²⁹ *Idem*

compelled to obey or to command, to stay away from opinions and morals, etc.. Also, it involves more specific meanings, especially the freedom in the use of speech (*parrhesia*). Raaflaub gave us a close analysis of the conditions of emergence of this last notion, next to *isegoria*, which means equality in speech. In spite of the fact that “speaking freely” (*eleutheros legein*) first appeared as a free man’s privilege, and was transferred to the political field, where it was given for equality in speech (*isegoria*) in the 6th century BC, and despite the fact that this latter concept was of such importance that it served sometimes to describe *isonomia* of the whole democracy, a new word appears in the last third of the 5th century. This word is *parrhesia*, which means first the citizen’s right to say all he wants (“*pan-rhesia*”). We all know at which point this word interested Foucault in the last part of his work and we have to note that he was perfectly aware of this first precise signification.³⁰ Raaflaub sees in *parrhesia* the most fundamental concept related to citizenship, at least in Athens.³¹

At the beginning of 5th century BC, during the Persian wars, the noun *eleutheria* appeared with its abstract and general meaning which includes a political and religious dimension. Raaflaub argues forcefully that it is only the serious threat of the loss of what they already enjoyed, but whose value they still ignored, that the Greek elites invent the notion in its most abstract signification and create at the same time the Ideal as a problem. After the first victories against the Persians, the worship of freedom took the form of the worship of *Zeus Eleutherios*, which substituted itself for that of *the Zeus Soterios*.³² Even if the sanctification of freedom in Greece did not give birth to a separate goddess, as was

³⁰ See Foucault *Fearless speech*, Semiotext, Los Angeles, 2001, p.12

³¹ Raaflaub, op Cité p.221 and following. In addition to the works of Raaflaub and Hansen one can consult with great profit Peter Liddell, *Civic duty and Individual Liberty in Ancient Athens*, Oxford University Press, 2007, and Josiah Obert, *Political Dissent in Democratic Athens: Intellectual Critics of Popular Rule*, Princeton University Press, 2011.

³² The Greek were still able to worship to the warriors dead in combat, or to honor *Eleutheria* in several manners. For example, by baptizing warships *Eleutheria*, or by organizing sport festivities in her honor. See Mogens Herman Hansen: *The ancient Athenian and the modern liberal view of liberty as a democratic ideal*, in *Demokratia: A conversation on Democracies, Ancient and Modern*, Ober and Hedick dir., Princeton University Press, 1996, p.93; See also Stratiki Kerasia, « *Les héros grecs comme personnification de la liberté dans la Périégèse de Pausanias* », Bulletin de l'Association Guillaume Budé, n°2, 2003. pp. 92-112.

the case, for example, for *Demokratia*,³³ the immediate religious consecration of freedom makes the recent notion becoming a value shared in the community. In the Roman world the situation seems different at first glance. *Libertas* already existed as a separate Goddess before the risk of defeat by Carthage. But she was only a secondary deity, as it was with *Ceres*, the consort of *Liber*. It is not until the First Punic War, in other words, when the Romans became aware of the seriousness of the threat which had weighed on their freedoms, that the Goddess gained in prestige and became fully recognized. Thus, in 238 BC, a temple on the Aventine was built in her name. There will be several such temples. During the time of Cicero, Romans dedicated her an atrium where were preserved legal texts and where ceremonies of slave emancipation took place. She also had her statue in the Forum. We also assist in Rome at the sacralisation of *Libertas* in a homologous process of the one described by Raaflaub in Greece. I think, we can suppose at the more general level, that the collective fear of the loss, under precise conditions we have talked about, gave birth to the ideal object. That is, the idealization of the object once conceived under the imaginary form of the function of the Gods and the Goddess, and, above all, the imaginary consistence and symbolical identity to the ones which apparently possess this “sublime object,” to talk like Žizek, for instance. This is the reason we assist at the formation of a collective proposition about what we have to do if we are free. The proposition is not only about what is freedom, but also about the fact that we have to honor freedom and to behave in a particular way in conformity with this definition. Precisely at what point in the Persian wars, the ideal of freedom becomes a vector of Athenian identity and the justification of its imperialism inside the alliance of the Greek cities is thus remarkably analysed by Raaflaub.³⁴

³³ I do not refer here to the fact that from the archaic period, the Greeks had made *Dionysos* the god who frees constraints, as the Romans did for *Liber*, the god of wine, “*the god of germination and fertility*” and the fact they had built sanctuaries to Dyonisos in Athens, at the end of 6th century, as Romans did in Rome to *Liber*, at the beginning of the 5th. See Kurt Raaflaub “Freedom for the Messenians? A Note on the impact of slavery and helotage on the Greek concept of freedom”, 2001, available at the following address, <http://chs.harvard.edu/CHS/article/display/5624>

³⁴ In Raaflaub, see the section entitled “The Athenian concept of Absolute freedom”, on the notion of *eleutherorate*, the “Freest”, p 187 and following.

Orlando Patterson thinks that before they introduced their synonyms, because of the contacts with the western languages, most of non-Indo-European languages were deprived of words equivalent to the Greek and Latin words to say “freedom.”³⁵ The thesis would perhaps deserve to be better supported. But even if in the future it is revealed to be not entirely true, the thesis certainly makes us aware of the fact that the Greek design a concept of freedom - which differs on several points of the Latin one, - was a linguistic, cultural and political invention which is nothing trivial in itself, even if in our tradition the notion of freedom became trivial. How to think of his invention? Of course, this question is not entirely new and it can be considered as a reformulation of the classic question since Renan, of the origin of “Greek miracle.” If we follow Patterson, it is necessary to consider first the existence in archaic Greece of a massive slavery joint to a marked statutory opposition between “the free” and the “unfree.” It is then necessary to take into account the ability for those who fall into slavery to share in a community of culture the valuation of the status of the one who is not a slave. Patterson does not hesitate to build on the idea, developed by Hegel in the 4th chapter of the *Phenomenology of the Mind*, according to which “the ideology of the freedom” is a slave's invention rather than one of masters. However, while Hegel asks himself the question of the conditions of emergence of the “knowledge of freedom,” Patterson radicalizes the Hegelian thesis by calling to “the invention” of the notion. This is not exactly the same thing since Hegel believes that men are free “in themselves” even they are not yet for themselves.³⁶ Raaflaub is going to defend a quite different position.³⁷ Following a rigorous method appropriate to what he calls “the history of concepts,” which means essentially that we do not suppose the use of a concept without the textual evidence, he supports that the notion of freedom should be considered as a much later invention than

³⁵ O. Patterson, *Slavery and social death. A comparative Study*, Cambridge, Harvard University Press, 1982, p.27

³⁶ O. Patterson, opus quoted, p. 97 sq.

³⁷ The discussion between Raaflaub and Patterson on the context of the “discovery” has indeed occurred during a conference held at Harvard on the institution of helots. See *Helots and Their masters in Laconia and Messenia: histories, ideologies, structures*, Edited by N. and SE Luraghi Alcock, Harvard University Press, 2001

Patterson claims. For his part, Patterson places his notion by going back up to archaic Greece. In contrast, Raaflaub tells us that nothing in the historical material gives evidence of a true cultural valuation of freedom in Greece before the beginning of 6th century, with the Solon's reform which ended debt slavery. Certainly there was already a word to qualify free man by opposition to the slave, but the general notion of freedom did not exist at this time, at least if we follow its uses in the texts. For Raaflaub nothing allows us to assert that it is the slaves, and among them the women, that invented the notion. On the contrary, it would be only with the reform of Solon and the end of the enslavement for debts of the freemen, that begins the cultural valuation of the freedom. To summarize, as Nietzsche talked about the "theory of the free will", Raaflaub believes that the invention of the notion is at first an invention of the "ruling classes."³⁸

As different as they are, the positions of Patterson and Raaflaub are irreconcilable only on the question of the class origin of the notion. Not only they find a common anchoring in Finley's work, which was among the first to draw attention on the massive character of the slavery in Greece, "democratically" distributed among citizens, and on the fundamental link between slavery and property, but they share a same argument: to become deprived or to fear becoming deprived of freedom plays a crucial role in the elaboration of a collective construction of an Ideal of Freedom.³⁹ I think it is a valuable encounter. If, to follow Raaflaub, we must accept the hypothesis of a late emergence of the general notion of freedom, it excludes by no means that, elaborated by the ruling classes, its diffusion took advantage of the massive, strong and old character of the statutory opposition in ancient Greece. The sole apparent paradox of the diffusion of the notion would be the very existence of a massive slavery itself. But, on this point, Patterson developed a simple, but crucial, observation, he applies as well to modern slavery, namely that the discourses about freedom are never as prosperous as when they

³⁸ F. Nietzsche, Œuvres II, Paris, Laffont, *Le Voyageur et son ombre*, #9, p.833

³⁹ Moses Finley, *L'économie antique*, éd. de minuit, Paris, p. 101 and following. See also *Esclavage antique et idéologie moderne*, Paris, Ed. Minuit, 1981

accompany the very real development of slavery.⁴⁰ Far from being paradoxical, the simultaneous presence of a chattel slavery and discourses which honor freedom are frequent, argue Patterson.⁴¹ He assumes that the finding can become a general general sociological thesis and that the particularities of the Greco-Latin slavery in Antiquity are closely related to the emergence of the passion for freedom in the Western culture.

II Four ways to problematize freedom

When we use the word “freedom”, a series of difficulties which are linked to the relative uncertainty of the content of the notion emerge. The first risk is to not distinguish between the notion and what it refers to. Second, even if we are firmly thinking of the content of the notion as existing outside us, we hesitate. Why is that so? Because we oscillate between a strictly positive meaning and a strictly negative one. On one hand, it can be a substance, a principle; or, on the other hand, it can be a mere possibility, a pure absence in fact, like for example, the absence of social barriers to action. A third difficulty is related to the fact that the extreme poverty of the content of the concept is matched only by the multiplicity of its referents. The concept refers to so many situations which may have nothing to do with each other that we can say its content slips by itself into the “plural.” Finally, and this is what will have major consequences in philosophy, we are constantly tempted to assimilate together four very different dimensions opened by different types of questions which are irreducible to each other. It is only within each type of questioning that disagreements between philosophers become really significant, but most of the time, in the common use of the word, we do not care about the exact frame we put forward. I still assume that this distinction first expressed a necessity of the structure of what the concept refers to, as a concept elaborated in the same movement to express a reality which is human, but thought also as non-human and whose social

⁴⁰ O. Patterson, *Slavery and Social Death*, Harvard University Press, 1982, p. viii

⁴¹ And it was not to make a joke that *The German Ideology* already pointed the fact that the slave ownership claimed for freedom. K. Marx and F. Engels, *Die Deutsche Ideologie: « Nach England kommt ein Yankee, wird durch den Friedensrichter daran gehindert, seinen Sklaven auszupeitschen, und ruft entrüstet aus: "Do you call this a land of liberty, where a man can't larrup his nigger?"* German edition of the complete works online, 1969, p.191 : http://www.mlwerke.de/me/me03/me03_017.htm#I_I_C

recognition founds and does not found the reality it refers to. Finally, I suggest that the ways of questioning freedom, that is the ways philosophers problematize it, are sufficiently independent of each other for allowing to adopt a position within one issue, independent of the other ways of inquiring about freedom. The typology that I build here contains the ways in which freedom presents questions for the philosopher. I interpret this typology as a tool for the deconstruction of discourses about freedom which, most of the time, confuse dimensions which have to be distinguished. Either the philosophers sought to determine the pure concept of freedom, disregarding therefore both the social life and politics of man; or they question human freedom, focusing this time on affirming or denying the freedom of souls, desires, bodies, reason and actions, but still making abstractions of any actual social and political dimensions; or they discuss liberties or freedoms as they appear, as particular manifestations of which the exercise is recognized by the law as rights or prohibitions. Finally, the legal recognition of freedom can be considered in its proper historical, cultural and political dimension and open to the deepest appreciation of its meaning. Let me illustrate the first two ways of questioning freedom by way of a few examples, the other two being objects of discussion in the rest of the paper.

The first way of questioning freedom takes form around what I call the “pure notion.” When philosophers make abstraction from any given social and political world, they detach the pure notion from any actual and concrete subject and question about the quality of being free as such. When they do so, in a second movement, they predicate the pure concept of a new subject, which is dictated to them by the logic of their system or their position in the philosophical and ideological fields. The subject to which they assign the pure notion may be thought as transcendent, as infinite or, if finite, considered by them as much more important than a concrete individual. Considered in itself, the pure concept of freedom may be defined in the simplest possible way. In the first of the treatises that Andronicos of Rhodes brought together three centuries after his death under the title “*Metaphysics*,” Aristotle wrote: “... *for just as we call free a man who exists for himself and not for another, so we call this one, the only free science, since it alone exists*

for itself.”⁴² We are facing here the pure concept of “the free,” bestowed by the “exist for itself and not for another.” The qualification which is plainly social in its origin is precisely detached from any social relationship. In the general introduction to his *Lectures on the History of Philosophy*, Hegel said in turn: “Freedom is only this; is free, which is not related to another, which does not depend on him.”⁴³ Contrary to Aristotle, the negation embedded in independence does not only include the negation of dependence (*nicht abhängig*) but also the negation of all relations to other beings (*nicht sich beseiht*), since, in any relation, the dependence on what is in relation emerges in one way or another. Once he defined the pure concept of freedom, Aristotle predicated it on a new topic, namely “the sought science.” In turn, once he defined the pure concept of freedom, Hegel predicated it on the entity that dominates his philosophy of reality, namely the “Mind”: “The mind, coming to itself, accomplishes that, being ‘one’ free.”⁴⁴ Insofar as it conceives of itself as a return to the “Concept” present in nature, a return to the principle of all principles of existence of beings, Hegel says, is in relation with itself alone. In Plato already, being “neither servant, nor slave,” the mind embodies freedom as independence and self-determination.⁴⁵ And now, radicalizing the Platonic idea that the very existence may depend on freedom understood as self-determination and independence, Spinoza can support the “post-theological” thesis that “is called free the thing that exists by the sole necessity of its nature and is determined to act by itself.”⁴⁶ But there is no rule on this predication of the pure concept. This is the reason why, in chapter 21 of *Leviathan*, for example, Hobbes proposes us a pure concept of freedom as it applies to any being, since freedom is (I quote here the spelling of the 1651’s edition)

⁴² Aristotle, *Metaphysics*, Book A, 982b 25. I quote from the new French translation published by Garnier Flammarion, Paris, 2008, p.77-78. I nevertheless changed one word and put the word “man” in place of “human.”

⁴³ Hegel: “Nur Freiheit ist dies; ist frei, was nicht auf sich ein Anderes bezieht, ist nicht von ihm abhängig...”, Vorlesungen über Philosophie geschichte, *Gesammelte Werke*, in zwanzig band, band 18, Suhrkamp Verlag, Frankfurt am Main, 1970, p. 41

⁴⁴ Hegel: “Der Geist, indem er zu sich selbst kommt, erreicht dies, [ein] freier zu sein.” *Idem*.

⁴⁵ Plato, *Laws*, IX, 875 cd, quoted by Robert Muller in *The Platonic doctrine of liberty*, Paris, Vrin, 1997, p.191

⁴⁶ Spinoza, *Éthique*, chapitre I, Definition 7, *Œuvres complètes*, Paris, Gallimard, 1954, p.310 (my translation)

*“the absence of opposition (by opposition, I mean external Impediments of motion) and may be applied no lesse to Irrationall, and Inanimate creatures than to Rationall.”*⁴⁷

All this shows us four things; first, that the concept of freedom once defined, and the most of the time it is defined by the independence metaphor, philosophers often predicated it of a new subject, nobler or broader than the human subject, or simply generalize to any being their definition. In Plato, the real subject of pure freedom is the Mind; in the example I just took from Aristotle, it is the “sought science,” in Plotinus, this is usually the One; in Spinoza, it is Nature, whose existence is necessary in essence, as the god of Anselm; but in Hobbes it is simply predicated of all beings. The second quite remarkable fact is that modern philosophers radicalize in one or another way the definition of pure notion they borrow massively to philosophers of antiquity. The third one is that the first philosophical construction of the pure concept makes abstraction of its social presuppositions and at the same time relies on them. The invention of the pure concept requires that the independence and self-determination of the figures attached to “the free” – metics (strangers who are accepted in the city), masters, stranger who are passing or citizen – are abstracted from social relations and thought as ontological principles. Finally, unlike what we have in Plato, Aristotle, Plotinus, Hobbes or even Spinoza, in Hegel’s conception, the ontological subject becomes a logical one, negation itself. So, at the heart of dependence of a being in relation to another one, the negation which bends and curves the being intensifies and reverses itself to become the principle of “no dependence”: *“The form of the highest nothing taken for itself would be freedom, but it is negativity as it deepens itself up to the highest intensity and is itself affirmation and, indeed, absolute affirmation”* says the *Logic* in the 1830 edition of the *Encyclopedia*.⁴⁸ For Hegel, then, the pure concept of freedom ultimately refers to the capacity of negation to become negation of the negation. But, perhaps, the main point common to all philosophers who engage in this first type of problematization, is that for

⁴⁷ Hobbes, *Leviathan*, N. York, Penguin books, 1968, p. 261.

⁴⁸ Hegel *Science de la Logique*, Vrin, Paris, 1994, # 87, p.351 (my translation).

them “being free” is not a property exclusive to humans or even to living beings. In other words, for them, Men belong in one or another to Freedom.

Whatever its more precise direction, the discourse on human freedom as such is always dependent of some cosmology but never entirely determined by it. Because in the Aristotelian tradition the human exercise of freedom is first thought within the domain of *physis* dominated by contingency, five centuries after Aristotle, Alexander of Aphrodisias identifies freedom of choice to the “non-being” present in the circumstances of the action of men which are those of a contingent world. He invented the notion of “free will” and did so from a synthesis of Platonic, Aristotelian and Stoic themes which anticipate the Neoplatonists.⁴⁹ The denial of statutory dependence, which formed the background of the emergence of the pure concepts of freedom in Plato and Aristotle, faded and it is rather the positive cosmological context of the exercise of the freedom that has become essential to think philosophically human freedom. Alexander argues that there is a “freedom without a subject,” that is chance, and that is where human freedom finds its “ontological foundation.” Thus he invents the problem of free will and anticipates by eighteen centuries the relation established by science and modern empiricist philosophy between chance and freedom. Although it is now articulated within a skeptical frame of analysis, which means that from a theoretical point of view it is impossible to state with certainty its existence, it is the same cosmological perspective that is still present in the theoretical definition of freedom as “pure spontaneity” in the *Critique of Pure Reason*. This second way of questioning freedom, philosophers consider it in relation with the natural human subject, while abstracting all its social and political dimensions. When, in the Christian tradition, they discuss human “inner freedom,” and thus question the reality of the “free will,” they still separate the will itself from any cultural, legal, economic or political consideration. This second way of questioning freedom is circumscribed by notions as will, choice, action, body, etc. By introducing the question of the will or the

⁴⁹ Susanne Bobzien *The Inadvertent Conception and Late Birth of the Free-Will Problem*, *Phronesis*, Vol. 43, No. 2, Mai 1998, pp. 133-175, p.169

theme of liberty in action, philosophers gave a concrete subject to the quality of being free. Are men free in the exercise of the will, since, as rational beings, they are conscious of their actions and desires? Is the will capable of self-determination? Does action count as actual freedom? The free will problem is old in philosophy and has been treated from so many perspectives that it is almost impossible to summarize. However, it is remarkable that the notion of will itself is not a philosophical notion which would be immediately at hand in Plato or Aristotle. The philosophical concept of will has itself a complex story and supposes that a part of the soul became *hegemonikos*, like it is the case in the stoic tradition. In the Aristotelian tradition, it is only with Alexander of Aphrodisias, that the stoic concept became available in such a way that the question of free choice began to be posed and this is the reason it is often said that Alexander first introduced the “libertarian” definition of freedom. The question of the free will supposes the plain formation of the concept of the will. This appeared plainly only with Augustine. In relegating the concept of the will to the order of the historical and political construct, and in adopting a point of view that the will does not have the ability to provide independent content, many social theorists follow a critical line that goes back to Spinoza, Marx and Nietzsche. But they often do it with an argument of their own. We will see this the case for Hayek. In the same vein, philosophers can question the liberty in action. When Foucault, for example, said in 1982 “*freedom is a practice*” he said another thing than Arendt did in saying that political action is in fact freedom, or Marx in maintaining that the possibilities of action are freedom. All these propositions have yet an undeniable “family resemblance” based on the negation of the belief that freedom of the will is essential. Ferreri and myself we are still situated in this second type of problematization. The reason is that, we claim, that human freedom needs to be thought of as the ability to change one’s “subjective position” in response to an offer of displacement of subject positions. This is what we call the “symbolic system.”

The third one starts where freedom becomes a legal matter and a philosophy of right. That is why, since the philosophy of law has existed, – that is since the Greeks – philosophers evaluated “positive law.” According to this type of law they deduced their

own conceptions of human freedom, and the specific form of social and political recognition. The philosophy of right began in Antiquity. And as soon as the second half of the 12th century, we can see emerging a new problematic from the works of jurists, separate from the framework of metaphysics and theology. This line of inquiry is partly inherited by the Roman jurists. On this matter, the works of Brian Tierney have changed our view of the origin of the doctrine of natural rights.⁵⁰ His work shows, with abundant details, that the conception of rights as “power to do,” as subjective rights, emerge from the debates between canonists and not from Occam’s theology, as Villey and many legal historians had believed. In other words, theology and philosophy are called to discuss a matter which is already constructed by jurists. Are they “natural” rights and to which extent they may apply? How are they reconciled? The fact that these questions emerged in the writings of the canonists does not mean that they are connected with the theological debates about the human free will or the freedom of God. The question here is not about the freedom in itself nor about the will alone, even if it presupposes the belief in rational human conducts and the supposition of the existence of a free will. Here the notion of freedom becomes more concrete and, at the same time, relatively detached from the beliefs on the qualification of freedom in itself and the reality of the free will. In other words, after the canonists, philosophers can analyze the juridical extent of freedom of usage, property, action, etc., even if they do not believe in the reality of the free-will. At the beginning of the modern times, Spinoza and Locke gave us good examples of this way of questioning; the first, in asserting that men believe to be free in their will but are really determined by their natural passions, belonging to the chain of determinations in Nature; the second, because he thought that the idea of liberty does not belong to the will but rather depends on the person who has the power to act or to refrain from acting. At the same time, they present themselves to be defenders of liberal “freedom” against tyranny and autocracy. So a philosopher can, for example, believe in the fact that there is

⁵⁰ Brian Tierney, *The Idea Of Natural Rights: Studies On Natural Rights, Natural Law And Church Law 1150-1625* (1997). See also, Brian Tierney, *The Idea of Natural Rights-Origins and Persistence*, 2 *Nw. J. Int'l Hum. Rts.* 1 (2004). <http://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/2>

not such a thing as “free will,” as Spinoza and Locke did, and nevertheless defends the necessity of individual freedom in the political arena.

The fourth way emerges precisely when philosophy grasps the question from the largest point of view, which forms the background of our preceding investigation, namely the philosophical quest of an interpretation of the history of freedom and its ideal. Here, the question becomes more complex. Cultural, economic, political contexts of the legal objectivity of freedom determine the possibility of the evolution of the law. Since Hobbes and Spinoza, we know that a relation of forces is underlying every construction of legal systems. With them, we understand that freedom is also entirely a political matter. The philosopher tries to grasp it from the point of view of a mobile “relation of forces” which supposes asymmetry of the parts in relation. However, he needs to keep in mind that a movement of liberation, individual or collective, or within a given relation of power or domination is always ambiguous and complex. As Foucault did in his lectures, the philosopher has to adequately think of freedom as an actual relation, which implies actual freedoms, but also formal freedoms, on both sides of the relation. The actual freedoms come first. They are at stake as relations of each pole to another. In other words, they exist not only on one pole of those who are governed, but also on the other pole of the relation. Liberty is always involved with the exercise of power itself. It is the true reason why Foucault can talk about an “art.” The exercise of power presupposes the liberty to choose tactics and where there is no liberty, no possibility to choose, there is no power. But at the same time, this liberty in the exercise of power is always limited by knowledge, means of coercion and interplays of forces which are its proper conditions. The search for more liberty is never a search for an indeterminate one. It is always a specific conquest, or a defense; it is always a specific liberation from this limitation or this coercion which is at work. This is the reason why Foucault’s “*actually existing relation*” of power is so fundamental since it gives us the content of the ideal of freedom. But it is also the reason why this actual relation of power cannot deprive us of the notion of ideology. Since the content of the representations of freedom to come is not the same on both ends of the relation, the demand of more freedom creates an idealization of

freedom on one end, while the fear of the “same freedom” emerges on the other end, which is so transformed in a nightmare by those who govern or dominate. Why? Because the freedom of the governed or dominated is often the loss of their proper or actual liberties. This is how we have “formal freedoms” at work at each pole of the relation. What I call here “formal freedom” is embodied in legal liberty. But it should be added that it largely and constantly exceeds it, since the subjective knowledge of freedom with its specific *cathexis* is actually at work in the “*even more*” on one pole and is eventually forming the “*too much*” on the other. Formal liberties are modes of recognition of the subjects in the Ideal notion of freedom. The Ideal manages the place from which it is possible to form a self-image of a person who is realizing freedom.⁵¹ The articulation of the art of government and ideology is first to be grasped on the mode of a concrete limitation of the possibilities of governing but also as a concrete intensity of the will to preserve or to reverse the relations. We encounter here the *cathexis* of Freud and Parson’s theories. Freedom is thus an actual relation of power, or better, a set of two relations. However, it is also the *topos* of a dialectic between formal and actual contents situated at each pole of the relation.

III The weight of the ideal of freedom in the dynamics of modernity.

So far, we have sketched a large and, I believe, useful background for the analysis of the first point I want to discuss today. The starting point of our analysis as I recall it concerns the history and more specifically the historical dynamics of freedom in modern times. The general thesis asserts that the deepening of the Ideal of freedom, or the deepening or real freedom, can explain the dynamics of modernity. We find the strongest formulation in Hegel’s philosophy of history. Hegel thought that more than any other realization of a

⁵¹ Hegel, *Philosophy of Mind*, Vrin, Paris, 1988, # 381 and # 382, p.178. “Freedom has two aspects. One concerns the content of the freedom, its objectivity, the thing itself The other concerns the form of the freedom in which the subject recognizes himself to be active, because the requirement of freedom is that the subject feels himself fulfilled and performs his duty, it being in his own interest that the thing is achieved” quoted by Domenico Lesurdo, *Hegel and the Freedom of the Moderns*, opus cited, p. 90.

concept in practical life, the realization of the concept of freedom, which he viewed correctly as a poor, simple and indeterminate one, was in fact suspended to its misunderstandings. Among these ones, he believed that the religious misunderstandings were crucial. But in spite of this absolutely lucid point of departure, he was convinced that the belief in freedom had effectively guided the path of modernity. The first part of the thesis goes as follows: “*From no Idea, it is also universally known that it is indeterminate, equivocal and likely to be the subject of the biggest misconceptions, and for this reason subject to them, that of the Idea of freedom.*”⁵² But this same statement forms only the first part of Hegel’s thesis. The second part goes like this: “... *nothing else - once individuals and peoples have grasped in their representation, the abstract concept of Freedom being for itself - has this unstoppable force precisely because it is the essence of the mind and that, as its effectiveness itself.*”⁵³ The core of the argument is as follows: the content of the notion is in itself indeterminate, but, however, the knowledge of freedom constitutes the effectiveness of mind; and because self-knowledge of the notion, is also knowledge of the concept which exists for itself in them, as subjective mind, it is also its essence. Even if contemporary theorists no longer believe that freedom constitutes the essence of the mind, they may admit even today that it is the belief and not the knowledge of freedom that is the real engine of the dynamic of modernity.

From our previous analysis we can begin to doubt that freedom can in itself do anything. But how about the beliefs in freedom? How about the efficiency of the ideal? My argument here is quite simple. Foucault gave us a line of inquiry, which focuses on practices and relations between practices. The great merit of STP and BP lectures in is that they gave us all the material to reconstruct the history of modernity which will be not

⁵² I translate from the french edition Hegel, *Philosophie de l'Esprit*, Vrin, Paris, 1988, # 482, p. 279

⁵³ Hegel, *Idem*. In previous editions, this paragraph entitled "free spirit", appeared in the following section on "objective spirit" of *The Philosophy of Mind*, but in the 1830 edition of the *Encyclopedia*, it is the last paragraph of the section on the subjective mind (# 482) that contains the thesis. It states that only some people, Christian people in this case, have acquired a true knowledge of the principle of freedom as the essence of the spirit. The same thesis is exposed in the last three chapters of the *Lectures on the Philosophy of History* where Hegel says that only when the Lutheran Protestantism is the authentic custodian of this knowledge in modernity.

understood as the progressive realization of an ideal. I first claimed there existed a historical convergence, if not an ideological coherence, between legal and corporate promotion of subjective rights, the bourgeois emancipation movement, the multiplication of peasant revolts and struggle against serfdom, the development of spiritual and dissent popular resistance to the domination of the Church. However, this convergence cannot be grasped only from the realization of the principle of “Christian liberty” as Hegel would want. This did not come about as the result of a sudden conscious realization among the masses of the Christian belief in “the infinite value of the individual.” Contrary to what the historical ties of Christianity and freedom since Antiquity might suggest, we must emphasize that there is virtually no theological or philosophical texts addressing the issue of human freedom between Augustine of Hippo, who lived and wrote in the late 4th century and early 5th century, and theological discussions on free will and freedom of the late 13th and early 14th century. For nearly nine centuries, therefore, among Christians, one of the only properly philosophical texts which touched on the theme of human freedom is *Consolatio Philosophiae* of Boethius. In the fifth book, Boethius develops an understanding of freedom which is much closer to that of Neoplatonism than to that of Augustine.⁵⁴ What I call the “premodern” praise of freedoms relies primarily on innovations of the canon law inherited first from Roman law and which made innovations in a relative independent way of theological discussions. With Brian Tierney we can state that the notion of “subjective right” developed by canon law, which precedes by more than a century Occam’s theology, was the true source of modern natural law.⁵⁵ With Brunkhorst, we can advance that canonists proceed essentially through formalization, generalization and radicalization of the rules derived from the ancient Roman private law

⁵⁴ Kristell Trego, "Freedom in the *Consolatio Philosophiae* of Boethius' philosophy Archives, 2006/2.

⁵⁵ See *The Idea Of Natural Rights: Studies On Natural Rights, Natural Law And Church Law 1150-1625* (1997). See the article that condenses the views expressed in great detail in the book: The Idea of Natural Rights, Origins and Persistence. *Northwestern Journal of International human rights*, 2004, Volume 2, Issue 1. <http://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/2>

rules to convert them into public law.⁵⁶ We already know that they do the same in England, which is widely considered the traditional ground of common law.⁵⁷

That said, I will not argue here that there is an exclusive causal relationship between the inventions of canon law and pre-modern praise freedoms nor suggest that the renewal of the law, especially in matters of corporate law, found here its only source. Liberties do not always come by way of a general law or through an axiomatic set of rights. In the late medieval society of the western part of Europe, recognition of freedom followed another path. Freedoms can be bought or conquered. Serfs bought their freedom from landlords and monasteries or conquered it. Towns purchased or conquered their liberties, corporations fought for their “power to do,” freedoms are purchased to the king, etc. It was especially true in the case of England and it was the case for many liberties objectified in the articles of the *Magna Charta*, as Simmel correctly pointed out.⁵⁸ Such freedoms become privileges and franchises. All individual and collective liberties of the late medieval time are not deduced from natural rights. As franchises and liberties, which are preserved for a long time, they may become precisely the immense set of privileges and arbitrary powers, which have to be erased by the process of modernity itself. The “power to do,” recognized by the canonists, become modern natural rights, but also by a parallel logic it can become an immense and complex system of privileges. The logic of development of an institutionalized power exercising actions on the relations between social positions then encounters the resistances of feudal powers and of privileges of all kinds. We can better understand now why we have said with Foucault that Freedom is never a metahistorical entity. It has objectively different meanings in the evolution of relationships between objective social positions. But I claim that it is the legal order

⁵⁶ On “the papal revolution” see especially Brunkhorst, *Critical Legal Theory of Revolutions*, Bloomsbury, London, 2014. The Roman maxim drawn from corporate law, *Quod omnes tangit ab omnibus approbatur*, can be considered as exemplary of this process.

⁵⁷ The interpretation of the same maxim in private law in the context of *common law* and the assumption of its use in public law have already been made a long time ago. We read, for example, detailed analysis of its use by the English jurist of 13th century Bracton, in “A Romano-Canonical Maxim, ‘*Quod Omnes Tangit*,’ In Bracton,” Post, *Traditio*, Vol. 4 (1946), pp. 197-251.

⁵⁸ Simmel, *The Philosophy of Money*, chapter 6.

which will give the objective coherence to multiple resistances to the traditional order, from the 12th century in Western Europe. Therefore, without denying frontally the role of Christianity in the emergence of pre-modern defense of freedom, I insist on the original function of canon law and ultimately on the Church as an institution of power.⁵⁹

First subjected to the imperial power, and then placed under the control of increasingly pronounced secular authorities, the Church enters a process of regaining its independence from the 10th century, a process of which the general principle is to detach the clerk to loyalties and local dependencies. One of the first manifestations of this was for example, the prohibition for bishops to defend their flocks, the sword in their hands. And on the 12th century, the “*Libertas Ecclesiae*” becomes not only a slogan, but a reality recognized as the first article of the *Magna Charta*. Thanks to the direct rule over vast lands, raising its proper taxes, sale of indulgences and dispensations of all kinds, including those concerning marriages between distant cousins which ensure a steady flow of income from the nobility, the Church continuously increases its wealth and control over more and more aspects of life. The prohibition of marriage of priests, in the early 12th century, accelerates their detachment from local communities and ensures their final integration to the central institution. By directly placing Inquisition under the control of the Pope and giving the institution of canon law the mission of defending and promoting his power, completed then what contemporary historians call the “papal revolution.” I may use the analogy with a famous Leninist stance, this “papal revolution” is akin to building clergy as a “vanguard of professional revolutionaries” who are to make the spiritual revolution of Europe.⁶⁰

⁵⁹ In a remarkable article Talcott Parsons had already taken this path by constantly moving the attention of doctrinal disputes that have marked the history of Christianity to the function that the position was victorious each time owned in maintaining and strengthening the institution clerical. See Parsons, T. (1968) 'Christianity', pp. 425-47 in *International Encyclopedia of the Social Sciences*, Vol. 2. New York: Macmillan / Free Press.

⁶⁰ 1215 is an emblematic date of the ambiguity of time: the peak of the growing power and independence of the Church and massive formulation of subjective and corporate rights, with *Magna Carta*, of which the first Article guarantees the *Libertas Ecclesiae* in the Church of England; Growth of the Church's power over the life of every Christian, with the obligation of confession but, relief of prohibited marriage between related parties.

The canonic law and the papal revolution made possible to imagine that the action of the institution, namely the legal production of new rights, generates a set of contradictory effects. Canonists that apply to assert the rights of the pope against those of the Emperor, are introducing subjective and corporate rights that will initially increase the domination of the Church, while allowing the challenging of feudal powers, those of the princes and the Emperor, will also put at risk the power of the Church itself. In other words, these rights will eventually undermine from within its ability to maintain a centralized and hierarchical power and will give birth to the desire for greater freedom to the clergy, as they will eventually promote the challenge to its power by the serfs and the peasant masses under its domination. These rights will strengthen the marginalized clerics in the process of centralization of papal power, like this fringe of spiritual Franciscans, in the fight against the papacy, during the early 14th century (*Fratricelli*), of whom Occam becomes the objective ally in its fight against John XXII.

To explain why it is rather in England, following Tierney, that freedoms of university, of the tenant, the merchant, the peasant and the serf, were the subject of a first collective claim, we must mention the peculiarities of the history of English feudalism and the specific figure of the free man, whose freedom is based on the common law guaranteed by the king. The most singular feature of the situation in England, says Wood, is that we are dealing with a “*unified legal system like no other, in a centralized state*” and that the system “*produces a special type of free man, subject of the King only and of no other Lord of less rank.*”⁶¹ The land has become an alienable property in the modern sense and has seen the establishment of a system of “outsourcing” of tenure, which strongly depersonalized feudal relations of subordination and created a new link between liberty and property, difficult to imagine otherwise. Early political centralization, judicial and military “*has stripped the lordly tenure system of its legal and political powers, leaving him only economic intervention power over the distribution of products of agricultural*

⁶¹ Ellen Meiskins Wood, *Liberty and Property*, Lux, Montreal, 2014, p.31

work.”⁶² So if the substitution of the individual by the property as the true subject of freedom, is a characteristic feature of liberalism in general, more specifically in the United States than in England, we can see the origin of the phenomena in the situation of land property in England at the end of the Middle Age. It is in England that the ownership of land has already acquired the modern sense of alienable property and abstract freedom of the individual were closely linked with the very nature of centralized domination and its way of informing the practices and hierarchies. If the Renaissance and Reformation symbolize the completion of a set of struggles for “the” freedom against the feudal powers and hierocratic monopoly of the Church, they lead to the religious wars which will profoundly alter the fate of Europe.

They have not only accelerated the centralization of power, but changed its nature, promoting the emergence of the “Reason of State,” whose concept certainly appeared in the previous period, with Guicciardini and Machiavelli. To account for the existence of reasons of state, modern political philosophy will make an unprecedented way to the notion of contract. We must insist that social contract theory is transverse to both great modern traditions regard the contract effective realization and rational composition of individual freedoms. Thinking of sociality based entirely in freedom is to think of the contract as its foundation. Undoubtedly contractualism has already existed in antiquity, especially in Epicurus and the Stoics, and in pre-modernity in the thought of Marsilius of Padua and Nicolas of Cusa, albeit in a far less pronounced than from Grotius and Hobbes. No need neither to argue that Hobbes believes in the state of nature and the factuality of the contract. Since Hegel, who welcomes the “method” of Hobbes, while criticizing the doctrinal content, and Cassirer, which separates the historical fact of the contract of fiction, we know that the contract serves to think the genesis of sociality and power. Or the invention of a philosophical method which is the construction of the social contract

⁶² Building on earlier work by Wood, Louis Gaudreau gave a profound interpretation of the transformation of the relationship to the land has made possible *“the path” of the English singular feudalism*. See Louis Gaudreau, *Fixing of capital into the property land. Study of the evolution of the spatial conditions of the reproduction of capitalism*, PhD thesis, Department of Sociology, UQAM, 2013, p.146

precisely reflects the fact that modern philosophy seeks to rely sociality on the ontological principle of freedom because the contract appears as the ideal realization of the composition of freedoms of each. If we put aside the limitations of the exercise of power that are external to the art of government and consist in the actualization of the last medieval doctrine of natural rights, the new problems which emerge in the second half of the 18th century, from inside the art of government, are the discourses of the Physiocrats, Smith's economic philosophy and Kantian philosophy of peace by the means of commerce. This liberalism according to Foucault, was a naturalism.⁶³ Why, he asked, should we think of these doctrines as defining an essential part of "liberalism" and not simply refer them to the larger concept of "naturalism"? For example, the Physiocrats were not especially interested in the improvement of individual freedom. Most often, histories of political thought never pay attention to them. Foucault recognized that Physiocrats do not intend to limit the action of government by invoking individual freedom, but in evoking the necessity to respect the evidence of the natural laws of economy. He nevertheless defended that the question of freedom was at work in their conceptions. The core of his argument was that the new art of government they favored was based on what he called "consumption" and "production" of liberties.⁶⁴ More generally, Liberalism, as he portrayed it, consumed liberties. Why? Because the new art of government supposed the effective liberties of the actions of those it conducts. At the same time, the art of government produced the conditions of specific liberties rather than an abstract injunction to be free or a discourse devoted to preserve natural freedom as such. Foucault insisted on the fact that the liberal art of government could not take for granted the liberty of property, of trade, of buyers, of sellers, eventually freedom of expression, but had to produce their conditions; producing them supposed it organizes some and destroys others. For example, at the end of the 18th and the beginning of the 19th centuries, to obtain free exchange you have to limit English hegemony; to obtain free interior market, you have to sustain the capacity of consumers and to fight monopolies, etc. The liberal art of government, said Foucault, necessarily faces the question of the

⁶³ Foucault, N.B.P, p.63

⁶⁴ Foucault, N.B.P, p.65

political cost to produce liberties, the equilibrium of collective and individual interests and, mainly, the equilibrium of security and freedom.⁶⁵ So, for Foucault, liberalism that emerges from within the art of government, was a naturalism in so far as it believed in the natural laws of the market; yet, in fact, liberalism produced and managed freedom and constitutes a politics of liberties. This tension is, in his view, common to all forms of liberalism.

Foucault describes in great detail the emergence of “ordoliberalism” in Germany. He begins by contrasting the view which states that European neo-liberalism is only the reactivation of ancient economic doctrines, the extension of market relations at the whole society, or a general and administrative intervention of the state into the civil society.⁶⁶ The main problem of Germany after the war, claims Foucault, was no longer as in classical liberalism, to install a true self-regulating space in a political society, but to settle the new political power on the formal principles of the market.⁶⁷ Foucault points here to a real reversal of priorities, narrowly linked to the historical conditions of the time.⁶⁸ Ordoliberals, which are at work in the Freiburg’s school in, are contemporaries of the extremely rapid development of Nazism and its collapse. And this is all the policy of Nazism in economic domains which they target in their writings. After Arendt, Foucault knew well that Nazism was in fact the destruction of the state by the party and the “laws of motion.” But he noted that Ordoliberals tended to identify official actions of the State during the period of Nazi domination with Nazism itself and so believed in the possible guilty orientations of the State. They are thus conducted to imagine a new version of liberalism. In their view, it is insufficient to think that the market must be a principle of the limitation of government; it has to become the principle of regulation of the state itself. They transform the liberal doctrine on several other points and first they transform the notion of competition. The classical doctrine of Smith rested on the idea that there exists a natural freedom that founds competition in the market since it expresses itself in

⁶⁵ Foucault, N.B.P, p.67

⁶⁶ Foucault, N.B.P, p.135.

⁶⁷ Foucault, N.B.P, p.137.

⁶⁸ Foucault, N.B.P, p.120.

the expression of self-interest. But in the new perspective, competition has nothing to do with nature or human nature. Competition has to be produced by the state itself. Foucault is the first to recognize that there exists a shift in the transition to Hayek's Neo-liberalism. He is able to do that precisely because he does not build on the self-representation of the contemporary political traditions. Hayek and his followers preserve the Ordoliberal idea of a strong state intervention: "*Neo-liberalism does not place itself under the sign of 'laissez faire,' but under the vigilance, under an activity, a permanent intervention.*"⁶⁹ Now, neoliberals say that it is no question for interventions to hamper the monopolistic situation, because the existence of monopolies is not an intrinsic problem in a real free economy. There is no longer question of contingent interventions of a certain kind, "regulatory actions" and "appropriate actions" on economic matters, nor a social policy, a "*Gesellschaft-politik*," as Ordoliberals called it. Hayek followed Ordoliberals in thinking that the target of the intervention has to be the competition itself. Foucault thought that the main difference between Ordoliberals and Hayek was precisely the fact that he eliminated all other reasons to sustain the intervention of the state.

This same thesis is reaffirmed and refined throughout *The New Way Of The World: On Neoliberal Society (2014)* by Dardot and Laval. For Dardot and Laval neo-liberalism becomes a "total social fact." The question of a liberal policy is no more a question of the quantity of interventions but a question of their nature.⁷⁰ Ordoliberals seek interventions to preserve "social justice," while Hayek categorically rejects the concept. It is well known that Hayek had always opposed all social policies and the simple idea of "social justice."⁷¹ Dardot and Laval believe the key to understand the position of Hayek is the following: he had to justify the interventions of the state that he wanted to privilege on legal grounds without giving the impression that these interventions enter in an "artificial" or "constructivist" conception of society that precisely appear in

⁶⁹ Foucault, N.B.P, p.137 (My translation).

⁷⁰ Dardot et Laval, p.243. Foucault had already paid attention to this point.

⁷¹ Hayek wrote three different texts devoted to the theme of the fallacy of the word "social." Dardot and Laval give a list of the articles and conferences, p.245.

Ordoliberalism. The main concept able to realize the difficult task of concealing both perspectives is the concept of “spontaneous order.” Dardot and Laval spend a great part of their analysis to explain the nature of Hayek’s concept of “spontaneous order.” In our tradition, the notion emerges in Ferguson’s works which serves to point to the existence of a relative stable cultural system that results of “*human actions, but not of the execution of any human design.*”⁷² The recovery of the concept allows Hayek to distinguish now three orders in society and its environment: *organizations*, which refer to artificial order, *kosmos*, which refers to what is independent of the willingness and *spontaneous orders*. Any planning of spontaneous orders is a logical impossibility and the temptation of mastering them is a political fault and an epistemological incoherence.⁷³ The market is a kind of spontaneous order, says Hayek, a *Catallexia*, since it manifests the ability to reconcile opposite projects in a pacific manner and compounds all the different and incommensurable ends of individuals and organizations. It has absolutely no *telos* and does not suppose any common goal, but only the respect of formal and general rules. Moreover, it transmits information to the agents via prices, information which is absolutely central for the orientation of decisions. But at the same time the market is never an economy, which supposes organization and planning, artifice, and determinate ends.⁷⁴ As many of Hayek’s commentators before them, Dardot and Laval, recognize that the principle of the “division of knowledge,” which informs us that each man has only a partial view of the whole, is already at work in Hayek’s critique of scientism and totalitarianism, and also in Hayek’s doctrine of liberty. Before accessing the market, men have a certain form of knowledge, but this knowledge is not essentially conscious. They followed the rules, schemes, norms, which are the deposits of cultural evolution, which follows a general principle of selection. Three general rules are presumed to have been selected in the cultural evolution. They have already been set up by Hume: stability of possessions, transfer by consent and fulfillment of promises. These rules express

⁷² The original sentence is slightly different in Ferguson’s work, but here one can find Hayek’s quote in, *True and False Individualism*, opus Cited.

⁷³ Dostaller, “Hayek et sa reconstruction du Libéralisme” (1999), in *Les classiques des sciences sociales*

⁷⁴ Dardot et Laval, p.246

themselves in the three principles of all systems of private right: freedom of contract, inviolability of property and compensations for damages.⁷⁵ While following rules, on the basis of the information they receive from the market through prices and only prices, men make calculations, they edify projects and they act.

For Hayek, the fallibility of their knowledge, appeals to the freedom of their choices. Thus, the limits of science and common knowledge are key to argue that the only political way to fit our conduct in the spontaneous order is to allow liberty of actions and competition between all the individual plans, in all the spheres of social life which can be concealed by the market, except therefore those which are devoted to organizations. The market is a selective medium of the pertinence of the series of acts men perform on the basis of their anticipations. The market is never directly a selection of the merits and capacities, but a selection of the usages men make of them. Is the ideal of freedom which is proposed to us entirely new? How does it relate to the actual conditions of freedom?

IV. Hayek's Notion of Freedom in Opposition with the Philosophical Tradition

We can now turn to the second central point I wanted to discuss today. In the first chapter of *The Constitution of Liberty* (1960) Hayek distinguished four definitions attached to human freedom. He adopts firmly the first one which states that the freedom of an individual is “*the state in which a man is no subject of coercion from the arbitrary will of another or others.*”⁷⁶ He rejects explicitly other traditional definitions of freedom, such as: a) to be free is to live under a system of laws established by consent, b) freedom is an inner expression of the will, c) freedom is a positive power, or an “*ability to do what I want.*” Hayek does not discuss the pure metaphysical concept of freedom nor the pure legal definition but he discusses the three others, if we count the popular one. For Hayek, even if we cannot act in a different manner than we do, due to natural constraints for example, we must be said free as long as we act without arbitrary coercion from others.

⁷⁵ Hayek, *The Constitution of Liberty*, p. 157, and *Right, Legislation and Freedom*, quoted by Dardot and Laval, p.252.

⁷⁶ Hayek, *The Constitution of Liberty*, p.11

So we must say that freedom is viewed exactly as in Foucault in a purely relational way. In other writings, he defends himself to adhere to a selfish concept of the individual.⁷⁷ In all occasions he assumes the fact that individuals are related to others. The relation to others can generate coercion but in obeying general and impersonal rules, all men emancipate, at least partially, from coercion. It is very important to note immediately that in Hayek's perspective, despite the declaration on the importance of relations between individuals, there is no such a thing as an objective social form between positions beyond the actual relations between individuals. The objectivity of social positions – mastery, slavery, etc. – separated from the rules of the spontaneous orders we talked about seems completely denied. But in the same time, the definition of “individual freedom,” as Hayek called it, is thought as the most ancient one in our tradition. He is perfectly right since he proposes in fact what I call the “statute-based” definition of freedom. At the same time he never discusses the statute of mastery or slavery, or the objectivity of power or domination, as Foucault did. In this way, freedom meant “*always the possibility of a person's acting according to his own decisions and plans, in contrast to the position of one who was irrevocably subject to the will of another, who by arbitrary decision could coerce him to act or not to act in specific ways. The time honored phrase by which this freedom has often been described is therefore 'independence of the arbitrary will of another.'*”⁷⁸ So defined, the notion of freedom, added Hayek, is strictly “one.” In his view, only this definition, which is not strictly negative nor strictly positive, in the sense of Berlin, is coherent. “*Though in some of the other senses it may be legitimate to speak of different kinds of freedom, 'freedoms from' and 'freedoms to,' in our sense 'freedom' is one, varying in degree but not in kind.*”⁷⁹ For Hayek, freedom is not in itself a matter of degree of choices, not directly a matter of free-will, it is a matter of relation to others and the possibility to avoid coercion from their part: “*By 'coercion' we mean such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends*

⁷⁷ Hayek, *Individual and Economic Order*, The University of Chicago press, 1948, p.8

⁷⁸ Hayek, *The Constitution of Liberty*, p. 12

⁷⁹ Hayek, *The Constitution of Liberty*, (1960), reprinted by the University of Chicago Press, 1978, pp.11-16

*of another. Except in the sense of choosing the lesser evil in a situation forced on him by another, he is unable either to use his own intelligence or knowledge or to follow his own aims and beliefs. Coercion is evil precisely because it thus eliminates an individual as a thinking and valuing person and makes him a bare tool in the achievement of the ends of another. Free action, in which a person pursues his own aims by the means indicated by his own knowledge, must be based on data which cannot be shaped at will by another. It presupposes the existence of a known sphere in which the circumstances cannot be so shaped by another person as to leave one only that choice prescribed by the other.*⁸⁰

Hayek avoided the trap of any ideal conception of freedom since he recognized that its perfect realization is out of the question for the same reason.

At this point, I want to make four remarks. We have seen that the more general and pure notion of freedom is poor, because it contains no determinations and only the determination of negation of dependence. It is the reason we can apply it to all we think is independent. But it is also the reason we can doubt of the factual existence of pure freedom and we can think that, since nothing is totally independent, even the totality which depends on its parts and the relations of the parts, nothing is completely free. And we can propose a compromise and pose that a being can be free insofar as it remains independent in relations to others. It is exactly what Hegel did when he spoke of other matters than the Concept or the Mind. It is exactly what Hayek does also. But in comparing the statute-based definition of freedom with the other definitions which belong to others problematics to exclude these ones, he generates a first conceptual confusion of dimensions of the problem. One cannot compare freedom as independence, freedom as interior freedom and political freedom. This kind of confusion of modes of questioning freedom is precisely the one Aristotle and Hegel avoided. Despite Aristotle's legitimization of slavery based on statute, in paying the most of his attention to moral and political freedom, in treasuring the political participation of the citizen, as Arendt, Pettit and Skinner also do, Aristotle avoided reducing politics as the organization of the negation of coercion on individuals. As Arendt has seen, this negation of coercion, which

⁸⁰ Hayek, *The Constitution of Liberty*, op. cited. p.21

is included in the negation of dependence, is for Aristotle the condition of politics, not its goal. In Hayek's view, the preservation of individual and economic liberty prevails over any democratic consideration, as it is well known, not because he separated well both dimensions, as he pretended, but precisely because his definition confused political and pre-political definitions of freedom.

Second remark. When Hayek notes that his definition of liberty is the oldest one, he is right.⁸¹ But this is precisely why this definition poses a major problem. In focusing on the avoidance of the "arbitrary will of others," Hayek actualizes the most archaic definition of "the free" (*to eleutheros*) which is in itself prior to Platonic and Aristotelian philosophies and belongs to a time where the abstract notion of freedom itself was nonexistent. This definition suspends historical conditions of dependence to others through the division of labor and social ties. Hayek knew that. Thus, he maintains that the respect by all of the general rules which govern spontaneous orders and the market is sufficient to mediate the relation of each of us to others, in such a way that, if the politics of the state are just, each of us is free of the arbitrariness of the will of others. But this alleged liberation by the impersonal and contingent rule is ambiguous because it may be obtained by rational legal means and because this alleged liberation means precisely the submission of all of us to three general rules which are presumed to have been selected in the cultural evolution but which are not to be found in reason. In this domain, with Hayek, the pure knowledge of liberty as private property, which prevailed with Locke, along with the affirmation of the labor as the essence of property, is definitively abandoned. Hayek emancipates the freedom of all ties to labor and reduces it to the plans, the knowledge and the beliefs of each of us which are destined to compete. But in such a game, we have the infinite right to be wrong in our expectations, as well as the brutal right to starve.

Third point. Transposed in a perspective which is deliberately social and political, not metaphysical, the position of Alexander of Aphrodisias gives us the well-known

⁸¹ Hayek, *The Constitution of Liberty*, op. cited, p.12

statement of Hayek about the institutions of freedom which are forged to confront the doubt and the uncertainty, the hazard and the lack of knowledge.⁸² Once more we find in his thesis a collapse between cosmological dimensions on one hand and social ones, on the other. While Alexander of Aphrodisias posed the existence of nothingness in the sub-lunar contingency as the essence of the natural free choice, Hayek supposes that the contingency of the spontaneous social order to deduce the political necessity to institute freedom. This freedom has now the sole meaning of adaptation to the contingency of the market. But at the same time, contingency is no longer a real contingency. Contingency is now the product of a selective mechanism. Moreover, contingency is still the effective condition of freedom, but nothingness is no longer its essence as the inner possibility of choice. It is now the adaptation to the spontaneous order and to the market which is granted this honor. Hayek forces us to consider the pure adaptation as the necessary horizon of our collective and personal actions in the social world. His definition of freedom is a rationalization of the contemporary requirements of the state's production and reproduction of the market based on a reactivation of a dimension of freedom which is perfectly true in itself, the avoidance of coercion. However, this claim for the avoidance of coercion plays its veiled function in masking the real mutual dependence of objective social positions and mechanisms of actual domination.

Fourth point. Hayek accepts the idea of the individual will as given, and does not question its formation. Individual life is certainly the necessary and unavoidable departure for any theoretical consideration of the Will. This will manifests two essential characteristics, which disqualify any theoretical pretension to substitute *individual will* to *individual life*. On the one hand, the human being, as a living being, never poses itself its proper existence, he is rather "thrown into the world." He never gives actively to himself and that is why the individual will cannot, in principle, be placed at the foundation of individual life as the element which conditioned it.⁸³ The individual will has to be thought of as the result of forces which are, for a part, purely interior ones, and which partly come

⁸² Hayek, *The Constitution of Liberty*, Routledge and Kegan Paul, 1960, p. 30-31.

⁸³ Henry, *Marx*, 2 volumes, Gallimard, Paris, 1976.

from the external environment. The will of each of us is partly shaped by the identification to the will of the others and by our refusal of it. It is shaped by cultural norms, legal and political points of view, and by inner resistances to them. It is still “based” on the needs and the desires of the individual, even if the will itself cannot be confused with the desire. It depends on the proto-political dimension at work in the *psyche* and in return to the different wills found in politics as such. This will may turn to political action against what appears unfair and what appears to be domination. This will may turn to be actively embedded in social ties and cultural objects. This will participates to form the cultural order in taking it as the object of action. If the “social will” does not decide on its content and if the individual life, as experience makes it for it, it does not mean that it deserves the disqualification we find in Hayek’s thought. In fact, on one hand, Hayek overestimates the place of the individual will and, on a theoretical level, substitutes it for individual life. On the other hand, he seems to minimize the fact that the socialized will takes an eminent place in the production of “spontaneous order,” even if the spontaneous order is neither the product of the content of one’s will, and even if the will is not “free.” Hayek did not see that the experiences of individuals really determines their actions and that wills can have the transformation of the spontaneous order as a goal even when the actors never grasp all the consequences of their actions. Hayek’s definition of freedom collapses the dimensions of the traditional philosophical questioning of human freedom and rationalizes the coexistence of an archaic definition of freedom with the actual injunction to adapt to the spontaneous order, whatever the collective fate. In doing so, it expresses as an ideological rationalization of practices which put in danger effective freedom. Today, we have to share the fact that the modern ideal of freedom is at risk. For each of us, it has to become a political question. We have to negotiate with others what kind of freedom we want in our communities. But we have also to know that freedom is perhaps the perfect example of the fact that men try to share what they cannot really share, since what they really share, is the fact that they do not share what each of them tries to.