

Hayek and Brexit: Sovereignty, National Democracy, and the Fallacy of Positivism

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Abstract: A central figure in the classical liberal tradition, Friedrich Hayek and his intellectual legacy have rarely featured in debates surrounding the merits of the European Union, despite the free-market cause animating a considerable section of the Eurosceptic political class. To the extent Hayekian arguments have been deployed to landmark events like Brexit, this is typically in opposition to transnational political centralization. The potential soundness of such arguments notwithstanding, the pendulum often swings so far back that classical liberals, quite contrary to Hayek's warnings, find themselves setting up camp with nationalists. In particular, a Hayekian approach—arguably an ongoing project—to international relations and European integration would take issue with claims that binding law is only possible within the confines of a nation-state, ostensibly emanating from a sovereign democratic body politic. A key misunderstanding seems to lie in the conflation of international institutions, such as law, and international organizations proper. Following Hayek, an international political community is possible in line with the public acceptance of rules, not according to the fiat of hierarchically higher authority. This view also requires the reaffirmation that some institutions on the international level are designed while others emerge.

UNDERSTANDING HAYEK AS A SCHOLAR OF EUROPEAN INTEGRATION AND INTERNATIONAL RELATIONS

Hayek's political economy and social philosophy can be characterized as going through a nascent phase of application to the international realm. Contemporary authors (Sally 1998, Van de Haar 2009, 2011, Rohac 2016, Pavel 2015, Slobodian 2018, Coyne 2015, and Staubach 2018) have placed often strongly normative assessment of current issues in European integration, international law, international relations, international political economy, and foreign intervention, within a specifically Hayekian framework. For some commentators, at least in 2016, it was logical to imagine Hayek at the ballot box, voting to Leave, and Remain.

The present exploration is empathically not about speculating whether the current workings of, say, the European Union (EU) conform to the expectations or predictions outlined in the famous 1939 essay on interstate federalism. Such considerations are valuable though somewhat misplaced because there seems to be greater and untapped potential in

the overall coherence of Hayek's work, especially when it comes to his institutional analysis. This is to say that a *positive* Hayekian take on a topic like the EU should consider both his parsimoniously expressed (and evolving!) opinions on all things international as well as his general theory about the origin and character of social institutions and the desire to deliberately, consciously, or rationally tinker with them.

Hayek's basic distinction between institutional evolution & design and spontaneous & made orders can be applied to the study of European integration as an ordered process based on law as well as on governmental organization (expressed in supranational legislation), but which is neither of them fully—an implication that should weigh heavily in liberal debates on the EU and Brexit. In the long run, Brexit might easily result in more trade liberalization, deregulation, and less government intervention in the UK economy overall, on the condition that liberal ideas will prevail in the fight for public opinion. In reality, such development is hindered by the countervailing forces that want to reassert national sovereignty and to “democratically” manage globalization. While sovereignty concerns are well established as factor of Euroscepticism by Euroscholars,¹ some commentators of a conservative, libertarian, or classically liberal bent have found in Brexit an ultimate proof that political community and binding law are possible only on the level of nation-state democracy. Such an exclusionary interpretation is suited to a conservative outlook but is utterly incompatible with an authentic liberal understanding of the world.

Regrettably, many self-understood classical liberals of today have fallen for the fallacy of legal positivism and unlimited sovereignty, hoping that the nation-state, freed from supranational organization, will deliver (more) liberal results. While this paper is not about the merits of Brexit as a decision, it can shed light on where Brexit might lead as a process unless certain fallacious ideas are eschewed. The clues contained in Hayek are enough to warrant such a conclusion, yet these clues are as explicit as they are discrete, requiring an exegetic analysis. In this regard, Sally and Van de Haar offer a remarkable model: they are pioneers in demonstrating that classical liberalism is also an international project and in characterizing Hayek as a scholar of international relations or international political economy. The two authors also share a certain thread of reasoning that is partly responsible for the market-liberals' conundrum on international governance, described above.

THE EVOLUTION OF HAYEK'S VIEWS ON EUROPEAN INTEGRATION

A common error among scholars who wish to “internationalize” Hayek is to treat his ideas as ready-made. In order to construct the The International Hayek, it is also necessary to ask which “national” Hayek should serve as the cornerstone. The task is laborious because, as mentioned above, discerning the implications of Hayek's work for a topic like European integration requires not only a thorough bibliographical perusal but also a hefty dose of exegesis. The mostly successful endeavors of Slobodian (2018) and Van de Haar (2009) attest to that sort of struggle.

A certain distinction, of course, exists between Hayek the economist and Hayek the philosopher, though it is not watertight. Scholars of Hayek such as Boettke, Caldwell, and Kolev record Hayek's shifting interest between and within disciplines, which can legitimately be called phases,² though certain issues stuck with him as a life-long project and attempting to deal with various elements of the same idea brought forth matured insights. One of the most fundamental of these ideas can serve as guide to interpreting his own thinking, too; namely, that reason is also subject to evolution: the human mind does not stand outside of nature and society—it has been evolving alongside them (Hayek 1982). The force of Hayek's principal arguments in economics and philosophy can be attributed precisely to their evolution—their departure from what he would later self-ironically recall as “technical economics” (Hayek 1967). The analysis of general equilibrium marks the time when Hayek explicitly started to spell out the problem of agents possessing dispersed and concealed knowledge as the better response to the socialist calculation debate in which he partook in the 1930s after he had been invited to the London School of Economics by Lionel Robbins.

It was Hayek's continuation and expansion of his mentor Mises' argument on the impossibility of rational economic calculation under socialism that brought him into the unknown territory of seeing prices

as conveyors of fractional knowledge and guides to individual action. Crucially, it was Hayek's rethinking of equilibrium economics that led him to realize the epistemological properties of prices, which is also connected to his definition of market competition as a dynamic temporal process in which the facts known to individuals should not be treated as a given, but as something that needs to be discovered (Hayek 1948, 2002 [1968]).³

Caldwell says that the transition in Hayek's argument against socialism away from technical economics amounts to a "transformation" (Caldwell 2004, p. 231). This argument becomes increasingly philosophical, especially after WWII. Hayek picks up the task of explaining how socially beneficial institutions develop mainly through evolution, not by intelligent design—a fallacy he calls "constructivist rationalism." In the last couple of decades of his life (1970s and 1980s), Hayek crystallizes the two-fold distinction between made and spontaneous orders, depending on whether they can be "rationally" designed and consciously steered, what kind of rules their functioning is based on, and how individual knowledge is used within them. While made orders—typically organizations—rely on commonly known aims, spontaneous orders emerge as the unintended consequence of individuals acting in pursuit of their own aims and using their own intimately-held knowledge. The problem of socialist central planning is, among other things, a knowledge problem.⁴

Hayek's own intellectual evolution can be better described as refinement than reversal with the exception of his views on monetary policy, where Hayek's preoccupation with government control of currency is radicalized with age.

Likewise, there is a trajectory in Hayek's views on international issues. Thus, Slobodian is only partly correct in his conclusion (Slobodian 2018) that Hayek went from being an international federalist to a principled opponent of world government. Not, as Slobodian seems to suggest, out of desire to publicly disavow some ulterior anti-democratic motives expressed previously⁵ but because of Hayek's exposition of the relationship between law, public opinion, and political authority where it is the collective adherence to the "rules of just conduct" that gives rise to coercive governance, and not the other way around (Hayek 1982). Slobodian is not alone in his assessment—it is a common misconception that Hayek's support for an international federation was geographically unbound or that it was mostly of a theoretical nature and that practically, Hayek "rejected most international organizations" (Van de Haar 2009, p. 122). A more reasonable explanation, I believe, proceeds in two steps.

1. Hayek regarded internationalism (both interstate cooperation and cultural, non-statist cosmopolitanism) as a desirable goal throughout his life.
2. In the later part of his life, Hayek came to regard the liberal-institutional basis for successful cooperation on the international level as lacking, at least in certain aspects, and was afraid some of the proposed internationalist policies would turn out to be counter-productive.

Already in the 1939 essay on interstate federation, Hayek wonders whether the bonds of mutual support among members of a future superstate would be sufficiently strong to sustain a level of residual protectionism to the benefit of different local (national, before federalization) producers. He repeats the concern, connecting it with a moral question of different peoples agreeing on legitimate government tasks, in the 1940s (*The Road to Serfdom*, particularly ch. 15) and then, likewise, in the 1960s (*The Constitution of Liberty*, p. 263) he suspects that the "moral foundations" for a world government are lacking. He explicitly repudiates the latter in late 1980s, and in-between (in the three-volume *Law, Legislation, and Liberty*, written throughout the 1970s), he expounds more philosophically on the path towards a global society of peace and cooperation through the extended adoption of the appropriate rules enabling the operation of a spontaneous order (1982, pp. 112, 145-147, 151). Specifically, Hayek feared that too eager attempts at establishing universally valid rules allowing for the equal treatment of all people would be counter-productive and therefore pushing for free movement across open borders could lead to nativist backlash (1982, p. 58). In fact, Hayek had used the exact same argument a few years prior to defend Margaret Thatcher's controversial immigration policy just before she was elected prime minister, a position for which he received instantaneous libertarian backlash from the USA (Ebeling 1978). Comparing that to the 1930s, when Hayek regarded the cross-border mobility of labor as a positive goal of an *international* federation, should then be interpreted not so much as

evidence of a change of mind as much as the realization that such a federation would be limited to liberal democracies whose residents subscribe to similar values.

In terms of monetary unification, he went from predicting a monetary union (Hayek 1939) in a supranational federation to denouncing (Hayek 1976a) the European Economic Community's (EEC) designs for a common currency in the 1970s, which reflected his own journey from an utopian longing for a stronger international gold standard administered by a supranational authority (Hayek 1948, ch. X.) in the interbellum age of competitive devaluations, to suggesting the relinquishing of central banking, exchange controls, and legal tender laws in favor of the free private use of competing sovereign or privately issued currencies (Hayek 1976b, 1978, pp. 57-58, 147-148).

FROM THE NATIONAL HAYEK TO THE INTERNATIONAL

Unjustly,⁶ Hayek is only rarely recognized as an international scholar. Like his Jewish mentor Mises and their numerous intellectual contemporaries from Vienna, Hayek fled from the Nazi advance by migrating throughout Europe only to end up in the USA, which facilitated a distinctly cosmopolitan outlook evidently present throughout his oeuvre. He displayed a vast knowledge of different national histories and a detailed familiarity with the current situation in various parts of Europe and the USA.

Furthermore, Hayek's cosmopolitanism is inextricably linked with his liberal political philosophy. Related to his thoughts on the genesis of social institutions like law is Hayek's repudiation of sovereignty and legal positivism as expressions of unlimited legislative power (Hayek 1982), which means that law is and can be whatever the effective government on a given territory at a certain time ascertains as law. A quote from *Law, Legislation, and Liberty*, is appropriate:

The concept of sovereignty, like that of the 'state', may be an indispensable tool for international law - though I am not sure that if we accept the concept there as our starting point, we do not thereby make the very idea of an international law meaningless. But for the consideration of the problem of the internal character of a legal order, both concepts seem to be as unnecessary as they are misleading. Indeed the whole history of constitutionalism, at least since John Locke, which is the same as the history of liberalism, is that of a struggle against the positivist conception of sovereignty and the allied conception of the omnipotent state (Hayek 1982, p. 61).

Whether it was his writing on monetary economics, political philosophy, or explicitly international topics, Hayek's take-down of the distorting effects of government intervention was of course related to *national* government's claim to intervene as a supreme, unlimited authority—as a sovereign. For this reason, I believe the framing of Hayek as an international relations (IR) scholar—embryonic, though international nevertheless—needs to go beyond the routine mention of *The Economic Conditions of Interstate Federalism* or the passages on international governance in *The Road to Serfdom*, *The Constitution of Liberty*, and *Law, Legislation, and Liberty*, and should rather deal chiefly with his institutional analysis.

Caldwell's (2004) and Boettke's (2018) almost complete omission in their outstanding intellectual biographies on Hayek of his treatment of international issues is telling. Slobodian's cynical remark, cited above, from his otherwise refreshing overview of 20th century classical liberalism shows that despite its decisive contribution to international political economy (IPE) and European integration, many, if not most, classical liberals of today are ignorant of their own intellectual tradition and the topic of "international order" itself. It is important, though, to note that in his latest book, Boettke lists Hayek, Mises, Robbins, and Hans Sennholz as examples of classical liberalism's traditional commitment to liberal cosmopolitanism and invites new scholars to further the research agenda (Boettke 2021, pp. 310-320); however, he does not refer to Slobodian's comprehensive overview of the topic. In his London heyday, however, Hayek was at the very heart of international federalist debates in the first half of the 20th century, alongside his contemporaries (of all political stripes), and his thoughts on IPE were well articulated. He was a member of the avant garde

Federal Union and belonged to the same generation as most pre- and post-World War II leading internationalist and federalist persons (born around the end of 19th century): Lionel Robbins (1898), Harold Laski (1893), Barbara Wootton (1897), Wilhelm Röpke (1899), Fritz Machlup (1902), Gottfried Haberler (1900), Oskar Morgenstern (1902), Jacques Rueff (1896), and Ivor Jennings (1903). To this roster, of course, it is necessary to add the two perhaps most famous international federalists of all times—the founder of the Pan Europa Union, Richard Coudenhove-Kalergi (1894), and Clarence Streit, founder of Federal Union, Inc. (1896). Interestingly enough, the two men who had a lasting influence on Hayek’s life and work—his mentor Mises and his ideological sparring-partner John Maynard Keynes were passionate students of international affairs (Mises 1941, and Keynes 1919) who both explored the political and institutional mechanisms needed to avoid or remedy war. After World War II, some of the above mentioned, including Hayek, would go on to inspire, draft reports for, or lead efforts by international governmental organizations and private associations aimed at international political and intellectual cooperation: the United Nations (UN) system (Keynes through the Bretton-Woods system, Haberler with the General Agreement on Tariffs and Trade), the European Communities (Rueff), the Mont Pèlerin Society (Hayek et al), the Pan Europa Union (Coudenhove-Kalergi and Mises; see Coudenhove-Kalergi 1954, p. 247), and the precursors of the North Atlantic Treaty Organization (NATO; the political wing of Streit’s Federal Union, Inc., the Atlantic Union Committee, would bring together a parliamentary assembly of future NATO signatories).⁷ It should be reiterated that “globalism,” at which Slobodian takes aim, was and is a shared moral commitment of intellectuals, politicians, and social scientists, regardless of their views on the role of government in economic policy. The Bolsheviks dreamt of a world revolution, the Nazis wanted to dominate at least all of Europe if not the world, and interwar socialists and liberals believed in some form of national or international planning under interstate federation. For neofunctionalist scholars and advocates of European integration, such as Mitrany, Haas, and Schmitter, transnational technocratic management was key, and modern social democrats, neo-Marxists, and post-functionalists like Marks, Scharpf, Rodrik, Van Parijs, and Habermas, who espoused the provision of public goods in a globalized world, have equally been committed to internationalism and globalism, though not necessarily of the same kind as the EU and the World Trade Organization as they currently are. As Kolev notes, Slobodian also takes too lightly, to the point of ignorance, the right-wing nationalist, conservative, and nativist revolt against the global idea (Kolev 2019).

Regarding Hayek’s foreign policy views, the pacifist libertarian activist will be disappointed by Van de Haar’s reminder of Hayek’s “warmongering” (my term, not his—Van de Haar claims he was more “belligerent” compared to other classical liberals): Hayek did not shy away from advocating the use of force internationally, as he did with the Falklands War and the Iranian hostage crisis (Van de Haar 2009, pp. 105-106).

This historical and theoretical detour into IR serves to reassert Hayek’s commitment to not only liberal cosmopolitanism but also internationalism. The liberal outlook of Hayek was not anarchist nor instinctively anti-state, though it is perfectly possible to argue that lasting and prosperity-inducing institutions on the international level owe their existence much less to intelligent design than to spontaneous evolution. For instance, a common misconception is that the EU (and its predecessor, the EEC) was created and developed in a straightforward fashion, while its history has been awash with aborted plans for institutional design (Vanthoor 1996) and unintended consequences (Pierson 1996). Conceiving of political globalization at least partly as result of unplanned emergence requires the difficult task of reconciling individualist political philosophy with an institutional setting of multiple simultaneously-existing states, and recognizing that individualism is not inherently hostile to international institutions like international public law and international organization.

THE ECONOMIC CONDITIONS OF INTERSTATE FEDERALISM, AND MORE

In the intellectually vibrant yet anxious environment of the last interwar decade, Hayek was not alone in trying to shape the development of future interstate federation. What contrasts his vision from his contemporaries was his focus on economic policy. The key message of *The Economic Conditions of Interstate Federalism*, written on the cusp of World War II, was that political and economic unification must go together. Furthermore, economic integration will only proceed by means of a liberal economic policy. National sovereignty, including the power to regulate economic life, would have to give way to an authority with the power to prevent discriminatory measures between the different national governments comprising the federation. This was a controversial conjecture when it was made. The idea that national economic planning and intervention, when wedded to the notion of omnipotent sovereign authority, leads to international friction, echoes or is identical to those advanced by other classical liberals of the 19th and the 20th century like Mises, Lord Acton (1907), and Robbins (1937). As long as national economic planning is fashionable, there will be no prospects for successful political unification: this was the message of another adherent of the Austrian School, German-born Hans Sennholz, who was Mises' first PhD student in the USA (Sennholz 1955). Again, the assumption was that peace through international cooperation was desirable, but the question was how to make it work.⁸

Hayek anticipated in his essay that regulatory trade barriers will have to be dismantled and that, as a result, the overall level of government involvement in the economy will have to be lower. This is a theoretical observation that has famously been made, albeit from an unsympathetic position, by Fritz Scharpf. Starting in late 1980's, Scharpf (1988, 1997) was one of the first to rediscover that the "transfer of sovereignty" from the national to the European level implies a circumscription of sovereignty, rather than a pooling; that is, a limitation to its substance because the heterogeneity of preferences on the international scale makes the costs of agreeing on positive intervention prohibitively high.

Hayek's early venture in public choice theory is shown in his treatment of subsidies where he reiterated that the only way for this federal policy to work was a move towards democratically approved liberalization. Members of different ethnic groups would have to agree to support a certain, though generally lower than previously, level of "protection" for industries in other parts of the federation for the sake of political unity. Hayek's default position was not that subsidies should be abolished completely and instantaneously but that their progressive minimization would be in line with expanding markets and the weakening of political limitations thereof. Since the free-market case against the EU is often based on a protectionist characterization of its policies, especially the Common Agricultural Policy (CAP) of subsidizing European farmers, it should also be noted that Hayek later explicitly treated subsidies as a legitimate policy tool. In 1960 (p. 264), he says subsidies should be seen as *beneficial* not for the value they represent to the direct beneficiary but because they allow the government to step in and provide goods or services where the market cannot.⁹ Due to the relatively high common external tariff on food products, CAP clearly represents one of the more redistributionist policies of the EU. Yet a Hayekian, evolutionary interpretation of CAP suggests that the relevant competition for post-war political integration in Western Europe was between the EEC and the European Free Trade Association (EFTA): the former managed to integrate horizontally across all sectors through a customs union and the latter only achieved market liberalization for industrial, but not agricultural products, through a preferential trade area. That the customs-union model was more attractive was displayed in the withering away of most EFTA members into the EEC/EU, and EFTA countries' agricultural policy remains more protectionist than that of the EU.¹⁰

The rationale for Hayek to support interstate integration was that competition would no longer be political but economic—that groups of constantly varying composition (producers) would compete with each other, not with groups with stable membership (states).¹¹

Hayek's defense of a common interstate currency is also noteworthy: he claims that it would be even more stringent than the historical international gold standard because the latter still allowed for deviations

in value due to varying national liquidity requirements for banks, and because of the distortionary effects of flexible exchange rates (Hayek 1948).¹²

Because the essay superficially reads as if these conditions were applicable to the whole world and because Hayek also anticipated a common monetary policy, defense policy, and communication policy, he could be, and indeed has been, criticized for betraying the same kind of “constructivist rationalism” he disparages later on in his work. This is why a variety of authors range from confused and skeptical to outright scornful (Van de Haar 2009, pp. 108, 110; Pavel 2015, pp. 163-164; Hazony 2018, pp. 34-35, 116; Sally 1998, p. 134) of Hayek’s idea of interstate federation, even if they approve of his ideas on the domestic level. But that, of course, means reading into Hayek an endorsement of international federation as synonymous with a world state or world government. The original idea was “regional,” despite the region in question being quite large, and it would comprise Northern Atlantic liberal democratic states and their colonial possessions of the time. The crucial adjective was likely liberal democratic, not global.¹³

This point should be expanded a bit further. With reference to classical liberal treatment of IPE, Van de Haar and Sally reject not only the idea of world government but also appeals to international community by saying that mutual bonds sufficiently strong to form political institutions exist only within nations and nation-states;¹⁴ an international liberal order of cross-border economic exchange requires nothing but “liberalism from below” (Sally 1998, p. 98), i.e. unilateral trade liberalization and domestically-limited government enforcing international private law. International organizations, according to Van de Haar and Sally, are largely unnecessary if not counter-productive to liberal purposes.

This kind of hostility to international organizations hardly conforms to Hayek’s argument in which public authority ultimately rests on public opinion (especially 1982), which is why lasting international organizations like those of the EU or UN, would not be possible without the long-lasting assent of citizens of the participating polities. It seems that public support for international organizations is not a topic of interest to Sally and Van de Haar. In any case, Hayek thought it was perfectly possible to have a legislative power that extends beyond the geographical area of separate government powers which shows he never really abandoned his internationalist ideals (1982, pp. 132-133).

WHAT WOULD HAYEK SAY?

As recipient of the Nobel Prize in Economics, initiator of an international intellectual movement, and an inspiration for the free-market revival in the United Kingdom, the US, and elsewhere in the second part of the 20th century, Hayek is a natural reference point for self-proclaimed Hayekians in their assessment of the pressing topics of today. One of those is certainly Brexit or the general stance on the desirability of international organizations such as the EU. The classical liberal argument on the referendum vote was divided, though heavily tilting towards Leave.

The liberal argument in favor of Remain was voiced by few European and American classical liberals, mostly scholars, for example Philip Booth (2016),¹⁵ Dalibor Rohac (2016),¹⁶ Ilya Somin (2016),¹⁷ Jacob Levy (2016), Johan Norberg (2016), Leszek Balcerowicz (2016), Nigel Ashford (2021), Sam Bowman (2015),¹⁸ and Diego Zuluaga, who were concerned about the rise of nationalist populism, particularly in connection with free movement in the EU. Those who explore the application of Hayekian ideas in their field of work naturally invoked Hayek or employed specifically Hayekian language in their opinions on Brexit. But otherwise, such a strategy was almost entirely missing among the classical liberal camp in the campaign leading to the June 2016 referendum. The most direct references to Hayek were made by Rohac (2016), published in the first half of that year, and on the Institute of Economic Affairs’ (IEA) blog by two policy analysts. There, Ryan Bourne and Diego Zuluaga, engaged in a pro and contra “Hayek would have voted...” debate. Bourne was convinced Hayek would have been a Brexiteer (Bourne 2016) based on his view that the European integration project represents the kind of “constructivist rationalism” Hayek warned against. He attacked the EU from all the well-rehearsed points: regulatory capture by interest groups and unnecessary harmonization, the customs union’s and CAP’s protectionism, the imposition of euro, and other detrimental aspects of

political centralization in Europe. He praises the EU's early achievements and then laments its later development, saying Hayek would have been repelled by the EU's institutional degeneration.¹⁹

Zuluaga (2016), meanwhile, identified several points where the EU has lived up to Hayek's 1939 blueprint, as well as points of divergence. He explains how the relatively free-trading epoch before World War I influenced Hayek's outlook and his thoughts on nationalism, and warned against the nativist elements in the Leave campaign. While both blog entries emphasized the dangers of the EU bureaucracy's constructivist rationalism, only Zuluaga mentions spontaneous growth in the context of European identity.

Rohac, a disgruntled former Eurosceptic, was the one who resurrected the Hayekian argument for interstate federation. He started the journey (2014) with a debate in the e-pages of the libertarian magazine *Reason*²⁰ and followed through with two books on European integration and global governance. Rohac takes on the evolving center- and not-so-center-right arguments against European integration and globalization, seen both as an economic and political process, and provides useful reference to the internationalist tradition of Hayek and Mises. The core of his argument (2016) was based on public choice—if we are to follow the prescriptions of Eurosceptics in dismantling the European supranational system, what is the guarantee that the process won't unleash even more destruction upon liberal society and economy, as sometimes the EU itself does (a point he honestly concedes), when nationalists and populists are voted into national and supranational offices? Rohac (2016) also dispenses with the myth that identity is fixed and thus that all movement towards a transnational political community in Europe is utopian and dangerous.

Rohac, who has frequently been critical of the EU, was a vocal supporter of the Remain camp.

Among the classically liberal opponents of the EU, the arguments are manifold and surely it would be futile to break down all of them. Many clever people—self-proclaimed Hayekians or classical liberals—spoke out in the Brexit debate and believed that liberty would be better served with the UK out of the EU. Already six years before the Brexit referendum, Van de Haar (2009, p. 134) wrote that the EU does not conform to the Hayekian interstate federation vision, and in 2020 said Hayek would have “hated” the EU (iealondon 2020). On the other hand, Sally, who shares Van de Haar's pronounced distaste for international organizations, voted Remain.²¹

Hayek's reference to Hume (Hayek 1983) on how the deliberative process of reasoning alone cannot tell us what is morally right or wrong can be paraphrased: “the rules of our moral judgment of the EU are not the conclusions of our reason”. Neither rules nor reason can tell us how to vote in elections or referendums.²² Similarly, the task to reformulate the liberal cause for the internationalist and cosmopolitan era should be based more on insight than literal interpretation of past ideas.

WHY DOES HAYEK MATTER?

There is, though, one specific strain of Eurosceptic reasoning worth addressing—the one that many classical liberals are, at best, sympathetic to and, at worst, true believers in.

In his effort to describe the substance of the Brexit referendum, former MEP Daniel Hannan—whom *The Guardian* (Knight 2016) dubbed “The Man Who Brought You Brexit” and whose fame as the exemplary free-market Brexiteer is unrivaled,²³ was probably in the right when he said that the main motivation of Leave voters wasn't purely to rein in immigration. The concerns that carried the vote were primarily about sovereignty, explained Hannan after the referendum, citing a reliable mainstream opinion pollster (Hannan 2016). It is noteworthy that the current UK Prime Minister, Boris Johnson, is a fan of the concept, having highlighted it when Brexit took effect.²⁴ It is almost certain that the sentiment is widely shared amongst the Brexit-supporting public.

Presenting the scale of preferences of Leave voters as being dominated by sovereignty concerns instead of hostility to immigrants, does not necessarily paint Brexit in a more liberal light. But it is an appealing argument. Hannan speaks for Britons and many Eurosceptic libertarians alike when he espouses the virtues of national democracy and unimpeded sovereignty. The Cato Institute, one of the leading libertarian think tanks in the world, summed it up right after the referendum: “The question facing British voters was, fun-

damentally, whether their parliament should be sovereign and their laws supreme, or whether such powers should continue to be pooled at the European level (Cato Institute 2016).²⁵ This is, in essence, similar to the liberal-nationalist case against global governance made by Jeremy Rabkin (Rabkin 2005) of George Mason University, who thinks of globalization *qua* supranational organizations as inherently inimical to national sovereignty, and that liberal values (especially individual rights) are ultimately guaranteed by national constitutions and enforced by national courts and executives, commanding national allegiance. In more national-conservative terms, the book by Yoram Hazony (2018) is a more popular and less scholarly version of the same. Hazony rides one of the waves of the recent populist and nationalist movements, arguably not the most reactionary, the so-called “National Conservatism” international. Hazony’s argument echoes the one made decades ago by the recently deceased British conservative intellectual Roger Scruton (1990, p. 77), who defined law as inseparably a territorial concept—the “territorial idea of jurisdiction,” which finds life either in empire or nation-state. Scruton, much like Hazony, likens moral universalism to world government²⁶ and, similarly to liberal-nationalists like Hannan and Rabkin or classical liberals like Sally and Van de Haar, who dismiss, not without reason, as the lofty ideals of world community or cosmopolitan identity, the claims that national identity is the primary force for social cohesion and the ultimate source of political legitimacy. Scruton (2014) further criticizes the project of European integration in general and the common currency in particular as being “imposed” on Europeans without asking, as well as the unelected bureaucrats and judges who can strike down laws “passed by elected parliaments.”

Hayek’s warning against the alliance of liberals with socialists and nationalists, as well as the underlying identity of socialist and nationalist impulses, spans works as early as 1939 (1948, pp. 28-29 and even more pp. 270-271) and continues through 1944 (pp. 148, 173, 185) to 1960 and *The Constitution of Liberty* (especially the postscript ‘Why I Am Not a Conservative’) to the early 1980s with *Law, Legislation, and Liberty* (II, p. 111, II, p. 341). While the point is connected with the equally contentious issue of secession where, at stake, are collective rights (which a classical liberal should admit only as extensions of individual rights, not on their independent merit), as regards to global governance and European integration the conception of law is more fundamental.

As mentioned earlier, Hayek (1982) links the concept of sovereignty with the positivist approach to law. One of his basic distinctions was between law that is a set of tested, lasting rules of just conduct, and legislation, which is regulation directed more towards the organization and management of government. Law is almost always a product of non-purposeful, spontaneous human action, whereas legislation is typically a product of deliberate, “rational” human design and, according to Hayek, appropriate for directing government as organization, not society as a whole. Contrary to this insight is the idea of legal positivism, which states that law is *only* what the sovereign power decides it to be in a given time in a given territory, with an extra requirement that the legal rules must be mutually and hierarchically congruent. Whereas positivism presupposes a willful or “voluntarist” human creation of law, its opposite—natural law—presupposes a divine revelation or purely rational invention.²⁷

Hayek would have neither of it. Hayek’s humans are imperfectly rational, rule-following, yet experimenting and spontaneous beings. When people learn how to limit the coercive power of rules to areas where genuine social agreement is possible, freedom to act within the limits of law is established and as consequence, civilization can flourish. There is, nevertheless, a role for conscious efforts in this picture. Hayek (1982) insists that only a principled, long-term acquiescence to rules of negative justice that protect the private domain of individuals secures the conditions of limited government. While formal constitutional constraints, for example, on the executive can be useful, it is mostly rule of law that prevents abuses of social power. This narrative leaves little to no space for the concept of sovereign power which represents the rational will of the body politic, easily aggregated and democratically translated into universally binding law.

Hayek says that while the legitimation of governmental power has shifted since the Middle Ages from the monarchs to the people, the accompanying danger was (is) in thinking that since decisions are now made by the people—the many and not the few, that the people should also be able to make decisions on anything. He cautions, instead, that while the ultimate source of social power might be public, not elite, opinion, it

does not follow that this democratic power is unlimited. Even more important for the present discussion is Hayek's further caveat that the most effective check against the risk of this democratic power's temptation for unlimited "sovereignty" is not control by another, higher sovereign body but, as already mentioned above, adherence of public opinion to long-term principles of negative justice. Hayek writes:

But if the power of the legislator is not derived from some fictitious basic norm, but from a state of widespread opinion concerning the kind of rules he is authorized to lay down, his power might well be limited without the intervention of a higher authority capable of expressing explicit acts of will" (Hayek 1982/II, p. 61).

Now compare this to the populists', and indeed popular, portrayal of European integration where the supranational authorities are in disposal of a sovereignty that nation-states need to recapture. It is perhaps a sign of irony that some of the people most loudly advancing the seemingly liberal case against global governance and European integration employ the exact positivist majoritarian rhetoric they would probably be opposed to on the domestic level. Once again, Hannan (Hoover Institution 2019, p. 128):

[the EU] *creates* its own legal order that is *superior* to the national laws and constitutions of its members, and it does this because *it wants* over time to become a single state, or something very close to a single state (Hannan 2019, italics added).

This constructivist-positivist worldview, where social phenomena like transnational law do not exist unless they were willed into existence, also ignores, as mentioned, the pervasive public support for international treaties like those of the EU. Nearly all European states participating in the EU/EFTA have organized referendums on European integration with the majority of the results sanctioning the proposed treaty or policy changes. When the results were negative, they often acted as veto points in the planned European constitutional design and contributed to the convoluted, differentiated institutional and organizational landscape of European integration.²⁸

In sum, a classically liberal position on European integration should remain liberal (Leave or Remain) and steer away from arguments rooted in positivist sovereignty or unimpeded national democracy. It is possible that eventually, Brexit as a process will prove to be an instance of a successful Hayekian experimentation with "rules of just conduct," but for this to happen, a large part of the rhetoric leading to Brexit as a decision will have to be rescinded.²⁹

NOTES

- 1 Hooghe and Marks (2008) are the authors of an influential explanation of pro-European and Eurosceptic attitudes in the framework of what they call a "post-functionalist" theory of integration.
- 2 Boettke (2018, pp. xvi-xvii) identifies four such phases: Economics as a Coordination Problem, Abuse of Reason Project, The Restatement of the Liberal Principles of Justice, and the Philosophical Anthropology and the Study of Man. Kolev's (2010, p. 8) distinction is between Hayek I (the business cycle theorist), Hayek II (the ordo-liberal philosopher), and Hayek III (the evolutionist philosopher). In the same paper, he, too, describes Hayek's intellectual "evolution".
- 3 For a detailed rendition, see Caldwell (2004, pp. 205-230) and Boettke (2018, pp. 81-88).
- 4 The exact term "the knowledge problem" was introduced by Lavoie (Lavoie 1985). The late Steven Horwitz brought this to my attention.
- 5 According to Slobodian (2018, p. 91), it represents "either [a] conscious disavowal of, or selective amnesia regarding, an earlier position".

- 6 As Haar (2009, p. 102) notes in his extensive review of Hayek's writing, "he repeatedly expressed the wish to write more about international affairs and regularly showed concern for the international context of his ideas".
- 7 For further reading of how Hayek fits into the context of this internationalist milieu of the period around World War II, see also Rosenboim (2014), Spieker (2014), and Masini (2011).
- 8 See, for instance, how Sennholz takes aim at Coudenhove-Kalergi's (and others') socialism, while sharing his objectives, in the book's part II.
- 9 But only as long as they weren't based on government prohibition of competitive provision.
- 10 See OECD data on how much government spending is included in farm incomes, and what the average tariffs on agricultural products in EU and EFTA are (WTO, World Tariff Profiles 2021).
- 11 This is the so-called *doux commerce* thesis according to which commercial interdependence reduces the likelihood of violent conflict for members of diverse groups. Boettke (2021) places it among the fundamental tenets of classical liberalism, which also follows from the reading of one of the most prominent classical liberals of today, Deirdre McCloskey. Haar (2009, p. 150) connects the idea with the similar paradigm of democratic peace and is critical of both, going as far as producing a paper bluntly titled *Free Trade does not Foster Peace*.
- 12 See de Soto (2012), to amplify the importance of an exogenous monetary check on the profligacy of national governments in Europe.
- 13 On this point, see Schliesser 2019.
- 14 Haar 2009, pp. 102-104 and Sally 1998, pp. 58-59.
- 15 Booth is more reluctant.
- 16 A good venue for a reasonable debate is *Cato Unbound*, including Rohac (2017), Bowman (2017) and Hannan (2017). <https://www.cato-unbound.org/2017/09/13/dalibor-rohac/reasons-concern-about-brexite>.
- 17 See, for instance, Somin 2016.
- 18 Already in 2015, Bowman warned against voting Leave from a classical-liberal perspective.
- 19 As an aside: a common sentiment among liberal Eurosceptics is that of nostalgia, the best embodiment of that being Margaret Thatcher, who grew disillusioned and hostile to the European project.
- 20 Rohac (2014) had several rounds of debate with Czech libertarian Euroskeptic Petr Mach, a former MEP.
- 21 "The eminent economist voted Remain, but says he sees 'a real opportunity to remake Britain'", is how the Conservative Party sums up a podcast episode featuring Sally. <https://www.conservativehome.com/tag/razeen-sally>.
- 22 I am aware that Hayek suggested Thatcher resort to a referendum on the issue of trade unions, as a way of breaking the political deadlock which Thatcher was confronted with early on in her prime ministership. Before that, as is well known, Thatcher campaigned in the 1975 referendum for the UK to remain member of the Common Market, yet I am unable to determine at this stage whether Hayek said anything on the topic.
- 23 The portrait provides a broader insight into the gestation of the Conservative Party's Euroskepticism. Hannan is a frequent visiting speaker at conservative (of both liberal and national varieties) and libertarian venues around the world. For instance, Reason, the Cato Institute (inter alia, drafting an oven-ready post-Brexit bilateral FTA between US and UK with Cato's trade policy experts), and Students for Liberty.
- 24 "Johnson pledged to use the UK's 'recaptured sovereignty' to control immigration, create freeports, liberate the fishing industry and negotiate trade agreements" (Courea 2020).
- 25 <https://web.archive.org/web/20160730220055/https://www.cato.org/featured/european-union-critical-assessment> (the blog entry has since been redacted).
- 26 Scruton (1990, p. 76) criticizes as untenable what he sees as demanded by liberal social-contract theory: "There is no satisfactory position for the contract theorist to take, short of universalism: if the contract is open to anyone, it is open to all. Anything short of world government is therefore tainted with illegitimacy."
- 27 How much the two, supposedly incompatible, concepts are in fact similar, where law is "either the product of the design of a human or the product of the design of a superhuman intelligence" (Hayek 1982/II, p. 59). Nientiedt (2021) commendably deals with Hayek on the natural-positive law faultline.
- 28 On the issue of law as emergent institution, compare also Nientiedt's (2021) and Nedzel's (2017; 2018, p. 210; and Nedzel and Capaldi 2019, pp. 105, 160, 234) treatment of Hayek on legal positivism and English common law—

see, especially, Nedzel's rather confused defence of Brexit as a common-law-cum-sovereignty reaction against the encroachment of EU legislation. When it comes to international law specifically, Staubach (2018) also shows that rules above and among states can indeed develop in an emergent way.

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