# 2. The competitive market and the state

Besides democracy, the other main social institution that has gained widespread acceptance over the last 200 years is that of the capitalist or open and competitive market. In this section, I therefore analyze the justifications of the open and competitive market and its relation to both the state and to democracy. I will begin this analysis with a short discussion of Thomas Hobbes' influential work on the state-market relation. In a second step, I argue with reference to Montesquieu and, most importantly, Adam Smith that two key justifications of the competitive market are its creation of a peaceful social order and the unlimited generation or, rather, accumulation of monetary wealth. Thirdly, I demonstrate with reference to several more recent economists that a central feature of the competitive market is that it operates in a self-regulating manner, which requires both limited state interference and an open institutional structure. In a final step, I argue with reference to Friedrich August von Hayek that the strict implementation of an open and competitive market severely undermines democracy and can potentially lead to a type of authoritarian liberalism.

Before beginning with this discussion, however, I would like to briefly explain why I do not refer to capitalism here, but instead use the term market or, more precisely, open and competitive markets. The reason for this is not only because capitalism is often used in a critical or pejorative manner, but also because it describes a more encompassing historical socio-economic transformation of society (Kocka 2014: 6). In contrast, the terms 'market' or 'market economy' is not only less polemical, but also refers to a more idealized, and thus somewhat ahistorical, model of the market. It is this idealized institutional arrangement of the open and competitive market that I would like to focus on here. As I demonstrate later, in my discussion of the market commons, openness and competition are, however, not characteristic of all markets, but merely specific institutional arrangements of capitalist markets. And within the existing "varieties of capitalism" (Hall and Soskice 2004), they refer to the ideal model of liberal market economies. But for now, let us turn to the origin, justification and implications of the open and competitive market in the history of political thought.

## 2.1 Hobbes: anarchy, leviathan and the competitive market

In the history of ideas, it can generally be said that the concept of the competitive market arose with Thomas Hobbes (1588-1679) and his individualistic portrayal of humans in antagonistic relationships (1985).[1] In Hobbes' book *Leviathan*, an absolute sovereign should overcome the anarchic state of nature, thereby enabling people to pursue their self-interest in a less destructive manner. By possessing the monopoly on the use of coercion, this Leviathan can secure individual property rights and enforce contracts. As in the minimalist notion of democracy, freedom is here understood negatively, as non-interference that provides people with the legal framework and security to trade and accumulate goods freely in a competitive market. Simply put, the monopoly of the state shall overcome an anarchic state of nature by creating a competitive market economy.

Because it is important to understand Hobbes' theory in its historical context, I would argue with C.B. Macpherson (2011) that Hobbes' Leviathan was not primarily an answer to an imagined anarchic state of nature, but more concretely to the development of a merchant class with "market-made wealth" that then led to the English Civil War of 1642, which lasted until 1651 (ibid.: 65). Here, "war was an attempt to destroy the old constitution and replace it with one more favorable to the new market interests" (ibid.). This social disorder that Hobbes experienced was then projected onto a theoretical state of nature. In turn, Hobbes' concept of the Leviathan was not used to legitimate and secure a minimal, parliamentary democracy, but to legitimate the rule of an absolute sovereign. It could be argued that with Hobbes' contractual theory of the state, absolute authority was secularized and shifted from the Church to a socially legitimated state monopoly. Nevertheless, both the Leviathan and its laws were understood as virtuous and absolute and the people constituting the social order as corrupt. Social order was therefore conceived by means of a dichotomy of coercion and repression from above and obedience by the people below. Here, the sovereign is to be understood as the watchmaker of an "automated machine" (ibid.: 31) of a competitive market society that is held together by the overarching monopoly of the state.

## 2.2 Justifying the market: social order, protection from arbitrary powers and unlimited wealth

Writers soon began to look to the rise of bourgeois society and Hobbes' new understanding of a competitive market economy as things that would not only legit-

1 For a discussion of this individualistic and antagonistic portrayal of social reality, see for example, C.B. Macpherson's introduction to Hobbes' *Leviathan* (Macpherson 1985: 48-53).

imize the existence of Leviathan, but also create a more peaceful and prosperous social order. As Albert O. Hirschman convincingly explains in his book *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (1997), the pursuit of economic self-interest was not only intended to overcome the capricious and belligerent passions of feudal lords, but also to limit the monopoly of power of absolute monarchs. Hirschman shows that this assumption is set out most clearly by Montesquieu in his book *De l'esprit des lois* (1748), who assumes that "commerce [...] polishes and softens barbarian ways" (Montesquieu quoted in Hirschman 1997: 60). Put somewhat simply, the idea is that steadfast economic interests in trade and commerce will tame wild and capricious passions. Or, conversely, irrational passions should be channeled into rational economic interests as in a process of sublimation. For these reasons, commerce can not only tame feudal lords, but also pacify entire peoples and nations. Furthermore, in enabling people to pursue their economic interests and move their capital about freely, Montesquieu saw an economic means of checking the abuse of unlimited political power (ibid.: 77-8).[2] This is what was implied by the "countervailing power of private capital" (Held 1987: 160) in our previous discussion of the minimalist model of democracy. Thus, market competition is expected not only to overcome the anarchy of warring feudal lords, but also to limit the monopoly of power of absolute sovereigns.

We find another twist to this general legitimation of competitive markets in the works of two other writers of the same time period, Bernard Mandeville (1670-1733) and, more importantly, Adam Smith (1723-1790). It could be said that Mandeville made the point most bluntly in his postulate that through competition and commerce, "private vices" turn into "publick benefits" (Mandeville 1924). Although Adam Smith was unlike Mandeville in that he was not a cynic, Mandeville's conviction is very similar to Smith's well-known metaphor of the "invisible hand" in *The Wealth of Nations* from 1776 in which self-interest leads to social order and an increase in society's material wealth (Smith 1994: 485).[3] The importance of this paradigm shift in moral and political philosophy cannot be underestimated. In line with other 'modern' thinkers such as Hobbes and Machiavelli and, possibly, for the first time in human history, social order and well-being did not arise when vice was opposed by virtue, but instead when the vices or self-interest of individuals were opposed by

2 It should be noted here that while Montesquieu was concerned with limiting the unlimited power of kings, Adam Smith was more concerned with the pacification and limitation of the power of feudal lords (Hirschman 1997: 102).

3 It must be mentioned that the "invisible hand" is only mentioned twice in Adam Smith's works. Once in his *Theory of Moral Sentiments* (Smith 2009: 215) and a second time in *The Wealth of Nations* (Smith 1994: 485). Although the term is only mentioned twice in his works, I would argue that the concept itself retains a central position throughout his economic theory and is also implicitly expressed in his concept of harmony between supply and demand.

the vices or self-interest of other individuals. As with Hobbes, in the social arrangements of Mandeville and Adam Smith individuals are conceptualized as separate and self-interested entities that find themselves in antagonistic and competitive relationships with each other. Similar to Montesquieu, Smith emphasizes his somewhat surprising and paradoxical conclusion that by unleashing self-interest and competition, a more disciplined and orderly society should arise. Smith explains this in relation to corporations (i.e. guilds) and the monopoly on coercive force:

> The pretence that corporations [i.e. guilds] are necessary for the better government of the trade is without any foundation. *The real and effectual discipline which is exercised over a workman is not that of his corporation, but that of his customers.* It is the fear of losing their employment which restrains his frauds and corrects his negligence. An exclusive [monopolistic] corporation necessarily weakens the force of this discipline. (ibid.: 149; emphasis added)

Adam Smith's notion of corporations is to be equated with the guild system that monopolistically controlled most trades and markets in medieval Europe. In contrast to the belief that a monopoly on coercion, which in this case takes the form of the guild system, is the best instrument for providing social order, Smith argues that it is the competitive market that does a better job of disciplining its citizens. The reason for this is that, in order to survive in a competitive market, people have to satisfy consumer demands and offer (better) products at lower prices. Simply put, the fear of losing one's job forces people to work harder and produce more. In this sense, competing interactions between self-interested individuals on the market create a disciplinary mechanism that is not exerted by any individual or organization. This is not to say that the coercion from overarching institutions should disappear, but rather that the power of the guilds should be replaced with that of the state in its enforcement of property rights and contracts, on the one hand, and that social order will simultaneously be reinforced by the disciplinary mechanism of the competitive market, on the other.

This market mechanism leads to Adam Smith's second important assumption, that the competitive market – or what he calls "perfect liberty" (ibid.: 63) – leads to greater material wealth. The increase in material social wealth results not only from the mechanism of competition, but also from the positive connotation of self-interest and therefore the release of egotistical springs in human action from other moral obligations.[4] This moral transformation is closely intertwined with

4 Although Adam Smith expresses an ambivalence towards this paradigm shift and emphasizes the importance of non-economic motives in human action (Smith 2009; Hirschman 1997: 108), he argues similarly to Montesquieu that economic motives enable the satisfaction of all other non-economic values – or conversely, that all non-economic motives (including "passions") "feed into" and "reinforce" economic motives (Hirschman 1997: 109-110). I agree, however, with Hirschman that although Adam Smith endorsed the positive outcomes of a

the changes in the legal framework that made new ways of accumulating property possible. It can generally be said, therefore, that a shift occurred both in moral philosophy and in political and legal philosophy. Similar to John Locke's labor theory of property, Adam Smith declares, "The property which every man has in his own labour, as it is the original foundation of all other property, so it is the *most sacred and inviolable*." (ibid.: 140; emphasis added) This concept of individual property is a clear critique of earlier, medieval forms of property that were based on feudal, customary law and, in certain cases, collective rights, in which individual appropriation was highly regulated and the possibility that property would be arbitrarily confiscated by lords and monarchs was pervasive (Holt 1972; Schneider 1997; Blickle 2000; Zückert 2003; Linebaugh 2008). With this new concept of property – and the increase in durable, mobile property (i.e. money) – individuals could, at least theoretically, appropriate property through their labor and trade and accumulate it freely (Locke 2008: II, §25-51).

We will discuss Locke's theory of property in further detail later on, but for the moment, it is important to note that this economic right to private property was understood as a natural or sacred right that stood *above* the political rights of absolute monarchs and states. We must therefore understand these new property rights as a central means to not only limit the power of the state, but also to open the door for wealth generation and accumulation. Here, the monopolistic structure of the sovereign ruler over a clearly delineated territory is replicated in the absolute sovereignty of an individual over their clearly delineated private property. From this perspective, the sacred character of the subject and of the right to absolute rule is maintained yet shifted to the hierarchical and Cartesian structure of the human being's ownership over *res extensa*, irrespective of whether one merely has property in one's own person or also in other things of the world. In this sense, the "possessive individualism" (Macpherson 2011) of the competitive market should not only limit the monopoly of power of absolute rulers, but should also – at least theoretically – undermine the monopoly power of corporations and guilds (Smith 1994: 136-156). Thus, the divine right to private property should ultimately decentralize economic power, protect the individual from arbitrary political intervention, and enable the freedom to accumulate property without limit, thereby supposedly increasing the general material wealth of society.

competitive market (social order and an increase in material wealth), he found the means to this end problematic and unfortunate (ibid.: 105). This ambivalence can be found in his description of the flipside of the division of labor which greatly increases material wealth yet simultaneously weakens the moral and intellectual capabilities of laborers (Smith 1994: 840). Elsewhere in Adam Smith's *Lectures*, he also expresses the problem of commerce leading to "debilitating luxury and corruption" (Hirschman 1997: 106).

## 2.3 Self-regulation, limited politics and the open-access market

Aside from these moral and legal paradigm shifts to a society geared towards the accumulation of material wealth, let us now discuss the concept of the invisible hand a little more. Although the invisible hand has often been criticized (Stiglitz 2006; Dupuy 2014; Amir-ud-Din/Zaman 2016),[5] it can be said that the metaphor still holds a central place in both economic thought and the social imagination in Western societies, ultimately laying the foundation for the legitimacy of the competitive market. Besides its disciplinary and wealth-generating functions, another aspect of the market's ability to create social order is its supposed ability to enable the self-regulation of economic activity. First and foremost, this notion of self-regulation is not to be understood as the kind of democratic self-governance I have already mentioned. Instead, the supply of goods and services is brought into equilibrium with the demand for them – *without* political or state intervention. But how does this magical mechanism work? In the words of Adam Smith:

> It is thus [in a competitive market] that the private interests and passions of individuals naturally dispose them to turn their stocks towards the employments which in ordinary cases are most advantageous to the society. But if from this natural preference they should turn too much of it towards those employments, the fall of profit in them and the rise of it in all others immediately dispose them to alter this faulty distribution. *Without any intervention of law*, therefore, the private interests and passions of men naturally lead them to divide and distribute the stock of every society among all the different employments carried on in it as nearly as possible in the proportion which is *most agreeable to the interest of the whole society.* (Smith 1994: 680; emphasis added)

In this passage, it is assumed that a competitive market economy will, first and foremost, serve the demands of consumers and therefore society at large. As we can see, the motivation for this service is a pecuniary profit. If too much investment from competing firms flows into a certain line of business, however, then both the price and the rate of profit decrease. This allocates investments into the production of other goods and services that are in demand and into places where greater profits can be realized. This balancing process also occurs for changes in demand, which

5 In this rather famous interview, Joseph Stiglitz argued that "Adam Smith, the father of modern economics, is often cited as arguing for the 'invisible hand' and free markets. […] But unlike his followers, Adam Smith was aware of some of the limitations of free markets, and research since then has further clarified why free markets, by themselves, often do not lead to what is best. […] [T]he reason that the invisible hand often seems invisible is that it is often not there." (Stiglitz 2006)

drive prices and profit rates up or down and thus theoretically bring about changes in production.

These descriptions, images and metaphors that Adam Smith presented during the 18th century are readily found in today's economic discourse. The image that arises from this description of self-regulating competitive markets is that of individual entities of resources, producers, products and consumers freely and harmoniously interacting in a vacuum-like space. This is portrayed by the well-known simple graphs of introductory economics courses in which supply and demand curves shift and intersect according to changes in production and consumption. Neoclassical economists such as Walras, Arrow and Debreu have since dubbed this balancing-out process between supply and demand the general or competitive equilibrium theory (Walras 1965; Arrow and Debreu 1954). Named after the economist Vilfredo Pareto, the terms 'Pareto efficiency' or 'Pareto optimality' refer to the assumption that a competitive market economy is the most efficient way to allocate society's resources.[6] Although Friedrich August von Hayek later criticized these notions of perfect equilibrium and Pareto optimality, his notion of *catallaxy* must still be understood as a reinterpretation of this old notion of a social order that spontaneously arises from the dynamic self-regulating functioning of the competitive market (Hayek 2013; Butos 1985; Vaughn 2013).

Furthermore, the self-regulation of the market must also be understood as a process in which power is supposedly shifted from producers to consumers. This has already been mentioned in relation to Adam Smith's quote on the discipline of the market. Today, this notion is discussed under the name of consumer sovereignty, as presented by William H. Hutt (1936, 1940) and as propagated by Milton and Rose Friedman in their book *Free to Choose* (1980). Along the same lines, Ludwig von Mises likened the decision to buy a product on the market to the casting of a vote. Mises writes,

> When we call a capitalist society a consumers' democracy we mean that the power to dispose of the means of production, which belongs to the entrepreneurs and capitalists, can only be acquired by means of the consumers' ballot, held daily in the marketplace. (Mises 1951: 21)

This interpretation of consumer sovereignty gives the market a political twist and reinterprets the competitive market as a consumer or market democracy. While

6 Amartya Sen criticizes the term Pareto optimality because it "is an extremely limited way of assessing social achievement" (Sen 1988: 35). He explains this with a rather alarming example: "A state in which some people are starving and suffering from acute deprivation while others are tasting the good life can still be pareto optimal if the poor cannot be made better off without cutting into the pleasures of the rich – no matter by how small an amount. Pareto optimality is faint praise indeed." (Sen 1984: 95)

decisions are made daily and producers must react accordingly to regular changes in demand in the market, in political democracy, citizens often only have the possibility of electing a representative every four years. According to this argument, the competitive market not only exercises a quasi-divine and harmonizing self-regulating authority but is ultimately also a better, more responsive form of authority than any other secular, political organization.

For specialists in the field of economics, it might appear to be highly imprecise and anachronistic to superficially compare classical economists with neoclassical, Austrian, and Chicago school economists. Nevertheless, I would emphasize that despite their different interpretations of (partial) equilibrium theory, in the end the main gist of their arguments often boils down to a common belief in the self-regulating abilities of the market and a more general common political vision. As has already been mentioned, Adam Smith saw both the monopoly of power that guilds possessed and the interference of the state in the pursuit of material wealth as important economic problems. In fact, Smith argues that it is precisely the intervention of politics in economic matters that lead to inequalities or disequilibria,

> first, by restraining the competition in some employments to a smaller number than would otherwise be disposed to enter into them; secondly, by increasing it in others beyond what it naturally would be; and, thirdly, by obstructing the free circulation of labour and stock, both from employment to employment and from place to place. (Smith 1994: 136)

The state should therefore neither limit nor support free competition. This being said, it remains quite unclear where this "perfect liberty" truly lies. Nevertheless, the prevailing consensus amongst economists is that for markets to be competitive, no monopolies should exist, and this supposedly works best in markets that are open and free. Here, it is assumed that unlimited and self-regulating competition will eventually destroy all monopolies and decentralize economic power. While Adam Smith's work was mostly aimed against the monopolies of guilds and the support they received from the mercantilist system, economists of the late 19^th^ and 20^th^ centuries criticized the socialist and welfare states for similar reasons. In all these cases, the state's use of its monopoly of power to interfere in the 'private' sphere of economics is a prominent target of criticism. The objection to state interference is thus not only based on the principles of negative rights to individual private property, but also on the maintenance of the self-regulating mechanism of the competitive market. States should therefore keep their hands off the invisible hand; their attempts to 'artificially' constrain or abolish competition by regulating markets or managing economic affairs need themselves to be placed under strict limitations.

Since Adam Smith, the answer to this state interference has therefore generally been, at least in principle, the opening of markets. In this sense, the new institutional economist Douglass North understands capitalist markets as "open access orders" (North et al. 2009). Similarly, Friedrich Hayek argues that economic freedom[7] cannot be limited to any community or nation, but that it is inherently open and international (Hayek 2007: 226). All national boundaries restricting the free movement of people and capital should be kept to a minimum, integrating all economies into one single common market (Hayek 1980: 258). Since the open market is international, nation states must, he thinks, pass their powers on to international bodies. In other words, Hayek urges that the role of the state be limited to the impersonal and impartial implementation of international economic laws and the preservation of the apparent mutual independence of economic and political realms of human interaction. As Douglass North et al. explain,

> Open access societies limit access to violence [through the state monopoly on coercion] while ensuring open access to political and economic activities. Because the political system in an open access order does not limit economic access, it *appears* that the economy exists independent of the political system. As the neoclassical economists' fiction holds, markets exist and then politics intervenes. This seeming independence of politics and economics in an open access society overlays a much deeper and fundamental connection. It is here that *impersonality* occupies central stage. (North et al. 2009: 121; emphasis added)

As we see, this political neutrality of the state should create a legal setting in which all humans are, at least theoretically, equal and included in the impersonal market exchange. The separation of political from economic matters is ultimately supposed to secure the desired competition in the market that, in turn, is meant to enable self-regulating markets to function properly (ibid.: 110-115, 121-2).[8]

7 I refer here to the 'negative' freedom to trade or exchange goods with others through contracts and the freedom to accumulate private property – without illegitimate state intervention.

8 As Douglass North et al. explain, "Open access orders prevent disorder through competition and open access. Consolidated, political control over violence combines with the rules governing the use of that violence to reduce and control access to violence. Constitutions and rule of law provide limits on governmental policymaking, thus limiting the ways in which citizens can feel threatened by the government that in natural states induce them to support the use of violence and extra-constitutional action to protect themselves. In addition […] competition is intimately involved in enforcing the constitution and rule of law that support these limits on violence." (North et al. 2009: 115)

## 2.4 Economist kings, authoritarian liberalism and structural constraints

In all these theories of the competitive market from Hobbes to Douglass North, the *political* question remains: Who shall rule? And who possesses the knowledge and insight to create economic laws and policies that will ensure just the right amount of competition – neither too little nor too much? The problem becomes most clear when we juxtapose the assumption of humans as self-interested and egotistical beings, on the one hand, with the necessity of a strong and neutral government that impartially imposes law, on the other hand. Furthermore, another tension appears to arise between the necessity of a strong and overarching Hobbesian state that enforces strict property laws and contractual agreements and its simultaneous self-limitation when it declines to interfere in economic affairs.

For this reason, it is interesting to turn to the work of Friedrich August von Hayek, who provides a rather insightful solution to these tensions between the state and the market. Importantly, Hayek transforms the simple mechanistic understanding of equilibrium theory into a more dynamic and evolutionary concept of perpetual social adaptation. This evolutionary adaptation occurs in a spontaneous manner and therefore cannot be planned by any political body. Here, we are again reminded of the invisible hand of the self-regulating market. Furthermore, he also admits that the distribution of wealth in a market economy is not just. More to the point, he argues that the category of justice cannot be applied to markets at all. The reason for this is that there exist no individuals or groups who are responsible for the "spontaneous" distribution of resources (Hayek 2013: 233). Put somewhat bluntly, Hayek acknowledges that the open and competitive market can create a good deal of human suffering through bankruptcies, unemployment, inequalities and economic crises (Dupuy 2013: 163-4). Yet for Hayek, these effects are merely natural occurrences in what he understands as a dynamic and spontaneously evolving social order. For this reason, he recognizes that if people possessed the power to alter their social conditions – in what he named an "unlimited democracy" – they would most likely do away with the competitive market or would not develop it in the first place. In his words:

> If in a society in which the spirit of enterprise has not yet spread, the majority has power to prohibit whatever it dislikes, *it is most unlikely that it will allow competition to arise.* I doubt whether a functioning market has ever newly arisen under an unlimited democracy, and it seems at least likely that unlimited democracy will destroy it where it has grown up. To those with whom others compete, the fact that they have competitors is always a nuisance that prevents a quiet life; and such direct effects of competition are always much more visible than the indirect benefits which we derive from it. (Hayek 2013: 415)

From Hayek's perspective, people do not desire an open and competitive market arrangement because it implies a threat to what he calls "a quiet life". But understood more generally, the opposition to such a social arrangement is not only due to a desire to lead a calm and peaceful life, but also most likely due to a deep aversion towards the perpetual change, injustices and existential insecurities that open competitive markets bring about. Here, it is interesting and important to note that Adam Smith also recognized this widespread aversion towards open and competitive markets, as he writes,

> To expect, indeed, that the freedom of trade should ever be entirely restored in Great Britain, is as absurd as to expect that an Oceana or Utopia should ever be established in it. Not only the prejudices of the public, but what is much more unconquerable, the *private interests* of many individuals, irresistibly oppose it. (Smith 1994: 501; emphasis added)

According to Smith, this aversion is due to the monopoly position of guilds and manufacturers who perceive open and competitive markets as a threat to their economic power – and security. Nevertheless, Smith admits here that open and competitive market arrangements are a somewhat utopian goal, given the egotistical nature of human beings.

But isn't this peculiar? Suddenly, we see that both Smith and Hayek believe that people are in fact *too* self-interested and that they therefore want to limit market competition to their advantage. This egotistical aversion to competition can be interpreted as a social counter-reaction to the creation of open markets through economic deregulation that Hayek's contemporary Karl Polanyi describes as the "double-movement" in his book *The Great Transformation* (Polanyi 2001: 136-157). In his book, Polanyi understands this reaction to open and competitive markets as an attempt that people make to alter and socially "re-embed" economic activities in order to satisfy their own needs and desires (i.e. the desire to have a secure income and lead a somewhat stable life). In contrast, it appears as though Smith and Hayek perceive these people to be blinded by their egoism, which prevents them recognizing the supposedly more subtle and "indirect" achievements of a competitive market economy and, ultimately, from believing in the providential nature of the self-regulating market.

But who, then, is there to implement the rules of such a social arrangement that a large portion of the population does not desire? Interestingly, Adam Smith remains silent on the question of who shall rule. For Hayek, the creation of a spontaneous social order requires people who have an insight into its hidden fruits and impartial laws. Only these people are able to restrain themselves from the hubris of collectively creating social institutions according to their particular needs and desires. Paradoxically, only such rulers can implement political institutions against the self-interest of the people, enabling a social order to 'spontaneously' arise through the pursuit of people's self-interest in economic affairs. While people should pursue their self-interest on a competitive market in 'private' economic affairs, they should not, however, pursue their self-interest in political or 'public' matters. Because most people do not possess this insight and humbling knowledge, Hayek literally argues that democratic politics must therefore be "dethroned" (Hayek 2013: 481-5). This is supposed to occur by creating a body of universal rules that primarily protects individual negative freedom from arbitrary interference and coercion, which is nothing other than the Hobbesian protection of individual private property rights and the enforcement of contracts (ibid.: 447). Furthermore, the democratic state should include both a Legislative Assembly and a Governmental Assembly that is elected by the entire population every couple of years. The Legislative Assembly consists of adults of a "relatively mature age for fairly long periods" (ibid.: 448), more specifically between 45 and 60 years old and for a period of 15 years. This long period should keep members independent from the "fluctuating wishes of the electorate" and from political parties "committed to support[ing] particular interests and particular programmes of actions" (ibid.). In contrast to the Governmental Assembly, the Legislative Assembly is only elected by people of the age of 45 once in their lifetime who then choose someone of their generation whom they can "trust to uphold justice impartially" and to possess qualities such as "probity, wisdom and judgment" (ibid.). This political body would revise and sanction all laws, including those concerning taxation and regulations for safety, health and environmental matters. In other words, members would ultimately possess the power to create an "adequate framework for a functioning competitive market" (ibid.: 450). To ensure that these laws are compatible with the constitution, Hayek also suggests that there should be a constitutional court that oversees the work of these two assemblies. The judges of this court are, in turn, appointed by the Legislative Assembly and would often include former members of this assembly.

As becomes clear, Hayek's concept of a 'democratic' state is not very democratic. The problem of conflicting interests is solved by a council of the wise who should be – in contrast to the other self-interested citizens – highly impartial. This group supposedly possesses the insight into the true nature of a free market society while simultaneously limiting citizens' ability to democratically codetermine its laws and social arrangements in ways that might interfere with the price mechanism, market competition and the resulting distribution of resources and wealth In other words, while Hayek understands the open and competitive market as an evolutionary process of discovery and adaptation dependent on the decentralized decision-making of individual agents, its legal framework remains abstract and immutable. While the interactions in the market should occur spontaneously, its laws are enforced and protected in a rather unspontaneous and calculated manner by supposedly wise and objective human beings. Simply put, it appears that Hayek is defending a social order that is ruled by technocratic economic experts or platonic economist kings. According to this interpretation, I believe it to be adequate to argue that Hayek's concept of society based on an international, open and competitive market comes close to what Hermann Heller called "authoritarian liberalism" as early as 1933 (Heller 2015). Furthermore, this interpretation of Hayek would allow us to agree with historian Philip Mirowsky, who argues that although many economists and economic agents often argue for a minimalist state, they are in fact not *against* the state but merely want to take over the driver's seat in government (Mirowski 2014).

It must be acknowledged, however, that such an anti-democratic political model could easily be put off as the somewhat embarrassing blunder and obscure thought experiment of an elderly economist. Furthermore, it can be expected that most economists would reject such a political model, because it not only denies fundamental political freedoms, but it is also highly improbable that such wise and impartial people could be found. For this reason, it is often argued that open and competitive markets must be coupled with the periodic open and competitive election of government officials (North et al. 2009). Here, we appear to have returned to Fukuyama's notion of liberal democracy or democratic capitalism, in which the underlying mechanism of the market – i.e. competition in the sphere of economics – is applied to the democratic decision-making process in the political sphere.

I would like to show, however, that even with the existence of periodic elections, open and competitive markets nevertheless severely limit peoples' rights and capabilities to democratically alter their social arrangements. Wolfgang Streeck lucidly describes this problem in his book *Buying Time* (2013). Here, he explains that democratic citizens (what he calls a *Staatsvolk*) are bound to a national territory and have specific rights and obligations, including the equal right to vote and the ability to express one's opinion freely. In contrast, the people of the market (*Marktvolk*) are generally understood as internationally mobile investors and creditors, who possess the right to demand profits. Importantly, while the first group is more or less geographically bound, the second can move easily and more or less freely from one country to the next. Because the well-being of economies, societies and states are largely dependent on private investors, the *Marktvolk* becomes a second and, in some cases, even more important constituency. Here, elections are supplemented by continuous auctions, public opinion by the rate of return on investment, and political loyalty by the "confidence" of investors in market stability (Streeck 2013: 117-132). When the *Staatsvolk* attempts to raise taxes or to implement environmental regulations, the *Marktvolk*, fearing a decline in profits, will often withdraw its investments. In turn, these "investment strikes" (ibid.: 50, 118-119) lead to unemployment and economic crises, thereby punishing the people for attempting to alter their politico-economic institutions and, ultimately, constraining democratic choices. In Streeck's words,

> The limitation of national sovereignty by 'market forces' amounts to a limitation of the freedom of the *Staatsvolk* to make democratic decisions and a corresponding empowerment of the *Marktvolk*, which becomes increasingly essential for financing government decisions. Democracy at national level presupposes nation-state sovereignty, but this is less and less available to […] states because of their dependence on financial markets. (Streeck 2013: 126)

Here, we are again reminded of the "countervailing power of private capital" (Held 1987: 160). Yet this time economic power is used not to limit the power of absolute sovereigns and warring feudal lords, as was the case with Montesquieu and Adam Smith, but instead to undermine the democratic powers of a nation state. Joshua Cohen succinctly calls this the "structural constraints argument". As Cohen explains,

> According to the structural constraints argument, the private control of investment importantly limits the democratic character of the state by subordinating the decisions and actions of the democratic state to the investment decisions of capitalists. Political decisions are structurally constrained because the fate of parties and governments depends on the health of the economy, the health of the economy on investment decisions by capitalists, and investment decisions by capitalists on their expectations of profits. While groups other than capitalists also control strategic resources, and can use that control to constrain decision-making, the structural constraints argument holds that the power of capitalists and the fact that everyone's welfare depends on their decisions singles them out for special attention. (J. Cohen 1989: 28)

This problem of structural constraints can, on the one hand, be understood as a tension between national democracies and an international open market economy (Streeck 1998; Rodrik 2012). On the other hand, it also must be understood as a fundamental tension between the realms of society that are considered to be private and public. Within the classical Hobbesian state-market dichotomy, the maintenance of one's life and livelihood is largely considered to be a private affair that occurs within the supposedly neutral framework of the state. Yet the framework of the state or the public is never neutral and in this case subjugated to the arbitrary decisions and powers of the *Marktvolk*.

For this reason, I would agree with the political scientist Charles E. Lindblom who provocatively argues in his article *The Market as Prison* from 1982 that the open and competitive market can be interpreted as a type of political prison that does not entirely stop, but substantially suppresses institutional change (Lindblom 1982: 326). As he explains,

> Many kinds of market reform automatically trigger punishments in the form of unemployment or a sluggish market economy. […] Punishment is not [however]

> dependent on conspiracy or intention to punish. If, anticipating new regulations, a businessman decides not to go through with a planned output expansion, he has in effect punished us without the intention of doing so. Simply minding one's own business is the formula for an extraordinary system for repressing change. […] That result, then, is why the market might be characterized as a prison. For a broad category of political/economic affairs, it imprisons policy making, and imprisons our attempts to improve our institutions. It greatly cripples our attempts to improve the social world […]. (ibid.: 325-329)

Yet even without Hayek's impartial economic rulers, once the institutions of individual private property and the open and competitive market are in place, the actual possibilities of people to democratically alter these central institutions remain severely limited. With Adam Smith, we can therefore say that this repression of institutional change is merely another form of discipline that results from open and competitive markets. In this sense, we might even say that Heller's authoritarian liberalism does not even require Hayek's economist kings, but rather functions through the economic institutions themselves. Here, it doesn't matter who is in the driver's seat, because whoever it is must acquiesce to the demands of the market. Thus, it can be concluded that both the supposedly neutral legal framework of the state and the self-regulating, open and competitive market undermine our previously developed concept of democracy, in which people possess the rights and capabilities to codetermine their social conditions.

This being said, this rather negative portrayal of the market as a political prison should not be taken as a denial of the positive aspects of capitalist markets. It cannot be denied that open and competitive markets have expanded the realm of individual freedom and increased the number of goods that a large portion of the world's population can enjoy today. In this sense, we must agree with Fukuyama that democratic capitalism is a good thing. Nonetheless, as I have shown, the institutions of the open and competitive market inherently limit the democratic freedom that people can realize. This might not be a problem if everyone was satisfied with life within the framework of an open and competitive market. But as Adam Smith and Hayek already acknowledged, this is not the case. Furthermore and as we will soon see, social arrangements that prioritize individual freedom based on the negative rights of private property bring about serious social, economic, and ecological problems that often cannot be solved due to the structural constraints of capitalist markets. For this reason, it is necessary to develop our understanding of other social arrangements that are more compatible with our more demanding understanding of democracy and thereby provide people with the capabilities to institutionally adapt and collectively solve the problems that threaten them. As already mentioned, one alternative to democratic capitalism that is increasingly being discussed is that of the commons. For this reason, let us now turn to this discourse on the commons and analyze whether it provides us with a normatively sound and feasible alternative 'beyond markets and states'.