GLOBALIZATION AND A NORMATIVE FRAMEWORK OF FREEDOM

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The author considers the question of whether or even what normative structure of social order is able to encourage the advancement of the measure of positive liberty in the process of globalization. Related to this is the issue of the insufficiency of guarantees provided by orthodox liberalism for human self-determination. The author considers possible scenarios as to the way in which an elite cosmopolitan minority, profiting from globalization and feeling no responsibility for the majority left to its own fate, would pursue its own interests. The ideas of Ralf Dahrendorf concerning the global rule of law in the name of freedom and the need for international law are referred to. Globalization is occurring just as Marx intuitively predicted: capitalism becomes the bearer of hidden immanent self-destructive mechanisms. In conclusion, the author’s hypothesis is that the new era of law in the 21st century will ensure that certain civilization legal norms become natural or customary.

Keywords: Globalisation; human self-determination; capitalism; positive freedom; rule of law.

At the end of the twentieth century, the contemporary social philosophy and sociology of the western cultural sphere is dominated by the concept of freedom as representing the spirit of the relevant, i.e. liberal, tradition and a certain kind of “success” for liberal democracy, but in contrast to the end of the nineteenth century, it concerns not only political freedom but freedom as a human end. In reality, however, individual freedom came to mean individualized consumption in a consumer society and consumer freedom within the framework of the market mechanism became a means of self-realization and individual independence. This concept of freedom expresses the social relations between an individual and the social order in the form of a hierarchic normative structure; the question is what kind of normative structure of the social order can foster the advancement of the measure of positive liberty—if it can do so at all.

It is well-known that in his 1958 inaugural lecture, “Two Concepts of Liberty”, Sir Isaiah Berlin characterized Mill’s concept of freedom as negative in the sense that it marked out a boundary beyond which the actions of an individual could not be interfered with; this approach is, however, rather modern and not universal even within the limited framework of the history of Western culture. Berlin took the concept of non-interference and in terms of the antipode of violence, showed that in his essay On Liberty, Mill confuses two different notions, since it is not the case...
that freedom is an essential precondition for the growth of human genius (it relates to his defence of non-conformist character). According to Mill’s theory, liberty is not incompatible with certain types of autocracy. Using this as his starting point, Berlin formed his positive concept of liberty, derived from each individual’s desire to be his or her own master/mistress and to act as s/he wants and not to be dependent on external forces of any kind. Since all positive ideals of humankind are incompatible, a liberal has to give up the concept of final harmony and may only offer pluralism with a measure of negative liberty and the ideal that each can make their own choices freely without requiring eternal validity (Berlin 1967).

Charles Taylor, well-known for his representations on the philosophy of communitarianism goes even further: he refers to the position held by the adherents of the idea of negative liberty as the “Maginot line” because this attitude derived from Hobbes mechanistic-materialist metaphysics guarantees defeat. In terms of negative liberty it makes no difference whether or not we make use of a particular opportunity, whereas positive liberty is most concerned with having control over one’s life, the concept of freedom is therefore associated with the experience and not only the possibility of freedom; at the same time, negative liberty itself is not enough because there are also other values and only the struggle for them gives meaning to life. According to Taylor, from a historical perspective, liberalism defended the idea of negative liberty in relation to different variants of authoritarianism; this, however, was at the cost of giving up the concept of individual self-realization, which seemed to him to be the loss of a significant liberal potential (Taylor 1985). The “Maginot Line” implies that in order for people to be really free, it is not enough that they are protected by the concept of negative liberty, i.e. the possibility of acting on the basis of will and guaranteed rights; rather, the issue is whether a subject really makes use of this possibility, which is applied in an organized human society through the active participation of the subject in the political sphere. Taylor is therefore concerned about the freedom of citizens actively participating in the republic (by republic he understands a liberal regime that allows the citizens control over their own lives). Taylor blames liberalism for the fact that although liberal society is based on a consensus over the issue of the rule of law, individualism leads to self-isolation and an absence of civic identification with the common good. It is in fact a sense of common good that builds ties of solidarity among citizens.

The idea of self-realization is relatively new according to Taylor. It appeared in philosophy in the 1960s and consists of the fact that each person has the right to shape their own life; something which is not possible without a particular level of self-knowledge. The idea of authenticity goes beyond simple self-determination, for people choose their own paths in life and this presumes that they have their own identity and individuality; people acquire this only at the level of higher common values. Taylor positioned the concept of authenticity against the ideal of autonomy (humans as bearers of rights) and requested that the individual be incorporated as a moral person into the context of a value community.
It is worth considering the extent to which the idea of self-realization has been included in Marx’s philosophical anthropology as a project of emancipation that emerges after alienation has been overcome and exploitation removed. Marx elaborated the concept of self-realization in connection with human liberty, negative liberty, i.e. the absence of pressure creates a space for positive liberty. Within the context of Marx’s materialistic interpretation of human nature, the true self-realization of man means that people control the social conditions of production. In contrast to the enlightenment interpretation of human nature, Marx showed that institutions and the means of production are not invariable; hence, social relations are created by people, who should act consciously so that the relations are the product of their will.

According to Zygmunt Bauman, the uncertainty of the times is a powerful individualizing force: it divides instead of bringing together, the idea of common interest is fading away; fear, anxiety and indignation are of such a kind that only a solitary person can suffer from them; solidarity is losing its former status of rational tactic and the contemporary life strategy differs strongly from that which led to the birth of working class and workers’ organizations. This loosened the link between capital and labour: this loosening is, however, one-sided because one side of the grouping won unprecedented autonomy: capital was released from its dependence on labour by means of the new freedom of movement; reproduction and the growth of capital have become independent of the permanent and locally bound link with labour. Governments are forced to adjust the political game to the rules of the free market: that means the minimum of rules, low taxes, and a flexible labour market in particular, a submissive population incapable of and not willing to organize resistance in relation to any decision of capital; governments can, paradoxically enough, maintain capital only when they enable it to leave at any time (Bauman 2004, 35-37).

Reflecting upon the vicious circle of bureaucracy and consumer freedom (the market game), Bauman considers that it would be possible to achieve individual autonomy through civic cooperation and with the support of local government (Bauman 2003, 114). With capitalism transforming into a consumer system, labour has been gradually losing its privileged position in favour of individual consumption in a consumer form. Consumer freedom (not labour) has become a significant force, connecting the world of individuals and the rationality of the system, the struggle to gain goods and services available exclusively through the market has replaced the “work ethic”. The individual achieves emancipation, autonomy and freedom in material enrichment (Bauman 2003, 88-92). Ulrich Beck (2006) stated that once upon a time, utopia was the liberation of man from the yoke of labour. That has happened. In Europe, it is finally time to start asking questions such as: ‘How can I live a meaningful life when I cannot find a job?’ Are freedom and democracy also possible outside full employment? How can an individual become a self-confident citizen without paid work? The guaranteed civic income,
700 Euros according to Beck (a proposal probably based on the cost of living in Germany) should enable freedom instead of employment.

Today, as was often so in the past, particularly in crisis situations or at “breaking points”, the question of the insufficient nature of guarantees provided by orthodox liberalism for human self-determination and the issue of the identity of the (post)modern individual under conditions of global intersubjectivity are being urgently considered. As is well-known, in *A Theory of Justice*, John Rawls conceived of his theory as being universalist in the Kantian spirit. In its original version, he faced the criticisms of communitarian philosophers (Michael Walzer). In his last writing, he admitted, however, that there might be several acceptable orders of justice. Rawls stated that in a property-owning democracy, law and liberties express and protect the interests of free and equal citizens of a higher order. The right to property in productive assets is not a basic law but a condition according to which the principles of fairness can be implemented most effectively. Regarding the formal side of political rights in a constitutional system, Rawls states that all citizens, regardless of their social status, are entitled to a fair opportunity to exercise their political influence. The property-owning constitutional regime does not only protect negative liberties, but democratic institutions together with equality of opportunity and the difference principle also protect positive liberties adequately. Rawls knows that according to Marx a regime with private ownership of the means of production could not fulfill the two principles of justice; he even thinks that it could have been true to some extent but it is questionable whether the liberal socialist regime would function better not only at the level of ideas but in terms of particular historical circumstances. For Rawls, following the spirit of Marx, the main problem lies with democratic participation within the work process; but he refers only vaguely to Mill’s idea of worker-managed firms, which might well peacefully replace capitalist firms through economic competition. But there has been no evidence of it so far and he therefore questioned whether worker-controlled firms should not be supported temporarily (Rawls 1985, 177-178).

In his other work, Rawls worked on the concept of “realistic utopia” *The Law of Peoples* (1999) referring to the concept of international law *ius gentium* and to Kant’s treatise *Perpetual Peace*: his concern was for a political philosophy that extends the bounds of “practicable political possibility”. Rawls postulates that great evil in human history comes from political injustice and the introduction of political justice will therefore lead to the failure of all great evils. Human nature depends, according to Rawls, on social institutions: if we claim that it is good, it means that citizens grow up under the conditions of rational and just institutions (Rawls 1999, 7). To be realistic, the liberal conception of justice assumes two indispensable conditions: (i) it understands people as they are (the laws of nature), constitutional and civil laws should be rationally just in a well-ordered democratic society, (ii) since there are several liberal conceptions of justice, each of them should observe three characteristic principles and the criterion of reciprocity (fair
cooperation). The basic principles are: 1. they include all basic human rights and freedoms in agreement with the constitutional regime; 2. these rights, freedoms, opportunities and special priorities are granted while taking account of universal good and perfectionist values; 3. they guarantee all citizens their primary requirements necessary for them to be able to enjoy their freedom intelligently and effectively (ibid., 13-14). Rawls is not an adherent of the absolutization of equality and thus he assumes that inequalities are not always unjust. He does however require that inequalities be reduced for three reasons. Firstly, the suffering of the poor; however big or small the chasm between rich and poor is irrelevant, what matters is that the least privileged have sufficient means to be able to exercise their liberties and to live valued lives. Secondly, inferior status; the abyss between the rich and the poor leads to the fact that some individuals and peoples may be unjustly regarded as second-rate. Thirdly, the important role of fairness in political processes: fair elections and opportunities to seek public office, equality of opportunity that goes beyond formal legal equality (ibid., 114-115). The Law of Peoples is concerned with a just society and not the welfare of individuals. Each society has sufficient resources to achieve just institutions. Rawls does not seek global redistribution (ibid., 119-120). As for the consequences of globalization, international social inequalities are not an obstacle to spreading liberal democracy and a well-ordered society.

The transition of capitalism from labour to consumption was subjected to critique by Herbert Marcuse (1964), writing a generation before Bauman. The hypothesis of the so-called “third way” was attributed to Marcuse in the context of the stormy 1960s, despite the fact that it would probably never have occurred to him (for instance, he regarded the welfare state as an unsuccessful hybrid of organized capitalism and socialism). He noticed that in advanced industrial societies a comfortable democratic unfreedom prevails free of conflict, which is a sign of technical progress; as a result of being liberated from deficiency, industrial society loses the previous content of freedom, which was related to a lower degree of productivity not only in authoritarian but also in non-authoritarian systems: there is no reason why production and the division of property and/or services should develop by means of competition between individual liberties. In advanced industrial societies, the scientific control of nature is thus used for the scientific degradation of humans. For instance, political and economic freedom (critical ideas in the early stages of industrial society) lose their former content and rationality. At a time when the post-war boom was fading away, Marcuse required new ways of realizing economic, political and spiritual liberties: economic freedom in terms of liberation from the economy as a necessary means of earning a living or struggling for existence; liberation from politics as a tool of effective control through so-called “repressive tolerance” (repressive needs prevail because the dominant interest of society is repression); the revival of individual thought as against mass communication and indoctrination through public opinion (Marcuse 1964).
Although Marcuse’s demands may seem utopian, they represent realistically formulated demands on normative structures that should function in the future in terms of expansion and not as repressive constraints of positive freedom. We can imagine a scenario with an elite cosmopolitan minority profiting from globalization, which feels no responsibility for the majority of society that is left to its own fate. The majority will accentuate its unique cultural identities (“the rebellion of minorities”) because it commands nothing else against successful economic globalization; moreover, and this is crucial, it can reject the ideology of economic growth by not accepting profit and competitive strength as primary goals in the name of its own values (happiness) even at the cost of a certain decline in consumption and/or in the standard of living (the revolt against meritocracy); this leads to a situation where the political consensus ceases to function and even fails. Another, warning scenario is based on the fragility and ephemerality of the well-being achieved in the so-called advanced countries during the post-war boom in the second half of the twentieth century: this welfare is for example the basis of the unique integration of Europe. Since we cannot rely on a predestined plan of history, there are no objective guarantees that the development characterized by Dahrendorf as “an unprecedented growth in life chances” and thus the prerequisites of freedom, will move (if at all) towards the future with the same tempo; it is more likely that we will encounter its limits (the problem of the sustainability of the parameters of civilization). “Revolutionary” frustration does not occur when the circumstances within the social order are least favourable, but when a partial improvement of the situation takes place (frustration of expectations). If the successful progression of civilization were to be suddenly interrupted and a short-term regression (rapid deterioration of the life chances of the majority population) to occur, the cumulated aggression of the disappointed masses would turn them against “the others” because of the need to find the guilty person no matter the cost. Berlin himself pointed out that deprivation is felt as a deficit of negative liberty when an individual is convinced that his/her inability to gain a particular thing was caused by the hand of others and that person therefore regards him/herself as the victim of coercion or serfdom (Berlin 1993, 24).

Globalization may transform the world into a “global village” but it does not integrate it: neither economically nor culturally; globalization may even strengthen local and regional particularities. Dahrendorf referred to this concept as “glocalization” in the sense that it is an amalgamation of globalization and localization (Dahrendorf 2007). Globalization has not and will not establish “the end of history” and a “universal homogenous culture” (as Fukuyama thought at the beginning of the 1990s). The essence of the process known as globalization consists in the fact that economic processes and interests take precedence over all others, its finality being the maximalization of utility. In this sense, Beck distinguishes between the complexity of globality and globalism in terms of the all-penetrating, all-changing rule of the world market, which is an “obsolete
economism projected in gigantic dimensions, a revival of historical metaphysics, and a social revolution that does not behave politically yet is governed from above”: “if the New Deal does not occur, if the fatalism of postmodernity and neoliberal globalism become self-confirming prophecies, the situation will be fatal” (Beck 2004, 137, 186). With regard to the limited time frame given to this originally spontaneous process, it is the beginning of the nineteenth century that is most often denoted as the advent of capitalism or the progress of the industrial revolution. Marx’s and Engel’s Manifesto of the Communist Party serves as an example. Jan Keller raised doubts concerning this relatively widely-held view because the forces of globalization established themselves at a political level (i.e. beyond the imperial politics of nation states—colonial powers) as late as in the middle of the twentieth century. “The secret of globalization is that it is in fact an attempt to enforce the colonisation of the public space through the pursual of private interests, mirrored across the planet” (Keller 2007, 183). Keller therefore distinguishes between two stages of globalization: (i) the first stage involves the aid offered to the developing countries of the South, although this aid in fact profits the advanced states thus solving their own problems and leaving the third world countries to become extremely indebted; (ii) the second phase was controlled by supranational organizations and financial institutions, which, using the deformed structures of the countries of the South destroys the communities of the developed countries of the North (through structural adjustment programs—SAP, which was applied in relation to post-communist countries).

Although Lord Dahrendorf refers to Beck, his objections relate to his philosophical perspective, i.e. that of Rousseau and his ideal of a stable utopia, Arcadia, (the permanent establishment of absolute freedom). He refers to Kant’s treatise “Idea of a Universal History with a Cosmopolitan Purpose” and the initial idea through which Kant justified the finality of history, the idea of unsociable sociability (die ungesellige Geselligkeit). Kant accepted Hobbes’ negative definition of human nature (in this sense he thought realistically in contrast to utopian ideas about new man). But in his teleological conception, the focus is not on anarchy, which would end in total genocide: it was precisely these negative qualities that would lead people to free themselves from the rural ideal of a vegetative (although happy) life, and “nature” will lead them to the establishment of a legal civil constitution, through which real freedom is realized through the rule of law. Kant extended the validity of the universal ethical theory to the domain of legal science (Rechtslehre), analogously, Dahrendorf modified his imperative, the aim should be the establishment of a global liberal constitution: “act in such a way that the maxim of your actions can be considered a principle of a cosmopolitan constitution generally administering the law” (Dahrendorf 2007, 122).

The objective of the policy of freedom is according to Dahrendorf: “the biggest life chances for the greatest number of people” (Rawls: benefit for all and most for the least advantaged), by this we understand the opportunities for choice to mean
permitting people to choose and having a chance to choose, that is the right to participate and a choice of activities and prosperity. If the opportunity to choose is to be meaningful, the postmodern value of nihilism, which leads to anomie will not suffice (anomie—universal hopelessness and a loss of orientation, a permanent feeling of being under threat), but the options should be accompanied by ligatures. Dahrendorf understands ligatures to mean strong bonds which enable the opportunities of choice to become meaningful and he presents them as a bond that holds society together; it concerns the subjective internal side of norms, which guarantee social structures (it is modernity that overcomes the dependencies created by people, which have limited the opportunities for choice) (ibid., 41). The situation of globalization leads to the deepening of extreme economic-social inequalities between both individuals and between nation-states including whole continents and a considerable section of the planet’s population becomes marginalized. According to Dahrendorf, simply pointing to an unpleasant social reality is not enough: despite this, he defined the following principles as a conditional framework for the policy of freedom: inequality is endurable and even stimulates an improvement in life chances, if everyone has a guaranteed basic standard of living and as long as no-one can enjoy their wealth to the extent that they limit the opportunities for others to participate in social life (in this context he refers to discussions on guaranteeing the basic incomes of citizens (ibid., 90).

The social perfection of the Enlightenment assumed, just as Marxism did, that social conflicts could be controlled through reformed and/or revolutionarily transformed institutions. Dahrendorf believed that future conflicts would be so unpredictable that they could not be managed by political institutions but that it would be necessary to introduce certain respected rules, i.e. the rule of law, and moreover, to strengthen the sense of stability in our actions in order that freedom might reign in our social world (ibid., 91-93). Political democracy does not create economic welfare automatically—as was confirmed during the postcommunist transformations—but in order that democracy fulfil its obligations, it must be anchored in a liberal order. Civic society is a society of free associations, integrating people on the grounds of their interests and preferences (bonds of “comradeship”, i.e. solidarity, a sense of belonging and cohesion). Civic society is a prerequisite for liberal order just as the rule of law is (upholding democracy and a constitution of freedom) (ibid., 96-99). At the same time, globalization means the vanishing of democracy, so that we have to content ourselves with developing the rule of law, seeking to establish binding legal rules and effective sanctions worldwide. “The vanishing of democracy” means that there is no procedure for replacing those who make the decisions; there is no systematic method of taking account of the interests and opinions of those whose decision-making affects the world’s population. For Dahrendorf, freedom is the highest aim of public activities and active life and as such it is indivisible: as long as it is related to privilege, it remains imperfect, and therefore, creating a liberal order is a condition of a free society for all citizens (ibid.,
We shall probably not experience worldwide democracy but the global rule of law is real. This means that international law will not exist as the sum of moral demands but as the sum of legal rules subject to sanctions (ibid., 127).

In relation to the politics of freedom, Dahrendorf rejects the classical Marxist scheme of the separation of labour and free time because a society of labour dies away and the learned society is a society of the conscious elimination of the modern world of labour; paid work and capital are not interconnected but capital also grows without the work of the majority (ibid., 52). Marx had predicted a universal law of capitalist accumulation and/or the population law of the capitalist mode of production: according to which, workers themselves create the means that will make them redundant. “The mechanism of capitalist production and accumulation constantly accommodates their number to these requirements” (Marx 1987, 587). Nowadays, however, part of the population in the advanced countries and the majority of the population of the so-called third world do not belong to the “reserve army” but are redundant with no employment prospects in a system that unreasonably presumes full employment under economic and political pressure. The strategy of “global genocide”, preceded by “global menticide” (as Egon Bondy put it), is one of the possible solutions in such a situation and particularly under the conditions of the population explosion of the pauperized. The sociologist Ulrich Beck believes the phenomenon of economic globalization lies behind the revolt of young French immigrants: “In order to get rich, the old people needed the poor. The new, globalised wealthy people no longer need the poor …because the concepts of ‘poverty’ and ‘unemployment’ as we understand them come from the power games of the nation-state organized class society. That society expected something that is less and less valid for the groups of inhabitants expanding all over the world—namely, that poverty is a result of exploitation and is thus useful. The poverty of one group engendered the wealth of the other. This historical premise has begun to flag. On the flipside of globalization, an increasing number of people find themselves in hopeless situations with no way out: the crucial sign being—and this is chilling—that nobody needs these people. The economy is able to grow without their contribution. Governments can be elected without their votes. These ‘redundant’ young people are citizens on paper, but in reality they are not citizens, they are thus an accusation against all others. They are beyond the imagination of the workers’ movement” (Beck 2005). Dahrendorf also observes that young men are prevailingly the victims of early modernization in developing countries: they have nothing to lose and expect little, they easily become victims of tempters; they are the reserve army of nationalist and fundamentalist demagogues, the reserve of all cults offering martyrdom, while terrorism and martyrdom are not regarded as a permanent state, but as a deficit of social structures in which they might get a foothold (Dahrendorf 2007, 22).

The crucial problem of the post-capitalist globalised society is how to ensure the right to minimum human dignity and a meaningful life for the ostracized who
find themselves outside the compulsory employment enforced by autarchy or should they not have been born at all? Bondy points out that intensification of labour is a belief that was enforced on people only a few generations ago; if labour was alienated in traditional societies, the relationship between people and their own production was not based on inadequate toil. The owners of the means of production counted on the workers wearing themselves out to death, while another ten people were to be found starving nearby who could have taken over part of the work and earned their living. This is the economic reality on which the belief that production must continually grow and be ever greater, otherwise civilization would collapse was built (Bondy 2005, 114). This scenario, envisioned by Bondy, is based on the exclusivity of profit motivation that leads to a situation where in the end there will remain only one monopoly owner, who in fact no longer needs profit or power; he can only maximize his own prestige. Since it is the legal systems that model the structure of society, the elite the global players need (“symbolic analysts”—Robert Reich) might be able to work out legislative schemes. The schemes would observe the takeover of power from within and thus enable the overthrowing of supranational oligarchies. Legal science should formulate certain legal norms, fixed to such an extent that it would be very difficult to violate them; moreover, the norms should become natural or customary for the rest of the inhabitants of the planet (Bondy 2005, 96-99). Keller’s scenario is derived from a situation where a number of people are redundant because the market does not need them for abstract labour. Therefore, those who are able to face the risks at their own cost become clients, meaning that they are capable of equipping themselves. The result of the second phase of globalization might, according to Keller, mean a return to pre-modern conditions, to a form of unorganized barbarism, which he termed “postmodern refeudalization” (Keller 2007, 176). The common denominator of the two scenarios is their consideration of a new elite—the winners of globalization who fulfil their own interests and, since they are successful, launch the self-destructive mechanism of the social order which they themselves established. This evokes Marx’s idea that capitalism will collapse only when it fulfils its historical mission and thus becomes a bearer of hidden immanent self-destructive mechanisms.

The different philosophical backgrounds of Kant (Dahrendorf) and of Marx (Bondy) confirm the significance of law as a fundamental normative system capable of providing hope that the social order will promote the development of positive liberty. Law should fulfill this task during the stage where it becomes autopoetic (N. Luhmann), i.e. when it is able to understand the cognitive problem arising from the social background itself and then organize society by redefining and organizing itself; the decision-making process about which elements of social reality will become the reality of the legal system always relates to the legal system and its inner structure. In contrast to the past, it is not predestined by the influence of politics, the economy or any other system of reference. This reflection is
conditioned by the fact that human social systems are not simply manifested in physical space (natural causality), but primarily in the symbolic space that contains regulations often codified as laws. (The Sophists already knew that social regulations could be violated because people choose how they interact), whereas the laws of nature cannot be avoided). This statement is, however, only one of the possible alternative scenarios of world civilization. As we known, after Roman law, which also inspired Kant, the twelfth century was the legal century. Law started to be understood as a duty prescribed by reason aimed at the universal good, which predetermined the era of the Enlightenment (reason as a universal measure and a measure of action). Although it is true that the limitations of human reason confine the potential of the *rule of law*—often used in postmodern discussions to repudiate it as a universal standard—it is still the case that reason is an indisputable prerequisite for its enforcement. If we think of the 21st century in terms of a new era of law, then this is a hypothetical alternative, whose accompanying traits are, for instance, a rise in legal philosophy and considerations of the basic principles of global ethics. The hypothesis put forward cannot be reflected as a must or even a step forward unless we resort to the fact that we are familiar with the finality of history or perhaps that this knowledge will provide us with authoritative structures able to offer us more freedom than if we had been left to our own devices.

References


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