

A NEW ORIGIN FOR THE LAW, POLITICS AND ECONOMICS OF INSTITUTIONS: THE
RESEARCH PROGRAMS OF CLASSICAL CONTRACTARIANISM AND UTILITARIANISM
(OUTLINE OF THE ARTICLE IN CONSTRUCTION AND UNDER REVISION)

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This article aims at defending the thesis that the research programs of classical contractualism and utilitarianism should be considered a new origin, instead of the work by Douglas North and also by Veblen, not only for the economics of institutions but also for the law and politics of institutions. In addition, as a subsidiary thesis, the article aims at defending that both programs approach politics, law and economics as science, following, as the classical contractarianism, a combination of pure geometrical and Archimedean models that emerges in Descartes's reflection on the new method of science, or an empirical Newtonian model represented by the Newtonian Optics, as the classical utilitarianism of Hume. There is also another subsidiary and complementary thesis about the new model of science and its main characteristic. The new model of science as rational knowledge of the efficient cause has the characteristic of rejecting the speculative approach of the Aristotelian and Ancient world and replacing it by a practical approach in the sense that science of the efficient causes must generate a knowledge of nature that allows us to produce the effects by controlling the causes which take us to the power of reproducing nature and by this way to the power of designing and constructing technologies, guided by science, for acting and intervening in the nature as well as for designing and creating new artificial natures. Descartes advances this new view of nature in the Discourse of Method.

According to our thesis the institutions of the State of Right and of the Market are a kind of these social and political technologies produced by the science of politics, science of law and science of economics in the sense of this model of science as producer of technologies for intervening in the nature or creating new artificial natures. This is the conception of science behind of the rationalist program established by Descartes. The rationalist program is applied by the contractarian

and utilitarian research program for solving political and social problems which led them to design and create a new image of the world based upon these formidable social and political technologies that are the institutions of the State of Right and of the Market for producing and distributing wealth in order to solve the important problem of the inequality among men once that this new image of the world has as its starting point the ontological foundation of the *cogito* by Descartes with his model of an rational and autonomous agent and with it the logical development of the idea, by Hobbes, of the equality of men in his model of the state of nature. With the ontological foundation of the individual as an rational agent was born the problem of the emergence of cooperation among interacting individuals as well as the problem of building a new basic institutional structure of social and political system appropriate and compatible with this new and emergent nature of the individual as an rational agent which also establishes as its foundation the equality, by nature, of the man. These new foundations is a radical rupture with the Aristotelian political and social world in which its foundation has the man as unequal by nature such that the inequality is not a problem. The new image of the world whose foundations are established by Galileo, Descartes and Hobbes has put as central as much as the problem of the emergency of cooperation as the social and political phenomena of the inequality among the men that exists in the actual world. There is no way to split or untie this new image of the world of the emergent new model of science that makes the rational individual master and owner of nature(Descartes, 2010-2015, p.24). Descartes advances such a view of science, in the Discourse on Method as an expertise knowledge of what Galileo is doing in his research, when he says

“For they -these scientific notions of mine -showed me that we can get knowledge that would be very useful in life, and that in place of the speculative philosophy taught in the schools we might find a practical philosophy through which knowing the power and the actions of fire, water, air, the stars, the heavens and all the other bodies in our environment as clearly as we know the various crafts of our artisans, we could (like artisans) put these bodies to use in all the appropriate ways, and *thus make ourself the masters and (as it were) owners of nature*. This is desirable not only for the invention of innumerable devices that would give us trouble -free use of the fruits of the earth and all the goods we find there, but also, and most importantly, for the preservation of health, which is certainly the chief good and the basis for all the other goods in this life(Descartes, p.24. The underline is our.)”.

Hobbes applies the main theses of the rationalist program, which replaced the Aristotelian image of the world as a Cosmo, in order to develop and build a new image of the

political and social world, also, in replacement of the unfolding of the view of Cosmo projected in the political and social organization of society of the medieval epoch that made it to be natural. The principles of the Cosmo in the social and political world meant saying that there was a fusion of the social and political world with the natural and physical world. Everything had a determined nature what connected and made it to belong to a determined place in that organized world of the Cosmo. The destruction of the Cosmo by the geometrization of the space and the emergence of the mechanical world led to the same transformation in the political and social world what is clearly expressed in the model of the individual as an rational and autonomous agent and in the model of the state of nature by Hobbes. The model of the state of nature by Hobbes is also a geometrization, but now, of the social and political space. This geometrization is uniformizing and making all men equal among themselves in order to be compatible and to be according to the new ontological foundation established by Descartes with the *cogito*, with a unique nature, i.e., rational, autonomous and self interested.

On this ontological foundation of an rational agent and in order to create an new institutional structure appropriate to this new nature of the individual Hobbes proposes to describe the outline of the characteristics of this appropriate institutions that he interprets as artificial in opposition to the Aristotelian view. It is a product of the rational man, so, an artificial institution, a social technology build up with the resource of the science. It is the product of the engineering which is applied science or as they used to say at that time, the product of the art. Hobbes's proposal and interpretation of the modern institutions, particularly of the State is explicitly revealed in the opening of his book Leviathan where he says,

“Nature, the art whereby God hath made and governs the world, is the art of man, as in many other things, so in this also imitated, that it can make an artificial animal...[later on]Art goes yet further, imitating that rational and most excellent work of nature, man. For by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE, in Latin CIVITAS, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended(HOBBS, 1651, p. ix)”.

Contractarian and Utilitarian research programs are defended as being a subprogram of the classical rationalist program which establishes both its kernel as much as the heuristic for developing and applying this kernel in order to solve problems which are social and political problems.

Both programs are the application of the classical rationalist program to solve social and political problems. All these problems are related to the fundamental problem, that is, that of the emergence and stability of cooperation among interacting individuals and a new institutional form of State as its solution. Hobbes, as North later when he say “Institutions are formed to reduce uncertainty in human exchange(North, 1992, p.2), recognizes the importance of the institutions to reduce the uncertainty generate by interacting individuals. All social and political problems are treated as the logical development from the fundamental problem as is required by the new scientific standard. The classical contractarian program, and the problem of the conditions of the emergence and stability of cooperation among interacting individuals as its main problem, and the State as its solution, is constructed and designed, by Hobbes, and followed by Locke and Rousseau, and completed by Kant. It is our interpretation that Hobbes has constructed the problem of the conditions of cooperation as very similar to a cooperative phenomenon. It is molded as a problem of transition of phase from a state of disorder to a state of order or a order-disorder transformation. It is a change from a model of the state of nature, which is interpreted as a state of disorder, to a model of civil society, as a model of order. In this aspect, we can advance that it is one of the first organized model for treating cooperative phenomena which will have his crowning with the Ising model, its first quantitative model. However, despite a qualitative approach, it was very innovative in approaching the problem of the nature and the role of the State as an experimental mental related to a cooperative phenomenon following, in this wary, very close to those experimental models elaborated by Galileo and Descartes as a form to provide propositions with certainty and thereby providing analysis with scientific legitimacy according to the new scientific pattern.

The classical rationalist program was established by Descartes with the stipulation of its main dichotomic thesis which states the theses about the two substances, mind and body, according to which, on the one hand, there is the substance, *cogito*, i.e., the rational and autonomous individual as the only ontological foundation of the moral, social and political world, and, on the other hand, there is, the matter with its mass in motion as the only ontological foundation of the material world. In order to apply both theses to solve problems Descartes advances a set of heuristic resources among them rationality model as a model of rational choice, geometrical model as the form of organization of science, the analytical method of solving problems by teaching how to build up the axioms and then how to work out the intermediate ideas between the axioms and the theorems or the empirical basis,

construction of mechanisms, and principles of optimization. The *cogito* as an rational and autonomous, and also, self interested agent it is the ontological departure point of Hobbes for building up a new political and social world.

One of the motivations of Hobbes for building up a new image of the world in replacement by the old Aristotelian image of the political and social world is to complete the work by Galileu and Descartes that was replacing the old Aristotelian image of the physical world based upon, according to Koyre, in two fundamental assumptions, 1) “la croyance à l'existence de natures bien déterminées”, and its relation to the notion of the Cosmo, i.e., 2) “la croyance à l'existence d'un Cosmo, c'est-à-dire la croyance à l'existence de principes d'ordre em vertu desqueles l'ensemble des êtres réels forment um tout (naturellement) bien ordonné(KOYRE, 1966, p.18-10)”. The destruction of the Aristotelian image of the physical world was completed with the process of the geometrization of the space and time which consisted in the process of identification of the physical space with the Euclidean geometry, and thereby, the above mentioned idea of Aristotelian cosmos with its thesis that “une place por chaque choce, et chaque chose à sas place; la notion du “lieu naturel” traduit cette exigence theorique de la physique aristotélicienne”(KOYRE, 1966, p.19). The geometrization of the space was completed with the mechanization of the matter, reducing all physical phenomena to mass and motion and its laws. This ontological, epistemological and methodological view was based upon the idea of science as defined by its method and whose model is the geometrical model. It was developed against the Aristotelian idea of the proliferation of the substances for explaining physical phenomena.

Hobbes is proposing the design and construction of a new image of the political and social world, with the help of the new conception of science that makes it a producer and promoter of new technologies, as a unfolding from what Galileo and Descartes did, throughout science of mechanics and geometry, with their construction of the new image of the physical world. Hobbes' proposal for designing a new image, defined by a series of new forms of institutions, with the science of politics and law, of the political and social world is related to a construction of an appropriate institutional structure for allowing the rational agent to develop himself as rational agent and enjoy the social well being commodities, therefore, to realize itself as an end that his rational condition allows him, as, later, will say Kant. According Hobbes the idea of the *cogito* as an rational agent is also the idea of the geometrization of the political and social space with the consequence that with him

comes the logical establishment of the idea that all men are equal provided with the same faculty of the reason formed by the understanding, as the faculty of the information and data as theoretical as empirical, and, by the will, as the faculty that provides to the individual the absolute power of decision of its action. This epistemological model of rational decision is also the foundation of the Hobbes' science of human action in its version of the law and politics as sciences of decision. The emergence of the *cogito* brought for the political scientist and for those practising the science of law the problem related to the what would be the basic characteristics of the institutional structure of the society appropriate for this newcomer to realize itself with the properties of rationality, self interested and autonomy of the will. Hobbes took the leadership with his contractarian research program that has in its kernel the principle of the ontological and methodological individualism whose members are all rational, self interested, autonomous and that its interaction with each other generates the problem of the conditions of the emergence and stability of the cooperation once that they are self interested and, therefore, do not bring, as part of its essence, any tendency to interact with each other. Besides, it is also in its kernel that the Hobbesian solution for this problem is the design an construction of the State as an artificial and exogenous agent with the goal of establishing an ordered society by means of a constitutional government as an appropriate institutional environment that provides the necessary conditions of security and peace inside the frontiers of a territory with population e united by a unique constitution or juridical order. The Hobbesian State is the description of the emergent State-nation with the institutional structure of a constitutional government and the goal of a just society what means a society in which the law is standard and the measure by which all men are considered equal. This is the new environment constructed by the emergent rational individual where he can realize itself as a rational agent. The Hobbesian State is an embrionary form of the State of Rights with its nature of a State based upon law and constitutional form that will be sistematically and gradually completed with contributions of the new designs of institutions by Locke, Rousseau and Kant in the contractarian. It is also our thesis that these contributions make the contractarian program a progressive one in terms of its capacity of developing and improving the institutional architecture of the State for solving the problem of the emergence of cooperation with its contribution of the construction of the institutions of the State of the Right with the political and civil rights. At the same time, the contratarian tradition, soon after Locke's contributions, gains a new competitor with the emergent proposal of a utilitarian and evolutionary research program by Hume.

Hobbes has as ontological foundation of his social and political world the rational and autonomous individual. The rationality model is the model of rational choice that has been defined by Descartes as compounded of the faculty of the understanding, which provides theoretical and empirical data, and the faculty of the will which provides the preferences and the power of decision. This epistemological model of rational decision is also the foundation of the Hobbes' science of human action in its version of the law and politics as sciences of decision. The formal organization of science is always the geometrical model.

With models compounded only by interacting rational individuals whose behaviors he, by means of his sciences of human action, can understand and predict, together with bonds made of contracts and state laws, Hobbes wants as explain as design and construct macroscopic entities or properties of the political and social systems, particularly, design and construct the institutions of the modern notion of State of Right out of the the ontological of the rational agent with the model of rational choice as also make that this same institutional architecture be the appropriate institutional environment for this new and emergent rational, autonomous and self interested individual.

Out of his ontological foundation, the rational human agent, therefore, as possessing an exogenous power of rational choice that with the help of the method becomes perfect, plus the model of the state of nature as the model of natural freedom, Hobbes shares with Douglas North the goal of providing the explanation of the emergence and the workings of the basic political, social, legal institutional structure of the civil society. Hodgson describes North proposal as a research program whose outline is as follows, "In the 1970 and 1980s, a prominent theoretical project in the "new institutional economics" was to explain the existence of political, legal, or social institutions by reference to a model of given, individual behavior, tracing out its consequences in terms of human interactions. The attempted explanatory movement is from individuals to institutions, ostensibly taking individuals as primary and given, in an initial institution-free "state of nature"(Hodgson, 2007, p.326). This description of the research program of the new institutionalism could be exactly the same as the description of the research program of the classical contractarianism, founded by Hobbes not only to explain, but beyond that, to design and construct the institutional structure of the modern political and economic system, as we are trying to outline throughout a rational reconstruction.

However, Douglas North is much more specialized than Hobbes, due to the modern circumstance, once he is concerned with the institutional structure related to the working and performance of an economic system through time (North, 1981, p.3). Bates also synthesizes this thesis that he is the founder of the research program of the new institutionalism when he says “Whether in the guise of formal theory (e.g. Persson and Tabellini 2000) or empirical research (e.g. Acemoglu et al. 2001), in the study of political economy, “institutions rule” (Rodrik, Subramanian et al. 2002). If anyone can lay claim to the being the founder of the new institutionalism, it would be Douglas North (Bates,). The emergence of the new institutionalism, despite being originally established on the foundations of the neoclassical theory of economics, since the beginning it emerges in order to defy the traditional approach in the area of economics where commands the idea that markets, no institutions, rule (Bates, p.2), yet, closely connect to its foundations because, also, at the beginning of his work, Douglas North made use of the neoclassical economic theory with the thesis of instrumental rationality theory of the maximizing individuals and also of the framework of the industrial organization of his epoch, i.e., structure, conduct and performance. This set of theories helped him to provide scientific legitimacy to his studies of the institutional structure of the economic system and the understanding of how institutions are created. In this context, there is also one of important thesis by North, i.e., “the existence of a state is essential for economic growth” (North, 1981, p.20). Here, again, we can make the bridge with our thesis, that the very origin of the institutional economics, political and law has as founder Hobbes and the classical contractarian and utilitarian research program. One of the arguments is that it is not enough establishing the existence of a state. It is also necessary to establish a new kind or form of State in order to produce economic growth. We make resource to historical data to confirm this thesis. The data and the graphic mentioned by Oded Galor (Galor, 2005), pointing a radical transition of the per capita income around the middle of XVIII from almost zero to an expressive value, show clearly this radical transition in the per capita income of the European countries from a state of stagnation to a state of growth which happens around the middle of XVIII. The economic growth rate up to the middle of the XVIII was practically zero when changes radically to a very expressive value. This new form of State is the work of Hobbes and the classical contractarian and utilitarian research program.

Another important example of the approach by North institutional economics is provided by his explanation of the institution of private property which arises spontaneously

depending only upon behavioral individual interactions(North, 1991). This institutional explanation of the emergent rights of property(Hodgson, 2007, p.326) is criticized even for authors in the institutionalist research program such as is carried out by Sened (Sened, 1997) and Mantzavinos(Mantzavinos, 2001) which wants to show the dependence of this notion to that of State.

Hobbes also considers the explanation of the institution of private property as central for the establishment of civil society, without which rest only the state of nature with his nature of war. Hobbes understand and establish the very basic meaning of the private property, i.e. , its *erga omnes* property or its property of excluding everyone else. He dedicates part of his chapter 24 to develop an explanation of the private property, which according to him depends upon the sovereignty power once that the most common situation is that of scarcity(HUME, 2010-2015, p.112). In this context, Hobbes says that

“The distribution of the materials that nourish the commonwealth is managed through the system of mine[and] thine and his -in a word, property- and in all kinds of commonwealth this is in the hands of sovereign power. For where there is no commonwealth, there is (I repeat) a perpetual war of every man against his neighbour, and therefore everyone has what he gets and keeps by force; and that this is neither property nor community, bu uncertainty (HOBBS, 2010-2015, p.112, the underline is our.)”

The whole chapter 24 of the Leviathan brings, together with the notion of property and labour, with it a notion that reflects one of the clues of the Hobbes conception of modern State: an organization of institutions for eliminating or at least controlling the degree of uncertainty that is necessarily related to the increasing of the number and of the complexity of the interactions among the individuals. Without the State there is no condition of making the future predictable, therefore, there is no way of making exchange and commerce viable among individuals and among commonwealth which is vital for the emergents commonwealth once that most of them do not produce everything that it needs, as he says,

“No territory under the dominion of one commonwealth (except a very vast one) produces everything to keep the whole body of the commonwealth alive and functioning: and there are few that don't produce more than they need of something. So the superfluous commodities to be had within a dominion stop being superfluous, and serve to meet home needs through the importation of commodities that can be acquired from other countries -either by exchange, or by just war, or by

labour. For a man's labour is also a commodity that can be exchanged for some benefit just as any other thing can(HOBBS, 2010-2015, p. 111-112)

After saying that in the distribution of the materials that nourish the commonwealth is managed by a system of property, which is the foundation of the market, he goes on to say that the first law concerns the division of the land itself and that this is carried out by the sovereign according to the defined notion of justice as distributing to every man his own(HOBBS, 2010-2015, P. 112). Hobbes finally concludes from these considerations that “a subject's ownership of his lands consists in a right to exclude all other subjects from the use of them, and not a right to exclude his sovereign...For seeing that the sovereign-i.e. The commonwealth whose person he represents -is understood always to act only for common peace and security this distribution of lands is to be understood as done for the same purpose(HOBBS, 2010-2015, p. 112)

With the development of his work and with the mounting problems related to approaching the explanation of the historical evolution of the institutional structure, North added to his view of the economics and of the human agent a theory of transaction cost and the framework of the industrial organization of his time, i.e., structure, conduct and performance, in order to provide his study of the institutional structure of the economic system through time with scientific legitimacy(North, 1981). Later, North criticized the instrumental rationality theory adopting a version of Simon's conception of the individual with a limited rationality.

It is our thesis that the scientific revolution, the establishment of the new ontological foundation with *cogito*, as an rational individual, and the design and construction of the institutional structure of the modern state as an artificial technological product of the scientific revolution for providing cooperation and its stability among interacting individuals, are the predominant factors explaining this radical transition in the per capita income of the European countries. These factors are elements of the kernel of the rationalist program established by Descartes as well as of the kernel of the classical contractualist research program developed by Hobbes who applied the rationalist program to solve social and political problems. Hobbes was the first to apply the new scientific model of researching nature, based upon the analytical method and mental experiments, developed by Galileo and Descartes, to develop politics and the laws as science of the human action and apply them to define the new nature of the state and to design and project its main institutional structures together

with its legitimacy, in that case, the scientific legitimacy. According to Hobbes the modern state is the technological product of the science of the human action. It is an artificial construction, made by rational agent, that encapsulates the power of all its members and whose function is to be an intervening power to develop an appropriate institutional environment in which he could realize himself as a rational, autonomous and self interested man. Therefore, the appropriate nature of this states is given by its generator principle of the modern state that is a constitution, as a set of laws, based upon the consensus.

However, such ontological foundation of the emergent individual has the characteristics of the methodological and ontological individualism just as a first approximation of the model of interacting individuals with each other through contracts that form bonds among them. This last model is essential for building up his conception of a social contract among all individuals throughout a consensus that they will obey the commands of State being created upon the constitutional government. On the other hand, the hypothesis of an atomistic individualism formed of rational agents is easier to utilize his theory of the human action in order to develop many of the institutions of this State that will help to solve the problem of the emergence of cooperation such as the codification of a new penal and civil legislation in the style of a *civil law* instead of a *common law*. The rational agent with his rational choice model is an agent with decision power therefore it is an agent that is responsible by his action and this is the new foundation for designing and building the institutions of the penal and civil code. The geometrical model is the guide to build up the legislation as a code according to the principle of codification what means that set of laws making a constitution are not a disordered set, on the contrary, an ordered one, following and developing from principles such as theorems follows from the axioms in geometry.

As mentioned before, in spite of Hobbes sharing with Douglas North the goal of providing scientific explanation of the institutions by means of mechanisms formed by interacting rational individuals, however, Hobbes goes farther because he is not only explaining but mainly creating, designing and helping to build a new political and social image of the world that has in its foundation as the model of the individual according to a rational choice model as the model of state of nature with the fundamental assumptions that all individuals are equal and also are free with the natural right natural of doing whatever necessary in order to maximize their survival time. The

establishment by Hobbes of the foundation of his political and social world based upon the model of the new and emergent *cogito*, or, of an individual with the rational choice model, and the model of the state of nature with the assumptions of the equality of the individuals represents the radical rupture with the old Aristotelian image of the world with its foundation upon the idea of determined natures that established the natural inequality among the individuals.

Both Hobbes and Douglas North use not only the rational individual in order to develop their view of the world, but, also, with the fundamental assumption to provide a scientific approach of the social and political problems. The first Douglas North uses the well established resources of the neoclassical research program mainly its associated principle of the methodological individualism according to which the individual is agent with the epistemological apparatus of the rational choice model. The core of his work is on the role and importance of the institutions helping the institution of the market in the process of allocating scarcity resources. In this sense, he goes beyond the thesis of the neoclassical research program. His studies of the role of the institutions and how it changes with time made him change his neoclassical view of the rational maximizing individual.

According to North the problem of the human cooperation appears with Smith and it is implicit that its solution is given by the market. North says,

“The central focus is on the problem of human cooperation -specifically the cooperation that permits economies to capture the gains from trade that were the key to Adam Smith's *Wealth of Nations*. The evolution of institutions that create an hospitable environment for cooperative solutions to complex exchange provides for economic growth. Not all human cooperation is socially productive, of course; indeed, this study is concerned as much with explaining the evolution of institutional framework that induce economic stagnation and decline as with accounting for the successes(NORTH, 1990, vii)”

As I said before, Hobbes is the first to see the change of state of nature to civil society as a cooperative phenomenon, as, a disorder-order transformation, besides that, his solution is the embryonic modern State of Rights founded on a constitution as set of laws. However, we have to be establish the due limits on attributing to Hobbes the idea of explaining the emergence of the civil society resulting from a transition of phase from the model of state of nature compounded of interacting individuals. The Ising model is our model to think Hobbes's explanation of civil society as resulting from a cooperative phenomenon. This model explains the emergence of a spontaneous magnetization in ferromagnetism based upon the interaction of the atomic spins, representing magnetic

dipole moments, with its nearest neighbors, which are distributed in a lattice of at least two dimensions, for example, a squared lattice, in order to have phase transition from an iron bar to a magnetic bar. In the model of Hobbes there is no such emergence of a spontaneous order among interacting individuals in spite of the bond established by the contracts as the form of interaction between individuals and its nearest neighbor. On the contrary, the emergent order of cooperation among interacting individuals is induced or promoted by an exogenous agent, the State, however, not just a State, but, a special form of State, the embryonic development of the State of Right based upon Hobbes' conception of the civil society as generated by a constitution as a set of laws. In this interpretation, the Ising model is that of one dimension in which it is essential the presence of an external magnetic field in order to make an order come out but it would not be appropriated to speak of an emergence of cooperation because it does not depend upon the interaction between spins and its nearest neighbors. However, we think that in the Hobbes' model it is appropriated to speak about cooperation once that are the rational individuals that takes initiative to build up the institution of the state to avoid the doom of the disorder of the state of nature and keep the instantaneous order and cooperation among interacting individuals and provide it with stability throughout the construction of a constitution establishing the laws of the organization of the civil society as just society.

Hobbes is not only explaining but designing and building up the basis of the social and political world where we live and develop our activities. The Hobbes idea of the model of the state of nature and an equal new institutional organization of social and political order out of a model of disorder which he calls the model of natural liberty. The scientific approach to the problem of providing explanation for social and political phenomena, particularly, the construction of the institutions organizing the social order is that of a mental experiment. Hobbes constructs a mental experiment following the models provided by Galileo and Descartes in order to provide scientific legitimacy to his conception of the nature of the modern state as an artificial and conventional entity.

However, Hobbes goes farther than Douglas North in the sense that he is not only interested in explaining the emergence of the institutions but, before this, he is interested in projecting them with the help of politics as science and in designing them with the help of the law, also as science, such as his ideas of the institutions of the constitution as the set of laws, the model of separation of the powers, the civil law as based upon the codification principle according to the geometrical model, the State and the individual as entities with juridical personality therefore as subject

of rights and duties which depend themselves upon a State, the basic principles of the foundation and structure of the civil and penal laws according to his interpretation of law as commands expressed by propositions with certainty and his idea that the model of the state of nature is made of rational and autonomous individuals that are free and equal which makes a radical rupture with the Aristotelian world view in which the individuals were naturally unequal, therefore, a world in which the inequality among the individuals does not need to be explained. With the model of the state of nature of Hobbes was born the problem of the inequality which from Hobbes on were required to be explained. Locke and Rousseau are the first theoreticians, in the case contractualism, to try explain the inequality among the individuals. Rousseau goes farther than Locke that says that inequality emerges in the state of nature produced by the arising of the private property which, on its turn, has to do with his conception of labour. Rousseau disagree with Locke and shows that the inequality has source in the social contract.

According to Hobbes, the individual supports the construction of the State in order to have provided conditions of security that preserves and protect his life. However, in order to have access to this environment the individual transfer to the State all the means in exchange to his protection. It is up to the State to distribute the means such as the right of property. This view seems close to that of the political economy of the merchantilism that provides legitimacy to the intervention of the State in the human affairs. Locke's proposal intends do diminish this presence of the State in the human affairs bringing an interpretation closer to the ascent of the middle class that starts transform England in a mass society. But Locke did not reject Hobbes's solution, on the contrary, he wants to make modifications in order to provide space for bringing back natural rights in order to control the power of the State. In the Lockean approach the private property is an natural right in the sense that it emerges in the state of nature not exactly that it is inherent to the nature of the individual. It seems to me that this is a distortion of the new notion of nature in the contractualism reducing it to the Aristotelian notion. The idea here is that the private property does not need the existence of the State in order to be explained once it appears in the state of nature. Hobbes explained the emergence of private property as a distribution of the State and depending upon the civil law. The framework of the contractualism that involves the model of the individual and the model of the state of nature it is very important in order to explain all the institutions that compound the civil society. This framework is essential as the foundation of scientific legitimacy for his explanations. Thus, the Hobbesian problem

of the loss of the rights of the individual to the State in order to preserve his life is solved by Locke, in a priori approach, with his view of the theory of the natural rights which recognizes the individual as end what establishes as natural his right to the means for protecting and exercising his right to life. Locke's view of the rights has it with tools for the limitation of the State power. The real problem for Locke is the commons tragedy that comes from each one in the state of nature having the right to apply itself the justice. This makes the state of nature very unstable. For Locke on the contrary of Hobbes, the state of nature is the state of peace and harmony. What should be the civil society of Hobbes build up by the State which produces harmony and peace it is the start point of Locke but without state only produced by rational individuals that recognizes the natural laws. Kant will utilize the Locke's state of nature as inspiration for his Kingdom of Ends or of Freedom. However, it is not the start point but the final stage of the human evolution in the control of the rational will.

Locke's solution is the construction of the civil society as that of the statization of the justice which requires that the individuals reject doing justice by their own hands in order to construct a mechanism of the solution of conflicts throughout a tribunal in which the justice could be applied in a impartial way avoiding the problems of the subjective justice of the state of nature. The relation with Hobbes is that with the statization of the justice he can preserve the property rights as natural resting to the State solve the conflict problems. We have here the design of the Sate more liberal with the preservation of other rights interpreted by Locke as the rights to the means for exercising the right to life.

It is up to Rousseau in the development of the contractarian program to deal with the problem of the freedom that is a natural right in Locke's approach including the right to rebel against the State but at same time with the duty to obey the sovereign. There is a paradox here that will faced by Rousseau. Besides this problem, Rousseau will face also the problem of the property right as a natural right at the same time the problem of the inequality that is associated to it. As we said before, one the main consequences of the construction of the contractarian program is the establishment of the problem of the inequality once that its foundation is that all men are equals.

Rousseau diverges from Locke and defends that the property right is social one, thati it depends upon the social contract, and, therefore, depends upon the State. The property right is not natural but a convection established by the social contract. Besides, Rousseau sees the origin of the inequality problem related to the problem of the property right. The solution of the inequality problem

passes throughout the solution of the problem of the property rights. How should be the design of the mechanism of the attribution, distribution and exchanging that would allow the solution of the inequality problem? According to Rousseau this solution passes throughout a new social contract. This conception of the property right is that motivation for Bentham criticizes the Universal Declaration of the Rights of Man as result of the French revolution. It is clear that the American constitution made use of the conception of the natural rights in order to establish its foundation. Some of the founder fathers was in Europe during the years before the French revolution and know quite well the controversy involving the construction of a new civil society that would replace the absolute monarchy besides having the example of the constitutional monarchy of Great Britain. It is very difficult not to attribute the construction of the state-nation and of United State of its constitution to the influence of the contractarian and utilitarian research program of Hobbes, Locke, Rousseau, Hume, Montesquieu and Smith.

However, the reasons for Douglas North change of the foundation of his work from the principle of the methodological individualism, that he shared with the core of the neoclassical theory of economics with the rational maximizing individual, to a new conception of individual based upon the model of a bounded rationality, according to the proposal of Herbert Simon, therefore with a cognitive nature more flexible and adaptable to the changing circumstances of the environments. This change of the view of the human agent and rationality is central for North's conception of the role and nature of institutions in economics, particularly, in order that he could be successful in his study and explanation of the change, evolution and the dynamic of the institutional structure of the economic system.

Thus, there was, inside of the own research program of the new institutionalism, the recognition of the difficulties and the problems that were mounting with the attempt to explain the creation and the dynamic of the institutional structure of the economic system based upon the foundation of a rational individual with the software of an exogenous e rigid model of rational choice together with an ideal model of interacting individuals of the state of nature. These problems and difficulties of the new institutionalist program is described by Hodgson when he says, “the new institutionalist project to explain the emergence of institutions on the basis of given individuals runs

into difficulties, particularly with regard to conceptualization of the initial state from which institutions are supposed to emerge. This does not mean that new institutionalist research is without value, but it suggests that the starting point of explanations cannot be institution-free. What is required is a theory of process, development and learning, rather than a theory that proceeds from an original “state of nature” that is both artificial and untenable (Hodgson, 2007, p.327). Hodgson goes farther by saying that theory of game emerges as an important tool to study the interactions among more psychological and empirical models of the individuals which takes the form of behavioral interactions. Besides that, there is also the use of experimental economics to bring more reality in the simulation of the production of the institutions as a result of the behavioral interactions of the individuals and to make “markets have to be treated not as abstract and universal ether of human interaction but as designed system of rules...[and to point] to a situated rather than independent conception of rationality” (Hodgson, 2007, p.328-329).

Thus, all these new tools, game theory, experimental economics with agent-based models, allows to view and simulate the reciprocal interaction and influence between individuals and institutions providing with this approach a more realistic way of the construction and development of the institutional structure of the social and economical system. This means that rational choice model loses its abstract and artificial characteristic that was the starting point of the neoclassical theory of economics and acquires a model that stresses an endogenous and context dependent preferences formation which requires new characteristics such as the complementary role of habit and of the instinct. This new software of the more empirical and psychological human agent with habits and instinct that was made possible by the emergence of the new tools brought to attention another research program, those, now called old institutional economics, or, the new new institutionalism that has among its members, Thorstein Veblen who was one of them that criticized the given and exogenous human agent with a rational choice model. Veblen defended, at the end of XIX and beginning of the century XX, a more realistic and adaptive model of the individual with the assumptions of the habits and instinct as its main properties generating a bounded rationality. He rejects the physical and mechanical model of economics imitated by neoclassical theory of economics.

Veblen replaced it by the Darwinian evolutionary model of economics with the foundation in an evolutionary conception of the human agent formed basically by habits and instinct, with which he tries to explain the creation and evolution of the social and economical institutions that were interpreted by him in a double perspective, as constraint and also as sourcing of incentives for

human action. Hodgson after mentioning that institutional economics is more than a century old, because according to him the first origin of the institutional economics is the proposal of the Veblenian institutional and evolutionary economics (Hodgson, 2007, p. 325), comes to condensate the main profiles of the core of the Veblen's proposal at his model of the individual when he says that “the development of an evolutionary concept of human agency, based on the concepts of habit and instinct, as rehabilitated within modern psychology and in modern pragmatist philosophy. Such a refined concept of the individual agent acknowledges the biological basis of human existence, and the role of habit in leaning and decision-making, with appropriate³ expressions in economic theory and agent-based modeling (Hodgson, 2007, p. 336) “.

It is our thesis that this criticism by Veblen against the rational choice model of the human agent at the core of the neoclassical theory of economics who replaced it by a behavioral, empirical and psychological model of human agent, possessing as main properties habits and instinct, it is very similar to the criticism conducted by Hume against the proposal of the classical contractualism founded by Hobbes. With this criticism Hume inaugurated the utilitarian and evolutionary research program of the problem of the stability and emergence of cooperation. However, Hume seemed more concerned with the problem of the stability of the cooperation than its emergence since he thinks that history has already provided with some models of governments and of states able to improve the cooperation, one of them is the constitutional monarchy, in spite of the fact that he also understand that the speculative investigation can produce new forms that will help improve this old ones. Hume is very cautions about thinking on implementing a completely new forms of government from the scratch as is implicit in the assumptions of the classical contractarian research program which establish from the beginning the idea of legitimacy of the government based upon the consensus of the contract among equal men. Hume thinks that this would necessarily be implemented only by revolution and civil war that bring terror and destruction. His example is the civil war and the destruction that came with the installation of the Republic by Cromwell with the remotion of the absolute monarchy in England supported by the legitimacy of the history and tradition. And, this is the starting point of what will happen with the French revolution.

As I have said before Hume is also compromised with the proposal of the classical contractarian theory of providing the guidelines and the protocol to design and project the institutional

structure of the state and governments in order to construct a nation-state able to provide stability, peace and promote cooperation among interacting individuals. However, his empiricist epistemological thesis establishes this above compromise in a completely different foundation of the origin of the state that is related to a different view of the model of the individual which is taken by him, not as an ideal and transcendent rational individual of the contractarians, as an psychological and empirical individual.

Hume's conception is compromised with an empirical thesis according to which all knowledge comes from experience and observation. This epistemological thesis is a real constraint to his construction of his economic and political philosophy. The first consequence of this epistemological thesis is his rejection of the analysis of the political conception of those contractarian thinkers as Hobbes and Locke as not scientific but metaphysical, particularly, their defense of the contract theory and of the consensus theory as the original foundation and the legitimacy of the real governments and states. However, and this is very important, Hume rejects the contractarian conception of the origin of the state and of the government as scientific but he does not reject them as moral. In a move very smart, he transforms the contractarian conception of the origin of the state, as based upon in the legitimacy of the consensus, into an ideal conception of the society to be pursued by means of reforms and marginal modifications in the real and actual societies and forms of government. He says that "It is not with forms of government, as with other artificial contrivances; where and old engine may be rejected, if we can discover another more accurate and commodious, or where trials may safely be made, even though the success be doubtful. An established government has an infinite advantage, by that very circumstance of its being established. The bulk of the mankind being governed by authority, not reason, and never attributing authority to any thing that has not the recommendation of the antiquity. To tamper, therefore, in this affair, or try experiments merely upon the credit of supposed argument and philosophy, can never be the part of a wise magistrate, who will bear a reverence to what carries the marks of age; and though he may attempt some improvements for the public good, yet will he adjust his innovations, as much as possible, to the ancient fabric, and preserve entire the chief pillars and supports of the constitution(HUME, 1752, p. 512-513)".

This passage shows quite clearly that he is trying to combine the results of the contractarian program, related to the new models of governments and of states and mainly related to

new forms of legitimacy and foundations for the governments, that Hume sees as being reduced to mechanical machines, with the restrictions imposed by his epistemological empiricist thesis that knowledge comes from experience and observations and his tools of analysis which includes the resource to the history of the empirical and real societies, as he did with the History of England, which teaches us, according to his point of view, that the foundation of the societies is not reason as defends the contractualist program but the authority. It is implicit that, be supported by tradition or even by force. However, history teaches us also that there we can find also an evolutionary view of the society that by small modifications and corrections is possible to change the models of authoritarian governments to less ones such as History of England shows us with the transformation of the government of the absolute monarchy to a constitutional monarchy in spite of the fact the it still depends too much upon one person without limited by the law.

The main principle of Hume's view of the world is his epistemological empiricist principle according to which our knowledge comes from observation and experience. The first consequence of this epistemological principle is the rejection of the formulation of the scientific proposition of the contractarian program related to politics, law or physics as synthetic a priori propositions. There is no such a thing. All our propositions about the world are synthetic and therefore hypothetical. Follows from this epistemological analysis that does not has scientific legitimacy for the models elaborated by the contractarian outside from the empirical evaluation. Hume questions the model of the rational individual of the contractarians program as being, exogenous, given, a priori, transcendent and ideal with the property of a perfect rationality which allows direct access to the essences. He also questions their ideas of a society based upon the consensus of equal and rational individuals as established by Hobbes. This passage shows quite clearly his interpretation of the contractarian view,

They [philosophers] assert, not only that government in its earliest infancy arose from consent or rather the voluntary acquiescence of the people; but also, that, even, at present, when it has attained full maturity, it rests on no other foundation. They affirm, that all men are still borne equal, and owe allegiance to no prince or government, unless bound by the obligation and sanction of a promise.[...] and if he fail in the execution, he has broken, on his subject from all obligations to allegiance. Such, according to these philosophers, is the foundation of authority in every government; and such the right

of resistance, possessed by every subject(HUME, 1987, p. 467)

But if , on the one hand, his epistemological principle rejects the proposal by the contractarian as a constitutive principle of the society, on the other, the contractarian proposal can be accept as a normative and teleological principle which give us guidelines for improving our real and empirical societies. That is what Hume does. We can add, according to our thesis that he incorporates the presence of normative and teleological principles in his conception, that Hume transforms the idea of a civil society formed by a constitution with its legitimacy based upon in the consensus of rational individuals into the an idea of a perfect commonwealth, which we dares to bring close to the idea of a federative republic, as a normative principle for his analysis of the evolution of the societies. Thus, he incorporates the results by the contractarian program with guidelines for improving the real and empirical societies and he had influenced Kant that was awaken with this kind of reasoning by Hume and develop his Reign of the Ends that is the Reign of Freedom and that the rational individual is end and not mean. He mentions his compromise with the idea of a most perfect society to serve a normative principle when he says,

“In all cases, it must be advantageous to know what is most perfect in the kind, that we may be able to bring any real constitution or form of government as near it as possible, by such gentle alterations and innovations as may not give too great disturbance to society(HUME, 1987, p. 513-514)”

This passage shows him compromised with the idea of a perfect society in order to serve as guideline for doing small alterations and reforms in the real societies with the careful of avoiding great disturbance to society

It is also our thesis that this set of ideas has influenced the construction of the United Stated as a republic federative ruled by a constitution.

The United States would be the concrete result of the transformation of the theory into practice developed by the contractarian and utilitarian research programs which defined the

construction of a country by means of a constitution with Hobbes who also creates the notion of State and of the individual as juridical persons, therefore, subjects of rights and duties and out of this basis he developed the new view of the penal and civil legislation in the form of *civil law* according to the codification principle following the model of the geometry and according to new principles compatible with the foundation that individuals are rational. Beccaria will develop this conception of penal law and will be followed by Bentham that will construct a civil and penal legislations in a geometrical form of a code. The *civil law* should be the best way to facilitate the elaboration of a territory as a nation-state by the possibility of given publicity and transparency to the rules, laws, duties, and rights of the members of the civil society.

Hume as well as Hobbes has in the model of the individual the foundation of his conception of the society. Hume establishes also his model of the individual close to that of a self interested individual when he says

“Political writers have established it as a maxim, that, in contriving any system of government, and fixing the several checks and controls of the constitution, every man ought to be supposed a knave, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and by means of it, make him, notwithstanding his insatiable avarice and ambition, co-operate to public good... [...] It is, therefore, a just political maxim, that every man must supposed a knave: Thought at the same time, it appears somewhat strange, that a maxim should be true in politics which is false in fact(HUME,1987, P.43)”

However, Hume's model of the individual is empirical and psychological, and by here, quite different from the Hobbes's model of a rational individual. To begin with, the most important faculty in Hume's model is passion and not reason. Reason is the faculty of the means and related to truth and falsehood as the passion is the faculty of the ends, an active principle, and related to actions which is not a matter of truth or falsehood but of moral evaluation. Hume says, *in verbis*,

“Reason is the discovery of truth or falsehood. Truth or falsehood consists in an agreement or disagreement either to the real relations of ideas, or to real existence and matter of fact. [...] Now ‘tis evident our passions, volitions, and actions, are not susceptible of any such agreement or disagreement. [...] Actions may be laudable or blamable; but they cannot be reasonable or unreasonable: [...] The merit and demerit of actions frequently contradict, and sometimes control our natural propensities. But

reason has no such influence. Moral distinctions, therefore, are not the offspring of reason. Reason is wholly inactive, and can never be the source of so active a principle as conscience, or a sense of morals(HUME, 1896, p.240)”

This model by Hume is much more compatible with the idea that individual is self interested than that by Hobbes and establishes the foundation of the utilitarian conception of human action, that will be developed more extensively by Bentham, when he adds the pleasure and the pain as the most basic motivations of our actions which we can see from this passage,

“Tis obvious, that when we have the prospect of pain or pleasure from any object, we feel a consequent emotion of aversion or propensity, and are carry’d to avoid or embrace what will give us this uneasiness or satisfaction...[...] But ‘tis evident in this case, that the impulse arises not from reason, but is only directed by it. ’Tis from the prospect of pain or pleasure that the aversion or propensity arises towards any object(HUME, 1896, p.216)”

To complete the construction of the a utilitarian conception of the human action we find in the work by Hume a plenty of considerations about the role of happiness as also a basic motivation, however, in the different perspective related to other philosophers that gave to it an ideal and transcendent characteristic which is rejected by him. Hume makes the happiness part of the objects of the real world and dependent upon the individual himself. It is his words,

“[p]hilosophers have endeavoured to render happiness entirely independent of every thing external. That degree of perfection is impossible to be attained: but every wise man will endeavour to place his happiness on such objects chiefly as depend upon himself(HUME, 1987, p.5)”

Hume's model of individual is very similar to that one by Veblen in the sense that he also attributes a basic and primary role to the notion of habit instead of reason. These properties make the individual an endogenous element of the theory of society and one elemento appropriate and flexible to adapt and adjust to the changes in the environment producing influence in it at the same time that receives its influence. With Hume emerges a model of individual appropriate for having a evolutionary conception of society bringing a dynamical theory of this society for replacing the the static conception of the contractualism. He says about the habit tha it is the source of the elements of

our reasoning as such as of our actions

“Men will scarce ever be persuaded, that effects of such consequence can flow from principles which are seemingly so inconsiderable, and that the far greatest part of our reasonings, with all our actions and passions, can be derived from nothing but custom and habit(HUME,1777, p. 160)”.

It is habit what is behind the development of our most basic notion of cause and effect that provides foundation for all our inferences according to Hume as he says

“The idea of cause and effect is derived from experience, which, presenting us with certain objects constantly conjoined with each other, produces such a *habit* of surveying them in that relation, that we cannot, without a sensible violence, survey them in any other(HUME, p. 160 underline is our)”

The habit is also the cause of our associations by which we connect ideas to impressions and by these means we construct all our ideas and reinforce them. Hume says that “As the habit which produces the association, arises from the frequent conjunction of objects, it must arrive at its perfection by degrees, and must acquire new force from each instance that falls under our observation(HUME, 1777, p. 177)

The basic principle of our predictions about the future is also based upon the habit according to Hume that says “First we may observe, that the supposition, that the future resembles the past, is not founded on arguments of any kind, but derived entirely from habit, by which we are determined to expect for the future the same train of objects to which we have been accustomed(HUME,1777, p.181)”

Together with the operation by the habit, as a principle of nature, that is producing most of our system of inference instead of reason Hume also stresses the importance of the instinct as its companion and natural impulse when he says “ To consider the matter aright, reason is nothing but a wonderful and unintelligible instinct in our souls...(HUME,1777, p. 235)

Thus, Hume has developed a model of the individual that is quite empirical and psychological with its main properties related to habit and instinct which will produce the emergence of patterns from its behavioral interaction with other individuals according to the principle of mutual advantages which takes the form of certain types of games. Hume wants to show that the first kind of interactions among individuals is behavioral interactions that is based upon the

principle of mutual advantages. Throughout these kind of interactions Hume can show the emergence of certain conventions or patterns that will transform into rules. The production of the behavioral patterns that can be translated into rules can be associated to the emergence of reason. Thus, we can say that Hume explain how emerge reason, and, thus, he explain how the individual transforms into a rational individual something that Hobbes left behind without explanation once he assumes that the individual is not born rational but the individual becomes rational. Hobbes says on reason,

“From all this it appears that reason is not born with us, like sense and memory; or acquired through experience alone, as prudence is; but achieved through work(HOBBS, 2010-2015, p.18)”

The interaction between individuals through behavioral signalization we call rationality non criterial. Using this model of empirical individual and with the resource of the rationality non criterial Hume will show how is possible and emerge a constitutional government. Thus, Hume does not need to use the resource of an transcendent individual with perfect rationality in order to develop the basic institutional structure of society. With this model of individual able to learn and evolve Hume develops an evolutionary view of the society and its institutions that has to do with the approach that Veblen will do much later. With his empirical and psychological model of individual Hume shows the emergence of the notion of property as result of the mutual advantage principle. The debate between Veblen and the neoclassical theory is more or less the debate between Hume and the contractarian view of society. With respect to the emergence of a convention or an institution of the property right Hume describes a kind of natural mechanism of interaction among individuals by behavioral exchanges before the use of the language, e, therefore, before, the existence of a system of rules.

Hume, *in verbis*: “I observe, that it will be for my interest to leave another in the possession of his goods, provided he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common interest is mutually expressed and is known to both it produces a suitable resolution and behavior. And this may properly enough be call'd a convention or agreement betwixt us, tho' without the interposition of a promise; since the actions of each of us have a reference to those of the other, and are perform'd upon the supposition, that something is to be perform'd on the other part(HUME, 1896, p. 255)”

In order to develop more arguments that his view of the emergence of institutions is an anticipation of that one by Veblen one could see how Hume is modern in the sense that he appeals to

the tools of the theory of the games in order to provide legitimacy and clearness to his conception of the a non criteria rationality in order to show the emergence of convection and pattern and thereby the emergence of rules and, therefore, of the rationality based upon criteria which helps to explain part of Hobbes idea that the individual is not born rational but that he transforms into a rational individual. We should remind that we associate the emergence of cooperation in Hobbes with the scientific model of Ising to make analogies for explaining Hobbes reasoning of a cooperative phenomena. In the same way Hume has the cooperative phenomena as his basic problem which involves the interaction among individual. However, Hume appeals to game theory in order to solve the problem of the emergence of cooperation. Hume's empirical individual model is endogenous to his explanation model so that at the same time that he is interacting with each order it is being transformed by this interaction in a process of learning. We explore this model for the emergence of cooperation among interacting individual in a paper, The emergence of Cooperation Among interacting individuals(CHIAPPIN, 1999) that combines Ising model and game theory that helps to shed light into this discussion. Hume says about the interaction among individuals,

“Two men, who pull the oars of a boat, do it by an agreement or convention, tho’ they have never given promises to each other. Nor is the rule concerning the stability of possession the less deriv’d from human conventions, that it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it(HUME, 1896, p. 255)”

Finally, Hume generalizes his natural mechanics of behavioral interaction according the principle of mutual vantages in order to explain all social and political convections when he says,

“In like manner [two men, who pull the oars of a boat] are languages gradually establis’d by human conventions without promise. In like manner do gold and silver become the common measure of exchange,(HUME, 255, 1896)”

Thus, Humes pursue an empiricist, utilitarian and evolutionary approach of constitutional government as part of institutional arrangements of the State of Right and Market, solution to the problem of cooperation by Hobbes. Model is an empirical individual with bounded, non-criterial rationality able to adjust to external conditions. Interaction natural mechanisms produce standardized behavior, conditions of the emergence of cooperation. It replaces and explains the rational individual of Hobbes. Hume takes the contractarian constitutional government as regulative idea of the historical process to be realized as federative republic. Politics, economics, history, are hypothetical

and dynamical sciences of technologies of the institutions by the utilitarian and contractarian, not from the XIX century. Law, not science, but designs and builds institutions.

It is also our thesis in defense of the contractarian and utilitarian research program as the new origin for the politics, law and economics of institution that its proposal of solving the problem of the stability and emergence of the cooperation, by designing and projecting most of the basic institutional structure of the State of Right and of the Market, had the effect of developing a guidelines and a protocol for designing and projecting the construction of the foundational and institutional architecture of the new nation-states, particularly, of the economic and political reunion of Scotland and England to form the United Kingdom, according to “Acts of Union of 1707” as a unitary state under the model of a government in the form of a constitutional monarchy, to create to France, with the French revolution, a new form of unitary state and a government in the form of a republic ruled also by a constitution, and, mainly, the construction of the United States of America with his innovative proposal of a model of federative republic established by constitution that is based upon the consensus of the majority of the people, throughout an emergent democratic form of choosing the governments that represents the people. There is in the construction of the constitution and of the country of the United States of America a convergence of the application of the ideas and principles of both research programs. It is our thesis that all members of both research programs such as Hobbes, Locke, Rousseau, Hume, Montesquieu, Beccaria and Smith, although these last three with less connections, had enormous influence in those who possessed the power of decision and of responsibility of building a new nation-state, mainly, of the American constitution.

The first influence comes from Hobbes that established as the generator principle of the modern State the constitution as a set of laws based upon the consensus of his members. The most influential of all classical contractualism was, however, John Locke, with his defense of the emergent of the State of the Right based upon in the protection of the basic rights such as the right to life, the right to freedom and the right of property which he condensed as right of properties. Another influence by him was his proposal and defense of the separation of the powers in which he attributes to the state three basic and complementary functions or branch, i.e., the executive function which contains the judiciary function and the legislative function. The legislative function is the most important since it is up to it the task of elaborating the laws that attributes and distribute rights and duties to the members

of the State besides the basic, according to him, natural rights.

The importance of Hume, together with Smith, is not less than that of Locke. Hume and Smith are the two most influential thinkers on the participation of Hamilton in the elaboration of the American constitution as well as in his economic policy compromised with the industrialization the United State of America of North in order to transform it in an industrial power against the project of transformation of the United State into an agricultural power pursued by Thomas Jefferson. The union of the Scotland and England forming the United Kingdom by the “Acts of Union of 1707” as unitary state received special attention from Hume and Smith who understood it as one of the reasons for the transformation of the England and Scotland from agricultural countries into an industrial countries throughout the industrial revolution. Smith could have seen in this extended market inspiration to his view that the division of the work is limited by the size of the market(SMITH, 2007, p.10, p. 528) and Hume was finding inspiration to build his model of a perfect commonwealth. Since Hume was Scottish he would prefer a kind of a federative union with England , where both keep certain autonomy instead of an unitary state with the control by the English constitutional monarchy. He expressed this view, yet, in a very complex way, on his reflection on an idea of a perfect commonwealth as a kind of a federative republic bringing back certain aspects of the republic of Cromwell in order to have “the most perfect model of limited monarchy”. He begins his reasoning by saying what one should get a country such as Great Britain or any territory of equal extension and divide it into 100 counties, and each county into 100 parishes. Each of the counties will choose by vote its representative. The representatives will choose 10 counties magistrate and one senator. Thus, he goes on, by combination and division, on mounting the structure of governance and decision of the country to which he says to be important to have a religion and a militia of the state. Later on he will say, indicating a federative form of government, “Every county is a kind of republic within itself, and the representatives may make bye-laws(HUME, 1752, p.520) ”. Every county law could be rejected by the senate or by another county as well as bye-law because as Hume says “the matter must be referred to the whole, which will best determine what agrees with general interest(HUME, 1752, p.525)”. In my free interpretation, I dare seeing here some elements of the constitutional control. About this most perfect model of commonwealth he says, rejecting Rousseau conclusion that democracy or republic is only for small countries, “We shall conclude this subject, with observing the falsehood of the common opinion, that no large

state, such as France or Great Britain, could ever be modelled into a commonwealth, but that such a form of government can only take place in a city or small territory. The contrary seems probable. Though it is more difficult to form a republican in an extensive country than in a city; there is more, when once it is formed, of preserving it steady and uniform, without tumult and faction(HUME, 1752, p. 527)”

Hume's proposal of the idea of a perfect commonwealth seems to share the same intention of the contractalist thinkers of being scientists, architects and engineers of the forms of states and governments. However he sees the difficulties of this task of building up forms of governments and does not reduce them, as perhaps the contractarian would do, to mere artificial mechanical machines when he says, “It is not with forms of government, as with other artificial contrivances; where an old engine may be rejected, if we can discover another more accurate and commodious, or here trials may safely be made, even though the success be doubtful(HUME, 1752, p. 513)”. He explores also the controversy of the meaning of this speculative reflection on new forms of governments advancing a negative argument against, for example, theoretical and mathematical models of new vessels if those vessels with which “Columbus had sailed to AMERICA and Sir FRANCIS DRAKE made the tour of the world without any such discovery(HUME, 1752, p.513)” In these new lines, Hume seems to understand quite well the meaning of the modern science, as Descartes did when said that science made us “master of nature”, as creator of new technologies for interfering in the world or for creating itself new artificial realities such as new forms of states and governments.

Hume clearly seems to refer to new territories that are in search of creation of nation-states, as, for example, America, at that time a English Colony, as he says, in the unfolding of the controversy of this speculative investigation, “As one form of government must be allowed more perfect than another, independent of the manners and humours of particular men; why may we not enquire what is the most perfect of all, though the common botched and inaccurate governments seem to serve the purposes of society, and though it be not so easy to establish a new system of government, as to build a vessel upon a new construction? ...[later on]And who knows, if this controversy were fixed by the universal consent of the wise and learned, but, in some future age, an opportunity might be afforded of reducing the theory to practice, either by a dissolution of some old government, or by the combination of men to form a new one, in some distant part of the world?(HUME, 1752, p.513)”

Thus, Hume is also very much compromised with the proposal of the contractarian program of providing the guidelines and the protocol to design and project the institutional structure of the state and governments in order to construct a nation-state able to provide stability, peace and promote cooperation among interacting individuals. However, his empiricists epistemological thesis establishes this above compromise in a completely different foundation of the origin of the state that is related to a different view of the model of the individual which is taken by him not as an ideal and transcendent rational individual but an psychological and empirical individual.

Hume's conception is compromised with an empirical thesis according to which all knowledge comes from experience and observation. This epistemological thesis is a real constraint to his construction of his economic and political philosophy. The first consequence of this epistemological thesis is his rejection of the analysis of the political conception of those contractarian thinkers as Hobbes and Locke, as not scientific but metaphysical, particularly, their defense of the contract theory and of the consensus theory as the original foundation and the legitimacy of the real governments and states. However, Hume rejects the contractarian conception of the origin of the state and of the government as scientific but not as moral. He transforms, cleverly, the contractualis conception of the origin of the state as based upon in the legitimacy of the consensus into an ideal to be pursued

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