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Libertarianism

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1. A Long Tradition in Defense of Individual ‘Negative’ Liberty

Libertarianism is a political philosophy. Its field of investigation is the examination of the conditions and constraints necessary for the realization of a just social order: ultimately, it is interested in the requirements of legitimacy, and therefore in the limits, in the use of force in relationships between individuals. In essence, libertarianism, like any theory within the perimeter of political philosophy, answers the key question: what human actions can be prohibited (and, correlatively, allowed)?¹ For a theory that is the heir to, and at the same time a development of, classical liberalism, the central political theme, as will be seen in detail throughout this book, is the defense of individual liberty, understood *ex negativo*, as absence of aggression and therefore as integral protection of property rights.

As a sufficiently homogeneous body of principles and prescriptions², libertarian doctrine acquires a full and autonomous identity starting from the mid-twentieth century, mainly in the United States, by authors such as Ayn Rand,³ Murray N. Rothbard,⁴ Roy A. Childs, Jr., Bruno Leoni,⁵ David Friedman, Robert Nozick⁶, Walter Block, Hans-Hermann Hoppe, Randy E. Barnett, Stephan Kinsella.⁷ Roots of this thought can be traced back to various philosophical currents,

¹ Legitimacy in the use of force does not imply acceptance of the State, that is, of a monopolist of force. In any case, for the currents of thought that foresee the existence of the State – most of the political theories – subject of political philosophy is also the question of *who* must rule (one, few, many, and through what procedures?). Regarding the central issue of limits in the use of force, the advocates of the State in turn supported the following models, in increasing order of constraint: minimum State, more than minimum State, welfare State, socialism, totalitarianism.

² According to some scholars, such as, for example, Matt Zwolinski and John Tomasi (*The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, Princeton University Press, Princeton, NJ, 2023), libertarianism is not a single theory but a family of political theories, which possess some common features but also distinct characteristics on important aspects. I, on the other hand, believe, as will become clear in the course of this paper, that the term designates an overall compact set of principles (non-aggression, negative liberty, methodological and political individualism, absoluteness of private property, homesteading, spontaneous order, antistatism) and applications (free market, antiprohibitionism, non-interventionism) and that the alleged variety depends on the undue extension of the label to approaches that cannot be called libertarian in the strict sense.

³ Because of the emotional impact of her novels, especially *Atlas Shrugged* (1957), the Russian writer was the most influential personality in converting generations of Americans to libertarian ideas (although she did not call herself a “libertarian” but a “radical for capitalism;” and she never participated in the political life of the libertarian movement, reserving sometimes even contemptuous words to it: see A. Rand, *Brief Summary*, in *The Objectivist*, vol. 10, no. 9, September 1971). The “heroic” stamp of some of her characters, her sometimes visionary tones and strong charisma, as well as her haughty moral and intellectual intransigence, helped to generate attitudes toward her person that were close to a real cult.

⁴ For the breadth and incisiveness of his political thought, the American Rothbard is the greatest theorist of libertarianism, of which he proposed a *jusnaturalist* version, centered on subjective property rights, with an anarcho-capitalist outcome. In the field of economics, he made important contributions as an exponent of the Austrian School. Theoretical interests never remained divorced from a passionate political activism, predominantly within the American libertarian movement; a passion attested by a prolific production of articles on current political affairs.

⁵ In his most important work, *Freedom and the Law*, he distinguishes between legislation and law, the former being the expression of centralized, arbitrary, contingent, and pervasive command, and the latter, best interpreted by *common law* and Roman law, the legal outcome of decentralized relations between individuals, thanks to the “discovery” made by judges through dispute resolution. Legislation is the effect of interventionist and statist logic, while jurisprudential law corresponds to the manifestation of free market information and is inherent in a system centered on “negative” liberty. B. Leoni, *Freedom and the Law*, Van Nostrand, Princeton, NJ, 1961.

⁶ His theoretical proposal to legitimize a minimal State, contained in the seminal *Anarchy, State and Utopia* (1974), is outlined in section 10.1.

⁷ Other notable exponents have been or are Ralph Raico, Morris e Linda Tannehill, John Hospers, Tibor Machan, Jan Narveson, Douglas Den Uyl, Douglas Rasmussen, Richard Epstein, Wendy McElroy, David Boaz, Llewellyn H. Rockwell Jr., Thomas Di Lorenzo, Justin Raimondo, David Bergland, Bruce Benson, Gary North, Jesus Huerta de Soto. The *Appendix* and the bibliography at the end of the text offer an even more exhaustive list.

political strands and research traditions, even dating back in time:⁸ the Scholastics who had proposed subjectivist theories of value; the classical liberalism of the English Levellers,⁹ John Locke,¹⁰ the *Cato's Letters* of John Trenchard and Thomas Gordon,¹¹ the rights-based iusnaturalists, and Benjamin Constant;¹² the *laissez-faire* of Adam Smith¹³, the French economists of the eighteenth¹⁴ and nineteenth¹⁵ centuries, the Manchester school¹⁶ and Herbert Spencer;¹⁷ the American individualist anarchism of Josiah Warren, Lysander Spooner, Henry D. Thoreau, Benjamin Tucker¹⁸ and Jay Nock;¹⁹ the Austrian School of Economics of Carl Menger, Friedrich von Wieser, Eugen von Bohm-Bawerk, Ludwig von Mises and Friedrich A. von Hayek;²⁰ the methodological individualism of the English and Scottish Enlightenment and again of the Austrian School; the American Old Right by Henry L. Mencken,²¹ Rose Wilder Lane,²² Isabel Paterson,²³ Frank Chodorov,²⁴ Garet Garrett²⁵ and Leonard Read.²⁶

⁸ Going back to antiquity, traces of a protoliberalism inspiration are found in the first book of Samuel, in the Chinese philosopher of the sixth century B.C. Lao-Tzu, the forerunner of spontaneous order theory, in Sophocles' *Antigone*, in the Stoics. In *Tao Te Ching (The Book of the Way and Nature)*, Lao-Tzu examines the relationship between the individual, State, and nature. At the center of his thought is the concept of non-action, or non-intervention: the greater the restrictions and limitations, the poorer the man, the less the intervention of the States and the greater the harmony. Levies, not nature, are the main cause of peoples' poverty.

⁹ It is a political movement active during the early English Revolution; leading exponents were John Lilburne, Richard Overton, William Walwyn, and Jonh Wildman.

¹⁰ J. Locke, *Second Treatise of Government* (1690), Project Gutenberg Ebook, 2010 (text recovered from Hackett, Indianapolis, IN, 1980 edition).

¹¹ J. Trenchard, T. Gordon, *Cato's Letters* (1720–1723), Liberty Fund, Indianapolis, IN, 1995, edited and annotated by Ronald Hamowy.

¹² B. Constant, *Principles of Politics Applicable to all Governments* (1806), Liberty Fund, Indianapolis, IN, 2003; *The Liberty of Ancients Compared with that of Moderns* (1819), in *Political Writings*, Cambridge University Press, Cambridge, 1988. "With Constant [...] we see the beginnings of classical liberalism's 'state-hatred'." R. Raico, *Benjamin Constant*, in "New Individualist Review", vol. 3, no. 2, p. 47.

¹³ Although traditionally considered a champion of *laissez-faire*, Adam Smith is not regarded as such by libertarians like Rothbard: cf. M.N. Rothbard, *An Austrian Perspective on the History of Economic Thought: Economic Thought Before Adam Smith*, vol. I, Edward Elgar Publishing, Brookfield, 1995 (posthumously published), Chapter 16, *The celebrated Adam Smith*.

¹⁴ Richard Cantillon, Robert-Jacques Turgot and the Physiocrats.

¹⁵ Jean-Baptiste Say, Michel Chevalier, Paul Leroy-Beaulieu, Charles Dunoyer, Charles Comte, Destutt de Tracy, Frédéric Bastiat, Gustave de Molinari. According to Zwolinski and Tomasi, the last two, together with Spencer, represent the authors who first elaborated a systematized libertarian thought, distinct from the more nuanced and pragmatic principles of classical liberalism. The reasons why this happened precisely in the mid-nineteenth century and in Britain and France are twofold: the industrial revolution in its most advanced stage and the rise of socialism as a political and intellectual force: one part of liberalism responded to the challenge by supporting interventionism and the redistribution of wealth, another part instead "not by softening [its] position but by hardening it" and that is the libertarian one. M. Zwolinski, J. Tomasi, *The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, cit., p. 36.

¹⁶ Led by Richard Cobden and John Bright.

¹⁷ H. Spencer, *Social Statics*, Chapman, London, 1851; *The Man versus the State*, Williams and Norgate, Londra, 1884.

¹⁸ The journal *Liberty*, which he founded in 1881, was for nearly three decades the main space of intellectual elaboration of the American (proto)libertarian movement.

¹⁹ A.J. Nock, *Myth of a Guilty Nation*, B. H. Huebsch, New York, 1922; *Our Enemy, the State*, William Morrow & Company, New York, 1935. In this work, Nock applies Franz Oppenheimer's sociological analysis to the growth of the American State. He opposes democracy in that the ideology behind it is inevitably egalitarian and leveling downward. From 1920 to 1924 he collaborated with the weekly *Freeman* (not to be confused with *The Freeman*, a magazine founded in 1950 by John Chamberlain, Henry Hazlitt, and Suzanne La Follette, and later acquired by the Foundation for Economic Education).

²⁰ In the economic field, the Chicago School was also a source of inspiration; and, in its interactions with political science, also the Public Choice of James Buchanan and Gordon Tullock.

²¹ H.L. Mencken, *Notes on Democracy*, Jonathan Cape, London, 1926. His views on current cultural, political and economic issues are contained in the monthly magazine *American Mercury*, which he founded in 1924.

As for the origins of the term “libertarian” in history, according to some sources it appeared for the first time in the seventeenth century during religious debates, indicating the supporters of free will against theories of predestination and determinism.²⁷ Towards the end of the nineteenth century the word began to be used by small socialist and anarcho-collectivist groups, which intended to give the doctrine a generically anti-authoritarian undertone.²⁸ In the first part of the twentieth century

²² R.W. Lane, *The Discovery of Freedom: Man's Struggle Against Authority*, John Day, New York, 1943; republished by Laissez Faire Books, New York, 1984. A journalist, writer and passionate traveler, she historically examines the evolution of freedom from Europe to the United States in her political work. Life is *energy*, and human beings use this energy to operate on nature in order to improve their condition. For much of human history people have lived in a miserable condition. The anthropomorphization of the natural world has induced from the earliest times a belief in an external authority controlling human life (gods, natural forces). There have been attempts to enhance the individual: the norms and customs of the ancient Israelites, Saracen (Islamic) civilization with Muhammad, *common law* in England. However, success is only fully manifested in America. The explosion of innovation in the West, but especially in America, stems from the fact that this superstition that men are subject to, and controlled by, some Authority is broken; it is no accident that it is in America that technological progress and wealth spread most widely. Lane explores the meaning of democracy, constitutionalism and republicanism, emphasizing property rights, which are essential to the exercise of individual natural rights. By maintaining the defense of property rights as an important element of the revolution, the American colonists identified the cornerstone that would make the U.S. system successful. In the twenty-five years following the book's publication she continued to delve into political and economic thought through long correspondences with L. von Mises, R. LeFevre, H. Sennholz and F. Meyer, and to cultivate current political affairs as a correspondent from Vietnam and polemicizing against the institution of Social Security. By the author see also *Give Me Liberty* (Longmans, Green & Co., New York, 1936).

²³ I. Paterson, *The God of the Machine*, G.P. Putnam's Sons, New York, 1943. The author proposes an original theory of history, focusing on human energy. Using the metaphor of society as a machine, the mind of the individual is equated to a “dynamo,” and commerce is the network of circuits for the transmission of energy across time and space. Tracing history from ancient Carthage to contemporary America, the philosophical principles and policy instruments that enabled the “long circuit” of energy to be created and maintained are analyzed. *Laissez-faire* capitalism – security of private property, full personal liberty, territorial decentralization, gold standard – has generated the largest energy circuit in history. Governments in prevalence have “short-circuited” innovation and dynamic wealth creation; those that historically have not or have done so less, England and especially the United States, not surprisingly have had supremacy over others. In the book's most famous chapter, “The Humanitarian with the Guillotine,” Paterson states that in the world most disasters are caused by ‘good’ people, who in order to achieve their “high ideals” violate the rights of individuals and reason.

²⁴ F. Chodorov, *Fugitive Essays*, Liberty Fund, Indianapolis, IN, 1980; it is a collection of articles and essays written between 1940 and 1959 and appearing mainly in the journals *Analysis* and *Freeman*, but also in *Human Events*, *National Review* and *Plain Talk*, or excerpts from the works *The Rise and Fall of Society* (1959) and *Out of Step* (1962).

²⁵ A journalist and writer, his political and economic views are mainly contained in articles written from 1922 to 1942 for the *Saturday Evening Post*. See also *The People's Pottage* (Caxton Printers, Caldwell, ID, 1953) and *The American Story* (Regnery, Chicago, IL, 1955).

²⁶ The Old Right is an aggregation of individual personalities – parliamentarians, politicians, journalists, writers, intellectuals – heterogeneous in cultural background and political orientation, who around the mid-1930s give birth to a political coalition whose cohesive elements are basically two: hostility to the New Deal and, later, opposition to the country's entry into World War II (and more generally to an interventionist foreign policy and a universalist and messianic vocation of America). In the 1940s it loses influence. In the following decade, the libertarian component of the Old Right tried to keep a liberal-radical perspective open through essays offered in journals such as *Analysis*, *The Freeman*, and *Faith and Freedom* (maintained by the Christian Protestant and libertarian organization “Mobilization for Spiritual Ideals”), the circulation of newspapers such as Raymond C. Hoiles' *Santa Ana Register* and the establishment of organizations such as the Foundation for Economic Education, created by Read in 1946, the Volker Fund run by Harold W. Luhnow and Loren Miller, Robert LeFevre's “Freedom School,” inaugurated in 1956, and the Institute for Humane Studies, founded by Floyd Arthur Harper in 1961. Crucial to the survival of a more distinctly classical liberal perspective is the conference activity of the Mont Pelerin Society, inaugurated in 1947; the association was initiated by Hayek and initially gathered thirty-nine personalities, including Milton Friedman, Frank Knight, George Stigler, Aaron Director, Mises, Read, Karl Popper, Ludwig Erhard, and Wilhelm Ropke.

²⁷ Even the *Oxford English Dictionary* initially assigns the term to the subject of free will but postpones its first use until 1789, when historian and politician William Belsham in *Essays, Philosophical, Historical, and Literary* writes: “What is the difference between the Libertarian [...] and the Necessarian?”

²⁸ French anarcho-communist Joseph Déjacque, in a letter sent to Proudhon in 1857, calls himself *libertaire*. And *Le Libertaire* is the name of the newsletter he published from 1858 to 1861.

two parallel uses developed. On the one hand, socialist groups continue to use the term, but with much less rigor or attention to meaning, identifying it mainly with a generic anti-authoritarianism. On another side, and this is what interests us here, classical liberals, especially from the Anglo-American world, resort to it. As the denomination of the doctrine in question, it was first used in 1946 by Leonard Read, who defined himself *libertarian* and popularized the term as shorthand to refer to “the free market, private property, limited government philosophy and the moral and ethical tenets which underlie these institutions.”²⁹ Those who appealed radically and consistently to classical liberalism, in fact, had to abandon the English term *liberal* in the early decades of the twentieth century, because it had been appropriated by advocates of state interventionism (such as, for example, proponents of the New Deal in the United States and the welfare State in the United Kingdom), egalitarianism and civil rights, with their publicist, “positive” and collectivist overtones.³⁰ However, as will be seen below, although initially there is an overlap between classical liberalism and libertarianism, later libertarians also choose this denomination to mark some differences from classical liberals.³¹

In the theoretical context under examination, the term generally identifies – and it is also the writer’s choice – both *anarcho-capitalists*³² and *minarchists*. The examination of the two currents is developed in Chapter 10. Here it is sufficient to say that the former, considering also the monopoly of force and taxation as aggression, advocate the entrustment to the market (through competing private agencies) also of the services – justice, police and defense – that characterize the State, with its consequent extinction. Whereas minarchists,³³ according to the etymon, are instead in favor of a minimal State, limited to the control of the three aforementioned sectors (although with differences regarding the mode of financing, voluntary or through taxation).

The distinction between minarchist libertarians and classical liberals is not clear and unambiguous. According to some interpretations, libertarianism is the most genuine heir of classical liberalism *à la* Locke and therefore the two labels are interchangeable. For a *liberal* like Sam Freeman, on the contrary, the difference lies in the vision of political power represented by the minimal State: for classical liberals it is a public power impartially exercised and whose benefit belongs to *all* citizens (Locke), while for libertarians it is the same of any other private good, the use of which depends on people’s willingness and ability to pay, as would be evidenced in Nozick (people buy the services and non-clients of the dominant agency that has become the minimal State are not protected from any aggression suffered by other non-clients).³⁴ According to other

²⁹ L. Read, *Talking to Myself*, Foundation for Economic Education, Irvington-on-Hudson, NY, 1970, pp. 120–1. The following year, in a letter to entrepreneur Jasper Crane, Rose Lane uses the phrase “libertarian movement” to identify herself; according to Brian Doherty, “the first example I’ve found of the phrase in its modern sense.” B. Doherty, *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement*, PublicAffairs, New York, 2007, p. 132.

³⁰ On the difference between libertarians’ liberty rights and civil rights, see *infra*, Chapter 6. On a theoretical level, the greatest exponent of (modern) liberal thought was John Rawls and the reference work is *A Theory of Justice* (Harvard University Press, Cambridge, MA, 1971). Other important thinkers belonging to this strand are Ronald Dworkin, Thomas Scanlon and Thomas Nagel.

³¹ On the party–political level, an organizational structuring of the movement of ideas occurs in the late 1960s and early 1970s: the American Libertarian Party was born in 1971. An account of the political events of the American libertarian movement is contained in section 12.2.

³² Or *anarcho-libertarians* or *austro-libertarians*.

³³ The term was coined by Samuel Konkin in 1971.

³⁴ R. Nozick, *Anarchy, State, and Utopia*, Basic Books, New York, 1974.

interpretations,³⁵ the main difference is to be found in the absoluteness of the notion of liberty: for classical liberals, liberty is a strong *presumption* but, when it is pragmatically ascertainable to achieve public good, allows for exceptions; whereas for libertarians it is a moral absolute.

To distinguish between the two approaches two criteria are followed here (which in most cases operate in conjunction): the State dimension and the attitude toward democracy. Libertarians (minarchists) are the supporters of a minimal State limited to the functions of justice, police protection, defense, and contract enforcement; and who do not celebrate the democratic system because of the threats to freedom posed by the extension of collective decision-making and the omnipotence of majorities.³⁶ Instead, authors who advocate a little-more-than-minimal, or *small*, State (in addition to the services inherent in the force also production and management of additional public goods,³⁷ correction of negative externalities, mild redistributive interventions, promotion of competition through antitrust rules) and who show less distrust (rarely enthusiasm) in the possibilities of coexistence between democracy and liberty³⁸ are ascribed to liberalism;³⁹ such as, for example, the ordoliberalists, Hayek, Milton Friedman, Ronald Coase, and James Buchanan.⁴⁰

³⁵ M. Zwolinski, J. Tomasi, *The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, cit.

³⁶ Thus, authors who assigned the label (classical) “liberal” to themselves, such as Mises (who, however, polemicized with the more interventionist liberals gathered in the Mont Pelerin Society; see *infra*), or whose prevailing output is made in a period prior to the coining and diffusion of the term “libertarian,” such as some exponents of the American Old Right or Henry Hazlitt, are also included in the roster. The latter made the greatest contribution to introducing the ideas of the Austrian School to the English-speaking layman. His *Economics in One Lesson* (Harper & Row, New York, 1946) is a classic.

³⁷ Here the expression is understood in the strictest way, that is, according to Paul Samuelson’s definition, meaning goods marked by two characteristics: non-excludability and non-rivalry in consumption. According to the prevailing theory, these characteristics would give rise to the “free rider” problem, and thus the need to provide, or subsidize, such goods through taxation. Anarcho-capitalist libertarians, but not only them, dispute the existence of the *indivisibility* implied by the above two characteristics and believe that the free rider problem is overstated; consequently, they argue that even for these goods (law and order, defense, public lighting, fire service) it is possible to realize an optimal quantity on the basis of the laws of supply and demand.

³⁸ Lew Rockwell Jr. argues that one difference between classical liberalism and libertarianism lies in the former’s close intertwining with republican theory, according to which a government made up of the people rather than the elites was possible. This utopian belief led liberalism to overvalue the State, regarding it as a necessary institution and not subjecting it, unlike libertarians, to sufficiently radical criticism. K. Johnson and L. Rockwell, *Do You Consider Yourself a Libertarian?*, in LewRockwell.com, <https://www.lewrockwell.com/2007/05/lew-rockwell/do-you-consider-yourself-a-libertarian>, May 25, 2007.

³⁹ Or *neoliberalism*, as the German economist Alexander Rüstow defined it, to distinguish it from the more radical of nineteenth-century *laissez-faire*, in the *Colloque Walter Lippmann*, the meeting of European liberal thinkers held in Paris in 1938, which represents the first organizational embryo of the future Mont Pelerin Society. It also includes *ordoliberalism*, elaborated in Germany in the 1930s by economists such as the aforementioned Rüstow, Leonhard Miksch, Wilhelm Röpke, Walter Eucken, and jurists such as Franz Böhm and Hans Grossmann-Dörth. and inspirer of the “social market economy”. Compared to *laissez-faire*, the hallmark of this classical twentieth-century liberalism is State intervention to create and maintain functional markets. Which therefore remain the mechanisms that produce the most welfare and freedom; however, an active role is not disdained to conform real markets to an ideal model characterized by openness and competition, operating against the formation of monopolies and cartels (more broadly, to dissolve any position of economic power) and to guarantee a minimum level of social protection. This line of thought has also supported international institutions such as GATT and the International Monetary Fund, which are not viewed favorably by libertarians. Since the latter part of the twentieth century, however, there has been varied, often vague and imprecise, use of the term, designating with it either a hypothetical unregulated market (which historically never existed) or the revival of a particular version of eighteenth- and nineteenth-century liberalism (*laissez-faire*, F. Bastiat, mere free-trade or the *homo oeconomicus* paradigm).

⁴⁰ According to the distinction between *strict libertarianism* and *libertarianism in a broad sense* proposed by Zwolinski and Tomasi, therefore, my classificatory and semantic choice decisively coincides with the former and rejects the latter, which encompasses under that label positions and authors that I have instead placed in the sphere of classical liberalism or neoliberalism. In very rare cases I have respected the self-identification proposed by the authors, as is the case, for

The methodological approaches to the theory are different, as can also be seen in the *Appendix* to this essay. However, the dominant formulation is the deontological, or ‘rights-based’, one, to which more space will be given here. On the basis of this approach, actions possess intrinsic qualities that make them the subject of rights – life, liberty and property⁴¹ – which are therefore the starting point of the theoretical-political elaboration (typically *monistic*⁴² and characterized by a high degree of systematicity). Rights are the translation of an ethical instance into a legal constraint. According to some formulations, the rights of deontological derivation are “asserted *a priori*”: this concise description can be accepted as long as it is not confused with the idea of rights *set* without any justification. Within libertarianism (but not only) they are based on different doctrines or methodological lines, such as natural law, objectivism, the *a priori* of logic, kantism or intuitionism.⁴³

In terms of epistemological status, most of these, and particularly *Austrolibertarianism*, support an ontology inspired by a strong foundationalism, that opposes relativistic or anticognitivist or postmodern approaches: *reality* exists, there is only one true description of it, and it is possible to formulate it through language (metaphysical realism); as well as the *truth*, or rather the truths of each disciplinary area, including the existence of principles of justice that are valid regardless of subjective beliefs. Against the provisional and reversible historical-linguistic knowledge, the plausibility of the definitive acquisitions is asserted.

A foundation of ethics profoundly different from deontology is represented by teleological approaches, such as consequentialist ones, which judge actions in relation to their ability to achieve certain goals or to maximize a certain state of affairs. To them, particularly utilitarian libertarianism, Chapter 9 is devoted.⁴⁴

example, with Richard Epstein, who calls his elaboration “libertarian”, although strictly speaking it should be placed within classical liberalism.

⁴¹ With corresponding duties of not aggressing the same rights of others.

⁴² As will be seen below, for this strand of doctrine the single starting principle of justification, from which all political implications are logically derived, is self-ownership (not, as is mistakenly repeated, the principle of non-aggression; see *infra*, Chapter 4, note 108). Monism also characterizes utilitarian libertarianism, since for it the single criterion of justification, from which political arrangements are made to descend, is utility.

⁴³ These settings will be mentioned in the paragraph on self-ownership (see *infra*, Chapter 2).

⁴⁴ Other approaches have not been given particular space. Two are noted here: the contractualism of Jan Narveson and the critical rationalism of Jan C. Lester. The former declines in an anarcho-libertarian key the theoretical construction of philosopher David Gauthier’s *Morals by Agreement* (in which morality is a matter of agreement). Through the instrumentation of game theory Narveson seeks to demonstrate how the rational self-interest of individuals leads to cooperative outcomes, that is, contractual agreements that are confined to a libertarian framework. J. Narveson, *The Libertarian Idea*, Temple University Press, Philadelphia, PA, 1988; *Contractarian Starting Points*, in P. Vallentyne (ed.), *Contractarianism and Rational Choice: Essays on Gauthier*, Stanford University Press, Stanford, CA, 1989; *Contracting for Liberty*, in T. Machan, D.B. Rasmussen (eds.), *Liberty for the Twenty-First Century: Contemporary Libertarian Thought*, Rowman & Littlefield, Lanham, MD, 1995. As for Lester’s epistemology, he applies Karl Popper’s critical rationalism, with its radical fallibilism, to libertarianism. Libertarianism, like any other theory, cannot be founded objectively and definitively. It is only a conjecture: that it is the solution that guarantees the best social system. Such conjecture exposes itself to criticism; what can be done is only to try to respond to the best criticisms. The type of liberty proposed (again as conjecture) by Lester is interpersonal liberty understood as the absence of aggression (invasion, interference), which the author prefers to call the absence of “proactively imposed costs” on others. J.C. Lester, *Explaining Libertarianism: Some Philosophical Arguments*, The University of Buckingham Press, Buckingham, 2014.

2. Self-ownership

The first concept to be examined is that of *self-ownership*.⁴⁵ Self-ownership means that each individual is the absolute owner of himself, that is, of his own body.⁴⁶ Individuals are sovereign of themselves.⁴⁷ This implies that everyone must be able to decide freely, without external interference, what to do with himself and his life; must be able to control one's body without coercive intrusions. People's lives and bodies cannot be used by others, including the government, for their own purposes.⁴⁸ As we will see later, a person can lose rights on his body only for having committed an aggression.

The principle of self-ownership traces an imaginary line around each individual, creating a space within which he has full freedom of action and inviolability.⁴⁹

Returning to the normative aspects, it is necessary to assign property titles on people's bodies because these are "scarce" resources, in the sense given to the term by economic science, i.e., limited, not infinite. Each individual has only one body, and must perform different actions in sequence over time; which is itself a scarce resource. Carrying out an action necessarily means giving up a series of alternative courses of action, as they are judged to be of lesser use to the agent.

⁴⁵ The phrase is first used by Auberon Herbert: "We hold that the one and only one true basis of society is the frank recognition of these rights of self-ownership; that is to say, of the rights of control and direction by the individual, as he himself chooses, over his own mind, his own body." A. Herbert, *The Principles of Voluntarism and Free Life*, Free Press Association, Burlington, VT, 1897, p. 5.

⁴⁶ The concept of self-ownership, although embryonic, is already manifested in some thinkers of the ancient and medieval world. Pericles identified the freedom of Athens in the ability of its citizens to highlight an essential characteristic: being "the legitimate masters and owners of their own person" (Thucydides, *History of the Peloponnesian War*). Marsilius of Padua called *dominium (sui)* the control of oneself, characterized by "human will or freedom in itself, with its connected power to act without hindrance" (*The Defender of Peace*, 1324). Francisco de Vitoria, exponent of the School of Salamanca, affirmed that "every man is a person and is the master of his body and possessions" (*Relectio de Indis [The Question of the Indios]*, 1539; and later draws the important conclusion that American Indians, as self-owners, have the right to own the land on which they live and labor, and Spanish colonists cannot take it away from them). The theme of personal property was central to the thought of the "Levellers", in particular of W. Walwyn and R. Overton. In the *Second Treatise of Government* John Locke explicitly stated it: "Every man has a property in his own person; this is something that nobody else has any right to." Subsequently, speaking of the creation of political society, he affirms that it takes place "for the mutual preservation of their lives, liberties and estates, which I call by the general name 'property'." D. Den Uyl and D. Rasmussen add three constitutive properties which, in addition to the body, are specifically possessed: faculties, talents, and energies. D. Den Uyl, D. Rasmussen, *Self-ownership*, in "Good Society", vol. 12, no. 3, 2003, pp. 50–7. R. Epstein, S. Kinsella and T.G. Palmer are of opposite opinion (see *infra*, Chapter 3).

⁴⁷ It was Josiah Warren in the mid-nineteenth century who first used the expression "sovereignty of the individual," influencing thinkers such as B. Tucker and John Stuart Mill: "Society must be so converted as to preserve the SOVEREIGNTY OF EVERY INDIVIDUAL inviolate. That it must avoid all [...] arrangements which will not leave every individual at all times at liberty to dispose of his person." J. Warren, *Practical Details in Equitable Commerce*, Fowlers and Wells, New York, 1852, p. 13 (capitals in the text).

⁴⁸ The most sensational example of violation of the right to self-ownership was slavery. There are also modern manifestations of it, in which the difference with ancient slavery is a matter of degree, not of nature. For example, today are the ban on the sale of one's organs, compulsory conscription, jury duty or the obligation to give evidence as witness, the ban on seceding individually, the ban on hiring or renting on the basis of racial or religious preferences (which basically translates into the obligation to associate with certain people against one's will), the taxation (if seen as a share of forced labor transferred to the State).

⁴⁹ *E contrario*, whoever is hostile to self-ownership, or complete self-ownership, disputes precisely the results of the person's absolute untouchability: a left-liberal like David Sobel believes that self-ownership is untenable because it also prevents trivial incursions, paralyzing humanity. For example, people would not be able to drive a car for fear of having even a speckle of dust land on someone's person. D. Sobel, *Backing Away from Self-Ownership*, in "Ethics", vol. 123, no. 1, 2012, pp. 32–60. Provided that, in relation to nuisances, self-ownership protects only from harmful ones (see *infra*, Chapter 4), in any case he does not specify to what extent the weakening of self-ownership should go, and so the door is open to the weakening of other rights that derive from self-ownership.

Due to the mere fact that more than one person exists in a given physical space, and that people's actions lead their bodies to compete for the given space, conflicts are inevitable also regarding the use of bodies.⁵⁰ It is therefore necessary to establish rules on property also in relation to the bodies of individuals: in particular, it is necessary to identify a rule that establishes *who* decides what that body should do.⁵¹ For libertarians, the right (but also more efficient) rule is that each person decides for his own body in an absolute way. And since whoever disposes of something at will is automatically its true owner (see *infra*, Chapter 3), the rule is self-ownership.

In libertarianism therefore, unlike almost all competing political doctrines, the term “ownership” in relation to bodies is not used in a metaphorical or figurative sense, but in a normative one: it denotes the same kind of relationship that exists between people and things, provides for the same set of rights.⁵²

The justification of self-ownership has been based on different methodological approaches and arguments.

According to the iusnaturalistic approach (A. Rand,⁵³ M.N. Rothbard,⁵⁴ R. Childs Jr.), human nature is such that each individual aims at conservation and prosperity; to this end it is absolutely necessary that human beings are free to think, learn about themselves and the world, select values,

⁵⁰ “I might, for instance, want to use my body to enjoy drinking a cup of tea, while someone else might want to start a love affair with it, thus preventing me from having my tea and also reducing the time left to pursue my own goals by means of this body.” H.-H. Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics*, Kluwer Academic Publishers, Boston, MA, 1989, p. 11.

⁵¹ Hoppe points out that even in a hypothetical Garden of Eden, that is, of total absence of scarcity, in which each individual could dispose of any good with a snap of the fingers, each person's body and its standing room would continue to be scarce resources: each person has only one body, if he makes a choice he cannot simultaneously make another and, at any given instant of time, can occupy only one place. Even in the earthly paradise, therefore, two people could not occupy the same space without coming to a physical conflict. And therefore a rule should continue to exist, and it is the one that establishes that everyone can move and stay in any physical space he wishes, provided only that no one else is already occupying that same space (whereas outside the Garden of Eden the rule is “provided no one else *has already occupied* or used the same places and goods before him”). Even in such an unrealistic condition, therefore, the concept of property would evolve, but it would not disappear.

⁵² Except, as will be seen shortly (note 61), for libertarians who do not admit the possibility of voluntary slavery, thus eliminating one action, alienability (of oneself), from the roster of those that are instead possible with “things” subject to ownership. As mentioned, the other theories in each case are much more restrictive, often denying, along with the concept of self-ownership, the lawfulness of many actions that result from it: destroying one's body totally (suicide) or partially (self-mutilation), selling parts of it, modifying it, using it for the provision of certain services (surrogate motherhood, prostitution).

⁵³ Ayn Rand is included in this group because Objectivism, the metaphysical and ethical theory she elaborated, is a naturalistic conception of man, of Aristotelian origin, which has several points in common with the natural law system: there is a stable essence and intrinsic to the nature of things and also of man, which is knowable through reason; once man is presupposed as an existing, rational and end-in-itself entity, the ethical and political-juridical truths inherent to him will consequently be derived, with the consequent attribution of inalienable rights characterized only ‘negatively’: life, liberty and property. For the purpose of human flourishing Rand sets three cardinal values of (Objectivist) ethics: Reason, Purpose and Self-Esteem; to which correspond three virtues functional to their pursuit: Rationality, Productiveness and Pride; from Rationality then other virtues are inferred: Independence, Integrity, Honesty, Justice. Cf. A. Rand, *The Virtue of Selfishness*, New American Library, New York, 1964. Detractors have claimed that the passages in Rand's argumentative sequence are overly prescriptive, apodictic and arbitrary or even “empty tautologies” (N.P. Barry) and that Rand's baroque theoretical construction cannot even rise to the dignity of philosophy (A. Koppelman). Cf. N.P. Barry, *On Classical Liberalism and Libertarianism*, Macmillan, Londra, 1986, Chapter 7; A. Koppelman, *Burning Down the House: How Libertarian Philosophy Was Corrupted by Delusion and Greed*, St. Martin's Press, New York, 2022.

⁵⁴ It was Rand who introduced Rothbard to the natural rights and natural law philosophical tradition.

choose ends and means.⁵⁵ Paralyzing this process through compulsion goes against what is necessary for man's nature, his life and well-being. The right to belong to himself gives everyone the right to carry out these vital activities without being hindered by others. "The individual man, in introspecting the fact of his own consciousness, [...] discovers the natural fact of his mind's command over his body and its actions: that is, of his natural *ownership* over his self. Crusoe, then, owns his body; his mind is free to adopt whatever ends it wishes, and to exercise his reason in order to discover what ends he should choose, and to learn the recipes for employing the means at hand to attain them."⁵⁶

Self-ownership is also demonstrated *ex negativo*, by illustrating through *reductio ad absurdum* the logical and/or operational implausibility of the alternatives, i.e., the meaninglessness of the consequences resulting from its denial (Rothbard).⁵⁷ If a man has *no* title to full and complete ownership over himself, according to logic there are only two possibilities: 1) universal and equal ownership of others (communism), or 2) partial ownership of a group by another.

In the first case, no individual has the right to one hundred percent of the property of his person. The same part of A's body should be attributed to B, C etc., and the same thing should apply to each other. This condition leads to a "performative contradiction", that is, to the practical impossibility of realizing a functioning social order. In fact, it is physically impossible for everyone to exercise continuous control over all the others, thus asserting their equal share of partial ownership over every other man. Even if we want to overcome this objection, the hypothesis of splitting the ownership of the body still prevents everyone from taking any action unless they have obtained prior approval from all the other members of society; what would determine the paralysis of individual and social life.

⁵⁵ In the natural law libertarianism of Aristotelian and Thomistic bent, the autonomy guaranteed by self-ownership is functional above all to a virtuous life, since development of moral character requires the capacity for *moral choice*, and, thus, the free exercise of one's capacities.

⁵⁶ M.N. Rothbard, *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, NJ, 1982, p. 31. Rothbard replies to the traditional objection to the iusnaturalistic approach, that is the violation of Hume's law (a *value* cannot be derived from a *fact*), arguing Leo Strauss's argument that the fact-value contrast is an artificial construction. Certain value judgments are nothing more than the description of facts, they coincide with the facts. The proposed example is the term "rude" to define the behavior of a person who pushes another in a queue: the definition of "rude" for that behavior is a description of an objective, non-subjective fact, and at the same time a value judgment. A similar position is supported by H. Putnam: to challenge the absolute fact/value dichotomy and to support what defines the *intertwining* of facts and values, he proposes the term "cruel", which has both normative and descriptive uses; an example of the latter is the proposition of a historian: "the cruelties of the regime provoked a rebellion". Furthermore, the values are not the exclusive result of arbitrariness; one can objectively argue in their favor. H. Putnam, *The Collapse of the Fact/Value Dichotomy and Other Essays*, Harvard University Press, Cambridge, MA, 2002. On the other hand, the classic pragmatists – Peirce, James, Dewey and Mead – pointed out that even science, considered by supporters of Hume's law "objective" and not evaluative, occurs to normative judgments: for example, the concepts of "consistency", "plausibility", "reasonableness", "simplicity", "predictive success" are. They are epistemic values, but always values, an "ought" applied to the methods of reasoning. Edward Feser contested the philosophical foundation of Rothbard's syllogism, attributing to it a logical leap, in that from the need to learn, choose, etc. does not inevitably follow a right to self-ownership. For example, you may need some rights to carry out those activities, but not necessarily self-ownership. Furthermore, the fact that something is needed does not create a right to have it. E. Feser, *Rothbard as a Philosopher*, in Right Reason Blog, https://web.archive.org/web/20071014120247/rightreason.ektopos.com/archives/2006/04/rothbard_as_a_p.html, April 25, 2006. A detailed response to Feser's criticisms is contained in G. Casey, *Feser on Rothbard as a Philosopher*, in "Libertarian Papers", vol. 1, art. no. 34, 2009, <http://libertarianpapers.org/wp-content/uploads/article/2009/lp-1-34.pdf>. In particular, in Casey's interpretation, self-ownership for Rothbard is an axiom (or a first principle), therefore it does not derive from the observation that human beings must be free to learn, choose, etc. A proposition posed as axiomatic cannot be imputed as a logical fallacy. The *a priori* assertion of Rothbard's self-ownership may be criticized, but that's not what Feser does.

⁵⁷ This is a second argument used by Rothbard, independent of the first.

In the second case, a person or group of people is entitled to own not only themselves, but also the rest of society. This means that the latter is made up of lower beings than the former. But such an assumption violates the universalistic criterion of formal equality among all human beings, the premise that individuals have an identical *moral* value.

From the examination of these two alternatives, we can deduce *a contrario* that the principle of integral property of oneself is the most convincing from an ethical point of view and more practicable on a social level, as it follows the natural tendency of the individual to direct himself towards the satisfaction of one's preferences.⁵⁸

Another argument aimed at legitimizing self-ownership is a physicalist one. Each person has an intimate and indissoluble connection with that "scarce" resource that is his own body: he has direct control of it since he always controls his own will. Kinsella believes that physical individuality, i.e., control over the movements of one's body, implies the impossibility of its non-ownership. For a previously "homesteaded" physical object (see *infra*, Chapter 3), it is possible to renounce ownership of it, abandoning it. With your body this is not possible, because its property is rooted in the inevitable direct control over it by the actor.⁵⁹ Rothbard's position, according to which every individual always controls his own will, and cannot fail to do so, is similar to this. Even if I obey another person, the decision to do so remains mine; and the possible threat of violence does not change the nature of causality mind/actions, because I'm always the one who has to decide whether to bow or not to the threat. According to Rothbard, the fact that every person cannot alienate his will reinforces self-ownership.⁶⁰ According to Hulsmann, self-ownership is factual even before being normative, since technically only I can use my will, only I can decide to lift my right arm. The fact that another person can force me to do it is not a refutation of this statement, because it is always my will that commands (parts of) my body, and this form of control can never be transferred.⁶¹ Human language itself implies self-ownership: the phrase "I am playing the piano" would not make sense if I were not the exclusive owner of my body.⁶² In this condition it would be a false claim, because any proprietary regime other than self-ownership, would mean that it is not I who plays the piano, but "me and others"; which is illogical.

Critics have argued that this thesis confuses physical individuality with property, and the controversy has been the basis for a further topic of discussion among libertarians, which will be touched upon shortly: the possibility of alienability of self and thus voluntary slavery.

⁵⁸ M.N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, Macmillan, New York, 1973, pp. 27–8; *The Ethics of Liberty*, cit., pp. 45–6.

⁵⁹ S. Kinsella, *Inalienability and Punishment: A Reply to George Smith*, in "Journal of Libertarian Studies" vol. 14, no. 1, Winter 1998, pp. 79–93.

⁶⁰ M.N. Rothbard, *The Ethics of Liberty*, pp. 59–60, 134–6.

⁶¹ J.G. Hulsmann, *The A Priori Foundations of Property Economics*, in "The Quarterly Journal of Austrian Economics", vol. 7, no. 4, Winter 2004, pp. 41–68.

⁶² Again with regard to the use of language, "naturalness [of self-ownership] is reflected by the very fact that in talking about bodies, it is almost impossible to avoid using possessive (possession-indicating) expressions as well. A body is normally referred to as a specific person's body: my body, yours, his, etc. [...] clearly, in doing so, one is assigning property-titles and distinguishing between proper owners of scarce resources." H.-H. Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics*, p. 11. Of opposite opinion Richard Fumerton: "looking at the use of possessives to get a pre-theoretical grip on the notion of what *belongs* to me in the sense that my property belongs to me is, at best, merely suggestive. We also feel perfectly comfortable describing someone as *my* enemy, *my* best friend, *my* favorite actor, and so on. Yet it would be absurd to infer from these natural uses of possessives that the enemy, friend, and actor should be included among my possessions." R. Fumerton, *A Consequentialist Defense of Libertarianism*, Lexington, Lanham, MD, 2021, Kindle e-book, p. 166.

Self-ownership has also been asserted through certain logical schemes based on *performative contradiction* (Hoppe's *a priori of argumentation*, Kinsella's *estoppel*). Argumentation is a form of action that involves the use of a scarce resource which is the body of each individual. The mere fact of supporting any thesis, of arguing and/or of opposing arguments to the theses of others, means automatically and necessarily recognizing that the interlocutor has the exclusive right over his own body, because he is disposing of his own body (brain, tongue, vocal cords etc.) *for the mere fact* of producing any statement. No one could propose anything, or be convinced of anything, if it were not assumed that the body is his private property. So, anyone who denies the right to self-ownership is self-contradicting, because, by supporting that thesis, that is, by arguing, it is implicitly assuming the right that denies.⁶³

According to Kinsella's *estoppel* criterion, a person must be prevented (*estopped*) from supporting in court a defensive line whose arguments contradict actions or statements previously made by the author. An attacker, who resorted to force first, cannot complain that "the use of force is unfair", and therefore cannot complain for being punished for the crime committed, because he previously showed he did not believe that "The use of force is unfair". Since therefore he cannot morally object to the punishment suffered, it is deduced that the punishment is right. This means, in the final analysis, that the subjective right that the sanction creates is an effective right. It is thus shown that individuals have rights, and, in the case in point, self-ownership right.⁶⁴

A consequentialist argument in the narrow sense (Jason Brennan, Bas van der Vossen, David Schmidtz) points out that societies in which individuals are self-owners, Kantianly ends in themselves and not means, are prosperous and with a significantly higher degree of well-being than societies that reject this principle.⁶⁵

Jurist Richard Epstein justifies the rule of self-ownership, which he calls *autonomy*, on an empirical level by comparing that condition with alternative systems, such as a slavery regime or Rawls' solution that individual talents are a collective resource. The best norm is to be derived by comparing the administrative costs of each regime (the apparatus and energy required to enforce it) with the incentive effects for individuals: a system that rectifies the endless series of social injustices attributable to inferior talents and bad luck would have gigantic costs, and at the same time the incentives would presumably be disincentives, because people could not count on the fruits

⁶³ H.-H. Hoppe, *The Ultimate Justification of the Ethics of Private Property*, in "Liberty", vol. 2, no. 1, 1988, reprinted in *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, cit. Hoppe borrowed the principle from Habermas and Apel, (K.O. Apel, *Das Apriori der Kommunikationsgemeinschaft*, 1973). Libertarian authors who follow a similar approach are G.B. Madison (*The Logic of Liberty*, Greenwood Press, New York, 1986), F. van Dun (*Economics and the Limits of Value-Free Science*, in "Reason Papers", no. 11, Spring 1986, pp. 17–32) and J.G. Hulsmann (*The A Priori Foundations of Property Economics*, cit.).

⁶⁴ On this basis it can be shown that only aggressive acts violate rights. For example, the above reasoning cannot be applied to "victimless crimes", in relation to which a defendant is not in contradiction if he challenges the sanction, because he did not undertake violent acts. So, the only rights that individuals have are rights against "initiating" violence. S. Kinsella, *Estoppel: A New Justification for Individual Rights*, in "Reason Papers", no. 17, Fall 1992, pp. 61–74; *New Rationalist Directions in Libertarian Rights Theory*, in "Journal of Libertarian Studies" 12, no. 2, Fall 1996, pp. 313–26.

⁶⁵ "We see self-ownership as a moral principle but not one that figures as a basic premise in our thinking, let alone a self-evident one. We consider people self-owners because of what the rejection of that idea implies, both for societies as a whole and for the individuals that make them what they are. [...] The places that see individuals as ends in themselves and their institutions as tools for supporting individuals are happy, prosperous, and progressive. The places that see their institutions as ends in themselves and their individuals as tools for supporting the institutions are the opposite." J. Brennan, B. van der Vossen, D. Schmidtz, (eds.), *The Routledge Handbook of Libertarianism*, Routledge, New York, 2018, Kindle e-book, *Introduction*.

of their labor. The conclusion is the superiority of the original allocation of people's property rights.⁶⁶

An epistemic (or consequentialist in the broad sense) argument for self-ownership is proposed by Jamie C. Watson. According to his 'principle of epistemic advantage', each person is in a position where he *knows* (has more information about) his own interests (understood broadly, such as preferences or desires, material or spiritual) better than the others (in particular the rulers) and therefore must be able to pursue them until they conflict with the interests of others. There is a *prima facie* reason to believe this, that is, it must be assumed that this is because the evidence is such; therefore, until proven otherwise, such as for children, in which case an exception to the criterion may be introduced. The general rule, however, provides that each person has control over himself (rights over himself).⁶⁷

Self-ownership has also been inferred from the unanimous agreement that certain practices, such as slavery or the obligation to provide a healthy eye for the blind, are unjust and unacceptable; and are such only insofar as one implicitly assumes self-ownership. According to Nozick, any redistributive theory violates self-ownership: in *Anarchy, State, and Utopia* mentions the concept in the section on distributive theories; in particular, the "end-state", i.e. redistributive, ones, "institute (partial) ownership by others of people and their action and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people."⁶⁸

Finally, some authors have pointed out that some rights only make sense if self-ownership is assumed: if an individual's mind is not his, freedom of thought has no meaning; if tongue is not his, freedom of speech has no meaning.⁶⁹

The power to totally dispose of oneself also extends to the economic realm and results in the freedom to do any work (services) independently or in the employ of others. This freedom also includes that of establishing or consensually negotiating working conditions. An early example of the close connection between personal liberty and economic liberty advocated by libertarians, which will be discussed more fully in Chapter 6.

Libertarians have long debated the possibility of renouncing property rights over oneself and thus the plausibility of voluntary slavery. The thesis of rejection, argued by authors such M.N. Rothbard,⁷⁰ W. Evers,⁷¹ S. Kinsella,⁷² R. Barnett,⁷³ D. Gordon,⁷⁴ R. Epstein,⁷⁵ and J.G. Hulsmann,⁷⁶

⁶⁶ R. Epstein, *Simple Rules for a Complex World*, Harvard University Press, Cambridge, MA, 1995, Chapter 3.

⁶⁷ J. C. Watson, *Prolegomena to an Epistemic Case for Classical Liberalism*, in "Libertarian Papers", vol. 6, art. no. 1, 2014, pp. 21–56, <http://libertarianpapers.org/wp-content/uploads/articles/2014/lp-6-1-2.pdf>.

⁶⁸ R. Nozick, *op. cit.*, p. 172. Just above he highlights how his notion of property based on Lockean rights "helps us to understand why earlier theorists spoke of people as having property in themselves and their labor." *Ivi*, p. 171.

⁶⁹ For a critical position of the idea of self-ownership see K. Lippert-Rasmussen, *Against Self-Ownership: There Are No Fact-Insensitive Ownership Rights over One's Body*, in "Philosophy and Public Affairs", vol. 36, no. 1, 2008, pp. 86–118.

⁷⁰ M.N. Rothbard, *The Ethics of Liberty*, pp. 59–60, 134–6.

⁷¹ W. Evers, *Toward a Reformulation of the Law of Contracts*, in "Journal of Libertarian Studies", vol. 1, no. 1, Winter 1977, pp. 3–13.

⁷² S. Kinsella, *Inalienability and Punishment: A Reply to George Smith*, *cit.*

⁷³ R. Barnett, *Contract Remedies and Inalienable Rights*, in "Social Philosophy and Policy", vol. 4, no. 1, Autumn 1986.

⁷⁴ D. Gordon, *Private Property's Philosopher*, in "Mises Review", vol. 5, no. 1, Spring 1999.

⁷⁵ R. Epstein, *Why Restrain Alienation?*, in "Columbia Law Review", vol. 85, no. 5, 1985, pp. 970–990.

⁷⁶ J.G. Hulsmann, *op. cit.*

is based on the argument, reviewed above, that an individual cannot technically alienate his will and the ability to control the movements of his body. In contrast, for libertarians favoring the thesis of the possibility, and lawfulness, of the voluntary contract of slavery (W. Block,⁷⁷ R. Nozick,⁷⁸ J.C. Lester⁷⁹), if one owns something, one can sell it; and one's body is not excluded from the objects of negotiation. They challenge the argument of the inalienability of the will because in their view it confuses physical individuality with property: taking up the example already proposed, if I am the property of another and play the piano, there is no need to say that "I and the other" play the piano; it is correct to say that only I play the piano, on the orders of the other. "What, precisely, did the slave owner in Alabama in 1835 get from his slave? Moral agency? Will? Heartfelt and cheerful obedience? None of the above. The master only received the privilege that when and if he used violence against the slave, he would not be penalized by law for assault, battery, and kidnapping, as he would have been had he carried out these acts against a free person. That is all that voluntary slavery would give the owner; not moral agency or will or anything else discussed by the critics of voluntary slavery."⁸⁰ J.C. Lester believes that Rothbard has confused what is alienated following the act of voluntarily subjecting to slavery. What is alienated is the property of the will, not the will as an attribute of the person. It is true, Lester argues, that we cannot alienate our will in the sense of making it cease to be our attribute, but this does not mean that we cannot alienate this attribute of ours in the sense of making it cease to be our property.⁸¹

Individualism

Self-ownership is closely related to the libertarian conception of the individual. The ontology of the "self" assumed by libertarianism derives from the metaphysical theory of personal identity based on separateness, which is therefore both an epistemic and normative assumption.⁸² The libertarian *individual* although not atomistic (if there were no social interactions, the very need for a political theory would disappear), is reduced to a conceptual abstraction that is independent of any concrete attribute.⁸³ Normative implications of this approach are the idea that value resides only in individuals and the equal moral status of human beings. Free will is presupposed.⁸⁴

⁷⁷ W. Block, *Towards a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Smith, Kinsella, Gordon, and Epstein*, in "Journal of Libertarian Studies", vol. 17, no. 2, Spring 2003; W. Block, J. Pillard, *Libel, Slander, and Reputation According to Rothbard's Theory of Libertarian Law*, in "Journal of Libertarian Studies", vol. 24, no. 1, 2020, pp. 116–42.

⁷⁸ R. Nozick, *op. cit.*, p. 331.

⁷⁹ J.C. Lester, *Market-Anarchy, Liberty, and Pluralism*, in J.T. Sanders, J. Narveson (eds.), *For and Against the State: New Philosophical Readings*, Rowman & Littlefield, Lanham, MD, 1996.

⁸⁰ W. Block, *Towards a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Smith, Kinsella, Gordon, and Epstein*, *cit.*, p. 81.

⁸¹ J.C. Lester, *Market-Anarchy, Liberty, and Pluralism*, *cit.*, p. 66.

⁸² On this point see E. Feser, *Personal Identity and Self-Ownership*, in "Social Philosophy and Policy", vol. 22, no. 2, July 2005, pp. 100–25.

⁸³ The specificity of this conception is grasped more clearly when compared with the conception of *person* in Greek philosophy and Christianity, in which the individual is placed in a relational system that also produces holistic legal outcomes.

⁸⁴ Even if neuroscience proved irrefutably that the possibility of choosing at will is an illusion of our brain (some neuroscientists claim it), this would equally not paralyze or distort the philosophical–political and social developments and outcomes of libertarianism (as well as of all theories which presuppose free will, such as classical liberalism). As Isaiah Berlin demonstrated, pretending to slap a determinist philosopher in a debate; to the remonstrances of the latter he replied that he could not be angry: if free will does not exist, Berlin was obliged to do so.

This philosophical individualism translates into individualism on the political level: rights and obligations pertain only to individuals, not to collectivities; and individuals, ends in themselves, cannot be compelled to serve the purposes of the state, specific groups or an abstract “society”.

This orientation is also reflected in the procedure followed in social analysis: in fact, libertarian theorists usually employ methodological individualism, a criterion for interpreting social reality based strictly on individuals and the circumstances pertaining to them. Social phenomena are reconstructed from the actions of individuals, the only existing entities, and their interactions. Only individuals exist, think, feel, express needs and values, choose, act, pursue projects, can take responsibility for their actions. Of them alone one can preach or not preach the will. Society is a sum of interacting individuals. This logical and explanatory priority of the individual is an expression of a line of thought that receives its earliest contributions from the nominalism of William of Ockham, is strengthened with T. Hobbes, J. Locke and the “Levellers,” is refined with the English and Scottish Enlightenment, particularly D. Hume, A. Ferguson, B. Mandeville and A. Smith, and sees its most robust development in the Austrian School through the elaboration of C. Menger, Mises, Hayek and K. Popper. In sociology, influential proponents of the individualistic method have been M. Weber, G. Simmel, A. Schutz and V. Pareto; in economics, in addition to the aforementioned Austrian School, exponents of the Chicago School such as F. Knight and M. Friedman, and of the Public Choice theory such as J. M. Buchanan. In recent years, contributions of particular interest have been made by R. Boudon and J. Coleman. The empirical starting point of the individualistic method – individuals as the only hermeneutic units – is only seemingly obvious, being challenged by alternative approaches. In particular, *methodological collectivism*, a long tradition of thought that has in Rousseau, Hegel, Comte, Marx and Durkheim only some of its most rigorous representatives. This perspective is characterized by organicism and holism. Collective concepts are reified: clan, tribe, society, state, collectivity, people, nation, race, class, market, party are treated as real, living autonomous entities, having an existence independent of the individual subjects that compose them. From the fact that human language needs, for the convenience of synthesis, collective-type expressions to designate a certain agglomeration of people, we fall into hypostatization, the attribution of substance to such abstract subjects, to these pure constructions of thought. And such slippage produces a further development: the social conglomerate is considered “more” than the parts that compose it, transcends them, and on the logical level comes before them. Collective entities not only exist, but have minds, purposes and values of their own. They shape individuals; social belonging is a constitutive element of individuality; social forces create individual identity. Without such omnipresent reality, the individual would not exist.

Libertarians oppose methodological collectivism not only on epistemological grounds. In general, the use of categories involving the forced affiliation of individuals to transcendental, conceptually abstract entities, as well as the construction of contrived identities based on blood, race or ethnicity, almost always crosses over into political and ethical collectivism, destroying the autonomy and freedom of the individual. The *descriptive* plane slips, more or less consciously, to the *normative* one. If the collective entity has a specific will, goals and objectives of its own, from this recognition to juridification is a short step, hence the implicit denial of the diverse goals,

objectives, values, tastes, interests and needs of individuals. And if the highest good is the glory of this collective then the welfare of the people who constitute it can be sacrificed to it.⁸⁵

It is important to dispel a misunderstanding not uncommon in sociological controversies. Methodological individualism has nothing to do with social atomism, according to which only individual actions are legitimate, each individual would be an isolated entity, which does not influence – and is not influenced by – others, and which does not cooperate with them. A caricature and wholly erroneous interpretation of the individualistic method, as Hayek made clear in *Individualism; True and False*.⁸⁶ Block pointed out that “there is nothing at all wrong with acting *collectively*, provided it is done on a voluntary basis. If it were really true that only individual actions were legitimate, [...] then we would have to reject team sports such as football, basketball, baseball as improper, while extolling the virtues, only, of individual sports. [...] [J]ust plain silly.”⁸⁷ Nevertheless, the concept of *common good* (or equivalents such as *general interest* or *public interest* or *social welfare*) is either rejected or treated with great shrewdness by libertarians: the only notion that approximates it, while remaining conceptually distinct, is the sum of individual goods (utilities) achievable from social interactions, and this disaggregation is not theoretically compromised even when the goods produced generate externalities or when their legal structure takes on co-ownership forms.⁸⁸

Finally, there is individualism understood as a person’s character trait. Which has no bearing on libertarianism, which is not a psychological theory, a guide for personal morality or a theory about “good life”. It is true that, because of the strong anti-collectivist imprint and many unconventional conclusions of the theory, many libertarians – thinkers, activists, artists, writers – value and sometimes idealize “the person who chooses her own life plan, is passionately creative, rises above the masses, and resists authority; [who] is a rational deliberator and a reflective chooser of ends; [who] experiments with different ways of living; [whose] code of values is not determined by and bound up in the traditions and expectations of her culture.”⁸⁹ However, this possible inclination is not a constitutive element of the foundations and outcomes of the theory.

Contiguous with individualism is the misunderstanding regarding “selfishness,” fueled by libertarian support for the free market and thus, in the view of detractors, the “law of the jungle.” First, libertarians do not accept the anthropological assumption that individuals are all selfish; and (except for Ayn Rand)⁹⁰ they do not assume the moral constraint that they *must* be. A libertarian can personally be a convinced altruist. What he will never accept is that the selfishness of others be rectified by force. Secondly, *laissez-faire* is not a form of social Darwinism, it *does not* prohibit

⁸⁵ Although methodological individualism is often associated with political and ethical individualism, as in libertarianism and classical liberalism, it does not imply it. The former is a social methodology, the latter an ethico-political theory.

⁸⁶ F. von Hayek, *Individualism; True and False*, in Id., *Individualism and Economic Order*, University of Chicago Press, Chicago, 1948.

⁸⁷ W. Block, *Defending the Undefendable II*, p. xix.

⁸⁸ “People speak of “the public interest.” But what is the public interest? Strictly speaking, there is no such thing. There is only the interest of each individual human being. There are interests that many or all people share, but these are still the interests of individuals. When politicians say that something is “to the public interest,” they usually mean that it serves the interests of some people but goes against the interests of others [...]. Just as there are only individual rights, so there are only individual interests.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 79.

⁸⁹ J. Brennan, *Libertarianism: What Everyone Needs to Know*, Oxford University Press, New York, 2012, Kindle e-book, p. 51.

⁹⁰ Ayn Rand’s Objectivism claims a “rational egoism,” the moral obligation to promote self-interest. Apart from Objectivists, no libertarian thinkers add such a constraint in their ethical system. So too with atheism, claimed by Rand but in no way included among the requirements of libertarianism.

voluntary assistance to those who need it. In addition, it “is the very opposite of the “jungle.” When not involved with government, it is characterized by peaceful competition. [...] In the real, literal jungle, there is a struggle for survival in which the stronger crushes his weaker foe, but in the free market one man gains wealth only through serving the consumers best. [...] In the jungle, some gain only at the expense of others. On the market, everyone gains.”⁹¹

⁹¹ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, pp. 106–7. Many libertarians believe that redistributive and welfare policies weaken human fiber in the long run or discourages work and enterprise. And to counter the accusation of being cynical and ruthless, since they are against the coercive help of people in difficulty, often use empirical theses from the social sciences. For example, highlighting how misleading it is to use empathy and emotions aroused by individual cases as a moral guide and basis for collective interventions, such as economic or international politics ones. On this point, see P. Bloom, *Against Empathy: The Case for Rational Compassion*, The Bodley Head, London, 2017. However, these consequentialist considerations do not pertain to political philosophy in the strict sense (except for radical utilitarians).

3. Property on Tangible Things

From self-ownership we move on to legitimizing ownership in external things. The latter emanates from the former.

If human beings could obtain all the goods they desire with a simple snap of their fingers – that is, if resources were not scarce (limited) – there would be no conflicts, and therefore the problem of identifying a criterion for assigning property would not arise. But since resources are not superabundant or infinite, conflicts can arise about their use, because the use of a good by a person necessarily excludes (interferes with, restricts) the use of it by someone else. An ethical rule is therefore required to govern the use of finite goods.⁹² The criterion for the assignment of property rights is the Lockean *homesteading*.⁹³ The first one who took the action of occupying⁹⁴ a *res nullius* resource⁹⁵ is the owner of it and the goods he has produced with it.

Early libertarianism (M. Rothbard, W. Block)⁹⁶ justified the emergence of a property right because of homesteading with the Lockean “mixing labour with nature”. The legitimacy of the constitution of a title of ownership on an unowned resource or on the good resulting from the processing of the resource would derive from the application on it of mental and/or physical

⁹² Even in the case of collective ownership, the problem is not circumvented, because whoever decides its destination (for example, the public official, or the co-owners in the common property) is the actual owner of the property right. S. Kinsella pointed out that any conflict between human beings – political, social, religious – is nothing more than a dispute over the use of scarce resources. Not in the Marxist sense that those conflicts are determined by economic causes, but in the praxeological sense that each conflict ultimately represents a conditioning not only on material resources, but also on the freedom of people’s bodies to take the desired actions; and the bodies are also scarce resources. “For example, it is sometimes said that people “fight over religion”. This is not true. People fight only over scarce resources. Disagreement over religion may be the reason for the fight but the fight is always conducted with physical force, mediated by causal means (e.g., weapons), to physically control others’ bodies or owned resources. For example, A may tell B to change to A’s religion or face death; the fight here is over who gets to control B’s body. When the state threatens to jail people for disobeying drug laws, the state is asserting an ownership claim over its citizens’ bodies.” S. Kinsella, *The Limits of Libertarianism: A Dissenting View*, in <http://www.stephankinsella.com/2014/04/the-limits-of-libertarianism-a-dissenting-view/>, April 4, 2014. This interpretation explains and justifies the *Austro-libertarians* label, rigorously questionable, because the Austrian theory belongs to the category of descriptive, not normative, disciplines; it is *wertfrei*, so it should not be called into question to illustrate a philosophical–political theory. However, the theory of property rights uses the acquisitions of praxeology: human action consists in the use of scarce resources (including bodies) to achieve certain alternative purposes. As mentioned above, conflicts over the use of scarce resources generate the need for a theory on the assignment of property rights; that libertarians identify in the right of the *first occupier* (homesteader). An explanation of the birth and development of property rights based on a different approach, the comparison between costs and benefits, is that of Harold Demsetz: ownership flourishes in history for a specific purpose, to allow users of an asset to internalize externalities when from this action the benefits outweigh the costs. For example, the common lands of Indians in Québec in the seventeenth century or of farmers in the American west in the nineteenth century were the subject of rapid depletion (by overexploitation) of hunting animals and pastures respectively; therefore, a negative externality was determined for the entire population. The division into private properties increased the product so much, so as to outweigh (in terms of benefits for the entire community) the cost of excluding some of them. H. Demsetz, *The Exchange and Enforcement of Property Rights*, in “Journal of Law and Economics”, vol. 7, no. 1, October 1964, pp. 11–26; *Toward a Theory of Property Rights*, in “American Economic Review”, vol. 57, no. 2, May 1967, pp. 347–59.

⁹³ The homesteading axiom without Lockean proviso was first proposed by Lysander Spooner in *The Law of Intellectual Property*, 1855. In his system this principle leads to an anarchist outcome.

⁹⁴ Mere *notification*, verbal or written, is insufficient: “anyone can verbally claim anything he wants, and disputes will continue. I hereby claim the sun, the moon, and the stars, and so do you. The rightful owner is still to be determined.” W. Block, *Defending the Undefendable II: Freedom in All Realms*, Terra Libertas, Eastbourne, UK, 2013, p. xiv.

⁹⁵ Libertarians believe that, in the “state of nature” condition prior to appropriation, all the resources of the Earth (and in the future of any planet) should be considered nobody’s property. The alternative theory holds that these resources were common property of all human beings (see *infra*, § 12.2).

⁹⁶ M.N. Rothbard, *The Ethics of Liberty*; W. Block, *Homesteading, Ad Coelum, Owning Views and Forestalling*, in “The Social Sciences”, vol. 3, no. 2, 2008, pp. 96–103.

energies, which belong to the individual's body, and that physically transform inert matter. Tangible things would have acquired new physical properties thanks to the actions of the individual, physical transformations would be emanations of these. In short: since everyone owns his labor, he also owns the external objects on which he transfused that labor. Tangible things would have acquired new physical properties thanks to the actions of the individual, physical transformations would be emanations of these. In short: since everyone owns his labor, he also owns the external objects on which he transfused that labor.⁹⁷

Subsequently other authors (R. Epstein, S. Kinsella, T.G. Palmer)⁹⁸ affirmed that this passage of the Lockean sequence is incorrect and that the original occupation or the first possession are sufficient for the purpose of establishing the title. According to this approach, labor is not strictly owned; it is a type of action – it is the way bodies act in the world – not a thing owned by the individual who performs it; an action is not ownable. Therefore, for the acquisition of property, there is no need to resort to labor (and possession of labor) and the subsequent creation activity⁹⁹. The only relevant “labor” is the one necessary for the completion of the homesteading, nothing else. The chair that I made with the wood of my tree is mine because the tree is mine, not because I applied subsequent labor to the tree or because I created “value”. Homesteading action of the tree is sufficient. According to this point of view, the Lockean idea of “mixing labor” with a scarce resource is relevant only because it *indicates* that the user of the resource already owned it, but labor is not the source of property right.¹⁰⁰

The legitimacy of ownership over external objects can be further demonstrated with the same *reductio ad absurdum* used to demonstrate self-ownership. “As in the case of the ownership of people's bodies, we again have three logical alternatives: (1) either the transformer, or “creator” has the property right in his creation; or (2) another man or set of men have the right in that creation, i.e., have the right to appropriate it by force without the sculptor's consent; or (3) – the “communal” solution – every individual in the world has an equal, quotal share in the ownership of the sculpture. Again, put baldly, there are very few who would not concede the monstrous injustice of

⁹⁷ “Let us take, as our first example, a sculptor fashioning a work of art out of clay and other materials [...] [T]he work of art as it emerges from the sculptor's fashioning [...] is, in fact, the sculptor's “creation,” not in the sense that he has created matter, but in the sense that he has transformed nature-given matter – the clay – into another form dictated by his own ideas and fashioned by his own hands and energy. [...] The sculptor has the right to own the product he has made, by his energy and effort, a veritable *extension* of his own personality. He has placed the stamp of his person upon the raw material, by “mixing his labor” with the clay, in the phrase of the great property theorist John Locke. And the product transformed by his own energy has become the material embodiment of the sculptor's ideas and vision.” M.N. Rothbard, *For a New Liberty*, cit., p. 30. It has been argued that the Lockean theory (previously sketched also by Thomas Aquinas and Jean Quidort) would represent the legitimacy of the labor theory of value. However, two different concepts are confused: the theory explains the ethical origin of the property, that is, to whom belongs the good, not the economic value (price) of the good of which you have become the owner. It belongs in the realm of normative theories, while the labor theory of value belongs in the realm of positive economics. In addition, the expression “labor” must be understood as the profusion of human energies in any economic activity, not only the work of the employee in exchange for wages.

⁹⁸ R. Epstein, *Possession as the Root of Title*, in “Georgia Law Review”, vol. 13, 1979, pp. 1221–43; S. Kinsella, *Against Intellectual Property*, in “Journal of Libertarian Studies”, vol. 15, no. 2, Spring 2001, pp. 1–53; republished from Mises Institute, Auburn, AL, 2008; T.G. Palmer, *Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects*, in “Harvard Journal of Law & Public Policy”, vol. 13, no. 3, 1990, pp. 817–86.

⁹⁹ Kinsella criticizes the second part of Rothbard's statement “an individual possesses his person *and therefore his own labor*”. “Owning one's labor” (or life or ideas) is a deceptive metaphor for Kinsella. This thesis, as we shall see (*infra*, Chapter 6) is at the basis of the refusal of the existence of intellectual property rights.

¹⁰⁰ Instead, utilitarian libertarians legitimize private property with the (typically consequentialist) argument of incentives: the care of what is proper, to enjoy its fruits, and the desire to acquire other properties in the future pushes agents to work and undertake. What does not happen with common ownership.

confiscating the sculptor's property, either by one or more others, or on behalf of the world as a whole."¹⁰¹ Hospers summarized the reasons for the logical and practical impossibility of universal co-ownership over all property as follows: "If everybody owns everything, then everyone has an equal right to go everywhere, do what he pleases, take what he likes, destroy if he wishes, grow crops or burn them, trample them under, and so on. Consider what it would be like in practice. Suppose you have saved money to buy a house for yourself and your family. Now suppose that the principle, "everybody owns everything," becomes adopted. Well then, why shouldn't every itinerant hippie just come in and take over, sleeping in your beds and eating in your kitchen and not bothering to replace the food supply or clean up the mess? [...] What happens if we *all* want to sleep in the bedroom and there's not room for all of us? Is it the strongest who wins? What would be the result? Since no one would be responsible for anything, the property would soon be destroyed, the food used up, the facilities nonfunctional. Beginning as a house that *one* family could use, it would end up as a house that *no one* could use. And if the principle continued to be adopted, no one would build houses anymore, or anything else."¹⁰²

All entities possessing the requirement of delimitation, demarcation, which have visible boundaries or edges can be the object of ownership; circumstance which in turn depends on the technological conditions. For a movable item, the original taking of possession can take place by taking the thing directly in a physical sense, pulling it to itself; capture of free animals is also included in this appropriation mode. For an immovable resource, *homesteading* occurs by marking it (fencing it with visible borders) or, for other libertarians, working it even once (see *infra*).¹⁰³

If a person purchases the resource (from a legitimate owner), in the same way the finite product made by him is his property.

As for the land,¹⁰⁴ one can only appropriate the part on which he has intervened with his work; moreover, it is not necessary to work it continuously, it is sufficient that it has been used at least once.¹⁰⁵ The extension of the area which is legitimately appropriate is the *technological unit* and

¹⁰¹ M.N. Rothbard, *For a New Liberty*, cit., p. 31. Epstein, as part of this reasoning technique of considering implausible alternatives in order to discard them, hypothesized a fourth rule: the person who occupies the property *second* rather than first is the legitimate owner. On the consequentialist level, such an absurd rule would represent an incentive for social disaster, since no one would take on the burden of employing private resources if someone else can take them away. With such a rule nothing could ever be subject to private ownership. Epstein, as a consequentialist, does not believe, unlike the deontological libertarians, that the original acquisition enjoys the *status* of absolute truth, but only that it represents the rule that produces the greatest overall benefits: it imposes costs on those excluded but the incentives given by the security of possession produce markedly overwhelming welfare gains. R. Epstein, *Simple Rules for a Complex World*, cit., Chapter 3.

¹⁰² J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, Nash, Los Angeles, CA, 1971; republished by CreateSpace Independent Publishing, 2013, Kindle e-book, p. 63.

¹⁰³ As will be seen in Section 12.2, the orientation defined as left-libertarian, on the other hand, believes that original acquisition should have restrictions.

¹⁰⁴ Land has a characteristic that distinguishes it from the capital factor and from other tangible goods resulting from production, and it is *non-reproducibility*. This characteristic has led many thinkers (for example Henry George and his followers) to believe that land ownership cannot be treated in the same way as other assets; it belongs to all humanity and should not be privatized. However, this feature does not cancel (quite the opposite) or alter the fundamental requirement of *scarcity*, which makes goods subject to human action, and therefore with a price on the market.

¹⁰⁵ In this regard, there has been a lengthy discussion in America about the right to land ownership of the native Indians and the unjust expropriation they would have suffered. For W. Block "it is by no means clear that the Indians are the rightful owners of anything like the entire U.S. Under libertarian law, they could justly claim only those parts of the land that they homesteaded, or occupied, not hunted over. They owned those paths that they used to get from their winter to their summer places. This is based on the Lockean-Rothbardian-Hoppean homesteading theory. I estimate

must be such as to allow the use and enjoyment of the asset; therefore, it depends on the nature of the resource in question. For example, if it is radio or television frequencies, the extension is given by the amplitude on the electromagnetic spectrum and the wavelength. In a land, appurtenances must be included. Regarding the subsoil and the topsoil, contrary to *ad coelum* doctrine of Accursio and Edward Coke, they do not extend like a cone to the center of the earth and to the cosmos, but only to the space essential for the use and enjoyment of the soil. In the very deep spaces, both below and above the surface, no occupation action has been taken (or, according to the previous Lockean-inspired theory, no labor was mixed). There is no standard and unique distance, the extension in height and depth varies from situation to situation. Therefore, in a land used for example in an agricultural activity, underground you have the right to the depth necessary for the integrity of the roots; while above the surface, if very tall trees are grown, the airspace must reach a height higher than that attributed to a land dedicated to grazing, but not higher than the need for extension of the trees. On the other hand, in a road there must be no interference at a height equal to or less than that of the highest vehicle potentially in transit.

The original occupation of a land that borders on unowned land areas gives the owner the right to produce emissions – polluting substances, noises, unpleasant smells etc. (nuisances) – in such surrounding areas. It is equivalent to *property easements*. If, on the other hand, an adjacent land was already owned by someone *before* our owner acquired his, then the emission is configured as an invasion and is illegal.

Homesteading is one of the situations that poses to libertarian theory what W. Block and W. Barnett have defined the *continuum challenge*, consisting in the difficulty of – and the inevitable arbitrariness in – setting in some cases a threshold beyond the which a particular action is legitimate or illegitimate (other cases are the distance between two people so that shaking a fist can be considered the initiation of a threat of violence or the age to determine when sexual intercourse can be considered rape). The authors are of the opinion that the solution should be left to the common sense of the court hearing the dispute on a case-by-case basis. According to Block, such a conclusion does not represent an undermining of the clarity and absoluteness of property rights (and, as will be seen in the next chapter, an operational weakness of the principle of non-aggression), to be remedied by the incorporation of additional morality criteria, but rather a simple activity aimed at “teasing out” the logical implications that already “reside” in the libertarian theory of property rights (and in the NAP).¹⁰⁶

In libertarian literature a much-discussed topic has been the so-called *forestalling*, the circumstance in which an individual appropriates a plot with a configuration that makes it impossible for anyone else to appropriate another contiguous terrain (for example, a “donut” configuration, in which the hole is the unowned part of territory, but which no one can access if the owner of the “donut” territory does not want). A similar problem arises if an individual owns and resides in a section of “surrounded” territory: since all portions of land, including paths and roads, are private property and therefore there is no public access route, an individual surrounded by private property whose owners prevented him from entering would remain trapped in his property. In both cases there would be a serious conflict between freedom and property (R. Nozick, F. van Dun, G. Tullock). W. Block is the author who has dealt more extensively with the topic, affirming

that they owned, in this way, at most 1 percent of the land in the US.” W. Block, *The Privatization of Roads & Highways*, Mises Institute, Auburn, AL, 2009, p. 414.

¹⁰⁶ W. Block, W. Barnett, *Continuums*, in “Ethics & Politics”, vol. 10, no. 1, 2008, pp. 151–66.

the non-appropriability in the form that precludes others from accessing or granting a right of access (proviso contested by Kinsella); in the second case the severity of the problem is mitigated by some solutions (previous guarantee of admission, possibility of building tunnels or bridges).¹⁰⁷

It should be pointed out that, for libertarians, in a pure market system it is neither expected nor required that all spaces be privatized. There could be assets or sections of land that are ownerless because no one is interested in or has any convenience in appropriating them. It is the modern State, not the private individual, that has “self-attributed legal control and full ownership of every *res nullius* and erased all virgin space.”¹⁰⁸

Homesteading is also applicable to waters – seas, lakes, rivers, streams – and can be represented by activities such as fishing or repopulation of fish species or infrastructure works for water use – irrigation, electricity generation, desalination, aqueducts.¹⁰⁹

Regarding the air, anyone who breathes, therefore all human beings, uses the oxygen contained in the atmosphere and therefore acquires a title on the quantity used. At the same time, an individual can exclusively take possession of a tot of liters of air – for example, a scientist who puts it in a container to carry out experiments – subtracting it from others. Also in this case the extension depends on the technological unit.

The right of ownership implies the absolute power to dispose of the property at will, namely to: possess it (control it),¹¹⁰ use it, perceive its fruits, transform it, sell it, barter it, give it, lend it, rent it,

¹⁰⁷ W. Block, *Van Dun on Freedom and Property: A Critique*, in “Libertarian Papers”, vol. 2, art. no. 4, 2010, <http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-4.pdf>; *The Privatization of Roads & Highways*, cit.; *Forestalling, Positive Obligations and the Lockean and Blockian Provisos: Rejoinder to Stephan Kinsella*, in “Ekonomia–Wrocław Economic Review”, vol. 22, no. 3, 2016, pp. 27–41. Kinsella’s criticisms of Block are contained in S. Kinsella, *The Blockian Proviso*, in “Mises Wire”, September 11, 2007, <https://mises.org/blog/blockean-proviso>. Another similar case–limit is that of the newcomer who may be left without livelihood in a world composed of areas completely privatized by previous occupants. Hoppe noted that, first of all, “empirically, of course, the problem does not exist: if it were not for governments’ restricting access to unowned land, there would still be plenty of empty land around. [Second], these newcomers come into existence somewhere – normally one would think as children born to parents who are owners or renters of land [...] If the parents do not provide for the newcomers, they are free to search the world over for employers, sellers, or charitable contributors [...] If they still could not find anyone willing to employ, support, or trade with them, why not ask “What’s wrong with them?” instead of Conway’s feeling sorry for them? Apparently they must be intolerably unpleasant fellows and had better shape up, or they deserve no other treatment.” H.-H. Hoppe, *On the Indefensibility of Welfare Rights: A Comment on Conway*, in “Austrian Economics Newsletter”, vol. 11, no. 1, 1990, pp. 15–6.

¹⁰⁸ C. Lottieri, *Rischi ambientali e società: gli equivoci della regolamentazione*, in C. Lottieri, G. Piombini (eds.), *Privatizziamo il chiaro di luna! Le ragioni dell’ecologia di mercato*, L. Facco, Treviglio (BG), 1997, p. 69 (my translation).

¹⁰⁹ Libertarians were presented with the extreme case of a person who takes over the only source of water in a widely populated area and then sell the water at astronomical prices, leaving those who cannot afford to pay them to die of thirst. Rights libertarians confirm that he would have the right to do so. In any case, Block observes, “We are much more likely to have well-developed water resources under private ownership and the NAP [...] than with any other possible system. It sounds horrendous, and preposterous, that the water “monopolist” could charge an arm and a leg for this product; but, paradoxically, if we allow for this possibility in law, it is less likely to occur than if not. What are the alternatives? There are only two. One, non-ownership of water, in which case it will disappear, due to the tragedy of the commons. Two, the government bureaucrat/politician will own all the water and will do to the populace precisely what Lester fears will emanate from the private owner if any of it is left after their depredations. No truer words were ever said than these by Milton Friedman ‘If you put the federal government in charge of the Sahara Desert, in five years there’d be a shortage of sand.’ Ditto for water.” W. Block, *Response to J.C. Lester on David Friedman on Libertarian Theory*, in “Mest Journal”, January 2019, https://mest.meste.org/MEST_1_2019/13_17.pdf.

¹¹⁰ *Possession* is different from *ownership*: the first designates the *de facto* holding of the thing, the second the legitimacy to dispose of the thing, the *title* to it. You can have possession of an object without being its owner; for example, driving a car loaned by a friend.

bequeath it,¹¹¹ raffle off it, destroy it,¹¹² abandon it.¹¹³ Ownership is therefore a *title to perform actions*.¹¹⁴

It can take many different forms: for example, it can be configured as a ‘bundle of rights’: different owners with distinct faculties can insist on the same asset. Or as common or shared property, circumstances in which ownership belongs to several people.¹¹⁵

The right of ownership also guarantees the *right of exclusion*, that is, the right on the part of the owner to expel anyone he wishes from the enjoyment of the property he owns, and to reject any other claim on those goods.¹¹⁶

This trench is particularly important against the State. For libertarians, private property creates a sphere in which the individual is free from the interference of political power. Unfortunately, comments Hospers, “the right to property is the most misunderstood and unappreciated of human rights, and it is one most constantly violated by governments. [...] Government has always been the chief enemy of the right to property. The officials of government, wishing to increase their power, and finding an increase of wealth an effective way to bring this about, seize some or all of what a person has earned. Depriving people of property is depriving them of the means by which they live,

¹¹¹ For libertarians, the government should not meddle by establishing distributions in the absence of a will or setting minimum shares for close relatives. The destination of the inheritance must be decided by each person *ad libitum*. Inheritance, so often attacked as a resource attained by beneficiaries not as a result of effort (thus undeserved), also has its own *raison d’être* in consequentialist terms: “the right to bequeath to one’s descendants or at any rate to persons of one’s choice [...] [is] a good incentive to attempt enterprises, which would not make much sense if conceived within the scope of a single generation.” S. Ricossa, *Impariamo l’economia* (1988), Rubbettino, Soveria Mannelli (Cz), 2012, p. 173 (my translation).

¹¹² Libertarians therefore oppose the law, introduced in Denmark in 2023, which prohibits burning religious books such as the Koran or Bible, with penalties of up to two years in prison. Confirming the close connection between liberty and property theorized by libertarianism (see *infra*, Chapter 6), in this case, freedom of expression (specifically, the freedom to express aversion to a specific religion) is circumscribed by the physical ownership of the symbolically used good.

¹¹³ For Hulsmann, on the basis of the *a priori of argumentation*, it is possible to demonstrate on a purely factual level, without resorting to normative (i.e., ethical) arguments, not only self-ownership and homesteading, but also the legitimacy of giving in exchange or giving away the good you own and the illegitimacy of theft or fraud; all situations that do not physically modify the good, as happens instead with the original appropriation. The reasoning is as follows: suppose that Jones collected, and is the owner of, an apple and Smith caught, and is the owner of, a fish. If the two wish to exchange, this implies that they both recognize that the other is the owner of the good of which he originally appropriated and that both give assent to the desire of the other *provided that* the other gives consent to his own desire. After the exchange, Smith cannot object to his appropriation of the apple through Jones without self-contradiction, because he has assented to letting Jones appropriate the apple. And the same thing goes for Jones. Therefore, compliance with the agreements that lead to the exchange are demonstrated, while any violations are not. And this without making normative claims – Smith *must not* object to Jones’s appropriation – but only on the basis of the factual observation that, if Smith objects to Jones’s appropriation, contradicts himself. In the event that Smith appropriates the apple without giving the fish in return (theft), Jones’ consent is lacking, because this consent was conditioned by the clause *provided that* (Smith gives the fish in return), and this consent is considered by Smith just for the sole fact of dealing (talking) with Jones. J.G. Hulsmann, *The A Priori Foundations of Property Economics*, pp. 54–6.

¹¹⁴ About disputes over the ownership of property going back in time and the related casuistry – knowledge or lack of knowledge of the facts, possibility of identification of the former owner, bona fide purchases of stolen property, no current owner for property stolen in the past – see M.N. Rothbard, *The Ethics of Liberty*, cit., Chapter 9.

¹¹⁵ For example, the community of property chosen by spouses or a building jointly owned by three individuals. All of these remain forms of private property and should not be confused with State ownership. On the variety of possible proprietary forms, see C. Lottieri, *Beni comuni, diritti individuali e ordine evolutivo*, IBL Libri, Torino, 2020.

¹¹⁶ The *jus excludendi alios* is particularly relevant in relation to goods such as house or land, the nature of which is such as to allow the individual to place itself within them. For this type of goods, the boundaries of ownership take on the meaning of a real bulwark for the freedom of the individual, a space that concretely guarantees freedom of action. The exclusion from any intrusion of external subjects, including the State, automatically entails the effective, tangible freedom of movement of the individual owner. On the right of exclusion understood as the right not to enter into relationships, contractual or informal, with others, see *infra*, § 6.2.4.

the freedom of the individual citizen to do what he wishes with his own life and to plan for the future.”¹¹⁷

As mentioned, once the right of ownership is guaranteed, the **right to exchange** (free contract) is also guaranteed, that is, the free exchange of the goods and services covered by this right is also ensured. In economics, therefore, the outcome of libertarian theory is *laissez-faire*,¹¹⁸ extended, of course, to the international level as well¹¹⁹; a pure market arrangement often described as *spontaneous order*.¹²⁰

As regards goods, all (and only) property titles constituted with homesteading, exchange or following a gift received from legitimate owners are therefore lawful.

Libertarians, in contrast to Thomas Hobbes, do not believe that the concept of property, of *mine* vs. *thine*, depends on the existence of a legal system (and thus the State) to define and create it. Property, and the establishment of its title, are pre-legal, arise out of behaviors and circumstances of social existence (homesteading, voluntary exchange or disposal) independently, and only later does law intervene to protect them.¹²¹

¹¹⁷ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 59–60.

¹¹⁸ Furthermore, according to a praxeology theorem, the *voluntary exchange theorem*, an act of exchange between two or more subjects takes place only if it improves (at least *ex ante*) the well-being position of each participant. Therefore, if an exchange between two individuals is voluntary, they, by carrying out that action, “reveal” their preferences; therefore, their *ex ante* utility (and, with experience, even *ex post*) necessarily increases. For a description of the functioning of the market and the economy in general through the interpretative grid of the Austrian School, see L. von Mises, *Human Action*, Yale University Press, New Haven, 1949; M.N. Rothbard, *Man, Economy and State*, Van Nostrand, Princeton, 1962.

¹¹⁹ The right of individuals to engage in voluntary trade with anyone extends to transactions between individuals residing in different countries. International trade should not be hindered by any barrier, either tariff or quantitative. In addition to being immoral, protectionism is inefficient: the most important application of the comparative cost theorem occurs precisely at the international level. Increased trade on a global basis generates a division of labor on a larger scale, which allows each party to produce the goods in which it has a comparative advantage, which generates benefits for all participants in the exchange.

¹²⁰ However, some clarifications are necessary on the topic. Within the libertarian world the expression is shared if aimed at representing the possibility of the achievement of an order without the intervention of a centralized authority (the State). If, on the other hand, it incorporates the Hayekian theory of the unintentionality of social arrangements, there is no unanimous consensus among austrolibertarians. In fact, the rationalist component of Mises and Rothbard believes that Hayek and the anti-rationalists exaggerate the weight of unintended outcomes of human action and believes instead that social dynamics are on the whole the result of voluntary actions not only in the initial impulse but to a large extent also in the consequences. If, moreover, the expression is not restricted to the description of the market in the strict sense, but suggests and designates the mode of constitution and development of a wide range of social phenomena, such as language or law, disagreements arise even then between those who tend to embrace evolutionary norms and institutions and those who believe that they should descend more rationally from the principles of theory. For the different approaches, see F. von Hayek, *Economics and Knowledge*, presidential address delivered before the London Economic Club, November 10, 1936, reprinted from “*Economica*”, new series, vol. 4, no. 13, February 1937, pp. 33–54; *The Use of Knowledge in Society*, in “*American Economic Review*”, vol. 35, no. 4, 1945, pp. 519–30; M.N. Rothbard, *The Present State of Austrian Economics*, speech at the 10th anniversary conference of the Mises Institute, October 9, 1992, reprinted in *The Logic of Action One: Method, Money, and the Austrian School*, Edward Elgar, Cheltenham, 1997, pp. 111–72; *The Consequences of Human Action: Intended or Unintended?*, in “*The Free Market*”, May 1987, pp. 3–4; H.-H. Hoppe, *Hayek on Government and Social Evolution: A Critique*, in “*The Review of Austrian Economics*”, vol. 7, no. 1, 1994, pp. 67–93.

¹²¹ By extending ownership to one’s own body as well, it can be said that in general *all* rights that people possess exist independently of the existence of political authority. One objection addressed to Lockean rights libertarians concerns the historical fairness of current property rights to land. Since theft and violence were a frequent mode of land (and infrastructure raised on it) acquisition in the past, many of the current private property titles would derive from unjust procedure, that is, not from homesteading and subsequent voluntary transfers. Libertarians retort that because of the difficulty of finding documents when going back a long way in time, current private property titles must be considered just *until proven otherwise*: the burden of proof, therefore, must be on those who possibly challenge the legitimacy of current ownership.

Property rights over goods property, despite the suspicion or hostility by which they are surrounded, are the foundation of liberty *tout court*. As Nathaniel Branden wrote, “without property rights, no other rights are possible. If one is not free to use that which one has produced, one does not possess the right of liberty. If one is not free to make the products of one’s work serve one’s chosen goals, one does not possess the right to the pursuit of happiness. And, since man is not a ghost who exists in some non-material manner, if one is not free to keep and to consume the products of one’s work, one does not possess the right of life.”¹²²

4. Non-aggression Principle

At this point it is possible to reach the conclusions of political philosophy. Self-ownership and ownership of material objects have been proven valid. They are *absolute* – not derogable by any competing principle or special circumstance – and *universal* rights – to be applied to all humanity. Then it follows that interactions, and possible collisions, between (the spheres of action of) individuals require a legal system centered on the following principle: it must be illegal to initiate violence against an individual or his goods without his consent. And since, as noted above, the individual's body is also his property, it can be more concisely asserted that it is not permissible to engage in violent acts against another's *property*. Non-aggression principle, with a more succinct formula, has also been enunciated thus: "it is illegitimate to undertake aggressions against non-aggressors."¹²³

The use of physical force is only right to respond to initial violence, that is, to stop the violence *first* committed by a person, or to sanction the person who initiated violence (enforcement rights).¹²⁴ Libertarianism therefore does not exclude at all the use of force, and its legitimacy in various circumstances of social life. Libertarians are therefore not "utopians", in the sense attributable to collectivist anarchism or Rousseau: they do not believe that man is naturally "good" but misled by institutions. Man is a mixture of good and evil,¹²⁵ and the use of force against aggressors is, realistically, a tool that even a libertarian society can hardly give up.¹²⁶

¹²³ The first formulation of this principle is by Ayn Rand, who in *Textbook of Americanism* (Nathaniel Branden Institute, New York, 1946) writes: "No man has the right to initiate the use of physical force against another man" (p. 10). Similar the statements later proposed by Murray Rothbard: "prohibition of any violence against the person or property of another" (*Power and Market*, Institute for Human Studies, Menlo Park, CA, 1970; Mises Institute, Auburn, AL, 2006, p. 7, note 4); "no man or group of men has the right to aggress against the person or property of anyone else" (*For a New Liberty*, cit., p. 8). An old American adage illustrates with good approximation the libertarian principle: "Your freedom to swing your arm stops where my nose begins". Rothbard used the expression "non-aggression axiom", however in recent years the most correct term *principle* has spread. In fact, more than an axiom it is a derivative principle, as it is the result of the logical steps that precede it, which have at the origin foundations different from it. For example, for deontological libertarians, self-ownership (and the homesteading principle that goes with it), or, for utilitarians, utility. Using the term *axiom* instead would suggest that non-aggression is an initial postulate, in itself concluded, self-evident, an *a priori* statement that is logically not refutable (in logic, true in any possible universe, of a tautological type, such as the axiom of equality: for every x, x=x); or, as in mathematics, an arbitrary postulate. As we have seen, for the Austro-libertarians *property rights* are the true foundation of the theory, and they are also logically preceding the principle of non-aggression. Authors such as Jan Narveson, Eric Mack, Richard Epstein, Loren Lomasky, and David Schmidtz do not resort to NAP as the foundation of libertarianism, as followers of contractualist or consequentialist or eclectic approaches.

¹²⁴ Consequently, to ascertain the justice or injustice of a violent action, it is not enough to simply observe the bare *fact*: we must also know whose property rights have been violated. For example, we see David putting his hands on Robert and pushing him; based on the mere observation of this action we might infer that David is the aggressor; but it may be that Roberto had previously trespassed on David's field; therefore, Roberto is the aggressor and David is only performing a legitimate response action in defense of his property.

¹²⁵ "The libertarian is committed to neither optimism nor pessimism regarding human nature. [...] Some people are good; some are not. Some good people sometimes behave badly; some bad people sometimes behave well." G. Casey, *Libertarian Anarchy*, Continuum, New York, 2012, p. 56. According to other interpretations, however, libertarians are considered optimists since they believe that private individuals, through voluntary interactions, are able to come to terms with all situations where high transaction costs are present; and thus produce an efficient and qualitative social arrangement.

¹²⁶ This aspect is even clearer when examined from the point of view of anarchist libertarianism: already in the nineteenth century an individualist anarchist like Benjamin Tucker wrote: "Anarchism means no government, but it does not mean no laws and no coercion. [...] Anarchists oppose government, not because they disbelieve in punishment of crime and resistance to aggression, but because they disbelieve in compulsory protection." B. Tucker, in "Liberty", vol. 8, no. 30 (212), January 2, 1891, p. 2.

The term “aggression” contains within itself the circumstance of using force *first*, and also includes the *threat* of it.¹²⁷ It is therefore more correct than the term “coercion”, sometimes used by libertarians (probably due to the influence of Ayn Rand). “Coercion”, in fact, is a mode of using force that can also be just, for example, if, as noted above, applied in response to another’s aggression (such as sanction). “Coercion” (like “force” or “violence”) is a neutral term; “aggression”, on the other hand, possesses the negative connotation implied by the violation of a right; it denotes an unjust invasion.

Non-aggression principle therefore must be understood in a rigorous “negative”, prohibitory meaning, and should not be confused with the intention of minimizing the total amount of aggression in society, typical of a consequentialist view, according to which it is lawful to inflict a given amount of aggression to prevent a greater one.¹²⁸

Aggressive acts can ultimately be reduced to two main types: aggression against the body and property of others (which can occur through either malice or negligence).

The first can consist in turn or in direct damage to the body (*battery*) or in the restriction of possible actions for the victim (restriction of freedom in the strict sense). Direct damage to the body can take two ways, which in order of seriousness are: murder and compromise of physical integrity (in the language of criminal law, injury, beating, sexual violence). The restriction on the actions that the victim would have liked/could take is in all cases in which through the threat or direct action a person is forced to be restricted to a place (even without visible physical damage, as in the previous case), such as kidnapping;¹²⁹ or is forced to perform an action or an activity against his will.¹³⁰ Basically, it is coercively deprived of the freedom of self-determination.

The attack does not need to inflict severe damage or persistent physical pain: even a spit in the face or the hat blown up by the head represents physical invasion.¹³¹ As well as a simple state of apprehension induced in the victim (e.g. going towards her with a gun – *assault*).¹³² Regarding *psychological* aspects in general, libertarians recognize the existence of compensable damage only as a consequence and corollary of a direct aggression: the fear and uncertainty induced, for example, by a theft suffered in one’s home represents an aggression in addition to that represented by the possible theft of physical property (see *infra*, § 8.1). Any other behavior that may disturb

¹²⁷ The threat, clear and direct (intimidation), is the only limit allowed by libertarians to freedom of expression; a typical example is the phrase “stand and deliver!”.

¹²⁸ An example would be the imposition of conscription as a deterrent to foreign invasions. Libertarians do not accept this interpretation, which legitimizes positive actions. Using Nozick’s terminology, the prohibition of aggression is a *side constraint* to be respected, not a goal to be promoted.

¹²⁹ Which Rothbard defined “fixed term slavery”.

¹³⁰ For example, military conscription or mandatory national service, which libertarians have historically opposed, or the obligation to rescue a person. Enslavement is the case that to the most extreme extent represents the obligation to carry out actions against one’s will; but it also incorporates the absence of liberty as an impediment. The synthetic expression “aggression” therefore encompasses “impediment and *obligation*”, the absence of which qualified liberty for the classical liberals.

¹³¹ On the entire issue relating to the criteria for assessing the existence of an aggression and the limits of self-defense, see *infra*, Chapter 6 and M.N. Rothbard, *Law, Property Rights, and Air Pollution*, in “Cato Journal”, vol. 2, no. 1, Spring 1982, pp. 55–99.

¹³² As has been said, the threat represents an aggression, therefore, to be included in the assault subset. In relation to an impending aggression, “apprehension” is a more appropriate term than “fear”, because it highlights the awareness of the incoming aggression and the action of the aggressor that causes that awareness, rather than the subjective psychological state of the victim. Apprehension is not the same as fear, in fact the fact that the victim is brave does not reduce or eliminate the aggressor’s guilt. For libertarians the apprehension is the circumstance that makes attempted crimes punishable (attempted murder, attempted theft, etc.): if the victim becomes aware of the attempt, even if not completed, the apprehension aroused in him triggers the obligation on the guilty to compensate.

feelings and mental states such as aesthetic sensitivity or decency, unless it is the subject of contractual agreements,¹³³ should not be prohibited¹³⁴.

Aggression to things in turn can take three ways: the subtraction (theft, robbery, extortion, fraud)¹³⁵ for movable property (including money), trespass to land for real estate¹³⁶ and damage (for both).¹³⁷

As regards real estate, a further classification of the types of invasion must be carried out: trespass, which is the invasion by a tangible entity, and the nuisance, which is the invasion by intangible entities (radio waves, acoustic waves, particles, fumes etc.).¹³⁸ Nuisances in turn can be

¹³³ For example, if the rules of a condominium that one has voluntarily joined prevent the facade of the building from having particular colors or obscene images depicted on it, then residents do not have the right to violate them.

¹³⁴ Nor can any physical effects resulting from psychological discomfort be invoked to qualify someone else's behavior as aggression: for example, I cannot claim that the type of music (not very loud, otherwise it would constitute harassment) listened to by my neighbor causes me increased blood pressure, which in turn can cause me serious ills such as heart attack or stroke, and therefore consider his listening to music to be unjust invasion. As will be seen below, uncertain, indirect, and potential effects cannot be grounds for the illegality of actions.

¹³⁵ Most libertarians assimilate fraud, which involves the appropriation of someone else's property without his consent, to theft (Rothbard calls it "implicit theft"; many breaches of contract would fall into this circumstance). Some critics argue that libertarianism does not have a coherent and convincing standard for condemning fraud: any "misleading representation" of the relevant facts is nothing more than a manifestation of freedom of expression, and therefore should not be considered an aggression. Furthermore, "bad purchases" exist, they are a consequence of the buyer's superficiality or ingenuity and in these cases the libertarians, shunning paternalism, appeal to the buyer's personal responsibility. J.W. Child, *Can Libertarianism Sustain a Fraud Standard?*, in "Ethics", vol. 104, no. 4, July 1994, pp. 722–38; T.I. Emerson, *The System of Freedom of Expression*, Random House, New York, 1970. Benjamin Ferguson responded to Child by proposing the expedient of an "external solution": deceitfully obtained consent is morally invalid when it is obtained through acts that are impermissible according to a full theory of moral permissibility. B. Ferguson, *Can Libertarians Get Away with Fraud?*, in "Economics and Philosophy", vol. 34, no. 2, 2018, pp. 165–84. Some libertarians reply identifying fraud not with theft but with the breach of contract, in accordance with the following reasoning: communication is the necessary prerequisite for carrying out any transfer of title deeds and cannot be equated to a mere act of expression of opinions. If the behavior of the defrauder is voluntary and the good is not at all transferred or is a good other than the agreed one or contains substances that can damage health, then in these cases it is a breach of contract, and the fraud is punishable. Mark D. Friedman believes that fraud is different from theft but is equally punishable on libertarian grounds. He considers fraud an alteration of the victim's beliefs (state of mind), a different circumstance from the *tout court* subtraction of the property perpetrated by the thief. The victim *voluntarily* transfers his property to the fraudster. Of course, he does it because he is deceived, but this circumstance is different from the start of the violence by the thief or the robber, who do not need to induce a false belief in the victim. However, Friedman believes that, although on other grounds, fraud can be consistently prohibited by libertarianism. Its foundation is represented by Nozick's "side constraints upon action", derived from the Kantian notion of respect due to human beings as rational agents, whose status requires that they are never treated as means. For Friedman, this ethical criterion precludes not only violence in the strict sense but also fraud, in which the perpetrator *intentionally* prevents the victim from making a free choice; and this is what distinguishes fraud from exaggerated or tendentious representations that can lead people to make disadvantageous choices, and which should not be sanctioned. M.D. Friedman, *Libertarian Philosophy in the Real World: the Politics of Natural Rights*, Bloomsbury, New York, 2014, Kindle e-book.

¹³⁶ This mode also includes invasion to occupy someone else's building, for example the apartment. Forcing a person to sell his property, as occurs for example in many extortions, can be considered, for the purposes of our non-strictly legal classification, a subspecies of the occupation of a real estate.

¹³⁷ For example, vandalism or arson.

¹³⁸ Pollution, whether of air or water, represents aggression. The often counterintuitive or alternative to established ways of thinking nature of libertarian proposals is manifested in the most resounding way in matters of the environment. Indeed, there is perhaps no idea more ingrained in common sense than that which considers the environment a collective good, the arrangement of which must be removed from the logic of the market and profit, and regulated by legislations, prohibitions and "positive" public actions. Libertarians, on the other hand, believe that pollution is a phenomenon linked not to capitalism, but to its absence; not to economic freedom, but to the failure of a market based on property rights to function. And the solution therefore lies in a broader allocation and respect for property rights; thus in the total privatization of any natural element, from land to water, from forests to oceans, lakes and rivers. Associated with the free development of technology. Each owner, in fact, has an incentive to conserve and enhance their assets. Environmental protection would occur through the internalization of externalities: the costs of pollution are made to be paid by the responsible parties, but not through the public hand, but rather by letting the injured party take

divided into visible (perceptible by human senses, e.g. excessive noise,¹³⁹ unpleasant odors, fumes) or invisible (e.g. radio waves, carbon dioxide, low-intensity radiation). While trespass and visible nuisance are always illegitimate because they interfere with the owner's use and enjoyment of the property, invisible nuisance is not always so, but only if it causes physical harm, to be proven beyond any reasonable doubt based on the medical and scientific knowledge of the time.¹⁴⁰ The damage, representing an interference with the exclusive possession, use or enjoyment of the property by the owner, transforms the crossing of borders into invasion. Therefore, until it is proven that radio waves are harmful, the owner of a piece of land cannot interfere with the radio waves passing through it, which belong to the transmitter, that is, the one who first transmitted a wave at a given frequency of X kilohertz into the ether. Or, taking up the example proposed (also by utilitarian libertarians like D. Friedman)¹⁴¹ to challenge the absoluteness of the rights of 'moral' libertarians, if I turn on a light in my room, the entrance of photons into my neighbours' houses is not an aggression and therefore the paradoxical outcome of the ban on lights in my house is not a consequence endorsable by law. So are CO₂ emissions from human respiration.¹⁴²

Another important aspect is that there must be a direct causal connection (*strict causality*) between the action of the invader and the damage suffered by the victim¹⁴³ (and, for some authors,

legal action for damages and to stop the polluting action, with a further deterrent effect on polluters. For pollution caused by individual cars, there is the practical difficulty of identifying the responsible party and demanding compensation. In a libertarian society, being roads privately owned, the person responsible for the pollution would be the owner of the road on which cars pass and applicants would be residents near the road. "Joinder", that is the union of several plaintiffs or more defendants in the same case, very useful in environmental matters, should be allowed only if the defendants (alleged aggressors) acted in concert or only if the plaintiffs (alleged victims) have a common interest which is clearly prevalent over individual interests. The libertarian theory instead rejects the "class action" because it acts on behalf of those who are not aware or have not consented to adhere to the case. M.N. Rothbard, *Law, Property Rights, and Air Pollution*; T.L. Anderson, R.D. Leal, *Free Market Environmentalism*, Westview Press, San Francisco, 1991; AA.VV., *Man and Nature*, The Foundation for Economic Education, Irvington-on-Hudson, N.Y., 1993; C. Lottieri, G. Piombini (eds.), *Privatizziamo il chiaro di luna! Le ragioni dell'ecologia di mercato*, Facco, Treviglio (BG), 1997; N. Papafava, *Proprietari di sé e della natura*, Liberilibri, Macerata, 2004. Relative to the controversies over the anthropogenic origin of global warming and climate change, a position of skepticism prevails among libertarians, even with respect to the dominant catastrophism in the media. Their thesis challenging the alarms about global overpopulation is also unconventional: cf. A. Iraj, *The Overpopulation Fallacy: Why More People Means More Knowledge and Prosperity*, in "Mises Wire", April 11, 2025, <https://mises.org/mises-wire/overpopulation-fallacy-why-more-people-means-more-knowledge-and-prosperity>.

¹³⁹ "Property rights can be violated by sound-waves, in the form of a loud noise, or the sounds of your neighbor's hi-fi set while you are trying to sleep. Such violations of property rights are of course the subject of action in the courts." J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 66. Of course, it is not possible to set a single decibel threshold above which there is automatically disturbance of others' peace and below which there is not; it will depend on the circumstances, assessable *ex post* by the judge; but the essential point is that the acoustic intensity may represent aggression.

¹⁴⁰ Cf. M.N. Rothbard, *Law, Property Rights, and Air Pollution*, cit.

¹⁴¹ D. Friedman, *The Machinery of Freedom*, 3rd ed., Harper & Row, New York, 2014 [1973], pp. 163-4.

¹⁴² Cf. W. Block, *David Friedman and Libertarianism: A Critique*, in "Libertarian Papers", vol. 3, art. no. 35, 2011, pp. 4-6, <https://libertarianpapers.org/wp-content/uploads/article/2011/lp-3-35.pdf>.

¹⁴³ The burden of proving the aggression rests with the plaintiff, i.e., the alleged victim, who accuses the defendant of aggression, as it is the plaintiff who generally seeks to change the present state of affairs (libertarians are in favor of *laissez-faire*) and who therefore should be expected to bear the risk of failure of proof or persuasion. Therefore, there is a presumption of innocence for the defendant. As far as the standard of proof is concerned, it must always be "beyond a reasonable doubt", which is a more rigorous standard than the "preponderance of evidence", in which it is only 51% probability to convict the defendant. In contemporary law the first type of standard of proof is used in criminal law and the second in civil law, but for libertarians the first should always be used, as it does not matter the seriousness of the punishment, but the verification of the guilt itself, which always deserves the same evidentiary rigor: defendants deserve as much protection in civil torts as in criminal cases. On the other hand, for libertarians, criminal law should graft onto an enlarged law of torts (see *infra*, § 8.1). If there is no certainty about the development of the facts, nothing

the *intent*¹⁴⁴). This circumstance qualifies strict liability.¹⁴⁵ Libertarians reject any form of indirect liability (such as that of the employer for damages caused to third party by the employee in the course of his work), as well as the inclusion of *potential*¹⁴⁶ and *indirect*¹⁴⁷ effects. So, by way of example, according to libertarians the smoker should not be punished for alleged damage that passive smoking may have caused to people living near him.¹⁴⁸

Likewise, actions that may cause indirect damage, that is, a simple loss of potential future well-being, but which do not represent aggression to the other person, such as competition, or the revelation of defamatory gossip, or the omission of aid, or the refusal to do begging or to sign a

should be done, because it is better to let an aggressive act slip through, therefore that a guilty person is acquitted, than to impose coercion on an innocent person.

¹⁴⁴ For H.-H. Hoppe, unlike Rothbard, liability arises not only in the presence of the objective requirement of “physical” causality, but also of the subjective requirement of *intent*. The causal relationship and guilt are two distinct elements, and both must be present for liability to be attributed. This implies that, if the fault is absent, and only the causal relationship exists, the agent cannot be held liable, and therefore guilty; but also that, if the fault is present, he is guilty even if the direct physical invasion by him/her is missing in the causal relationship. Basically, not all physical invasions involve liability, but some actions involve liability even in the absence of physical invasion. An example of the first case is that of driver A who is traveling on a road; B jumps from behind a tree onto the road and is killed. A should not be held liable. Life, in fact, involves an inescapable element of risk. This clause must therefore be added to Rothbard’s criterion: no one is responsible for “accidents” that occur, whose risk must be assumed individually (and possibly insured). But, as mentioned, for Hoppe the intentional element generates liability even in the absence of direct physical invasion. The example is as follows: A is a hierarchical superior of B; suppose that A can accurately calculate when a tree is struck by lightning; therefore, wanting to kill B, A sends him under this tree; and B is hit by lightning. In this case Hoppe believes that A is guilty because he caused the event, as his will is based on the awareness of the certainty of the causal relationship. If A did not have the certainty of the lightning fall, he should not be considered guilty, because in this circumstance there would only be hope, but the intent would be missing, which, as we have seen, is the element that configures the *action*. Rothbard, on the other hand, allegedly would not have considered A legally guilty in either case, because, on the basis of his strict causality alone, he would have assessed A’s orders as well as verbal expressions, not as “physical” causes of an invasive act. Following the Misesian praxeology, the action that generates guilt must be understood in a broad sense: even not acting is a form of action, therefore the intention undoubtedly manifests itself in voluntariness, but also in negligence (I could have avoided the harmful fact, and then not having done it depends on me, it is my “action”). H.-H. Hoppe, *Property, Causality, and Liability*, in “The Quarterly Journal of Austrian Economics”, vol. 7, no. 5, Winter 2004, pp. 87–95. S. Kinsella, to highlight the importance of the intention in attributing responsibility, offers the following example: A builds a letter-bomb and mails it to B, which, upon opening it, dies in the explosion. The courier who delivered the package, despite being part of the “physical” causal chain that generates the murder, being unaware, therefore devoid of intention, is obviously innocent. The courier was, in a praxeological sense, one of the *means* used by the killer (together with other resources, such as some physical objects: the explosive, the parcel paper, etc.) to achieve its *goal*. Therefore, the intervention of another individual does not necessarily always interrupt the causal chain; sometimes it is true, such as in incitement to commit a crime (the free will of the instigated persons removes liability of the instigator, who therefore is not the *cause* of the crime committed; although for Kinsella this is not always true, depends on the means employed), but it is not a rule. S. Kinsella, P. Tinsley, *Causation and Aggression*, in “The Quarterly Journal of Austrian Economics”, vol. 7, no. 4, Winter 2004, pp. 97–112.

¹⁴⁵ If the damage is caused in the course of self-defense (for example, I break an aggressor’s watch during my effort to fend off his assault), there is no liability.

¹⁴⁶ For example, if you are drunk you could cause a fight, or a car accident; therefore, the consumption of alcohol is *tout court* forbidden. As we shall see about legal paternalism (Chapter 7), libertarians retort that these are hypothetical harms, placed in a future time horizon that is too long and not certain, while the compression of freedom deriving from the prohibition of drinking alcohol is certain and direct.

¹⁴⁷ Being *indirect*, in the sense understood here, does not mean lack of temporal proximity between cause and effect, but rather that factors beyond the agent’s control intervene in the causal chain. Indeed, there may be a long causal chain, even one that is very extensive in time, which does not exempt the first agent from responsibility. For example, person A, in order to kill E, may devise a plan that consists of hiring B who will later hire C to hire D to carry out the murder. However remote the cause, A clearly remains responsible for the action.

¹⁴⁸ The fact that many smokers do not contract lung cancer, and vice versa that some non-smokers contract it, shows that many complex variables operate for this disease, and therefore there is no evidence of a (direct) causation between smoking and disease; as a result, the correlation cannot be used as legal proof for someone’s guilt. In general, statistical or probabilistic correlations cannot be used as evidence that a given action is aggressive. Correlation is not causation.

contract or to marry a person, should not be considered illicit.¹⁴⁹ This point will be taken up in Chapter 6 in relation to the concept of *harm* proposed by John Stuart Mill.

The “aggression”, and the consequent non-freedom, of libertarians is also very distant from the “domination”, and the non-freedom, of neo-republicanism, consisting in the condition in which an agent has the ability to arbitrarily¹⁵⁰ interfere in the choices of another agent as a result of an imbalance of power between the two (not only political, also economic or social); where interference also includes the condition of psychological subjection, not just aggression in the strict sense. which includes among the violations of individual’s independence also subjective psychological circumstances such as the reverence or condescension towards specific social figures (the employer, the superior, the creditor, the fickle parent) .¹⁵¹ As will be seen shortly, the libertarian criterion resolves the contradictions remained unsolved due to vague and imprecise definitions of the concept of freedom.

In the conception in question, *consent* is an important element:¹⁵² *volenti non fit injuria*, consequently if the passive subject (the one who suffers violence) is consenting, as is the case, for example, in a boxing match or as was the case in dueling (now outlawed),¹⁵³ the violent act must not be prohibited: in fact, it does not represent an *aggression* in the sense outlined above.¹⁵⁴

In summary: everyone should be free to do whatever he wants with his own resources, provided that this use does not *physically* interfere with the use and enjoyment of another person’s resources.¹⁵⁵ This confluence of the concept of liberty into the concept of property, which will be

¹⁴⁹ The most prominent exponent of the opposite tradition of thought, interventionist and socialist, which considers “coercion” (aggression) towards an individual to refuse to exchange with him, was Robert L. Hale: the possibility of turning to another seller would represent “threatening” and thus power exercised by the customers over each potential seller (*Coercion and Distribution in a Supposedly Non-Coercive State*, in “Political Science Quarterly”, vol. 38, no. 3, September 1923, pp. 470–94). The concept of “economic power” was introduced by thinkers hostile to free market, considered equivalent to any other coercive-type power. A subject that would typically have it is the large corporation towards employees or suppliers. But for libertarians all these relationships are part of contractual freedom. A firing is the refusal by the employer to continue a certain exchange; “under a regime of freedom [...] every man has the power either to make or not to make exchanges as and with whom he sees fit” (M.N. Rothbard, *Power and Market*, cit., p. 281). Denying this means introducing a ‘right’ on the property of the employer for the worker.

¹⁵⁰ An act is arbitrary if it is subject only to the decision and judgment of the agent performing it.

¹⁵¹ Consequently, violations of an individual’s independence also include subjective psychological circumstances such as reverence, servility or condescension towards social figures in a position of strength (the employer, the superior, the overbearing husband, the creditor, the tyrannical teacher, the despotic parent), even if they are not actually exercising the actions of subjugation, it being sufficient that they can (have the right and ability to) perform them without fear of sanctions. Representatives of this current of thought are P. Pettit, B. Kriegel, J. Habermas, R. Bellamy, R. Dagger, F. Lovett, M. Viroli, C. Laborde, J. Maynor.

¹⁵² “Libertarians advocate *radical voluntarism*. Libertarians want all human interactions to be based on consent, not force.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 3.

¹⁵³ Other examples of legitimate “intrusions”, because required by the passive subject, are the operations of a surgeon or dentist, the physical suffering desired by the masochist, or euthanasia at the request of the patient.

¹⁵⁴ The only case in which consent (and even a previous act of violence) may be lacking for the passive subject of the forced act is the use of means of correction by parents against children (within a certain age) or in general the execution of actions expressing parental authority, which therefore represent a legitimate use of force. About “authoritarianism” in social interactions, if voluntary, for libertarians it is lawful. On the other hand, in contemporary societies there are different dynamics characterized by the exercise of authority that are normally accepted, such as teachers towards students.

¹⁵⁵ This is also the most rigorous definition of the essential core of libertarian philosophy. Listed below are various definitions or concise descriptions offered by authors of libertarian approaches: Libertarianism [...] is a philosophy of personal liberty, the liberty of each person to live according to his own choices, provided that he does not attempt to coerce others and thus prevent them from living according to their choices” (John Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 14). “[According to] the libertarian [...] freedom is a condition in which a person’s ownership rights in his own body and his legitimate material property are *not* invaded” (Murray N. Rothbard, *For a New Liberty*, cit., p. 43). There is “one only universal obligation: [...] to hurt no one” (Lysander Spooner, *Natural Law*,

examined in detail in Chapter 6, is well evoked by this passage from Hospers, who describes the content of any right by employing the terms that recall the ordinary intimations of impassability of physical property: “When I claim a right, I carve out a niche, as it were, in my life, saying in effect, “This activity I must be able to perform without interference from others. For you and everyone else, this is off limits.” And so I put up a “no trespassing” sign, which marks off the area of my right. Each individual’s right is his “no trespassing” sign in relation to me and others.”¹⁵⁶

The non-aggression principle is a general rule, applicable in all situations. Its logical implications allow the entire libertarian edifice to be erected. If there were exceptions it would be either a wrong rule or a simple guideline, that could be followed in most but not all circumstances.¹⁵⁷

“Lifeboat situations” and the condition of children represented the main challenges facing libertarians¹⁵⁸ in relation to the coherence of the non-aggression principle.

The former are states of need, those situations in which a person, in order to save his life, is forced to violate a property right on the physical goods of others, such as the castaway who clings to a lifeboat not his own. Critics of libertarianism resort to such counterexamples to undermine the regime of integral freedom of contract advocated by libertarians. Any exception introduced would undermine the coherence of the theory and in particular the absoluteness of non-aggression

A. Williams & Co, Boston, 1882, p. 6). “Libertarianism is the view that each person has the right to live his life in any way he chooses so long as he respects the equal rights of others” (David Boaz, *The Libertarian Mind: A Manifesto for Freedom*, Simon & Schuster, New York, 2015, p. 6). “The idea of libertarianism is to maximize individual freedom” (Jan Narveson, *The Libertarian Idea*, p. 175). “Libertarians believe that so long as we do not violate others’ rights, we should each be free to live as we choose” (Jason Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. xi). “Libertarians agree that liberty should be prized above all other political values” (Tibor Machan, *The Libertarian Reader*, Rowman & Littlefield, Totowa, NJ, 1982, p. vii). The possibility of resorting, for libertarian theory, to the stringent – as adiafours – definitions of analytic philosophy as a philosophy of language is compromised by the evaluative implications of that theory. Suppose we use F.E. Oppenheim’s logico-positivistic arsenal relating to *social freedom* and write the following proposition that is only descriptive of negative liberty, the one that comes closest to libertarian doctrine: “With respect to Y, X is free to do x only if Y does not preclude X from doing x.” Absent from this statement is a description of circumstances decisive for libertarianism; to list two, whether or not Y was previously an aggressor (of property) of X and whether or not Y *consented* to the action x affecting his property. About the first aspect, if Y had previously attacked X, he would not have the right to preclude retaliatory actions by the latter. The proposition, therefore, could hypothetically be rewritten as follows: “With respect to Y (non-aggressor), X is free to do x only if Y does not preclude X from doing x.” However, in such a case, it is necessary to preliminarily deconstruct through linguistic analysis all types of aggression and all meanings of the term “aggression”; which incorporate, however, a normative connotation, not just a descriptive one, since, going backwards, one inevitably arrives at a point where one has to determine when the use of force is just or unjust; that is, one has to confront a value judgment. As for the problem of “consent,” one could counter-argue that the expression “Y does not preclude X from doing x” tacitly incorporates it; however, the claim of the coldly factual nature of the analytical procedure, to whose field of inquiry motivational aspects are foreign, renders the defense fragile. Again, it would be undue to rewrite the proposition in this way, “With respect to Y, X is free to do x only with Y’s consent”; for to have explicated, for the sake of completeness, the “consent” factor leaves untouched the problem of the nature of that concept, an intrusion of a psychological kind that pollutes the purely behavioristic (in the sense of “externally phenomenal”), empirical dimension of analytic methodology, which aspires to provide a “scientific” account of social dynamics, that is, elementary assertions about sensible data. In conclusion, the definitions of libertarian freedom (like, on the other hand, those of all theories belonging to the field of political philosophy) possess an evaluative connotation that neopositivist analytical language cannot assume and describe. For a logico-positivist analysis of the concept of social freedom (evaluative in intention and thus without specific libertarian implications) see F.E. Oppenheim, *Dimensions of Freedom*, Macmillan, London, 1961.

¹⁵⁶ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 56.

¹⁵⁷ “The NAP is a general rule [...] If a general rule does not apply to the specifics then something is wrong with it. Either it is not a general rule but more like a guideline to which there are exceptions or the general rule is wrong. By definition a general rule must apply to every specific situation that is part of it.” W. Block, K. Williamson, *Is Libertarianism Thick or Thin? Thin!*, in “Italian Law Journal”, vol. 3, no. 1, 2017, p. 5.

¹⁵⁸ Even by utilitarian libertarians. Epstein’s position on the issue is outlined in Chapter 9, note 488.

principle, attenuating property rights. Not allowing exceptions, on the other hand, would expose libertarians to the charge of idolatry of principles to the point of inhumanity, tolerating a disproportion between the property right originally violated and the outcome of the retaliation.¹⁵⁹

Rights-libertarians reply that such situations do not create any logical difficulty to theory and continue to defend the inviolability of rights even in such extreme cases. The one who violates the property of others, even if to save one's life, is an invader and must be punished. In the case of the castaway, he will be punished after getting on the mainland.

W. Block turned the accusation of inconsistency back against critics. If it were true, he observed, that to save a life (in danger not because of aggression by others) it is necessary to violate a property right on physical goods, why do utilitarian libertarians not deprive themselves of a part of their wealth to save some people who starve, for example in other areas of the world? And it would not be enough to deprive yourself of a limited sum of money, because the logical implications of their argument dictate that the transfer must continue as long as their standard of living is higher than that of people who are starving; that is, in the end, the transfer must be of such a size as to leave in their pockets only the amount of money that prevents them from starving, no more. That they have not done so shows they do not even take their own arguments seriously.¹⁶⁰

Ayn Rand replied that failure to apply the normal rules in emergency situations does not affect the overall soundness of the theory. In a shipwreck or fire an individual can offer help, but in the situations that the author defines as *metaphysically* normal, what must not be imposed is a continuous provision over time, for example to alleviate the poverty or physical suffering of others.¹⁶¹

As for the alleged logical difficulties created by the condition of children, the problem is linked to the use of means of correction or to the imposition of conduct by parents towards human beings

¹⁵⁹ The classic example proposed by critics of the absolutist conception of the NAP to denounce the disproportion between violation and response is as follows: A unintentionally oversteps B's property by only twenty inches and B shoots him. For a review of criticisms of the NAP as the foundation of libertarianism see M. Zwolinski, *The Libertarian Nonaggression Principle*, in "Social Philosophy and Policy", vol. 32, no. 2, 2016, pp. 62–90. As a left-libertarian who is also sensitive to some liberal issues, Zwolinski believes that rights over people's bodies should be treated differently from rights over property, and therefore physical violence against a person is a different thing from the violation of property rights over external resources; whereas standard libertarian theory conflates everything into one concept of property. A NAP relating to persons is correct but must be accompanied by other moral rules for other situations. He proposes a *nonabsolutist* NAP that represents only an initial *presumption*, but one that can be overridden under circumstances that call into question other weighty moral considerations that are more important than trespassing on property in the strict sense (e.g., if a parent does not feed his infant child, there is a right to enter the parent's property to feed the child). The author acknowledges that his version of the NAP represents neither a complete moral theory nor a complete political theory, but only a "piece" of theory that needs to be supplemented with other principles; and that no clear and unambiguous guidance to legitimate actions can be derived from it. Jason Brennan, too, believes that liberty and property rights are *prima facie* rights (strong presumption in their favor), which can be overridden, resulting in the prohibition of certain actions, if an independent justification (very strong, the author points out) is adduced.

¹⁶⁰ W. Block, *Turning Their Coats For the State*, in LewRockwell.com, <http://www.lewrockwell.com/2003/02/walter-e-block/turning-their-coats-for-the-state/>, February 17, 2003.

¹⁶¹ According to the utilitarian libertarian Raymond Bradford, this reply by Rand destroys the universality of the principle of non-aggression: "if one dispenses with observing the nonaggression axiom in any situation in which conditions "appropriate to human existence" do not prevail, as a practical matter one may dispense with it whenever one doesn't like his circumstances. [...] What is to keep an individual from declaring a personal state of emergency whenever it seems expeditious to initiate the use of force? [...] To the question, "When is it legitimate to initiate the use of force against others?" the libertarian moralist answers, "Never! Unless, of course, you really *need* initiate force...". R.W. Bradford (under the pseudonym Ethan O. Waters), *The Two Libertarianism*, in "Liberty", vol. 1, no. 5, May 1988, p. 8. In fact, the concession made by Rand cannot be extended to all "moral" libertarians; Rothbard and Block, for example, have not responded to objections to absoluteness by admitting exceptions. Instead authors who present attenuated versions of aggression in specific cases are Huemer and Narveson.

unable to direct their own lives. For example, Thomas Szasz observed that a parent must use force to prevent a young child from ending up on a road where cars pass; and he concluded that the non-aggression axiom is impossible in practice.¹⁶² However, parental authority over children is admitted by libertarians (indeed, invoked, as a deterrent to State meddling in choices relating to children): the parents are the owners of the children, even if it is a property of a particular nature, limited both in time and in kind. Parents keep the children in a sort of guardianship (a “trustee”) until the latter are intellectually able to fend for themselves; therefore, parental actions that limit the freedoms of children are legitimate and not in contradiction with the non-aggression principle.¹⁶³

It is important to emphasize that for libertarians the limits to human actions involving non-freedom are only those imposed by other human beings. *Natural* causes or those *internal* to human beings do not represent compressions of freedom/property. Natural obstacles should not be considered limitations of freedom but lack of *power*, understood as *inability*. One example is the impossibility for humans to cross the ocean with a jump. Some natural laws cannot be violated, and yet the action prevented is not an absence of freedom, which in the “negative” sense always implies the interference by human beings.¹⁶⁴ In addition, the constraints must be *external*, not *internal*, to the person: character (including irrational desires or false beliefs)¹⁶⁵ and physical elements

¹⁶² John Hospers has proposed a more sophisticated case, that of parents who for religious reasons refuse medical treatment that could save their child’s life. In this case Rand replied that the child should be taken away from the parents, to safeguard his rights. Of a different opinion Rothbard.

¹⁶³ Libertarian Kathleen Touchstone argues that government should exist only to guarantee children’s rights (and rights of those with diminished capacity) in the event of murder or abuse committed by parents or caregivers. She believes that anarcho-capitalism has a “flaw” on this front. In this system, only the victim can take action to protect any right that may be violated. But the aforementioned subjects are not “by nature” able to provide for them, and therefore a disparity would be created between individuals in the possession of rights. The presence of government must therefore serve to guarantee these rights by acting against any families or caregivers aggressors. In addition, because of this natural inability to fend for themselves, according to the author, children enjoy “positive” rights to parental care, with government protection of those rights if they have been violated by their caregivers. K. Touchstone, *Rand, Rothbard, and Rights Reconsidered*, in “Libertarian Papers”, vol. 2, art. no. 18, 2010, <http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-18.pdf>. Of a contrary view was Rothbard, who held that there was no obligation on the part of parents to support (and thus also to feed) their children, even if they were infants and unable to provide for themselves. M.N. Rothbard, *The Ethics of Liberty*, cit., Chapter 14, *Children and Rights*. In contrast, David Conway believes that parents, having *caused* the existence of the child, are responsible for it. Consistent with this view, however, he argues that a stranger has no obligation to rescue and feed a child he or she should come across. D. Conway, *Classical Liberalism: The Unvanquished Ideal*, St. Martin’s, New York, 1995, pp. 21–3.

¹⁶⁴ This point is grasped clearly as early as the eighteenth century by the Enlightenment philosopher Claude-Adrien Helvétius, who in his essay *De l’Esprit* (1758) writes: “the free man is the man who is neither in chains, nor imprisoned in a cell, nor terrified like a slave by the fear of punishment [...] it is not a lack of freedom not to be able to fly like eagles or not to be able to swim like whales” (my translation). Similarly, Isaiah Berlin: “Coercion is not, however, a term that covers every form of inability. If I say that I am unable to jump more than ten feet in the air, or cannot read because I am blind, or cannot understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced. Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act.” I. Berlin, *Two Concepts of Liberty* (1958), in *Four Essays on Liberty*, Oxford University Press, Oxford, 1969, p. 121.

¹⁶⁵ According to the conception of freedom as *self-realization/self-perfection*, supported by communitarianists like Charles Taylor e by neoaristotelians Amartya Sen and Martha Nussbaum, the quality of goals is relevant for qualifying freedom. Freedom coincides with the realization not of the trivial purposes, but of the fundamental ones, which are those which aristotelically guarantee the human flourishing, that is, the development of the human faculties. According to this conception, therefore, a person who spends all his time watching telenovelas suffers from internal (and not visible) restrictions to freedom. Conversely, paternalistic prohibitions, such as that on smoking, are not considered a compression of freedom but the exact opposite, since they remove an obstacle to self-realization and a better life.

(diseases, substance or mental¹⁶⁶ addictions),¹⁶⁷ even if can reduce the range of actions of the individual, do not represent a compression of freedom in the libertarian meaning, focused only on social interactions. This is a central element in the difference between libertarians and egalitarians (of various degrees) and, as will be seen further on, it has enormous implications in relation to the legitimacy of the policies to be undertaken.

From these considerations it follows that the basic function of the law¹⁶⁸ (excluding here the rules arising from specific contractual agreements) must be to protect the individual, and his property, from the violence of others. Libertarian rights are typically “negative” rights, which imply a correlative obligation of others *not to do*. The rights (to specific freedoms) are nothing more than the application to the various particular circumstances of a single right/duty to non-aggression (right not to be attacked and duty not to attack).¹⁶⁹

So libertarians do not recognize general “positive” rights, arising from the concept of “positive” freedom, so defined because it instead implies an obligation on the part of others to “do” something, to perform an action for the benefit of the subject whose that type of freedom is preached,¹⁷⁰ in particular to coercively transfer goods, services or money to him¹⁷¹ (which means being forced to work for him for a share of the time without compensation). This notion emerged at the turn of the nineteenth and twentieth centuries and identifies liberty with the *effective capacity (power)* to act, shifting the concept of liberty to that of *well-being*, which inevitably implies the right to receive

¹⁶⁶ For example, the compulsive gambler. When such a person is said to be a slave to that desire, it is a meaning that can be “of great importance for the therapeutic psychologist, who attempts to remove the psychological stumbling-blocks to the realization of the person’s rational desires. Nevertheless, it is a different sense: the word “slave” here is a metaphor. The literal slave has his life and work subject to the commands of another human being, external to himself; such a person is not free in the first and fundamental sense [...] And it is this literal sense which concerns us in political philosophy. Southern blacks were quite literally slaves; the compulsive gambler who flies to Las Vegas every weekend is not, for no *other* human will intervenes to prevent him from acting in accordance with his voluntary choices. Whatever problem he may have in altering the trend of his choices is a problem between him and his psychiatrist, and does not affect his enjoyment of political freedom or rights.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 17.

¹⁶⁷ Poverty also does not represent a lack of liberty in the sense described here (unlike the assertions of proponents of the concept of “positive” liberty, examined below).

¹⁶⁸ This is not the place to dwell on the nature and manner of legal production in a libertarian society. A few general orientations can only be briefly mentioned here. In the libertarian view, law does not coincide with legislation, rules enacted by parliaments or other authorities in a top-down logic. Law has been the product of a complex evolution that, in customary or judicial forms, has seen the emergence of useful rules to prevent disintegration and enable the development of human communities. The predominantly Anglo-American theoretical elaboration of libertarianism highlights a preference for case law, which is better suited to prevent regulatory proliferation, inevitably associated with a compression of economic and social freedom. In terms of content, a legal system would be characterized by a few norms, general and abstract, aimed at protecting the (negative) rights of individuals. But even more than the content, it is the libertarian mode of implementation of the various legal orders that marks the distance from the contemporary legal structure: systems pluralism and voluntary accession advocated by libertarians are antithetical to the monopoly of legislation and the obligation of submission dominant in modern State systems.

¹⁶⁹ According to Jan Narveson, the libertarian meaning of liberty can be summarized with the expression “right to do”. The possession of a right is ultimately an *action-right*, not a *being-right* nor a *having-right*, both particular cases of the former. The “freedom-to-be” is in fact incorporated in the “freedom-to-have”, understood as the person’s right to possess certain qualities, characteristics, properties. The freedom to have “things” in turn derives exclusively from the “freedom to do”. The right to action (the “freedom to determine” effects on others and on the state of things through the “choice” by Agent A of a person or thing, Narveson points out) therefore incorporates the other two. J. Narveson, *The Libertarian Idea*, pp. 18, 80–82.

¹⁷⁰ As is evident, the adjectives in question are not intended to suggest a value judgment, but only describe a mode of interaction between individuals.

¹⁷¹ In contemporary times, rather than directly providing a service, providing, through taxation, the money needed to arrange the service.

economic resources from others.¹⁷² Typical examples of rights that derive from this conception of freedom are the right to medical care, education, housing, welfare, a job, a salary that does not fall below a given level, and quotas.¹⁷³ But mere “need” generates no rights. All these pseudorights configure an aggression against the obligated. For libertarians, the only positive rights allowed are those that arise from contracts,¹⁷⁴ thus they are voluntary obligations, or from compensation¹⁷⁵; and they are *special* rights. *General* rights are only negative.

¹⁷² On a theoretical level, it was Thomas H. Green who, in his *Lecture on Liberal Legislation and Freedom of Contract* of 1881, defined the concept, and all the so-called English liberal-socialism of the late nineteenth century, represented not only by Green but also by the figures of B. Bosanquet, D.G. Ritchie and L.T. Hobhouse, follows this notion of liberty; which was later adopted by theories of democratic, social democratic, socialist, christian-social or generally welfarist inspiration. In the twentieth century it has a continuation and development, even if on sometimes different philosophical grounds, in liberal thought, of which authors such as John Rawls and Ronald Dworkin are prominent exponents. In the latter’s influential rights theory, positive rights are based on the *principle of equal concern* for all people (whereas the other principle proposed by the author, that of *equal respect*, is the one most in tune with libertarianism’s defense of subjectivity). Also supporting positive liberty are the aforementioned Sen and Nussbaum (*Creating Capabilities*, 2011), the communitarian Taylor (*What’s Wrong with Negative Liberty*, 1985), Cass Sunstein (*The Second Bill of Rights*, 2004) and Henry Shue (*Basic Rights*, 1980). As we have already seen (see above, note 150), within this current authors such as Sen, Nussbaum and Taylor extend the conception of freedom as *capacity* by integrating it with (transforming it into) the notion of freedom as *self-realisation/self-perfection*, in which, in addition to the *means* guaranteed by liberalism, is central the judgment on the *ends*. In any case, the outcome of the two conceptions is almost always the same, a consistent redistribution of resources. For example, in the view of these authors, the free provision of a service such as education increases both freedom as capacity and freedom as flourishing. On the social conservatism front, an exponent of this approach is Sohrab Amari (*Tyranny, Inc.*, Forum Books, New York, 2023).

¹⁷³ The topic of positive rights, almost entirely coinciding with so-called economic-social rights, and their conflict with negative libertarian rights, is discussed more fully in Chapter 7.

¹⁷⁴ “A right of somebody to something is brought about by contract. A man lends a hundred dollars to his neighbor, and the neighbor promises to repay it at a specified time; the lender has a right to the money at the agreed-upon time.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 49.

¹⁷⁵ Within the libertarian theory, it is debated whether, in the event of non-execution of the contractual obligation assumed, the effect should only be of an economic nature (no payment and compensation) or whether it is permissible to force the party in default to perform the service. According to W. Block, both types of contracts can be stipulated, perhaps in relation to the importance of the activity: for a singing performance at a wedding, the economic option would be sufficient, while for the supervision of a child in a pool, the obligation to intervene would be agreed. W. Block, *Defending the Undefendable II*, pp. 196–98.

5. Licit Actions

What has been noted so far – all actions are permitted except overt acts of aggression – allows us to infer the content of legal rules. These must *not*: 1) prohibit individuals from actions that “harm” themselves¹⁷⁶ or impose their behavior “in their own interest”,¹⁷⁷ as each being the owner of his own body, he must be able to dispose of it as he wishes; 2) prohibit consensual exchanges, that is, all exchanges voluntarily undertaken by people. The three types of legal norms currently in force and variously supported by other political conceptions – paternalistic, perfectionist and redistributive¹⁷⁸ – are therefore illegitimate. This implies – and it is a diriment issue compared to other political-cultural strands – the lawfulness of activities, actions and behaviors generally prohibited by law such as the production, exchange and consumption of drugs, medicines and alcohol,¹⁷⁹ pornography,¹⁸⁰ prostitution,¹⁸¹ homosexuality, different sexual practices,¹⁸² adultery,

¹⁷⁶ In the wake of the John Stuart Mill of *On Liberty*, people shouldn't be prevented from making bad choices as long as they only harm themselves. In the words of Lysander Spooner: “vices are not crimes”; or, with those of Cesare Beccaria, “distinguishing sins from offences.”

¹⁷⁷ Such as the consumption, or greater consumption, of the so-called *merit goods*.

¹⁷⁸ On the libertarian opposition to paternalism, perfectionism, egalitarianism and economic and social “rights”, see *infra*, Chapter 7.

¹⁷⁹ This right derives primarily from ethical reasons, self-ownership (the right of every person to ingest or inject the desired substances into his own body) and the freedom to undertake voluntary exchanges. A large anti-prohibitionist literature has also made arguments against prohibition based on economic and consequentialist considerations. They are summarized below in ten points. 1) Decades of “war on drugs” have proven to be a failure because any attempt to suppress peaceful and voluntary activities is always such, since the individuals involved are consenting and do not feel harmed (assaulted) by those exchange relationships, nor do they feel guilty of violating the rights of others. 2) The laws of supply and demand also operate in illegal markets. Supply compression causes prices to rise sharply; which causes an increase in crimes functional to procuring the money needed to purchase doses (muggings, robberies, thefts). Legalization would greatly reduce this type of crime. It would also prevent the transformation of consumers into drug dealers, again caused by the need for money. 3) Illegality breeds violence and attracts crime. Unable to use the judicial system, black market operators use violence and threats to enforce agreements; which fosters the entry and domination of people oriented to such behavior. The aforementioned price increase further fuels criminal organizations. Wars between them for control of the market spread. Decriminalization, by collapsing prices, would deal such organizations a severe blow. 4) In illegal markets, the consumer cannot know the quality of the product, and has no legal protection against fraud. Exiting illegality would reduce the risks associated with poor quality and increased potency of substances, an example of which is overdose. 5) Prohibition and repression encourage risky behaviors, especially the promiscuous use of syringes, which promote the spread of infectious diseases and hepatitis. 6) The prohibition regime also makes criminals out of those who are not. Imprisonment and compromised criminal records place hundreds of thousands of completely peaceful young people into a criminal circuit; they are brutally placed in contact with underworld circles. 7) The prohibitionist system keeps the judicial-repressive apparatus busy, which would conversely be more efficient if it could devote itself only to actual crimes. (2021 data). In the United States 50% of prisoners are for drug violations and half of the resources taken from the IRS are used, mainly by the judicial and police apparatus, to combat drug buying and selling. 8) Elimination of the prohibitionist regime would reduce corruption of judges and police. 9) The shift from soft drug use to hard drug use, an argument much used by prohibitionists, is not statistically proven. When such a shift occurs, it depends mainly on the unification of markets for different drugs caused by prohibition itself. The prohibitionist regime, in fact, by giving rise to an illegal market, concentrates the supply of the two types of substances in the hands of criminal organizations, which encourage the use of hard drugs by those who purchase soft drugs. 10) The “war on drugs” erodes civil liberties: innocent citizens are stopped and searched; forced to submit to urine tests; undergoing forced detoxification treatment (as an alternative to incarceration); driver's licenses, passports or gun licenses can be suspended; some courts introduce exceptions to individual rights for drug cases; police have undergone militarization processes, with suspension of procedural safeguards for citizens (property violations, money requisitions); economic privacy is violated to prosecute alleged money laundering activities from drug trafficking. In any case, in a libertarian world, where all territorial space is private property, “policies” on the narcotics trade would be decided by the owners (of the neighborhood, the block, the apartment building, the park, the commercial unit, the restaurant). Residents, being able to “vote with their feet”, would send information about their preferences to the owners, and in this way the optimal combination of “prohibitionist” or “tolerant” areas would be realized; and the same would be true for cigarette smoking, now subject to an increasingly pervasive ban. For an examination of prohibitionist policies with a consequentialist slant, see M. Thornton, *The Economics of Prohibition*, University of Utah

contraception, nudism, gambling,¹⁸³ prodigality, suicide, euthanasia at the request of the interested party,¹⁸⁴ the refusal of life-saving treatments, the refusal of transfusions or transplants for religious

Press, Salt Lake City, UT, 1991. Of course, consequentialists also add, on the positive side, the pleasure derived from consuming the substances under consideration. Counterbalanced negatively by the effects that can be produced in the long run in terms of addiction and health problems and harm caused to others because of the altered state. Effects to which, however, responsible users are not exposed. As is well known, this calculation, regardless of complexity, is not feasible because of the impossibility of the cardinal measurement of utility.

¹⁸⁰ “It is not the business of the law – even if this were practically possible, which is, of course, most unlikely – to make anyone good or reverent or moral or clean or upright. [...] Neither is it the business of government, nor of any legal agency, to pass laws against the voluntary production or sale of pornography. Whether pornography is good, bad, or indifferent should be of no interest to the legal authorities.” M.N. Rothbard, *For a New Liberty*, cit., pp. 116–17. Libertarianism rejects the ground of distinctions between eroticism – considered art – and pornography, the line between the two being arbitrary and elusive.

¹⁸¹ “If labor and persons in general are to be free, then so should there be freedom for *prostitution*. Prostitution is a voluntary sale of a labor service, and the government has no right to prohibit or restrict such sales.” M.N. Rothbard, *For a New Liberty*, cit., p. 119. “There are those, women’s liberationists among them, who lament the plight of the poor downtrodden prostitute, and who think of her life as demeaning and exploitative. But the prostitute does not look upon the sale of sex as demeaning. After considering the good features (short hours, high remuneration), with the drawbacks (harassment by the police, enforced commissions to her pimp, uninspiring working conditions), the prostitute obviously prefers her work, otherwise she would not continue it.” W. Block, *Defending the Undefendable*, Fleet Press Corporation, New York, 1976; Mises Institute, Auburn, AL, 2018, p. 4. Of course, libertarians are calling for the deletion from criminal codes not only of the main crime of prostitution, but also of contiguous offenses such as inducing, aiding and abetting or exploiting prostitution, all cases in which there is blatant consent of the prostitute and the client.

¹⁸² Including incest, if practiced between consenting adults. Cf. G.E. Andrade, *A Libertarian Critique of Incest Laws: Philosophical and Anthropological Perspectives*, in “Human Affairs”, vol. 31, no. 2, 2021, pp. 139–48.

¹⁸³ Among the motivations behind the ban, the main one is paternalistic (see *infra*, Chapter 7): the need to prevent ludopaths from improvidently depleting their wealth. To this argument Rothbard responds as follows: “Aside from the fact that he can now spend his payroll on friendly betting [those run by the State], this paternalistic and dictatorial argument is a curious one. For it proves far too much: If we must outlaw gambling because the masses might spend too much of their substance, why should we not outlaw many other articles of mass consumption? After all, if a workman is determined to blow his paycheck, he has many opportunities to do so: he can improvidently spend too much on a TV set, a hi-fi, liquor, baseball equipment, and countless other goodies. The logic of prohibiting a man from gambling for his own or his family’s good leads straight to that totalitarian cage, the cage in which Pappa Government tells the man exactly what to do, how to spend his money, how many vitamins he must ingest, and forces him to obey the State’s dictates.” M.N. Rothbard, *For a New Liberty*, cit., p. 124. Then there is, as in all activities characterized by voluntary exchanges, the practical ineffectiveness of the ban: “the mass of the public, making an instinctive libertarian distinction, abhors and condemns murder and does not engage in it; hence, the prohibition becomes broadly enforceable. But the mass of the public is not as convinced of the criminality of gambling, hence continues to engage in it, and the law – properly – becomes unenforceable.” *Ivi*, p. 123.

¹⁸⁴ The debate on euthanasia often centers on the alternative between *active* euthanasia, that is, caused by an intervention in a positive way (an injection, tablets), and *passive*, the withholding treatment necessary for the continuance of life (“pulling the plug”, e.g., the disconnection of an artificial respirator); but for libertarians only the distinction between *voluntary* and *involuntary/non-voluntary* matters. What matters is the will of the patient, and therefore the degree of participation of a third party is irrelevant, which in many contemporary legal systems configures *aiding suicide* (or *assisted suicide*) when the latter arranges certain conditions (accompanying to the place of hospitalization, making barbiturates available) but does not perform the action that directly causes the death event, an action materially performed by the suicide (e.g. taking the barbiturates); or *consenting murder* when instead the active subject performs acts that directly result in death (an injection, disconnection of the artificial respirator). For libertarians, these crimes should be eliminated, because in both modes there is consent of the moritur. The body, and the life, of an individual should not be regarded as an individual’s own unavailable property. This position does not prevent libertarians, especially of the ‘paleo’ tendency, from expressing their aversion to the pro-death culture that has spread in recent decades, which has led to questionable situations even in terms of libertarian theory. The reference in particular is to all those situations in which doctors, in the absence of living wills or in violation of them (as happened in the Netherlands or in the case of Helga Wanglie), arbitrarily ‘pulled the plug’; or in which judges imposed it, even against the wishes of relatives and even when the medical costs were not borne by the community (Terry Schiavo case). Cf. M.N. Rothbard, *Our Pro-Death Culture*, in “Rothbard-Rockwell Report”, vol. 1, no. 4, August 1990.

reasons,¹⁸⁵ self-mutilation¹⁸⁶, religious self-flagellation rituals, sadomasochistic practices, the free sale of organs,¹⁸⁷ the refusal of the compulsory helmet and seatbelts,¹⁸⁸ surrogate pregnancy, the selling of children,¹⁸⁹ the provision of loans at any interest rate (even usurious), insider trading,¹⁹⁰

¹⁸⁵ Provided that such refusal concerns only themselves. The controversial circumstance, of course, is that of the decision made by parents for young children who are unable to make their own decisions. Since this is an omissive behavior, it could be equated with failure to feed, considered legitimate by Rothbard. Of opposite opinion other libertarians.

¹⁸⁶ The Italian Civil Code prohibits “acts of disposition of one’s body [that] cause a permanent diminution of physical integrity” (art. 5, “gli atti di disposizione del proprio corpo sono vietati quando cagionino una diminuzione permanente dell’integrità fisica”).

¹⁸⁷ Cfr. J.S. Taylor, *Stakes and Kidneys: Why Markets in Human Body Parts Are Morally Imperative*, Ashgate, New York, 2005. Underlying the permissibility of organ sales are not only self-ownership and thus the free availability of one’s body, but also consequentialist arguments. Prohibiting the exchange of a certain good for monetary consideration also has negative effects in terms of efficiency, reducing the availability of the good to those who need it. For example, if blood donation were remunerated, hospitals would no longer have the availability problems that the news reports occasionally highlight. Similarly, many of the thousands of people waiting in vain to receive a kidney transplant would not die. The same argument is applicable to the buying and selling of bone marrow cells. “The principal objection to organ sales holds that short-sighted or desperate individuals would be lured by large monetary rewards into selling organs against their own interests. This concern is understandable but oversold. Doctors and hospitals, along with family and friends, would prevent most such abuses. Informed consent rules would alert potential organ sellers to the risks they face.” J.A. Miron, *Libertarianism from A to Z*, Basics Books, New York, 2010, p. 125. Brennan thus dismisses concerns about the “exploitation” of the poor: “Organ sales save lives *and* make the poor richer? Hooray!” J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 92. W. Block hypothesized that in a free market for organs, companies or hospitals would arise that would offer people a sum of money to donate some organs in the event of their death. They would then sell the organ to the beneficiary. The availability of organs would increase enormously because people would be paid, probably with substantial sums, while they are still alive. W. Block, *Defending the Undefendable II*, pp. 98–102. As regards the *post-mortem* removal of organs for transplants, libertarians are against the widespread practice of silent consent, which configures an original ownership of people’s bodies by the State or society.

¹⁸⁸ Insurance companies could include clauses in contracts not to reimburse drivers for damages if they drive without seatbelts or helmets. Of course, in a libertarian society, vehicle insurance, like any other kind, should not be mandatory.

¹⁸⁹ This is one of the libertarian theses deemed most “scandalous.” However, this practice, generally considered abject and repugnant, would result in benefits for all three parties involved in the exchange, and particularly for the child, the very one whom the prohibition is intended to protect. “The demand for babies and children is usually far greater than the supply, and hence we see daily tragedies of adults denied the joys of adopting children by prying and tyrannical adoption agencies. In fact, we find a large unsatisfied demand by adults and couples for children, along with a large number of surplus and unwanted babies neglected or maltreated by their parents. Allowing a free market in children would eliminate this imbalance, and would allow for an allocation of babies and children *away from* parents who dislike or do not care for their children, and *toward* foster parents who deeply desire such children. *Everyone* involved: the natural parents, the children, and the foster parents purchasing the children, would be better off in this sort of society.” M.N. Rothbard, *The Ethics of Liberty*, p. 103. See also L.A. Alexander, L.H. O’Driscoll, *Stork Markets: An Analysis of “Baby-selling”*, in “Journal of Libertarian Studies”, vol. 4, no. 2, Spring 1980, pp. 173–96. W. Block points out that after all, the sale of children would be nothing more than adoption with the addition of a sum of money in return. Even in adoption, the situations deprecated by critics of sale occur: the birth parents did not want to take care of the child, and the child was transferred to a new couple. In spite of this seemingly “dissolving” position on family value, and confirming how problematic the placement of libertarianism within a rigid progressive–conservative schema is (see *infra*, Chapter 12), the practice, growing steadily in recent years, of child abduction from parents by juvenile courts appears particularly odious to libertarians. The justifications given revolve around the criterion of protecting the child: that he would be oppressed by overprotective or over-permissive parents, drug addicts or alcoholics, or would suffer real or alleged violence, or be obese or undernourished, insufficiently educated or clean. In reality, these justifications often hide an authoritarian and Jacobin vision, which claims to impose through the State a model of education, compressing the autonomy and freedom of families. The theme of the family is taken up in section 12.2, in relation to paleolibertarian positions.

¹⁹⁰ In *insider trading*, the possibility of making higher profits thanks to the superior information you have is considered illegal, only for the financial market; but such a circumstance is the norm in a market economy, and there should be nothing wrong. Moreover, it is a “crime” without victims: suppose that B, the insider trader, purchases from A shares of a company for 1 dollar each, knowing that in the future there will be a merger involving the company in question; after the merger, B resells the shares for 2 dollars; if the information had not been there, A would have still sold the shares for 1 dollar, to another individual C; therefore he would not have been deprived of anything. Insider trading laws rest on the view, unfair to libertarians, that others have a right to one’s revealing to them information one has obtained ahead of

freedom to express any thought.¹⁹¹ “Libertarians take property rights to lengths where others fear to tread.”¹⁹² They believe that we must be “free to make stupid, imprudent, or even immoral decisions. [...] Free to experiment with new ways of living. [...] Free to join religious communities or to mock and deride religion. [...] Free to write patriotic songs or to burn flags. [...] Free to lead lives of moral virtue or vice. [...] Free to be prudes or to perform sex acts others find perverted.”¹⁹³ All these actions are legitimated by self-ownership, by the consent of those who want to take them and by the absence of physical aggression against unwilling third parties.¹⁹⁴ “Libertarianism holds that the true test of a free society is not whether people are free to do the right thing, the acceptable thing, the responsible thing, or the popular thing. The true test of a free society is whether people are free to do the wrong thing, the unacceptable thing, the irresponsible thing, or the unpopular thing — so long as their conduct is peaceful.”¹⁹⁵

5.1 Ethics and Morality

Many of these outcomes of the theory defy common sense¹⁹⁶ or come across as stinging or even scandalous. And have frequently, but erroneously, drawn the accusation of “libertinism” or “hedonism” or “materialism” or “relativism” or “not believing in any moral principle” to libertarians. Libertarianism, as mentioned, is a political philosophy, in particular it is the subset of ethics that deals with the right role of violence in social life; therefore, it is not a complete moral theory or a social philosophy or an aesthetic, anthropological or sociological theory, it does not offer a comprehensive personal morality or indications for individual life philosophies.¹⁹⁷ A person long as he does not invade the body and goods of others) is irrelevant to libertarian theory.¹⁹⁸ However, one virtue of libertarianism is that it does not conflict with the total moral structures chosen by individuals. Which means that individual libertarians, like any other people, can have, and certainly do have, their own complete moral system or their own value systems about personal

them. Cf. T. Machan, *What is Morally Right with Insider Trading*, in “Public Affairs Quarterly”, 10, no. 2, April 1996, pp. 135–42.

¹⁹¹ Nowadays limited by speech crimes: see *infra*, § 6.2.1.

¹⁹² M. Zwolinski, J. Tomasi, *The Individualists: Radicals, Reactionaries, and the Struggle for the Soul of Libertarianism*, cit., p. 107.

¹⁹³ J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 81.

¹⁹⁴ Freedom of abortion was not included in this list because the issue is controversial within the libertarian world, although the argument for permissibility is in the majority. Those against it – the American organization “Libertarians for Life” (D. Gordon, D.N. Irving), Edward Feser, Andrew Napolitano, Ron Paul, Javier Milei – consider it an assault on the life of the embryo first and the fetus later (a human life); those in favor a right arising from the self-ownership of the woman, who can remove an unwanted parasite from her body (see M.N. Rothbard, *For a New Liberty*, cit., pp. 120–21).

¹⁹⁵ J. Hornberger, *The Virtues of Libertarianism*, in <http://fff.org/explore-freedom/article/the-virtues-of-libertarianism/>, May 15, 2014.

¹⁹⁶ “Libertarianism’s basic ideas come from commonsense morality, yet libertarians use these ideas in ways that defy common sense. For example, commonsense morality says that if a person is minding his own business and isn’t hurting anyone, he should be left alone. Yet most of us would imprison that person if we found out that, while minding his business and not hurting anyone, he also snorted some cocaine.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 7.

¹⁹⁷ “I am not a libertine. I am not a hedonist. I am not a moral relativist. I am not a devotee of some alternative lifestyle. I am not a revolutionary. I am not a nihilist. [...] I am a libertarian.” L.M. Vance, *I Am a Libertarian*, in LewRockwell.com, <https://www.lewrockwell.com/2014/05/laurence-m-vance/i-am-a-libertarian/>, May 6, 2014.

¹⁹⁸ Regarding “materialism”, Hospers observed that “an individual is free to spend the money he has earned on symphony concerts just as much as on yachts; he can even build and sustain a concert hall or a cathedral if he has the money. What he does with the money he earns is up to him; it can be put to a “spiritual” as well as a “material” use.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 104.

behaviour.¹⁹⁹ And this in turn means that, both on the level of political action and of their own personal morality, they do not necessarily approve or encourage transgressive or vicious behaviors or alternative lifestyles allowed by the principle of non-aggression.²⁰⁰

The libertarian may believe that virtue should be promoted and that some behaviors are vicious or indecent. For the former, he can mobilize through persuasion, education, or example; against the latter, he may resort to ostracism, boycott, verbal disapproval, exclusion from friendships, propaganda; or any other form of nonviolent action, never to coercion.

Although it is not always clear from the texts, libertarianism distinguishes the meaning of two terms that are often used synonymously: ethics and morality. Among the many criteria for distinction proposed by thinkers and philosophical currents,²⁰¹ libertarianism employs the following: ethics defines the field of prohibited actions, and therefore legitimately forbidden by legal rules, having identified the rational foundations that imply a deontological status for all individuals;²⁰² whereas morality defines the field of behavior to which individuals spontaneously bind themselves on the basis of their own principles (personal morality), but on which the law must not interfere. Of course, within the moral principles of an individual, values belonging to ethics (e.g., the prohibition to kill) can also be included, but this intersection or incorporation does not affect the proposed conceptual distinction. A libertarian can therefore judge a given behavior *immoral*, for example the exercise of prostitution, without falling into any contradiction, which, on the other hand, would happen if he defined it *anti-ethical*, and therefore also to be prohibited from a legal point of view.²⁰³

On the whole issue, it should be noted that, around the mid-2000s, a debate began to emerge within the libertarian world, addressing the degree of theoretical “leanness” of the doctrine, which resulted in a distinction between *thin* and *thick* libertarians. The difference concerns the integration, or not, of the philosophical-political core with certain cultural and/or value assumptions (and, for those who embrace them, a mobilization in favor of their implementation). The thinists limit the theory to respect for property rights based on homesteading and subsequent voluntary exchanges, thus to the principle of non-aggression and its developments (and believe that this alone is the ‘true’

¹⁹⁹ “Does this mean that libertarians are precluded from making their own personal value judgments on how a person should live his life? Of course not! It just means that when they do make such value judgments, they are not doing so under the philosophy of libertarianism but rather as Christians, people who believe in the Golden Rule, or people who live according to some other moral or ethical code.” J. Hornberger, *op. cit.*

²⁰⁰ M.N. Rothbard, *Myths and Truths About Libertarianism*, in “Modern Age”, 24, Winter 1980, pp. 9–15. Walter Block, after the publication of his “scandalous” *Defending the Undefendable*, in which he defends generally despised figures such as the moneylender, prostitute, drug dealer or pimp because their activities do not represent aggression, was careful to point out that he personally considers himself a “cultural conservative” and that his advocacy in terms of political philosophy should not be confused with his moral preferences. W. Block, *Libertarianism and Libertinism*, in “Journal of Libertarian Studies”, vol. 11, no. 1, Fall 1994, pp. 117–28.

²⁰¹ For example, Hans Kelsen defines *ethics* as the science that studies *morality*. Jürgen Habermas, on the other hand, attributes to morality the universalistic and normative nature while ethics concerns the self-understanding of a group in a pluralistic context.

²⁰² Whereas *metaethics* is concerned with the search for the foundation and justification of the criteria established by ethics; with what it means to assert that an action is morally good or bad, permitted or forbidden or required; with what makes something morally good or bad.

²⁰³ Some use the term *justice* to indicate the field included here in *ethics*: “the subject matter of law is justice, which is a matter of giving to others what is their due and requiring the same from them. The subject matter of morality, on the other hand, ranges from relatively trivial matters that border on etiquette to serious matters such as homicide and theft that clearly overlap with the concern of justice.” G. Casey, *Libertarian Anarchy*, p. 94.

libertarianism; among the authors who explicitly supported the controversy: Narveson,²⁰⁴ Block,²⁰⁵ Thomas Woods,²⁰⁶ Logan Albright,²⁰⁷ Rockwell Jr.,²⁰⁸ Dan Sanchez,²⁰⁹ Robert Wenzel,²¹⁰ J. Hornberger); while the thickists broaden it, with ‘left-wing’ (prevailing) or ‘right-wing’ additions.

Proponents of thickening “from the Left” advocate an active role for the purposes of inclusion and non-discrimination, spread of civil rights, opposition to racism and sexism, fight against patriarchy, elimination of white privilege, reduction of big business power, and less economic inequality²¹¹ (Chris Sciabarra,²¹² Charles Johnson,²¹³ Kevin Carson,²¹⁴ Matt MacKenzie, Roderick Long,²¹⁵ Nick Gillespie and Matt Welch,²¹⁶ Matt Zwolinski,²¹⁷ Sheldon Richman,²¹⁸ Jeffrey A. Tucker,²¹⁹ Cathy Reisenwitz²²⁰).²²¹ While “from the Right” believe that the core of the NAP should be supplemented with other, often contrary, elements such as cultural conservatism, religious morality, recognition/valuation of differences and natural hierarchies among human beings, active discrimination, territorial exclusion (Hoppe,²²² Gary North, Edward Feser,²²³ Ron Paul).²²⁴

²⁰⁴ J. Narveson, *Libertarianism: The Thick and the Thin*, presentation at the Molinari Society symposium: “Libertarianism Through Thick and Thin”, New York, December 27-30, 2005.

²⁰⁵ W. Block, *Libertarianism is unique*, Mises Institute, Auburn, AL, 2006; *Thick and Thin Libertarianism and the Non-Aggression Principle*, in “Ethics & Politics”, XXIV, 2, 2022, pp. 31-54; W. Block, K. Williamson, *Is Libertarianism Thick or Thin? Thin!*, cit.

²⁰⁶ T. Woods, *Thick and Thin Libertarianism, and Duck Dynasty*, in <https://tomwoods.com/thick-and-thin-libertarianism-and-duck-dynasty/>, December 19, 2013.

²⁰⁷ L. Albright, *What Libertarianism Is Not*, in LewRockwell.com, <https://www.lewrockwell.com/2014/04/logan-albright/what-libertarianism-is-not-2/>, April 29, 2014.

²⁰⁸ L.H. Rockwell Jr., *The Future of Libertarianism*, in LewRockwell.com, <https://www.lewrockwell.com/2014/05/lew-rockwell/the-future-of-libertarianism/>, May 1, 2014. Rockwell only incorporates left-libertarians into the thick ones.

²⁰⁹ D. Sanchez, *Sophistry and the State: The Perils of Fuzzy (Thick) Thinking*, in LewRockwell.com, <https://www.lewrockwell.com/2014/05/dan-sanchez/theperils-of-thick-thinking/>, May 10, 2014.

²¹⁰ R. Wenzel, *It's Here: Libertarian-Socialism*, in Economic Policy Journal.com, <https://www.economicpolicyjournal.com/2014/06/its-here-libertarian-socialism.html>, June 14, 2014.

²¹¹ “Left wing thickists aver that in addition to these two foundational aspects [NAP and property rights] of this philosophy, an advocate must also favor interracial marriage, homosexuality, egalitarianism, LBGTism, and oppose racism, sexism, ageism and other such instances of discrimination.” W. Block, *Thick and Thin Libertarianism and the Non-Aggression Principle*, cit., p. 32.

²¹² C. Sciabarra, *Total Freedom: Toward a Dialectical Libertarianism*, Pennsylvania State University Press, University Park, PA, 2000.

²¹³ C. Johnson, *Libertarianism through Thick and Thin*, in https://radgeek.com/gt/2008/10/03/libertarianism_through/, October 3, 2008. An earlier, less extensive version of the article is published three months earlier, on July 1, 2008, on the Foundation for Economic Education website, <https://fee.org/articles/libertarianism-through-thick-and-thin/>.

²¹⁴ K. Carson, *Studies in Mutualist Political Economy*, Booksurge Publishing, North Charleston, SC, 2007. The author is inspired by the voluntarist socialism of individualist anarchists such as Warren and B. Tucker and seeks to rehabilitate the labor theory of value.

²¹⁵ R.T. Long, *Thickness Unto Death*, in in Austro-Athenian Empire, <https://aeblog.com/2008/07/thickness-unto-death/>, July 10, 2008.

²¹⁶ N. Gillespie, M. Welch, *The Declaration of Independents: How Libertarian Politics Can Fix What's Wrong With America*, PublicAffairs, New York, 2011.

²¹⁷ M. Zwolinski, *Libertarianism: Thick and Thin*, in Bleeding Heart Libertarians, <https://bleedingheartlibertarians.com/2011/12/libertarianism-thick-and-thin/>, December 28, 2011.

²¹⁸ S. Richman, *Libertarianism = Anti-racism*, in <https://fee.org/articles/libertarianism-anti-racism>, May 28, 2010.

²¹⁹ J.A. Tucker, *The New Libertarianism*, in Foundation for Economic Education, <https://fee.org/articles/the-new-libertarianism/>, October 28, 2013.

²²⁰ C. Reisenwitz, *Thick And Thin Libertarianism And Tom Woods*, in Center for a Stateless Society, <https://c4ss.org/content/23069>, December 21, 2013.

²²¹ Organizations such as the Cato Institute or the Institute for Justice have a similar orientation.

²²² Hoppe considers himself a thick in that he integrates the philosophical-political principles of libertarianism with a conservative cultural framework. Cf. H.-H. Hoppe, *A Realistic Libertarianism*, in LewRockwell.com, <https://www.lewrockwell.com/2014/09/hans-hermann-hoppe/smack-down/>, September 30, 2014.

²²³ E. Feser, *Self-Ownership, Abortion, and the Rights of Children: Toward a More Conservative Libertarianism*, in “Journal of Libertarian Studies”, vol. 18, no. 3, Summer 2004, pp. 91-114.

Charles Johnson proposed a particularly elaborate, left-oriented defense of thick libertarianism. He takes elements (values, ways of thinking, ideas, actions, outcomes) that are positively *related* with libertarianism, i.e., favorable to its achievement, even if they are not the non-aggression principle and its direct applications, and integrates them into the basic structure of the theory.

For example, there are beliefs or commitments that, although not descended from the principle of non-aggression, should, on the basis of considerations of reasonableness, be accepted by a libertarian, because they are beliefs that prompt adherence to libertarianism, that are close to the NAP even if they are not implied by it. Johnson gives the example of *authoritarianism* in social relations (not authoritarianism imposed by force by the state), as a result of which some individuals assume, even voluntarily (through cultural influences, social pressure, media action) attitudes of deference and subjection to those who exercise authority (a wife to her husband, an employee to his employer, etc.). Even if social authoritarianism does not conflict with the NAP, according to the author it would be bizarre for a libertarian to support it and reasonable for a libertarian to oppose it, because the deep-seated reasons for a libertarian to espouse the NAP are contiguous with an aversion to authoritarianism *tout court*. Since beliefs of this kind (anti-authoritarianism) can also be the basis of adherence for other orientations, Johnson calls this set of beliefs “thickness from grounds”.

Then there are elements that are preconditions for the implementation of the NAP (of a libertarian society) in the real world; that is, ideas, practices, or projects that increase the likelihood that a libertarian society can be achieved and preserved. For example, a libertarian should support voluntary associations that fight to reduce economic inequality, because a society with high inequality – for example with a minority of very rich people and a mass of poor people – would be highly conflictual, would risk descending into civil war and would not remain free for long. Or another example is the libertarian commitment to promoting independent thought and reason and fighting conformism. Johnson defines “strategic density” as all these ideas, practices or projects subsumed into libertarianism.

Finally, there are social practices or economic arrangements that libertarians should condemn even though they do not in themselves represent violations of the NAP, such as exploitative working conditions (low-wage sweatshop labor, high number of hours per day), because they derive from previous government distortions (entrepreneurs who can “hold workers to ransom” due to the power they have acquired not in a free market but under crony capitalism). These elements are called “thickness from consequences”.²²⁵

²²⁴ The Randian Objectivists can also be considered tickists (although, in the left/right alternative illustrated, the placement is problematic), believing that libertarianism can only derive from prior adherence to the metaphysical, ethical and epistemological principles of Ayn Rand’s philosophy. A “centrist” tickist can be considered Kevin Vallier, who advocates a (classical) liberal social morality, as both a progressive and a conservative social morality, by sanctioning people who fail to comply with those values, would generate authoritarian outcomes. K. Vallier, *Libertarian Social Morality: Progressive, Conservative or Liberal?*, in Bleeding Heart Libertarians, <https://bleedingheartlibertarians.com/2013/02/libertarian-social-morality-progressive-conservative-or-liberal/>, February 22, 2013; *Political Libertarianism: Between Thick and Thin*, in Bleeding Heart Libertarians, <https://bleedingheartlibertarians.com/2014/05/political-libertarianism-between-thick-and-thin/>, May 7, 2014.

²²⁵ To clarify that his is a general method that can also be used to implement a thick right-wing libertarianism, Johnson points to a “tickness from consequences” that can be derived from Hoppe’s thought: “consider the reasons that Hoppe offers for ostracizing homosexuals and condemning large-scale migration of unskilled laborers – it’s basically thickness from consequences, on the belief that without statist intervention against restrictive uses of property rights, these lifestyle choices would not be sustainable in the face of opposition from civil society. I, as a left libertarian, find these specific appeals specious (or, in Hoppe’s case, grotesque). But that means only that I disagree with the *specific*

For Johnson, all these elements, which are not exclusive to libertarianism, must be considered constituent parts of that doctrine; which must “be seen as a thread among others in a “thick” bundle of intertwined social commitments”.²²⁶ To avoid inconsistency with libertarian principles, the author specifies that the means to be used should not be coercive, thus never laws and State intervention, but persuasive or denunciation or pressure actions, “such as targeted moral agitation, mass education, artistic or literary propaganda, charity, mutual aid, public praise, ridicule, social ostracism, targeted boycotts, social investing, slowdowns and strikes in a particular shop, general strikes, or other forms of solidarity and coordinated action.”²²⁷

Following in Johnson’s footsteps is a left-wing thickist like Sheldon Richman, who considers non-violent racist conduct, i.e., the expression of racist opinions or a person’s refusal to engage in relations with people from specific minorities because of personal racist beliefs. He believes that libertarianism must also oppose such conduct, even if it does not involve the initiation of physical force: it must not only “abhor racism, [...] but also publicly object to it and even take peaceful but vigorous nonstate actions to stop it.”²²⁸ He justifies this belief with a particular interpretation of libertarian philosophy, according to which all human beings are equal in terms of *authority*, whereas in racism members of one group are subordinate to those of the dominant racial group. Instead, Zwolinski justifies the need for libertarianism to include opposition to racism in this way: “Imagine someone who endorsed the non-aggression principle because they believed it reflected the fundamental equality of persons, for example, but who simultaneously believed that white Americans were the moral superior of every other person on the planet, and who expressed that belief through a variety of derogatory and marginalizing practices. Even if such a person in no way violated the non-aggression principle, I would still say that they are not a libertarian in as full a sense as they could, and should, be. The reason is [...] that they have beliefs and practices that are incompatible with the very moral foundation on which libertarianism rests.”²²⁹ Block disputed Richman’s interpretation of libertarianism by noting that “[equality of authority] is an aspect of egalitarianism, something not usually associated with the freedom philosophy. [...] Secondly, this sort of racism need not have anything to do with servility. Merely separateness.”²³⁰ About Zwolinski’s argument, thin libertarians retort that the attribution to a group of people of particular requirements, e.g., a lower IQ or a greater propensity for crime (a trait typical of racism), does not imply a claim for different legal treatment (i.e., unequal enjoyment of ‘negative’ property rights).²³¹

Thomas Woods responded in this way to libertarians who, in order to safeguard liberty, believe they must counter reactionary beliefs with left-wing options: “some libertarians say that [...] we also need to have left-liberal views on religion, sexual morality, feminism, etc., because reactionary

premises, not with the general forms of argument that all thick forms of libertarianism help themselves to.” C. Johnson, *op. cit.*

²²⁶ *Ivi.*

²²⁷ *Ivi.* For a critique of Johnson’s theoretical proposal see D. Sanchez, *op. cit.* In particular, Sanchez points out that a *relation* (between the elements examined and libertarianism) does not mean *identity* (of libertarianism).

²²⁸ S. Richman, *op. cit.*

²²⁹ M. Zwolinski, *Libertarianism: Thick and Thin*, *op. cit.*

²³⁰ W. Block, *Thick and Thin Libertarianism and the Non-Aggression Principle*, *cit.*, p. 36.

²³¹ The thinist David Gordon thus dismisses support for interracial marriages, often evoked by leftists thick as an issue to be integrated into libertarianism: “It would be hard, offhand, to think of a question less relevant to libertarianism, as usually understood. Of course, no one has the right forcibly to prevent such marriages. What more need a libertarian say about this issue?” D. Gordon, *A Political Philosophy or a Social Attitude?*, in LewRockwell.com, <https://www.lewrockwell.com/1970/01/david-gordon/a-political-philosophy-or-a-social-attitude/>, August 29, 2011.

beliefs among the public are also threats to liberty. [...] But if the thickists are concerned that certain cultural attitudes might be dangerous to liberty, why do I never hear them express concern that the hysteria of the cultural Left might be prejudicial to liberty? Why is it only the traditional moral ideas of the bourgeoisie that are supposed to be so threatening? Could this be yet another double standard? Everyone in American society now knows there are certain things they must never say, lest they be banished from polite society by the opinion police. [...] Yet I haven't come across a thickist who seems concerned about *this*".²³²

An illustrative right-wing thickism is instead represented by some of Hoppe's positions. For instance, in *Democracy: the God That Failed* argues that, in a libertarian society, individuals who proclaim and practice alternative ideas to it should be excluded from it (very strong expression used: "physically removed"). The list includes communists, supporters of the democratic State and all those who extol lifestyles adverse to the traditional family, including homosexuals.²³³ (Block, true to his 'thin' approach, also disagreed with this opposing viewpoint: exclusion from private facilities is legitimate, exclusion from 'society' as a whole is not).²³⁴ The subject of a paleolibertarian perspective is taken up and examined more extensively in section 12.2.1.

Albright thus defends the 'minimal' nature of libertarianism as a theory of the legitimate use of force against left-wing and right-wing thickists: "by attempting to redefine a narrow political philosophy to encompass all things that we like and think are nice – like non-discrimination, like treating people as ends rather than means – we dilute its power and simplicity. We destroy what makes it great. Once we proceed down the road of declaring everything we think is good to be "libertarian," we will quickly find that libertarianism suddenly has no meaning at all. Let's leave the philosophy of non-aggression where it belongs, and feel free to supplement it with any other moral or ethical codes we also hold. It is a mistake, however, to try to combine all our views about life into one amorphous blob of watered-down libertarianism."²³⁵ According to Rockwell, by broadening its content, libertarianism is made to go the way of classical liberalism: "to claim that it is not enough for the libertarian to oppose aggression is to fall into the trap that destroyed classical liberalism the first time, and transformed it into modern liberalism. How, after all, did the classical liberalism of the eighteenth and nineteenth centuries become the state-obsessed liberalism of the twentieth and twenty-first centuries? How did the once-venerable word liberalism become perverted

²³² T. Woods, *op. cit.*

²³³ H.-H. Hoppe, *Democracy: the God That Failed*, Transaction, New Brunswick, NJ, 2001, p. 218. In 2004, a statement he made during a lecture on the high time preference of homosexuals gave rise to a lengthy controversy with his university, Nevada, in Las Vegas.

²³⁴ "In the free society, there will always be the likelihood that different groups will tend to amalgamate in certain geographical areas, and even have restrictive covenants that enforce just requirements, and limitations on free speech. In places like parts of Texas, Alabama, Mississippi, Arkansas, Louisiana, for example, there is little doubt that such sentiments will be the order of the day. But there will likely be other areas of the country, for example, the People's Republic of Santa Monica, Ann Arbor, Cambridge, Mass, Greenwich Village in New York City, heck, the entire Big Apple for that matter, where pretty much the opposite outlook will legally prevail. That is, in these latter places, positive mention of free enterprise, capitalism, profits, etc., will be severely punished by law. Why libertarianism should be equated with the former views and not the latter is a mystery. Surely, the libertarian philosophy would support the rights of *both* groups to act in such manners. As for homosexuality, it is entirely possible that some areas of the country, parts of Gotham and San Francisco for example, will require this practice, and ban, entirely, heterosexuality. If this is done through contract, private property rights, restrictive covenants, it will be entirely compatible with the libertarian legal code. Prohibiting the advocacy of ideas that are harmful to society, moreover, comes under the heading of laws against incitement. I fully agree with Hoppe that the views of democrats, communists, queer studies theorists, etc., are very harmful for civilization. They do indeed amount to incitement", which for libertarians should not be punished, concludes Block. W. Block, *Libertarianism is unique*, Mises Institute, Auburn, AL, 2006, p. 22.

²³⁵ L. Albright, *op. cit.*

in the first place? Precisely because of thickism. Sure, twentieth-century liberals said, we favor liberty, but since mere negative liberty — that is, restrictions on the state — doesn't appear to yield a sufficiently egalitarian result, we need more than that. In addition to restrictions on some state activity, we need the *expansion* of other forms of state activity. After all, the new liberals said, state oppression isn't the only form of oppression in the world. There's poverty, which limits people's ability to make life choices. There's private property, whose restrictions limit people's ability to express themselves. There's discrimination, which limits people's opportunities. There's name-calling, which makes people feel bad. Sound familiar? Is this not precisely what many thick libertarians are now saying?"²³⁶

Another misinterpretation is the identification of "tolerance" as the hallmark of libertarianism. The veracity of this assertion, however, depends on the meaning given to the term. If understood as non-interference with the nonaggressive ideas and lifestyles of others, then it is certainly an attitude that can be associated with libertarianism.²³⁷ However, in most cases the concept of tolerance is made to descend theoretically from a relativist assumption: since there are no objective values or beliefs, nothing can justify the suppression of other people's ideas and behaviors, towards which therefore we must be tolerant. This is the prevailing position in (modern) classical liberalism.²³⁸ Not in the most consistent libertarianism,²³⁹ according to which the (non-aggressive) behaviors, ideas and opinions of others should not be outlawed because they *do not represent aggression*, not because we do not know if they are good or bad, right or wrong. Even if the problem of "pervasive disagreement" was solved and we reached a unanimous consensus on a valid criterion for distinguishing the right ideas from the wrong ones, the wrong ideas equally should not be prohibited, because they do not represent physical aggression.²⁴⁰ The libertarian is not relativist (much less a nihilist); proclaims some absolute values, such as self-ownership and non-aggression: only through them can 'tolerance' and 'pluralism' be safeguarded. With a relativist approach, they would be arbitrary ideologies, like all the others, and there would be no reason to accept them more than cannibalism or slavery.²⁴¹

The conclusions reached so far enable us to understand the reasons for the feeling of distrust, when not open hostility, that libertarians manifest toward the State. Monopoly in the use of force

²³⁶ L.H. Rockwell Jr., *The Future of Libertarianism*, cit.

²³⁷ This is the meaning attributed to it by Jason Brennan: "Libertarians advocate *radical tolerance*. Libertarianism is a demanding doctrine – it demands that we mind our own business, even though most of us would rather not. In a free society, some will choose to follow traditional lifestyles. Others will choose new ways of living. Some will choose tight-knit communities. Some will choose communes. Some will choose a life alone. Some will be wicked. Some will be virtuous. So long as a person lives in peace and respects others' liberty, she may live her life as she chooses. Libertarians say, "Live and let live." No one should be forced to fit anyone else's vision of the good life." J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 3.

²³⁸ A liberal arrangement as a necessary outcome of value pluralism is advocated, for example, by Mises and Berlin.

²³⁹ Within libertarianism, an epistemologically relativist and/or skeptical position is maintained by the leftist component, the one most oriented toward civil rights and countercultural positions.

²⁴⁰ The same attitude is maintained toward *respect*, another behavior subject to misunderstanding, as reflected in the standard, frequently enunciated phrase, "I don't agree with your ideas but I respect them." Instead, for libertarians there is no obligation to respect the ideas or lifestyles of others; one may even despise and scoff at them, actions that do not constitute aggression; the only constraint is that those ideas and lifestyles are not prevented by force.

²⁴¹ See H.-H. Hoppe, *The Western State as a Paradigm: Learning from History*, in Paul Gottfried, ed., *Politics and Regimes: Religion & Public Life*, Vol. 30, Transaction Publishers, Edison, NJ, 1997; S. Kinsella, *Milton Friedman on Intolerance, Liberty, Mises, Etc.*, in Mises Wire, <https://mises.org/wire/milton-friedman-intolerance-liberty-mises-etc>, 9 novembre 2009; W. Block, *Milton Friedman on Intolerance: A Critique*, in "Libertarian Papers", vol. 2, art. no. 41, 2010, <http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-41.pdf>.

and coercion in the acquisition of resources, i.e., taxation, make the State a potential aggressor, incomparable to any other subject. “Libertarians oppose romantic ideas about government. People are people. Handing someone a gun, calling him boss, and charging him with a noble goal will not transform him into a saint. Libertarians are skeptical that those in power will want to use their power to do good. They are also skeptical that those in power will know *how* to do good, even when they want to.”²⁴²

Section 10.2 will examine the strand of thought that takes this hostility toward the State to extremes.

²⁴² J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 5.

6. Liberty as Property

An important aspect of the conclusions reached so far is the confluence in the only concept of ownership (understood in a broad sense, also as self-ownership)²⁴³ of three rights that the liberal tradition kept distinct: life, freedom, and property (of objects); in the sense that the protective perimeter of rights is co-extensive with property. Let us see why.

6.1 Life

My right to life is nothing other than the right to go on living *if I want to*; which has as a negative correlative the prohibition imposed on others to kill me (if I have not threatened or suppressed the lives of others or if I didn't ask it specifically), and this prohibition stems from self-ownership; therefore, it is a property right. Only in this sense should the "sacredness" of life for libertarians be understood; instead, not as an absolute indefectibility, because there are five circumstances in which it is legitimate to suppress the life of others: the legitimate defense, the killing of the enemy in war,²⁴⁴ euthanasia at the request of the patient, the death penalty²⁴⁵ and abortion.²⁴⁶ Plus, the right to suppress one's life, with suicide.

Regarding the right to self-defense, the threat must be clear and imminent (see *supra*, assault), it must be an overt act. Mere insults, verbal violence, vague future threats, bawling or the mere possession of a weapon cannot be considered aggression. The reaction must be proportionate to the violation suffered (proportionality principle) and directed only against the aggressor (*targeting principle*); but the attacker must be given the right to proceed on the basis of the assumption that the aggression (in progress) is deadly, and therefore to be able to react with equally deadly means. The use of methods that can cause death must also be allowed in case the attack affects the assets (trespass to land, housebreaking, theft of movable property).²⁴⁷

²⁴³ To illustrate how the concept of property is the basis of any social theme, the libertarian jurist Butler Shaffer begins his essay *Boundaries of Order* by listing 92 issues that exhaust all the topics that today have relevance for social life (abortion, education, minimum wages, environment, drugs, euthanasia, immigration etc.) and noting how the disputes on each issue ultimately concern the nature and limits of property (pp. 1–4). He stressed that, in the libertarian sense, *property* does not indicate first of all the materialistic possession of tangible things, but rather describes a much higher human dimension: "something that men and women of ascetic dispositions have often failed to understand. It involves the question of *how* and by *whom* decisions are to be made about people and "things" in the world in which we live. The deeper significance of property lies in defining our relationships to one another as well as our personal sense of being, particularly as such factors delineate our respective areas of decision-making authority. As the common origins of the words suggest, "property" is a way of describing "proper" behavior: that conduct is "proper" when performed by the individual whose "property" interests are affected thereby." B. Shaffer, *Boundaries of Order: Private Property As a Social System*, Mises Institute, Auburn, AL, 2009, p. 29.

²⁴⁴ Since, as will be seen in the section on foreign policy (§ 8.4), libertarians only approve of defensive wars, and even in ways that do not affect the innocent, this circumstance could be considered an extension of the previous one, self-defense.

²⁴⁵ The admissibility of the death penalty, advocated by influential libertarians such as Rothbard, should come as no surprise: indeed, it is consistent with the restitutive and proportionalist view of punishment prevalent within libertarianism; see *infra* § 8.1.

²⁴⁶ As mentioned, on abortion there is no unanimity within libertarian thought, but the thesis of permissibility is prevalent.

²⁴⁷ Rothbard noted that in contemporary law, on the basis of the prevailing doctrine of "reasonable" force, the victim's right to defend himself and his possessions has been significantly weakened. Under current law, a victim of assault is allowed to use maximal, or "deadly", force only (a) in his own home, and only if he is under direct personal; or (b) if there is no way that he can retreat when he is personally under attack. All this is dangerous nonsense. *Any* personal attack might turn out to be a murderous one; the victim has no way of knowing the aggressor's intentions and reactions, whether he is going to stop without inflicting a grave injury or not. The victim should be entitled to proceed on the

The right to self-defense implies the full right to possess weapons.²⁴⁸ For the defender, as for any person, the principle of strict liability must apply, so that if it causes physical damage (not justified by the degree of threat suffered), even involuntarily, it is guilty.

6.2 Personal Liberties

As correctly stated by Lord Acton, liberty is the highest *political* end, not the highest end in the lives of individuals.²⁴⁹ Individuals need liberty to achieve their ends, whose importance is subjective. Liberty is a precondition, not an ultimate goal.

It consists in the possibility of carrying out actions, with one's own body, with one's own goods and/or on one's own goods, but accepting the bodies and goods of others as limit; therefore, still a question of "property". In the libertarian property-based conception, the "negative" freedom of classical liberals, with its changing limits to the area of non-interference, becomes the condition in which any individual is not prevented from carrying out any action *with his resources* (provided that it does not consist in an attack on the *resources of others*). In a concise formula: liberty is the condition in which a person's property rights are not invaded.²⁵⁰

The freedom of an individual therefore does not depend on the content of his actions; there is no freedom of action "in itself", but only the right to act within the borders set by legitimate property rights.

With this criterion of liberty as non-aggression all conflicts that some liberal definitions failed to settle are clearly resolved. For example, the well-known Kantian formula "each person's liberty ends where the liberty of others begins" (*The Metaphysics of Morals*, 1796) is purely formal²⁵¹ and,

assumption that any attack is implicitly a deadly one, and therefore to use deadly force in return. Otherwise, the first-mover advantage is always given to the criminal, and it is unacceptable. As for the defense of home or movable property, the victim is not even allowed to kill the aggressor, on the basis of the following argument: since the legal sanction for theft is not killing, then the victim cannot shoot the thief even in the moment of the theft. But punishment and defense are two different things and must be treated differently. Punishment is an act of retribution *after* the crime has been committed and the criminal apprehended, tried and convicted; defense is an act that occurs while crime *is in the process of commission*, and it is a very different condition. M.N. Rothbard, *Law, Property Rights, and Air Pollution*, pp. 70–71.

²⁴⁸ Libertarians object to any restriction: in itself, the possession of a gun is not an aggressive act, nor is the possession in the home of objects such as knives, clubs or stones; and it cannot be banned on the basis of a judgment on intentions. Moreover, the ban practically takes away any possibility of self-defense from the victims. Criminals, who can supply themselves with weapons even under a prohibition regime, gain a psychological advantage that actually results in an incentive to commit crime. For a concise review of libertarian arguments in support of gun ownership see M.N. Rothbard, *For a New Liberty*, cit., Chapter 6, section *Gun Laws*, pp. 128–30.

²⁴⁹ J. Acton, *The History of Freedom and Other Essays*, Macmillan, London, 1907.

²⁵⁰ As with utility, liberty is also not quantifiable and measurable. According to an example proposed by W. Block, if a bill contains both a 7% increase in the minimum wage and a 6% reduction in tariffs, it cannot be said whether as a result of its introduction the overall liberty has increased or decreased; it can only be said that the first measure reduces liberty, as it accentuates an aggression (already existing) on property rights, and the second increases it, as it partially removes an aggression on property rights. W. Block, *Klein and Clark are Mistaken on Direct, Indirect, and Overall Liberty*, in "Libertarian Papers", vol. 5, art. no. 1, 2012, pp. 89–110, <http://libertarianpapers.org/wp-content/uploads/article/2013/lp-5-1-4.pdf>.

²⁵¹ Earlier, in the *Foundation of the Metaphysics of Morals* (1785), Kant had conceptualized liberty in a completely different way, inherent in the internal forum. Liberty occurs only when one acts *autonomously*, and this happens if one acts on the basis of *reason* (practical, that is, inherent in ethics). Reason makes it possible to determine when an action is moral (and free): if it is understood as a duty in itself, not because it is useful or convenient; and it corresponds to duty if it can be formulated as a categorical imperative. Of which Kant offers two versions: the first identifies universalizability as the criterion for judging all action: we must act according to principles that we could make universal without falling into contradiction; the second is the one that sees people as ends in themselves; they must therefore be treated as ends and not as means. Isaiah Berlin has observed that for Kant, as for rationalists of his type, not all ends have the same value; it is reason that is able to identify the "true," "moral" ones. According to Berlin, the fact

unless accompanied by a specific theory, does not allow for a certain operational criterion to be identified as to what the boundary between the liberties of the individuals involved is given by. Or John Stuart Mill's "absence of harm" (*On Liberty*, 1859)²⁵². His *harm principle* sets the limits to one's actions in the possible harm done to others: with the definition already contained in Article 4 of the French "Declaration of the Rights of Man and of the Citizen" of 1789, "liberty consists in being able to do anything that does not harm others". However, this conception refers back to a strict definition of the too vague concept of "harm". If this is too broad, and, for example, does not exclude, as was the case with some versions of utilitarianism, generic references to "economic harm" or "psychological harm", it could lead to absurd conclusions and/or legitimize pervasive interventionism in social and economic relations, and consequently limit too much the range of permissible actions. For example, legitimate omissive behaviors, such as refusing to give alms or to do charity or sign a contract or engage in a romantic relationship, and legitimate actions, such as competition²⁵³ or public displays of affection, could be prohibited because there would be subjects (the beggar, the other party who would like to sign the contract, the sentimentally rejected person, the business suffering my competition, the passersby with an exaggerated sense of decency) economically or psychologically "harmed".²⁵⁴

The libertarian criterion does not incur these logical inconsistencies or paradoxical outcomes. Human rights, or freedoms – of movement, expression, worship, correspondence, association, assembly, the inviolability of the home – are nothing more than property rights, in the sense that they are circumscribed by self-ownership and external property – are nothing more than property rights, in the sense that they are circumscribed by self-ownership and external property. The contents and limits of specific freedoms, whose nature and boundaries are often misrepresented in theoretical and political debate, thus gain sharpness.

6.2.1 Freedom of Expression

Particularly enlightening in this regard is the conceptualization of freedom of manifestation of thought (broadly understood, including through artistic expressions). For libertarians, there is no

that the thought of initially Kantian authors such as Fichte later had authoritarian outcomes may not be surprising: reason does not accept all the ends of individuals, consequently some ends can be suppressed: "the fact that Kant's rational judge has sent you to prison is evidence that you have not listened to your own inner reason. [...] I have never, I must own, understood what 'reason' means in this context. [...] If this leads to despotism, albeit by the best or the wisest [...] but still despotism, which turns out to be identical with freedom, can it be that there is something amiss in the premisses of the argument?" I. Berlin, *Two Concepts of Liberty*, cit., p. 154.

²⁵² J.S. Mill, *On Liberty*, Batoche Books, Kitchener, Ontario, 2001.

²⁵³ This is not the case with Mill, who explicitly states in Chapter 5 that losses resulting from competition should not be prevented by governments. Instead, he does not consider legitimate the omissive behavior of one who does not intervene to prevent a harm of others (not caused by him); a conclusion, as we know, rejected by libertarians. Also problematic are the passages in which Mill also considers actions that have the *probability* of harming another person to be the object of legitimate prohibition.

²⁵⁴ Another example is the harm suffered by the family members or friends or colleagues of a person who engages in life-threatening behavior (heroin use, motor racing, driving without a helmet): in the event of death, the harm to the family members is certainly psychological and, if they depended on his financial support, also economic. Mill is ambiguous on this point: he believes that only behaviors that have detrimental effects on people with whom contractual commitments have been made can be the subject of legislative intervention; but he includes both formal and informal ones, and therefore also includes family members among the unjustly harmed. Rothbard dismisses the use of misleading terms this way: "the vague, question-begging term "injury" must not be used. Instead, infringement can be defined as "direct physical interference with another man's person or property, or the threat of such physical interference." [...] The important point to remember is never to use such vague expressions as "injury," "harm," or "control," but specific terms, such as "physical interference" or "threats of physical violence"." M.N. Rothbard, *Power and Market*, p. 298.

absolute right to freedom of expression. The key question is not *whether* in the abstract people enjoy it but: *where* the action takes place. I cannot break into another person's house and hold a speech; my freedom of speech is limited by his property right on the house. Similarly, I cannot demand that a writing of mine be published in a newspaper; or a commentary of mine be broadcast by a television channel. Any situation relating to freedom of expression can be interpreted according to the criterion of ownership: with my body (my *property*), that is, with my vocal cords, with my tongue, with my hand that holds a pen or beats on a keyboard, I can express my ideas; but I can do it either inside my physical *property* (my home, my theater, if I own it) or in someone else's property, but with the owner's consent; for example by renting a hall, or by signing a partnership contract with a newspaper or TV or radio station or website,²⁵⁵ or by being invited there.²⁵⁶

This solution contrasts with the prevailing theory which, by sacralizing the freedom of manifestation of thought, presupposes a right of "free and equal access" for all. Which, besides being ethically wrong – it would represent an aggression on the private owner of the information tool – is also technically impossible (thus also for any *public* media). In economic terms, in fact, this would mean that the supply of space and time is free, which would determine an extremely high demand for them (i.e., a demand/pretense of access), which certainly far exceeds the supply. But time and space are 'scarce' (limited) resources: the time allowed to a speaker on a podium, or the space allowed in a newspaper are not infinite, they must be divided, and there must be a selection criterion. The owner's decision is the ethically fairest and operationally least arbitrary criterion.²⁵⁷

This approach obviously rejects the existence of an alleged "right to information", understood in the sense of a right to be informed, a classic contemporary positive right. Proclaiming a right to know (but then, *what?* Who determines if that information is true?) automatically means obliging others to spread the news in their possession or their own opinions, which are their property. Each has no other right than to seek and acquire the information or opinions that others have freely decided to disseminate, free or paid.

This incorporation of liberty into property does not necessarily work in the sense of limitation. On the contrary, in a libertarian context, freedom of expression would be much less constrained

²⁵⁵ Relative to social media and online technology platforms (Google, Apple, Facebook, X, Amazon, Microsoft), the tones are particularly apocalyptic. The accusations are the most varied: threat to democracy, Orwellian controls, alteration of personality, manipulation of ideas and consciences by spreading fake news, violation of privacy and commercialization of data, copyright violations, abuse of dominant position, tax avoidance. Actually, in all the activities of "Big Tech" there is no aggression: membership is voluntary and the terms and consequences of it are known. Relative to privacy, there is absolutely no right to privacy (see *infra*), but in this case the transfer of personal data is voluntary; thus the claim is even more tenuous. Manipulation through fake news? It is part of freedom of expression and communication; everyone filters according to his abilities and culture. Do they do targeted advertising by knowing people's web purchase history? No fraudulent intent is discernible. Is each person's geographic location traceable? If one wants to, one can evade detection. Is copyright sometimes infringed? There is no right to intellectual property (see *infra*). Are they making money on membership or participation in the service? They are not stealing anything from the user. Consequently, any interference by States to prevent or constrain how user-firm interaction takes place is rejected by libertarians. The only circumstance in which activity is not deemed legitimate is if such platforms collaborate with States for repressive purposes, transferring information about users (or contents of their devices) to public apparatuses without users' permission in order to sanction "victimless crimes."

²⁵⁶ For libertarians, the reason why it must be forbidden to shout "Fire!", lying, in a crowded theater – according to the famous example proposed by Justice O.W. Holmes Jr. in 1919 – is not the possible harmful effect caused to spectators, but the violation of the contract made with the theater owner. That is, again, a problem of failure to respect property rights.

²⁵⁷ In State-owned media *de facto* access is decided by the public official, with the decision inevitably arbitrary. The decision of the private owner is also arbitrary, but in the latter case the service is not paid for by everyone, including the excluded, through taxes or a forced fee, as is the case with public media.

overall than what is guaranteed by other political-cultural positions and contemporary legal realities. In almost all countries, reputation or protection of sensitivity or safety or protection from disinformation²⁵⁸ or decency or privacy²⁵⁹ or property of ideas or possible economic harm are seen as values overriding freedom of expression, as can be seen from the existence of crimes of opinion or in general crimes committed through the manifestation of thoughts or intentions or images. The supremacy of honor or reputation, of an individual or group, is found in the punishability of insult, defamation, slander, vilification, denialism, micro-aggressions,²⁶⁰ incitement to hatred and discrimination on racial, ethnic, national, religious grounds; in general, in the indictment for ‘hate speech’. The dominance of security is evident in incitement to crime and suicide, apologia of crime, violation of investigative secrecy and state secret, and again in incitement to racism. The prominence of protection from disinformation (“fake news”) is manifested in measures such as the European Union’s Digital Services Act. The primacy of decency emerges in limits to pornography.²⁶¹ The preservation of religious sentiment in the prohibition of blasphemy. Non-reproducibility of creativity works descends from copyright law. The greater relevance of economic harm in the limits to boycott and blackmail and in the configuration of the crime of agiotage.

²⁵⁸ The first influential advocate of the censorship of lies and morally harmful ideas is Plato: in the *Republic* he states that people are fragile and impressionable, and in order for them to grow up with good character, in both literary and political and philosophical works negative values – such as Odysseus’ deceptions and adulteries – should not be celebrated, and the gods should not be portrayed as jealous, narcissistic, vengeful beings.

²⁵⁹ For libertarian theory, there is no right to privacy. In absolute terms, it would mean that each individual has the right for others not to know anything about him, to remain anonymous or hidden from the sight or hearing of others even without taking the actions that would guarantee him that condition. However, this right does not exist: again, privacy is connected with property rights; it is these that establish everyone’s room for maneuver with respect to his own privacy. Anyone can eavesdrop on, watch or follow another person, if he does not *physically* invade his property. So, for example, the activity of a detective hired by his wife to spy on her husband is legitimate. A journalist, or again a detective, can look through binoculars at another person, even if that person is in his own apartment, because in that case there is no physical invasion. And a photographer, under the same conditions, can take photographs. For the same reason, it is also permissible to use goggles or other X-ray optical instruments to see people through their clothing (as may be the case at airports). So is the surveillance of workers by the employer, if provided for in the contract. In a free society, if you want privacy, like other goods and services, you have to pay for it. It is a privilege, not a right. In many of the above situations, countermeasures can be implemented by incurring a cost. One can erect guards to prevent others from the outside from seeing our garden or apartment, or one can install smoked glass in one’s car. Even thorny issues such as wiretapping phone calls, environmental eavesdropping, or stealing and reading e-mails are circumscribed by property rights. If such activities were carried out by private police without violating the boundaries of physical property, they would be legitimate. Conversations are not the property of the person holding them (this false right should not be confused with the true right to engage in conversation). Even in these cases, the willingness to deploy resources can make a difference in relation to privacy protection. In a libertarian society, firms would spring up that would offer technological services to protect conversations, and individuals most jealous of privacy might purchase such services. The above is dulled and distorted by the fact that intrusion into the lives of others today is by the State. In addition to the cases listed above, there are privacy-violating situations typically related to State activity: ID cards, passports, health cards, vaccination green passes, driver’s licenses, postal inspections, censuses, cameras in public places, and public security or intelligence agency filings. Libertarians are hostile to such institutions not because they configure a violation of the right to privacy, which, as we have seen, does not exist, but for two other reasons: because they are coercively financed; and because they represent the ‘blackmail’ condition that allows otherwise forbidden actions to be carried out or because the information seized is the premise for subsequent attacks (e.g., census data on Jews in Nazi Germany).

²⁶⁰ Devised by the “woke” culture, especially in American universities, they are normal expressions of language that have, however, become forbidden phrases because they are considered offensive to some minority: for example, you cannot ask a person where he or she is from; or what “field of study” he or she is oriented toward because the term “field” evokes cotton plantations for blacks or a farmland where ancestors worked as labourers for a Mexican.

²⁶¹ Or in outright censorship with a ban on publication, even to literary works, accused of obscenity (this was the case, for example, of *Lady Chatterley’s Lover* in the United Kingdom until 1960). Disappeared now in the West, it persists in many Islamic countries.

According to libertarians, all these offenses should be deleted, because the explication of one's opinions, even the most aberrant, is a direct emanation of self-ownership, and should take precedence over other matters. Thought and voice, in fact, are components of the individual's body; their free exercise is an emanation of the individual's ownership of that body and does not result in physical aggression toward the interlocutor.²⁶²

A clarifying example can be derived from the conflict between the right to manifest thought and the right to reputation; to be resolved in favor of the former, since reputation is not an entity belonging to the slandered but consists of the judgments contained in the minds of other people; is purely a function of the subjective attitudes contained in their minds; which are their properties, and therefore cannot be controlled. And the use of that property does not result in physical invasions. Besides all that, an individual's (or institution's) reputation fluctuates constantly, depending on the opinions of the rest of the population. There is also another reason why compensation and/or conviction of the slanderer cannot be sought: people's information and opinions about others' reputations, like intellectual "property" in general, are not scarce resources, and therefore are not subject to property rights.²⁶³ In the case of libel or slander, the victim can defend his reputation by pitting freedom of expression against freedom of speech, i.e., by replying, buying a newspaper page, challenging the slanderer to a public debate, and so on, but not by resorting to the courts. For libertarians, in contrast to the "cancel culture" Left, "words are NOT violence".²⁶⁴

Moreover, in many of these crimes of opinion, it is not possible to establish objectively, scientifically and irrefutably what is the limit beyond which an expression of ideas from lawful becomes unlawful; to draw a line between "true" or "right" ideas and mystifications.²⁶⁵ A principle that comes with the vague proviso "except sometimes" is a weak principle that can be easily overwhelmed. Paving the way to "State truths" and allowing the courts to place a threat on historical research and freedom of speech, writing and publication. The outcome is inevitably the censorship or the persecution of non-aligned views.²⁶⁶ Of course, total freedom of expression would

²⁶² Libertarian freedom of expression does not imply that people can expect to bear no *cost* for ideas and opinions expressed. "You won't pay a *legal* price for holding your views, but you should know that there are other prices to be paid." R. Fumerton, *op. cit.*, p. 129. If others do not want to enter into relationships with a person because they find some of his ideas particularly hateful, they should be allowed to do so. For example, if a private university does not want to employ a person for this reason, it should not be coerced, and the person will have borne a cost for the manifestation of his ideas. On the right to discriminate see *infra*.

²⁶³ According to Walter Block, favorable, unlike M. Rothbard and other libertarians, to the possibility of the contract of voluntary slavery, there is a case in which one person owns the mind of another, precisely that of a slave owner (or that, similar and even more problematic, of a person A who has acquired from another, B, the right of partial ownership to his own reputation, i.e., to the ideas that B has about him). If a person, talking to the slave (volunteer), slanders the slave owner, according to Block the owner has the right to recover damages, and therefore the slanderer can be sanctioned, because in this case the owner's reputation contained in the slave's mind belongs to the owner. If the reason for the non-sanctionability of defamation consisted only in the question of "who" owns the mind and thoughts, this case would challenge the libertarian conclusion. But, Block concludes, even in this case the theory about the intangibility and non-scarcity of thoughts prevails, so even in this case the defamed cannot seek compensation and/or conviction of the libelist. W. Block, J. Pillard, *Libel, Slander, and Reputation According to Rothbard's Theory of Libertarian Law*, pp. 116–42.

²⁶⁴ A slogan of *woke* radicalism is "words are violence".

²⁶⁵ In relation to the recent obsession with fake news, it should be noted that accuracy in news presentation is not characterized by a binary, true/false condition, but by a *continuum* that varies between two extreme values. Consequently, the hasty censorship solution often invoked runs up against a much more complex epistemic problem than the digital overseers believe. In any case, for libertarians, there is no right not to be "fooled" by mere news.

²⁶⁶ A recent example is Meta's admission in 2024 that, at the request of the Biden administration, it censored dissenting opinions regarding the management of Covid.

allow the manifestation of even abject, false and repugnant ideas and opinions, but the alternative regime carry an even higher price.²⁶⁷

In consequentialist terms, while measuring the physical harm caused by an action is simple, there is no way to measure the dangerousness of an idea. “Assessing it by the material consequences it might cause is not simple: taken literally, there are statements in the Bible or the Koran that sound like incitements to murder. Applying a historical criterion is impossible, because one would have to outlaw not only communism, but more or less all religions, in whose name gigantic massacres have been perpetrated. To go into the merits of various opinions, to assess their compatibility with common sense, is risky, to say the least, because common sense is also changeable: a hundred and fifty years ago in the United States, slavery was for many a moral idea. [...] John Stuart Mill said that the only way to weed out a wrong idea is to circulate it as widely as possible, so that it can be refuted by the largest number of people with the widest range of arguments.”²⁶⁸ Moreover, Mill further added, taking others’ ideas into consideration, even if only with the intention of demolishing them dialectically, allows to test the soundness of one’s own.²⁶⁹ Being confronted with evil helps to recognize it and eventually combat it.

Still within a consequentialist analytical framework, an exponent of the Economic Analysis of Law such as Richard Posner argues for the non-limitation of free speech based on the efficientist consideration that the circulation of ideas and information generates positive externalities because of their non-rivalry and the incomplete appropriability of property rights over them.²⁷⁰

Finally, like any prohibitionism, even that of ideas generates two perverse effects: it makes the proponents of prohibited ideas martyrs of freedom, amplifying the spread of those ideas; and, by producing clandestinity, it encourages the shift from opinion to exemplary deed, from idea to violent action.

For libertarians, as mentioned above, incitement to crime should also not be sanctioned. Individuals possess freedom of choice and will, and they should be responsible for their own actions. If A says to B and C, “Come on, go smash those shop windows”, and B and C execute, only the latter two, who have carried out concrete violence, should be sanctioned, not those who have only uttered words. B and C are not automatons inexorably compelled to commit such a bad deed.²⁷¹ The same criterion should be applied to incitement of hatred or violent video content: “if

²⁶⁷ Confirming the fact that State censorship always acts in an excessive way, “The Future of Free Speech”, a think tank based at Vanderbilt University, carried out research in 2024 which showed that between 88.5% and 99.7% of comments deleted from social media following the Digital Service Act were permitted by law.

²⁶⁸ F. Rondolino, *Non è con le manette che si batte il razzismo*, in “Il Giornale”, December 16, 2011 (my translation).

²⁶⁹ To counter censorship Mill also uses another argument: since it is not possible to have absolute certainty about the truth or falsity of any idea, banning some of them risks suppressing a truth, which could have contributed to the progress of society. The radical epistemic fallibilism contained in Mill’s premise is not shared by all libertarians.

²⁷⁰ R. Posner, *The Law and Economics Movement*, in “American Economic Review”, vol. 77, no. 2, 1987, pp. 1–13.

²⁷¹ Of course, it is a different matter if A is the organizer of the violent action: he recruited the perpetrators, paid them salaries, supplied them with weapons, etc.; in that case he is liable. On instigation, S. Kinsella’s position is less clear-cut: he, in identifying the causal chain for purposes of liability, uses praxeology, thus the application of means in relation to a given end. If the initiator of the causal chain has the intention, and the instigators represent the means, the former is also responsible. For Kinsella, one must make a concrete case-by-case distinction and examine the context: “We do not maintain that the inciter is necessarily responsible; the question turns on many specific facts and the context. What we maintain is that the inciter is not off the hook *just because* the rioters had free will. The question to be answered is: was the mob the *means* of the inciter? Was the inciter a cause of the mob rioting, or of their ensuing havoc? [...] We do not suggest that merely formulating the issue in this manner makes the correct answer easy to find in every situation. Such questions must take into account relevant facts and the context, and depend on the sense of justice of the judge or jury. Looking at actions from the praxeological point of view, however, helps us look in the right place and ask the right questions.” S. Kinsella, P. Tinsley, *Causation and Aggression*, p. 107. On the more general topic of

we banned movies, we would have to ban books, stories, paintings, plays, operas, etc. Even children's fairy tales – *Jack and the Bean Stalk*, *Little Red Riding Hood*, *Chicken Little*, *Hansel and Gretel* – are replete with mayhem and murder. Down this path lies the end of culture and art as we know it. But there is an even more basic objection to censorship and prior restraint. The human being is a creature of free will. People, whether they like it or not, are responsible for their own acts. “The Burning Bed” and all other artistic endeavours that depict violence are not to blame for the acts of those who chose to emulate them. Only the criminals themselves are responsible and guilty.”²⁷²

Similarly, ‘blackmail’ should not be prohibited. If an individual has the right to disclose the knowledge he possesses about another individual, then he also has the right to demand a sum of money from that individual in order not to place the information he has in the public domain. The right to blackmail can be inferred from the general property right over one's person and knowledge and the right to disclose or not disclose that knowledge.

The only freedom of expression not admitted by libertarians is that which is functional to the threat of the use of force or the commission of a crime in a hierarchical associative relationship: an example of the first type is the phrase “Your money or your life” uttered by a robber; an example of the second, order to kill by a mafia boss.

Identical to freedom of expression is the proprietary content of religious freedom: everyone has the right to pray, perform the rites of his religion and proselytize within his own facilities or those that can be used following agreement with the owners.²⁷³ In contrast, there is no right to have a church, or synagogue, or mosque built with the resources of others, as is the case when the State builds these places of worship through taxation.

The problem of state subsidies or public ownership actually concerns any medium of communication of ideas, thoughts, facts, images, sounds, culture in general – TV, radio, print media, the Internet and also, in a broader sense, cinemas, theaters, museums, libraries. The State should not interfere even “positively”, for support purposes. Choosing to favor one work over another, one orientation over another, is arbitrary and distorts competition. The outcome is usually a bureaucratic conformism of the grantees. In the United States, the National Endowment of the Art, the agency that subsidizes the arts, has often been at the center of controversy for funding works that are obscene or blasphemous, or politically oriented, or not classifiable in the arts. The market liberates art; public intervention crystallizes its forms. Moreover, “culture” is an unlimited good, so the desire to support or promote it, if pursued consistently, would involve unlimited looting of

inchoate crimes, offenses that are an intermediate and antecedent step to the commission of another crime (attempted crimes, conspiracy, incitement, aiding and abetting), see B. O'Neill, W. Block, *Inchoate Crime, Accessories and Constructive Malice in Libertarian Law*, in “Libertarian Papers”, vol. 5, art. no. 2, 2013, pp. 241–71, <http://libertarianpapers.org/wp-content/uploads/2013/12/article/2013/12/lp-5-2-34.pdf>.

²⁷² W. Block, *Defending the Undefendable II*, cit., pp. 120–21. A similar controversy is being brought against toy guns for children, which would incite these to violence. Canadian American philosopher Richard Fumerton noted that his generation, which grew up during the 1950s with Westerns and consequently a bit of an obsession with toy guns, was then the “make love not war” generation in the 1960s: “my own guess is that children are really good at distinguishing fantasy from reality and are perfectly capable of enjoying the fantasy, while they live a life that is quite different from that fantasy.” R. Fumerton, *op.cit.*, p. 114.

²⁷³ Based on his consequentialist approach (see *infra*, Chapter 9), David Conway justifies freedom of religious worship in this way: suppose a person prefers to live in a polity that allows only the practice of his own religion. In that case the alternative he faces is not between tolerance of all faiths or the egemony of his own, but between tolerance of all faiths or a bloody civil war, as the European history of the sixteenth and seventeenth centuries has shown. So, in terms of well-being, religious freedom is the best solution. D. Conway, *op. cit.*, pp. 17–19.

resources. This is what inevitably happens when the State, instead of merely “avoiding evil” (aggression), sets out to achieve the “good”.

6.2.2 Intellectual Property

It was said above that the confluence of liberty with property entails overall a broadening, not a compression, of the range of lawful actions. This is further confirmed by the position libertarian thought has arrived at on the issue of so-called intellectual property, regarding which the illegitimacy thesis prevails.

Intellectual property concerns intangible assets such as creations of the mind. It is generally identified with copyright, concerning products of human creativity such as writings (books, articles), films, musical compositions, plays, paintings, computer programs, etc., but in contemporary legal systems it is also applied to patents, trademarks and trade secrets.

What exactly does the right reserved to the author by contemporary legislations consist of? Taking the author of a novel as an example, he basically has the right 1) over any physical version of his work (book) consisting of that given sequence of words²⁷⁴ 2) to sell the book, present it publicly and collect (in whole or in part, depending on agreements with any publishers) the proceeds, and 3) that the purchaser not make a copy of it (hence the term copyright: only the author can reproduce his own work). The buyer owns only the physical copy of the book, those given pages and that given ink, not “the novel” itself.

Nineteenth-century forerunners of libertarianism such as Spooner²⁷⁵ and Spencer²⁷⁶ defended intellectual property. So, too, in the twentieth century libertarians of both natural law and utilitarian approaches. The former – A.J. Galambos,²⁷⁷ J.N. Schulman, D. Kelley, A. Rand,²⁷⁸ J. Hospers – starting from the traditional principle of self-ownership: the mind belongs to the individual, and therefore the products of the mind, intellectual creations, also belong to the individual. The latter – L. von Mises, D. Friedman²⁷⁹ – by pointing out that the protection of the rights of creators, thus the possibility of profiting economically from one’s own creations, incentivizes the realization of a greater quantity of artistic and technical inventions, which reverberates positively on overall wealth and utility.

²⁷⁴ Copyright protects the *form*, the *expression* of ideas, not the underlying ideas themselves, which can be reworked into a different form of expression. However, this distinction is more problematic than it seems: for example, W. Block observed that words are nothing more than a manifestation of ideas. Since words have been invented by various people in the past, if intellectual property is allowed, it cannot have a time limit, and then none of us could use words anymore, verbally or in written form. W. Block, *Defending the Undefendable II*, pp. 224–5.

²⁷⁵ L. Spooner, *The Law of Intellectual Property* (1855), in *The Collected Works of Lysander Spooner*, M & S Press, Weston, MA, 1971. The basis is the Lockean (mental) *labor* done by the creator or discoverer of a given idea.

²⁷⁶ H. Spencer, *Social Statics*, cit., Chapter 11, “The Right of Property in Ideas”.

²⁷⁷ Galambos, an eccentric personality who managed to gain a good following among young libertarians in Southern California in the 1960s, extreme his theory of “primary ownership” - his ideas - by preventing those who attended his (paid) lectures given at the Free Enterprise Institute from disseminating his ideas to anyone unless they paid for them; and in turn put a nickel in a fund box every time he uttered the word “liberty” to pay royalties to the descendants of Thomas Paine, believed to be the “inventor” of the term.

²⁷⁸ A. Rand, *Patents and Copyrights*, in “The Objectivist Newsletter”, May 1964.

²⁷⁹ In the field of Economic Analysis of Law, an important exponent such as Richard Posner also supported the same position.

In the early 2000s, however, an innovative contribution by Kinsella²⁸⁰ changes the orientation on the topic. Later reflections in the same direction are offered by authors such as J.A. Tucker, R.T. Long,²⁸¹ W. McElroy, T.G. Palmer, H. Lepage, B. Bouckaert, W. Block and B. Shaffer.²⁸² The opposition to the existence of the property of ideas is based on the distinction between tangible (corporeal, material)²⁸³ and intangible goods with reference to scarcity. As we saw in Chapter 3, tangible goods are scarce (physically limited) and, to avoid conflict, property rights over them must be created. To perform this function, property rights must be *visible* and *just*. ‘Visible’ in the sense that they must be objective, that is, ascertainable without ambiguity; ‘just’ in the sense that they must meet the Lockean “first occupier” criterion of allocation.

Intellectual property rights, however, are not about scarce resources and do not arise on the basis of the first occupier homesteading rule. Ideas are not scarce: “my use of the Pythagorean Theorem in no way detracts from your use of it.”²⁸⁴ Relating to patents, “[i]f I invent a technique for harvesting cotton, your harvesting cotton in this way would not take away the technique from me. [...] Your use does not exclude my use”²⁸⁵ there is no conflict. The same can be said for copyright: “if you copy a book I have written, I still have the original (tangible) book, and I also still “have” the pattern of words that constitute the book.”²⁸⁶ It is *replicability*, that is, the ability to copy and share endlessly, that is the characteristic that makes a good not scarce, and therefore not an object of ownership. If an idea (or music produced, or a file on the web, etc.) has been made public, that is, if other people have taken possession of it, the creator (or anyone else) is not deprived of it; that idea has replicated (multiplied) without cost. There is no *rivalry* in the ownership of it. In short: a book is a scarce good, is subject to ownership and has a price; the ideas in it are not and must be able to be copied without restriction. I own a specific book, not the sequence of words in it and its *characteristics* in general; just as if I buy a red car I own that individual car, not the color red in the abstract, which can also be used by other people. In praxeological terms, nonscarce goods are not *means*, but *guides* for human action.²⁸⁷ “Information is not a concrete thing an individual can control; it is a *universal*, existing in other people’s minds and other people’s property, and over these the originator has no legitimate sovereignty. You cannot own information without owning other people.”²⁸⁸

This conclusion is a consequence of the already examined (see *supra*, Chapter 3) rectification made by contemporary libertarian thought with regard to the element that justifies the acquisition of

²⁸⁰ S. Kinsella, *Against Intellectual Property*, cit.; J.A. Tucker, S. Kinsella, *Goods, Scarce and Nonscarce*, in Mises Daily, <https://mises.org/library/goods-scarce-and-nonscarce>, August 25, 2010. The author develops and refines some thoughts that in the late 19th century Benjamin Tucker had made in “Liberty” magazine.

²⁸¹ R.T. Long, *The Libertarian Case against Intellectual Property Rights*, in G. Chartier, C. Johnson (eds.), *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, Autonomedia, New York, 2012, pp. 187–98.

²⁸² Rothbard, while placeable on this front, admitted a limited form of intellectual property as a consequence of the concept of “bundle of rights”: there is a right to ownership of the physical copy of a book and a separate right that others should not reproduce it that can be inserted by the author/publisher in the contract of sale.

²⁸³ Hardy Bouillon noted that “material” is more accurate than “tangible” since there are material goods that are not tangible, such as atoms. H. Bouillon, *A Note on Intellectual Property and Externalities*, in J.G. Hülsmann, S. Kinsella (eds.), *Property, Freedom and Society: Essays in Honor of Hans-Hermann Hoppe*, Mises Institute, Auburn, AL, 2009, pp. 149–60.

²⁸⁴ W. Block, *Defending the Undefendable II*, p. 226.

²⁸⁵ S. Kinsella, *Against Intellectual Property*, p. 22.

²⁸⁶ *Ibidem*.

²⁸⁷ J.A. Tucker, S. Kinsella, *Goods, Scarce and Nonscarce*.

²⁸⁸ R.T. Long, *The Libertarian Case Against Intellectual Property Rights*, in “Formulations”, 3, n. 1, Fall 1995, pp. 10–13.

a property right as a result of homesteading: not *mental* or *physical energies*, not *labor*, but the mere action of occupation. In the present case, the error stems from the fact that intellectual property advocates believe that it is *creation*, i.e., a type of labor, that legitimizes the establishment of title.

6.2.3 Freedom of Movement

Access to public spaces linked to rights such as assembly or movement rights is also a matter of property. In “public places” (streets, squares, sidewalks, etc.) the dominant theory generally descends from the public nature of a good²⁸⁹ an absolute right of access for all. However, this situation inevitably generates conflicts. Here too, free access – that is, in economic terms, the free supply of a limited resource such as space – generates a permanent excess of demand. Hence the conflicts. Selection criteria are therefore necessary. In reality, the decision is made on a case-by-case basis by the public administrator. However, the problem is not solved, because most of the people who access the public space are taxpayers, therefore they have financed (coercively) the production and maintenance of the property, from whose enjoyment they can be excluded based on the arbitrariness of the state official. For example, in relation to the roads, a typical conflict is that between motorists and demonstrators. Whatever the decision made by the public bureaucrat, one of the two categories (also of taxpayers) will have their rights limited or violated: to travel by car or to demonstrate.²⁹⁰ Other examples of conflicts in the public space are those between motorists and windscreen washers at traffic lights, between prostitutes and residents, or between annoying bums and passersby on the sidewalks.

This theme also confirms the close relationship between freedom and property. In fact, the whole problem would not arise if the roads were the private property of individuals or companies.²⁹¹ In this case, as happens for any other form of private property, they could be rented or donated to individuals or groups of individuals. It would be up to the owner to decide whether to rent his road to demonstrators or motorists, and when, and at what price. In this case, no conflict would arise, because economic resources would not be subtracted from the excluded, unlike taxpayers.

6.2.4 Freedom of Association (and of Exclusion)

About the right of association, the libertarian interpretation turns out to be particularly heterodox to current thinking. We have seen (see *supra*, Chapter 3) that the right of property also guarantees the right of exclusion. Freedom of association is nothing but a subset of the right to property (which

²⁸⁹ “Public ownership is a fiction. If you think you own something that is said to be owned by “the people” (of whom you are one), ask yourself what power you individually have over it. If you own stock in a corporation, you are genuinely part-owner: you can cast your vote on the corporation’s policy decisions, and (more important) you can take out your stock at any time that you care to dissociate yourself from the corporation, and collect the value of the shares you own. But try the same with any government-owned enterprise. [...] You would soon find that you own none of it, you pay taxes to support it, whether you want to or not, but there is no part of it that you can call yours. What is “owned by the people” is only paid for by the people, and used by government officials at the people’s expense, and occasionally by you, under conditions laid down by them.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, pp. 78–9.

²⁹⁰ R. Fumerton, assuming the current context characterized by public property, proposes as a compromise solution the identification of specific spaces for manifesting one’s ideas or claims. Areas important for circulation or commercial activities would not be available. This amplified “Hyde Park corner” model would allow protesters to exercise their freedom of expression and motorists or people who want to shop or stroll not to be bothered. The same author acknowledges that protesters would probably like such a solution little as the resonance of protests, often related to the inconvenience caused, would be greatly diminished. R. Fumerton, *op. cit.*, pp. 123–4.

²⁹¹ A fully private road system is described in paragraph 10.2.

incorporates freedom of contract). So it incorporates the right of “discrimination”, i.e., exclusion. Freedom of association, in fact, is the right to establish *voluntary* relations with other people; with whomever one *wishes*. And to accept or exclude them from physical property. To associate with some people is a choice that implies at the same time and necessarily not to associate with others. Freedom of contract also contains within itself the right of exclusion. All of us continually ‘discriminate’ by the mere fact of making choices that involve contact or relations with people: we choose friendships or affections or business or associative relations on the basis of honesty or beauty or talent or common interests or other characteristics; thus, ignoring or avoiding (discriminating against) other people who in our view do not possess the requirements we demand. Conversely, and in spite of the progressive mantra about “inclusiveness” always and everywhere, no one has the right to impose himself on a non-consenting other. Freedom in social relations, with its negative correlative, implies that no factor can be excluded as a selective criterion: gender, race, age, nationality, religion, sexual orientation, political inclinations, personal values.²⁹² “Must the homosexual nightclub be forced to hire women? Must the lesbian restaurant or social club be forced to hire men? Must Chinese restaurants be forced to hire non-oriental cooks and waiters?”²⁹³ A bakery whose owner refuses, because of personal beliefs, to bake a cake celebrating a same-sex wedding should be allowed to do so. In turn, gay associations should have the right to publicly propose a boycott of the bakery. British men-only clubs should not be forced to admit women. And in relation to racism, “we have to protect a racist’s right to the use and disposal of his own property. Private racism is not a legal, but a moral issue – and can be fought only by private means.”²⁹⁴ A private group should be able to decide, however obnoxious it may seem to many, not to accept homosexuals or people of color within them (and, conversely, homosexuals and people of color should have the freedom to exclude heterosexuals and whites²⁹⁵ from their associations).²⁹⁶

²⁹² The empirically ascertainable reality of the selectivity of individuals relative to dating, with the resulting legal protection claimed by libertarians, is also the answer to the communitarians’ argument against individualism (often unduly equated with atomism; see *supra*, Chapter 5). They emphasize the ties of individuals to the community and the fulfillment of individuals as emanating from the health and (value, identity) compactness of the body politic. But, as Epstein noted, a community requires more than a series of people living next to each other or individuals owing allegiance to a single ruler. It requires people in the community to show interest in each other. Equal interest and respect cannot be forced into the heads of those who wish to turn their emotional energies elsewhere. A voluntary community also assumes and defends the exclusion of some people if they do not meet its criteria. Cf. R. Epstein, *Simple Rules for a Complex World*, cit., *Conclusion*.

²⁹³ W. Block, *Defending the Undefendable II*, p. 130. Block points out that anti-discrimination regulations sometimes conflict with religious freedom. This is what happened to the marriage dating website e-Harmony, created by Christian psychologist Neil Clark Warren. In 2008, New Jersey’s Civil Rights Division with a lawsuit got Warren to open a website for homosexual dating as well, and in 2010 that it merged with the original website to achieve greater visibility.

²⁹⁴ A. Rand, *The Virtue of Selfishness*, p. 134.

²⁹⁵ In light of this, it becomes less surprising, and less “scandalous,” for Rothbard and other libertarians to prefer the separatist Malcolm X over the integrationist Martin Luther King, even though they considered the former’s concept of “black nationalism” to be problematic in several respects. See M.N. Rothbard, *Their Malcom...And Mine*, in “Rothbard–Rockwell Report”, vol. 4, no. 2, February 1993, pp. 10–12.

²⁹⁶ On the other hand, as Gary Becker and Milton Friedman pointed out, racist, sexist or generally discriminatory behavior, precisely because of the operation of the free market, does not remain without sanction. Indeed, the economic operator who discriminates limits his options and thus uniquely restricts his market (e.g., reduces the number of workers from which it can choose new hires; or the number of suppliers from whom he can purchase a good or service; or the number of people to whom he can rent his apartment), imposing higher costs on himself than his competitors who do not discriminate and thus suffering a competitive disadvantage: G. Becker, *The Economics of Discrimination*, University of Chicago Press, Chicago, 1957; M. Friedman, *Capitalism and Freedom*, University of Chicago Press, Chicago, IL, 1962. As we saw in section 5.1, ‘thick’ left libertarians believe instead that a libertarian should fight (without coercive means) against discriminatory attitudes.

Finally, as already mentioned, there is a right to manifest one's ideas and make a condition public, not a right to be immune from the nonaggressive consequences of such "revealing" oneself to others.²⁹⁷ Libertarians therefore radically oppose antidiscrimination laws applied to private individuals.²⁹⁸

6.2.5 Civil Rights and Libertarian Rights

The illustration of the precise characteristics of libertarian liberty also allows us to shed light on the true nature of a category of rights that is generally associated with libertarianism: *civil rights*. If understood in the nineteenth-century sense, i.e., as freedom "from the State", they could largely coincide with libertarian liberties. However, today the label does not only denote the "negative" liberties of individuals, but also includes forced integrationism and the attribution of privileges (often group-based, hence collectivist) which often imply an obligation for others to perform actions, thus giving the rights a "positive" connotation that does not belong to the libertarian conception. Moreover, these (pseudo)rights are almost always inherent to groups, they are collectivistic, and the tribal mosaic to which they give rise is antithetical to the libertarian inspiration that law and the State should relate to all citizens as *individuals* and not as members of categories. Many of these civil rights are presented as (or hidden behind the label of) anti-discriminatory²⁹⁹ and/or inclusive policies: right to override others in a ranking for hiring or admission to universities (quotas),³⁰⁰ right not to be subjected to insulting or contemptuous or sarcastic epithets if belonging to a particular minority; right to group compensation as a result of alleged "systemic racism" or of that suffered by ancestors; right to be chosen as a tenant if a member of a given category; right to enter and enjoy the services of places open to the public such as restaurants, hotels, shops; right to stand in public places even if engaging in harassing

²⁹⁷ About American communists during McCarthyism, Justin Raimondo writes that "there is nothing "libertarian" about the idea that Communists have a "right" to private-sector jobs. There is nothing in libertarianism, properly understood, to prevent any employer from immediately firing one of the comrades just as soon as his or her party membership is exposed to the light of day. The conditions of liberty are fulfilled just as long as one has the right to speak out on any subject, to espouse any political belief, no matter how irrational or repulsive—but there is no corollary to this principle that insists on making the exercise of this right profitable or even painless." J. Raimondo, *Reclaiming the American Right: The Lost Legacy of the Conservative Movement* Center for Libertarian Studies, Burlingame, CA, 1993; republished by Regnery Gateway, Washington, DC, 2008, pp. 125–6.

²⁹⁸ Such as the Civil Rights Act of 1964. See R. Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws*, Harvard University Press, Cambridge, MA, 1992.

²⁹⁹ Victimology fueled by the identitarian Left increasingly multiplies the categories to be recognized as oppressed minorities, which, however, even in their multiplicity, are identifiable by opposition (more rarely by simple distinction) to the quatern Male, White, Heterosexual and Western, manicheistically considered the matrix of domination. For example, the claims of the genders belonging to the LGBTQ+ community arise and develop, more or less explicitly, out of antithesis to the majority heterosexual condition; as do feminist struggles with respect to Male; and black people with respect to White; and support for international causes always has a Third-Worldist afflatus of anti-Western intonation. When facts place in the position of victim a category that does not fit into the rigid paradigm (e.g., Israeli civilians slaughtered by Hamas Palestinians), a cognitive dissonance arises in the galaxy of "social justice", that produces either silence or forms of justificationism.

³⁰⁰ For theorizing in favor of affirmative action, see T. Nagel, *Equal Treatment and Compensatory Discrimination*, in "Philosophy and Public Affairs", vol. 2, no. 4, 1973, pp. 348–63; R. Dworkin, *Affirming Affirmative Action*, in "The New York Review of Books", 22 ottobre 1998, pp. 91–102. Many recriminations are aroused by the possibility of bypassing others in a ranking initially drawn up on the basis of merit criteria. Affirmative action introduces legal norms on the basis of psychological or sociological evaluations, which are inevitably elusive and changing (prejudice cannot be quantified). For libertarians, only *de jure* discrimination can be remedied, and the therapy, legal, is one that removes the incapacities that possibly affect the *status* of individuals, i.e., equal rights to life, liberty and property and equal duties to refrain from violating the same rights of others. The logic of affirmative action loses sight of the individual and makes membership in a race or gender the *normatively* (not *subjectively*) diriment element in socioeconomic relations.

behavior;³⁰¹ right to be assigned a house for a couple (heterosexual or homosexual); right of the handicapped to be able to move easily in the city; right of the student to attend even if pursuing violent conduct; right of free and ‘equal’ access to public resources and to stand in them even if engaging in harassing behavior; higher penalties for assaults on specific categories (women, homosexuals) or introduction of specific crimes such as femicide or homophobia; obligation to approve multiculturalism in schools; indiscriminate immigration.³⁰²

In this sense, the position of libertarians on the whole issue of homosexuality is exemplary. In line with the view of liberty as the mere absence of aggression, they are only interested in guaranteeing the freedom to engage in same-sex relationships. Therefore the “rights of gays” (of lesbians, bisexuals, transsexuals, transgenders, queers) consist of having to be treated like everyone else, and that is, only in the right not to be aggressed in person and in property (both by private individuals and by State when it considers homosexuality a criminal offense or when it imposes coercive psychiatric treatment). And not also, as liberals and many left-libertarians argue, in the claim, behind the semantic blackmail of “discrimination”, that everyone expresses approval of homosexuality (hence an enforced approval);³⁰³ or that the corporatization of that condition through juridical privileges and public aid is carried out; or that juridical equality is violated by inventing new criminal offenses that aggravate the penalties for crimes against homosexuals. Furthermore, since everyone should be able to dispose of his own resources as he sees fit and possess full freedom of contract, behaviors, erroneously termed “discriminatory”, such as an employer’s refusal to hire a homosexual or an apartment owner’s refusal to rent to a homosexual, are completely lawful. For libertarians, the biological datum is irrelevant on a moral and juridical level, in the sense that even libertarians who believe that there is a biological core that distinguishes the two genders (the majority) do not conclude that this disparity establishes differences in the moral status of individuals and consequently the need for different treatments on a juridical level (as instead argued, for example, by “difference feminism”).³⁰⁴

The refusal of the statization of family³⁰⁵ relationships is also at the basis of the libertarian coldness towards the claims aimed at the legalization of homosexual marriages or civil unions. This

³⁰¹ Such as window washers at traffic lights, beggars begging in an intimidating manner, groups of boys hassling and cackling, hawkers with intrusive stalls, and so on: “we must reject once and for all the [...] view that all government-operated resources must be cesspools. [We must] *Take Back the Streets: Get Rid of the Bums.*” M.N. Rothbard, *Right-Wing Populism*, in “Rothbard–Rockwell Report”, vol. 3, no. 1, January 1992, p. 9.

³⁰² On the connection between victimology and welfare statism, Justin Raimondo says: “the science of victimology [...] gauges one’s right to “entitlements” on the basis of how “oppressed” one is—the more you are victimized, the more you are subsidized. Washington [...] is ruled not by Congress or even the president, but by the lobbyists of every group aspiring to victimhood, competing for the right to rob the taxpayers blind.” J. Raimondo, *Reclaiming the American Right*, p. 287.

³⁰³ As we saw above, for libertarians there is no right to be “approved” by others.

³⁰⁴ The main features of libertarian feminism, represented by such exponents as Theodora Nathan, Joan Kennedy Taylor, Sharon Presley and Wendy McElroy, are individualism and legal equality. On the historical level, one point of reference is Mary Wollstonecraft, who originated liberal feminism in the 18th century. On the topic see: J. Kennedy Taylor, *Reclaiming the Mainstream: Individualist Feminism Rediscovered*, Prometheus Books, Buffalo, NY, 1992; *Women’s Issues. Feminism, Classical Liberalism and the Future*, Hoover Institution Press, Stanford, CA, 1993; W. McElroy, *Freedom, Feminism, and the State: An Overview of Individualist Feminism*, Cato Institute, Washington, DC, 1982; *Individualist Feminism of the Nineteenth Century. Collected Writings and Biographical Profiles*, McFarland, Jefferson, NC, 2001; R.T. Long, C. Johnson, *Libertarian Feminism: Can This Marriage Be Saved?*, in <https://charleswjohnson.name/essays/libertarian-feminism/>, 2005.

³⁰⁵ Even on the issue of ‘family,’ libertarians walk a narrow ridge. Indeed, they defend the family as a private trench to State encroachment, appearing to be fellow-travelers with conservatives. But, with their emphasis on the individual as the primary value, from both ethical and hermeneutical points of view, they are wary of suggestions about the family as an entity endowed with its own autonomous existence beyond the individuals that compose it, and therefore worthy of

would only subject homosexual marriages to the coercive and standardizing legislation to which heterosexual marriages are currently subjected, with the corollary of the so-called “positive rights”³⁰⁶ due to spouses.³⁰⁷ Instead for libertarians no type of marriage should be governed by legislation, “validated” by the State, but left to private law contracts; differentiated according to the preferences and religious or cultural orientations of the contracting parties³⁰⁸. The primary goal of libertarians is the separation of State and marriage.³⁰⁹

In light of these considerations, the strong publicist and statist imprint of “civil rights” takes on greater evidence. The expression itself manifests the ambiguity of the concept: they, in fact, presuppose the identification of the individual with the *civis*, marked by the condition of belonging to the State (or to the “community,” understood, however, in a publicist sense, as an entity strongly integrated – or even fused – with the public subject); they are therefore rights intimately connected with the existence of the State, which alone can grant and guarantee them; therefore, they are not *real* rights. The ethical and legal attributes of libertarians are pre-existing to the State, aimed at individuals *uti singuli*, not *uti cives*.

Thus explicit are the reasons why this “container” label, which largely designates, in Rothbard’s phrase, *phony* rights, is not embraced by libertarians. Except, as mentioned, by Left-wing libertarians (see *infra*, Chapter 12), whom Hoppe accuses of inconsistency, since the defense of private property is incompatible with anti-discrimination and pro-immigration positions. Left-libertarians seek to logically reconcile these two aspects by delegitimizing the entire current distribution of private property, which has been altered in the past by State intervention, thus unjust today. Hoppe notes that from the correct premise that States have heavily altered property rights, it does not follow that all current private property should be at the mercy of any rectifying

specific legal attributions. Indeed, they believe that such an approach may result in an unacceptable reduction in the degrees of freedom of individuals within that social formation. For libertarians, family ties must be voluntary, and possibly revocable. The ultimate decision-making unit is always the individual. To imprison the individual, through stringent legal constraints, in entities to which a superior spirituality is abstractly conferred is an unjustified compression of individual freedom and well-being. Such considerations justify the favor with which libertarianism views regulations permitting divorce.

³⁰⁶ Marriage entails various effects in social and economic spheres, such as hospitals visitation rights, inheritance rights, tax deductions for the dependent partner, the right to share in the profits of the family business, action for compensation for damages suffered by the partner, parental leave, survivor’s pension, housing assignment. The last three are general positive rights, burdening taxpayers or third parties, and therefore considered illegitimate by libertarians.

³⁰⁷ On the other hand, statehood is precisely what both sides confronting each other aspire to: both those for and against gay marriage aspire to public recognition of marriage (only between straights for those against, both straights and gays for those in favor), as they believe that it is this “officialization” that assigns it a higher value, that gives it a seal of approval. It is no accident that philosopher Michael Sandel coined the term *de-officialization* to designate the libertarian position, to which he is hostile.

³⁰⁸ For libertarians, these private contracts should also be able to provide for polygamy/polyandry and group marriages. See W. Block, *Defending the Undefendable II*, Chapter 15, *Polygamous Marriage*, pp. 115–7. Richard Fumerton, in his consequentialist perspective, within a framework of substantial bias in favor of permissibility, also lists possible disutilities, such as the complex discipline in divorce and child custody: R. Fumerton, *op. cit.*, pp. 142–3. For a defense of such institutions, by a non-libertarian author, see E. Blake, *Minimizing Marriage: Marriage, Morality, and the Law*, Oxford University Press, Oxford, 2012. Since libertarians favor the free buying and selling of children exercisable by any individual, they also favor the freedom of adoption by same-sex couples, as well as singles, although the institution is heavily regulated by States.

³⁰⁹ A different position is expressed by Stephan Kinsella: in dissent from those he defines as “purist” libertarians, he argues that libertarians, in the concrete context of contemporary statehood, should defend the possibility of marriage between homosexuals: ““purist” libertarians say we should not extend the reach of the state in this way: well, the state should not have roads either. But would we not oppose a law banning gays from the roads? We would not hide behind, “Well, it’s not nice that the state prohibits gays from using the roads, but the solution is not to let gays use the roads—it’s to abolish the public roads!” No.” S. Kinsella, *The Libertarian Case for Gay Marriage*, in StephanKinsella.com, <https://www.stephankinsella.com/2009/06/the-libertarian-case-for-gay-marriage/>, June 24, 2009.

intervention. The correct criterion must be as follows: all current private property is legitimate unless a person claims title to one or more of them, with the burden of proof on him.³¹⁰

To conclude, a brief mention of procedural rights: in voluntary adherence systems such as those foreshadowed by libertarians, non-primary norms do not have the cogency of norms of conduct and may have room for variability. However, for a system of thought that has liberalism as one of its most robust roots, above all the criminal law must protect an overall right to *habeas corpus*, guaranteed by principles such as the presumption of innocence, the right to defense and fair trial, the burden of proof upon the plaintiff, guilt “beyond a reasonable doubt”, protection from arbitrary arrest and detention, safeguards against unwarranted search and seizure.³¹¹

6.3 External Property

In this sense the term “property” is also used by classical liberals, and it has the same meaning attributed to it by libertarians, absoluteness of property rights over material objects, which we already talked about in Chapter 3. The physical property extends to dimensions of economic freedom such as the freedom to operate a business,³¹² to save and to invest.³¹³

Egalitarianists object that the universality of property right (of rights in general) would be violated by the existence of different degrees of wealth among human beings (simplifying, by the existence of the rich and the poor), because the rich would benefit from this right much more than the poor. However, they completely misunderstand the nature of libertarian “negative” rights, which guarantee the possibility of carrying out an action, not the final result. As the American Mark D. Friedman has observed, an individual may feel no need to express his views, however the First Amendment continues to apply; or, for supporters of political rights, a person can completely disinterest in politics and not vote, but this does not mean that the right to vote has been compromised.³¹⁴

Marxists and other property-hostile schools of thought argue that property rights to things are merely “formal,” empty concepts for those who own nothing. Libertarians retort that where these “formal” rights are guaranteed there is a high standard of living, while in countries that do not enforce them or cancel them altogether there is widespread poverty.

In libertarianism, the recomposition occurs between personal liberties and economic liberties, kept separate by liberal thought, for which economic liberties are not basic rights, they do not have the same dignity of rights as freedom of expression or of religion or some positive rights.³¹⁵ But,

³¹⁰ H.-H. Hoppe, *A Realistic Libertarianism*, cit. On the historical legitimacy of current property rights Rothbard similarly: “if we *don't* know whether the current title had any criminal origins, but can't find out either way, then the [...] property reverts instantaneously and justly to its current possessor.” M.N. Rothbard, *The Ethics of Liberty*, p. 57.

³¹¹ For a libertarian interpretation of some of these principles, see M.N. Rothbard, *Law, Property Rights, and Air Pollution*, cit.

³¹² A widespread misconception, especially on the left, is that libertarianism is the defender of Big Business interests. This is false not only on a theoretical level but also in light of contemporary reality characterized by the intermingling of the State and large corporations. Libertarian anti-statism is also functional to prevent the latter from “capturing” political power in order to gain privileges.

³¹³ Economic freedom, besides being absence of interference, is also guaranteed by *ex post* protection of property rights and enforcement of contracts; therefore, it requires efficient courts and police. Having to wait many years to earn compensation or collect a debt, or to regain possession of one's property despite the tenant being in default are examples of circumstances that limit economic freedom in the specified sense.

³¹⁴ M.D. Friedman, *op. cit.*

³¹⁵ Liberal egalitarians Liam Murphy and Thomas Nagel have criticized libertarianism in its idea of property rights as antecedent to legal institutions; according to the two authors, the property rights derive from legal conventions and are

libertarians point out, the freedom to sell drugs or sexual services is also an economic freedom, and the freedom to hire or not to hire a worker is also a personal freedom. According to Hayek, “economic freedom cannot be separated from other freedoms. Liberty is about experiencing, and you can only experience if you can use all the means available. The distinction between economic freedom and intellectual or cultural freedom is artificial. There is no system that, deprived of economic freedom, has been able to guarantee intellectual freedom.”³¹⁶ On the other hand, Goldwater observed, “How can a man be truly free if he is denied the means to exercise freedom and if the fruits of his labor are not his to dispose of, but are treated, instead, as part of a common pool of public wealth? Property and freedom are inseparable.”³¹⁷ Economic freedom is not only intertwined with personal freedoms but is often a driver of them, as exemplified by Jahel Queralt: “Consider, for example, the right to associate. Associations usually engage in economic and commercial activities. They collect fees, manage, save, and spend funds – and they provide different sorts of goods and services, such as leisure activities, education, and sport facilities. The same may be said about [...] religious freedom. Many of the activities carried out by religious groups [...] require the possession and control of productive property and the enjoyment of entrepreneurial rights.”³¹⁸

Restrictions on economic freedom prevent the full unfolding of the potentials of people, who are different from each other; they also hinder the pursuit of their life plans and of their own conception of the good life, imposing uniformity and standardization.

Libertarians are therefore radically anti-statist, whatever the nature and degree of intervention in the economic field, from collectivistic planning to the mixed systems of Keynesianism, social democracy, liberal-socialism, ordoliberalism and also of classical liberalism when it provides for

made possible by tax-funded State action (view already supported in the past by Hobbes and Bentham). L. Murphy, T. Nagel, *The Myth of Ownership*, Oxford University Press, Oxford, 2002. A reply to these theses is contained in E. Mack, *Libertarianism*, Polity Press, Cambridge, UK, 2018, pp. 129–37.

³¹⁶ F.A. von Hayek, interview with “El Mercurio”, April 19, 1981

³¹⁷ B. Goldwater, *The Conscience of a Conservative*, Victor Publishing, Shepherdsville, KY, 1960, p. 59.

³¹⁸ J. Queralt, *Are Economic Liberties Basic Rights?*, in J. Brennan, B. van der Vossen, D. Schmidtz (eds.), *op. cit.*, pp. 290–91.

interventions in excess of force management.³¹⁹ The minimal state or the anarchist solution in each case represent arrangements that oppose the presence of the public hand.³²⁰

Of course, such scenarios, which would involve, among other things, the dismantling of welfare systems,³²¹ draw on libertarians the accusation of ruthlessness, of indifference to the problems of poverty³²² and economic insecurity. Libertarians retort that, first and foremost, the well-being “of *all* [should be considered], both the recipients of government welfare, [...] and the providers of it, for whom the added burden of taxation often spells the difference between solvency and bankruptcy.”³²³ Secondly, it is Welfarist statism that shortens the time horizon of society, that is, the incentive to work and save in order to increase one’s income.³²⁴ Welfare systems then fail their objective also because of other distortions: bureaucratic dispersion,³²⁵ reverse redistribution,³²⁶

³¹⁹ According to a functional classification, that is, in relation to the purposes to be achieved, State intervention can be divided into three categories: efficiency, redistribution, and macroeconomic stabilization. The first includes interventions to foster positive externalities (public goods) or cope with negative externalities (e.g., pollution), anti-monopolistic, to direct consumption and production, to overcome information asymmetries. Libertarians either challenge the validity of some of these concepts or believe that the market handles such situations more effectively; that “government failures” are on a larger scale and more damaging than hypothetical “market failures”. Of interventionism they denounce consequences such as cronyism, corruption, waste, welfarism, parasitism, bureaucratization, regulatory hypertrophy, disincentives, reallocation for the benefit of organized interests, crowding out of private activities, and they also oppose its fiscal effects: high government spending and taxes, structural budget deficits, out-of-control public debt. Even when dictated by good intentions, the attempt to direct economic systems from above, burdened by the absence of knowledge (of the circumstances of time and place, which are disseminated among individuals: Hayek, T. Sowell) and incentives, does not turn into good results; not to mention the heterogenesis of ends and the unintended consequences of legislation. Constructivism, like any project of social palingenesis, is therefore not only immoral, but also bankrupt in consequentialist terms. With classical liberals one point of disagreement is antitrust legislation, which the liberal tradition has defended in the name of competition and which libertarians equate with any other public intrusion into the free functioning of the market. Through vague and arbitrary expressions such as “dominant position,” “unfair competition,” or “collusion,” the authorities claim to determine artificially the optimal number of firms and their size; whereas in the view of libertarians it is sufficient to remove *legal* barriers to entry, those artificially created by States.

³²⁰ *Austrolibertarians* are the authors who combine social-economic analysis based on the methodological approach of the Austrian School with libertarian political positions, often with an anarchist slant: economists include, in addition to the aforementioned Rothbard, Block and Hoppe, Joseph Salerno, George Reisman, Jörg Guido Hülsmann, Jesus Huerta de Soto, David Gordon, Thomas Di Lorenzo, Hans Sennholz, Robert Murphy, Douglas E. French, Gary North, Peter G. Klein, Roger Garrison, Peter Boettke.

³²¹ Replaced by private solutions, in which insurance companies would play an important role, in health, old age, illness, occupational injury, unemployment. With prevalence of capitalization systems, replacing the pay-as-you-go, thus redistributive, systems dominant today.

³²² Libertarians of the *paleo* orientation (see *infra*, Chapter 12), in total dissonance from contemporary conventional thinking, argue that the *permanently* (not *transiently*) poor, if not prevented by seriously disabling physical handicaps, are so because they deserve it, because they have present-oriented values and attitudes, do not know how to self-discipline, are unwilling to sacrifice, are unprejudiced, are ruled by impulses, do not develop interest in any craft, and consume only things and their bodies. If people have a modicum of resourcefulness, they do not remain poor for a long time.

³²³ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 283. According to Bastiat’s lesson, one must also consider the *unseen* effects of the measures taken.

³²⁴ “No single other consideration has done more than [the question of destitutes] to foster intellectual resistance to classical liberalism. [...] However, from the fact that a liberal polity does not acknowledge or confer upon all its members as having a legal right to welfare, it cannot be inferred that, within a liberal polity, those unable to provide for themselves innocuously would fare any less well than they would were they to enjoy such a legal right. [...] It could well be that attempts by government to take care of the destitute – through acknowledging and administering legal rights to welfare – do not reduce the number or plight of the destitute but only exacerbate the problem.” D. Conway, *op. cit.*, pp. 20–21.

³²⁵ A substantial part of the resources withdrawn does not reach the recipients (eventual needy) but is absorbed by *administrative costs*, basically by the public bureaucracy that intermediates them (salaries of officials, residential facilities, purchases and replacements of office goods, etc.). According to American studies these resources would amount to two-thirds: R. Woodson, *Private sector alternatives to the welfare state*, NCPA, Dallas, 1987; M. Tanner, *The End of Welfare*, Cato Institute, Washington, 1996. Private charitable corporations absorb less than one-third of

fraud. Finally, in a market environment four private institutions capable of solving situations of hardship and insecurity would operate: the family, charities, the insurance mechanism, and corporate welfare. Regarding poverty, historically countries that have cancelled or hindered the market have experienced very low living standards. From the Industrial Revolution to the present, for low-income people much more than the State has been done by producers, who, by innovating and compressing production costs, have made a large quantity of goods and services accessible and cheap. “Once we were all poor. Then capitalism happened, and now, as a result, we are rich.”³²⁷ About the ‘security’ invoked by many, it is often the maintenance of pre-established interests, static.

The main argument of supporters of a public welfare system is its universalistic capacity, which would be diminished by relying on private philanthropic associations or voluntary insurance, as was the case until the 19th century. However, the comparison should not be made with the number and size of *current* private charitable organizations, because the State’s avocation of such activities to itself has “driven out” private individuals. Given current income levels (which, without State welfare levies, would be even higher on net), organizational capabilities (reduced transaction costs and increased information thanks to the Web), and increased efficiency, private associations would have enough firepower to perform the welfare role not less effectively, but even more effectively than the State. In the mid-19th century, thus at the height of *laissez-faire*, there was an extraordinary proliferation of philanthropic and mutual aid institutions in Britain and the United States. In Britain in 1870 three out of four working-class children attended private fee-paying schools supported by religious and philanthropic bodies; and by the early twentieth century nine million workers were covered by the Friendly Society and other private insurers against sickness and unemployment.

The concept of liberty-property now illustrated allows to derive the concept, and a definition, of *right*. It is the translation of an ethical request into a legal bond.³²⁸ If the general rights are only “negative”, and the only “positive” rights are that deriving from a contractual obligation, then a right is the absolute claim of each individual not to be attacked in the body and property of which he is the owner, guaranteed by the legitimacy of the use of force against the offender.³²⁹

intermediated resources for themselves. Once a public bureaucracy has been established, it then proves impossible to dismantle it, since its members constitute a combative, politically organized and strategically positioned interest group (the supposed technical expertise claimed at the legislature).

³²⁶ The redistributive transfer goes from lower-income groups to higher-income groups because the latter are more organized than the former, are able to carry out lobbying activities and enjoy political connections, leading to so-called “regulator capture” (G. Stigler, *The Theory of Economic Regulation*, in “The Bell Journal of Economics and Management Science”, vol. 2, no. 1, 1971, pp. 3–21).

³²⁷ J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 107.

³²⁸ As we have seen by examining in Chapters 2 and 3 the theoretical genesis of rights (over oneself and over things), for libertarians rights pre-exist their juridicization by the State or any self-organizing community, they are not *granted* by them: “Nor were these rights created by government; governments [...] *recognize* and *protect* the rights that individuals already have.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 57.

³²⁹ This “thin” definition of right is considerably different from the mainstream definitions of contemporary legal theory, based on more articulated conceptions as presupposing general positive rights and legitimacy of State prerogatives, such as W.N. Hohfeld’s static theory, R. Dworkin’s theory of balancing (rights) or legal positivism. In general, traditions of thought such as democratic, liberal and republican ones, unlike libertarianism, provide for different types of rights: they speak of “generation” of rights, the succession of which would be the following: civil rights (freedom “from the State”; rights of 1st generation), political rights (2nd generation), social rights (3rd generation), rights of future generations, the environment, the safeguarding of artistic heritage, peace and the like (4th generation). For some, the succession is an axiological priority order (so that any conflict between rights will be resolved by resorting to the established value-based order); for followers of more interventionist and egalitarian views, the sequence is exclusively chronological.

Rights constructed in this way are *compossible*, that is, they can coexist with the equal rights of others, in the sense that the exercise of one's own right by A never precludes the exercise of one's own right by B. There are no overlaps or gray areas;³³⁰ it is possible to clearly identify the right holder in any dispute without resorting to assessments relating to the greater final well-being or (presumed) greater moral value of a given action³³¹ or to arbitrary and changing balancing of rights created *ad hoc* according to the circumstances.³³²

³³⁰ 'Positive' rights instead, in addition to conflicting with 'negative' ones, are also mutually conflicting. In fact, since the resources available to a country (and to the State through taxation) are not unlimited, allocating a larger share to one sector inevitably leads to a reduction in another sector: for example, an increase in the protection of the "right" to health (increase of expenditure for medical care) affects the "right" to education (reduction of expenditure for schools or colleges), or the "right" to fair pay for other civil servants, or the "right" to unemployment benefit and so on.

³³¹ In Locke's terms: A wants to sacrifice a calf to please God, B doesn't want to because he thinks the sacrifice displeases God; the controversy is not resolved by establishing whether God likes or dislikes the sacrifice, by evaluating the moral or religious content of the two positions, but by establishing who is the owner of the calf.

³³² As is the case, for example, in neoconstitutionalism, advocated by such jurists as R. Dworkin, R. Alexy, C. Nino, R. Dreier, G. Capograssi, G. Zagrebelsky, A. Garcia Figueroa, M. Atienza, P. Haberle.

7. Unjust interferences

A theory which, as we have seen, admits only voluntary exchanges and actions which do not represent aggression against others, is logically opposed to doctrines which, in various ways and to varying degrees, violate these principles. We will now examine some theoretical approaches that for libertarians give rise to unjust coercion.

7.1 Paternalism

*Legal paternalism*³³³ is the label of the conception, opposed to libertarianism, which admits the (threat of the) use of force against an adult individual “for his own good”, to protect his interests (which the legislature knows best) – that is, to prevent him from making decision that may cause physical, mental or economic harm to himself or herself or generically to increase his well-being.³³⁴ The premise of this approach is that people’s interests are opposed to their own will; that is, that many individuals are not the best judges of their well-being because they are not responsible or rational (cognitive limitations) or far-sighted or ill-informed; also because they are manipulated or suggested.³³⁵ “This reasoning is at the heart of policies like as mandatory savings programs,

³³³ Or, as suggested by advocates of non-sexist, gender-neutral language, *parentalism*.

³³⁴ Plato’s *Republic* is one of the earliest expressions of political paternalism: unbridled freedom leads to ruin; just as a parent restricts children’s freedoms for their own good, so rulers must regulate people’s behavior in order to avoid self-destructive attitudes and ensure their well-being and the integrity of the State. Lies for good can be used to captivate subjects.– a classic of paternalism; the “noble lie” represented by the Phoenician fable that the guardians are made of gold, the warriors of silver, and the mass of citizens of iron or copper. A more recent progenitor of this doctrine is the late J.G. Fichte (*The Closed Commercial State*, 1803, *Addresses to the German Nation*, 1808).

³³⁵ Such “Frankfurtian” prejudice underlies the widespread tirades against “consumerism”; a concept that has its origins in the criticisms of consumption by Karl Marx (“commodity fetishism”) and Thorstein Veblen and was refined and defined in the 1950s by the American economist Victor Lebow (*Price Competition in 1955*). If only behaviors investigated by disciplines such as sociology or psychology are designated by the term, a political philosophy, such as libertarianism, might have little to say. However, the expression has acquired a strongly critical connotation against capitalism and the market (responsible for an artificial urge to indiscriminate purchase of consumer goods, to “hedonism”), puts forward a specific interpretation in praxeological terms (distinction between real and fictitious, induced needs; between necessary and superfluous goods; standardized and luxury goods), and asserts a mystifying identification of so-called “homogenization” with respect to the commodity with a form of totalitarianism (equating political coercion with individual economic choices, albeit “conformist”); for which libertarians have reasons to feel called upon and to sustain a combative controversy. Not least because the outcome, intentional or not, of this offensive is almost always the coercive imposition of specific lifestyles, in the name of an equivalence between virtuous and austere living and, more recently, in the name of defending the “environment”. For libertarians, however, each person must always be able to freely rearrange the hierarchy between essential and accessory (Voltaire: “The superfluous, so necessary!”). Critics of the sovereign consumer pointed to ongoing dissatisfaction as a telltale and evidence of a pathology. Sergio Ricossa observed: “it was said that consumption left one dissatisfied, and it was true. Man is what he is because he is never satisfied. If he were, progress would stop on the instant. But to be dissatisfied is to desire something, which one does not already have, and that probably implies other consumption.” S. Ricossa, *I fuochisti della vaporiera* (1978), IBL Libri, Turin, 2017, Kindle e-book. On the other hand, historically almost all of today’s mass goods – cars, televisions, computers, telephones – have in the past been “luxuries” for the few. Following the logic of the floggers of abundance, these goods and services would never have been brought to market. Mises pointed out that “two or three generations ago even in England an indoor bathroom was considered a luxury; today the home of every English worker of the better type contains one. Thirty-five years ago there were no automobiles; twenty years ago the possession of such a vehicle was the sign of a particularly luxurious mode of living; today in the United States even the worker has his Ford. [...] There was a time when only the rich could afford the luxury of visiting foreign countries. Schiller never saw the Swiss mountains, which he celebrated in *Wilhelm Tell*, although they bordered on his Swabian homeland. Goethe saw neither Paris nor Vienna nor London. Today, however, hundreds of thousands travel, and soon millions will do so. [...] This is the course of economic history. The luxury of today is the necessity of tomorrow. Every advance first comes into being as the luxury of a few rich people, only to become, after a time, the indispensable necessity taken for granted by everyone. Luxury consumption provides industry with the stimulus to discover and

consumer protection laws, bans against vice, compulsory education laws, warning labels on food and medicine, and more.”³³⁶ Paternalism, frequented on the Left by liberals and on the Right by compassionate conservatives, is akin to holistic utilitarianism (the individual, having community ties, cannot harm himself or else he harms others, reducing collective well-being) and to the theological approach (God gives life and takes it away, and no one can dispose of what does not belong to him).

For libertarians, on the other hand, liberty also includes the freedom to make mistakes or harm oneself in the long run by achieving greater pleasure in the short run. In the libertarian social edifice, maximum freedom always goes hand in hand with maximum personal *responsibility*.³³⁷ A classic anti-paternalist formulation is that of John Stuart Mill: “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”³³⁸ And Hayek, in an admirable passage from *The Constitution of Liberty*: “where private practices cannot affect anybody but the voluntary adult actors, the mere dislike of what is being done by others, or even the knowledge that others harm themselves by what they do, provides no legitimate ground for coercion.”³³⁹

To the argument that substances such as drugs shorten life, and therefore represent objective harm to individuals, Block responded this way: “This is indeed unfortunate, but it hardly constitutes a valid criticism of addiction, and it most certainly does not justify the prohibition of heroin use. It does not constitute a valid criticism or justify prohibition because it is up to the individual to determine the kind of life he will lead—a short one, including what he considers to be pleasurable

introduce new, things. It is one of the dynamic factors in our economy.” L. von Mises, *Liberalism*, Cobden Press, San Francisco, CA, 1985, pp. 32–3; or. ed. *Liberalismus*, Gustav Fischer, Jena, 1927. “If all had to wait for better things until they could be provided for all, that day would in many instances never come.” F.A. von Hayek, *The Constitution of Liberty*, University of Chicago Press, Chicago, IL, 1960, ed. 2011, p. 98. As has been said repeatedly, libertarianism, as a political theory, does not advocate one particular lifestyle over another; however, in the face of the tirades against “luxury” and “unnecessary” goods of leftist pauperism, which only result in intolerance for the tastes of others, the impatience and straining operated by the Italian libertarian Marco Faraci is understandable: “Those who are not libertarians [...] often accuse us of wanting to turn the world into a supermarket. Yes. It is true. We libertarians want to turn the world into a supermarket. And we brag about it. What, after all, is a supermarket if not a welcoming place where you can find everything you need? Where you can exchange the fruits of your labor with other willing people, buying what you want and paying for what you buy? [...] We are hedonists, because we do not like to take vows of poverty like the upright North Koreans. We are consumerists, because we believe in a society in which more and more people can access consumer goods and more and more people can find jobs producing consumer goods. But above all, we are convinced that, in the face of the arrogance of those who want to aseptically erase inequalities and subjectivities, the “consumerist” rises to an extremely meritorious role, that of defender of a fundamental human right: the right to pursue the most subjective value there is, one’s own personal happiness.” M. Faraci, *Il consumismo? È la ricerca della felicità*, in “Enclave”, no. 12, June 2001, p. 6. A defense of consumer society, of the broadening of the horizons of desire, of objects as an expansion of human faculties and of their aesthetic content as an expression of the human spirit is contained in P. Bruckner, *Le fanatisme de l’Apocalypse. Sauver la Terre, Punir l’Homme*, Grasset Et Fasquelle, Paris, 2011, particularly in the part 3.

³³⁶ J.A. Miron, *op. cit.*, p. 127. In general, the consumption of so-called *merit goods* (housing, education, medical care, helmets, seat belts, mandatory vehicle maintenance) is encouraged or made compulsory, and the enjoyment of *demerit goods* (narcotics, tobacco, alcohol, sodas, junk food, weapons, slot machines) is discouraged or prohibited.

³³⁷ As we will see later about egalitarianism and socializing interventionism, according to libertarians, people should not be allowed to externalize the costs of their bad decisions onto others.

³³⁸ J.S. Mill, *On Liberty*, p. 13. And further on in the text: “neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it.” *Id.*, p. 70.

³³⁹ F.A. von Hayek, *The Constitution of Liberty*, *cit.*, p. 212.

activities, or a longer one, without such enjoyment. Since there is no objective criterion for such choices, there is nothing irrational or even suspect about any choice on the spectrum.”³⁴⁰

It is true, libertarians observe, that individuals are not perfectly rational and wise subjects,³⁴¹ but this observation does not logically lead to the concentration of the decision in the hands of the public authority. For several reasons. First of all, since everyone has a different mind and “ego”, there is a much greater chance of knowing what is intimately better for himself than a public official can do.³⁴² The condition of freedom is a prerequisite for the “best interests” to be achieved. Correction of errors left to individuals and persuasion is a more efficient way than constraint. It should be added that collective intervention is almost always a worse remedy than the evil: as Mill noted, “the strongest of all the arguments against the interference of the public with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly and in the wrong place.”³⁴³ Secondly, the indiscriminate ban penalizes moderate consumers (of tobacco, alcohol, soda, slot machines), who are the majority.³⁴⁴ Third, the individual can hire or consult experts to reduce or eliminate errors. Finally, once the principle is accepted, there is a risk of *slippery slope*, because it is logically difficult to object to further impositions: if the physical well-being of people is at stake, why not also impose physical activity or diets? And why limit the intervention to the protection of the physical, and not extend it to the soul and mind, preventing you from reading “bad” books, seeing “bad” comedies or “bad” paintings and so on?³⁴⁵ “Once governments are given the authority to restrict the liberty of some sane adults for what it considers their physical or moral welfare, there is no principled stopping point in terms of what governments will have authority to prohibit.”³⁴⁶ If man’s freedom to establish his consumption is abolished, all freedoms are taken away.

Defenders of legal paternalism also resort to another argument: there is no complete freedom to perform actions that harm oneself because, taking into consideration the *potential* and *indirect* effects, those actions could also harm others. For example, an alcoholic or drug addict *might* cause a

³⁴⁰ W. Block, *Defending the Undefendable*, Mises Institute, Auburn, AL, 2018, pp. 34–5.

³⁴¹ Mario J. Rizzo and Glen Whitman have objected that behaviors that appear to be failures of rationality are often simply ordinary learning processes: “An important part of rationality is experimenting with different choices, discovering one’s preferences over time, learning from one’s mistakes, structuring one’s environment, adopting strategies for self-control.” M.J. Rizzo, G. Whitman, *Escaping Paternalism: Rationality, Behavioral Economics, and Public Policy*, Cambridge University Press, New York, 2019, p. 17.

³⁴² “He is the person most interested in his own well-being [...]; the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else.” J.S. Mill, *On Liberty*, p. 70.

³⁴³ Ivi, p. 77.

³⁴⁴ “Interventions have their own costs. One major obstacle is that policies that protect the irrational from themselves inevitably harm the rational. A sin tax on alcohol, for example, might discourage drinking by people who abuse alcohol, but it also raises the cost to responsible drinkers.” J.A. Miron, *op. cit.*, p.128. The fact that the vicious (or virtuous) nature of behaviors depends on persistence over time, intensity, and concrete, subjective circumstances is illustrated by Spooner as follows: “It is not often possible to say of those acts that are called vices, that they really are vices, except in degree. That is, it is difficult to say of any actions, or courses of action, that are called vices, that they really would have been vices, *if they had stopped short of a certain point*. The question of virtue or vice, therefore, in all such cases, is a question of quantity and degree, and not of the intrinsic character of any single act, by itself. This fact adds to the difficulty, not to say the impossibility, of anyone’s – except each individual for himself – drawing any accurate line, or anything like any accurate line, between virtue and vice – that is, of telling where virtue ends, and vice begins.” L. Spooner, *Vices Are Not Crimes* (1875), Mises Institute, Auburn, AL, 2020, pp. 10–11.

³⁴⁵ “Paternalism can seem to justify an enormous range of government intervention. Paternalism might suggest, for example, that government should discourage not only drug use or insufficient savings, but also saturated fat, lack of exercise, excessive television, certain books, and particular religious preferences. [...] Paternalism opens the door for interventions that would horrify those who invoke paternalism in other contexts.” J.A. Miron, *op. cit.*, p. 128.

³⁴⁶ D. Conway, *op. cit.*, p. 19.

fight or a car accident or neglect his family.³⁴⁷ Libertarians retort that these are harms that are uncertain, indirect, and placed in an overly extended future time horizon, while the compression of liberty resulting from the prohibition of those behaviors (drinking and drugging) is certain and direct. Since prohibitions cannot be imposed on a case-by-case basis, but are introduced in a generalized manner, the final outcome is the violation of a greater good, liberty, in the name of an abstract precautionary principle.³⁴⁸ Law, is the conclusion, cannot do sociology; it must deal with direct connections between facts.

The involvement of family members, in addition to the unavailability of one's own body and life, is the argument also used to prohibit actions that cause or may cause the death of the subject agent, such as voluntary euthanasia, suicide or a duel. In this regard, Block responded as follows: “[t]here are several things wrong with this criticism. First of all, it flies in the face of the doctrine of self-ownership. If a person *may not* risk his life legally because there are people dependent upon him, then to that extent he is not free. But if he is not, then those who are dependent upon him are his owners, or slave masters, since they control him. So this criticism of dueling amounts to the advocacy of slavery. Moreover, [...] if he is dependent upon them, then for the same reasons that he has to follow their orders about risky behavior, *they* have to follow *his* views on risky behavior. [...] And if they are truly slaves of his, then he can order them to allow him to do any risky thing they fear. They must obey his order that they allow him to duel; otherwise they would be disobedient slaves, and that would never do. But by the same token, they can order him not to give them the order to allow him to duel. And so on. The point here is that it is an entirely illogical situation for one person to be both a slave and an owner of another person—the *same* other person. And this

³⁴⁷ We have already encountered this thesis in relation to Mill's concept of *harm*; see *supra*, Chapter 6.

³⁴⁸ Under the precautionary principle, devised for ecological issues, if there is a possibility that an action or policy will cause significant and irreparable harm, the burden of proving non-harm must be on those who support that action or policy. Put another way, even if there is no full scientific certainty that a given action causes serious or irreversible harm, that action must be prohibited. But scientific certainty is almost always absent. With the application of this principle, any technological progress would have been impossible: aviation would not have been born or would have been stopped after the first plane crash. The assertion of the advocates of this principle, that no human life can be sacrificed for an increase in utility, is, among other things, belied by the fact that, for example, despite the existence of a certain number of road deaths, we do not reduce speed limits below the threshold necessary to eliminate them completely (presumably ten miles per hour even on highways): we continue to keep them higher because “it's worth it to most of us so that we can get the extra pleasure of arriving at our destination [much] sooner than we otherwise would.” R. Fumerton, *op. cit.*, p. 120. The author extends the example to the Covid-19 pandemic, noting that accepting a higher death toll in exchange for normal economic and social activities would have been perhaps unpopular but not illogical and unjust. Most of the libertarian world has opposed anti-covid policies (lockdowns, masks, quarantines, compulsory vaccination, green pass): Rockwell Jr., on the basis of Rothbard's non-impediment of merely “risky” activities, argued that the mere risk of contagion does not represent a “palpable, immediate and direct” threat, the three conditions that qualify an act as aggressive: “People are not threatening others with immediate death by contagion. Rather, if you have the disease, you might pass it on to others. Or you might not. What happens if someone gets the disease is also uncertain.” L.H. Rockwell Jr., *What Would Murray Say about the Coronavirus?*, in LewRockwell.com, <https://mises.org/mises-wire/what-would-murray-say-about-coronavirus>, March 4, 2020. The securitarian obsession that has recently spread to more developed countries claims to erase by law the ineradicable margins of risk, error and fatality associated with human activity (and life in general). One effect is the spread of lawsuits to demand penalties or compensation for events in which the imponderable plays a decisive role. Another is the spread of an emergency logic that turns phenomena that cannot be eliminated into exceptionalities to be removed (and, in some cases of bad faith, artificially creates them): given the available technology, the number of traffic accidents or the negative effects of some natural events cannot be reduced below a certain threshold. If, however, every suffering, every friction of reality is unacceptable and must be removed, the space for political power and regulatory intrusiveness grows ever wider. A non-libertarian author like Elie Halévy as early as 1938 (*L'ère des tyrannies*) suggested that the hallmark of modern State tyranny is the artificial extension of a state of emergency from wartime to peacetime.

illogic is logically derivable from the criticism of voluntary dueling on the ground that a potential duelist has ‘responsibilities’.’³⁴⁹

The circumstance of the so-called *desperate exchange*, which would involve an “exploitation” of the vendor (e.g., the sale of a kidney for economic reasons), can also be considered a sub-class of paternalism and should therefore be prohibited. For libertarians there is voluntariness (absence of aggression) even in this type of relationship and therefore they oppose the ban.

The libertarian John Hospers believed that paternalistic interventions were legitimate if they were aimed at satisfying the person’s *own goals*, restricting the notion of voluntariness.³⁵⁰ An approach similar to that of Hospers is expressed by Sarah Conly, who supports paternalism when it serves to achieve the ends chosen by the individual and believes that in this version it is not incompatible with libertarianism.³⁵¹

Economist Richard H. Thaler and jurist Cass R. Sunstein have advocated “libertarian paternalism” through the theory of *nudge*. Individuals, far from perfectly rational, commit cognitive errors: if the legislator or the ruler (but also private institutions), through light and targeted interventions, by influencing and not forcing, can correct the error, the individual improves his well-being. The suggested decisions are those that the agent would make if he possessed complete information, unlimited cognitive abilities, and complete self-control. Examples of such “mild” interventionism are the silent consent in joining companies’ pension funds or in the donation of organs, the shocking images on cigarette packets, the best exposure on the shelves of the healthiest food. “Paternalism” because the intervention is aimed at highlighting and suggesting the best choice, “libertarian” because the individual would have freedom of choice (and therefore also to opt out). It would not be an aggressive interference, an imposition, but a guide; the ends of individuals would not be changed, only the means to achieve them.³⁵²

Libertarians such as David Gordon and Gregory Mitchell have criticized this proposal by citing, first of all, the Epistemic Argument, according to which individuals can make errors of judgment, but nevertheless can decide for themselves better than rulers of assessment. Rulers are also subject to errors (as well as being self-interested). Furthermore, it is not possible to prove that the individuals whose behavior you want to change have fallen victim to cognitive errors:³⁵³ for example, a smoker could be fully informed and aware of the harm of smoking, but also, from his point of view, of the psychological benefits, and therefore may still wish to smoke. In addition, some of the proposed measures have redistributive effects, from rational to irrational individuals.³⁵⁴ Finally, Sunstein incurs the utilitarian distortion of considering preference for freedom of choice as

³⁴⁹ W. Block, *Defending the Undefendable II*, pp. 208–10.

³⁵⁰ J. Hospers, *Libertarianism and Legal Paternalism*, in “Journal of Libertarian Studies”, vol. 4, no. 3, Summer 1980, pp. 255–65. David Gordon replies to him in the same issue of the magazine (*Comment on Hospers*, pp. 267–72), reaffirming the standard libertarian position of non-interference.

³⁵¹ S. Conly, *Paternalism and the Limits of Liberty*, in J. Brennan, B. van der Vossen, D. Schmidtz (eds.), *op. cit.*, pp. 427–34; *Against Autonomy: Justifying Coercive Paternalism*, Cambridge University Press, New York, 2012.

³⁵² R.H. Thaler, C.R. Sunstein, *Libertarian Paternalism Is Not an Oxymoron*, in “University of Chicago Law Review”, vol. 70, no. 4, 2003, pp. 1159–202; *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Yale University Press, New Haven, CT, 2008; C.R. Sunstein, *Why Nudge? The Politics of Libertarian Paternalism*, Yale University Press, New Haven, CT, 2014.

³⁵³ To do so, State officials would have to delve into each person’s private life to identify the deeper reasons for each of his conduct, reaching totalitarian-like heights of invasiveness of the personal sphere.

³⁵⁴ For example, if retirement savings plans include an employer contribution, resources will be allocated for this purpose that would have been used otherwise, for example as benefits for some workers, who will then see their real income reduced.

a component of well-being; well-being as the goal of morality prevents him from understanding the respect for people's autonomy.³⁵⁵

In conclusion, “[l]ibertarians agree that freedom does not *guarantee* good results. If people are free to choose for themselves, many will make bad choices. Still, libertarians say, *nothing* guarantees good results, so guarantees are beside the point. Liberty may not guarantee good results, but as a matter of fact it delivers good results.”³⁵⁶

7.2 Perfectionism

A second moral theory is *perfectionism* (or *legal moralism*), according to which some consumption or certain behaviors are “immoral” or “degrading” in themselves, even if they do not materially damage or violate anyone's rights, while others are “moral” and “noble”. The argumentative strategies supporting this theory were basically two: values are either asserted as objective ethical truth (the natural law of John Finnis³⁵⁷ and Robert P. George)³⁵⁸ or interpreted as simple shared morality (this is the case of exponents of communitarian thought such as A. MacIntyre,³⁵⁹ M. Sandel, M. Walzer and A. Etzioni, for whom the core of shared values is to be understood as the prevailing opinion in a given historical moment).³⁶⁰ In any case, the State has a legitimate interest in promoting moral stability and some meanings of “good life”, supporting virtue and punishing vice (and the “commodification” of certain activities)³⁶¹ also through legal coercion, on the basis of feared disintegrations or corruption of society.³⁶² Legal permissiveness, although by its nature abstentionist, value-free, can be perceived as a subliminal endorsement – a wink – to

³⁵⁵ D. Gordon, *Cass Sunstein's Phony Paternalism*, in “The Austrian”, vol. 1, no. 4, July-August 2015, pp. 10–12; G. Mitchell, *Libertarian Paternalism is an Oxymoron*, *Northwestern University Law Review*, vol. 99, no. 3, 2005, pp. 1255–56.

³⁵⁶ J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. xi.

³⁵⁷ J. Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford University Press, New York, 1980.

³⁵⁸ R.P. George, *Making Men Moral. Civil Liberties and Public Morality*, Oxford University Press, Oxford, 1993.

³⁵⁹ According to MacIntyre, capitalism and the individualism of the liberal polity discourage the acquisition and exercise of the Aristotelian virtues – justice, honesty, courage, wisdom, altruism – that underpin the three forms of life of “social” intonation – *practices*, *life-as-a-narrative-unity*, and *traditions* – that give impetus to the achievement of a “good” life. The liberal polity also deprives people of moral convictions and moral attitudes. These are more than mere subjective and arbitrary preferences only if they pander to the goal (*telos*) of human beings; and that goal can only manifest itself within a community. The “self” abstracted from social ties, and thus lacking *telos*, of liberalism does not allow for the grounding of moral convictions, which remain exposed to endless disputes, in which the protagonists appeal to first principles of which, however, they cannot provide incontrovertible justifications. A. MacIntyre, *After Virtue*, University of Notre Dame Press, Notre Dame, IN, 1981. A critique of his position is contained in D. Conway, *op. cit.*, pp. 79–100.

³⁶⁰ J.F. Stephen, *Liberty, Equality, Fraternity* (1874), Liberty Fund, Indianapolis, IN, 1993; J. Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford, 1980; R.P. George, *Making Men Moral*, Clarendon Press, Oxford, 1993; A. Etzioni, *The Spirit of Community: Rights, Responsibility, and the Communitarian Agenda*, Crown Publishers, New York, 1993, pp. 23–53.

³⁶¹ For libertarians, any activity of one's body (labor) that one person voluntarily makes available to another in exchange for money is a “bargaining chip.” And this is true even for activities deemed noble or vocational such as, for example, those of scientists or medical doctors. There is no dehumanization in this. If labor is given a sacred nature, if it is to be removed from the “vulgar” world of commerce, then no person could ever receive a salary in exchange for his labor services. The same applies to the sale of an organ from one's own body, which is often opposed with the argument of mercantile debasement.

³⁶² “People on the right oppose libertarianism because they think it would lead to moral depravity. Conservatives argue that [...] traditional modes of life help maintain these rules and conventions. [They] worry that libertarianism undermines the underlying social order. For instance, conservatives claim the traditional family is the bedrock of society. When the family breaks down, crime, poverty, and economic stagnation are sure to follow. [...] Because libertarianism permits experimentation and tolerates almost anything, it will destroy the traditions upon which society depends.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, pp. 24, 49.

profligate behavior. The *disintegration thesis* is sometimes further supported with the argument of the slippery slope: if the *x* behavior, not immoral but morally ambiguous, is allowed, it is likely that the road is open to the *y* behavior, immoral, that will be kept in the future.

The libertarians turn the same argumentative technique against the perfectionists: the latter assert that “the market profits from the vices of men, and that prohibiting temptations would benefit virtue. [...] However, the “consumerists” fear that, once set on the road of prohibiting temptations, we will not stop before prohibiting almost everything, almost everything being able to appear as a lure to seduce”³⁶³ and corrupt us.

On this issue, the controversy that occurred between the late 1950s and early 1960s in the United Kingdom between the jurists Herbert Hart and Lord Patrick Devlin about the criminal repression of homosexuality and prostitution was significant: the first opposed the ban based on the Millian principle of the lawfulness of self-regarding actions (a position shared by libertarians), while the latter supported it by arguing that a shared morality is an indispensable component of social organization, in the sense that it represents an essential aspect of the structure of a society, it determines its identity as such and preserves it; consequently society has the right to interfere through law with acts that destroy fundamental moral rules.³⁶⁴

The idea (expressed for example by M. Walzer, M. Sandel,³⁶⁵ A. Sen and M. Nussbaum) that leaving the purchase and sale of certain goods or services to the free market sends a “wrong” message, encouraging material interests and selfishness and devaluing spiritual contents, can also be included within perfectionism. More generally, free market and capitalism are frequently accused of promoting a collapse of moral values, subordinating all else to the pursuit of individual wealth and pleasure. Leo Strauss and Eric Voegelin contend that the intellectual inception of capitalism lies in the thought of Locke, who rejected Christianity, did not take revelation seriously and valued the hedonistic and utilitarian aspects; interpretation of Locke’s philosophy rejected by libertarians. It is also frequently asserted that there is a conflict between capitalism, which is “soulless” and devoted only to profit, and traditional values; therefore, free market and conservatism would be incompatible.³⁶⁶ Rothbard pointed out that this is completely erroneous. Economic “efficiency” and “development” are not goods in themselves. Efficiency is such in relation to a particular goal. And that goal depends on the preferences of the individual agent. If he wants to use his resources to realize or preserve a good or service that represents traditional value, thus not aiming for maximum monetary profit,³⁶⁷ this is entirely compatible with the free market. For example, an individual or group of individuals might prevent the establishment of a supermarket on land that has historical and/or sentimental significance to them by purchasing the land.³⁶⁸ The market is a neutral instrument, serving the demanders. As economist George Stigler wrote, “waiters are not responsible

³⁶³ S. Ricossa, *Impariamo l'economia*, cit., pp. 79–80 (my translation).

³⁶⁴ H.L.A. Hart, *Positivism and the Separation of Law and Morals*, in “Harvard Law Review”, vol. 71, no. 4, February 1958, pp. 593–629; *Law, Liberty and Morality*, Stanford University Press, Stanford, CA, 1963; P. Devlin, *The Enforcement of Morals*, Oxford University Press, London, 1965.

³⁶⁵ M. Sandel, *What Money Can't Buy. The Moral Limits of Markets*, Farrar, Straus and Giroux, New York, 2012.

³⁶⁶ For a conservative position that, on the other hand, does not see market institutions as necessarily corrosive to values and community spirit, see D. Willetts, *Modern Conservatism*, Penguin, London, 1992.

³⁶⁷ Provided that such a choice is voluntary. Milton Friedman criticized the rhetoric of “corporate social responsibility”: managers should be accountable only to the owners of the company (thus, in a corporation, to the shareholders) and therefore should act in accordance with their interests, not feel compelled to undermine profit objectives in the name of pursuing “social” goals (green policies, sustainability, charity, inclusion, urban infrastructure). Cf. M. Friedman, *Capitalism and Freedom*, cit.

³⁶⁸ M.N. Rothbard, *Eisnerizing Manassas*, in “The Free Market”, vol. 12, no. 8, August 1994, pp. 1, 8.

for their customers' obesity."³⁶⁹ Libertarianism offers a framework within which moral action can take place.

While points of intersection are not completely absent, here we distinguish perfectionism from *perfectism*, the conception that believes perfection is possible in all human activities, because it represents a more radical project, akin to utopias, the fulfillment of a collective palingenesis that goes beyond the mere legal sanction of vices and virtues. The divinization of human nature prophesied by such a perspective is often connected to the prefiguration of a path leading to the end of history, to an ultimate static destination (the perfect cannot be improved), a reacquainted earthly paradise permeated by a social irenicism in which any conflict is extinguished (Plato, Joachim of Fiore, T. More, T. Campanella, G. Winstanley, J-J. Rousseau, K. Marx, J.M. Keynes)³⁷⁰.

Libertarians are anti-perfectists. They believe, with Kant, that out of the crooked timber of humanity no straight thing was ever made. And they share the appeal to human fallibility and finitude of Antonio Rosmini, who was the first to offer a thorough political critique of the perfectionism, at the time embraced by all the theories opposed to liberalism.³⁷¹

Libertarian society itself will not be a perfect society: "In contrast to such utopians as Marxists or left-wing anarchists (anarcho-communists or anarcho-syndicalists), libertarians do not assume that the ushering in of the purely free society of their dreams will also bring with it a new, magically transformed Libertarian Man. [...] The 'better' that people will be, of course, the better *any* social system will work, in particular the less work *any* police or courts will have to do. But libertarians make no such assumption. What we assert is that, given any particular degree of 'goodness' or 'badness' among men, the purely libertarian society will be at once the most moral and the most efficient, the least criminal and the most secure of person or property."³⁷² That is, it will probably be able to circumscribe aggression, corruption episodes, cases of poverty better than other systems, but not to eliminate them entirely, as they are probably anthropological constants.³⁷³

L. von Mises defined "Fourier complex" the neurotic idea that imperfection is unacceptable and that a utopia must and can be realized in which all discomfort disappears, and abundance replaces scarcity in a cherished land of plenty.³⁷⁴ While Harold Demsetz has called "nirvana approach" the propensity to compare real-world situations with idealized (but *unrealizable*) alternatives, and then

³⁶⁹ G. Stigler, *The Intellectual and the Marketplace*, University of Chicago Booth School of Business, Chicago, 1963.

³⁷⁰ Although Keynes is routinely presented as a pragmatic reformer of capitalism, in fact in various writings, including the *General Theory*, he at times takes millenarian tones that vague a final perspective coinciding with a kind of euthanasia of capitalism. When he abandons short-term analyses to paint very long-term scenarios he speaks in prophetic tones of the end of the "economic problem," i.e., economic necessity, with a landing to a quasi-stationary condition in which capital scarcity is eliminated; consumers, educated in austerity, are all satisfied and fulfilled; producers are cautious in a risk-free and novelty-free environment; (economic) work time is gradually reduced until it disappears, to give way only to work-joy.

³⁷¹ A. Rosmini, *Filosofia della politica* (1839), Rusconi, Milan, 1985.

³⁷² M.N. Rothbard, *For a New Liberty*, cit., pp. 243–44. On a similar register Jerome Tuccille: "Would such a system work perfectly? To answer this question affirmatively one would have to be a devout Utopian. Unfortunately, a perfect society depends on perfect individuals living within that society. Nothing on earth works perfectly at all times." J. Tuccille, *Radical Libertarianism: A Right-Wing Alternative*, Bobbs-Merrill, Indianapolis, IN, 1970, p. 74.

³⁷³ See R. Zitelmann, *The Power of Capitalism*, LID Publishing, London, 2018, Chapter 10. In a consequentialist view, M. Huemer states that the standard for evaluating social theories cannot be that of perfection, but of comparison between alternatives. The relevant question is not simply whether a social system is good (or bad) absolutely, but whether it is better (or worse) than the alternatives, i.e., the other social structures we might adopt. We should not reject a proposed social system because, in it, some people would face certain problems. Perfection is not an available option for human societies. M. Huemer, *The Problem of Political Authority*, Palgrave Macmillan, New York, 2013, § 8.1.1, "Rational evaluation is comparative".

³⁷⁴ L. von Mises, *Liberalism*, cit.

denounce the unacceptable imperfection of reality; thus incurring fallacies concerning alleged “market failures” to be remedied.³⁷⁵

The end of history heralded by perfectionism always also incorporates the utopia of the extinction of the economy, to be understood as the end of scarcity and work as necessity; in parallel with the achievement of a stationary end state characterized, in consonance with the New Man,³⁷⁶ by an austere absence of frivolous desires and “consumerist” needs³⁷⁷. Innovation, change, and aspiration for improvement are ineradicable dynamics of the human condition: “the economy perpetuates itself because it renews itself, and to stop the economy is to stop renewal. Which, however, is never entirely peaceful, precisely because it wounds pre-existing interests and destroys the value of old wealth.”³⁷⁸

Finally, anti-perfectists are also such because they fear the oppressive outcomes of the perfectist option. As Italian economist Sergio Ricossa has observed, palingenesis is always associated with destructive, *tabula rasa* political activism: “the collectivist is convinced that perfection is to be found well and truly behind a last diaphragm to be torn down. He therefore spends his life demolishing, since there is always a last diaphragm. The bourgeois Taine observed that the French had destroyed thirteen forms of government in eighty years. We know that they have continued without ever finding what they seek, and so do other peoples.”³⁷⁹

7.3 Egalitarianism

The third front, for a theory such as the libertarian one which prefigures complete freedom of action, even in the economic field, is represented by egalitarianism,³⁸⁰ by the recognition of positive rights and by redistribution, which is the instrument of the first two.

The equality that libertarianism opposes is the substantial one, not that of moral status which is expressed in the “equality of freedom”³⁸¹ or “equality of rights”, in which the rights are only those

³⁷⁵ H. Demsetz, *Information and Efficiency: Another Viewpoint*, in “The Journal of Law & Economics”, vol. 12, no. 1, April 1969, pp. 1–22.

³⁷⁶ Human perfection inevitably comes at the expense of individual variety and originality: as the Italian poet Giacomo Leopardi observed, “imagining a single and absolute type of perfection, independent of and antecedent to all sorts of existence, all beings in order to be perfect must conform entirely to this type; therefore, all perfectly equal and identical in nature.” G. Leopardi, *Zibaldone*, I, Mondadori, Milan, 1957, p. 1206 (my translation).

³⁷⁷ On the subject see S. Ricossa, *La fine dell'economia. Saggio sulla perfezione*, SugarCo, Milan, 1986.

³⁷⁸ S. Ricossa, *Impariamo l'economia*, cit., p. 94 (my translation).

³⁷⁹ S. Ricossa, *Straborghese* (1980), IBL Libri, Turin, 2013, p. 75 (my translation). The same author carries out an extensive analysis of the issue in the chapter *Contro la perfezione* in his book *Impariamo l'economia*, cit. Against the “healers of humanity” see also I. Berlin, *The Crooked Timber of Humanity: Chapters in the History of Ideas*, Alfred A. Knopf, New York, 1991. Of liberalism it has been said that it “does not warm the hearts,” that it lacks an epic. The absence of a messianic narrative, of an eschatological promise, is a trait that also characterizes libertarianism, perhaps penalized, for this reason too, in terms of propaganda effectiveness. As will be seen in Chapter 12, attempts to touch in public opinion also emotional strings were experienced by Rothbard, with his “right-wing populism” of the 1990s. In 2023, anarcho-capitalist libertarian Javier Milei surprisingly wins Argentina’s presidential election. The reflex of the mainstream media is to quickly relegate him within the increasingly abused category of populism; which is perhaps traceable in the anti-caste rhetoric and some prophetic overtones about the country’s return to a lost Golden Age, certainly not in the economic-social program, centered on measures such as cuts in public spending, privatization, reduction of welfare protections, and a non-laxist monetary policy.

³⁸⁰ On egalitarianism, the ideology of equality in the distribution of wealth, see M.N. Rothbard, *Egalitarianism As a Revolt Against Nature*, in “Modern Age”, vol. 17, no. 4, Fall 1973, pp. 348–57; *Egalitarianism and the Elites*, in “Review of Austrian Economics”, vol. 8, no. 2, 1995, pp. 39–57. It is not only communist and socialist doctrines that subordinate liberty to equality: even a liberal like Dworkin argues that in democracies the founding principle is equality, and it comes before liberty. Cfr. R. Dworkin, *What is equality?*, in “Philosophy and Public Affairs”, vol. 10, no. 3 and no. 4, 1981; *Why Liberals Should Believe in Equality*, in “New York Review of Books”, 3 February 1983.

³⁸¹ H. Spencer, *Social Statics*, cit.

negative to the non-aggression of property.³⁸² For a deontological approach, the violation of rights, i.e., properly acquired property titles (see *supra*, Chapter 3), is the main reason for hostility to redistributionism.³⁸³ However, other arguments put forward by libertarian and classical liberal theorists will also be considered in the following discussion.

The idea of (substantial) equality, which intersects and often overlaps with that of social justice,³⁸⁴ enjoys an excellent reputation, despite the fact that it has lacked both a rigorous definition and a solid theoretical foundation as a result of a compelling demonstration.³⁸⁵ According to the

³⁸² When understood in this way, it can be called *juridical equality*. However, the expression is often used to refer to *equality before the law*, which, however, is not libertarian equality, because uniformity of treatment *in itself* is not sufficient to guarantee a libertarian arrangement: for example, a hypothetical law on compulsory conscription for all satisfies equality before the law but not libertarian legal equality, which, as mentioned above, is equality in possessing negative rights to non-aggression. “Libertarians advocate *radical equality*. No people or group of people has any special authority over others. No one rules by right. Every person, regardless of ability, virtue, or social class, has fundamentally the same moral standing. We are all equally sovereign over ourselves and equally nonsovereign over others.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 3. Henry Maine, a British jurist very dear to libertarians, argued in *Ancient Law* (1861) that Western civilization and liberty manifested themselves with the transition from status-based to contract-based society. Rockwell Jr. noted that the abolition of the state would remove an important difference in status: “the abolition of the state will necessarily increase the level of egalitarianism from the point of view of status; the inequality of status between state officials on the one hand, who today may carry out all kinds of moral outrages with the legitimacy of the state to support them, and ordinary people, who are constrained by the traditional moral rules against theft and aggression, on the other, will no longer exist when the state disappears.” L.H. Rockwell Jr., *The Future of Libertarianism*, cit.

³⁸³ Forced withdrawal or obligation to services also violate the Kantian moral principle of considering each man as an end in himself, not as a means of realizing the ends of others. The transfer of power from individuals to government caused by redistribution is the focus of Bertrand de Jouvenel’s reflection in *The Ethics of Redistribution* (Cambridge University Press, Cambridge, UK, 1951). It should be pointed out that libertarians, who favor the right of exit and entry (with the consent of others) into any community of people, have no objection to the existence of communities governed by egalitarian principles, as long as membership in them is voluntary; and voluntary the possible unfavorable net balance between withdrawal and revenue for some of the participants.

³⁸⁴ Also termed *distributive justice*. For a wide-ranging critique of the concept see F.A. von Hayek, *Law, Legislation and Liberty*, vol. II, *The Mirage of Social Justice*, University of Chicago Press, Chicago, IL, 1973-79. Some authors pointed out that often the less noble sentiment of envy weighs more than the sentiment of justice in consenting to the redistribution of income: see H. Schoeck, *Envy: A Theory of Social Behaviour* (1966), Secker & Warburg, Londra, 1969. Various theories in social psychology, such as social comparison theory, reference group theory, status anxiety theory, or relative deprivation theory, have supported the view that for many people, their happiness is determined by comparison with others and not by own condition in absolute terms. The explanation does not represent a justification of the claim made by the complainant. Tibor R. Machan observed that the “rich” can be so thanks to aggressive action (for example the conquests of monarchs in the past) or thanks to their own resourcefulness (Steve Jobs, Bill Gates). The negative prejudice towards the rich that is dominant today, Machan hypothesizes, probably derives from the fact that for centuries very rich people achieved this status through unjust theft of other people's goods, protected by law. In the last two centuries, the take-off of economic activity has generated a large number of rich people who have become rich thanks to their own merits, because they are able to produce goods and services that are appreciated by buyers. However, many people do not distinguish the two different origins of wealth and extend aversion and suspicion to any type of rich. T.R. Machan, *Libertarianism, For and Against*, Rowman & Littlefield, Lanham, MD, 2005, pp. 71–72. Individual wealth turned into guilt, on a grand scale becomes the wealthy West responsible for crimes against humanity.

³⁸⁵ “In a society of free men (as distinct from any compulsory organization) the concept of social justice is strictly empty and meaningless. [...] the differences in reward simply cannot meaningfully be described as just or unjust.” F.A. von Hayek, *Law, Legislation, and Liberty*, vol. II, pp. 68, 70. It is so taken for granted that a given distance between incomes or wealth is unjust, without demonstrating why, that the mere presentation of economic statistics is often considered sufficient to justify a redistributive intervention. However, as Gianfranco Miglio observed, “from the fact that, for example, Milan has a per capita income double that of Agrigento, no right of the people of Agrigento to the money of the Milanese can derive.” G. Miglio, A. Barbera, *Federalismo e secessione*, Mondadori, Milano, 1997, p. 56 (my translation). According to liberal Catholic Michael Novak, social justice should be interpreted not as a concept that legitimizes the intrusion of political power into people’s lives but as an individual classical virtue, an “attitude of the heart,” which is acquired in the practice of associationism, itself a primary condition for the implementation of the principle of horizontal subsidiarity. M. Novak, P. Adams, E. Shaw, *Social Justice Isn’t What You Think It Is*, Encounter Books, New York, 2015.

egalitarian approach, the distances and differences between individuals' resources, whether they are artificial (J.-J. Rousseau) or the result of natural differences, are unjust "in themselves". Even if (or without knowing if) those differences are determined by a different commitment and sacrifice, therefore by merit.

The main arguments in support of the thesis of injustice are two: the dependence of the individual on society and the possession of resources resulting from fate, from luck. While a more strictly utilitarian argument in support of redistribution – increase in overall well-being – is the one proposed by the economist Arthur C. Pigou.

The first argument is intended to mitigate or refute the legitimacy of personal gains, especially when they are large, and to justify the transfer of income to the "community" (and, with a logical leap, to the State). If the merit of what has been achieved is due, to a greater or lesser extent, to the environment in which we live – to the infrastructural, cultural, and institutional context – then we are not entitled to appropriate all the fruits of our own efforts, initiatives and inventions; those fruits must be shared. For example, (public) roads allow owners of most economic activities to carry out these activities and earn profits; the contribution offered by the roads is an advantage acquired by private producers thanks to a collective good.

Libertarians have highlighted some weaknesses of this reasoning. First of all, on the market it is possible to evaluate the contribution of each to the total product through marginal productivity; as well as the benefit – subjectively assessed utility – achieved from the goods obtained in exchange; and there is no additional compensation to be awarded. Taking the example of roads, if they were private, the cost would emerge in the form of a toll imposed on users, equivalent to the benefit they enjoyed; it is the choice to make the roads public and free that prevents the emergence of the contribution of this infrastructure, and therefore of its owner, to the overall output. Furthermore, in the event that the state activity, rather than being represented by roads or lighting or protection, is constituted by the transfer of a sum of money (e.g., unemployment benefit), the one who has been taxed for providing it does not even receive a counterpart (which has instead been assigned to the unemployed), so in this case the contribution (subtracted by force) is not justified by a benefit received.

Second, "others," society, do not benefit each of us deliberately, as, say, our parents would. As the philosopher D. Schmitz has noted, the benefit each of us receives from society more closely resembles the benefit gained from the sun: we cannot live without it, but the sun is not doing me a specific, purposeful favor; it is simply *there*. I am in some metaphorical sense grateful that the sun exists, but I owe no debt to it; as to society. Besides, the benefits that the subject receives from previous generations and from contemporaries have not been requested by him.

Thirdly, the fact that the human being derives an enormous advantage from interactions with others, from sociality (without it any individual would not even have the language to express the concepts, in addition to the knowledge developed in all previous human history), it does not mean that he is deterministically a simple and passive expression or derivation of the social "whole". If this were the case, we could not explain the innumerable situations in which specific individuals, reworking the ideas received, have produced new ideas and progress in the various fields of knowledge and technology thanks to their individuality. Collectivism "denies that individuals can form ideas of their own, govern their own lives in light of these ideas, and are responsible for the

result. [...] [T]hough we are social beings, there is an essential individuality to our lives as well, and this requires for our flourishing that we enjoy sovereignty in how we live.”³⁸⁶

The fourth mistake consists in the logical leap in identifying in the coercive transfers of taxation the channels that restore a condition of justice, compensating those who really contributed to the overall wealth. But “taxes are not the instrument to remit our debts to society. If they were, some of us would probably send a monthly check to the high school teacher who first saw talent in them, rather than to the country in which they live; donate shares of their income to put flowers on the grandmother’s grave for she first accompanied them on the piano, send their thanks to the family of Charles Darwin or to that of Guglielmo Marconi.”³⁸⁷ Besides, if everyone owes something, why only to the nation-state and not to the entire world as well?

The second argument highlights the weight of fate and not of merit in human affairs. It is argued that some personal skills are due to fate and not to merit. For example, personal abilities are a “gift”³⁸⁸ received genetically.³⁸⁹ Given that being lucky does not mean being a thief,³⁹⁰ the fundamental aspect is that the rights that each person has over his own body (self-ownership) include the right to make use of his talents and to take every possible advantage of them. Einstein’s extraordinary scientific creativity, as well as Leonardo da Vinci’s artistic creativity, must be considered their property and not collective property of society. They characterize their personality so *intimately* that – except perhaps in a slave society – they cannot be treated as property of society, just as their eyes or hands cannot; otherwise, some individuals are treated as means and not as ends.³⁹¹ On the other hand, if a person does not deserve the fruit of his talent, it is even more

³⁸⁶ T.R. Machan, *Libertarianism, For and Against*, p. 68.

³⁸⁷ A. Mingardi, *L’intelligenza del denaro*, Marsilio, Venezia, 2013, p. 213 (my translation).

³⁸⁸ Cf. J. Rawls, *A Theory of Justice*, cit. Positions that draw more radical consequences are those that go by the name of *luck egalitarianism*: authors such as Eric Rakowski, Richard Arneson, G.A. Cohen and John Roemer argue that the impact of “brute” luck (that which operates in the distribution of talent, but also when one contracts a disease or suffers a natural disaster) should be eliminated through economic compensation of inequality. Of course, due to the impossibility of accurately measuring the incidence of fate, determining the amount of compensation is very problematic. The prevailing solution, equating it with the value of an insurance premium, has been subject to numerous objections.

³⁸⁹ It is thus implicitly recognized that humanity is characterized by a high degree of variety, diversity, differentiation: in short, inequality. The differences between human beings in many characteristics (intelligence, beauty, strength, health, talent, vocations, aptitudes, character) are a circumstance that a certain radical egalitarianism has not always admitted, believing that they depended on the environment and could therefore be eliminated through its manipulation *ad libitum*. Wherever creative production is needed, polarization (not just economic) is an iron law of any society. This, as R. Michels and V. Pareto pointed out, is also true for organizations: an elite or oligarchy of individuals is invariably formed, and, as a result of superior skills, personality, charisma, intelligence, motivation, etc., assume leadership. If this role is not assumed by force, there is nothing wrong with it, on the contrary, it represents the premise for more efficient and effective decisions.

³⁹⁰ Tibor R. Machan observed that in the thesis of the coercive redistribution that calls into question the lack of merit there is a *non sequitur*: the fact that an individual does not deserve an asset in his possession, does not automatically imply that others have the right to take it away from him. T.R. Machan, *Libertarianism, For and Against*, cit. Libertarians, contrary to the frequent, but erroneous, description of their position, do not defend free markets and negative entitlements because they believe that these always reward “merit”; but because it is unjust to forcibly take away people’s resources (and, for utilitarian libertarians, because overly pronounced redistributions generate disincentives to production). A slacker may be wealthy, because, for example, he has received a large inheritance or achieved a lottery win, and therefore may not deserve such wealth, but for libertarians he is equally entitled to have it not attacked.

³⁹¹ If you do not recognize the right to own your own natural characteristics, you risk, on the basis of the *slippery slope* argument, reaching the logical climax of the equalization of natural gifts. With aberrant conclusions: the obligation for an individual with healthy eyes to give an eye to a blind man or a kidney to a patient on dialysis. Nozick pointed out that the correction of an element deemed “undeserved” as physical beauty should lead to an absurd constraint for good-looking individuals, subsidize cosmetic surgery for aesthetically unpleasant people. R. Nozick, *op. cit.* The Greek myth

difficult to claim that someone else deserves it. Furthermore, in evaluating the results, it is not possible to separate the natural qualities from other voluntary actions, mixed with them, such as commitment, effort, sacrifice, which are in turn indispensable for cultivating natural qualities.³⁹² And even luck, often indicated as an element that generates “undeserved” gains or advantages,³⁹³ cannot be isolated and identified, it is too inextricably intertwined with human actions; it could happen that some rich people are unlucky, in the sense that they earn less of their productivity, therefore than they deserve. Finally, although a libertarian order often awards merit, libertarianism does not make the assignment of rights derive from “merit”: for example, an individual who is just lucky and wins a lottery is entitled to the winning money. Nor is libertarianism “meritocratic”: if the term “meritocracy” is understood in its strict etymological meaning, that is, the right to command, in the sense of exercising political power, by those who deserve, in libertarian theory, as seen above, the legitimate relationships are only the voluntary, “horizontal” ones, not the “vertical” exercise (not originating from contracts) of power by some subjects over others.³⁹⁴

The utilitarian argument, first organically proposed by the economist A.C. Pigou, is based on marginalist instrumentation applied to money: the marginal utility (increase in well-being) deriving from an additional monetary unit tends to decrease as the number of monetary units held increases. Lower income earners, therefore, derive a higher marginal utility from the last monetary unit; that is, if they receive an additional monetary unit, they increase their well-being more than those with a high income. Thus, to increase collective well-being, income must be redistributed from the wealthy to the less well-off.³⁹⁵

Two types of objections have been raised against this thesis. First, Pigou’s reasoning, if carried out consistently, must lead to a perfectly egalitarian income distribution: in fact, as long as there are people with higher incomes than others, redistribution increases well-being, since it transfers

of Procrustes alludes to the suggestion of bodily uniformity, and although similar conceptions today appear to us as dystopian nightmares, nevertheless in the course of history they have sometimes manifested themselves in thinkers or in social experiments that ended tragically (Pol Pot’s Cambodia). The communism of the French enlightener G.B. Mably (*Entretiens de Phocion*, 1764; *Doutes proposées*, 1768; *Des droits et des devoirs du citoyen*, 1758, published in 1789) draws egalitarian conclusions from natural law premises: men are perfectly equal, in the sense of uniform. Mao Tse-tung maintained that any individual, even of genius, is a mere expression of the community in which he lives.

³⁹² Those who oppose the free market often also address the opposite accusation: geniuses earn less than mediocre or less intelligent but successful people. “The first objection is usually expressed by a question such as: “Why should Elvis Presley make more money than Einstein?” The answer is: Because men work in order to support and enjoy their own lives – and if many men find value in Elvis Presley, they are entitled to spend their money on their own pleasure. Presley’s fortune is not taken from those who do not care for his work (I am one of them) nor from Einstein – nor does he stand in Einstein’s way – nor does Einstein lack proper recognition and support in a free society.” A. Rand, *Capitalism: The Unknown Ideal*, New American Library, New York, 1966, p. 27.

³⁹³ An element of injustice is often seen as the advantage of having wealthy parents passing on their wealth to their children, a circumstance not deserved by the beneficiaries. A frequently invoked corrective measure is the taxation of inheritances or gifts, or those above a given threshold. However, the importance of inheritance in inequality is overstated: in the United States, of the 400 richest people on the 2011 Forbes list, only 32 percent come from wealthy families, and 68 percent founded their own businesses, not inherited them.

³⁹⁴ It should be noted that libertarianism is not meritocratic even if the term is extended to also identify the criterion for justifying the distribution of wealth. For libertarians, as we have seen, people are also entitled to wealth obtained as a result of luck (winning a lottery) or as a result of a gift received from others, thus irrespective of merit understood as commitment applied to one’s natural skills. Conversely, a person might strive to the utmost to achieve goods or services that are, however, disliked by others and therefore not purchased by them; this does not mean that he or she is entitled to earn income.

³⁹⁵ About the manner of the levy, the *minimum-sacrifice* criterion advocated by Pigou implies a progressive taxation. A.C. Pigou, *The Economics of Welfare*, MacMillan and Co, London, 1920. The theory of diminishing marginal utility is also used by liberal philosopher Thomas Nagel to support his redistributive scheme as opposed to classical liberals and libertarians: T. Nagel, *Equality and Partiality*, Oxford University Press, New York, 1991.

monetary units from those who have a lower marginal utility to those who have a higher marginal utility. One can only stop when all incomes are equal; a conclusion rejected by most supporters of a redistributive intervention.

Second, Pigou's reasoning is based on a false premise, namely that people have the same utility-of-money schedule. However, this is not the case: some value material goods more than others, and work harder to obtain more of them. Consequently, a high-income individual could have a higher marginal utility than a low-income individual (the accusation of "greed" often leveled at the rich by redistributionists would be an implicit admission of the correctness of this conclusion). If so, to adjust income or wealth it would be necessary to know the values of utilities achieved by people; but, as is well known, interpersonal comparison of utilities is impossible.

In any case, what is fragile is the very concept of "fair" distribution according to established arithmetical proportions and imposed in a top-down logic. Libertarians contrast their own idea of just distribution: that which originates, as a result of *horizontal* interaction, from people's right 1) to *all* the fruits of their own labor,³⁹⁶ 2) to resources received as a result of an exchange, or 3) to resources received as a gift as a result of the voluntary actions of others; determined by the horizontal interaction between people. Right which, they point out, has a superior ethical force to the right of some to receive resources taken from others (redistribution). So one could turn the argument of justice and morality of redistribution upside down: to argue that those in need have the right to appropriate some of the goods of others means to claim that the former have the right to confiscate the work of those who produced the goods. Put in these terms, the immorality content of the redistributive acts appears much clearer than that reported in the abstentionist attitude.³⁹⁷

The concept of economic equality (in its articulations of equality of outcome³⁹⁸ and of opportunity³⁹⁹)⁴⁰⁰ also suffers from logical limits such as to determine the impossibility of its achievement.

³⁹⁶ This is one of the major points of distance between the libertarian conception and the others, which deny, to a greater or lesser degree, the right to retain for oneself *all* income from one's actions.

³⁹⁷ "So insensitive have we become to the role of property as the most important civilizing influence in our world, that we have even learned to regard the infliction of our wills upon the lives and property of others as expressions of "socially responsible" conduct." B. Shaffer, *Boundaries of Order*, p. 5. Those who argue for the immorality of inequality can be contrasted with the same argument used by Block regarding "lifeboat situations" (see Chapter 4 above): the advocate of economic equality, if he is consistent, must deprive himself of some of his wealth to save some starving people, for example, in other parts of the world. And the transfer cannot be limited to any amount of money, but must continue as long as his standard of living is higher than that of the starving people. The fact that he does not behave in this way shows that he himself does not take his argument seriously.

³⁹⁸ In this type of equality all individuals have the same assets or income (depending on the wealth indicator chosen as *equalizandum*). Since it is practically impossible for this to occur spontaneously as the final outcome of the economic activity of all subjects, this objective can only be achieved in two ways: 1) in a context in which free initiative and private property are admitted, through the "levelling", a gigantic *ex post* redistribution intervention (after the production activity); which, in its most basic and radical version, is based on dividing all wealth or all income by the number of people, so that everyone gets the average (that is, all the same monetary value); 2) not admitting private property but only public property, and assigning everyone the same monetary income, regardless of the type of activity, and the same services (health, education, etc.).

³⁹⁹ In this type of equality everyone is placed in the same starting conditions; that is, everyone should have not *equal* income or assets, but *equal chances* (or, in a stronger version, *equal options*) to obtain any income or assets. The so-called *level playing field*, the possibility of competing on equal terms, should be guaranteed. Using the sports metaphor, all runners should start from the same line. This conception, which in many respects overlaps with positive liberty, can be traced back to the aforementioned English liberal socialism of the late nineteenth century. In the twentieth century the most organic version is contained in *A Theory of Justice* (1971) by John Rawls. A more recent exponent is Martha Nussbaum (*Frontiers of Justice*, 2006). Being the former radical egalitarianism now completely discredited, it is this kind of equality to have more appeal. A more recent egalitarianism is that which pertains to *groups* rather than

If, in fact, wealth or income is considered not in monetary terms but in substantial terms, that is, as enjoyment of goods and services that can be acquired in a given place,⁴⁰¹ they are not equal: the world is infinitely diversified, both from a natural point of view and due to the intervention of man stratified in history; the condition of a person living in New York is necessarily different from that of an Indian living on the bank of the Ganges, if only because the former can enjoy the skyline of Manhattan, impossible for the latter, which however in turn can benefit of a bath in the Ganges, or of the relative landscape, an impossible circumstance for the former. The two goods are non-homogeneous and there is no objective criterion that allows to quantify, and therefore compare, the value of a bathroom in the Ganges with the view of the Manhattan skyline; to then decide who should be taxed and who should be subsidized, so as to restore a condition of equality. Since each individual is necessarily located in a different space, in places that have different natural and/or artificial characteristics, his real income *cannot but differ* from that of another.⁴⁰²

Another logical limit of redistribution with an egalitarian goal is its implementation within each country. However, outside a given country there may be (certainly there are) people who are worse off than the poor resident in the country in question; and there is no reason why they shouldn't be helped. Looking at the issue from another point of view: a resident of one country could choose to help one or more poor people in another country rather than those of the country of residence; however, this is prevented: he is forced to help the poor of his country, since part of his taxes, coercively levied, are destined for them and not for the poor whom he would have liked to help. There are also some specific problems affecting the concept of equality of opportunity.

It is not rigorous and does not offer precise indications on an operational level: it is not possible to know when two individuals have been placed in a condition that has exactly the same range of opportunities. But the main point is that equality of opportunity is impossible in fact. First of all because, as we have seen, there are different natural qualities (biological, hereditary) between individuals and, for example, the opportunities for earning in professional sports are not equally distributed among the entire world population; those with talent will have more opportunities than those without. Another circumstance that prevents equality of opportunity is the fact that different parents have unequal abilities, transmit different education to their children and this determines different opportunities for the latter; consistent with the principle of equality of opportunity, all children should be removed from families and subjected to a single state education, a tyrannical outcome that the same supporters of equality do not want.

Moreover, since people have different aptitudes and talents, the same starting condition would evolve over time toward an arrangement characterized by considerably different amounts of subjective wealth and income.⁴⁰³ Therefore, if the equality of the starting points were achieved only

individuals, and which has generated the policy of so-called 'affirmative action' in favor of categories defined oppressed or discriminated, such as racial minorities, women, gays, immigrants, handicapped etc.

⁴⁰⁰ Equality of *welfare*, introduced in some classifications related to substantive equality, suffers from the well-known difficulties of measuring and interpersonal comparison of the parameter; difficulties that have suggested the expedient of directly using wealth or income as approximations.

⁴⁰¹ Monetary income is not a correct measure, because money is a simple unit of account, an abstract number, and equalizing the number of monetary units does not mean equalizing real income. In fact, in different places the price level may be different, and therefore an equal monetary income would not guarantee an equal purchasing power. If we then consider places belonging to different States (and there is no reason why egalitarianists do not have to demand equality on a world level), things get complicated, because we have to calculate the purchasing power of two different currencies, and in any case always in terms of purchasable goods and services.

⁴⁰² M.N. Rothbard, *Power and Market*, cit., Chapter 6, Section 5.

⁴⁰³ As admitted by R. Dworkin in *Justice for Hedgehogs*, Harvard University Press, Cambridge, MA, 2011.

once and forever,⁴⁰⁴ after a certain period of time the conditions of the people would return to be considerably unequal; for this reason, equality of opportunity is also associated with a repeated redistribution of wealth, and not one-off.⁴⁰⁵

Another problem of redistribution with egalitarian purpose is consequentialist.⁴⁰⁶ In terms of efficiency, a repeated redistribution of wealth causes disincentives to work and enterprise, as hardworking people will receive less than what they produce, while lazy people will receive an income greater than their contribution. Both categories will therefore find it useless to commit. Furthermore, the redistributive action, modifying (reducing) the profits of some to increase the incomes of others, distorts the signals represented by profits and losses, which allow to reward those who satisfy the desires of consumers and to punish those who do not and waste resources. The market economy is deprived of its steering wheel, and therefore the allocation of resources is distorted and is much less efficient. The inequality of wealth, that is, the fact that some are rewarded, and others sanctioned, is not a defect but an advantage of an economic system⁴⁰⁷. In addition, most of the profits and incomes of wealthy individuals are not destined for the consumption of luxury goods, but for savings and investment, therefore for the expansion of the production base. So, it is not true, as is often repeated, that the poor exist because the rich are there: on the contrary, it is those who transform savings into investments that allow increases in wealth, productivity, and job opportunities.

7.4 'Positive' Rights

As mentioned, an important tool of equality, of 'positive' liberty and of redistribution are the so-called economic-social rights, rights to receive free or semi-free services such as medical care and education,⁴⁰⁸ or goods such as housing, or sums of money such as state benefits,⁴⁰⁹ or a job,⁴¹⁰ or

⁴⁰⁴ The idea dates back to Thomas Paine (*Agrarian Justice*, W. Adlard, Paris, 1797) and is also the proposal of *left-libertarians* like H. Steiner, M. Otsuka, I. Carter, and *real-libertarians* (hardly distinguishable from the *liberals*) like B. Ackermann and A. Alstott. The general approach of these authors is examined in Chapter 12.

⁴⁰⁵ It is defined as equality of *basic* opportunities, which should be enjoyed throughout life.

⁴⁰⁶ As we have already seen in Chapter 5, libertarianism is not an economic or sociological theory, therefore the following economic and inherent efficiency considerations pertain to political philosophy in the strict sense of the term only for the utilitarian component, while libertarians' adherence to the free market is predominantly through deontological means.

⁴⁰⁷ It is true that in a free market system there are very large distances of income and wealth between people. However, it is not true that the countries that show greater economic liberty are those with more unequal income distribution: in research proposed annually by the "Wall Street Journal" and the "Heritage Foundation," it consistently emerges that nations with the highest levels of economic liberty – Switzerland, Singapore, Australia, Canada, New Zealand – show a lower Gini coefficient than nations with greater State interference.

⁴⁰⁸ Libertarians denounce that the organization of education today is characterized by triple coercion: in attendance, funding and content. The alternative is a free-market arrangement in education as well: each parent could choose the type of private school closest to his cultural or religious orientations, or to his preferences regarding teaching methodology, or based on the available facilities and services offered; or he could choose to turn to private tutors, or decide to provide for himself through homeschooling. Such a solution would also have the merit of eliminating the frequent conflicts over the permissibility of the presence in schools of religious rituals and symbols, such as prayer, crucifix, crèche, veil, and so on.

⁴⁰⁹ Many of these services and transfers are managed and offered directly by the public hand, configuring what has been polemically termed the *providence-State*. "Observe, in this context, the intellectual precision of the Founding Fathers: they spoke of the right to *the pursuit* of happiness – *not* of the right to happiness. It means that a man has the right to take the actions he deems necessary to achieve his happiness; it does *not* mean that others must make him happy." A. Rand, *The Virtue of Selfishness*, p. 97.

⁴¹⁰ "If you have a right to a job, who is to supply it? Must an employer supply it even if he doesn't want to hire you? What if you are unemployable, or incurably lazy? (If you say "the government must supply it," does that mean that a job must be created for you which no employer needs done, and that you must be kept in it regardless of how much or

good working conditions, or paid holidays. As we know, for libertarians *general* positive rights do not exist; the only positive rights are *particular* ones of contractual origin; the only ones that entitle a person to get a service or a sum of money (or, in the case of breach of contract, to obtain the appropriate compensation). It is clear that admitting the right to receive money, goods or services without a prior contract (rights of recipience) implies that forced services are imposed on some people, transgressing the principle of non-aggression. With the words of Ayn Rand: “If some men are entitled *by right* to the products of the work of others, it means that those others are deprived of rights and condemned to slave labor. Any alleged “right” of one man, which necessitates the violation of the rights of another, is not and cannot be a right.”⁴¹¹

All those who claim that some of these services must be “free” “are consciously or unconsciously evading the fact that there are in reality no such thing as free services. All man-made goods and services are the result of human expenditure of time and effort. There is no such thing as “something for nothing” in this world. If you demand something free, you are demanding that other men give their time and effort to you without compensation.”⁴¹² As an old American proverb, made famous by libertarian science fiction writer Robert Heinlein⁴¹³ and later revived by Milton Friedman,⁴¹⁴ used to say: “There Ain’t No Such Thing As a Free Lunch”.

These ‘positive’ rights, in addition to the already mentioned problem of conflict with negative freedom, face other difficulties.

little you work?) If the employer is forced to supply it at his expense even if he doesn’t need you, then isn’t *he* being enslaved to that extent? What ever happened to *his* right to conduct his life and his affairs in accordance with his choices?” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 71. On the other hand, if a job was a right, the lack of it for a person would amount to the violation of that right. If so, then it means that a crime is being committed. But who is committing it? Who should be denounced? All the other individuals who do not hire him? The State? In the institutional figure of whom? Of the President of the Republic? Of the Prime Minister? Of the members of parliament? It is obvious that all this would be nonsense. And this is confirmed by the fact that, in all legal systems, the right to a job is not actionable in court, and no unemployed person would remotely think of taking legal action to have his jobless status terminated.

⁴¹¹ A. Rand, *The Virtue of Selfishness*, p. 96. Nozick similarly: “Taxation of earnings from labor is on a par with forced labor. [...] Is like taking *n* hours from the person; it is like forcing the person to work *n* hours for another’s purpose. [...] It gives [people] a property right in you.” R. Nozick, *Anarchy, State, and Utopia*, p. 169, 172. The philosopher Loren Lomasky pointed out that our moral views are such that “we assign more weight to our duty not to harm other people than we do to the duty to extend positive help to them. A revealing example is that we would regard it as wrong for a doctor to cut up and distribute the parts of one healthy patient in order to save the lives of five others even though we suppose that doctors have a general duty to help their patients. The duty not to harm overrides utility considerations and the duty to help.” L. Lomasky, *Harman’s Moral Relativism*, in “Journal of Libertarian Studies”, vol. 3, no. 3, Fall 1979, pp. 284–85. Furthermore, solidarity, to be the result of a moral option, must be voluntary, spontaneous, not mandatory: “government-administered charity programs [...] are also immoral: humanitarianism does not consist of a gun directed at the pocketbooks of productive men, to enforce their compliance in programs of which, for very excellent reasons, they may disapprove.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 283. L.E. Carabini observed that in small groups (family, friends, workplace, condominium, neighborhood), the prevailing social dimension for the individual, we always imagine and practice the help to others in terms of voluntariness, never through the use of force; not so when the community extends to the whole society: “should a neighbor need help, we would never consider going around the neighborhood threatening those who do not pitch in. We instinctively understand that charity is voluntary [...] However, in a political arena, we find ourselves condoning, even promoting, the use of physical force as the proper means to extract aid. And when such force is used, we paradoxically refer to it as an act of charity and compassion.” L.E. Carabini, *Inclined to Liberty: The Futile Attempt to Suppress the Human Spirit*, L. von Mises Institute, Auburn, AL, 2008, p. 23-24. Finally, it was observed that the redistributive State is an ethical State because it is not neutral from the point of view of values.

⁴¹² J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, p. 72.

⁴¹³ R. Heinlein, *The Moon is a Harsh Mistress*, G.P. Putnam’s Sons, New York, 1966.

⁴¹⁴ M. Friedman, *There’s No Such Thing As a Free Lunch*, Open Court, LaSalle, IL, 1975; the book is a collection of the columns he wrote for *Newsweek Magazine*, plus an interview he gave to *Playboy* and the important *New York Times Magazine* piece advocating a voucher system in education.

Unlike “negative” rights, welfare rights violate ethical universalism, in that they depend on time and place and cannot have the same degree of absoluteness as negative rights:⁴¹⁵ for example, depending largely on the level of development, poorer societies cannot guarantee them. Furthermore, they are limited within a single country; but, if they are rights, they apply to everyone, and then the billion richest people should transfer resources to the poorest six billion; but not even the most heated redistributivists support such an absurd thesis.

Secondly, by attributing to these transfers of resources the imperativeness that derives from the qualification of rights, *non-action* and *action* are ethically equated: the fact that A *does not* supply food to B who is starving is equated to the situation in which A kills B through active conduct; but this is unacceptable in terms of applied logic.⁴¹⁶

Finally, some economic and social “rights” cannot be activated, or because they are necessarily vague – such as the right to correct (?) information, or to a decent (?) remuneration⁴¹⁷ – or because they depend on the free will of the contractors or on the overall arrangement of the economic system – such as the so-called ‘right to work’ intended as the right to employment.⁴¹⁸ Human aspirations – well-being, wealth, health, a job, children, home, fame – are profoundly different from rights.⁴¹⁹ The only “economic rights” are property rights and rights of free trade.

Some authors, contiguous to libertarianism rather than libertarianism in the strict sense, have faced the insensitivity objection by attenuating the absoluteness of rights in specific cases: Eric Mack through a provisional redefinition of property boundaries;⁴²⁰ Nicolàs Maloberti introducing a new category, the *exception rights*, which, attributed to the beneficiaries, automatically infringe the basic rights of the owners. The conditions are that 1) the holder of the exception right is in a situation of serious peril, 2) which does not derive from his fault and 3) the cost (of the compression of the right) for the holder is reasonable. This correction would make it possible to deal with some borderline cases designed to embarrass libertarians, such as that of a child who is drowning and to

⁴¹⁵ Brian Barry noted that a typical formulation of a positive right such as “an adequate standard of living”, compared with the formulation of a negative right would be analogous to “a moderate amount of freedom of expression”, a statement that no one would ever accept in a constitution or in any declaration of rights. B. Barry, *Political Argument*, Routledge & Kegan Paul, London, 1965, p. 150.

⁴¹⁶ In civil law countries this “solidarity” conception has also extended to criminal law, multiplying the omissive cases. It is no coincidence that common law, in accordance with its more individualistic principles, has historically opposed the sanctioning of omissive conduct, which affects autonomy and individual freedoms through the imposition of obligations to act. For libertarianism, liability for omissive behavior arises only if such behavior violates contractual agreements.

⁴¹⁷ So why not introduce a “right to travel comfortably by train”, or a “right not to have a sprained ankle walking on the sidewalk” and so on? Moreover, transforming everything into law means generating a regulatory jungle that makes the certainty of the law itself disappear. Not to mention the costs involved in their implementation, a frequent “stone guest” in proposals and debates on the issue.

⁴¹⁸ Of all markets, the labor market is the most regulated: wages set by collective bargaining, minimum wage laws, minimum fees for professional associations, salary caps, limits to entry (licenses, numerus clausus, registers), working conditions set by law (hourly limits, age limits, permanent contracts, retirement age), non-fireability, social charges. Libertarians defend freedom of negotiation and call for the removal of all rigidities.

⁴¹⁹ Another “positive” definition of liberty – socialist and communist-minded – is “the absence of any obstacle to the use of material goods” (R. L. Hale, 1952). Mises objected that, in such a conception of freedom, if I prohibit others from using my toothbrush, I am unfairly restricting their freedom. Or that a woman who makes clothing for her husband with the raw materials she purchased is restricting my freedom because it poses an obstacle to my use of it.

⁴²⁰ E. Mack, *Elbow Room for Right*, in D. Sobel, P. Valentine, S. Wall [eds.], *Oxford Studies in Political Philosophy*, Oxford University Press, Oxford, 2015, pp. 194–221.

save which a person just needs to reach out. The author also legitimizes some moderate coercive economic transfers.⁴²¹

In any case, much of libertarian thought is settled in a “non-rectifying” position, and a different distribution of wealth is lawful only if the effect of the free choice of some to donate to others.

⁴²¹ N. Maloberti, *Libertarianism and Exception Rights*, in J. Brennan, B. van der Vossen, D. Schmitz, (eds), *op. cit.*, pp. 155–68. We have seen (see *supra*, note 144) that left-libertarians like Zwolinski also share this line of thinking.

8. Other Implications of the Theory

Let us briefly examine how the principles examined model theoretically and practically certain sectors of social life of particular importance.

8.1 Theory of Punishment

Deontological libertarians mostly advocate retributive, proportionalistic and restitutory (only to the victim) system. The punishment of the offender is a strict consequence of the unjust act committed (*retribution*; the criminal loses his rights to the same extent as he deprives the victim), but this sanction coincides with the direct *restitution* to the victim, to an extent equal to the damage caused (*proportionality*).⁴²²

In the case of crimes involving an economic value (theft, robbery, extortion, etc.), proportionality is respected with the return of an overall value equal to something more than double the value of the property or the sum subtracted. *Restitution-only stance*, in fact, is not enough. The return of the goods or of the sum represents compensation. Then an amount equivalent to the value of the stolen property or to the sum must be added, because the criminal loses his rights *to the same extent* as he deprived the victim (retribution).⁴²³ Finally, an additional sum must be added which incorporates two elements: compensating the victim for the aspects of fear and uncertainty deriving from the aggression and deprivation of property (the victim now feels less secure relative to his property, fears future encroachments, etc.; it is the harm, which cannot be measured in definite terms, of the violation of property rights per se),⁴²⁴ and judicial and police costs (the costs of capture and/or finding the stolen property).⁴²⁵

In the case of murder, proportionality is respected with death penalty⁴²⁶ (although in such a case compensation may not benefit the victim but possibly the next of kin or whomever the victim chose in life⁴²⁷). In the case of beatings or injuries, the victim has the right to beat up the attacker (or have him beaten up by judicial employees) to a greater extent than he has suffered.

An important aspect in the sanctioning system of a libertarian society is the circumstance that the victim may reduce the penalty for the offender at his own discretion, or completely remit it, or switch one type of sanction to another. This possibility is particularly relevant in the case of the death penalty. If the victim is against it on his own moral principles, he/she can, through a

⁴²² An alternative punishment theory is the *consequentialist* one, which focuses on the deterrent effect of the penalty, as the goal is a socially optimal result, the greatest possible reduction of crimes. The retributivist libertarians argue that, if the goal is to discourage crime, more afflictive penalties should be applied for the most widespread crimes and milder penalties for the rarer crimes. So petty theft should be punished harder than murder. Or you could publicly execute an innocent (as long as innocence remains a secret for public opinion): if the sole purpose is to discourage, such execution would exert a deterrent effect as much as the execution of the guilty. But all this clashes with the most basic principles of justice, and therefore deterrence, although it represents an ineliminable effect of the sanction, does not offer an independent justification for it. Retributivism is consistent with the libertarian approach that only individuals and individuals' responsibilities exist, and no individual must be sacrificed in the name of social optimization.

⁴²³ In the Rothbardian version of the law of retaliation: "two teeth for a tooth."

⁴²⁴ For example, a thief who enters an apartment by opening a window or without picking the lock, thus without breaking anything, and is caught before he can steal anything, equally owes something to the victim for merely violating the victim's property rights. The same for a person who attempts murder and fails.

⁴²⁵ If the offender does not possess such a sum of money, he must be forced to work until the income he receives allows him to repay the victim.

⁴²⁶ American libertarians opposed to capital punishment, such as Brian Carnell, generally resort to practical arguments, such as the limited deterrent effect and the irreversibility of any miscarriage of justice.

⁴²⁷ With a mechanism similar to the way one can sell off the right to collect his life insurance policy to the spouse and/or children and/or grandchildren for cash today.

testamentary will, make explicit the type of alternative punishment for his possible killers, for example imprisonment.⁴²⁸ In case of beatings, the penalty can be converted into a cash fine, in this case in agreement with the offender. Therefore, proportionality establishes the *maximum* limit of the penalty, it does not represent a peremptory tariff system.⁴²⁹

In such a victim-centered theory, for the purposes of punishment what matters is the mere *effect* the criminal act has generated on the victim; no weight is given to the motivations (the “thoughts”) that may have provoked it. In a libertarian legal system, therefore, the painstaking catalog of aggravating, mitigating or exempting circumstances that characterizes contemporary legal systems would disappear or be drastically curtailed.

Again in the name of the centrality of the victim, in a libertarian society she alone can take legal action against the aggressors, not a prosecutor in the name of abstract entities such as “society” or “State”. Criminal law would flow into tort law, in which the victim files a lawsuit against the aggressor with the aim of compensation. The *crime* as a category would disappear, being a typically statist and collectivist notion, which originates from the idea of damage caused not to a specific person, but above all to the personality of the State (and in the past of the sovereign).

8.2 Theory of Contracts

We have already seen that voluntariness is central to any exchange; however, it is not sufficient to guarantee the validity of a contract. In the libertarian approach, title-transfer theory is dominant: the legal transaction is valid only when there is the factual transfer of the object of the transaction. In this case, if the other party fails to fulfill its obligation to provide the counter-performance, implicit theft occurs. In all other cases the enforceability of the contract cannot be claimed. Nor the compensation. Because promises and expectations are not binding; they are subjective states of mind, and one cannot own the promises of others because one cannot own the *will* of another. The promise or the expectation did not involve the transfer of an alienable, i.e., physical, property. “Suppose that Smith and Jones make a contract, Smith giving \$1000 to Jones at the present moment, in exchange for an IOU of Jones, agreeing to pay Smith \$1100 one year from now. This is a typical debt contract. What has happened is that Smith has transferred his title to ownership of \$1000 at present in exchange for Jones agreeing now to transfer title to Smith of \$1100 one year from now. Suppose that, when the appointed date arrives one year later, Jones refuses to pay. Why should this payment now be enforceable at libertarian law? Existing law [...] largely contends that

⁴²⁸ For W. Block, if this will is missing, the decision lies with the victim’s closest heir.

⁴²⁹ Nowadays, however, States sanction most crimes with imprisonment, which, moreover, implies a burden on taxpayers (and therefore also on the victim). Concerning the reduction of the punishment by the victim, it was objected that the criminal could threaten the victim to impose the reduction or pardon. But this behavior would be a crime as it is in contemporary systems (e.g., the witness intimidated by criminals). According to W. Block, this objection can be addressed through restrictive contractual agreements between the victim and the protection company, under which the company will establish the punishment, so that the victim cannot be threatened. In general, Rothbard admits that the proportionality criterion can encounter difficulties in some concrete situations, but this happens for many legal principles, and for this reason there are courts and arbitrators; however, it is important to have a correct guiding principle, albeit with some application dilemma, rather than not having any principle or having other principles (e.g. deterrence or rehabilitation) that lead to completely illogical and paradoxical outcomes. M.N. Rothbard, *The Ethics of Liberty*, Chapter 13, *Punishment and Proportionality*, pp. 85–96; *King on Punishment: A Comment*, in “Journal of Libertarian Studies”, vol. 4, no. 2, Spring 1980, pp. 167–72. With regard to any disputes over a title dating far back in time, therefore difficult to assess (because, for example, a written document is missing), as we saw in Chapter 3, libertarians believe that the burden of proof should be on the person who contest the legitimacy of the current property. In the event of rectification, ownership rests with the heirs.

Jones must pay \$1100 because he has “promised” to pay, and that this promise set up in Smith’s mind the “expectation” that he would receive the money. Our contention here is that mere *promises* are not a transfer of property title; that while it may well be the *moral* thing to keep one’s promises, that it is not and cannot be the function of law (i.e., legal violence) in a libertarian system to enforce morality (in this case the keeping of promises). Our contention here is that Jones must pay Smith \$1100 because he had already agreed to transfer title, and that nonpayment means that Jones is a thief, that he has stolen the property of Smith. In short, Smith’s original transfer of the \$1000 was not absolute, but *conditional*, conditional on Jones paying the \$1100 in a year.”⁴³⁰ In short, a contract should only be enforceable when the failure to fulfill it is an implicit theft of property.

In any case, with regard to contracts that provide for services, a solution could be the promisee’s requiring a *performance bond* of the promissor in the original agreement. The latter agrees to transfer a certain sum of money to the other party in the event of non-performance.

8.3 Immigration

A distinction must be made between an anarcho-capitalist order, in which any section of territory is someone’s private property, and the contemporary situation, characterized by large areas of state ownership. In the former case, the position of libertarians is unambiguous. In the anarcho-capitalist model, in fact, in which the entire territory is privatized, a person’s access to a given area depends on the will of the owner (conferred on him by the freedom of association and exclusion), as is the case today for such units as houses, stores, fenced land, enclosed precincts, and boats. A country in which every square inch of land belongs to private individuals is as “closed” or “open” to outsiders as the individual inhabitants and owners of different sections of land desire. In such an arrangement, therefore, there is no prejudicial position of libertarians against immigration, either for or against.

In the second case, libertarians express two different positions: the traditional one based on open borders, which is still in the majority, has over time been joined by a more restrictive option..

The classical view, supported by authors such as W. Block,⁴³¹ D. Friedman, Joseph Carens⁴³² and Michael Huemer,⁴³³ preaches the abolition of any restrictions on the free movement of people between states.⁴³⁴ Every individual should enjoy the freedom to move physically wherever he wishes, with the only limitation being the property of others. Emigration and immigration activities would not violate the non-aggression principle. Barriers imposed by states are illegitimate. “Like tariffs and exchange controls, migration barriers of whatever type are egregious violations of laissez-faire capitalism. [...] For the purist libertarian, national boundaries are only lines on a map, demarcating one “country” from another; there is no such thing as a legitimate nation-state.”⁴³⁵

⁴³⁰ M.N. Rothbard, *The Ethics of Liberty*, pp. 133–4.

⁴³¹ W. Block, *A Libertarian Case for Free Immigration*, in “Journal of Libertarian Studies”, vol. 13, no. 2, Summer 1998, pp. 167–186; *Hoppe, Kinsella and Rothbard II on Immigration: A Critique*, in “Journal of Libertarian Studies”, vol. 22, no. 1, 2011, pp. 593–623.

⁴³² J.H. Carens, *Aliens and Citizens: The Case for Open Borders*, in “Review of Politics” vol. 49, n. 2, Spring 1987, pp. 251–73. The author is not a libertarian in the strict sense, but in this essay he defends free migration through some conceptual categories contained in Nozick’s *Anarchy, State, and Utopia*.

⁴³³ M. Huemer, *Is There a Right to Immigrate?*, in “Social Theory and Practice”, 36, 2010, pp. 429–61.

⁴³⁴ Ludwig von Mises was also in favor of complete freedom of immigration: cf. L. von Mises, *Liberalism*, cit.; *The Freedom to Move as an International Problem* (1935), in Id., *The Clash of Group Interests and Other Essays*, Center for Libertarian Studies, New York, 1978.

⁴³⁵ W. Block, *A Libertarian Case for Free Immigration*, cit., pp. 168, 172.

All the more so if the person barred from entry has an agreement with a resident. Huemer and J. Hidalgo⁴³⁶ note that an employer has the right to hire whomever he wants, including residents abroad, just as a homeowner has the right to rent to whomever he wants; in such cases there would be consensus among the parties involved in the exchange, without aggression to third parties.⁴³⁷

From a consequentialist point of view, the absence of travel restrictions would allow a better allocation of factors of production, in this case labor, a greater division of labor and thus greater efficiency.⁴³⁸ In rich countries, people's skills are more valued because those countries have better institutions (rule of law, protection of property rights, less corruption)⁴³⁹ and superior technology; as a result, the immigrant is more productive than in his country of origin. Immigration also benefits indigenous people: according to David Friedman, "unrestricted immigration would make us richer, as it has in the past. Our wealth is in people, not things; America is not Kuwait. If a working wife can hire an Indian maid, who earned a few hundred dollars a year in India, to work for her at six thousand dollars a year, and so spend her own time on a 30 thousand a year job, who is worse off?"⁴⁴⁰ Economist Sam Bowman articulates that position as follows: "immigrants bring new skills to the country, allow for more specialization, tend to be more entrepreneurial than average, pay more in to the welfare state than they take out, and make things cheaper by doing the jobs that Britons won't."⁴⁴¹

Other arguments in support of free movement include demographic rebalancing, resulting in sustainable pension systems, and cultural diversification (artistic, culinary, in customs).⁴⁴²

Of course, this option toward "openness" concerns only the boundaries of state territory and public areas, because with respect to private property these authors also reiterate the full sovereignty of the owner, and thus the possible right of exclusion.

However, the position in favor of free movement is also supplemented with a call for the elimination, not only for immigrants, of all welfare state benefits and regulations. This would greatly reduce the conflicts associated with immigration today. Indeed, a deregulated labor market also allows immigrants to obtain employment, preventing them from engaging in criminal activities; while the elimination of welfare state institutions avoids additional tax burdens for

⁴³⁶ J. Hidalgo, *The Libertarian Case for Open Borders*, in J. Brennan, B. van der Vossen, D. Schmidtz (eds.), *op. cit.*, pp. 377–89.

⁴³⁷ As will be seen below, this position is not incompatible with that of libertarians hostile to free immigration like Hoppe.

⁴³⁸ An argument frequently made by those opposed to immigration is the reduction in wages caused in some sectors by competition from immigrants. An outcome that presents no difficulty or contradiction for libertarians, who favor free contractual arrangements. On the other hand, this eventual reduction in labor costs allows lower prices and thus benefits consumers. Opponents of immigration on nationalist grounds claim that economic protection of residents is justified by the argument that States have *special obligations* to compatriots, whose interests must be protected to a greater extent than those of immigrants (Michael Sandel). Libertarians retort that support for residents cannot result in a violation of the rights of other people, the non-citizens.

⁴³⁹ One reason given against expanded immigration is the deterioration in the quality of institutions: many immigrants come from authoritarian or illiberal cultures; they may vote for laws that reduce civil and economic liberties; they may generate a thinning of social trust, an important basis for good institutions. On the predominantly conservative side, two other reasons are the increase in crime and the destruction of the nation's culture.

⁴⁴⁰ D. Friedman, *The Machinery of Freedom*, cit., p. 68.

⁴⁴¹ S. Bowman, in "Adam Smith Institute", <https://www.adamsmith.org/blog/tax-spending/abandon-hope-all-ye-who-enter-this-immigration-debate>, March 25, 2013. Similar positions are expressed by consequentialist libertarian Jeffrey A. Miron in *Libertarianism from A to Z*, cit., pp. 105–7.

⁴⁴² One motivation given by the third-worldism innervated by "cancel culture", thus far from the libertarian universe, is based on the belief that immigrants are "better" than the White Man, that they come from a kind of Age of Innocence, untainted by the immoral ugliness of capitalism.

citizens⁴⁴³ and conflicts between immigrants and locals over the allocation of resources (think housing allocation).

Exponents of libertarian thought such as Hoppe, the late Rothbard,⁴⁴⁴ Hospers, Kinsella⁴⁴⁵ and Peter Brimelow,⁴⁴⁶ on the other hand, oppose open borders.

For Hoppe, with predominantly public land and extensive welfare systems, total freedom of immigration would be a catastrophe. Millions of people would flock to countries such as the United States or Switzerland. The argument used to refute the free movement of people is as follows. While the movement of goods and services from one place to another necessarily requires the consent of both the sender and the receiver, the movement of a person can take place without anyone else's consent. Population movements, unlike the exchange of goods, are not *per se* mutually beneficial because the agreement of the receiver may be lacking. Individuals, like goods and services, must be in demand. Free immigration for Hoppe then means unwanted invasion and forced integration.

The greater the extent of public property – streets, squares, parks, buildings, means of transportation – the greater the forced cohabitation between immigrant and resident, as there is little private property (especially land) to act as a constraint on immigrants' internal movement. Public property is generally considered "everyone's" property. It became so, however, as a result of the original confiscation of formerly private property and later through taxes taken from residents. The latter, therefore, have the greatest title to be considered owners-like of the areas in which they reside. The State, accordingly, should behave as a trustee acting on behalf of taxpaying residents, managing public property as they would manage their own private property; thus, admitting only those persons positively valued by them and/or able to maintain or increase the value of the property, and excluding all others.

Hoppe, however, is aware that doing so exposes himself to the charge of violating a libertarian principle such as freedom of negotiation, which can arise between two individuals belonging to two different countries, a resident and a foreigner willing to travel to the former's country.⁴⁴⁷ So he proposes the following solution: the obligation for every immigrant of the possession of an invitation from a resident owner, who would guarantee the immigrant, for free or for a fee, mainly housing, and possibly a job. Whoever received the immigrant would be burdened with legal responsibility for the actions performed by his host, that is, for any crimes against the person or property of any third party. So the government, along the borders, would have to check that all individuals entering the country have this valid invitation, otherwise it would have to expel them. The requirement for obtaining citizenship is the acquisition of property, precisely real estate or residential property.⁴⁴⁸

⁴⁴³ Gary Becker and Julian Simon support the possibility of *purchasing* citizenship to offset tax burdens for residents.

⁴⁴⁴ The work that places Rothbard on a side that is no longer favorable to free immigration is *Nations by Consent: Decomposing the Nation-State*, in "Journal of Libertarian Studies", vol. 11, no. 1, Fall 1994, pp. 1–10.

⁴⁴⁵ S. Kinsella, *A Simple Libertarian Argument Against Unrestricted Immigration and Open Borders*, in LewRockwell.com, <http://archive.lewrockwell.com/kinsella/kinsella18.html>, September 1, 2005.

⁴⁴⁶ P. Brimelow, *Alien Nation: Common Sense About America's Immigration Disaster*, Random House, New York, 1995.

⁴⁴⁷ For example, an employer intends to hire a well-identified foreigner because he possesses superior skills to domestic workers or because he or is willing to work at a lower wage.

⁴⁴⁸ H.-H. Hoppe, *The Case for Free Trade and Restricted Immigration*, in "Journal of Libertarian Studies", vol. 13, no. 2, Summer 1998, pp. 221–33; *Natural Order, the State, and the Immigration Problem*, in "Journal of Libertarian Studies", vol. 16, no. 1, Winter 2002, pp. 75–97.

According to Hospers, the distinction, made by philosopher David Ross in 1930, between absolute rights and *prima facie* rights should be recognized. The former are those rights we possess unconditionally; the latter those of which we must say “provided that no other *prima facie* right overrides it”. Free movement between countries belongs to the second category. A restrictive border policy would generate violations of “real” rights only under ideal political conditions. But since we are under other than ideal political conditions, because immigrants may cause harm to residents (crime, disease, impact on welfare, higher taxes, demographic overcrowding, reserved quotas), the rights possibly affected are not inviolable rights.⁴⁴⁹

Mark D. Friedman, an overall pro-open borders libertarian, argues that it is legitimate to prevent entry to people who express cultures that threaten freedom of expression or religion: “if such a fear is not fanciful, but realistic, then the regulation of immigration would be permitted under libertarian principles. Otherwise, we would find ourselves in the paradoxical position of arguing that our commitment to natural rights requires us to surrender them.”⁴⁵⁰

On the level of empirical evidence, multiethnic and multilingual states tend to show lower quality performance. Economists Alberto Alesina, Enrico Spolaore, and Romain Wacziarg summarized the literature on the issue as follows: “The costs of heterogeneity in the population have been well documented, especially for the case in which ethnolinguistic fragmentation is used as a proxy for heterogeneity in preferences. Easterly and Levine (1997), La Porta et al. (1999) and Alesina et al. (2003) showed that ethnolinguistic fractionalization is inversely related to economic success and various measure of quality of government, economic freedom and democracy.”⁴⁵¹

As can be seen, the arguments of libertarians against open borders are different from those typical of anti-immigration approaches, which are predominantly two, the nationalist argument that the majority has the right to decide for everyone who to admit and who to exclude and the argument of competition made by foreigners to domestic workers.

8.4 Foreign Policy

In relations between States, and in general between communities separated by distinct legal systems, the heart of libertarian politics is *non-interventionism*:⁴⁵² the international transposition of the domestic anti-statism. The libertarian position is effectively summarized by Thomas Jefferson’s motto: “commerce with all nations, entangling alliances with none.”⁴⁵³

An intervention abroad represents an attack on three groups of people: civilians and soldiers⁴⁵⁴ of the attacked country, not guilty of the conduct of their government; taxpayers of the aggressor State, who are seen to increase taxes to finance the war; and, if compulsory draft exists, the conscripts of

⁴⁴⁹ J. Hospers, *A Libertarian Argument Against Open Borders*, in “Journal of Libertarian Studies”, vol. 13, no. 2, Summer 1998, pp. 153–65.

⁴⁵⁰ M.D. Friedman, *Libertarian Philosophy in the Real World: the Politics of Natural Rights*, p. 162-163. Specifically, Friedman refers to Muslims, citing data from a scientific polling done by the Pew Research Center in 2013 (consisting in 38.000 face-to-face interviews with Muslims in 39 countries), which shows majorities in favor of *sharia* as official law of the land, stoning adulterers, and executing those who leave Islam.

⁴⁵¹ A. Alesina, E. Spolaore, R. Wacziarg, *Trade, Growth and the Size of Countries*, in P. Aghion, S. Durlauf (eds.), *Handbook of Economic Growth*, vol. 1B, Elsevier, Amsterdam, 2005, p. 1505.

⁴⁵² *Isolationism*, a term that has also been used, is incorrect because it extends its meaning to trade relations, which instead for libertarians should not be hindered by protectionist measures.

⁴⁵³ American libertarians in particular are harshly critical when the United States acts as the “world’s policeman.”

⁴⁵⁴ If conscription is compulsory in the attacked country, the soldiers who fight are also innocent.

the aggressor State.⁴⁵⁵ In addition, there is the destruction of the assailed country's material assets, an aggression on property. Furthermore, in a war context the State presence extends,⁴⁵⁶ sometimes associated with a restriction of civil liberties (indiscriminate wiretapping, searches without a warrant, detentions for suspects); and citizens are exposed to the danger of retaliation, especially of a terrorist type, by members of the country attacked.⁴⁵⁷ Therefore, interventionism is immoral.

Although libertarian foreign policy pursues peace as its primary goal, it is not pacifist.⁴⁵⁸ If a State is attacked, its citizens have the right to resort to the use of force to defend themselves. There is the Just War;⁴⁵⁹ it is the one that has the following requisites: defensive;⁴⁶⁰ it affects only the military and not the civilians; it is based on voluntariness both of participation and funding. For libertarians, supporters of national self-determination,⁴⁶¹ a typical case of *bellum iustum* is that eventually undertaken by a community to secede from a State.⁴⁶²

In the light of what has been said, the hostility of libertarians towards international institutions such as the United Nations or the European Union (if it aspires to become a superstate and does not limit itself to a free trade area) also becomes clear. These, in fact, tend to intertwine and overlap with national sovereignty, further compressing individual freedom. And the general aversion towards all the proposals for integration and political centralization at an international level, up to the extreme of "world government", becomes more understandable. This cosmopolitan suggestion is pernicious because the more choices are removed from the local and individual level, the more inefficient the outcome of the decision is. Indivisible decisions such as those of the majority in the

⁴⁵⁵ M.N. Rothbard, *War, Peace, and the State*, in "The Standard", II, 5, April 1963, pp. 2–5, 15–16; reprinted in *Egalitarianism as a Revolt Against Nature and Other Essays*, Libertarian Review Press, Washington, 1974; reprinted by Mises Institute, Auburn, AL, 2000, pp. 115–32.

⁴⁵⁶ War has always been an opportunity for an intensification of the power of the State over society: Randolph Bourne's famous phrase, "war is the health of the State," is one of the most cited in libertarian literature. As Robert Higgs noted in *Crisis and Leviathan* (1987), in times of war, States increase taxes, public debt, bureaucracies, programs and coercive interventions without much opposition, because public opinion, in a moment of crisis, accepts or even calls for "something to be done." When the war is over, however, the State never regresses to pre-war levels, because it has managed to change the psychological perception of public opinion: the precedent, especially if the war has been won, creates an acceptance of big government.

⁴⁵⁷ American libertarians argue, at the cost of considerable unpopularity, that Islamic terrorists certainly hate American freedom, yet they do not carry out attacks for this reason but as a result of American war interventions in their countries: "they do not fly airplanes into our buildings because of our freedom. They fly airplanes into our buildings because we drop bombs on theirs." J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 156.

⁴⁵⁸ *Sentimental pacifism* (according to Rothbard's expression) is the "political" version of nonviolence: according to this doctrine, states must never wage war, even if attacked.

⁴⁵⁹ See M.N. Rothbard, *For a New Liberty*, cit., pp. 285–6.

⁴⁶⁰ This requirement also excludes "preemptive" wars, an expression abused from September 11, 2001 onwards. As Walter Block pointed out, from Stalin to Hitler to Attila, "throughout all of history there has never been a dictatorial aggressor, a mass murderer, who could not have agreed with this preemptive strike sentiment, and enthusiastically so. [...] Conflation of offense and defense is a recipe for disaster." W. Block, *Libertarian Warmongers: A Contradiction in Terms*, in LewRockwell.com, <https://archive.lewrockwell.com/block/block22.html>, January 6, 2003.

⁴⁶¹ Nationalism is not always negative; libertarians make a distinction: aggressive nationalism must be opposed, while nationalism as liberation from other people's occupations must be supported. L. von Mises, *Liberalism*, cit.; M.N. Rothbard, *National Liberation*, in "The Libertarian Forum", vol. 1, no. 11, September 1, 1969, pp. 1–2; reprinted in *Egalitarianism as a Revolt Against Nature and Other Essays*, pp. 195–8.

⁴⁶² "How far should secession go for the libertarian? To ask this is to ask: What is the optimal number of countries in the world? The bottom line answer is, one for each person, or six billion different nations. In the just society, we are each sovereign individuals. The reigning ideology, of course, makes no such course of action practicable in the present day. But this principle still illuminates the issue, however politically infeasible. It at least establishes a presumption in world affairs: whenever a minority wishes to secede from a majority, they should be allowed to do so. Other things equal, the more countries the better. [...] Voluntary separation is part and parcel of freedom of association." W. Block, *St. Abraham's War and Current Foreign Policy*, in LewRockwell.com, <https://www.lewrockwell.com/2002/06/walter-block/let-the-south-go/>, June 20, 2002.

political sphere, in fact, divert the use of resources by taking away their possession and use from those who produced and deserved them. If this mechanism is applied to an ever wider territorial and demographic area, up to the extreme of centralized decisions at a global level, the wider the distortion produced will be.

9. Consequentialist Libertarianism

Consequentialist theories, unlike deontological ones, are teleological: people's actions must be a function of the *consequences* that can be generated. Limiting the field to politics,⁴⁶³ the arrangement of a society is justified on the basis of some end result. When this end is utility (happiness, welfare, pleasure) we have the set of normative doctrines termed *utilitarianism*.⁴⁶⁴ According to which the morally best policy, to be pursued, is that which maximizes total utility, generally understood as the sum of the utilities of individuals.⁴⁶⁵

Consequentialist libertarians – R. Epstein, David Boaz, D. Schmidtz, Richard Fumerton, R. Barnett,⁴⁶⁶ John Hasnas⁴⁶⁷ – as well as utilitarian ones in the narrower sense – D. Friedman, Raymond W. Bradford, David R. Steele, Leland B. Yeager, Charles Murray, John Kelley, David Conway, Jeffrey A. Miron, Peter T. Leeson – therefore support liberty-property not on the basis of the principle of non-aggression (itself derived from objectively founded property rights) but for its suitability to bring about overall better consequences or greater well-being in society. Since, as the voluntary exchange theorem suggests, an act of exchange between two or more parties takes place

⁴⁶³ We will not dwell here on comprehensive moral or personal consequentialism or utilitarianism, which concern the individual's ethical rules and obligations related to personal conduct.

⁴⁶⁴ There are several, sometimes intersecting, versions of it, the result of an attempt to overcome the critical remarks that have been directed at the doctrine over time: hedonistic u. (J. Bentham, H. Sidgwick), indirect u. (J.S. Mill) ideal u. (G.E. Moore), preference u. (J.- C. Harsanyi, R.M. Hare, Brandt, P. Singer, J.A. Mirrlees, J. Narveson), act u. (G.E. Moore, J.J.C. Smart, D. Lyons), rule u. (R.F. Harrod, J.O. Urmson, E.S. Toulmin, R.B. Brandt), negative u. (K. Popper). Within libertarianism, utilitarian positions have not been articulated with such breadth as to embrace all these types. This paper also does not examine the consequentialist approaches of the classical liberal tradition, although contiguous to libertarianism or influential on its development, such as the anti-rationalism of David Hume, Adam Smith and Hayek, the rationalism of Mises' praxeology, and the positivism of the Chicago School. The latter two because they are methods circumscribed to economic analysis. On the level of policy outcomes, both Mises and Milton Friedman, two classical liberals bordering on libertarianism, are utilitarians (although Friedman not in ethics). Mises tried to reconcile his ethical relativism with liberalism through two separate attempts at a solution, both contained in *Human Action*: a variant of the unanimity principle and later a more pragmatic pandering to majority preferences. A critique of Mises' proposed solutions can be found in M.N. Rothbard, *Praxeology, Value Judgments, and Public Policy*, in E.G. Dolan (ed.), *The Foundations of Modern Austrian Economics*, Sheed and Ward, Kansas City, 1976, pp. 89–111; reprinted in *The Logic of Action One: Method, Money, and the Austrian School*, Edward Elgar, Cheltenham, 1997, pp. 78–99. M. Friedman, without ever having articulated or delved into the subject, merely expresses a similar orientation: one cannot arrive at absolute truths in ethics; therefore, one must pander to people's preferences: men of good will favor the same things, principally peace and prosperity, and a system centered on freedom is the one that succeeds in generating them most efficiently. M. Friedman, *An Interview with Milton Friedman*, in "Reason", December 1974. Consequentialism in a broad sense also supports Hayek's liberalism: particularly the insurmountable limits to human knowledge.

⁴⁶⁵ Since human reality is characterized by uncertainty and people must choose among alternative courses of action, *probability* must be introduced: all possible alternative actions are evaluated and the action that is *likely* to bring the greatest utility is chosen. Thus, in stricter terms, what is maximized is *expected utility* (J.J.C. Smart).

⁴⁶⁶ Barnett's placement within a consequentialist orientation is permissible only if, as the author himself points out, his consequentialism is understood as "indirect": we must arrive at the protection of "libertarian" natural rights because these allow better than any other arrangement the resolution of the three main dilemmas of social interaction: *knowledge* (the acquisition and use of information about the world's physical resources, including bodies), *interest* (the incentives to pursue one's own well-being and the disincentives to aggression) and *power* (the use of force against offenders). In Barnett, natural laws become empirical generalizations about how certain types of behavior lead to human happiness. His *The Structure of Liberty: Justice and the Rule of Law* (Oxford University Press, Oxford, 1998) is one of the most important and organic works of libertarian anarchism.

⁴⁶⁷ A similar point applies to Hasnas as that made for Barnett in the previous note: in his approach, rights emerge throughout history as the outcome of attempts by human beings to resolve, through peaceful and cooperative ways, social conflicts; rights that have arisen in this way become structural, "natural." J. Hasnas, *Toward a Theory of Empirical Natural Rights*, in "Social Philosophy and Policy", vol. 22, no. 1, 2005, pp. 111–47. Going back to the roots of libertarian thought, an exponent of indirect consequentialism is Herbert Spencer.

only if it improves the welfare position of each participant (at least *ex ante*), the free propagation of consensual exchanges increases the “good” consequences in the whole society.⁴⁶⁸ Conversely, the imposition of involuntary exchanges produces disutility (less well-being, greater dissatisfaction, more pain) to the individuals who suffer it.⁴⁶⁹ The “best consequences” are not limited to well-being in the strict sense but extend to all aspects of life, “wealth, happiness, prosperity, peace, good character, scientific knowledge, and generalized trust.”⁴⁷⁰ For consequentialist libertarians, then, the claim that liberty enhances well-being is a *positive* statement that becomes a *normative* one. Unlike deontologists, for whom it is only a positive, descriptive assertion.⁴⁷¹

The property rights of consequentialists do not have the status of absoluteness that the rights constructed by deontologists do. They are akin to Hume’s conception more than Locke’s; they are artificial, not natural; they are constructs designed to solve the problems of social life, to attain greater mutual benefit and to avoid what Garrett Hardin has called the “tragedy of the commons.”

There is also another reason, of a practical nature (and thus always pertaining to *consequences*) for not turning all morality into law, interfering in people’s lives: the economic, time and energy costs necessary for enforcing those norms would be so high as to make it unrealistic and to actually burden the justice and security system to the point of paralyzing it. This is what would happen if the police also had to check, for example, people who do not give up a seat to an elderly person or are unfaithful to their spouse or do not give alms or drink alcohol at home or practice sodomy in the bedroom, and then undertake the procedure leading to prosecution and punishment.⁴⁷² Moreover, legal norms, in order to chase all the nuances of morality, would lose the characteristics of generality and abstractness that make law appropriately “thin”: “if we want laws to mirror morality as much as possible, [...] we can try to build into the statement of law as many morally relevant considerations as possible. Our laws would take the form: Do not steal from another unless it is the case that you could use the money to do A, B, C, D, E, . . . X, where the capital letters stand for all of the morally relevant considerations that would intuitively give you acceptable moral reasons for stealing. But the more complicated this list of conditions gets, the harder it would be to determine whether a law has been violated. This presents difficulties for police, prosecutors, judges, and juries. It would also present difficulties for citizens contemplating whether or not to break the law. The more complicated that law is, the more difficult it is to determine what the law actually

⁴⁶⁸ A deontologist like Rothbard has objected that such an exchange is not necessarily pareto-optimal (a necessary circumstance for utilitarians so that the impossible interpersonal comparison of utilities can be avoided) because it is not necessarily going to leave the welfare of third parties, not involved in the exchange, unchanged. For example, if there are people who envy the fact that the two exchangers are better off, the exchange will induce in them a decrease, not invariance, in utility, and then it cannot be said that welfare of society as a whole is definitely increased. Second, a voluntary exchange is an exchange of property titles, so it presupposes the adoption of another ethical principle, the legitimacy of private property. M.N. Rothbard, *Value Implications of Economic Theory*, in “The American Economist”, Spring 1973, pp. 35–9; reprinted in *The Logic of Action One: Method, Money, and the Austrian School*, pp. 255–65.

⁴⁶⁹ Consequentialist Fumerton argues that if the consequences of a given action or activity cannot be evaluated, even in terms of probability, then we must err on the side of liberty, that is, not prohibit those actions or activities.

⁴⁷⁰ J. Brennan, *Libertarianism: What Everyone Needs to Know*, p. 31.

⁴⁷¹ “It is an error [...] to say that libertarianism contains a “factual” thesis. Yes, “liberty generally promotes human welfare” but this is a positive statement, not a normative one, and libertarianism lies entirely within the latter realm.” W. Block, *Response to J.C. Lester on David Friedman on Libertarian Theory*, in *Mest Journal*, gennaio 2019, https://mest.meste.org/MEST_1_2019/13_17.pdf.

⁴⁷² Cf. R. Fumerton, *op. cit.*, Chapter 2.

requires. *Nor will our hypothetical law ever succeed in anticipating all the factors that might pop up as perfectly good excuses for violating the law.*⁴⁷³

As we have already seen in Chapter 7, although a regime of complete freedom does not prevent some people from making irrational, imprudent, wrong and harmful choices, for consequentialist libertarians it still constitutes a better system than one that forces people to make rational, prudent, right and safe choices.⁴⁷⁴

Authors who defend this perspective tend to reject holistic versions of utilitarianism and reiterate that “separateness” of individuals that forms the heart not only of libertarian ethics but of the entire classical liberal tradition: the welfare that matters is that of *each* individual. If, on the other hand, an objective social good is assumed, and calculated; if the well-being of each person is evaluated not in itself but by virtue of some contribution it may make to trans-individual entities, as is the case in the evaluation of aggregate well-being; if the goal of political action is the production of the whole, the sum of pleasures, there is a danger of weakening the identity and importance of individuals, understood as irrevocably distinct entities, each in itself a source of value. “Each individual I’s well-being is the ultimate good *for that individual I*. [...] The value [of well-being] is not generic, it is not value-at-large, it is essentially value-for-I.”⁴⁷⁵

Utilitarian libertarians believe that deontological-type foundation criteria, mainly those that support natural rights, are fragile. In addition, the absoluteness of rights would create problems in cases where the nature of the possible invasion has a gradualness in the *continuum* and the threshold between a non-damaging boundary crossing (e.g., photons entering my house because the neighbor across the street has turned on a light in his house) and an invasion (aggression) can only be detected through empirical ascertainment.⁴⁷⁶ Other objections are raised by citing “lifeboat situations”, which we have already examined in Chapter 4; or borderline cases such as the circumstance where only the theft of a rifle may make it possible to stop a madman who is killing dozens of innocent people;⁴⁷⁷ or the hypothetical requirement for the owner of an airplane to seek overflight permission from everyone living within a radius of hundreds or thousands of miles, which is an impossible transaction cost to bear.⁴⁷⁸ Finally, although some of the authors cited above

⁴⁷³ *Ivi*, p. 26 (italics in the original). In this paper we do not expand on questions of legal theory, understood in the strict sense as an analysis of the formal structures of legal systems and as a reflection on legal concepts (not least because on the libertarian side there is no systematic treatment of the subject). It can be very briefly said, however, that libertarianism in general, including that of a deontological bent, possesses a marked inclination for what Richard Epstein calls “simplicity,” that is, for a system characterized by a few rules that tend to be general and abstract (that they are also predominantly “negative” is taken for granted, but it pertains to the field of content, not form, of law).. This is true even in an anarcho-capitalist context of the “mosaic” type, in which, as will be seen in Section 10.2, ordinal variety does not compromise streamlining within each “enclave.”

⁴⁷⁴ The case, already illustrated, of the War on Drugs (see *supra*, Chapter 5) is a striking example of this assumption.

⁴⁷⁵ E. Mack, *Moral Individualism and Libertarian Theory*, in Machan T., Rasmussen D. (eds.), *Liberty for the Twenty-First Century*, cit., p. 46. For critics of utilitarianism, the utilitarians’ claim for the protection of the individual runs the risk of being a mere *petitio principii* that clashes with the unacceptable outcomes, in terms of the sacrifice of individual people, to which the felicific calculus can lead.

⁴⁷⁶ We saw in Chapter 4 how deontological libertarians deal with possible invasions by intangible entities and thus how they respond to this objection.

⁴⁷⁷ Of the same tenor is the classic example, put forward by consequentialists in the dispute with deontologists, of the duty not to lie in ethics: if the lie saves a person’s life, as would be the case with those who knew Anne Frank’s hiding place before the Nazis, the duty not to lie becomes a *prima facie* duty which, however, once the whole situation is examined in detail, is trumped by the “all things considered” duty to save the life of an innocent person. One must resort to empirical investigation and look at the consequences.

⁴⁷⁸ In Chapter 3 we saw that ownership of real property does not extend upward indefinitely, but only within a distance compatible with the needs of use and enjoyment of the property. Consequently, for deontological libertarians, a conflict does not arise between owners residing on the earth’s surface and owners of air vehicles traversing an airspace, and it is

admit that even utilitarianism falls into some logical inconsistencies, they nevertheless believe that it possesses the ability to provide more useful dialectical tools for convincing public opinion or prevailing in political-cultural disputes.⁴⁷⁹

Within utilitarian libertarianism, the most articulate operation is undoubtedly the one attempted by David Friedman in the aforementioned *The Machinery of Freedom* (1973).

The son of economist and Nobel laureate Milton Friedman, David on the epistemological level rejects the objectivism in ethics of libertarians such as Rand or Rothbard, believing that there is no such thing as, or that it is not possible to know, “true”, “right” morality. His subjectivism manifests itself in the attempt to arrive at libertarian and anarcho-capitalist conclusions on the basis of the analytical instrumentation developed by a particular application of utilitarianism, Economic Analysis of Law, a legal theory that has its origins at the University of Chicago in the 1960s thanks to a decisive contribution by economist Ronald H. Coase,⁴⁸⁰ is defined and established in the 1970s with jurist Richard Posner⁴⁸¹ and subsequently through the work of economists such as Harold Demsetz and Gary Becker,⁴⁸² enjoying a notable development in the last twenty years of the 20th century and at the beginning of the 21st century in the United States and profoundly influencing contemporary legal thought.⁴⁸³ Distant progenitors are the utilitarians J. Bentham and J.S. Mill, while there is direct descent from American legal pragmatism, represented mainly by Roscoe Pound’s “social engineering” and the realists, whom, however, the EAL accuses of lacking a good method of economic analysis.

This school of thought basically links legal norms to welfare maximization. (Micro)economics is applied to law, using the criterion of economic efficiency (verifiable on the basis of empirical investigations of costs and benefits) as the fundamental principle from which to derive optimal legal norms. The methodological premises of EAL are those of the neoclassical tradition: individuals are rational beings who tend to maximize their own utility; therefore, they respond rationally to incentives and disincentives created by external constraints. Welfare maximization can be achieved

therefore not necessary for the latter to acquire the consent of the former. A conflict between owners of aircraft might arise, but in that case the homesteading criterion would resolve the dispute: the one who first traveled a certain route at a certain time has the right to travel that route; unless he later decides to abandon it.

⁴⁷⁹ Natural (or in general a priori) rights libertarians reply that utilitarianism is a fragile trench for liberty and property rights because it leaves the field open to state intervention if it can be demonstrated, or even just made to believe, that this increases social utility. For a libertarian defense of the “moral” approach and general criticisms of utilitarian strands see M.N. Rothbard, *Toward a Reconstruction of Utility and Welfare Economics*, in M. Sennholz (ed.), *On Freedom and Free Enterprise: Essays in Honor of Ludwig von Mises*, Van Nostrand, Princeton, 1956, pp. 224–62; *Praxeology, Value Judgments, and Public Policy*, in E.G. Dolan (ed.), *The Foundations of Modern Austrian Economics*, Sheed and Ward, Kansas City, 1976, pp. 89–111; *Value Implications of Economic Theory*, in “The American Economist”, vol. 17, no. 1, Spring 1973, pp. 35–9; all three essays reprinted in M.N. Rothbard, *The Logic of Action One: Method, Money, and the Austrian School*, Edward Elgar, Cheltenham, 1997.

⁴⁸⁰ Central is the theorem that takes his name, according to which, with zero transaction costs, in the case of externalities the most efficient property rights arrangement, i.e., the one that determines the maximum social welfare, is that resulting from free negotiation between the parties (regardless of who initially holds the property rights) and the State should not intrude by imposing regulations. R. Coase, *The Problem of Social Cost*, in “Journal of Law and Economics”, n. 3, ottobre 1960, pp. 1–44.

⁴⁸¹ R.A. Posner, *Economic Analysis of Law*, Little, Brown, Boston, 1972.

⁴⁸² G. Becker, *The Economic Approach to Human Behavior*, University of Chicago Press, Chicago, 1976.

⁴⁸³ The approach is also often referred to as *Law and Economics*; which, however, strictly speaking, is the oldest discipline that studies the influence of law and institutions on the economy. Its object of study is thus the economic system, whereas EAL studies the legal system (on the basis of economic inquiry tools). Of course, the mutual influence between the two approaches is strong and is the reason for the frequent interchangeability of labels. An important contribution to the take-off of L&E is provided, within the Chicago School, by Aaron Director starting in the 1940s. He is also credited with recruiting for the Chicago Law School Coase, in 1964, and Posner, in 1969.

by introducing legal rules that, by changing transaction costs and relative prices, influence the behavior of individuals in the direction of achieving the most efficient solutions.

In line with this approach (although, as we shall see, with a much more “free market” slant), David Friedman, in order to define in detail the optimal arrangements of a society, does not start from abstract libertarian principles, asserted on the basis of metaphysical constructions. Reversing the analytical procedure, libertarian (and in Friedman’s case anarcho-capitalist) institutions, and the legal norms underlying them, are derived through inductive reasoning that originates from considerations of economic efficiency, broadly understood as the utility brought to individuals. Friedman points out that this approach is more accurately described by the term “consequentialist” rather than “utilitarian” in the strict sense.

The verification of a condition of economic efficiency has two theorems as prerequisites: of revealed preference and voluntary exchange. According to the former, people’s preferences are revealed through their actions; specifically, in an economic context, how many monetary units each person is willing to offer in exchange for the desired good and how many monetary units each person requires to sell the good in question. For Friedman, the monetary value attributed to the good is a good approximation of the utility it brings. “If I prefer gaining an apple and losing four dollars to doing neither, that shows that the apple is worth at least four dollars to me.”⁴⁸⁴ This expedient of monetary values, already proposed by Alfred Marshall, makes it possible to circumvent the *vexata quaestio* of the cardinal measurement of utility (it is not possible to identify a unit of measurement for utility, as early utilitarianism unrealistically suggested) and the incomparability of utilities of different individuals.

To understand whether an exchange produces a gain or a loss, we need to bring into play the second theorem, of voluntary exchange. This asserts that an act of exchange between two or more parties takes place only if it improves the welfare position of each participant. Accordingly, every voluntary exchange results in an improvement in the welfare of the parties involved. “Suppose I offer you three dollars for the apple and you accept. The fact that I make the offer implies that the apple is worth more than three dollars to me. The fact that you accept implies it is worth less than three dollars to you. Assuming that we are the only people affected, the transfer must result in a net gain. Generalizing the argument, we conclude that any voluntary transaction that has no effect on third parties must result in an economic improvement”⁴⁸⁵ and thus in an increase in total utility.

At this point the legal rule can be deduced: it is the creation of a property right as a result of the exchange that has taken place; a right reinforced by a sanction for all who violate it. The sanction is necessary, and, for example, theft should be prohibited, because with it there is either an overall economic (and utility) deterioration or no economic improvement or less economic improvement than if the good had been bought. Friedman illustrates the argument with the following example: “Suppose the apple is worth two dollars to you and four dollars to me. Instead of buying it for three dollars I sneak into your orchard at night and steal it, at a cost of a dollar’s worth of time and effort. You are worse off by two dollars (the value of the apple to you) and I am better off by three dollars (the value of the apple to me minus the cost to me of getting it), so there is a net gain of one dollar; my stealing the apple is an economic improvement over my not getting it at all. But not getting the apple is not the only alternative; I could have bought it instead. Stealing the apple is worse than

⁴⁸⁴ D. Friedman, *op. cit.*, p. 183.

⁴⁸⁵ *Ivi*, p. 181-182.

buying the apple, since that would have produced a net gain of two dollars.”⁴⁸⁶ Through the legal rule that punishes theft, those who desire a good receive an incentive to purchase it rather than steal it. In the terms of game theory, the rule (endowed with a sanction) establishing property rights increases the cooperative surplus.

Through such a procedure, all legal rules protecting property rights can be established. Such as that on the size of the punishment for the perpetrator of theft or fraud. Punishment, preferably of a pecuniary nature, which is not fixed in the abstract: it must be equal to the economic value of the damage produced, in this case of the stolen property (price), multiplied by the probability of catching the offender.⁴⁸⁷ Which in turn is not an unmodifiable exogenous variable, but depend on the resources that a social system decides to employ for that purpose. Also to be considered in choosing the right combination of punishment and probability is the cost of law enforcement (paying policemen, distributing pictures of wanted criminals, or whatever), which has a direct relationship to the probability of capture; and the cost of punishment. The possibility of miscarriage of justice should also be included in the calculation. The application of such theoretical instrumentation to the problem of the amount of punishment confirms the predominantly deterrent function of punishment typical of utilitarianism.

Equally utilitarian assessments underlie the solutions identified in another area, that of civil justice. Rules on damages (which must be equal to the value of the damaged thing) are derived from cost-benefit assessments.

As can be seen, the origin and protection of the institution of private property are described and at the same time legitimized on a completely different basis than the deontological ones examined in Chapters 2, 3 and 4.

The economic analysis of law applied so far can be extended to the achievement of anarcho-capitalist institutions, replacing the “legitimized (but not legitimate) agency of coercion” that is the State. The mechanism of rule-making would coincide with the bargaining process typical of the market, supply and demand for rules, with the criterion of profit and loss as the basis. Each individual’s desire for his preferred type of legal code would be reflected in the different fees he would be willing to pay to his protection agency to see a given set of norms affirmed. “The process is analogous to the way you and I bid to have a piece of private land used the way we want it used.”⁴⁸⁸ Thus, competition is determined among the various “producers of law”, usually coinciding with protection agencies, of the same nature as that which routinely takes place in the various economic sectors. “Laws are being produced for a market and that is what the market wants.”⁴⁸⁹

The very success of a court would depend, in addition to its reliability, honesty, and promptness, on the preference of potential clients for particular legal systems it uses.⁴⁹⁰ Competition among alternative legal systems will maximize subjective utility, the only plausible criterion for determining the optimal arrangement of each community.

Such a system, based on the divisibility of choices made in the market, i.e., an anarcho-capitalist arrangement, for Friedman favors a libertarian society, unlike a system based on indivisible decisions made through the political mechanism (which in democratic systems are those of the

⁴⁸⁶ *Ivi*, p. 186-187.

⁴⁸⁷ If, for example, one out of every ten thieves is caught, the total fine must be equal to the price of the good multiplied by ten.

⁴⁸⁸ D. Friedman, *op. cit.*, p. 125.

⁴⁸⁹ *Ivi*, p. 123.

⁴⁹⁰ For a review of institutional architectures in an anarcho-capitalist context, see *infra*, § 10.2.

majority). The legality or illegality of heroin or prostitution would be determined not by the number of people for or against, but by the cost each side is willing to bear to win.

On this basis, prohibitionist laws – so-called “victimless crimes” – should be rarer in an anarcho-capitalist society than in a traditional one. Because the value individuals place on the ability to manage their own lives is far greater than the value any other person places on the ability to control the lives of others, and therefore the former are willing to pay more than the latter. “Those on the receiving end, whether of laws against drugs, laws against pornography, or laws against sex, get a lot more pain out of the oppression than their oppressors get pleasure. They are willing to pay a much higher price to be left alone than anyone is willing to pay to push them around.”⁴⁹¹ In other words, comparing the costs such laws impose on their victims and the value of such laws to their supporters, the former are greater than the latter, and thus such laws are unlikely to survive in an anarcho-capitalist society.⁴⁹²

In conclusion, it should be pointed out that Friedman explicitly admits to employing utilitarian criteria with an approach that we might call “weak”. He acknowledges the soundness of some of the logical objections that critics of utilitarianism have addressed to the doctrine, with hypothetical situations highlighting how the application of utilitarian rules generates unacceptable outcomes. And yet the author believes that utilitarian arguments are those that, on the theoretical level, suffer from fewer difficulties than other approaches, and, on the practical level, achieve the greatest effectiveness. “Although I reject utilitarianism as the ultimate standard for what should or should not happen, I believe that utilitarian arguments, or consequentialist arguments more generally, are usually the best way to defend libertarian views. [...] To the extent that I can show that a particular libertarian proposal – abolition of heroin laws, or minimum wage laws, or all government – produces attractive results, I have an argument which will have some weight in convincing almost anyone to support it.”⁴⁹³ If libertarian institutions “work”, that is, if they tend to produce economically efficient arrangements (in the broad sense, already seen, of realizing greater well-being), the justification for libertarianism is most effective when conducted on an empirical level.⁴⁹⁴

Raymond W. Bradford, editor of the American magazine “Liberty”, was a staunch consequentialist. In his view, within libertarianism, the 1990s of the last century saw the decline of

⁴⁹¹ *Ivi*, p. 123.

⁴⁹² Friedman proposes the following example: “Heroin addicts pay over \$2 billion a year for heroin. If heroin were legal, its cost would be much lower. Almost all of the \$2 billion now spent for heroin is the cost of the law, not the habit; addicts bear additional costs in prison sentences, overdoses caused by the poor quality control typical of illegal products, and other side effects of the laws against heroin. Heroin addicts would therefore be willing, if necessary, to bear a cost of \$2 billion or more in order to have the drug legal. It would cost the rest of the population, assuming all of them wanted to keep heroin illegal, an annual expenditure of about ten dollars per capita or forty dollars per family to match that. [...] One of the advantages of a market system of laws is its ability to tailor its product to its customers, geographically as well as in other ways. If the maximum return comes from having heroin illegal in some places and legal in others, that is what will happen. Most of the population lives in areas where there are few heroin addicts. For those people the cost of having heroin made illegal locally would be low, since there would be no one on the other side bidding to have it legal [...]. [8 million New York nonaddicts on the other hand have to bid] against 100,000 New York addicts, raising the cost to the nonaddicts of keeping heroin illegal in New York to over \$100 a year per person. I predict that, if anarcho-capitalist institutions appeared in this country tomorrow, heroin would be legal in New York and illegal in most other places. Marijuana would be legal over most of the country. [...] Just as the market allocates resources to producing illegal drugs in response to the demands of those who want to use them, it would make use of those drugs legal in response to the same demand.” D. Friedman, *op. cit.*, pp. 124–5.

⁴⁹³ *Ivi*, p. 177.

⁴⁹⁴ For a critique of Friedman’s book from a deontological point of view, see W. Block, *David Friedman and Libertarianism: A Critique*, cit.

the “moral” current (which he, with derisive intonation, called “moralistic”) and the supremacy of the consequentialist component.⁴⁹⁵ The reasons for this development, according to Bradford, did not depend on the philosophical superiority of utilitarian methodology over moral methodology but were of a practical nature, involving the ability of consequentialist libertarianism to provide more useful dialectical tools in disputes with non-libertarians. “The kind of libertarianism that grows out of the non-aggression imperative tends to promote dogmas and declamations, rather than dialogue. And dialogue is commonly necessary to change people’s minds. For this reason, libertarianism deduced from the non-aggression imperative does poorly in the intellectual arena. In fact, it is usually counterproductive, and libertarians are finding that out. Moralistic libertarianism offers a pretty easy answer to just about any kind of policy question. If a government policy involves the initiation of force it’s bad. If it doesn’t, it’s permissible. For the moralistic libertarian, non-aggression imperative is a sort of trump card. In almost any political discussion, whatever cards are on the table make no difference – the non-aggression imperative wins the trick. [...] While most people accept non-aggression as a general moral principle, they are simply astonished at the extremes to which libertarians take it. They believe that when non-aggression becomes a categorical imperative, it leads to positions that they think are just plain crazy. [...] To the moralistic libertarian, the non-aggression imperative plays more or less the same role that the Bible plays for a fundamentalist Christian. Just as the fundamentalist finds the answer to every important question about life within the page of the Bible, so the moralistic libertarian finds answers to nearly every social and political issue within the non-aggression imperative. And just as the fundamentalist finds it impossible to have fruitful dialogue with those who do not accept the literal inerrancy of the Bible, so the moralistic libertarian finds it impossible to have fruitful dialogue with those who do not accept the non-aggression principle as an absolute moral imperative.”⁴⁹⁶ Instead, the consequentialist approach, Bradford continues, is more pliable, and more dialectically effective. “If you cannot convince others to accept somewhat peculiar moral law in one swallow – absurd implications and all – then perhaps you can convince them that the world would be a better place if a few more aspects of life were regulated by it, that is, if we had more liberty. Consider how a moralist and a consequentialist argue against minimum wage. The moralist say something like, ‘Minimum wage laws threaten to imprison or fine anyone who purchases labor below a certain price. This threat constitutes an initiation of force, and it is wrong for government to initiate force, just as it is wrong for an ordinary person to initiate force...’ [...] ‘But’, most people will respond, ‘why should businessmen be able to pay a wage so low that it won’t support a family?’ If the libertarian sticks to his invocation of the non-aggression imperative, most people will figure that they have no common ground for further discussion. [...] The consequentialist takes a very different approach. He argues something like this: ‘[A minimum wage law] will raise the cost of hiring low-skilled people to a level at which many business owners will either no longer be able to operate profitably, and thus go out of business, or will replace the low-skilled employee with a piece of

⁴⁹⁵ A survey conducted in 1998 among readers of the magazine and among activists attending the American Libertarian Party convention showed, compared with a similar survey taken ten years earlier, a reduction from 90 percent to 50 percent of those who were willing to accept in absolute terms the non-aggression imperative (considered representative of the natural rights approach). In addition, the survey showed an increase in preferences for Mises, Hayek and M. Friedman and a corresponding decrease in indications for Rand and Rothbard.

⁴⁹⁶ R.W. Bradford, *The Rise of the New Libertarianism*, in “Liberty”, vol. 13, no. 3, March 1999, p. 44.

automated equipment. The net effect is to increase unemployment among the marginally skilled. Is that what you really want to do?”⁴⁹⁷

From a more strictly philosophical point of view, Bradford believes that consequentialism is also an “objective” moral theory. The difference from moral libertarianism is that the latter accepts only the principle of non-aggression, while consequentialist libertarianism accepts the moralities that arise from social interrelation.⁴⁹⁸

David R. Steele enhances his own consequentialism by taking Rand and Rothbard as his main targets. He finds the theoretical formulations of the two lacking in any originality, and totally indebted to such giants of thought as Mises, Hayek and M. Friedman, themselves tributaries to A. Smith, John S. Mill and H. Spencer. Rand and Rothbard’s fame, according to Steele, is due to the fact that the rebirth of the libertarian movement, which was determined in the 1960s, coincided temporally with their writings, what allowed them to intellectually hegemonize (as well as politically direct) the resurgent libertarian instances. “Neither Rothbard nor Rand were outstanding thinkers. Neither of them made lasting contributions to any branch of human thought. Rothbard may also be seen as a kind of Bastiat, a lively writer who made no enduring original contributions but did restate libertarian truisms in persuasive form for a wide audience. But even in this endeavor, he was outclassed by Milton Friedman, who also made significant contributions to economic theory.”⁴⁹⁹

Going into the substance of the criticism, Steele notes that natural rights advocates employ an ambiguous argumentative technique. For on the one hand, they imply that every consequentialist will ineluctably end up a proponent of state intervention; on the other hand, they have never admitted that, in actual reality, state intervention has achieved good results. Suppose, Steele goes on, that it can be indisputably demonstrated by overwhelming empirical evidence that a social arrangement based on the principles of natural law works badly; that its implementation leads to “hell on earth”. In this case there are two possible answers: 1) it may not be natural rights that lead to the worst consequences. But then, Steele objects, not much is lost by considering “good” consequences practically equivalent to natural rights; 2) it is just a wonderful coincidence that natural rights always produce the best consequences; but in that imaginary world where this is not the case, some would choose good consequences over natural rights, and be “excommunicated” by natural lawyers. Generally, then, in debates about individual issues, rights libertarians resort heavily, if not predominantly, to consequentialist arguments. “For instance, when Rand was asked on “Donahue” about the danger of the monopolist taking over the market, she did not for one second think of saying that this will just be tough and we would have to put up with it because to stop it would be to contravene natural rights. Rand instantly responded in standard libertarian fashion: a monopolist (in the special, strong sense) could never arise on the free market.”⁵⁰⁰

⁴⁹⁷ *Ivi*, p. 45.

⁴⁹⁸ R.W. Bradford (under the pseudonym Ethan O. Waters), *The Two Libertarianism*, cit., pp. 7–11; R.W. Bradford, C. Murray, D. Friedman, D. Boaz, *Freedom: What’s Right vs. What Works*, in “Liberty”, vol. 19, no. 1, January 2005, pp. 31–9.

⁴⁹⁹ D.R. Steele, *An Accident of Rebirth*, in “Liberty”, vol. 13, no. 5, May 1999, pp. 18–9.

⁵⁰⁰ *Ivi*, p. 20.

Utilitarian Leland B. Yeager, the staunchest proponent of moral minimalism, believes that rights, being moral entitlements, presuppose an ethical system, not found it. Following John Gray,⁵⁰¹ Yeager asserts that rights are never the foundational element, but rather intermediaries between claims about the interests that are essential to well-being and claims about the obligations to be imposed on others to respect these interests. Rights therefore acquire content from the welfare needs of individuals and vary with them. Yeager ironizes that rights libertarians have applied their “dogmas” even to a discipline such as economics. Economists at the Mises Institute have taken up Rothbard’s moral condemnation of the contemporary monetary system, which is based on partial, not full, coverage of paper and fiduciary money: “they insist that all banknotes and checking accounts be backed 100 percent by reserves of hard money. [...] Any other monetary arrangement is downright fraudulent. No matter how much banks and their depositors might desire it, any alternative violates the first principles of property law and morality.”⁵⁰²

However, Rothbard himself, Yeager notes, resorted to a utilitarian argument to ground the jusnaturalistic elements of his doctrine. In *For a New Liberty* he wrote: “it becomes vitally necessary for each man’s survival and prosperity that he be free to learn, choose, develop his faculties, and act upon his knowledge and values. [...] [T]o interfere with and cripple this process by using violence goes profoundly against what is necessary by man’s nature for his life and prosperity.”⁵⁰³

Classical Liberalism: The Unvanquished Ideal by David Conway is one of the most interesting attempts to re-propose libertarianism on consequentialist grounds. Conway seeks to justify libertarianism (which he calls “classical liberalism”) solely on the basis of its ability to generate, more than any other form of social order, the well-being and happiness of individuals. He avoids any reference to the absolute value of capitalist freedom or the intrinsic justice of private property. The arguments are those of a typically empirical nature of the consequentialist mode of analysis.⁵⁰⁴

Economic growth is considered the most important unit of measurement of welfare. Redistributive interventions are rejected because they disincentivize capital formation and instead encourage its dissipation. Good statist intentions, once translated into concrete interventions, always prove disastrous in their effects.

A substantial part of the work is devoted to defending libertarianism against the attacks on it by three alternative theories: liberal (in the elaborations of Rawls, Nagel, Dworkin, Kai Nielsen and Ted Honderich), communitarian (according to the interpretation proposed by Macintyre in *After Virtue*) and conservative (in the versions of Roger Scruton and the liberal-conservative John Gray).

Charles Murray’s approach is eclectic and pragmatic, yet in *What It Means to Be a Libertarian* the American author repeatedly emphasizes how “human happiness is intimately connected with personal freedom and responsibility.”⁵⁰⁵ In this work, which is rich in data and factual elements, there are two main guidelines of the argument against the State and in favor of civil society. The first is based on the analysis and comparison of economic trends over time and/or across countries

⁵⁰¹ J. Gray, *Post-Liberalism Studies in Political Thought*, Routledge, London, 1993.

⁵⁰² L.B. Yeager, *In Defense of Utility*, in “Liberty”, vol. 13, no. 5, May 1999, p. 25.

⁵⁰³ M.N. Rothbard, *For a New Liberty*, cit., p. 26.

⁵⁰⁴ D. Conway, *op. cit.*, pp. 12–3.

⁵⁰⁵ Ivi, C. Murray, *What It Means to Be a Libertarian*, Broadway Books, New York, 1997, p. XI.

following state intervention (the *Trendline Test*). In almost all cases, Murray notes, the trend did not take a positive direction. For example, the New Deal did not reduce unemployment during the Great Depression period, as is confirmed by the fact that unemployment rates remained unchanged for ten years after the interventionist policy began. Or, the introduction in 1965 of the public health service for the elderly and poor, Medicare and Medicaid, did not increase but rather reduced the growth rate of Americans' life expectancy. And so on. The main reason for this ineffectiveness is the crowding-out effect, whereby the State takes resources away from private individuals and drives them out of some activities. The second utilitarian argument in favor of a libertarian arrangement is that the exercise of individual responsibility is the source of psychological satisfaction. Managing one's own lives is the condition that generates the most satisfaction, and it is more than pleasure, which is the result of events not always dependent on our will. So, leaving decisions to society instead of the State is an inherently more productive condition of happiness.⁵⁰⁶

Richard Epstein uses a consequentialist foundation – using and reworking the thought of authors such as Hume, Bentham, Hayek and contemporary Robert Ellickson⁵⁰⁷ – to substantiate conclusions whose most proper place is within the classical liberal strand, but which the author repeatedly calls libertarian.⁵⁰⁸

His utilitarianism is not the holistic one of the more orthodox version: utility does not represent an ideal or a detached entity owed respect in and of itself, it is not something that “hovers above the people”; the common good is understood in a strictly individual sense.

Epstein adheres to a moderate skepticism: on the one hand, he eschews a priori assumptions (in polemic with what he calls “absolutist libertarians,” foremost among them the exponents of the natural rights current), but on the other hand, he refuses to fall into the opposite trap of avoiding moral judgments about the form of public institutions (and here his targets are authors such as Oliver W. Holmes and Richard Posner).

In the Humean context of limited selfishness in a world of scarcity, each person does not know the preferences (and their intensity) of other individuals: the legal rules that maximize the overall sphere of human choice are those that make use of social awareness of such ignorance, which in turn constitutes a strong motivation in the direction of individual freedom.

The preferred method is that of presumptions supported by empirical regularities: through successive approximations, an attempt is made to demonstrate the close connection between the most widespread propositions of common life and the strictest requirements of a consequentialist theory. Specifically, rules are derived by Epstein by comparing the administrative costs of them

⁵⁰⁶ Another empirical work of his, aimed at highlighting the failures of statism in America, is *Losing Ground: American Social Policy 1950-1980*, Basic Books, New York, 1985. Violent criticism aroused his *The Bell Curve* (Free Press, New York, 1994; co-author Richard Herrnstein), in which, through data, he tries to demonstrate the existence of race-based differences in average IQ. A circumstance that results in structural differences in income and wealth, which cannot be corrected through social engineering measures which wrongly assume total malleability of human beings.

⁵⁰⁷ R.C. Ellickson, *Order Without Law: How Neighbors Settle Disputes*, Harvard University Press, Cambridge, MA, 1991.

⁵⁰⁸ R. Epstein, *Simple Rules for a Complex World*, cit.. Always in a classical liberal context, the themes of social interaction, public goods and civil law were explored in *Principles for a Free Society: Reconciling Individual Liberty with the Common Good*, Perseus Books, Cambridge, MA, 1998; and *Skepticism and Freedom. A Modern Case for Classical Liberalism*, University of Chicago Press, Chicago, IL, 2003. Previous works include: *Takings: Private Property and the Power of Eminent Domain*, Harvard University Press, Cambridge, MA, 1985; *Forbidden Grounds: The Case Against Employment Discrimination Laws*, Harvard University Press, Cambridge, MA, 1992.

(resources absorbed by the bureaucracies created to implement them, time and energy required of the recipients to observe them, and so on) and the incentive effects in the direction of more efficient and welfare conditions.

Through this method, the author identifies four basic rules, clearly libertarian in structure, plus three others that are necessary additions to “force” private parties under certain circumstances (public intervention). The four basic principles are self-ownership, original acquisition based on the homesteading criterion, voluntary exchange through freedom of contract, and protection from aggression.

However, problems may arise in social coordination and non-cooperation situations may arise, such as states of necessity⁵⁰⁹ and the management of services with high transaction costs (justice, law and order, defense); which opens the way for the introduction of norms that allow for interventions in derogation of the principles now listed and the presence of the state, the size of which approaches that of the Smithian model.⁵¹⁰

David Schmidtz’s doctrine is composed of several independent elements and is not as conceptually compact as that prevailing in other authors, yet in the overall design he can be considered a follower of indirect utilitarianism, contiguous with norm utilitarianism. Schmidtz is an advocate of a *non-ideal* theory, that is, a theory that does not seek to derive principles of justice through purely abstract reasoning and from a single normative theme (e.g., the flourishing of human nature or self-ownership) as is the case with most libertarian thinkers. For example, property rights over external resources are not – or are not derived from – abstract, universal natural rights but rather a means to an end, which, as we shall see more fully below, is mutual advantage.

Justice consists in giving each person what is due to him (e.g., the innocent is due not to be punished; those who have produced a good are due the fruits of that labor). There are four distinct substantive elements that affect a theory of justice: merit, reciprocity, equality and need. Each of these elements is the source of human beings’ demands for justice. A demand emanating from one of these elements may conflict with a demand arising from another of them.

Each demand for justice has the support of empirical information about human psychology and the conditions necessary for social, economic and political progress or retrogression. This factual information plays an important role and is precisely why Schmidtz’s scheme is non-ideal.

The good that is the goal of justice is cooperation for mutual benefit, “living well together”. The rules that best ensure the achievement of such an arrangement are those that protect individual liberty, property and contracts. On the crucial role of expectations about adherence to such rules, the author is heir to the broad sense consequentialism of Hume and Hayek (which tends to coincide, as mentioned, with a rule consequentialism): more welfare is achieved not by going to test the utility achieved on a case-by-case basis but by establishing fixed rules by which people feel more assured:

⁵⁰⁹ These are the situations where there is an imminent risk to life or property, however limited to the existence of bilateral monopoly with one party in a strongly dominant position. If such circumstances – largely coinciding with the already encountered “lifeboat situations” – occur, a limitation on freedom of contract is permissible. In the example proposed by Epstein, the water owner in a desert has no right to charge the person dying of thirst a million dollars for a glass of water. In that case the thirsty person has the right to water and also the right to use force to get it (the relationship is reversed, the owner does not have the right to use force to defend his water). What is in fact an expropriation (in most cases temporary) must be accompanied by compensation equal to the market value of the good or service used.

⁵¹⁰ Epstein admits to moderate income redistribution, not based on piecemeal measures that bind individual private entities, as in the case of minimum wages or rent control, but borne by general taxation.

if I can count on others not killing me (even though in a single circumstance murder might be the solution that brings the most utility), it opens up opportunities that otherwise would not be there; in the long run, overall utility increases.

To arrive at the goal of identifying the best rules, we need to define the concepts related to the already listed four elements that affect justice: just merit, just reciprocity, just equality, and just need.

About merit, in disagreement with Rawls, Schmidt believes that one should leave to each person not only the resources that he has produced by his own qualities but also the resources that may have been transferred to him by others, thus without immediate merit, because the management of those resources nonetheless evidences later merit; and it incentivizes people to make good use of their opportunities. So, the norm protecting private property is appropriate.

In relation to equality, that of status but not substantive equality should be pandered to, since the acquisition of unowned property by first-users is best because it increases productivity and innovation, since the owner has no fear of having the fruits of his efforts taken away. Homesteading also enables individuals to pursue their own ends. We cannot live well together without the norm that secures our possessions, allowing us to plan our lives as separate, distinct human beings.

Finally, needs cannot be examined statically, at a given time, to claim a given income distribution. A needs-based income distribution can fail the purpose of meeting needs because it reduces production. This consideration also leads to libertarian norms.⁵¹¹

We treat David Boaz last because his consequentialism is, on closer examination, an eclectic combination of rights and consequences. He believes in the compatibility of natural rights and consequences in the sense that he believes it is not coincidental that the protection of liberty rights leads to greater social prosperity. However, he argues that not all moral principles (which support rights) are categorical imperatives: rights are good initial guides for action, but if the consequences are manifestly unacceptable, as may be the case in emergency situations, then the behaviors that lead to the best consequences must be legitimized (turned into norms). Boaz gives the example of a person who is falling from the 50th floor of a building and clings to the tent of the 30th floor apartment tenant: if the latter does not want to, the person who is falling, in the case of absoluteness of property rights, should let himself fall and, probably, die; instead, he does well to cling and violate the right, in order to a clearly better consequence. On the other hand, Boaz adds, the derivation of natural rights was made from the requirements of human nature, that is, from considerations that inevitably originated from empirical findings: the fact that those rights indulge the flourishing of human beings; and in fact we do not assign natural rights to bees or cows, because we have previously observed their nature. “We talk about natural rights, we talk about deriving them morally, we talk about deriving them a priori, but we also ought to look at history, economics, reason, the study of human nature, and all of those in my view lead us to essentially the same

⁵¹¹ D. Schmidtz, *The Limits of Government*, Westview Press, Boulder, CO, 1991; *Elements of Justice*, Cambridge University Press, New York, 2006.

conclusion. [But if it wasn't], we'd have a real problem";⁵¹² we could not, with a shrug of the shoulders, simply reiterate that only principles (and rights) derived a priori matter.

⁵¹² D. Boaz, *Freedom: What's Right vs What Works*, in "Liberty", January 2005, pp. 32–3, transcript of the talk at the Liberty Editors' Conference held in Las Vegas on May 15, 2004; the other participants were Charles Murray, David Friedman and R.W. Bradford.

10. Minimal State and Anarchy

As mentioned in Chapter 1, regarding the admissibility or otherwise of the State, two currents coexist within libertarianism: *minarchists* (or *limited-government libertarians*) and *anarchists* (*no-government libertarians*).

10.1 Minarchism

Minarchists admit (or resign themselves to)⁵¹³ the presence of the State, that is, an apparatus that exercises a monopoly of force⁵¹⁴ in a given territorial area. The State is the only subject that can use it, but, for libertarians, not to obtain a generic and unlimited respect for its commands, but only to carry out the activities of protecting people from aggression: production of law, justice, police, and defense. Any violent act committed by a subject other than the State, even to rectify *ex post* a previously suffered violence, is considered illegitimate. “The only government tolerated by libertarians is one that exercises only *retaliatory* use of force on anyone who initiates the use of force against anyone else [...] A government that exceeds this function [...] is not a protector but an aggressor.”⁵¹⁵

This approach also belonged to a significant part of the classical liberal tradition (J. Locke, the Levellers, I. Kant, W. von Humboldt, H. Spencer, Auberon Herbert,⁵¹⁶ L. von Mises), which however also included within it arrangements identifiable as a little-more-than-minimal State, assigning to the public hand also the production and management of other services such as roads, lighting and public works in general (Adam Smith,⁵¹⁷ B. Constant), some public goods in addition to the police and defense (J. Buchanan, Epstein⁵¹⁸), money,⁵¹⁹ antitrust rules (Hayek, L. Einaudi) and slight redistributive interventions to guarantee a safety net for all (M. Friedman’s negative income tax,⁵²⁰ Hayek’s minimum income,⁵²¹ Epstein’s general tax support)⁵²² or the provision of

⁵¹³ Grover Norquist, president of Americans for Tax Reform, provocatively stated in a 2001 interview with National Public Radio: “I don’t want to abolish government, I simply want to reduce it to the size where I can drown it in the bathtub.” Skepticism about the State also expresses the motto, revived by Thoreau in *Civil Disobedience* (1849), “That government is best which governs least.”

⁵¹⁴ “It is, of course, legalized coercion: the Mafia also operates by force, but illegal force, and one is not compelled to belong to the Mafia.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 19.

⁵¹⁵ *Ivi*, p. 20.

⁵¹⁶ Spencer and Herbert were members of the Liberty and Property Defense League, the first English organization with a resolutely (proto)libertarian stamp. Founded in 1882 by Francis Charteris, its members also included intellectuals such as Wordsworth Donisthorpe, Thomas Mackay and Lord Bramwell.

⁵¹⁷ Smith also the postal service.

⁵¹⁸ R. Epstein, *Takings: Private Property and the Power of Eminent Domain*, Harvard University Press, Cambridge, MA, 1985.

⁵¹⁹ Alternative systems to the State monopoly of money have been in force throughout history and, with institutional updates, are advocated by liberal and libertarian thought: for example, a system with commodity money, preferably gold (L. von Mises, M.N. Rothbard, W. Block, H.-H. Hoppe, J.H. de Soto, J.G. Hulsmann, J. Kimball, M. Skousen, G. North); or *free banking*, with 100% reserve (F.A. von Hayek, *Denationalisation of Money*, 1976) or fractional reserve (L.H. White, G. Selgin, V.C. Smith, K. Dowd, S. Horwitz, L.J. Sechrest, R. Garrison, D. Glasner, L.B. Yeager, R. Greenfield, R. Timberlake).

⁵²⁰ A support that guarantees a minimum income in place of the entire panoply of welfare institutions, in order to simplify and reduce bureaucracy.

⁵²¹ Cfr. F.A. von Hayek, *Law, Legislation and Liberty*, vol. I, *Rules and Order*, cit.

⁵²² Hayek and M. Friedman, as David Hume did in the past, support this moderate redistribution of income in favor of the poor for consequentialist reasons (mainly because it guarantees social peace), not because they recognize an absolute positive right to receive resources. Hayek in some speeches also supported measures such as legislative limits on working hours and contributions to companies that generate positive externalities (environment, scientific research). In Hayek also the concept of “coercion” is different from the libertarian one. He defines coercion as the control of the activities and environment of an individual, who is thus prevented from achieving his own ends. Coercion, that is, takes

some essential services with mixed modalities (M. Friedman's school voucher)⁵²³. Furthermore, classical liberalism of the nineteenth century supports democracy and majority rule,⁵²⁴ a system viewed with suspicion, if not opposed, by libertarians. This difference also constitutes the distinguishing criterion used here between classical liberalism and libertarianism in the contemporary era.⁵²⁵ This includes authors such as Ayn Rand, Robert Nozick, Leonard Read, John Hospers, Tibor Machan, Richard Epstein,⁵²⁶ Douglas J. Den Uyl, Douglas B. Rasmussen, David Boaz, Charles Murray, Loren Lomasky, David Kelley, Robert Bidinotto, Leland B. Yeager, Randall G. Holcombe.

Within this component, we can distinguish the exponents of the minimal state without taxation, i.e., with voluntary contribution (*No Taxation Minimal State*), who are decidedly prevalent (Rand, Hospers, Nozick),⁵²⁷ and the supporters of the minimal state with taxation (*Taxation Minimal State*).

The most traditional justification of the (minimal) State, as developed by authors such as Ayn Rand and John Hospers, does not differ much from the classical liberal position: the monopoly of force, naturally limited to the three sectors of the police, the armed forces and the courts, is necessary, and morally legitimate, in order to prevent private individuals from resorting to it. When dealing with violence, competition in the same area is impossible. The outcome of a non-centralized use of force would be of a Hobbesian type: chaos, gang warfare, feuds between private individuals.⁵²⁸ "A nation in which there are two competing armies within it the same nation is in a state of civil war."⁵²⁹

place when one man's actions are made to serve the will of another man; therefore they are aimed at achieving the ends of this and not one's own. The consequence of this definition is an expansion of the range of actions considered aggressive: not only violence or the threat of violence, but also "harming" others, including in the concept of "harm" the involvement of goods that are crucial to the existence of the person or that he values the most. The concept, Rothbard noted, is not only vague because it is subjective. But it also extends coercion to "omission" behaviors, that is, cases in which a subject generates discomfort in another because he does not want to enter into exchanges with him; such as, in the examples proposed by Hayek, the nagging wife, the employer who fires someone in a city with a lot of unemployment, or fires someone because he hates the worker, the water monopolist in an oasis who wants to sell water at a very high price to the people living there (the price for Hayek must be "reasonable"; but who establishes it?), a single doctor who refuses to treat. In all these cases the State must intervene to prohibit "discrimination" (F.A. von Hayek, *The Constitution of Liberty*, cit.). Negative liberty is transformed into positive liberty. The liberal Andrew Koppelman, an American jurist and political philosopher, maintains, following a reconstruction that is at times tendentious, that the true libertarianism is that of Hayek and that that of more radical authors, such as Rand, Rothbard and Nozick, represents a corruption of it: A. Koppelman, *op. cit.*

⁵²³ Friedman had the merit of being able to introduce into the American debate other previously taboo themes, such as the elimination of compulsory schooling; the suppression of minimum wages; the removal of the norms and practices that allow the cartelization of industrial sectors caused by unions; the criticism of the idea of corporate social responsibility; the elimination of licenses and barriers connected with professional orders; a proportional tax instead of a progressive one. The most popular works that address these themes are: M. and R. Friedman, *Capitalism and Freedom*, cit.; *Free to Choose*, Harcourt Brace Jovanovich, New York, 1980.

⁵²⁴ It also advocates an education system based on public schools and is characterized by an anticlericalism that often degenerates into intolerance.

⁵²⁵ In addition to the already mentioned chronological criterion (see *above*, Chapter 1), according to which I assign to classical liberalism *minimal State* authors but belonging to the first half of the twentieth century such as Mises and Henry Hazlitt or many exponents of the Old Right.

⁵²⁶ As we saw in Chapter 9, Epstein in some of his works has legitimized redistributive interventions beyond the minimum function of protection: see R. Epstein, *Simple Rules for a Complex World*, cit., Chapter 7.

⁵²⁷ Also to be included in this category are the *voluntarists* who inferred from Auberon Herbert's philosophy the voluntariness of the tax contribution, such as R.C. Hoiles.

⁵²⁸ A. Rand, *The Virtue of Selfishness*, cit., Chapter 14, "The Nature of Government", pp. 107–15.

⁵²⁹ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 20.

Hospers adds to the reasons the impossibility for a single individual to provide for personal protection, otherwise “he would have little time for cultivating those qualities which are essential to civilized life. [...] The function of government is to take this responsibility off his shoulders.”⁵³⁰

Minarchist libertarians are obviously aware that “historically governments have gone far beyond this function [of protectors of individuals]. Since they already have the physical power, they have not hesitated to use it for purposes far beyond that which was entrusted to them in the first place [...]; illegitimate purposes.”⁵³¹ To avoid such outcomes, the preferred solution is that of a *law of the land* that has the characteristics of a rule of law not dissimilar to that outlined by Hayek,⁵³² and so summarized by Hospers: “the libertarian believes in government by law as opposed to government by men. What this means is not that the laws are not made and administered by men, but that they must be passed and enforced according to a previously agreed on procedure (embedded in a constitution), that they be publicized and written (so that everyone can know what the law is), that they can never be made retroactive, and that they cannot be selectively enforced at the whim of a judge or policeman. [...] A criminal is also entitled to protection of his rights by impartial judgment. [...] When government exists, and its laws are enforced by uncorrupted officials, the punishments attaching to various offenses are known in advance and carried out according to previously enacted laws.”⁵³³

For Rand too, it is central that there be an “objective law”, that is, a set of uniform norms (a requirement of the objectivism she preached), that is, general and abstract: even if men were fully rational and moral angels, there would still be a need for objective norms and third-party figures who regulate disagreements in good faith, and therefore for a single source of law.

Of course, for minarchist libertarians, the procedural framework is a necessary but not sufficient condition: the rule of law, as well as any constitutionalism, even of strong liberal imprint, does not in itself guarantee the absence of coercion. It is essential that the content of the norms produced thanks to the structural norms be based on the already known principle of non-aggression.⁵³⁴

Rand explicitly attacks anarcho-capitalists, advocates of competing protection agencies:⁵³⁵ “A recent variant of anarchist theory, which is befuddling some of the younger advocates of liberty, is a weird absurdity called “competing governments.” [...] Remember that forcible restraint of men is the only service a government can offer. Ask yourself what a competition in forcible restraint would

⁵³⁰ *Ivi*, p. 21. The next paragraph will illustrate the anarchists’ response to this argument.

⁵³¹ *Ivi*, p. 21-22.

⁵³² F.A. von Hayek, *The Constitution of Liberty*, cit. The Hayekian rule of law as a guarantee of minimizing coercion has been criticized by Bruno Leoni, Rothbard and Ronald Hamowy: the existence of general, abstract, stable and known in advance norms is not an automatic guarantee of freedom; the procedural aspect is not sufficient, one must always investigate the content of the norms. B. Leoni, *Freedom and the Law*, cit.; M. Rothbard, *The Ethics of liberty*, cit., Chapter 28; R. Hamowy, *Hayek’s Concept of Freedom: A Critique*, in “New Individualist Review”, April 1961, pp. 28–31.

⁵³³ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., pp. 19, 22–3.

⁵³⁴ Whatever the legal form of the protection service, Hospers specifies that the important aspect is the existence of a single legal code in the territorial space identifiable with the nation and that this “*law of the land* is limited to the protection of the individual against the use of force” (p. 380). Hospers defines a *republic* as the institutional form in which *unlimited democracy does not exist*, one in which majorities can do everything; protection is fundamentally guaranteed by the existence of a constitution that makes some individual rights inviolable. He considers the United States a republic but not a *pure one*, because the original conception of the constitution, although far more liberal than that of other nations, had some opacity and above all because the system has become corrupted over time thanks to legislation that has unduly exceeded constitutional limits. J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., pp. 47–8.

⁵³⁵ In particular, she attacks Rothbard, who had already reached anarchist conclusions by the end of the 1950s, suffering exclusion from Randian circles.

have to mean. One cannot call this theory a contradiction in terms, since it is obviously devoid of any understanding of the terms “competition” and “government.” Nor can one call it a floating abstraction, since it devoid of any contact with or reference to reality.”⁵³⁶

⁵³⁶ A. Rand, *The Virtue of Selfishness*, cit., p. 80. Rand sarcastically called the anarcho-capitalists “the hippies of the right”. From the anarchist front, the most organic response was represented by an essay by Roy Childs, Jr., *Objectivism and the State: An Open Letter to Ayn Rand* (appeared in “The Rational Individualist,” vol. 1, no. 10, August 1969; reprinted in Id., *Liberty Against Power*, cit. The following quotations are taken from this volume). Starting from the monopoly condition, Childs argues, if a new protection agency were to arise, two, and only two, situations could occur: a) the government uses force or the threat of force against the new institution to maintain its monopoly: in this case it has initiated force; b) the government refrain from initiating force, allowing the new agency to carry out its activities without interference: in this case the “government” would be nothing more than any of several competing protection agencies, and therefore an anarchic system would be configured. Therefore, Childs concludes, addressing Rand, “government cannot exist without initiating force, or at least threatening to do so, against dissenters. If this is true, and if sanctioning any institution which initiates force is a moral evil, then you should morally withdraw all sanction from the U.S. government, in fact, from the very concept of government itself.” (*ivi*, p. 148). In addition to this main objection, Childs addresses other criticisms to Rand’s statements in defense of the State. 1) Rand argues that, in the absence of a monopoly on force, citizens would be forced to go around armed, to turn their homes into fortresses, to distrust anyone who knocks on their door, and so on. Childs replies that, extending this argument to food, the State should monopolistically provide food supplies, otherwise citizens would be forced to raise vegetables in their own backyards, under penalty of starvation. But the alternative is not between these two hypotheses, because in a free market there is the division of labor and exchange, therefore voluntary collaboration, which would also apply to protection against aggression. 2) Rand states that the use of physical force cannot be left to the discretionary evaluation of individual citizens. But this contradicts the epistemological and ethical position of Objectivist philosophy, according to which each individual is capable of knowing reality, of judging and of acting on the basis of his own rational interest. 3) The use of force as a response to aggression requires objective rules on evidence, sanctions and judicial procedures. But this, Childs observes, also applies to other areas of social life, for which Rand does not claim a coercive monopoly. The free market is able to provide such rules. 4) All laws, with the prohibitions and punishments they impose, must be known to individuals in advance, Rand argues. This is not a valid objection to an anarcho-capitalist society for Childs: “all that would be forbidden in any voluntary society would be the initiation of physical force [...] If a person chooses to initiate force in order to gain a value, then by his act of aggression, he creates a debt which he must repay to *the victim*, plus damages. There is nothing particularly difficult about this, and no reason why the free market could not evolve institutions around this concept of justice” (*ivi*, p. 151). 5) In the criticisms of market anarchy in *The Virtue of Selfishness*, anarcho-capitalists are credited with defending a system based on “competing governments [states]”. Childs points out that “the theory we defend is not called “competing governments,” of course, since a government is a coercive monopoly. We advocate competing agencies of protection, defense, and retaliation. [...] Since we understand the nature of government, we advocate no such thing as competing governments; rather, we advocate the *destruction or abolition* of the state, which, since it regularly initiates force, is a criminal organization” (*ivi*, p. 152). As for the clash between Mr. Smith and Mr. Jones, and between States A and B of which they are clients, which according to Rand would lead to an escalation of violence, Childs replies that such an attitude would not be in the *rational self-interest* of the agencies. Finally: at present there exists a condition of anarchy among the citizens of different countries. If there is a need for a single authority to settle disputes between individuals, then by logical consequence there is a need for a world super-state to settle disputes between individual States; an outcome Rand would not wish for. In the late 1980s, shortly before his death in 1992, Childs renounced his anarchist positions. The reasons were never made explicit, because the article that was supposed to address the issue, *Anarchist Illusions*, was never completed (the incomplete article was first published in the volume *Liberty Against Power*). From the few observations made by Childs it can be inferred that the critique of anarcho-capitalism involves two aspects: it is rejected on the basis of doctrinal coherence and judged misleading and dangerous for libertarian political action. “It is my conviction that anarchism functions in the libertarian movement precisely as does Marxism in the international socialist movement: as an incoherent and therefore unreachable goal that inevitably corrupts any attempted strategy to achieve it. [...] [A]s in the case of advocates of a Marxist utopia, libertarians attempting to implement anarchism would find themselves invariably moving in practice toward something very different; something, furthermore, that they never intended” (*ivi*, pp. 181–2). Joan Kennedy Taylor revealed that, in private conversations, Childs had confided in her that the 1979 Iran hostage crisis had been an important factor in reflecting on the issue. When the Iranian students took the American hostages, in the *de facto* anarchic condition of that country, there was no authority with which to negotiate for their release. The issue, however, was never taken up and explored again by Childs. An attempt to make Objectivist philosophical foundations coexist with anarcho-capitalist outcomes is contained in *The New Libertarianism: Anarcho-Capitalism* by J. Michael Oliver. The work, published in 2013, originates from an academic thesis written in 1972.

Once the legitimacy of the State was admitted, Rand found herself faced with the contradiction between this recognition and the principles of Objectivist ethics. The prohibition of aggression clashes, in fact, with *a)* the violent exclusion of potential competitors and *b)* the existence of taxes, coercive levies on the property of individuals, but necessary to finance the activities reserved to the State. Rand proposed various solutions, all characterized, for the sake of coherence, by the voluntary nature of the contribution.⁵³⁷

A first solution could consist of collecting through lotteries.⁵³⁸ A second solution focuses on paying for the registration of contracts. This payment would not be compulsory, but it would guarantee the validity and enforceability of the contract. Everyone is free not to subscribe to this form of insurance, but in case of non-compliance they cannot turn to a court.⁵³⁹ The scheme is also extended to the police services: “if you want police protection, you will have to pay a fee to obtain it, but of course you are free not to want it or pay for it, in which case you will not have the protection even if you need it.”⁵⁴⁰

Considering credit transactions, prevalent in contemporary economies, the percentage to be paid on them would be infinitesimal, given the needs of a minimal State. Furthermore, the cost for each individual would be proportional to his level of economic activity. Thus, those who have little economic availability would enjoy government services for free, these collective goods being characterized by non-excludability. This gratuity can be considered as a *bonus* made possible by individuals with greater economic capacity; and, a decisive circumstance for Randian philosophy, without any sacrifice of these being necessary in favor of individuals with lower incomes. Voluntariness, Rand adds, has the advantage of keeping the size of the State at the minimum level.

The most famous justification of the minimal State is Robert Nozick’s *Anarchy, State and Utopia*. The American philosopher carries out this operation on the basis of a Kantian-inspired deontological ethic and a scheme of spontaneous socioeconomic evolution. Rights (negative ones: Locke’s life, liberty and property), placed as “side constraints” on actions, reflect the Kantian categorical imperative that individuals should be regarded as ends and not means.⁵⁴¹ He seeks to legitimize the minimal State both against the anarchist-individualist theses, trying to prefigure the emergence of a minimal State without violation of “libertarian” rights, that is, to non-aggression (Part I of the book); and against the supporters of a State more extensive than the minimal one, in particular Rawls’ theory⁵⁴² (Part II)⁵⁴³; and for the capacity his model of minimal State possesses to incorporate different political and cultural orientations (Part III).

⁵³⁷ See A. Rand, *The Virtue of Selfishness*, cit., Chapter 15, “Government Financing in a Free Society”, pp. 131–6.

⁵³⁸ It has been objected to Rand: if there were one or more competitors, they would drive the State out of business, because they do not need to charge higher prices to ensure the profit margins necessary to finance State expenditures. On the other hand, the State could not prohibit competition without initiating violence.

⁵³⁹ Objections to this solution have been along the lines of: if the State declares a monopoly on the enforcement of contracts, it must initiate violence to maintain this monopoly. If it does not declare a monopoly, then competing private companies may arise. But then the State would cease to be a State and would be merely one of many competitors in the enforcement of rules.

⁵⁴⁰ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 349.

⁵⁴¹ On the epistemological level, the foundation of rights does not go beyond this Kantian-inspired intuitionism. According to some commentators, constraints on actions, and the underlying rights, are, after all, asserted a priori.

⁵⁴² J. Rawls, *A Theory of Justice*, cit.; *Political Liberalism*, Columbia University Press, New York, 1993.

⁵⁴³ In my opinion, the value of the book is to be found above all in the elaboration contained in this section. For the rest, the work owes more to Murray Rothbard than subsequent political theory has been willing to recognize. In fact, even if Nozick’s construction takes shape as a refutation of the Rothbardian anarchist model, some of the categories used – the entitlement principle, self-ownership (even if less strong and less foundational than that of the ‘property rights libertarians’), the theory of acquisition *à la* Locke, the principle of non-aggression – are concepts that Rothbard had the

Nozick starts from the condition of the state of nature in Locke's version, in which individuals can restore conditions of violated justice by imposing sanctions. In a context of free market and division of labor, mutual-protection associations will arise, which offer their services in exchange for a price, with a wide variety of forms. Nozick hypothesizes that these agencies act according to Locke's natural law, therefore in a moral way, without giving rise to unjustified aggression; and that they require their clients to renounce their right of private retaliation in the event of aggression suffered.

Because of economies of scale, a dominant protection agency emerges. This single company does not protect all individuals in that given geographical area but only those who have purchased its services, therefore its clients. The next step is the choice, legitimate in Nozick's opinion, of the dominant agency to prohibit risky procedures against its clients and therefore to prevent the "independents" from taking action (defending themselves) when its clients are involved in the dispute.⁵⁴⁴ This arrangement is defined by Nozick as an "ultramiminal state", as the agency exercises a (*de facto*, not *de jure*) monopoly of force but not yet on all individuals. The definitive transition to a minimal state is represented by the compensation that the dominant agency offers to independents for the prohibition imposed on them. And the least expensive way to do this, concludes Nozick, is to guarantee them free protection services that cover cases of conflict with

merit of reintroducing, in a new guise, to the philosophical-political debate of the time. Nozick himself, in the acknowledgements included in the volume, writes that "it was a long conversation about six years ago with Murray Rothbard that stimulated my interest in individualist anarchist theory" and encouraged him in the search for a solution that would identify a minimal State devoid of coercive elements. *Anarchy, State and Utopia* remains a fundamental work for libertarianism, because the enormous attention it received in the academic establishment brought the libertarian doctrine out of the shadows in which it had been relegated. This outcome was probably contributed to by the Harvard philosopher's use of some conceptual and linguistic tools of analytical philosophy, which was dominant in the Anglo-Saxon world at the time. The interest received by the work among mainstream intellectuals subsequently generated the erroneous identification of libertarianism with Nozick's theory. The other political-philosophical traditions, when they confronted libertarian theory, almost exclusively took this author as a polemical reference point, ignoring the more coherent and articulated theoretical edifices of the anarchist, natural law or rationalist components of libertarianism. "Nozick's book has come to enjoy canonical status among academics, who normally assign it to students as 'the' libertarian book, with little appreciation of the broader tradition of libertarian thinking and scholarship within which Nozick's work took shape." T.G. Palmer, *The Literature of Liberty*, in D. Boaz (ed.), *The Libertarian Reader: Classic and Contemporary Writings from Lao-Tzu to Milton Friedman*, Free Press, New York, 1997, p. 417. Hans-Hermann Hoppe's judgment is very severe: "The book was a series of dozens of disparate or loosely jointed arguments, conjectures, puzzles, counterexamples, experiments, paradoxes, surprising turns, startling twists, intellectual flashes, and philosophical razzle-dazzle, and thus required only short and intermittent attention of its reader. [...] Despite his politically incorrect conclusions, Nozick's libertarianism was deemed respectable by the academic masses and elicited countless comments and replies, because it was methodologically non-committal; that is, Nozick did not claim that his libertarian conclusions *proved* anything. [...] Nozick did not claim that his ethical "explorations" had any practical implications. They were meant to be nothing more than fascinating, entertaining, or suggestive intellectual play. As such, libertarianism posed no threat to the predominantly social-democratic intellectual class. On account of his unsystematic method – his philosophical pluralism – Nozick was "tolerant" *vis-à-vis* the intellectual establishment [...] He did not mean to do any real harm to the ideas of his socialist opponents. He only wanted to throw an interesting idea into the democratic open-ended intellectual debate." H.-H. Hoppe, *Introduction* to M.N. Rothbard, *The Ethics of Liberty*, New York University Press, New York, 1998, pp. xxiii–xxiv.

⁵⁴⁴ To justify the prohibition, Nozick uses the concept of *risk*. There are actions – activities – that, due to their social pervasiveness, put the physical safety of a large number of people at risk. The use of force by a protection agency falls within the scope of these actions. According to Nozick, there is a high probability that independents are unreliable in their procedures and methods of action (not very "guarantors"), and therefore, in using force for retaliation or to collect compensation, they would expose the clients of the dominant agency to unjustified dangers. The *widespread fear* induced in the community by the possible actions of independents is not compensable. Even if such fear did not exist because few independents, and rarely, exercised their enforcement actions, there is a second and more important reason that legitimizes the prohibition and that is the existence of *procedural rights*, consisting in summary in the right to an accurate ascertainment of guilt or innocence. In particular, the right is to be tried under procedures that minimize the likelihood of violation of property rights.

their clients. Once this second condition, the protection of the rights of everyone in the given territory, has also been verified, we have arrived at the minimal state. Now, in fact, both requirements that Nozick considers indispensable for a State to exist are satisfied: monopoly of force and protection of all.

Unlike the ultraminimal State, the way in which the minimal State functions is such as to qualify it as “redistributive” (from clients to non-clients); but this redistribution, unlike the Rawls-style one, is morally legitimate since the procedure that generated it, of the Smithian “invisible-hand” type (plus the principle of compensation), did not violate rights.⁵⁴⁵

In the second part, Nozick tries to argue the thesis of the illegitimacy of a State larger than the minimal one. As mentioned, the refutation of the “interventionist” theses is carried out by Nozick by taking as a target the most prestigious liberal theoretical edifice, that of Rawls, who, in one of the most important works of contemporary political philosophy, *A Theory of Justice*, had tried to found on contractarian bases principles of justice that entailed redistributive outcomes.

Nozick begins his discussion by examining the different distributive theories,⁵⁴⁶ among which he favors the theory of “entitlement”, the only one that does not violate rights because it is based on a *historical criterion* of a procedural type: the acquisition of the property title is based either originally on homesteading (*principle of justice in acquisition*) or on the subsequent consensual transfer (*principle of justice in transfer*),⁵⁴⁷ therefore with free exchanges between people, without coercive corrections imposed by other subjects (in particular by public authority).⁵⁴⁸ The principles of redistributive justice, among which that of the end-result assumed by Rawls, instead violate the freedom of people to assign their resources to their preferred interlocutors, and therefore do not respect side constraints.⁵⁴⁹ Furthermore, they apodictically incorporate equality, of results or

⁵⁴⁵ Anarchist libertarians have criticized many aspects of Nozick’s analytical procedure. The first and most rigorous challenges were made at the Third Libertarian Scholars Conference held in New York in October 1975, particularly in the papers of Murray N. Rothbard, Roy A. Childs Jr., and Randy Barnett. Written versions of these papers were published in the first, almost monothematic, issue of the “Journal of Libertarian Studies” in 1977: M.N. Rothbard, *Robert Nozick and the Immaculate Conception of the State*, in “Journal of Libertarian Studies”, vol. 1, no. 1, Winter 1977, pp. 45–77 (a later version was included by Rothbard in *The Ethics of Liberty*, cit., Chapter 29, pp. 229–48); R.A. Childs Jr., *The Invisible Hand Strikes Back*, in “Journal of Libertarian Studies”, vol. 1, no. 1, pp. 23–33; reprinted in Id., *Liberty Against Power*, Fox & Wilkes, San Francisco, CA, 1994; R. Barnett, *Whither Anarchy? Has Robert Nozick Justified the State?*, in “Journal of Libertarian Studies”, vol. 1, no. 1, pp. 15–21. The same issue also contains the essay by John T. Sanders, *The Free Market Model Versus Government: A Reply to Nozick*, pp. 35–44. Subsequently, articulate critical analyses of anarchist approaches have been carried out also by Jeffrey Paul (*Nozick, Anarchism and Procedural Rights*, in “Journal of Libertarian Studies”, vol. 1, no. 4, Fall 1977, pp. 337–40), James D. Davidson (*Note on ‘Anarchy, State, and Utopia’*, in “Journal of Libertarian Studies”, vol. 1, no. 4, Fall 1977, pp. 341–8), David Osterfeld (*Internal Inconsistencies in Arguments for Government: Nozick, Rand, and Hospers*, in “Journal of Libertarian Studies”, vol. 4, no. 3, Summer 1980, pp. 331–40), Frederic C. Young (*Nozick and the Individualist Anarchist*, in “Journal of Libertarian Studies”, vol. 8, no. 1, Winter 1986, pp. 43–9) and Eric Roark (*Nozick’s Failed Defense of the Just State*, in “Journal of Libertarian Studies”, vol. 21, no. 1, Spring 2007, pp. 5–39). Nozick returned to some of the themes covered in *Anarchy, State and Utopia* in 1989 in his work *The Examined Life*, in which, however, no specific replies or counterarguments to the objections raised by the anarchists appeared.

⁵⁴⁶ In Nozick’s classification, theories of distributive justice can be: *entitlement theory; patterned* (e.g., as a function of a factor such as IQ, effort, or marginal product); and *end-result* (e.g. income equality).

⁵⁴⁷ Supplemented by a third principle, *of rectification*, aimed at correcting any injustices of the past, i.e., violations of the principles of correct acquisition and/or correct transfer, such as the purchase of stolen property.

⁵⁴⁸ For a version of entitlement theory that rejects Nozick’s anti-egalitarian outcome and supports redistributive interventions, see C. Del Bò, *I diritti sulle cose. Teorie della giustizia e validità dei titoli*, Carocci, Roma, 2008.

⁵⁴⁹ The only restriction placed by Nozick on free acquisition and voluntary exchange is given by the “Lockean proviso”, interpreted in this way: following the appropriation by one individual, the condition of (even just one) of the others must not be worsened. The debate on the Lockean proviso is resumed in paragraph 12.3.1.

opportunities, without demonstrating such a choice on a theoretical level, which therefore appears arbitrary.

Nozick refutes Rawls on several points, particularly those that legitimize redistributive activities: that people do not deserve, and therefore do not own, their natural qualities; that the existence of social cooperation does not allow for the evaluation of the contributions of individuals; the “maximin” criterion underlying the principles chosen by individuals behind the “veil of ignorance” of the original position; the fact that the difference principle is centered on groups rather than individuals.⁵⁵⁰

Finally, in the third part Nozick specifies some structural characteristics of his minimal State, whose framework allows people to organize themselves according to their own orientations and affinities. Within the minimal structure of the State, the implementation of communities with their own laws is possible, as long as membership in them is not coercive. The maximum of pluralism and tolerance is thus achieved.⁵⁵¹

Authors who accept, or tolerate, coercive financing point out that the limited functions attributed to the State would allow for a tolerable tax burden because it would be incomparably lower than contemporary levels. In the United States, a 5% income tax rate or a 5% sales tax rate would suffice. In the words of David Boaz: “How, then, would we pay for the legitimate functions of government – police, courts, and national defense? Several answers to that question have been offered, none of them entirely satisfying. The best we can offer here is that we have a great deal of government spending and taxation to roll back before we get to the point where the only remaining taxation goes to support the legitimate functions of government. At that point, maybe we will be able to see how even the remaining coercive taxation can be eliminated. Perhaps people in a prosperous libertarian society *would* willingly contribute, say, 5 per cent of their income to a government that protected their rights and otherwise left them alone. [...] A government that taxed us 5 per cent of our income in order to protect us from aggression by fellow citizens or foreign powers would be far closer to the libertarian vision than today’s expansive state.”⁵⁵²

10.2 Anarcho-capitalism

The deontological component of libertarian theory, as noted above, hinges the optimal legal structure of a society on the principle of non-aggression. In the 1950s, the author who most clearly perceived the contradiction between the principle of non-aggression and minarchism was Murray N. Rothbard. If the State is defined as the agency that maintains the monopoly of force in a given territorial area and acquires its resources through coercion (taxation), its presence implies a violent aggression to the property and liberty (body and actions) of people, as a result of 1) taxation, which is a forced and non-voluntary levy on the resources of a certain number of individuals (equivalent to theft),⁵⁵³ and 2) the imposition of a coercive monopoly on certain activities (production of law,

⁵⁵⁰ These criticisms, like others from the “right”, gave rise to the current of the so-called *Rawlsians*, on which see below, § 12.3.1.

⁵⁵¹ See also C. Kukathas, *E Pluribus Plurum, or, How to Fail to Get to Utopia in Spite of Really Trying*, in R.M. Bader, J. Meadowcroft (eds.), *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia*, Cambridge University Press, Cambridge, UK, 2011, pp. 289–302.

⁵⁵² D. Boaz, *Libertarianism: a primer*, Free Press, New York, 1997, pp. 217–8.

⁵⁵³ The existence of taxation in itself represents the suppression of the absoluteness of property rights claimed by libertarians: “the tax rules [...] instead of presupposing the patrimonial structures established by the market, by contract law and by the rules on the acquisition of property, [contribute] themselves to defining those structures which, before

justice, police, defense), which prevents others from freely carrying them out, producing and exchanging goods and services.

The individualistic method of libertarians, however, rules out the ethical double standard: what is forbidden to individuals as private subjects – extort, seize, forbid others’ nonaggressive actions – does not become lawful just because it is exercised by that group of individuals which, beyond symbolic artifices, constitutes (the apparatus of) the State.⁵⁵⁴ “The state encourages the public to believe there are two sets of moral rules: one set that we learn as children, involving the abstention from violence and theft, and another set that applies only to government, which alone may aggress against peaceful individuals in all kinds of ways.”⁵⁵⁵ Such an approach excludes legitimacy for theories that consider morality and politics to be two different normative systems that must obey different criteria of judgment (N. Machiavelli, M. Weber) or that for politics admit derogations from the one normative system of morality (theorists of ‘reason of state,’ Bodin); theories that also admit derogations and violations of State law itself, which is already unjustly divergent from the law to which the individual is subject.⁵⁵⁶

History has undertaken to demonstrate the conversion of potential threat into actual harassment. “While opposing any and all private or group aggression against the rights of person and property, the libertarian sees that throughout history and into the present day, there has been one central, dominant, and overriding aggressor upon all of these rights: the State. [...] For centuries, the State (or more strictly, individuals acting in their roles as “members of the government”) has cloaked its criminal activity in high-sounding rhetoric. For centuries the State has committed mass murder and called it “war”; then ennobled the mass slaughter that “war” involves. For centuries the State has enslaved people into its armed battalions and called it “conscription” in the “national service.” For centuries the State has robbed people at bayonet point and called it “taxation.” In fact, if you wish to know how libertarians regard the State and any of its acts, simply think of the State as a criminal band.”⁵⁵⁷ According to Spooner, “all the great governments of the world – those now existing, as

the levy, [have] a merely precarious and morally meaningless character.” D. Stevanato, *La giustificazione sociale dell'imposta*, il Mulino, Bologna, 2014, p. 16 (my translation).

⁵⁵⁴ Hence the legitimization of *political authority*, the right to rule for one subject – imposition of norms – and the corresponding obligation to obey for others.

⁵⁵⁵ L.H. Rockwell Jr., *Against the State: An Anarcho-Capitalist Manifesto*, Rockwell Communication, Auburn, AL, 2014, Kindle e-book, p. 12. To highlight the problematic nature of ethical double standard and state monopolistic violence, Huemer proposed the following allegorical tale: “You live in a small village with a crime problem. Vandals roam the village, stealing and destroying people’s property. No one seems to be doing anything about it. So one day, you and your family decide to put a stop to it. You take your guns and go looking for vandals. Periodically, you catch one, take him back to your house at gunpoint, and lock him in the basement [...] After operating in this way for a few weeks, you decide to make the rounds of the neighborhood, starting with your next door neighbor. As he answers the door, you ask, ‘Have you noticed the reduction in crime in the last few weeks?’ He nods. ‘Well, that is thanks to me.’ [...] I’m here because it’s time to collect your contribution to the crime prevention fund. Your bill for the month is \$100’.” Adding, with the gun in plain sight, that if he refused payment, you would consider him a criminal too and subject him to detention in your basement. Most people, Huemer concludes, would consider these actions outrageous. M. Huemer, *The Problem of Political Authority*, cit., p. 3.

⁵⁵⁶ The work that most thoroughly refuted theories and explanations of political obligations was A.J. Simmons, *Moral Principles and Political Obligation*, Princeton University Press, Princeton, NJ, 1979. On the demystification of the State see, in addition to Spooner’s writings reported in this paper, F. Oppenheimer, *Der Staat* (1907), Libertad, Berlin, 1990 (which contains the famous distinction between sustenance achieved through economic means – production, and political means – robbery, a mode pursued by the States); A.J. Nock, *Our Enemy, the State*, William Morrow & Company, New York, 1935. For Gerard Casey, it is surprising how high the agreement among scholars is on the violent origin of States and the close relationship between State and violence throughout history. He cites the studies of David Hume and, in the contemporary era, of Charles Tilly, Anthony de Jasey, Crispin Sartwell, Clarence S. Darrow, and James C. Scott. G. Casey, *Libertarian Anarchy*, pp. 16–7.

⁵⁵⁷ M.N. Rothbard, *For a New Liberty*, cit., p. 10, 49.

well as those that have passed away – have been [...] mere bands of robbers, who have associated for purposes of plunder, conquest, and the enslavement of their fellow men.”⁵⁵⁸

Once property rights are posited as antecedent – logically and temporally – to any government, individuals cannot renounce their right of “final decision”, *permanently* ceding the right to protect themselves and their property to another subject.⁵⁵⁹ The logical consequence of this analysis is that the universality of the non-aggression principle is preserved only if the sectors involved in the use of force are left, like the others, to free initiative and to the meeting between supply and demand on the market.⁵⁶⁰ It is *anarcho-capitalism*.⁵⁶¹ the State becomes extinct and any good or service is offered by private individuals (not hindered by any legal barriers to entry) and exchanged on a voluntary basis. Exponents of this strand are Murray Rothbard, Roy Childs Jr., David Friedman, Morris and Linda Tannehill, Walter Block, Randy Barnett, Anthony de Jasay, Bruce Benson, Hans-Hermann Hoppe, Stephan Kinsella, Pierre Lemieux, Thomas Di Lorenzo, Jan Narveson, John

⁵⁵⁸ L. Spooner, *Natural Law*, cit., p. 18.

⁵⁵⁹ M.N. Rothbard, *Anatomy of the State*, in “Rampart Journal”, Summer 1965, pp. 1–24; *Power and Market*, cit., Chapter 1. To logically weaken the thesis of the inevitability of the State, Rothbard proposed a parody of Hobbesian reasoning, replacing “the sovereign” with “the Jones family”. Let us start from a hypothetical “state of nature”. From that condition, characterized by the *bellum omnium contra omnes*, Hobbes, and with him most political philosophers, have prefigured a sequence that invariably leads to the public monopoly of violence. If the reasoning were conducted in the following manner, all its absurdity would be highlighted. If each individual is granted the right to self-defense, soon each will find himself at war with the others. Therefore, it is appropriate to surrender all our weapons and the power to enforce our rights (hence surrender the power to use force) to the Jones family. The immediate objection would be: but who will protect us from the Jones family? If man is evil (Hobbesian premise), he certainly does not transform himself into an angel when he becomes sovereign (State). Furthermore, the possibility of retaliation against the aggressor, which in the state of nature represents an element of deterrence, is excluded by the surrender of the monopoly to the Jones family, against whose aggressions there is no longer any mechanism of dissuasion. These natural objections, in the reasoning that leads to the constitution of the State, are ignored, and it is blindly accepted to devolve the use of force to an apparatus from which one cannot defend oneself. M.N. Rothbard, *The Ethics of Liberty*, cit., pp. 175–6.

⁵⁶⁰ Regarding the attempt by one strand of liberalism to justify a minimal State with social contract theory, Rothbard observed: if a society can make a “social contract” to agree to a single public police force or a public judicial system, then “why can’t society also agree to have a government build steel mills and have prices controls and whatever? At that point I realized that the *laissez-faire* position is terribly inconsistent, and I either had to go on to anarchism or become a statist. Of course for me there was only one choice there: that’s to go on to anarchism.” Unpublished interview with W. Block and W. Grinder, reproduced in J. Raimondo, *An Enemy of the State: The Life of Murray N. Rothbard*, Prometheus Books, Amherst, NY, 2000, p. 47.

⁵⁶¹ The term *anarchy* generally evokes the doctrines of the European collectivist and socialist anarchism of Godwin, Bakunin, Kropotkin and Netschajev, which emphasizes the social and collective dimension of human nature, egalitarianism, and hostility to private property and the existence of legal norms and sanctions (and such a mixture of individualism and collectivism is considered by Henri Arvon a *contradictio in adiecto*). And which generally embraces a social philosophy of secularized Christianity, calling for a total palingenesis that reconciles “without residue the good of the totality with that of each individual, thus eradicating at the root the antithesis between being and ought-to-be, utility and morality, pleasure and duty” (D. Settembrini, *Il labirinto rivoluzionario*, Rizzoli, Milan, 1979, vol. II, p. 9, my translation). The absence of the State and of the domination of any group of people over others, common to both visions, legitimizes the use of the term *anarchy*, but the notable distance, even philosophical, between the two perspectives has forced individualist anarchists, for whom anarchism is an extension of the priority of the individual, to modify or integrate their own denomination: hence *anarcho-capitalism* or *libertarian anarchism* (other expressions used are: *natural order*, *property anarchy*, *ordered anarchy*, *radical capitalism*, *society based on private law*). On the distance between the two types of anarchy, see also M.N. Rothbard, *Anarcho-Communism*, in “The Libertarian Forum”, vol. 2, no. 1, January 1, 1970. About the term *capitalism*, it is used by libertarians to refer to a pure market system, or pure *laissez-faire*, and not as that mercantilist admixture of big business, guilds, banks and the State apparatus that is contemporary real capitalism, which they call “crony capitalism”. Ricossa distinguished between *laissez-faire* and *liberismo* (an Italian-only term for economic classical liberalism), the first being a condition of total extinction of politics or of its complete extraneousness to the economic dimension and the second a context in which there is no lack of interaction between State and market (for example to manage externalities), although without invasiveness by the first on the second. In this volume, as has already been noted, the libertarian and Austrian nomenclature is followed and no distinction is made.

Hasnas, Lewellyn H. Rockwell Jr., Terry Anderson, Peter J. Hill, Patrick Tinsley, Larry Sechrest, Roderick T. Long, Jorg G. Hulsmann, Edward P. Stringham, Gary Chartier, Gerard Casey, Michael Huemer, Peter T. Leeson, John Sanders.⁵⁶²

In addition to the ethical problem mentioned above, supporters of anarchocapitalism also highlight its superiority in terms of efficiency.⁵⁶³ Not only does the State not coincide with society, but the subsistence and prosperity of society do not imply the necessity of the State. The absence of the State does not mean disorganization and disorder, because the principles of the division of labor and comparative advantage would continue to operate in society.⁵⁶⁴ The economic theory of the Austrian School on the impossibility of socialism is generalized and becomes a complete theory on the impossibility of statism: as in other economic sectors, also in that of protection the barrier to entry represented by the legal monopoly raises the price and reduces quality. Resources taken coercively, and not subjected to market risk, and the lack of competition do not induce the public apparatus to efficiency and effectiveness. Instead, market prices, through the mechanism of profits and losses, would allow the resolution of the problems of information and incentive that public management cannot resolve.⁵⁶⁵ Profits reward companies that best accommodate consumer preferences (and losses punish the worst), allowing the right size of service to be defined (quantities produced) and, thanks to competition, to achieve better quality, lower prices, and greater variety. Reversing the dominant theory, it is highlighted that the State is not only not a necessary entity; moreover: it is pernicious.⁵⁶⁶

⁵⁶² In the nineteenth century, forerunner of anarcho-capitalism was the Belgian economist Gustave de Molinari, and individualist anarchists were the Americans Lysander Spooner and Benjamin Tucker. The latter two shared socialist theories of interest, rent, and wages, but believed that *laissez-faire* was the solution, not the cause, of these ‘evils.’ In the early twentieth century, an important exponent of American anarchism was Albert Jay Nock. On anarcho-capitalism, see M. and L. Tannehill, *The Market for Liberty*, Lansing, MI, self-published, 1970; reprinted by Fox & Wilkes, San Francisco, CA, 1993; M.N. Rothbard, *Power and Market*, cit.; *For a New Liberty*, cit., Chapters 10, 11, 12; *Society Without a State*, in “The Libertarian Forum,” vol. 7, no. 1, January 1975, pp. 3–7; P. Lemieux, *L’anarcho-capitalisme*, Presses Universitaires de France, Paris, 1988; B. Benson, *The Enterprise of Law: Justice Without the State*, Pacific Research Institute for Public Policy, San Francisco, 1990; *To Serve and Protect: Privatization and Community in Criminal Justice*, New York University Press, New York, 1998; E.P. Stringham (ed.), *Anarchy and the Law: The Political Economy of Choice*, Transaction Publishers, New Brunswick, NJ, 2007; G. Casey, *Libertarian Anarchy*, cit.; G. Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society*, Cambridge University Press, New York, 2013; M. Huemer, *The Problem of Political Authority*, cit.; L.H. Rockwell Jr., *Against the State: An Anarcho-Capitalist Manifesto*, cit.; J. Hasnas, *The Obviousness of Anarchy*, in R.T. Long, T. Machan (eds.), *Anarchism/Minarchism: Is a Government Part of a Free Country?*, Ashgate, Aldershot, 2008, pp. 111–32.

⁵⁶³ As we saw in the previous chapter, utilitarian anarcho-libertarians, as in every consequentialism, arrive at the anarchist system exclusively on the basis of arguments of superior efficiency and well-being and not on the basis of the deontological argumentative sequence described above.

⁵⁶⁴ “Without government [...] does not mean without order or without social structure or even without social organization.” J. Tuccille, *Radical Libertarianism: A Right-Wing Alternative*, cit., p. 22.

⁵⁶⁵ See B. Benson, *The Enterprise of Law: Justice Without the State*, cit.; *To Serve and Protect: Privatization and Community in Criminal Justice*, cit.

⁵⁶⁶ “At the popular level, the State is thought to be necessary, since its existence (not necessary) is confused with the indispensable nature of many of the services and resources that it currently (badly) offers exclusively (almost always under the pretext of their public nature). Humans observe that currently roads, hospitals, schools, public order, etc., etc., are provided to a large extent (if not exclusively) by the State, and since they are very necessary, they conclude without further analysis that the State is also indispensable. They do not realize that the resources mentioned can be produced with much greater quality and in a more efficient, convenient way and in accordance with the changing and different needs of each person, through the spontaneous order of the market, entrepreneurial creativity and private property.” J. Huerta de Soto, *Liberalismo e anarcocapitalismo*, in “Nuova civiltà delle macchine”, XXIX, no. 1-2, 2011, p. 408 (my translation). According to E.P. Stringham, when a problem arises, rather than assuming that the solution is the State, one must first ask whether it has the ability, knowledge and incentives to solve it; in the examples given by the author all three elements are missing. E.P. Stringham, *Private Governance*, in J. Brennan, B. van der Vossen, D. Schmidtz (eds.), *The Routledge Handbook of Libertarianism*, cit., pp. 312–22. W. Block highlights the incentive mechanism that

Finally, anarcho-capitalists criticize the illusion of classical liberals and minarchists that they can limit the State, keeping it minimal. The history of the last century has clearly shown an irrepressible tendency to extend the sphere of public intervention. No State remains “limited” for long: if some individuals have a monopoly on force and can indiscriminately take resources from others to increase their own well-being and/or consensus, it is difficult for them to abstain from doing so. “The idea of a strictly limited constitutional State was a noble experiment that failed, even under the most favorable and propitious circumstances. If it failed then, why should a similar experiment fare any better now? No, it is the conservative laissez-fairist, the man who puts all the guns and all the decision-making power into the hands of the central government and *then* says, “Limit yourself”; it is *he* who is truly the impractical utopian.”⁵⁶⁷ Even the politician and the public official act in a self-interested manner, and therefore the monopoly, combined with the power of taxation, leads to an ever-increasing extension of the State dimension.⁵⁶⁸ And there are no institutional mechanisms that keep the State within certain limits; in fact, any control body is composed of subjects who also belong to the State machine.⁵⁶⁹

generates the superiority of private management: “If there is consumer dissatisfaction, and people don’t patronize the Post Office, will it go broke? No, government will just seize more taxes. If there is a rape on the public sidewalk, who in a position of authority, who is able to do something about this, loses money? Nobody. If there is a rape in a department store, that enterprise will be avoided by customers. Who do such enterprises hire to make sure there are no rapes? They hire private police to make sure that doesn’t happen. [...] But should this outrage occur in an area covered by the city police, the mayor isn’t going to be worried unduly. His salary isn’t dependent on public safety. Yes, he has to face the electorate, eventually, but this might occur in three or four years, and many, many other issues will be on the table at that time. The reaction of the market to failure is swift and deadly; in the public sector, uncertain, weak and postponed.” W. Block, *Libertarianism vs Objectivism; A Response to Peter Schwartz*, in “Reason Papers”, vol. 26, Spring 2000, pp. 47–8.

⁵⁶⁷ M.N. Rothbard, *For a New Liberty*, cit., p. 308.

⁵⁶⁸ On this theme, which will be taken up again in paragraph 11.5, the most penetrating and innovative analyses have been produced by the School of Public Choice and by its inspirers such as Anthony Downs: see A. Downs, *An Economic Theory of Democracy*, Harper, New York, 1957; J. Buchanan, G. Tullock, *The Calculus of Consent*, University of Michigan Press, Ann Arbor, MI, 1962; M. Olson, *The Logic of Collective Action*, Harvard University Press, Cambridge, MA, 1965. Buchanan however remains in favor of the State, even if minimal: “The libertarian anarchists who dream of markets without states are romantic fools who have read neither Hobbes nor history.” J. Buchanan, *What Should Economists Do?*, Liberty Press, Indianapolis, IN, 1979, p. 282.

⁵⁶⁹ Libertarian literature has attempted to analyze the factors that have historically rooted in people the belief in the indispensability of the State. Rothbard focused on the influence of intellectuals, who, employed and paid by the State, have produced ideologies aimed at legitimizing, if not sacralizing, the ruler. M.N. Rothbard, *Anatomy of the State*, cit., pp. 209–39. On indoctrination, on the role of theoretical legitimization of the State played by intellectuals and on the mimesis of religion operated by the modern State, to the point of imposing itself as a new secular divinity, see also C. Lottieri, *Credere nello Stato?*, Rubbettino, Soveria Mannelli (CZ), 2011. A liberal-conservative like M. Oakeshott has observed that contemporary States have supported their claim to authority with gaudy and implausible ideological junk that has little or no connection with the governments in question, such as “the sovereignty of the people” or of the “nation,” “democracy,” “majority rule,” “participation,” and so on. M. Oakeshott, *On Human Conduct*, Clarendon Press, Oxford, 1975, Part III, “On the Character of a Modern European State”. The philosopher Huemer has presented a review of psychological studies that explain the mechanisms of acceptance of the dogma of political obligation. Psychological experiments (S. Milgram, L. Festinger-J. Carlsmith, S.E. Asch, P. Zimbardo) demonstrate how uncritical obedience to authority, social conformism, a propensity for the *status quo*, and the underestimation of cognitive dissonance play a role in this regard. Another factor of subjection is represented by the so-called “political aesthetics,” the set of symbols (anthem, flag, uniforms, building architecture), rituals (oaths on the Bible) and language (technical and repulsive) that encourages respect and submission. Psychologically, power tends to be self-validating, regardless of who exercises it, the ways in which it is exercised, and its legitimacy, and this induces uncritical patterns of obedience. M. Huemer, *The Problem of Political Authority*, cit., Chapter 6. Support for the State is also often determined not by conviction (even induced by the above-mentioned artifices) but by apathy, deriving “from the resigned belief that the State is a permanent if unwelcome fixture of nature. Witness the motto: ‘Nothing is as permanent as death and taxes.’” M.N. Rothbard, *Power and Market*, cit., p. 20.

With regard to the *pars construens*, several anarchist authors have outlined alternative structures to the State monopoly,⁵⁷⁰ obviously in the four sectors which, representing the use of force, are those typically assigned to the State: law, justice, police, defense.⁵⁷¹

As far as law is concerned, it should first be clarified that libertarian anarchism, unlike collectivist anarchism, calls for a system of norms, because violence between individuals must be concretely prevented; it is unlikely that, even in a completely libertarian society – and even more so in other types of society – human beings will all become angels respectful of the bodies and property of others. The absolutely erroneous comparison between anarchist libertarianism and the absence of norms is the result of the supposed inseparability between law and State. But for libertarians of anarchist origin the two concepts are not coextensive and the State is not the necessary condition for the production of law.

The only legitimate institutions are those constituted on the basis of the free accession of individuals. Whether law is the product of a spontaneous order or is based on a rationally identifiable natural law or is utilitarian in character, on the structural level the solutions identified by libertarian theory are basically two: a single legal code in a given territorial space;⁵⁷² and a normative plurality in the same territorial space. The two solutions have in common the essential characteristic of the right of *exit* for each individual.

The hypothesis of regulatory pluralism, the most widespread among anarcho-libertarians today, involves the presence, in a given geographical area, of different normative sources with voluntary adherence. The authors who support this arrangement believe that the mythological idea of a *law of the land* should be abandoned. There is no need for a single set of norms that obliges everyone in a given geographical space. In a completely free society, all actions would be subject exclusively to

⁵⁷⁰ Although anarchist theorists have also pointed out that, when asked how an anarchist society would work, “we can’t give an answer that gives all the details of the institutions of anarcho-capitalism [...] Anarcho-capitalism means relying on the free market in everything; and we can’t specify in advance exactly how the free market will work” (L. H. Rockwell Jr., *Against the State: An Anarcho-Capitalist Manifesto*, cit., p. 165). To do so would be to fall into a dialectical trap, because by outlining the entire arrangement, one would be behaving like monopolists, legitimizing their constructivism. As John Hasnas observed about a free market in legal services, “[i]t is possible to describe what a free market in shoes would be like because we have one. [...] If human beings had the wisdom and knowledge-generating capacity to be able to describe how a [not yet existing] free market would work, that would be the strongest possible argument for central planning. [...] For an advocate of free market law to even accept this challenge would be to engage in self-defeating activity since the more successfully he or she could describe how the law (or shoe) market would function, the more he or she would prove that it could be run by state planners.” J. Hasnas, *The Myth of the Rule of Law*, in “Wisconsin Law Review”, n. 199, 1995, p. 226.

⁵⁷¹ These sectors can be broken down into a series of concrete services: production of rules, protection in the form of preventive surveillance, identification and capture of potential offenders, sentencing, imposition of sanctions, methods of serving the sentence, patrols.

⁵⁷² This is the solution supported and outlined by the first Rothbard. The contents of the law code would be limited to the definition of property rights, to the libertarian principle of non-aggression and to the drafting of maximum sanctions for each type of crime. But they would be imperative for everyone. Other procedural aspects instead can vary on the basis of the market choices of clients and courts. The principles of common law already existing can represent an excellent reference for the libertarian code. However, some of them should be amended because they conflict with libertarian criteria. Rothbard disagrees with a slavish interpretation of the Hayekian spontaneous order of human institutions, because he fears its conservative outcomes. The statist *status quo* could be legitimized as an unintended consequence of social evolution. Therefore, for the author it is inevitable, and desirable, that a part, even residual, of the libertarian legal code be written *ex novo* on the basis of criteria of reason. See M.N. Rothbard, *Society Without a State*, cit., p. 7. There is no unanimous consensus within the Austrian School on the theory of the unintentionality of social arrangements; the rationalist component of Mises and Rothbard believes that Hayek and the anti-rationalists exaggerate the weight of the unintended outcomes of human action.

contracts. The rules, including procedural ones, could be those proposed by protection agencies⁵⁷³ or by the owners of territorial units (workplaces, shops, residential structures).⁵⁷⁴ Individuals/customers would choose according to their preferred legal code. The incentive to include norms that prohibit aggression (murder, theft, etc.) would be very strong, because no one would want to frequent places where murder or robbery go unpunished. “And, because *all* contracts of this sort (except possibly in very eccentric areas frequented by people who liked to live dangerously) would contain such clauses, one could say that “murder is illegal” in the whole anarchist society, even though the evidentiary rules and penalties might differ from area to area.”⁵⁷⁵ Other factors would presumably also push towards a convergence of legal standards: the increase in scientific knowledge, both social and natural, on the dynamics of societies; the persuasion of scholars and jurists towards common models; the benefits of uniformity for conflict resolution and cost reduction; the economic pressure deriving from the ease of “exiting” from each legal regime, which could push towards the adoption of a tendentially anti-authoritarian *ius*; the costs deriving from the management of rules that provide for the use of force against non-aggressors; the spread of subjects specialized in drafting standardized contracts.⁵⁷⁶ Transaction costs, therefore, would be lower than what is generally believed by the dominant theory.⁵⁷⁷

As for the services related to the force – justice, police and defense –, in the schemes drawn by anarchist theorists they are often vertically integrated into protection agencies, which therefore confirm themselves as the privileged solution in substitution of the State monopoly.⁵⁷⁸ The

⁵⁷³ This is the scheme proposed by Hoppe: protection agencies are also providers of standards, which they apply in disputes. With arbitration by an independent third party in case of conflicts between clients belonging to agencies with different legal codes. H.-H. Hoppe, *The Problem of Social Order*, speech at the second Austrian School seminar organized by the Mises Institute Brasil in Porto Alegre, April 9, 2011; reprinted under the title *State or Private Law Society*, in Mises Daily, <https://mises.org/library/state-or-private-law-society>, May 9, 2011.

⁵⁷⁴ For solutions involving urbanized sections – apartment buildings, blocks, streets, neighborhoods, cities, metropolitan areas – see D.J. Boudreaux, R.G. Holcombe, *Government by Contract*, in “Public Finance Quarterly”, vol. 17, no. 3, July 1989; E. McKenzie, *Privatopia: Homeowner Associations and the Rise of Residential Private Government*, Yale University Press, New Haven, CT, 1994; G. Piombini, *La Città privata. Casi di federalismo radicale*, in “Federalismo & Società”, III, no. 2, 1996; S. Davies, *Laissez Faire Urban Planning*, in D. Beito, P. Gordon, A. Tabarrok (eds.), *The Voluntary City*, University of Michigan Press/The Independent Institute, Ann Arbor, MI, 2002; G. Brunetta, S. Moroni, *Libertà e istituzioni nella città volontaria*, Bruno Mondadori, Milan, 2008; T. Gabriel, *Free Private Cities: Making Governments Compete For You*, Free Cities Foundation, Liechtenstein, 2018, 3rd ed. 2023.

⁵⁷⁵ R.P. Murphy, *Chaos Theory*, Mises Institute, Auburn, AL, 2002, 2nd ed. 2010, p. 16.

⁵⁷⁶ G. Chartier, *op. cit.*, pp. 247–8.

⁵⁷⁷ A particularly refined elaboration of this pluralism of the legal system is contained in the aforementioned *The Structure of Liberty* by the American jurist Randy Barnett. He defines his libertarian anarchism, which removes the coercive monopoly in the use of force, as a “polycentric” structure. The term “polycentric” does not indicate a system with different decision-making centers, but an order in which each decision-making center is capable (and needs) to adapt to the decisions of the others; a spontaneous order, therefore, achieved through a decentralized process of mutual adaptations and not through a centralized command. In this polycentric order there is a multiplicity of legal systems, which exercise the judicial function (which in the context of common law is also normative production), and a multiplicity of law-enforcement agencies, i.e., police, which exercise executive power; of course respecting the two principles of *non-confiscation* (agencies must acquire their revenues following voluntary contracts with clients and not by forcibly withdrawing resources) and *competition* (agencies cannot forcibly exclude their competitors from the activity). These different subjects operate within certain constitutional constraints, which allow them to coexist and to regulate their mutual relationships.

⁵⁷⁸ A similar system was pioneeringly and boldly supported in the nineteenth century by the Belgian economist Gustave de Molinari: “The production of security, like any other, must be subjected to the law of free competition. [...] A single government, to constitute the unity of a people, is no more necessary than a single bank, a single educational institution, one worship, one grocery store.” G. de Molinari, *Les Soirées de la Rue Saint-Lazare: Entretiens sur les lois économiques et défense de la propriété* (1849), Liberty Fund, Indianapolis, IN, 2010, p. 212 (my translation). From which it follows “that no government should have the right to prevent another government from going into competition

misunderstanding, according to which it is believed that non-State protection is equivalent to chaos, derives from the erroneous hypothesis that *each individual* personally performs the protection service. But in the protection sector there would be a division of labor, as in all other sectors.

The judicial service would be offered by several private courts and magistrates in competition with each other. Each individual, on the basis of a voluntary choice, could purchase the dispute resolution and culprit identification services offered by a given private judicial company.⁵⁷⁹ If in a dispute between two people who are clients of two different agencies the verdicts diverged, the welding of *competition* and *reputation* would generate incentives for an efficient solution: the violent clash would cause a loss of prestige and clients, in addition to representing too high transaction costs, therefore their statute would presumably contain the commitment to respect the outcome of the appeal judged by a third-party arbitrator.

As regards public order, police services would be offered in a free and competitive market. Consumers would pay for the level of protection they would be willing to purchase. Contracts with protection agencies could be signed by individuals or by owners of real estate complexes (gated neighborhoods, districts, condominiums, commercial activities). As mentioned, the police service could be vertically integrated with private courts and/or prisons, in all-inclusive companies.⁵⁸⁰ According to the original intuition of Morris and Linda Tannehill,⁵⁸¹ insurance companies would be the main candidates for the role.⁵⁸² On the other hand, libertarians point out, jurisdictional or protection services offered by private individuals already exist: private police forces⁵⁸³ (vigilantes), bodyguards,⁵⁸⁴ armed escorts, detective agencies, civil justice (arbitration and transactions, for example the American Arbitration Association, or the London Commercial Court for disputes between parties resident in different countries),⁵⁸⁵ prisons. Plus, the anti-crime tools already used by private individuals, such as security cameras, burglar alarms, sophisticated locks, window bars, guard dogs, possession of weapons, safety deposit boxes, insurance, non-violent disincentives such as negative feedback for scammers on websites (e.g. eBay).

with it, or to require consumers of security to come exclusively to it for this commodity.” G. de Molinari, *The Production of Security* (1849), Mises Institute, Auburn, AL, 2009, p. 23. It should be remembered that in a libertarian system every individual would have the right to possess weapons, and therefore a first level of personal defense would be guaranteed.

⁵⁷⁹ M.N. Rothbard, *Power and Market*, cit., Chapter 1.

⁵⁸⁰ In such a system without a monopolist, if an attack occurs, no uninvolved third party has the obligation to intervene to defend the rights of the assailed, neither during the attack nor afterwards to bring justice (capture and punishment). Everyone has the responsibility to safeguard his rights, either personally or by turning to a protection agency; in any case using his own resources. If he does not do so, his possibly violated right will remain prejudiced, and there is no defect or gap in such a legal system. The victim cannot claim, in the name of ‘justice’, that others restore his violated right. Rights are universal, but their enforcement is the responsibility of each holder. By extension, there is no moral obligation for a State to intervene on the side of another State that has also been attacked. M.N. Rothbard, *America’s Two Just Wars: 1775 and 1861*, in J.V. Denson (ed.), *The Costs of War: America’s Pyrrhic Victories*, Transaction Publishers, New Brunswick, NJ, 1997.

⁵⁸¹ M. and L. Tannehill, *op. cit.*

⁵⁸² A detailed analysis of an insurance-based scheme is contained in H.-H. Hoppe, *The Private Production of Defense*, in “Journal of Libertarian Studies,” vol. 14, no. 1, Winter 1998.

⁵⁸³ In Detroit, the city with the highest crime rates in the United States, the private company Threat Management Center began operating in 1998, and its services have reduced violent crime by 90 percent in some neighborhoods. In South Carolina, private police officers are licensed by the state to make arrests and respond to telephone calls.

⁵⁸⁴ In the United States today the number of private police officers is clearly superior to that of public police officers, 1,000,000 against 700,000, a clear symptom of the inadequacy and inefficiency of the State police.

⁵⁸⁵ In the United States, approximately 75% of commercial disputes are resolved through private arbitration or mediation.

Even for a sector such as foreign defense, which cannot be conceived by common sense as anything other than a “State” activity,⁵⁸⁶ anarcholibertarians propose a privatistic solution. Extending Rothbard’s solution of protection agencies to defense, one could hypothesize an external defense agency, whose clients are all those who voluntarily contribute, after signing a contract. In particular, the preferred solution is an insurance contract (Morris and Linda Tannehill,⁵⁸⁷ Rothbard, B. Benson⁵⁸⁸ and the aforementioned Hoppe scheme)⁵⁸⁹. Even in this case, the *free rider* problem, overestimated by economists,⁵⁹⁰ would not have such an impact as to prevent the provision of the service. In such a structure, “it is not the average person, but rather the *insurance companies*, that would purchase defense services. [...] Because of economies of scale, coverage for large geographical regions would likely be handled through a few dominant firms, ensuring standardized pricing and a coordinated defense. [...] In economist jargon, the insurance agencies would internalize the positive externalities (among their customers) of defense spending.”⁵⁹¹

The amount and destination of the expenditure would be decided by the consumers themselves. According to the example proposed by Rothbard at the time of the Cold War, Americans who feared a Soviet attack and preferred Polaris submarines, would have signed up for financing to purchase such vehicles. Those who instead preferred an ABM system would have invested in such defensive missiles. Defensive systems would therefore be prepared in proportion to the number of individuals who support the different defense theories.

It should be added that the non-interventionist attitude of a libertarian society greatly reduces the need for military resources, which remain limited to purely defensive needs, minimum deterrence, and not burdened by “preventive” attacks or indiscriminate reprisals or “strategic” interference abroad.

Finally, it is also worth mentioning the solution proposed for sections of territory, such as roads (and similar infrastructures such as squares, sidewalks, ring roads, junctions, highways), which, although not representing an essential monopolistic element to qualify the State as services related to violence, are generally reserved for public domain. Roads, erroneously considered public goods by the dominant theory,⁵⁹² from the point of view of the ownership structure could be incorporated into a given territorial unit or be owned by private road companies (a more likely solution for

⁵⁸⁶ Economists have regarded national defense as the quintessential *public good*, with the two classic requirements of non-excludability and non-rivalry. See P.A. Samuelson, *Economics*, 10th ed., McGraw-Hill, New York, 1976, p. 159; J. Buchanan, M.R. Flowers, *The Public Finances: An Introductory Textbook*, 4th ed., Richard D. Irwin, Homewood, IL, 1975, p. 27; J.G. Head, C.S. Shoup, *Public Goods, Private Goods, and Ambiguous Goods*, in “Economic Journal,” 79, September 1969, p. 567.

⁵⁸⁷ M. and L. Tannehill, *op. cit.*

⁵⁸⁸ B. Benson, *The Enterprise of Law: Justice Without the State*, cit.

⁵⁸⁹ A more complex system, integrating private agencies with the armed population and a decentralized militia is advocated in R.T. Long, *Defending a Free Nation*, in “Formulations II”, 6, 1994.

⁵⁹⁰ An unavoidable element of human existence is that individuals live in a three-dimensional space on the surface of the Earth. A good produces external effects on a given physical space and not on another, and, within the physical space on which it has effects, it affects more in some areas and less in others. This means that even the goods that characterize military defense do not defend the entire territory in the same way, generating excludability and rivalry: a submarine that patrols the eastern Pacific Ocean protects California much more than Boston. And the citizens of Alaska and Hawaii can be excluded very easily from the defensive perimeter. On the other hand, defense must be divisible: if it were not, it, once prepared, would also defend the territory of neighboring countries or even the enemy; instead, it is possible to limit it to the chosen section of territory.

⁵⁹¹ R.P. Murphy, *op. cit.*, p. 46.

⁵⁹² Roads lack both of the requirements that theory defines for a good to be called *public*, namely non-excludability and non-rivalry. It is possible to exclude, selecting at will through barriers or tolls; and there is rivalry in consumption, since roads possess the characteristic of “congestibility”: traffic is a typical example.

highways and long-distance roads), with the collection of a toll in relation to the distance traveled, the size of the vehicle and the times of transit (with higher rates during rush hour). Short or neighborhood roads could be paid by homeowners for maintenance, improvement and surveillance services.

Each owner would have the right to set rules of behavior – speed, seatbelt use, blood alcohol level, etc. – for driving on his street or highway. The market outcomes cannot be predicted: initially some would impose strict rules, others lax, with varying degrees between the two extremes, but it would be the desires of consumers that would determine the success of the best set of rules, giving the greatest profits to the entrepreneurs who offer the best product at the lowest price.

Modern technology allows for the provision of appropriate solutions to the problem of applying and collecting the price for urban roads without compromising the smoothness of circulation: the Telepass, the Viacard, the American EZPass, GPS with charges on credit and debit cards and other types of cards allow automatic payments. Other solutions are represented by purchasing permits to be displayed on the vehicle; or by the installation of cameras at intersections to record license plates followed by the sending of an invoice with the amount. Financing through fares on the passage and parking meters is more efficient than financing through general taxation.

Private nature would solve the problem of traffic congestion. Space is a scarce resource, and the more it is, the higher the price to pay for passage.⁵⁹³

In this way, moreover, road construction would no longer be determined by the influence of pressure groups or the arbitrary decisions of politicians, but by the demand expressed by the market.⁵⁹⁴

The solutions described make it easier to understand the valorization that some libertarians have operated, in contrast to the dominant historiographical interpretation, of the polycentric feudal order of the medieval era.⁵⁹⁵ As well as the revaluation of the positions of the so-called “Antifederalists”, those writers who, in the debate on the American constitution drafted at the Philadelphia Convention of 1787, opposed the federalist (centralistically based) approach of Hamilton, Madison and Jay from a confederative or independentist point of view.⁵⁹⁶

⁵⁹³ The high number of accidents is also a consequence of the public structure. As Walter Block has observed, the responsibility for road fatalities is attributed to the most varied factors – speed, alcohol, tiredness, inattention, seat belts not worn, traffic, mechanical failures, obsolescence of the fleet – but never to the road operator, and to the circumstances dependent on it: the quality of the road surface, lighting, maintenance, the introduction of entry requirements. “This is akin to blaming a snafu in a restaurant on the fact that the oven went out, or the waiter fell on a slippery floor. [...] How can these factors be blamed, while the part of restaurant management is ignored?” W. Block, *Free Market Transportation: Denationalizing the Roads*, in “Journal of Libertarian Studies,” vol. 3, no. 2, Summer 1979, p. 211.

⁵⁹⁴ Historically, road networks were not created by the State. In the United Kingdom and the United States, until the early twentieth century, when public monopolization took over, long-distance roads, despite the theory of transaction costs, were privately managed: in the United Kingdom there were more than 1100 private companies that collected tolls on about 35000 kilometers of roads, one of the best road networks in the world; in the United States about 3000 private companies built and operated more than 48000 kilometers of roads. Today in the United States private roads exist in many communities, especially in St. Louis, Missouri. On the whole issue of the privatization of roads and highways see W. Block, *The Privatization of Roads & Highways*, cit.

⁵⁹⁵ Jean Baechler in *The Origins of Capitalism* (1971; Blackwell, Oxford, 1975) and later historians Nathan Rosenberg and L.E. Birdzell Jr in *How the West Grew Rich* (Basic Books, New York, 1986) argued that it was the extensive decentralization of the medieval era that enabled the European economic miracle.

⁵⁹⁶ They feared the reappearance of British tyrannical power in a new guise; in particular, the power of Congress to levy taxes and to raise and finance an army without any limit. The principal exponents were G. Mason, P. Henry, G. Clinton, E. Gerry, R. H. Lee, M. Smith, J. Taylor of Caroline. For a review of the theses of the Antifederalists see B. Bailyn, *The Ideological Origins of the American Revolution*, Belknap, Cambridge, MA, 1992 [1967], pp. 331–51; J.N. Rakove,

To rebut accusations of utopianism or lack of realism in the arrangements just described, libertarians cite the vast literature on historical examples of stateless societies: medieval polycentrism, Ireland from the 7th to the 17th century AD, Iceland between the 10th and 13th centuries, the Hanseatic League, the *Leges Marchiarum* produced from the 13th to the 16th century in the border areas between England and Scotland, the American West in the 19th century.⁵⁹⁷ They also reported more recent attempts to establish *enclaves* or small libertarian States in areas without State sovereignty such as international waters or *terrae nullius*; attempts often frustrated by the violent aggression of geographically closer States, as described in Chapter 13.

Original Meanings: Politics and Ideas in the Making of the Constitution, Vintage, New York, 1997, pp. 142–160; L.M. Bassani (ed.), *Gli antifederalisti. I nemici della centralizzazione in America*, IBL Libri, Turin, 2011.

⁵⁹⁷ Libertarians contest the liberal and communitarian thesis according to which political liberty was born and affirmed with the modern nation–state: medieval autonomies, the free republics of Flanders, the free Italian municipalities, the cities of the Hanseatic League are just some examples of the contexts in which bourgeois dynamism and independence were affirmed, with the connected structuring of the modern concept of liberty.

11. Libertarianism and Democracy

11.1 A procedural notion of democracy

If “liberalism and democracy [...] are not two lovers walking hand in hand [but] two boxers fighting in a ring,”⁵⁹⁸ libertarianism and democracy have even more conflictual relations. A theory, such as the libertarian one, which bases social and economic structures on the choices of individuals and on the interactions between them and their properties, cannot accept that those structures are decided collectively, subjecting liberty and property to the arbitrariness of occasional and variable majorities.

To fully understand the reasons for this irreconcilability, and at the same time clarify that in libertarianism anti-democratism does not imply, as in other doctrines, authoritarianism, it is appropriate to preliminarily illustrate the notion of democracy espoused by libertarians. Unlike the prevailing *substantive* conceptions, the libertarian one is *procedural* (in the strict sense). Among the numerous interpretations and typologies of democracy, a common core of a formal type can be identified, which, like an Occamian razor, allows us not to uselessly multiply conceptual entities and to recognize the democratic system as a single container, albeit a polyform one. Democracy is a method for making decisions relating to the allocation of resources, both material and human. The democratic principle presupposes that some of these decisions must be collective, and not individual⁵⁹⁹ (or the result of the free interaction of individual preferences). And since unanimity is difficult to achieve in collective decisions,⁶⁰⁰ a particularly “streamlined” procedural definition is the one that describes democracy as the system of collective decisions *by majority vote*⁶⁰¹ with an equal share of *de jure* political power for each person.^{602, 603}

⁵⁹⁸ A. Panebianco, *Persone e mondi*, Il Mulino, Bologna, 2018, p. 445 (my translation).

⁵⁹⁹ Many decisions involving the use of resources are taken at the individual level. In contemporary times, however, many decisions are also imposed collectively, even in sectors in which there are no problems of social “coordination” and externalities, that is, divisibility is technically possible and therefore a uniform result, the same for all, is not necessary. One criterion often evoked is the distinction between issues of public interest (when a collective benefit justifies the restriction of individual liberties that do not represent fundamental rights), to be decided collectively, and issues involving ethical dilemmas, to be left at the individual level. However, this principle of distinction is vague, not rigorous and does not offer certain operational criteria. For example, taxation (like almost all economic issues) is always and without discussion included among the issues to be submitted to collective majority decision; but a less superficial reflection on this institution – the coercive subtraction of income or wealth produced by an individual – reveals the existence of enormous ethical implications.

⁶⁰⁰ For some, even undesirable, because of the veto power it confers on individuals. In the times of the ancient Greeks, the majority principle was a practical expedient, which could be used on some occasions, but the reference principle, recognized as legitimizing, was that of unanimity. This was also the belief of medieval religious communities, although they are responsible for the development of majority voting rules and secret ballot. On the other hand, historically the rule of unanimity has not been rare: for example, it was implemented in the Polish parliament (Diet) from 1652 to 1791. It is only with Locke that a turning point is made and the right of the majority to prevail is recognized, and theoretically constructed (inserted in a constitutional system that disciplines and controls it).

⁶⁰¹ The fact that within this purely quantitative criterion the will of the *most*, rather than the *least*, should be supported may seem obvious, however throughout history the reasons that have justified this choice have been different. During the Middle Ages the idea that majorities revealed the will of God and the absolute truth was prevalent (R. Llull, N. Cusano). According to Condorcet instead the majority rule had established itself for a much more pragmatic reason, the safeguarding of peace and social stability: in fact, authority must be established where there is strength, and strength is on the side of whoever obtains the greatest number of votes. The decision may also be wrong, but, by satisfying the greatest number (which as such has greater strength), the possibilities of conflict are reduced. In any case, according to Condorcet’s *jury theorem*, the majority (of a jury, but the case can be extended to elections) is more likely to be right than wrong (it is more likely to be on the side of truth) and the probability that the majority is right increases with the number of people who are part of it. This theorem is linked to the epistemic theories of democracy (D. Estlund), according to which its value does not depend so much on procedural elements (e.g. equal weight for each) as on the fact that it is able to guarantee better choices than any other known method; it is the epistemic value, the quality of the

In order to evaluate democracy in the contemporary era, universal suffrage must also be included among the requirements of democracy. This requirement is no longer stringent if, in historical context, the term ‘democracy’ is used, as is done among scholars, also for systems with restricted suffrage, such as the Greek *poleis*⁶⁰⁴ or regimes even more temporally recent, such as male-only electorates still in force at the beginning of the twentieth century.

Essentially, this *broad* interpretation limits the requirements necessary to qualify a political regime as democratic. In the now obsolete form of direct democracy, there are two: the right to participate in decisions for all and decisions by majority. In the form of representative democracy that is prevalent today,⁶⁰⁵ to decisions by majority must be added the freedom to enter the competition and periodic elections.⁶⁰⁶

content of the decision, that is superior and it is this that counts in the judgment on democracy. Libertarians object that with this apodictic assertion an almost sacred meaning is attributed to the decision of the majority, an automatic stamp of absolute and objective truthfulness that empirical observation denies: majorities can be wrong, and by majority decisions can be taken that reduce the common good or increase it less. Norberto Bobbio, not suspected of heterodox positions on the subject of democracy, maintained that the principle of majority itself, as a rule of the preliminary game, a meta-rule, must be accepted unanimously. N. Bobbio, *La regola di maggioranza: limiti e aporie*, in “Fenomenologia e società”, IV, n. 13–14, 1981. He also stated that there is no coincidence between democracy and majority rule because in modern democracies there are also other ways of forming the collective will, such as, for example, the contractual method, through which independent subjects reach an agreement, even with enormous social implications, following a negotiation (e.g. unions and employers’ associations). It can be objected that the contractual moment is the space that a community *by its own choice* subtracts from the collective decision and leaves to private negotiation; that is, in the final instance the supremacy of the decisions/rules established through the collective procedure (by majority) prevails, which could restrict those negotiating spaces at will.

⁶⁰² The condition of parity, which can be summed up in the formula ‘one head, one vote’, can be considered a structural requirement of contemporary democracies. It symbolically aims to represent moral equality, the equal dignity of each person, stripped of any subjective requirement, which translates into equal political value. Equality concerns *de jure* power, because *de facto* power, the actual ability to affect decisions, varies according to certain subjective conditions, such as the exercise of top positions of command or a particularly prestigious status: presidents, members of parliament, lobbyists, influential celebrities, opinion makers. Bruno Leoni and Hoppe contest the theory of equal weight also *de jure*: the former, focusing on the ex post condition, following the vote, believes that, if the theory is intended as equal opportunity to affirm everyone’s opinion, it is false, because those who find themselves in the minority are not able to defend their own positions and interests on an equal basis with respect to those who are in the majority (B. Leoni, *Political Decisions and Majority Rule*, in “Il Politico”, 4, 1960); according to the latter, on the other hand, democracy does not achieve equality before the law because, since public law is placed at a higher level than private law and therefore the State can unilaterally impose any burden on private individuals at any time through legislation, the people who through the democratic mechanism assume the role of agents of the State find themselves in a condition of supremacy also on the legal level (H.-H. Hoppe, *Democracy: The God That Failed*, cit., Chapter 3). Systems with weighted or plural or multiple voting are possible, and have historically existed, in which different weights are assigned in relation to specific subjective conditions. John Stuart Mill defended a partially epistocratic regime, with multiple voting on a cultural basis, assigning more votes to the most educated. Regarding the active electorate, democratic theory states that anyone whose rights or interests are affected by a collective decision must be able to contribute to it, that is, must have the right to vote. However, there are situations in which this does not happen: in two types of decisions that have an impact on foreign residents, a war of aggression and protectionist measures, individuals whose interests are affected by the decision, the citizens of the attacked State and the producers of the State towards which trade barriers are introduced, are excluded from the choice (from voting).

⁶⁰³ The definition of democracy proposed here also allows us to define the system opposite to democracy, *autocracy*: which is the system in which decisions (rules) are produced without the possibility of participation of the subjects to whom they are addressed.

⁶⁰⁴ In fifth century B.C. Athens, slaves, metics, women and the very young were excluded, so in fact the right to participate in decision-making concerned only 10% of the population.

⁶⁰⁵ Representative democracy is typical of the modern nation-state, whose size, both demographic and territorial, makes it technically difficult for citizens, who should be consulted almost daily on various issues, to participate directly. Direct democracy, in fact, despite the theoretical revival attempted by Rousseau at the end of the eighteenth century, has historically concerned dimensionally limited realities: ancient city-states such as the Greek *poleis* from the fifth century B.C. to the end of the Hellenistic age, the Roman *respublica*, medieval Italian municipalities or eighteenth-century Basel. Furthermore, decisions are often the result of meetings, discussions, mediations, compromises, and this is possible only in a limited number of people. Epistemic reasons have also been put forward in support of representative

The value of the notion accepted here⁶⁰⁷ is the ability to incorporate a wide range of democratic forms, allowing the variety of axiological characteristics and contents to be catalogued, on a

democracy: the common citizen may not possess the time, intelligence, culture, information, competence, foresight, passion necessary to make (often complex) appropriate decisions. *Technocracy* has been defined as the modern tendency to entrust decisions to restricted groups due to the need to make decisions in matters that require increasingly specialized knowledge, not accessible to all. As we will see later in the chapter, for libertarians the mechanism of representation determines, contrary to the democratic–representative thesis, an *adverse selection*. On a theoretical level, the legitimacy of representative democracy occurs with E. Burke, the American constituents (the expression itself was used for the first time by A. Hamilton in 1777 in relation to the American constitution) and E.J. Sieyès, for whom the authorization of the rulers occurs through election (in Hobbes, however, the pact that authorizes the representative was a methodological fiction, a theoretical model). In the nineteenth century, supporters of representative democracy are B. Constant, A. de Tocqueville and John S. Mill. For H. Kelsen, one of the major theorists of modern democracy, the essential element of democracy is the *election*, the method of selecting rulers. It should be noted that electoralism has not been the only method conceived in history: for example, the American founding fathers believed that sortition (*lottocracy*, power distributed at random), experimented in ancient Greece (the 500 members of the *boulé* in Athens), in the Republic of Venice and in Florence, was a better method because it was more open, able to offer equal opportunities to all. The supporters of sortition (for example the philosophers Ben Saunders and Alex Guerrero) believe that it alone guarantees the requirement of equal distribution of power among all (everyone has the same probability of being drawn and all opinions have the same weight), and that the privilege assigned to the election contains a latent aristocratic prejudice, the belief in the substantial incompetence of the majority of the members of the *demos*. Another way of choosing representatives is by *appointment* (by other bodies): the Italian Senate and the Canadian Senate are partly or totally composed of appointed and not elected members. The mechanism of delegating decisions has also extended to the international level, where organizations or institutions such as the United Nations, the European Commission, the ECB, the World Bank, the NATO take decisions outside the traditional (national) democratic process. These supranational or international organizations could be considered as a second–level representation: the political elites of the States, elected by the citizens, in turn elect or appoint the members of these institutions. According to other scholars, these institutions are technocracies whose appointment or co-optation should not be considered an emanation of the democratic process, even if of second level or derivative. In recent years, a large literature has examined (often deprecated) the weakening of Nation–States following this shift of powers, sometimes overlapping and confusing this phenomenon with the “globalization”; which instead represents the breaking down of barriers to the free circulation of goods and capital, with the consequent expansion of multinational companies. The comparison derives from the fact that this second process would also expropriate (the democracies of) the Nation–States of quotas of sovereignty on relevant issues. In reality the two phenomena have profoundly different natures: the organizations listed above have a public nature, derive from agreements between States and often hold the coercive power transmitted by them; while the subjects that interact on international markets are private. On representative democracy see two classics: F. Guizot, *Histoire des origines du gouvernement représentatif en Europe* (1821–22), Société Typographique Belgique, Brussels, 1851; H.F. Pitkin, *The Concept of Representation*, University of California Press, Berkeley, CA, 1967.

⁶⁰⁶ However, many libertarians believe that the last election held before the abolition, if it respects the requirement of competition between different political forces, still represents a democratic response. This is, for example, the case of the German elections of November 1932 that allowed Hitler to become head of government, judged democratic even by historians. On a theoretical level, it is possible that the majority consciously decides to abolish the majority principle, that is, the democratic procedure (for example, by handing over all power to a dictator). If this is possible, democracy ends; for a school of thought this circumstance does not represent a contradiction because the choice was made on the basis of the democratic principle; the thesis that the majority principle has absolute validity and cannot be limited without falling into contradiction is supported in W. Kendall, *Prolegomena to any Future Work on Majority Rule*, in “The Journal of Politics”, XII, 1950, pp. 694–713. The opposite thesis, according to which a principle cannot accept its own negation, which implicitly means that there is another superior rule which prevents the decision to abolish the majority principle from being taken by a majority, is argued in H. McClosky, *The Fallacy of Absolute Majority Rule*, in “The Journal of Politics”, XI, no. 4, 1949, pp. 637–54.

⁶⁰⁷ Descriptive proceduralism is not exclusive to the libertarian approach. Authors such as J. Schumpeter, G. Sartori, A. Downs and currently A. Pintore also followed this approach. Norberto Bobbio’s theory of democracy has also been defined as procedural, but it is proceduralism in a broad sense and in this work it is included among the normative theories (see *infra*). Some *pure* proceduralists (T. Christiano, I. González-Ricoy) assign to the procedure a value that is not only descriptive but also foundational, legitimizing: since there is no independent moral standard with which to evaluate the results of decision–making institutions, and citizens disagree on what is just/unjust or beneficial/harmful, voting is the best device. In particular, Thomas Christiano has used the argument of equality to support the intrinsic justice of the democratic principle: since we are obliged to treat others as equals, we must respect democratic laws; by not doing so 1) we place our judgment above that of others, therefore we treat them as inferior and 2) we do not support the equal promotion of the interests of all, of which democracy is the presupposition. T. Christiano, *The Authority of Democracy*, in “Journal of Political Philosophy”, vol. 12, no. 3, 2004, pp. 266–90. For libertarian criticisms of the

semantic level, with successive refinements. It therefore includes democracies with rule of law and democracies without it; *high-quality democracies*, which protect pluralism, political rights, personal freedoms (especially freedom of expression, in particular a free press) and collective freedoms, with separation of powers, a system of “checks and balances”, the principle of legality, impartiality of the rules, due process and repetitiveness of elections; and *low-quality democracies* (or *electoral autocracies*), political regimes with illiberal traits, in which political rights are guaranteed but not (or little) civil liberties;⁶⁰⁸ or *rule-by-law authoritarian regimes*, when, in addition to human rights being violated, the opposition is not allowed fair competition; it includes *electoral democracies*,⁶⁰⁹ with or without *plebiscitarianism*; and, if so, in two different meanings: the call to the polls in non-competitive conditions (absence of an opposition, or opposition admitted but deprived of political resources such as, for example, access to the media); or the presence of charismatic leadership (with or without the existence of competitive equilibrium). Taking into account also the political cultures and the behavior of the electorates, it also incorporates the recently proposed tripartite division: *balanced democracies*, with a low degree of political polarization and high institutional accountability (the set of control mechanisms over the government exercised by a plurality of institutions – constitutional courts, mass media and so on); *irresponsible democracies*, with weak accountability and high political polarization; and *protest democracies*, with high polarization and a high “claims participation”, that is, with significant sectors of the electorate that vote for protest parties.⁶¹⁰ And so on, including other possible classifications and labels contained in the vast literature produced by political science.

The procedural conception is opposed to the normative theory of democracy, followed by authors belonging to the liberal democratic (R. Dahrendorf, N. Bobbio), democratic (R. Dahl) or republican (P. Pettit) schools of thought, according to which democracy, in order to function well, in addition to the active and passive electorate, needs some requirements (essentially those listed above to qualify *high quality democracies*), which therefore rise to the rank of characteristics of democracy itself (with the consequent label of *liberal democracy*). As a consequence of this, this school of thought, unlike the proceduralist conception, denies the title of democracy to all political regimes that, while following democratic procedures (universal suffrage elections, majority rule), do not respect the other requirements. The theory of “deliberative democracy” (J. Cohen, J. Habermas) also belongs to this conception, which, in addition to equal voting rights, requires that participants can present the reasons for their proposals and that the outcome of such proposals be decided by those reasons. Methodologically similar, although of a different nature, are the conceptions of democracy that identify it with “high social content democracy”. This is the case of socialist doctrines, which made the democratic procedure coincide with the overcoming of classes, private property and the market; or of the social democratic doctrine, which establishes the union

equation between quantity and truth, see *infra*. For now, we limit ourselves to pointing out that theorists of the ‘sacredness’ of the vote do not recognize the same legitimacy when it is requested on issues they disapprove of, such as referendums on the independence of a community from the State (Catalonia, Northern Ireland, Veneto). Or when the outcome is unwelcome, as has happened in the failure to implement the results of many referendums in the history of the Italian Republic.

⁶⁰⁸ F. Pasquali, *Transizioni politiche*, Egea, Milan, 2015.

⁶⁰⁹ A. Luhrmann, M. Tannenberg, S. Lindberg, *Regimes of the World: Opening New Avenues for the Comparative Study of Political Regimes*, in “Politics and Governance”, vol. 6, no. 1, 2018, pp. 60–77.

⁶¹⁰ For this last tripartite division see L. Morlino, *Equality, Freedom, and Democracy. Europe After the Great Recession*, Oxford University Press, Oxford, 2020.

between the democratic method and the welfare state (T.H. Marshall, L. Ferrajoli, A. Mastropaolo).⁶¹¹

In the concept of democracy, therefore, other political goods are included; or, in some theoretically less refined operations (probably due to the positive evaluative charge of the term), the concept is made to coincide *tout court* with one of these political goods. However, libertarians point out, “democracy” and “liberty”, as well as “democracy” and “equality”, “democracy” and “well-being”,⁶¹² “democracy” and “progress”, “democracy” and “peace”,⁶¹³ “democracy” and “fraternity”, remain distinct concepts, and it is not a given that one presupposes the other. The only foundation of democracy is the *will* (of the majority) of individuals, which is not conditioned by anything other than itself. Only in this very limited sense is it possible to trace a descriptive value to the etymon of the term, *sovereignty*, or *power* (*kràtos*), of the people (*demos*); for the rest, the mechanisms of contemporary representative democracies make that synthesis a very gross illustration of the nature of democracy. Schumpeter, inaugurating the study of democracy through the conceptual arsenal of economics, considered the democratic political process as “competition for command,” analogous to competition in the economic sphere. In his view, democracy, far from being the government of the people, is the competition for power between organized factions, vying to obtain the vote of the electors; in essence, it is primarily a mechanism for *selecting leadership*, not for representing the popular will. Even James Madison before him and later Karl Popper believed that the essence of democracy, and one of its merits, was not the sovereignty of the people but that it constituted the only system for ensuring changes in government (changes of elites in power) without bloodshed.⁶¹⁴ Rothbard radicalized the argument by stating that the *only* merit of democracy is that it is a peaceful and bloodless way for the will of the majority of the people to assert itself.⁶¹⁵

⁶¹¹ Norberto Bobbio defined *substantial democracy* as that which implements redistributive and “social” measures such as progressive taxation and inheritance taxation, compulsory education or social security assumed by the State.

⁶¹² Nondemocratic States such as Qatar and Hong Kong (the latter with extensive economic and personal freedoms) are much more prosperous than democratic States such as India, Pakistan or Congo; and today’s democratic countries such as Singapore, South Korea and Taiwan have achieved very high rates of economic growth even during periods when their political systems were not democratic. Well-being is closely related to the degree of economic freedom in a society rather than to the presence of democratic institutions. Democratic institutions are thought to foster economic freedom, but the history of the last century does not bear this out: many democracies exhibit high levels of government intervention, regulation, taxation and public spending, resulting in poor economic performance.

⁶¹³ Democracies have fought fewer wars of aggression than dictatorships, but they are not entirely free from them. Examples of democratic States (in the broad sense adopted here) that have initiated wars include: India against Pakistan in 1971, Serbia against Bosnia in 1992, the US-led coalition against Iraq in 2003, Russia against Georgia in 2008 and against Ukraine in 2022.

⁶¹⁴ Strictly speaking, this is not the only system; peaceful succession of power also characterizes monarchies governed by the rules of dynastic succession.

⁶¹⁵ In addition to the affirmation of the principle of self-government, the already examined equality of political power and the capacity for turnover, two other merits have been attributed to democracy: the accountability of the rulers before public opinion, thanks to the possibility of recall by election; and the public nature of decisions and discussions that precede them (the “power in public”), in antithesis to the hidden management of public affairs typical of other political regimes. On this second aspect, a very narrow path, which often becomes an insoluble dilemma for democracies, is the balance between transparency and security, which sometimes requires secrecy (intelligence services, State secrets). Generally, these merits are highlighted, with a predominantly historical gaze, in opposition to absolutist, autocratic, tyrannical, dictatorial or despotic regimes; as we will see later, they are not arguments that can be opposed to libertarians.

11.2 Democracy *versus* liberty

For libertarians, the central issue is the conflict between democratic principles and liberty. This may seem counterintuitive, because, as we have seen, it is a widespread practice, even in ordinary language,⁶¹⁶ to mix, if not overlap, the two concepts. Or at any rate, in the most sophisticated analyses, a strong interdependence.

This belief has historical and conceptual roots. On the historical level, the commitment to democracy was motivated by the desire to suppress arbitrary and absolutist power, considered a threat, concrete or potential, to the freedoms of civil society.⁶¹⁷ On the conceptual level, the notion of freedom as *self-determination* (or *autonomy* or *self-government*), that which, according to the interpretation of Madame de Staël and Benjamin Constant,⁶¹⁸ is typical of the ancients, and whose elaboration becomes the substance of classical republicanism⁶¹⁹ and democratic doctrine, is very influential.⁶²⁰ It is a concept of liberty that presupposes a collective dimension and collective, not individual, decisions on the allocations of resources (human and material). As we will see shortly, it is precisely this premise that is the primary source of conflict.

According to this “participatory” conception, liberty consists in the possibility of a given community to give itself laws (*auto-nomy*),⁶²¹ therefore not to obey any laws other than those imposed on itself. In this way one would become the architect of the course of one’s own existence,

⁶¹⁶ The epithet “antidemocratic” is frequently used against people who are carrying out actions that limit the freedom of others (when the correct term should therefore be “illiberal”). Strictly speaking, antidemocratic is someone who violates (prevents the operation of) a decision taken through the democratic procedure *ex post*, *not someone who violates tout court* one or more freedoms (a violation that could be a consequence of a decision taken through a democratic procedure).

⁶¹⁷ The historian F.W. Maitland has observed that this intent, leading to the affirmation of a majoritarian democracy, has in many respects contradicted that original inspiration. F.W. Maitland, *A Historical Sketch of Liberty and Equality* (1875), Liberty Fund, Indianapolis, IN, 2001.

⁶¹⁸ B. Constant, *The Liberty of the Ancients Compared with that of the Moderns* (1819), in *Political Writings*, Cambridge University Press, Cambridge, 1988. The author also expresses a value judgment, in favor of negative liberty and hostile to this type of liberty, which he defined as “positive”; manifesting aversion to Rousseau and Mably, who praised the latter.

⁶¹⁹ Even contemporary republicanism, at least in the “neo–Athenian” version of J. Pocock, which emphasizes political participation and the virtue that accompanies it. On the other hand, the “neo–Romans” (Q. Skinner, P. Pettit), who consider their own conception of liberty as *non–domination* distinct from liberty as self–determination (see *supra*, Chapter 4), refuse to be assimilated to this conception of liberty.

⁶²⁰ This is the kind of liberty that Isaiah Berlin contrasts with negative liberty in his *Two Concepts of Freedom*. He calls it “positive liberty”; but, as we have seen (Chapter 4), in the present work the expression is used to identify another conception of liberty, that which individuals enjoy if others provide means (resources) that are indispensable for the performance of certain actions.

⁶²¹ If a collective dimension were not presupposed and this criterion were applied at an individual level, it would mean that each individual gives laws to himself and does not obey any other laws than those given to himself. If the term “laws” is not intended in a figurative sense but rather in a juridical–political sense, such a condition at a social level would produce conflicts. Norberto Bobbio applied the concept to the individual dimension, interpreting this type of liberty, which he calls liberty as *autonomy*, as the situation in which a *conscious* will operates, in which the action is truly *desired* by the acting subject, not merely *not impeded*; it is the action of the non–conformist, non–passive person, who reasons with his own head (he proposes the following example: it is the person who establishes the itinerary of his own trip instead of passively accepting that of the travel agency). The same author, in addition to specifying that liberty as autonomy must presuppose liberty as non–impediment, however, recognizes a difficulty: the impossibility of establishing, apart from some extreme cases, when a will is self–determined and when instead it is heterodirected, partially or totally. N. Bobbio, *Della libertà dei moderni comparata a quella dei posteri*, in Id., *Politica e cultura*, Einaudi, Turin, 1955, pp. 160–94. Liberty as conscious, rational will, can however be assimilated to yet another conception of liberty, as an *interior dimension*. It is the liberty of the Stoics (the “liberty of the wise man”, he who exercises reason), of early Christianity (spiritual liberty, as non–submission to sin and to the world of the senses) and of Kant in the *Foundation of the Metaphysics of Morals* (acting autonomously, that is, on the basis of practical reason, formulated as a categorical imperative).

one would manifest a (common) will, which is free if it is not heterodirected. In this sense, liberty is the possibility of sharing command, through direct participation in the political process;⁶²² it is a political liberty. It is Rousseau's "obedience to the law": the individual is free only when he obeys the will of the social body (the "general will"), which he contributes to forming.⁶²³

As a consequence of this, it has been argued that this type of liberty can also be ascribed to individuals and not only to communities: since the individual has participated, directly or by designating representatives, in the process of producing the rules, he has thereby contributed to directing the choices of the community according to his own preferences.⁶²⁴ And if the rules (the choices) are in accordance with his will, then he, by obeying the rules, is as if he were obeying himself.⁶²⁵

Libertarians consider this logical sequence to be completely fallacious, a mystified illustration of the nature of the democratic procedure. In democracy (but in general in the political decision-making process), they point out, because of the indivisibility of collective decisions, each person chooses not only for himself, but also for all the others (and therefore it also happens that others choose for us).⁶²⁶ Decisions are not the expression of a presumed unanimous will: some (usually the majority, but this is not a given)⁶²⁷ impose them on others. The will of the individual belonging to the dissenting minority is not in favor of the decision taken. If a law assaults one or more individuals, it is irrelevant to libertarians whether that law is enacted by one or a million people. "As for the moral status of majority rule, it must be pointed out that it allows for A and B to band together to rip off C, C and A in turn joining to rip off B, and then B and C conspiring against A,

⁶²² In contemporary democracies, in which, as we have seen, the ideal of direct participation is difficult to achieve, it is participation in the choice of the rulers, therefore indirectly in the process of creating laws. This liberty of democratic imprint has also been defined as *populist* liberty (W.H. Riker, *Liberalism Against Populism*, W.H. Freeman, San Francisco, CA, 1982).

⁶²³ "Obedience to a law that we prescribe to ourselves is liberty." J.-J. Rousseau, *The Social Contract* (1762), in <https://freeparalegal.org/wp-content/uploads/2019/04/The-Social-Contract-Rousseau.pdf>, p. 11. Jacob L. Talmon has defined Rousseau's conception as "totalitarian democracy". J.L. Talmon, *The Origins of Totalitarian Democracy*, Secker & Warbur, London, 1952. A similar reversal of the concept of liberty is accomplished by Hegel (*Elements of the Philosophy of Right*, 1821), who sees the affirmation of true liberty in the apotheosis of the State, and in obedience to its will, represented by the law.

⁶²⁴ According to a variant of this conception (Hegel, T. Green, B. Bosanquet), the collective decision tends to realize the conscious, rational, informed wills and therefore the irrational, ignorant, blinded people, guided by the lowest passions, will be forced to follow the collective choice, which will in any case realize their good. In essence the final collective choice is the one that everyone would have made if they had been rational, aware etc.; therefore it is an exercise of "true" liberty, it is the action of the self-directed subject, who realizes his "true" nature, not a slave to nature and at the mercy of external events. The rather paradoxical conclusion of this argumentative *tour de force* is that the coerced person "wanted" that final choice, therefore he acted freely, even though he did not actually want it.

⁶²⁵ Norberto Bobbio has argued that, regarding the correspondence between the outcomes of collective choices and individual wills, there is not a conceptual difficulty, but only a political one, consisting in historically identifying and practically designing a collective will such that the decisions taken by it are to be accepted as the maximum and best expression of the will of each individual. Freedom as collective self-determination is a limit-ideal, not easy to achieve (if the objective is to respect the will of each individual) but conceptually not inconsistent. N. Bobbio, *Eguaglianza e libertà*, Einaudi, Turin, 1995. Authors belonging to classical liberal or libertarian schools of thought, such as the Public Choice, contest the assumption.

⁶²⁶ Jason Brennan argues that democracy empowers *groups*, not individuals. J. Brennan, *Against Democracy*, Princeton University Press, Princeton, NJ, 2016.

⁶²⁷ For example, in representative democracies, on some issues the decisions of (the majority of) representatives may not reproduce the preferences of the majority of the population but only of a minority; which in this case would impose the choices on the majority.

and so on. This is not justice but a moral outrage.”⁶²⁸ Benjamin Franklin famously quipped: “Democracy is two wolves and a lamb voting on what to have for lunch” (and, anticipating what would be a typical operative corollary of libertarian freedom, he concluded: “Liberty is a well-armed lamb contesting the outcome of the vote”). In the words of Lysander Spooner: “To say that majorities, as such, have a right to rule minorities, is equivalent to saying that minorities have, and ought to have, no rights, except such as majorities please to allow them.”⁶²⁹ And Hospers: “Democracy is essentially government by the majority, and a majority may be stupid, unenlightened, foolish, misled, and corrupt. If one person can make a mistake, fifty million can make the same mistake. If one person can be ignorant of the issues, so can fifty million of them. The laws passed in a democracy may even be worse on the whole than the decrees of an enlightened despot. [...] A majority may vote to prohibit everyone (not just themselves) from consuming alcoholic beverages. A majority may vote to ban black people from public places. A majority may vote to persecute a minority for its religion or its moral code or any other thing. A majority may even vote to send a minority to death camps and gas chambers.”⁶³⁰

Even not particularly extreme classical liberals like Berlin and Hayek have denied the necessary causation between the form of the political regime and negative liberty. According to Berlin “just as a democracy may, in fact, deprive the individual citizen of a great many liberties which he might have in some other form of society, so it is perfectly conceivable that a liberal-minded despot would allow his subjects a large measure of personal freedom. [...] The answer to the question ‘Who governs me?’ is logically distinct from the question ‘How far does government interfere with me?’”⁶³¹ Hayek has repeatedly stated that democracy is a means, not an end; the end remains individual liberty. An unlimited democracy is the worst form of government. “There has often been much more cultural and spiritual freedom under an autocratic rule than under some democracies.”⁶³²

Libertarians do not want every decision to be subject to public debate. If “every decision is subject to discussion, [...] if your entire life resembles a committee meeting, you are not free.”⁶³³ Strictly speaking, libertarians object, the guarantee of the coincidence between collective decision and individual autonomy is achieved only in *unanimous direct democracy*, in which each individual votes on every issue and decisions are taken unanimously. In this case, each citizen is effectively subject to laws that he himself has chosen. But, as we have seen, such a system is unfeasible. In contemporary representative democracies, such a coincidence is inexistent, because representatives are independent of their electors (prohibition of imperative mandate); some electors vote for

⁶²⁸ H.-H. Hoppe, *Democracy: The God That Failed*, cit., p. 104. The original essay *Down with Democracy*, included as Chapter 4 of the volume, first appeared in “Enterprise and Education. The Association of Private Enterprise Newsletter”, Summer 1995.

⁶²⁹ L. Spooner, *No Treason No. 1*, Boston, 1867, self-published text, p. 8.

⁶³⁰ J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 44. Brennan offers other examples of morally unacceptable democratic laws of the past: “In the United States, it was once illegal to send literature about contraception through the mail. The United States used to require Americans to turn in escaped slaves. Many parts of the United States used to criminalize sex between blacks and whites. [...] The United Kingdom chemically castrated mathematician Alan Turing for having sex with another man. These and many other laws are vile, libertarians say, and no person should obey them.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 60.

⁶³¹ I. Berlin, *Two Concepts of Liberty*, cit., p. 125.

⁶³² F.A. von Hayek, *The Road to Serfdom*, Routledge, London, 1944, ed. 2006, p. 73–74. In an interview with the Chilean newspaper “El Mercurio” on 12 April 1981 he said: “personally I prefer a liberal dictator to an illiberal democratic government.” In a letter to the “Times” on 3 August 1978 he had already scandalised the world Left by stating: “in much criticised Chile I have not been able to find a single person who did not agree that personal freedom was much greater under Pinochet than it was under Allende.”

⁶³³ J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 69.

candidates who are not elected; some electors have elected representatives who are part of the minority; it is possible that no candidate reflects the point of view of a voter, and so on. Only parliamentarians who vote for a certain measure can claim to be subject to rules they have given themselves. In any case, even the adoption of the Principle of Unanimity, suggested in the past by social theorists such as J. Calhoun, K. Wicksell and J. Buchanan, has some contraindications. Rothbard observed that, since it can be applied from a certain moment in time, ratifies and freezes the *status quo*, not allowing to modify even profoundly unjust situations – outcomes of aggressions – which may have occurred in the past. If even just one of the aggressors votes against the rectification, the victims will never be able to regain possession of their properties.⁶³⁴

It is not true, then, that through the vote and the consequent collective decision each individual has given *consent* to the decisions taken. Hospers writes: “What exactly is it to which we consented? Let us assume that the person consented to be taxed; since he consented, there is no aggression against him. But would he consent to be taxed unless *all the others* were also taxed? Isn’t he “consenting” for himself *and everyone else* to be taxed? And how can he consent on behalf of others? Can *I* consent for *you* to be beaten or robbed? [...] But then I would be “consenting” for all those others to be victims of aggression.”⁶³⁵

This expedient of implicit consent, thanks to which democratic theory supports the transformation of what is *a part* (majority and sometimes even minority) into the *totality*, that is, into “general will,” is a questionable and dangerous fiction, which on a logical level can lead to grotesque consequences. As Rothbard provocatively pointed out, “we would have to say, for example, that any Jews murdered by the democratically elected Nazi government were *not* murdered, but only ‘voluntarily committed suicide’”⁶³⁶; as German citizens and voters, they would have implicitly given consent to their own extermination.⁶³⁷

When someone says “there should be a law that requires you to do X” (and votes accordingly), they are really saying “I feel like threatening people with violence unless they do X.” It is questionable whether a person can delegate to others the right of dominion (through legislative power) over a third person.

Since, as we have seen, for libertarians property, and the freedom that is connected to it, are absolute, inviolable rights; and since in fact a large part of collective decisions affect existing *just* property arrangements, democratic logic is irreducibly antagonistic to liberty. “Murder is murder, theft is theft, whether undertaken by one man against another, or by a group, or even by the majority of people within a given territorial area.”⁶³⁸

To illustrate the inconsistencies of the democratic process, Hoppe proposes the following thought experiment: Imagine a world government, democratically elected on a global scale according to the principle of “one man, one vote.” The most likely outcome of such a vote would be a Chinese-Indian coalition government. Which, to please its voters and get reelected, would presumably carry out a systematic redistribution of income from the richer West to the poorer East.⁶³⁹

⁶³⁴ M.N. Rothbard, *The Ethics of Liberty*, cit., pp. 203–5.

⁶³⁵ J. Hospers, *What Libertarianism Is*, in T. Machan, D.B. Rasmussen (eds.), *Liberty for the Twenty-First Century*, cit., p. 15.

⁶³⁶ M.N. Rothbard, *The Ethics of Liberty*, cit., p. 164.

⁶³⁷ Or, to use Brennan’s example: “Imagine you vote against the war hawk because they’re a hawk, but they win anyway. When they start a war, you’d be partly the author of that war” J. Brennan, *Against Democracy*, cit., p. 89.

⁶³⁸ M.N. Rothbard, *The Ethics of Liberty*, cit., p. 164.

⁶³⁹ H.-H. Hoppe, *Democracy: The God That Failed*, cit., p. 95.

The main argument that political and legal theory has used to deduce the (implicit) consent of individuals towards decisions taken through a democratic procedure is participation in voting.⁶⁴⁰ Spooner has scaled down the sacred value, as well as the legitimizing power, of voting by stating that this often represents a form of self-defense, a choice of the “lesser of two evils”. If a person does not vote, he risks having his money stolen, being forced to provide services, seeing his rights compressed. By using the vote he can hope to reduce this tyranny of others towards him or even to reverse it, exercising a tyranny over others himself. This case, concludes Spooner, is analogous to that of a man forced to participate in a battle, where he must kill or be killed.⁶⁴¹

Furthermore, in the increasingly frequent cases in which the number of voters is less than 50%, the theory of voting as a legitimation of decisions (and of the State) is further weakened: in a democracy, it is not a given that silence is consent, there is no theoretical agreement on the qualification of abstention as non-dissent or non-consensus. As has already been noted with regard to the forcing of the *part* that becomes *the whole*, abstention from voting (and the equivalents represented by blank or spoiled ballot paper), as well as voting for the losing party or candidate,⁶⁴² cannot indicate approval for the actions of the elected parliament or government.⁶⁴³ Yet the rulers will still impose rules, regulations, restrictions and taxes even on non-participants in the game.

In conclusion, an action is not automatically *right* because it is *legal*, for the sole fact of having followed a procedure.⁶⁴⁴ For libertarians, “the quality of a state is determined not just by how its

⁶⁴⁰ The other three arguments, aimed at legitimizing membership in the State itself, as well as membership in the decisions taken by the democratic State, are the payment of taxes, the acceptance of State subsidies or services (generally benefits), and residence. The most widely accepted explanation of political obligation in the last four hundred years is the theory of the *social contract*. There would be a contractual relationship between the State and its citizens, by virtue of which the former provides certain services to the latter, who in exchange agree to pay taxes and obey the laws. In this theory, consent would be manifested in the fact that citizens have voluntarily accepted the two aforementioned obligations; therefore, there would be no unjust coercion. There are two versions of the theory: explicit or implicit contract. In the first, consent is manifested, either verbally or in written form. Since no one is ever called upon to sign such a contract (and even if the people who created the State in the past had initially signed it, it cannot bind subsequent generations), the prevailing version is the second, in which one’s agreement is manifested through behavior. Authors such as David Hume (*Of the Original Contract*, 1741), Adam Smith, Josiah Tucker (*A Treatise Concerning Civil Government*, 1781), Lysander Spooner (*The Constitution of No Authority. No Treason*, 1867–1870), Herbert Spencer (*The Man versus the State*, 1884) and Anthony de Jasay (*Against Politics*, 1997) have denounced the logical weakness of the theory of tacit consent. Of course, on a historical level, no State was formed through a contract: Mancur Olsen observes that political order, much more prosaically, emerges when nomadic bandits are replaced by settled bandits, who exercise a monopoly of force in the geographical area of settlement in order to extract resources from the residents, offering protection in exchange. M. Olsen, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, Basic Books, New York, 2000.

⁶⁴¹ L. Spooner, *The Constitution of No Authority. No Treason No. 6*, cit. Consensus is even less verifiable in countries where voting is compulsory, such as Australia or Bolivia. Opinion polls are unanimous in depicting the gap between the represented and the representatives.

⁶⁴² On the condition of the losing voter, Brennan wrote: suppose that a person votes for a political movement that supports the legalization of marijuana, and that in the elections this movement is defeated and is a minority, in the country and in parliament; consequently, the consumption of marijuana remains prohibited (or becomes illegal if it was previously legal): “you smoke marijuana [and] dissent from marijuana criminalization laws and believe it is deeply immoral to throw people in jail for possessing marijuana. The government will still throw you in jail for possession. This is unlike a consensual transaction, where saying “no” means no. For the government, your “no” means yes.” J. Brennan, *Against Democracy*, cit., pp. 80–81.

⁶⁴³ “And beside all this, a large percentage of the actual power of a mature democracy [...] is in the hands of tens of thousands of faceless appointed bureaucrats who are unresponsive to the will of any citizen without special pull.” M. and L. Tannehill, *op. cit.*, p. 35.

⁶⁴⁴ As the jurist F. D’Agostino observed, “no one plays only to respect the rules of the game. The game (living in society) has a meaning that cannot be deduced solely from its rules, just as the meaning of a speech cannot be made to emerge from a mere check of its syntactic and grammatical correctness.” F. D’Agostino, *Lezioni di teoria del diritto*, Giappichelli, Turin, 2006, p. 78 (my translation).

government is chosen, but by the content of the laws that the state passes.”⁶⁴⁵ A majority can violate the rights of minorities, or individual liberties, or in general moral principles considered inviolable.⁶⁴⁶ This can generate the Tocquevillian “tyranny of the majority”.⁶⁴⁷ And, as the philosopher Paul Woodruff wrote, “the tyranny of the majority kills freedom as dead as any other form of tyranny.”⁶⁴⁸

Libertarians, using their procedural notion of democracy, support theoretical reflections with historical references: the elections that brought Hitler and Juan Peron (the latter twice) to power or the contemporary realities of authoritarian and obscurantist countries such as Russia, Turkey, Iran or Pakistan represent only some of the numerous examples of democratic procedures that are strongly in conflict with liberties.⁶⁴⁹ And, as we have seen in chapters 6 and 7, even democracies that are traditionally more respectful of the rule of law restrict rights that libertarians consider inviolable.⁶⁵⁰ “Not only the emperor, but even the “democratic” state has no clothes.”⁶⁵¹

11.3 Political market and economic market

The dangers to liberty arise from the aforementioned indivisibility of collective choices: decisions taken through this procedure are inevitably of the “all-or-nothing,” monopolistic, one-size-fits-all type. And so they have a coercive imprint that individual choices do not. If 51% of the electorate wants public funding of political parties, the remaining 49% must also pay for it. In a system of individual decisions, on the other hand, if 51% of consumers want to buy cars of a given brand, they can do so without imposing the purchase on the remaining 49% (and furthermore, if they pay for them themselves, they cannot force the remaining 49% to bear the cost of their choice). Or, conversely, if a majority does not like certain goods, for example hashish or GMO foods, they can not buy them, leaving the minority who like them free to buy them. Instead, democratic majorities often prevent everyone from buying hashish and GMOs.⁶⁵² According to the analogy

⁶⁴⁵ R. Fumerton, *op. cit.*, p. 15.

⁶⁴⁶ In addition to the issues that imply ethical postulates, there is another sector that cannot be decided by the majority criterion, that which concerns scientific questions. Science is not democratic.

⁶⁴⁷ A. de Tocqueville, *Democracy in America* (1835), Liberty Fund, Indianapolis, IN, 2010. In his *On Liberty* (1859) John Stuart Mill uses the same expression: “in political speculations “the tyranny of the majority” is now generally included among the evils against which society requires to be on its guard.” J.S. Mill, *op. cit.*, pp. 8–9.

⁶⁴⁸ P. Woodruff, *First Democracy: The Challenge of an Ancient Idea*, Oxford University Press, New York, 2005, p. 12.

⁶⁴⁹ “In many Middle Eastern countries, the so-called Arab “Spring,” a Spring that included the occasional much-celebrated election, turned very quickly into a nightmarish winter. Democracy [...] certainly doesn’t guarantee the kind of liberty that most of us value so much.” R. Fumerton, *op. cit.*, *Preface*.

⁶⁵⁰ For example, the prevailing Italian legal doctrine defines property as a “right that is born weakened” (“diritto che nasce affievolito”), not recognizing it as a full subjective right; on the other hand, economic liberty and the right to property are not even mentioned in the *Fundamental Principles* of the constitution; their subordination to a “social” function actually places them in the rank of the weaker protected “legitimate interests”. Spain, generally included in the list of countries with solid liberal democratic credentials, in 2017 showed a ferocious repressive face towards the non-violent actions aimed at the independence of Catalonia (holding the referendum, declaration of independence by the Catalan parliament), arresting, indicting or forcing the political exponents who were protagonists of the initiative to flee abroad.

⁶⁵¹ M.N. Rothbard, *For a New Liberty*, *cit.*, p. 11.

⁶⁵² “I’ve made quite a few autonomous decisions in my life. I’ve made autonomous decisions over petty things: what to wear each day, what to eat, what color toothbrush to have, and what to watch on television. I’ve made autonomous decisions over important things: what to write about for my dissertation, where to go to college and graduate school, and which job offers I would accept. I’ve made autonomous decisions over momentous things: whom to marry, whether to have a child, and what to choose for a career. Suppose these choices had been subject to democratic decision making. We’d regard that as taking away my choice and giving it to the democratic body. [...] It’s not just that I have more autonomy when I make decisions alone as opposed to when a democratic assembly (of which I am a member) makes

proposed by Frank Karsten and Karel Beckman, democracy is like a bus full of people who must decide together where the driver will go. Even if the driver has no self-interest and listens carefully to what the passengers want, he can never satisfy all their wishes. He has only one bus and there are almost as many wishes as there are passengers.⁶⁵³ Collective choices are indivisible, while those made by individuals on the market are divisible. On the market, even the minority wins. And the power of choice of the individual is total, equal to 100%; while the power of the individual in the role of voter is infinitely lower, equal to the reciprocal of the number of voters.

Three other aspects affect the comparison between decisions taken through the electoral mechanism, i.e., the political market, and the economic market: information, incentives and error correction.

As for information, the acquisition of it in the political context has an expected cost that is significantly higher than the potential benefit. In order to vote wisely, the individual voter should spend time and energy to carefully study the programs of numerous different parties, relating to the most disparate issues, written in lengthy and often boring documents; examine the personalities of the various candidates, their position on individual issues, their proposed laws, the different nuances of their political and ideological sympathies; then analyze the data, know how to interpret them, make statistical inferences for each political issue. Such a task would occupy almost every moment of life and, considering the current extension of state activities in society, in any case it could never achieve the goal of exhaustive knowledge. We therefore realize that the cost of “voting well” is very high, and the choice not to inform oneself is a consequence (*rational ignorance* in the definition of the Public Choice Theory).⁶⁵⁴ On the contrary, the choice concerning the purchase of a single good or service has a much lower cost in terms of time and effort.

the decisions. Obviously I have more autonomy as an individual than as a voting member of a large group. It's that when a democratic assembly (of which I am a member) makes the decisions, I don't have much autonomy at all.” J. Brennan, *Against Democracy*, cit., p. 89.

⁶⁵³ F. Karsten, K. Beckman, *Beyond Democracy*, CreateSpace Independent Publishing Platform, 2012, p. 50.

⁶⁵⁴ Antonio Martino provocatively objected that, if a voter is not competent to decide on issues A, B, C etc., how can he be competent to decide whether Mr. X or Mr. Y is better on issues A, B, C etc.? In the latter case he must be competent on two things, *both* the issues *and* the people. Many political scientists believe that the epistemic load required in voting is reduced through the use of heuristics such as ideologies or the party system, in its filter and transmission belt functions. Voters, that is, use parties as a “cognitive shortcut”: even if they are not informed on the various issues that are the object of policies, by voting for a given party they express a generic orientation and so it is *as if* they were making conscious (preferred) decisions also on individual issues; decisions in fact taken by the representatives, who are more informed. Of opposite opinion Ilya Somin, Jason Brennan and Bryan Caplan, who argue that ignorance and irrationality lead voters to choose not the best representatives but those who share their erroneous beliefs. Numerous surveys in the world's major democracies reveal a profound ignorance of political issues and public affairs. As the jurist Ilya Somin reports in a wide-ranging presentation of the empirical literature on voter knowledge, for example, in 2014 in the United States only 38% of Americans knew which party controlled the House of Representatives and which the Senate. In his view, the best way to limit the damage caused by political ignorance is to implement a smaller State. I. Somin, *Democracy and Political Ignorance: Why Smaller Government Is Smarter*, Stanford University Press, Stanford, CA, 2013. Political scientist Philippe Converse has stated: “the two simplest truths I know about the distribution of political information in modern electorates are that the mean is low and the variance is high.” P. Converse, *Popular Representation and the Distribution of Information*, in J.A. Ferejohn, J.H. Kuklinski (eds.), *Information and Democratic Processes*, University of Illinois Press, Urbana, 1990, p. 372. Brennan has observed that “[w]hen it comes to politics, some people know a lot, most people know nothing, and many people know *less* than nothing.” J. Brennan, *Against Democracy*, cit., p. 24. Following this observation, he suggests being open to experimenting with other forms of governance, mainly *epistocracy*, which subordinates the right to vote to knowledge of the topics. In the United States, the scholar suggests, the questions on the ANES questionnaire could be used; or the citizenship exam, or a score of three or higher could be required on the Advanced Placement in economics and political science exams. To encourage citizens, especially the poorest, to take and pass the exam, monetary incentives could be introduced, for example a tax cut of one thousand dollars. *Ivi*, pp. 211–3.

As for incentives, those associated with individual economic choices are much higher than those associated with political choices, because the cost of error is higher in the former than in the latter: having to buy a good that costs one hundred dollars, a person has an incentive of one hundred dollars not to make a mistake – one hundred dollars is the cost of the mistake; superficiality and irrationality are punished.⁶⁵⁵ Instead, as Anthony Downs pointed out, it is statistically very unlikely that an election is decided by a single vote,⁶⁵⁶ and therefore the cost of a mistake is zero⁶⁵⁷ because any mistake (voting for the wrong party/candidate in relation to one's interests) does not alter the result. Again, the condition of ignorance in which each voter decides to remain is absolutely rational (just like not using one's time to go to the polls).⁶⁵⁸

Finally, the correction of mistakes in the economic market is a much more efficient process than in the political market, for two reasons. The first is temporal: in the economic market it is a continuous process, today accelerated by the enormous diffusion of information and contacts generated by information technology; while in the political market decisions are taken at intervals of years, at election time (and even the resulting decisions, those of politics *during* each interval, following obsolete procedures and negotiations, are much slower than individual decisions). The second reason concerns the ease of evaluating the existence of the mistake, very easy for the consumer (it is easy to understand *ex post* whether one is satisfied or disappointed by a purchased good) or for the producer (thanks to the profit or loss test) and much less for the voter, since the political market is characterized by a low degree of transparency and by very strong information asymmetries between representatives and voters, for various reasons: it is very expensive to search for information on how each representative voted on each bill during his mandate or on the behavior of each minister (or councilor); the causal chain of the consequences of political measures is much

⁶⁵⁵ The expression 'individual economic choices' should be understood in a broad sense: it includes any choice of action that has consequences on one's well-being, even if it is not strictly economic (purchasing or selling a good, a service or a security): for example, the action of finding out about traffic on the roads before undertaking a journey by car can be included in this category; the cost can be calculated as an opportunity cost.

⁶⁵⁶ For the U.S. presidential elections, Huemer estimated this probability to be one in ten million. In fact, the elections have always depended on no more than ten million votes, that is, the differentials between the two candidates have been ten million or less. By assigning the same probability to each possible total of votes within this range (10,000,000, 9,999,999, 9,999,998, etc. down to 0), the possibility that the totals differ by zero (that is, that the election ends in a tie) is precisely one in ten million. M. Huemer, *The Problem of Political Authority*, cit., p. 310.

⁶⁵⁷ More rigorously, Downs states that the cost of a possible mistake will not be equal to the differential between the parties. In the case of a two-party contest, the "differential between the parties" is given by the comparison between the hypotheses "what happens to me if Party A wins" and "what happens to me if Party B wins", and then by the calculation of the difference between the two expected utility incomes (in the case of the victory of one party or the victory of the other). A. Downs, *An Economic Theory of Democracy*, cit., p. 40.

⁶⁵⁸ "When it comes to informing themselves and reasoning, voters (and often those elected) are a disaster: since their vote is irrelevant, they have no incentive to do so. Why invest hours, days, months in studying economics if the electoral result does not change? [...] This leads to rational irrationality: in politics it becomes rational to follow one's cognitive biases, to choose based on conformism or psychological benefits (the illusion of representing Good, fighting Evil, understanding the Whole), without caring whether what one professes is true or false. One does not vote to solve problems, nor does one make the slightest effort to understand them: one votes to express a state of mind, a prejudice, an aspiration, a hope. Sometimes one votes to express whims. [...] Those who prepare for an exam know that they will fail if they do not study, but those who vote know that being informed is irrelevant." P. Monsurrò, *Potere senza responsabilità*, Infoedizioni, Milan, 2020, Kindle e-book, Part III, Chapter 2 (my translation). In psychology there is a broad consensus that in politics cognitive bias, a pattern of systematic deviation from rational thought (information is processed in a biased, prejudiced manner, not modifying, but rather reinforcing, one's pre-existing beliefs even if they are erroneous), is more widespread than in other disciplines or sectors of social life. Just as the "availability bias", according to which we overestimate the frequency of some phenomena only because they come to mind more easily as a consequence of images that appear more vividly (for example, a terrorist attack on TV), while less impressive images (for example, deaths from flu) seem uncommon to us. This mistake conditions and distorts the use of resources, excessively allocated to the resolution of less important problems.

longer and more complex, therefore not easily decipherable by the average voter; rulers through dialectical or oratorical skill can mask or attenuate their responsibilities for the failures experienced.⁶⁵⁹

A further effect of imposing a single solution on everyone is the increase, and not the desired reduction, of conflicts. Personal or social conflicts are elevated to collective problems and, since only one option wins, for the defeated it means losing everything and hostility inevitably increases. F. Karsten and K. Beckman write: “[Nowadays], it is decided “democratically” what children must be taught in school, how much money is spent on elderly care, how much on third-world aid, whether smoking in bars is allowed, which TV stations are subsidized, which medical treatments are covered by Medicaid, how high rents should be, whether women are allowed to wear headscarves, which drugs people are allowed to take, and so on. All these decisions create conflicts and tensions. These conflicts can easily be avoided. Let people make their own choices and take responsibility for the consequences. Suppose we decided democratically how much and what kind of bread is baked every day? This would lead to endless lobbying, campaigning, wrangling, meetings, and protests. The supporters of white bread would come to regard the proponents of whole-wheat bread as their political enemies. If the whole-wheaters get the majority, all bread subsidies will go to whole wheat and white bread might even be prohibited.”⁶⁶⁰

On the whole issue Ayn Rand comments as follows: “wealth, in a free market, is conquered by a free, general and “democratic” vote – by the sales and the purchases of every individual who takes part in the economic life of the country. Whenever you buy one product rather than another, you are voting for the success of some manufacturer. And, in this type of voting, every man votes only on matters which he is qualified to judge: on his own preferences, interests and needs. No one has the power to decide for others or to substitute *his* judgment for theirs; no one has the power to appoint himself “the voice of the public” and to leave the public voiceless and disfranchised.”⁶⁶¹

11.4 Representation

Libertarian theory also highlights another problematic issue: the question of representation.

A first aspect has to do with the quality of the representatives. We have seen that one of the reasons given in support of representative democracy is the poor competence of the average citizen, guaranteed instead by the elite selected through elective mechanisms. For libertarians, on the contrary, in the sector of political decisions the so-called “adverse selection” operates: open political competition favors political talents characterized by demagoguery, insincerity, opportunism, while those who are inclined to acquire wealth through personal effort tend to disregard political dimension or abstain from it. This idea is expressed in the most radical form by

⁶⁵⁹ The two American political scientists Christopher H. Achen and Larry M. Bartels, on the basis of a huge amount of studies and data from the last half century regarding Western countries, have judged the *retrospective voting theory*, according to which voters have the ability to evaluate governments on the basis of past performances, rewarding or punishing them on the basis of a more or less satisfactory work, to be unrealistic. Instead, they have demonstrated that the majority of citizens have little interest in political events, dedicate an extemporaneous and superficial attention to public issues and do not even vaguely know the main details of the most relevant debates. C.H. Achen, L.M. Bartels, *Democracy for Realists. Why Elections Do Not Produce Responsive Government*, Princeton University Press, Princeton, NJ, 2017.

⁶⁶⁰ F. Karsten, K. Beckman, *op. cit.*, pp. 49–50. A similar position is expressed by the philosophers David Schmidtz and Christopher Freiman, cf. especially *Nozick*, in D. Estlund (ed.), *Oxford Handbook of Political Philosophy*, Oxford University Press, New York, 2012, pp. 411–28.

⁶⁶¹ A. Rand, *Capitalism: The Unknown Ideal*, cit., p. 46.

Hoppe: “Subject to mass elections, those members of society with little or no moral inhibition against taking another man’s property, habitual amoralists who are most talented in assembling majorities from a multitude of morally uninhibited and mutually incompatible popular demands, efficient demagogues, will tend to gain entrance in and rise to the top of government. [...] [T]he selection of government rulers by means of popular elections makes it practically impossible that any good or harmless person could ever rise to the top. Prime ministers and presidents are selected for their proven efficiency as morally uninhibited demagogues. Thus, democracy virtually assures that *only* bad and dangerous men will ever rise to the top of government.”⁶⁶²

This “corruption” also occurs on the side of the voter: against the belief of John S. Mill, it has been observed (J. Schumpeter, J. Brennan) that the (possibility of) participation, far from making people better intellectually and morally, on the contrary corrupts, stupefies and creates enmity and hatred in the public arena. According to Schumpeter, when the typical citizen enters the political field, he “drops down to a lower level of mental performance. He argues and analyzes in a way that he would readily recognize as infantile within the sphere of his real interests. He becomes a primitive again. His thinking becomes associative and affective.”⁶⁶³

The second aspect involves the existence of popular sovereignty. Representative democracy accepts the legal fiction according to which the popular will is transmitted to the representative, or the representative is authorized to express it. The congressmen act in the name of the people. According to the prevailing liberal democratic approach, in representation there is a split between entitlement and exercise of power: the people are holders of power, the representatives exercise it. There would therefore be no alteration of sovereignty. According to an alternative view (Kelsen), however, the mechanism of representation necessarily involves the transfer of sovereignty from the people to the representatives, who are therefore also the exclusive owners of power, mainly through the power to draft and approve laws. According to this view, compared to direct democracy there is a mutation of the very nature of democracy, and the distinction between title and exercise is considered only a semantic expedient that cannot mask the fact that sovereignty is ceded to a restricted group.⁶⁶⁴ A heavy oligarchic imprint shapes democracies.

For libertarians, the attempt, made by public law and political science, to describe the legal relationship between voter and elected in the same terms as the institution of private law representation is, to use Kelsen’s words, a “gross fiction”. The differences between public representation (in the democratic mechanism) and the civil law representation contract are profound.⁶⁶⁵ First of all, during the election procedure, the representatives cannot confer the mandate to a person chosen by them from among all the members of the community; they can only choose a list (if preferences are not allowed) or one or more names⁶⁶⁶ within a list or vote for the

⁶⁶² H.-H. Hoppe, *Democracy: The God That Failed*, cit., pp. 87–8. Regardless of adverse selection, Karsten and Beckman question one of the reasons that justify representative democracy, the greater competence and superior ethics of those elected (see *above*): why should elected politicians be so much more intelligent than those who voted for them? Do they perhaps have exclusive access to a mysterious source of knowledge hidden from the people? Or do they boast a higher moral code than the average citizen? Unfortunately, there is no evidence of this. F. Karsten, K. Beckman, *op. cit.*, Part I, Chapter 2.

⁶⁶³ J. Schumpeter, *Capitalism, Socialism and Democracy*, Routledge, New York, 2003, p. 262; or. ed. Harper & Brothers, New York, 1942.

⁶⁶⁴ H. Kelsen, *The Essence and Value of Democracy* (1929), Rowman & Littlefield, Lanham, MD, 2013. English legal culture speaks of *parliamentary sovereignty*, not of *people sovereignty*.

⁶⁶⁵ So much so that in other languages, such as German, there are two different words, *Vertretung* to indicate representation in the private sense, and *Repräsentation* to indicate public representation.

⁶⁶⁶ And even then it is rare for the represented to know the representative.

representative chosen by the preferred political force (for example in single-member constituencies).⁶⁶⁷ Secondly, the representatives do not have a specific mandate relating to a single act, but offer an indivisible package of political proposals; on the other hand, the fact that a political representative is the agent of a multitude of people makes this option *de facto* impossible, because it is presumable that the interests of the numerous represented diverge.⁶⁶⁸ Third, following the criterion of independence (E. Burke) and the consequent prohibition of imperative mandate, the representative in fact receives a blank power of attorney, is not obliged to carry out the acts for which he has committed himself,⁶⁶⁹ and the represented cannot revoke his assignment (recall). The representative's responsibility ceases. But, as Spooner pointed out, no one would be so foolish as to sign a contract by which one attributes to one's agent an arbitrary and uncontrollable power over one's life, liberty and property without having the possibility of revoking the power of attorney.⁶⁷⁰ Another difference is that the represented, i.e., the voters, are not responsible for the representative's acts, as instead happens in the institution of private representation. Finally, the proxy (the vote) is secret, and not open and visible as a power of attorney is; the representative cannot provide legal proof capable of indicating who the individuals are who have entrusted him with the mandate.

11.5 Democracy and statism

Another aspect of the collective choice procedure that libertarians consider harmful is the multiplication of the issues subjected to it and the expansion of State intervention. The representative body, which in past eras represented the instrument of limitation of the sovereign's power, today is also a legislative body, and therefore there is no brake on the inflation of norms, as well as on the increase of public spending, tax burden, public debt and all the other indicators of interventionism.⁶⁷¹

⁶⁶⁷ Ortega y Gasset wrote that election is not a choice but rather the *approval* of a choice, that is, a secondary choice; it is the voter's adherence to the decision made by one minority or another (the competing parties). J. Ortega y Gasset, *The Revolt of the Masses* (1930), Allen & Unwin, London, 1932.

⁶⁶⁸ The issues that concern the coexistence of a community are many, individuals have different opinions and above all non-homogeneous for blocks of majorities: an individual can be part of a majority on one issue and a different majority or a minority on another issue. In any community, therefore, there is no *a majority*, but a number of majorities that, even for a small community, is monstrously large: in mathematical terms, for a group of n odd elements, the number of majorities (excluding unanimity) *on each single issue* is equal to $2^{n-1} - 1$. The condition of a plurality of people choosing between a plurality of alternatives is also the subject of the so-called Condorcet paradox, according to which it is not possible to say which choice is preferred by the majority because it is not possible to elaborate an ordinal scale of expressed preferences for the community, since the principle of transitivity between the different preferences is missing. The economist Kenneth Arrow developed this paradox in 1951 to illustrate the impossibility of aggregating individual utility functions into a social utility function when there are more than two alternatives to choose from; his impossibility theorem, showing that the concepts of democracy, rationality and decision-making capacity are mutually incompatible, that is, that the voting mechanism as such cannot express a coherent popular will, shook the foundations of the democratic edifice. K. Arrow, *Social Choice and Individual Values*, John Wiley and Sons, New York, 1951.

⁶⁶⁹ This type of political representation, typical of modern parliamentarism, is defined as "fiduciary representation", distinct from "mandate representation", which binds the representative to the instructions of those represented.

⁶⁷⁰ L. Spooner, *The Constitution of No Authority. No Treason No. 6*, cit. That politicians sometimes make decisions contrary to the preferences of the majority of the population is demonstrated by the results of referendums and opinion polls. Further confirmation that 'government by the people' is a myth.

⁶⁷¹ The statistics on this subject are overwhelming: in the last century in all democratic countries public spending and taxes in absolute terms have increased at a sustained pace; and, except for some rare temporary reductions, they have maintained an increasing trend also in percentage terms with respect to GDP. In the United States in 1913 public spending with respect to GDP was equal to 7.5%, in 2009 to 42.2%; in Great Britain the two values were 12.7% and 47.2% (source: *Economist*, 17-3-2011). As regards the tax burden, in the United States it rose from 7% (1913) to 24.3% (1965) to 27.6% (1995) settling at 26% in 2016; in Italy in 1961 the tax burden was just above 20% of GDP, in 2012 it was equal to 45.2%; public debt was 32.6% of GDP, in 2016 it was 132%.

This outcome can be understood by referring to the teachings of the theorists of Public Choice: contrary to the traditional narrative that contrasts the selfish private individual with the noble, disinterested politician/public administrator devoted only to the general interest, the latter is also oriented by personal interest,⁶⁷² no more and no less than the former. A self-interested motivation is the desire to increase electoral consensus. A circumstance that pushes politicians to multiply *ad hoc* measures for particular categories and interest groups. The increase in spending prevails over the reduction of taxes and the proliferation of rules over streamlining, due to two main factors. The first is represented by the introduction, especially during the twentieth century, of universal suffrage, which, by extending the right to vote to the lower income classes, with the relative parliamentary representation, has multiplied the welfare and redistributive measures and therefore the fiscal pressure necessary to finance them. In any society, the majority of people belong to middle-low income classes. Being the majority, in democratic systems it manages to redistribute wealth in its favor.⁶⁷³

The second phenomenon, illustrated by authors such as Mancur Olson and Anthony Downs,⁶⁷⁴ is the one that can be summed up in the law of “concentrated benefits and dispersed costs”. The categories that have their own specific interest and much to gain from particular legislative measures (customs duties, subsidies, minimum tariffs, tax exemptions, patronage hiring and salary increases in the public sector, public works, privileges in public procurement, monopoly concessions, barriers to entry in their sector) organize themselves and conduct pressure on legislators. The monetary advantages (future earnings) exceed the cost of mobilization;⁶⁷⁵ since the number of members of the group is not high, in fact, organizing is relatively simple (low transaction costs). The ordinary citizen, on the other hand, despite being economically damaged by such measures,⁶⁷⁶ does not organize to oppose them with the same stubbornness with which lobbyists support them. This happens for two reasons. First, if one is informed of the measure, because the cost of organizing against it exceeds the benefits that would derive from its abolition. For example, the fraction of an individual’s tax destined to subsidize agriculture is so small that the taxpayer does not notice it, or, if he does notice it, does not consider it worth spending resources, greater than the

⁶⁷² In addition to suffering from ignorance (lack of information), cognitive biases and prejudices.

⁶⁷³ In the United States, 53.7% of income taxes are paid by taxpayers with an income above 200,000 dollars; 82% by those with incomes above 100,000 dollars, who represent 19% of the population (2005 data). In Italy, 59% of Irpef is paid by taxpayers with incomes above 35,000 euros, who represent 13% of the total (2021 data). Gianfranco Miglio supported a weakening of political rights for those who are full beneficiaries of public transfers (and do not work): “it is difficult to argue that those who enjoy privileges produced by the normative acts of the “welfare state” have an unlimited right to vote; and this is both for a moral reason, and because it is unacceptable that someone decides for themselves with other people’s money. I consider it unacceptable, according to a criterion of justice and equality (under the rule of law), that those who will have to receive what has been taken, decide how much to take from the pockets of their fellow citizens. [...] Those who pay more taxes have a greater right than others to determine the destination of public spending.” G. Miglio, A. Barbera, *Federalismo e secessione*, Mondadori, Milan, 1997, pp. 70–71 (my translation).

⁶⁷⁴ M. Olson, *The Logic of Collective Action*, cit; A. Downs, *The Economic Theory of Democracy*, cit. Olson’s analysis is already internal to the theory of Public Choice, whose fundamental contribution is the already cited *The Calculus of Consent* (1962) by J. Buchanan and G. Tullock.

⁶⁷⁵ In the United States, farm subsidies amount to about \$12 billion a year, most of which goes to large agribusiness corporations, which receive about \$300 million each; it is therefore understandable why all agribusinesses considered together spend \$80 million a year on lobbying activities.

⁶⁷⁶ Some may not be harmed: for example, if the government intervention is a transfer that has involved a previous tax levy, this is what happens to all those who are exempt from direct taxes. In the United States, 43% of the population does not pay federal income tax; in Italy, 49% does not pay personal income tax. However, indirectly and in the long run, these people will also be harmed by the lower overall efficiency of the sector benefiting from the transfer or by the higher price caused by the reduction in competition.

levy, to oppose the measure; also subsisting a low probability of succeeding in changing it.⁶⁷⁷ Second, because of the already illustrated condition of “rational ignorance” (the costs of informing oneself on all the issues that are the subject of public policies are far greater than the perceived benefits).

Another factor is the emotionality and/or irrationality that certain issues generate in the common citizen, arousing a position of consensus towards assistance measures, presented in terms of “solidarity”.⁶⁷⁸

The reflection of all this in the legislative body is that the parliamentarian, having as his primary objective re-election, will vote for the measure in favor of the given interest group, hoping to receive the vote of its members in the elections, and knowing that he will not lose the vote of other voters, indifferent to the issue. Democracy becomes a competition between interest groups for the coercive appropriation of resources.

A situation in which this cost/benefit mechanism operates with even fewer constraints is the budget deficit, because in this case the costs are borne by subsequent generations (who do not vote or have not yet been born), while the benefits are enjoyed today and in the immediate future.⁶⁷⁹ Deficit spending policies, with the consequent accumulation of public debt, are strongly influenced by the aforementioned primary interest in re-election, which in turn produces another distortion of political decision-making: the *tyranny of the short term*. The time horizon of those who govern does not go beyond future elections. And if electoral campaigns – national, regional, local, European – follow one another continuously, this horizon narrows further. This affects the action of the government, incentivized to neglect, because they cause the loss of the next elections, policies that may be unpopular but beneficial in the long term and to follow patronage and demagogic policies,

⁶⁷⁷ In the American example already illustrated, the total 12 billion in subsidies, divided by the American population, have an impact of 40 dollars per person, an amount that does not prompt a single individual to organize to cancel the measure. This dynamic also explains why, symmetrically, it is difficult to cancel the regulations favorable to guilds: the cost of elimination is concentrated for the single category, while the benefit, even if overall higher, is widespread and therefore lower for each individual. For example, in most of Europe taxi drivers have been successful, through pressure on the lawmaker, in prohibiting or limiting the activity of Uber, a car transport company that would compete with them. These activities, and the consequent use of resources, aimed at obtaining particular privileges have been defined by the theory of Public Choice, in particular by G. Tullock, *rent seeking* (the expression was coined by Anne Krueger in 1974). The increase in income of the individual category is a “rent” because the activity has a negative social value. For example, the automobile sector that invests resources to convince the government to introduce a protectionist tariff; in this case the negative social value is the reduction in consumer welfare, forced to buy at higher prices and/or with lower quality. It can be considered *rent seeking* also the activity of the political agent or public official who arranges interventions in the economic system to achieve personal interests, disguised as “general interest”. See G. Tullock, R.D. Tollison, C.K. Rowley, *The Political Economy of Rent Seeking*, Kluwer, Boston, MA, 1988.

⁶⁷⁸ For example, television images of “family men” demonstrating or picketing to demand public subsidies for an irreversibly loss-making company always provoke the viewer’s solidarity with the worker, and therefore the consent to the intervention to expand public spending. Then there is the aforementioned phenomenon of *availability bias*. As Paul Bloom has pointed out, empathy can be positive in the enjoyment of art or in direct personal relationships, but it is negative in social and economic issues, which are much more complex in their interactions and consequences (P. Bloom, *Against Empathy: The Case for Rational Compassion*, Ecco Press, New York, 2016). In general, the argument according to which the media would play the role of control neglected by the common citizen is not convincing. First of all, as we have seen in the previous example, the media can actually amplify the emotional effect, operating, more or less consciously, in favor of the measure. Secondly, monitoring the thousands of government or parliamentary activities also involves high costs and energy for journalists. Finally, the media have to deal with audiences and sales, and therefore are induced to offer the public less challenging topics.

⁶⁷⁹ Central bankers are also part of the political-administrative elite, and they also operate according to their own personal interest. The reason why they tend to carry out mainly expansionary and inflationary monetary policies, and never contraction of the monetary base, is the condescension towards the government and the political authorities, since the appointment and renewal of the office depend mainly on them. Especially in the imminence of electoral deadlines, the ‘drugged’ expansion of income and employment favors the re-election of the executive in office.

which, in addition to the high public deficits and debts already mentioned, cause other undesirable results, such as the unsustainability of pension systems or unproductive and wasteful public spending. Hoppe observed that the public ruler, especially in democracies where the office is temporary, has a shorter time horizon than the private ruler (owner; for example the monarchs of previous centuries) because he does not own the State assets, but only has the current use of them. This higher time preference (orientation towards present consumption compared to future consumption) determines a more intense and less far-sighted economic exploitation of goods.⁶⁸⁰

Another democratic distortion in the direction of increased public intervention, highlighted by Public Choice, occurs within legislative bodies. *Logrolling*, or vote-trading, is the mutual support between parliamentary lobbies for the approval of individual measures. Member of Parliament A votes for law x that concerns Member of Parliament B, if B votes for law y that concerns A. To ensure this result more efficiently and on a larger scale, so-called *implicit* logrolling is often used, by inserting all public spending measures into a single act,⁶⁸¹ in support of which it will presumably be possible to assemble a majority. In fact, the member of Parliament who wants to pass the measure that is favorable to him or to the lobby he represents must vote for the bill, and thus automatically supports all the other measures as well.⁶⁸²

11.6 Constitutionalism

The increasingly widespread interventionism of democracies is therefore unstoppable. A strong point of disagreement between libertarianism and liberalism concerns the possibility of limiting the State through the panoply of institutional solutions devised by classical liberalism starting from the 17th century, to first circumscribe the power of sovereigns (E.J. Sieyès, B. Constant) and subsequently of democratic majorities (H. Kelsen): rigid constitutions with an exhaustive list of subjective rights, control of the constitutionality of laws, rule of law in the strict sense,⁶⁸³ separation

⁶⁸⁰ H.-H. Hoppe, *Democracy: The God That Failed*, cit.

⁶⁸¹ For example, the *Finance Act* in the United Kingdom.

⁶⁸² Another law of tendency is the one illustrated by Duncan Black's "Median Voter Theorem": in a system with two candidates or two parties facing each other, the policies chosen will be those preferred by the median voter (the one who divides the distribution of voters on an imaginary right-left axis into two equal parts; therefore the one with moderate, not extreme, positions), since this person is decisive for victory. That is, each side tends to converge towards the center because in this way it hopes to obtain more votes; in fact, it believes that it will not lose the votes of the most extreme voters of its own side as they are sufficiently loyal and that it will gain the "borderline" voters necessary to gain the majority. D. Black, *On the Rationale of Group Decision-making*, in "Journal of Political Economy", vol. 56, no 1, 1948, pp. 23-34.

⁶⁸³ Rule of law is not intended in the generic sense of the constitutionalism of the State governed by law as opposed to the government of men, but as the government of *codified* and *statutory law* (*lois, gesetze, leyes, leggi*) understood as a source of the whole legal order. It is the German *Rechtsstaat* or the French *État de droit* of the nineteenth century, the 'legislative State', that is, a particular type of legal-political organization, characterized by the idea of government *through laws* (general rules) independent of ends, neutral, and with the enacted, written law placed at the top of the sources, therefore rejecting the primacy of the constitution. Hayek believed that the *Rechtsstaat* was the continental equivalent of the English *Rule of Law*. However, authors such as A. Dicey, E.C.S. Wade and other Anglo-Saxon jurists placed at the basis of the latter not only the principle of legality but, in line with the British tradition, also the remedial, jurisprudential model of rights protection, and a non-supremacy role for written law. Instead, in the nineteenth-century European-continental conception, the State is conceived and represented as a person endowed with will and purposes, and with supreme power, or *sovereignty*. From this a constant tension with individual rights, which no longer constitute something independent and prior to the law; which rights to recognize and the content of each of them ultimately depends on the legislation, that is, on the sovereign will of the State. Only in the twentieth century does the evolution towards the 'constitutional State' take place, in which the (rigid) constitution aims to represent the trench against the compression or violation of rights and certain principles.

and balancing of powers, limits on mandates, articulation of levels of government (central and local), submission to the law of State bodies as well, institution of independent authorities.

Libertarians denounce the clear failure of this attempt. In the “liberal democratic” option, the hoped-for coexistence between the two principles (and related practices) democratic and liberal has soon become unbalanced in favor of the former, degenerating into social democratic, interventionist, corporatist or soft authoritarian outcomes.

As for constitutions,⁶⁸⁴ libertarians point out that conceptually there cannot be norms that apply or enforce themselves, independently of the men and bodies that produce and implement them. Not every power can be subjected to rules, under penalty of infinite regress (the problem of *quis custodiet custodes?*). Applying this reasoning to constitutions, one can extend the criticisms leveled at the democratic criterion of the majority to them: constitutions are also drafted, and can be amended, by majority, so as to say what the majority wants them to say. The fact that the necessary majorities are larger does not preserve the rights of minorities. For example, according to the constitution of Pakistan, all the prescriptions of the law must conform to the injunctions of Islam. If the majority wants to deliberate in a certain way, there is no legal or institutional barrier that can stop it. In the ironic words of Anthony de Jasay, constitutions are chastity belts placed on politicians, to which they themselves hold the keys.

Furthermore, constitutional principles and rights have only an apparent internal coherence, because many of them, as we have seen, are mutually conflicting: freedom of expression with the right to privacy or reputation, the right to property with substantial equality, the right to assembly with the right to circulate on the territory and so on. The balancing carried out by judges and courts does not guarantee the most protective solutions for liberty, because the invoked independence of judges, even if it were from political factions (and this is not a given), is certainly not from ethical-political conflicts on rights, with respect to which no one can say they are *super partes*. On this point, jurist Anna Pintore has observed: “it is fallacious to contrast the *decision* on the contents of rights (by legislative bodies) with their *custody* (by courts), because the contents are not self-declared and self-certified. The alternative is, if anything, between a political decision procedure with a majority of representative bodies and a procedure, also of political decision with a majority, of non-representative bodies. In other words, the alternative between parliament and judges (even if constitutional) does not correspond to the alternative between procedure and substance, but to the alternative between two different procedures, both majoritarian.”⁶⁸⁵

Added to this is the increasingly frequent vagueness, imprecision or obscurity of legislative texts, which allow and encourage discretion and arbitrariness in their interpretation and application.⁶⁸⁶

Another limitation is that constitutions are not self-enforcing documents. State bodies sometimes surreptitiously violate, to a greater or lesser extent, established constitutional limits. “The worst

⁶⁸⁴ The expedient of the implicit contract has already been mentioned and we will not dwell here on the contractual theory of the constitution as a source of legitimacy of the individual’s loyalty to the State, nor on the critical observations made against it.

⁶⁸⁵ A. Pintore, *Democrazia e diritto*, in G. Pino, A. Schiavello, V. Villa (eds.), *Filosofia del diritto*, Giappichelli, Turin, 2013, pp. 469–70 (my translation).

⁶⁸⁶ “If we view the Bill of Rights and its amendments as a kind of meta-law limiting what other laws there can be in the United States, it is by now perfectly obvious to everyone that the language used to describe freedoms that cannot legally be abridged is often extremely vague – subject to a wide range of interpretations. The Second Amendment seems to make clear that *someone* has the right to own and bear arms. Some will argue that the surrounding language makes clear that the freedom in question was restricted to members of militia – others insist that the introductory remarks refer only to the need for *possible* militias and offer only a *justification* of the right described subsequently.” R. Fumerton, *op. cit.*, p. 18.

dictatorships and totalitarian regimes have often had liberally written constitutions, constitutions indistinguishable from those in liberal Western democracies. For instance, the Soviet Union under Stalin was a humanitarian disaster [...] even though the USSR's constitution guaranteed human rights."⁶⁸⁷ To a lesser extent and in a lesser degree, even countries with solid liberal democratic credentials do violate constitutional texts: for example, in the United States during the New Deal, the Supreme Court upheld Roosevelt's programs even though they conflicted with Article 1, Section 8 of the Constitution, which lists the powers of the legislative branch.⁶⁸⁸

Finally, as regards the division of powers, this does not in itself imply a reduction in the intervention of each power, legislative, executive and judicial, in economic and social life. The increased activity of one power in many cases also allows greater margins of action to another, which therefore has no interest and is not encouraged to act as a counterbalance to the first. For example, an increase in legislative production also entails greater powers of intervention for the executive power, which also administers on the basis of those laws. Huemer speculated that the legislature passes laws that infringe on the liberties of the people. How could this damage the executive or judicial function? If anything, one should expect the latter two to be strengthened. The more laws that must be enforced, the broader the executive power must be. Likewise, the more restrictive the legal regime, the more cases will have to be judged in the courts and, therefore, the broader the judiciary must be. If each power wants to be larger and stronger, there is some reason to think that they should make common cause. There is, in any case, no obvious reason to think that each should try to prevent the others from violating the liberties of the people.⁶⁸⁹ Libertarians point out that the three powers are ultimately branches of the same organization, the State ("branches of the same tree"), mutually permeable, all three financed in the same way, through taxes established by the State itself, and therefore on some salient aspects of social life ("negative" liberties, the right to property, defense from interference by public administration) the reciprocal limitations do not operate. On the other hand, the history of the last century has highlighted the enormous growth of the interference of the three powers in the lives of individuals. The democratic State, conclude libertarians, cannot be bridled.

In light of the considerations made in this chapter, the (counterintuitive, and for the mainstream scandalous) low regard that libertarians have for political rights, judged to be of lower rank than the rights of liberty/property, becomes more understandable. "Libertarians' attitudes toward political liberties – the right to vote and run for office – are mixed. Civil and economic liberties [...] give individuals power over themselves and create a sphere of personal autonomy that others must not

⁶⁸⁷ J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 73.

⁶⁸⁸ Brennan offers other examples from American history: "Do you like the idea of separation of powers? Watch it disappear: Congress has authorized the president to decide when and how to go to war. Do you like the right of free speech and freedom of the press guaranteed by the First Amendment? For most of American history, the US Supreme Court did not forbid censorship. Think it is important that governments respect habeas corpus? (Habeas corpus is the principle that governments must not imprison or detain people without trial or evidence.) Lincoln suspended it during the Civil War. [...] Congress and the president [Obama] authorized the US military to detain anyone anywhere indefinitely without charge or trial, provided the person "substantially supports" certain terrorist groups. [...] If you want to see proof that the Constitution is not self-enforcing, just watch a confirmation hearing when the President nominates a justice to serve on the Supreme Court. Supreme Court justices do not interpret the Constitution objectively or disinterestedly, but instead "interpret" so that the Constitution generates their preferred political result." *Ivi*, pp. 73–4. Moreover, in the libertarian interpretation, the U.S. Constitution replaces the Articles of Confederation in order to strengthen the central State, not to more forcefully protect liberty.

⁶⁸⁹ Cf. M. Huemer, *The Problem of Political Authority*, cit., § 9.4.9.

violate. The political liberties [...] are different. They give individuals power over others. Thus, libertarians do not believe these liberties have the same kind of status as other liberties.”⁶⁹⁰

⁶⁹⁰ J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., pp. 38–9. On the different orientations relating to the exercise of the vote and participation in elections see *infra*, Chapter 13.

12. Right, Left, and Libertarianism

This chapter addresses the question of the political positioning of libertarianism. Is the traditional Right/Left bipartition suitable for positioning libertarianism? And, if so, on which of the two fronts should it be situated?

According to a common sense, widespread even among experts, libertarianism would be inconsistent, resulting at the same time a “Left-wing” instance, for its defense of civil liberties⁶⁹¹ and any chosen lifestyle and for its aversion to war, and “Right-wing”, for the uncompromising protection of property and the free market, with the related anti-egalitarian outcomes. “If interpreted according to the categories of European-style politics, the libertarian [...] could be at the same time an *ultra* of conservatism and an exponent of the most extreme progressivism.”⁶⁹² A political doctrine that combines the freedom to take drugs and the rigorous defense of property rights, escaping the dominant theoretical *clichés*, is considered an oddity.

Not that libertarians have historically always rejected the two labels. For example, Rothbard in the 1960s believed that libertarianism was the “true” Left, and indeed the “extreme Left”.⁶⁹³ With the evolution of his political-social analysis, at the beginning of the 1990s, judging libertarianism the best heir of the Old Right, whose ideals needed to be relaunched, argued that a qualification as “Right” was not improper;⁶⁹⁴ and gave birth to the *paleolibertarian* current (see *infra*). Some other authors, as we will see later, have also accepted one of the two denominations. However, intolerance for a bipartition that, like a Procrustean bed, imprisons and impoverishes the richness of the theoretical system and the political proposals of libertarians is prevailing.

12.1 Criteria of distinction

Scholars who trust in the explanatory value of the Left/Right paradigm have often proposed a single decisive concept, with the relative antonymic pair: inequality/(substantial) equality⁶⁹⁵; free market/interventionism;⁶⁹⁶ exclusion/inclusion; selfishness/solidarity; conservatism/progressivism; natural order/manipulability of the social structure;⁶⁹⁷ reality principle/utopianism. Other authors

⁶⁹¹ As we have seen (Chapter 6), in reality the liberties of libertarians coincide almost in no way with the “civil rights” of the *liberal* and *radical* tradition.

⁶⁹² C. Lottieri, *Anarchici per il capitalismo*, in “Ideazione”, no. 5, September–October 1996, p. 115 (my translation).

⁶⁹³ M.N. Rothbard, *Liberty and the New Left*, in “Left and Right,” vol. 1, no. 2, Fall 1965, pp. 35–67. The question is taken up again later in this chapter in connection with the relationship of libertarianism to the left.

⁶⁹⁴ M.N. Rothbard, *A Strategy for the Right*, speech given at the John Randolph Club, January 1992; reprinted in Rothbard–Rockwell Report, vol. 3, no. 3, March 1992. In 1970, Jerome Tuccille, then in partnership with Rothbard, explicitly used the *right-wing* label for the libertarian movement: “the libertarian Right has rediscovered the Old Right policies of the late ‘40s and early ‘50s.” J. Tuccille, *Radical Libertarianism: A Right–Wing Alternative*, cit., p. 10. As can be seen, the right–wing placement is proposed in the title of the book itself.

⁶⁹⁵ This is the criterion followed by Norberto Bobbio in *Destra e Sinistra*, Donzelli, Rome, 1994. Libertarians who accept this basis of distinction prefer *diversity* (and therefore diversity/equality) instead of the first term, since *inequality* has a negative evaluative connotation, which on the other hand is intended by those who propose the distinction from leftist positions.

⁶⁹⁶ Anthony Downs arranges the political forces along an axis according to their degree of State interventionism, with the free marketeers on the Right and the statists on the Left. A. Downs, *An Economic Theory of Democracy*, cit.

⁶⁹⁷ Ambrogio Santambrogio essentially proposes this distinguishing criterion between Left and Right: for the former, people’s fulfillment occurs by overcoming their own concrete essence, for the latter, on the contrary, this essence is taken as a criterion and valorized. A. Santambrogio, *Destra/sinistra*, in R. Esposito, C. Galli (eds.), *Enciclopedia del pensiero politico*, Laterza, Rome–Bari, 2000. According to the American conservative R.R. Reno, for the Left “the ideal world is liquid and mobile, [while] the Right is defined by the desire to restore old loyalties and solid identities. It

have associated some of these categories, giving them different weight.⁶⁹⁸ Still others have followed a more empirical criterion, listing the opposing inclinations regarding some issues of civil, social and economic life particularly exposed to polarization (possession of weapons, death penalty, immigration, nationalism, abortion, drugs, family, feminism), trying to induce possible systems of values or more general cultural patterns. For example, on the Right there is a greater propensity for the freedom to possess weapons; for the severity of the sanction rather than towards attitudes aimed at understanding and recovering the offender; for the death penalty; for restrictions on immigration (generally motivated by identity reasons, which also generate disapproval of multiculturalism); a more marked nationalism; greater hostility towards the freedom of abortion; no tolerance for drug use; impulse to valorize the traditional family and opposition to forms of legal recognition (marriage, civil unions) for homosexual couples; distrust of feminism; adherence to the principle of hierarchy; aversion to ‘political correctness’.⁶⁹⁹ While those who place themselves on the Left on these issues manifest opposite orientations. The positions on some of these issues can be traced back to the conceptions listed above: for example, the defense of heterosexual marriage, as well as the idea of respect for certain hierarchies, are the fruit of the conviction, more deeply rooted on the Right, of the existence of certain permanent elements of human nature that prefigure a natural order that cannot be manipulated at will.⁷⁰⁰ Others are influenced by religious beliefs, others still by anthropological interpretations, such as the degree of skepticism about human nature, or by specific values.

In the opinion of libertarians, the explanatory value of the Right/Left interpretative pair has become opaque. Not because they consider the polarizations that originate from different political-cultural settings to have been erased;⁷⁰¹ not because, as is often claimed today by proclaiming the “end of ideologies”, alternative visions of man and society are no longer possible (the compactness and coherence of the libertarian *Weltanschauung* demonstrate the opposite); but because the instances that are inserted within the two “containers” are often arbitrary; in historical terms, erroneous, because their composition within the different theoretical-political systems has varied over time.⁷⁰² If the analysis is conducted on a historical level, the cultural and doctrinal

supports borders, frontiers and distinctions (right versus wrong, male distinct from female, etc.). [...] The ideal world is solid and stable. M. Matuzzi, *Il Dio della frontiera*, in “Il Foglio”, November 16, 2024 (my translation).

⁶⁹⁸ This is, for example, the approach of the historian Ernst Nolte: he assumes the criterion of perfectibility or imperfection, also used by Santambrogio, as one of the criteria for the purposes of the left–right distinction (“the left believes that the future is the fulfillment of the human being and that therefore it will bring with it universal happiness, while the right is convinced that imperfection in man is fatally unavoidable”) but adds three others, corresponding to the trio of “liberty, equality, brotherhood” of the French Revolution: “the Right places “order” as the central value in place of “liberty”, “diversity” in place of “equality”, “distance” in place of “brotherhood”.” E. Nolte, *Ordine, distanza e diversità le tre parole di un conservatore*, in “Repubblica”, January 20, 2004 (my translation).

⁶⁹⁹ This point seems to confirm the idea, supported among others by Luca Ricolfi, of a reshuffling of positions that has taken place in the last decade on some issues: freedom of expression is one of these, with a greater sensitivity on the Right (also because its exponents are more frequently the object of legal action) and an attitude of watchful surveillance on the Left (see above, § 6.2.1). Another issue that has “passed to the right” would be the defense of the weak. See L. Ricolfi, *La mutazione. Come le idee di sinistra sono migrate a destra*, Rizzoli, Milan, 2022.

⁷⁰⁰ This principle can be expressed in a reactionary sense – no concessions to innovation – or in a conservative sense – “new ideas inspired by permanent principles”, according to the maxim of Giuseppe Prezzolini.

⁷⁰¹ It is not surprising, then, that many libertarians reject the simplistic assertion, often repeated today, that “Left and Right no longer exist.” What they reject is a specific (and prevalent) meaning of this assertion, namely the celebration of pragmatism and the reduction of political choices to mere administrative technique, after the removal of “strong” principles.

⁷⁰² On the identity fragmentation of Right and Left see M. Gauchet, *La droite et la gauche*, in P. Nora (ed.), *Les Lieux de mémoire*, Gallimard, Paris, 1992.

heterogeneity of the various “Rights” and “Lefts” that have inhabited the last two centuries of political history does not allow the identification of a single distinctive criterion. If the analysis is conducted on a conceptual level, and at the same time limited historically to the contemporary era, the reduction of the Left/Right dichotomy to a single discriminating criterion leads to stringent logical difficulties, as will be seen shortly.

To clarify the first aspect, we will focus, as an example, on one of the interpretative pairs listed above, free market/interventionism, with the label of “Right” assigned to *laissez-faire*, in contrast to interventionist demands, often identified with Left-wing positions, from the most extreme, such as the communist one, to the more moderate ones, socialist, social democratic or liberal socialist.

If one carefully examines the economic predilections of the Right (*rectius*: of the Rights) throughout modern history, its assignment to the *laissez-fairist* front appears highly inadequate. The term “Right”, coined shortly before the French Revolution to indicate positions aimed at defending the sovereignty of the king against popular sovereignty, in its two centuries of history has largely identified cultural and political options that were clearly anti-market, focused on the regulation of the economy, on the defense of the incomes of the privileged classes, on the corporatization of economic and social systems. This can already be seen in the political position that gives rise to the two terms, that is, the positioning in the hemicycle that hosted the assembly of the Estates General convened by the king of France in May 1789: the pro-monarchist exponents led by Pierre Victor de Malouet, those who sat in the seats to the right of the president of the assembly, were interventionists in the economic field; while Mirabeau’s radicals, positioned on the left side, were *pro-laissez-faire* liberals.

The original Right, in the reactionary version of Joseph de Maistre, Louis G.A. de Bonald and von Haller, is anti-bourgeois, and opposes capitalism as a vehicle for the overturning of social hierarchies⁷⁰³ and of a mythical uncontaminated community. The traditionalism of Adam Heinrich Muller, Novalis, Friedrich Schlegel, Friedrich Schelling and Thomas Carlyle exalts the nation as an organic community founded on common bonds of memories, customs and religion, also rejecting the natural law and individualistic perspective contained in 1789. Friedrich von Gentz, in the commentary to the *Reflections on the Revolution in France* by Edmund Burke,⁷⁰⁴ and Adam Müller, in the *Elements of Politics* (1804), explicitly oppose Smithian *laissez-faire*. Burke, in favour of free trade, is improperly assimilated to this line of thought.

In the first half of the nineteenth century in the United States, it was Andrew Jackson’s Democrats who supported free trade, in opposition to the National Republican Party.

The Right that took shape after 1848 (G. Boulanger, E. Drumont, R. Wagner), no longer questioned the legal-institutional presuppositions of modernity,⁷⁰⁵ but maintained its hostility towards the capitalist revolution,⁷⁰⁶ industrialism and urbanism, riding the wave of social unease in the name of the values of order, tradition and hierarchy. Anti-Semitism and militarism are two other notable features.

⁷⁰³ See E. Galli della Loggia, *Intervista sulla destra*, Laterza, Bari, 1994. Other traits are the defense of the Christian tradition, and also of clericalism, against the atheism of the Enlightenment and German idealism. Furthermore, it is an elitist, snobbish, aristocratic Right, exalting the moral value in itself of the fight against modernity, as pure testimony.

⁷⁰⁴ E. Burke, *Reflections on the Revolution in France* (1790), Penguin, London, 1982.

⁷⁰⁵ Although there remains the aversion to universal suffrage, resulting from the rejection of the mass dimension.

⁷⁰⁶ Also because of the anti-Semitic component. The journalist Otto Glagau wrote in 1879: “Judaism is the Manchester School put into practice and carried to the extreme”.

In the last decade of the nineteenth century, a Right-wing movement emerged that cultivated an aversion to modernity precisely because it was the bearer of bourgeois materialism, which would dissolve natural personal relationships. Against liberal individualism, the restoration of the principle of authority deriving from religion (God), the nation (fatherland) and the family was invoked. The reactionarism of the French of the first half of the twentieth century, Charles Maurras, Maurice Barres, Paul Bourget and Jacques Ploncard d'Assac and, excluding the Christian and Catholic reference, of the Italian Julius Evola, fits into this trend.⁷⁰⁷

Between the end of the nineteenth century and the beginning of the twentieth century, only in the theory of elites – in the version of Vilfredo Pareto, not in those of Gaetano Mosca and Robert Michels – can we find benevolent accents towards the market.

The conservative revolution that developed in Weimar Germany (O. Spengler, E. Junger, A. Moeller van den Bruck, M. Heidegger, C. Schmitt, W. Sombart), while valorizing technology, underlined the organic characteristics (in the anthropological sense) of peoples (far removed from the free relations between individuals hoped for by *laissez-faire* liberalism), asserted the primacy of the political and the community and on an operational level resulted in a synthesis of socialism and nationalism.

In Italian fascism, in which different cultural impulses operate, the most important exponents on a theoretical level are Alfredo Rocco and Giovanni Gentile: the traditionalist organicism of the former and the “ethical State” of the latter in operational terms resolve themselves into a strong dirigiste impulse.⁷⁰⁸ A “fascist socialism” is that advocated by Pierre Drieu La Rochelle, while Ezra Pound’s support for fascism is motivated by an intransigent anti-capitalism.

The background of National-Socialism includes nineteenth-century irrationalism and the romantic cult of the *Volk*. The former opposes liberalism as “arid intellectualism”; the latter transforms itself into Aryanism (J.A. Gobineau, H.S. Chamberlain), nationalism and biological racism with the elaborations of A. Rosenberg and E. Kriek, the two most important theorists of Nazism, and with Hitler’s *Mein Kampf* (1925). On a strictly political level, Nazism, although a movement different from the classical Prussian Right, as an actor of a strong social democratization against the hierarchies of the aristocracy, in the economic field operates through a strong public mobilization of investments and a State control that is at times pervasive.

It is only since the post-war period, and mainly in the Anglo-Saxon world, that some political forces and conservative movements have assumed free market positions in the economic field: sometimes the Republican Party and some movements that have inspired it in the United States, Margaret Thatcher’s Tories in Great Britain.⁷⁰⁹ But in a global context in which the presence of traditionalist or conservative thinkers and movements that are strongly anti-individualist and anti-market, such as Nicolàs Gomez Dàvila, Ernst Nolte, Yoram Hazony, remains strong; or like the French New Right created by Alain de Benoist at the end of the 1960s (Guillaume Faye, Pierre

⁷⁰⁷ In the same period, confirming that not every right-wing position coincides with conservative demands, an avant-garde movement also developed in Italy, such as the Futurist one.

⁷⁰⁸ Early fascism also inspired Romanian thinkers Mircea Eliade and Emil Cioran; the former’s articles in the late 1920s contributed to the theoretical structuring of Codreanu’s Romanian ‘Iron Guard’ movement.

⁷⁰⁹ It should also be addressed, but there is no space here, the issue of coherence between words and policies actually implemented, sometimes anything but liberal.

Vial, Jean-Claude Valla, Giorgio Locchi, Dominique Venner), which expresses radically anti-capitalist positions;⁷¹⁰ or like the American neocons, economically social democratic.

Even turning our gaze to the party expressions of political cultures, it can easily be noted that in recent decades a large part of the European Right has been characterised in a strongly “social” or statist sense (the Popular Party in Spain, the Gaullists and the Le Penists in France, the heirs of the Movimento Sociale in Italy).⁷¹¹

A careful reading of modern political history therefore does not allow the identification of any Right with *laissez-faire* orientations; while it can assign these only to some Right-wing movements very circumscribed in time and space.

The question arises again for other conceptual pairs indicated above, whose one-dimensional character risks descriptive and theoretical simplism. Taking into consideration the criterion of equality supported by Bobbio, Ambrogio Santambrogio observed: “It is easy to show how there have existed, and still exist, Left-wing parties that support inequalities and Right-wing parties that advocate equality. On the other hand, our daily experience is full of inequalities that appear fair and equalities that appear unfair. The problem therefore seems to be not so much about the concept of equality as such, but about its content, around which positions are divided. The essential question is then: equality of what? [...] And, since we naturally have dozens and dozens of answers, corresponding to the various right-wing and left-wing parties, we fall into a multiplicity of heterogeneous contents.”⁷¹²

However, if the distinction between Left and Right coincided with the equality/inequality dichotomy in Bobbio’s sense, libertarians should be defined as right-wing, since, as we have seen (Chapter 7), they oppose substantive equality pursued coercively and defend legal equality only if understood as a reflection of the moral equality of individuals, that is, at a metanormative level. And in fact the libertarian Hoppe places libertarianism on the Right front because he accepts the position on the *differences* between human beings as an element of distinction between Right and Left: “The Right recognizes, as a matter of *fact*, the existence of individual human differences and diversities and accepts them as natural, whereas the Left denies the existence of such differences and diversities or tries to explain them away and in any case regards them as something unnatural that must be rectified to establish a natural state of human *equality*.”⁷¹³

⁷¹⁰ A. de Benoist, *On the Brink: The Foretold Failure of the Money System*, Arianna Edizioni, Bologna, 2012. The author is inspired by the German Conservative Revolution. The experience of the Nouvelle Droite generates in Italy the New Right of Marco Tarchi.

⁷¹¹ A scholar and advocate of a social and community Right such as Marcello Veneziani often lists the following characteristics of the Right he advocates: sense of State, traditional values, primacy of the community, principle of sovereignty, love of country, civil and cultural education.

⁷¹² A. Santambrogio, *op. cit.*, pp. 180–181 (my translation).

⁷¹³ H.-H. Hoppe, *A Realistic Libertarianism*, cit. Hoppe specifies that mental differences, the most controversial ones, for the Right are strongly conditioned by biological factors, while for the Left the environment plays a decisive role, and therefore a change in living conditions would also generate a substantial equality of results. And, as we saw in Chapter 7, where some differences are undeniable and not attributable to the environment but to genetic makeup, such as the talent of some athletes, they are undeserved and the lucky ones must “compensate” the disadvantaged. Walter Block also supports the existence of biological characteristics that give rise to irreducible diversity among human beings: W. Block, *Defending the Undefendable II*, cit., Chapter 21, *Stereotyper*, pp. 157–66; *Four Firemen Die in Socialist Fire; Worse, Two of Them Were Woman*, in LewRockwell.com, <http://www.lewrockwell.com>, July 27, 2001, republished in *Toward a Libertarian Society*, Mises Institute, Auburn, AL, 2014, pp. 115–7.

Even in relation to the dyad natural order/manipulability of the social structure, libertarians, opposing “constructivist” normativity, and therefore in consonance with the first term, would be placed on the Right.

As for the interpretative pair conservatives/progressives, if used as a counterpart to the Right/Left polarity, it risks being either a classification with no descriptive content or even a mystification. The concepts of progress and conservation, in fact, require in turn a further criterion of orientation, that is, parameters through which to establish when a transformation is progress or when the maintenance of a given social structure is regression.

Even if we wanted to assume those categories, it is not a given that the forces on the Left have implemented policies of “progress” and those on the Right of conservatism. An unbiased analysis could conclude that, in the late 1970s, Margaret Thatcher may have been able to sense and pander to the new needs of broad sections of society far better than the old statist Trade Unions; and she understood the needs of the new classes that arose from the third technological revolution more acutely than the Labour Party, crossed by old ideological reflexes. And, again, a non-ideological examination could arrive at the conclusion that Ronald Reagan, and not the left-liberal intellectuals of America’s eastern universities, best interpreted the desire for individual autonomy, denouncing the inefficiencies and distortions of public management and helping to liberate social relations from the oppressive remnants of the old dirigiste policies. In such contexts, identifying innovators and conservatives could be more problematic than is commonly believed.

On the other hand, conservatism, understood as a tradition of thought, has opposed Left-wing progressivism precisely because of the Jacobin results inherent in the idea that the social structure and even human nature can be manipulated at will through political means (mainly legislation). Eterogenesis of ends can lead, and often has led, social engineering to undesirable consequences, disintegration on the social level and authoritarian or even totalitarian on the political level.

Once this dichotomy and the identification with one or the other have been rejected, libertarians propose a different opposition, which can be summarized as individual freedom *versus* heterodirection. In the light of this antithesis, not based on labels but on a precise option, the libertarian position reveals its intimate coherence, deriving all its implications from the principle of liberty. Liberty is applied to all fields of social life, including the economic one.

Bergland wrote:

People frequently ask: are libertarians left wing or right wing? Liberal or conservative? It is a mistake to attempt to locate libertarians on the traditional “left-right spectrum” because it measures nothing. Curiously, political analysts and commentators seem blind to this defect in this traditional scheme. Labels like “left,” “right” and “moderate” are as useless as traditional party labels for predicting how any politician will stand on a given issue. [...] Libertarianism is not some variant of left wing or liberal thinking, nor some variant of right wing or conservative thinking. Nor is it a combination of left and right. [...] It is not unusual for liberals and libertarians to take similar positions on certain personal liberties issues. Nor is it unusual for conservatives and libertarians to be on the same side of certain economic issues. This is more a result of coincidence than principle. All libertarian positions on the issues are derived from the basic libertarian principles of self ownership and respect for the equal rights of others. The same consistent, principled approach is not true of other political groups. Indeed, you cannot predict the position of Democrat, Republican, liberal or conservative on any given issue at any time. They have no consistent way to deal with issues because they have no fundamental principles. The best

you can do is compile a list of positions they hold on issues and check from time to time for any changes.⁷¹⁴

As early as 1958, Ludwig von Mises wrote: “These terms, ‘left’ and ‘right,’ have now lost all political meaning. The only significant distinction is between the proponents of the market economy and, as a corollary, of limited government, and the proponents of the total state.”⁷¹⁵ The writer Robert Heinlein observed: “Political tags – such as royalist, communist, democrat, populist, fascist, liberal, conservative, and so forth – are never basic criteria. The human race divides politically into those who want people to be controlled and those who have no such desire. The former are idealists acting from highest motives for the greatest good of the greatest number. The latter are surly curmudgeons, suspicious and lacking in altruism. But they are more comfortable neighbors than the other sort.”⁷¹⁶

As has been pointed out, it is libertarians who can hold other political families accountable for their inconsistencies. They can ask conservatives, on the Right, why they are in favor of economic freedom but not in other areas of social life, and liberals, on the Left, why they want to extend civil liberties but compress economic ones.⁷¹⁷ Libertarianism is politically elusive because it cannot be understood with the worn-out conceptual categories still in use today. And, in fact, libertarians have often considered themselves politically homeless, finding themselves uncomfortable in each of the two prevailing camps in contemporary political systems.

To highlight the location of different political ideologies, libertarians have proposed more sophisticated graphic representations than the traditional straight line that interprets the political spectrum as a one-dimensional horizontal path left-center-right.

In 1970, Jerome Tuccille proposed the diagram shown in Figure 1. At the top of the circle, “a predominantly gray zone, a mixed economy with its natural by-product, welfarism. As we move toward both left and right we enter an area of stronger government control of the economy, conservative state capitalism on the right, liberal socialism on the left. Moving further to the right, we enter an area of right-wing fascism, with nominal private enterprise but, in actuality, total government *management* of the economy, suppression of opposition parties and censorship of all media of communications. Likewise, as one moves further down the left side of the political circle there is total government *ownership* of the means of production and distribution, suppression of all opposition and censorship again of the spoken and written word. But as one moves further to both the left and right, he moves further on the right to the *ideal* of capitalism, and on the left to the *ideal* of socialism. Here is the broad spectrum of libertarianism, of voluntarism in the intellectual, economic, social, and spiritual life of society.”⁷¹⁸

⁷¹⁴ D. Bergland, *Libertarianism in One Lesson*, Orpheus Publications, Costa Mesa, CA, 1984, 7th ed. 1997, pp. 36, 39.

⁷¹⁵ L. von Mises, *Wirtschaft und Staat*, in “Swiss Monatshefte”, 48, 1, April 1968 (my translation). Even in the classical liberal perspective the concepts of Right and Left reveal their inadequacy: Raimondo Cubeddu wrote: “that a political philosophy, such as the classical liberal one, can be enclosed in a classificatory scheme such as that of “Right–Left” is questionable, to say the least. And this even if by “Right” one meant a political attitude aimed above all at the maintenance of liberty and by “Left” a political attitude tendentially directed at the realization of equality. [...] The distinction is not between conservatives and progressives, between “Right” and “Left” but between statists and non–statists.” R. Cubeddu, *Atlante del liberalismo*, Ideazione Editrice, Rome, 1997, pp. 135–7. A similar position is expressed in D. Antiseri, L. Infantino (eds.), *Destra e Sinistra due parole ormai inutili*, Rubbettino, Soveria Mannelli (CZ), 1999.

⁷¹⁶ R. Heinlein, *Time Enough for Love*, G.P. Putnam’s Sons, New York, 1973, pp. 351–2.

⁷¹⁷ “Conservatives want to be your daddy, telling you what to do and what not to do. Liberals want to be your mommy, feeding you, tucking you in and wiping your nose. Libertarians want to treat you as an adult.” D. Boaz, *The Libertarian Mind: A Manifesto for Freedom*, cit., p. 132.

⁷¹⁸ J. Tuccille, *Radical Libertarianism: A Right–Wing Alternative*, cit., p. 39.

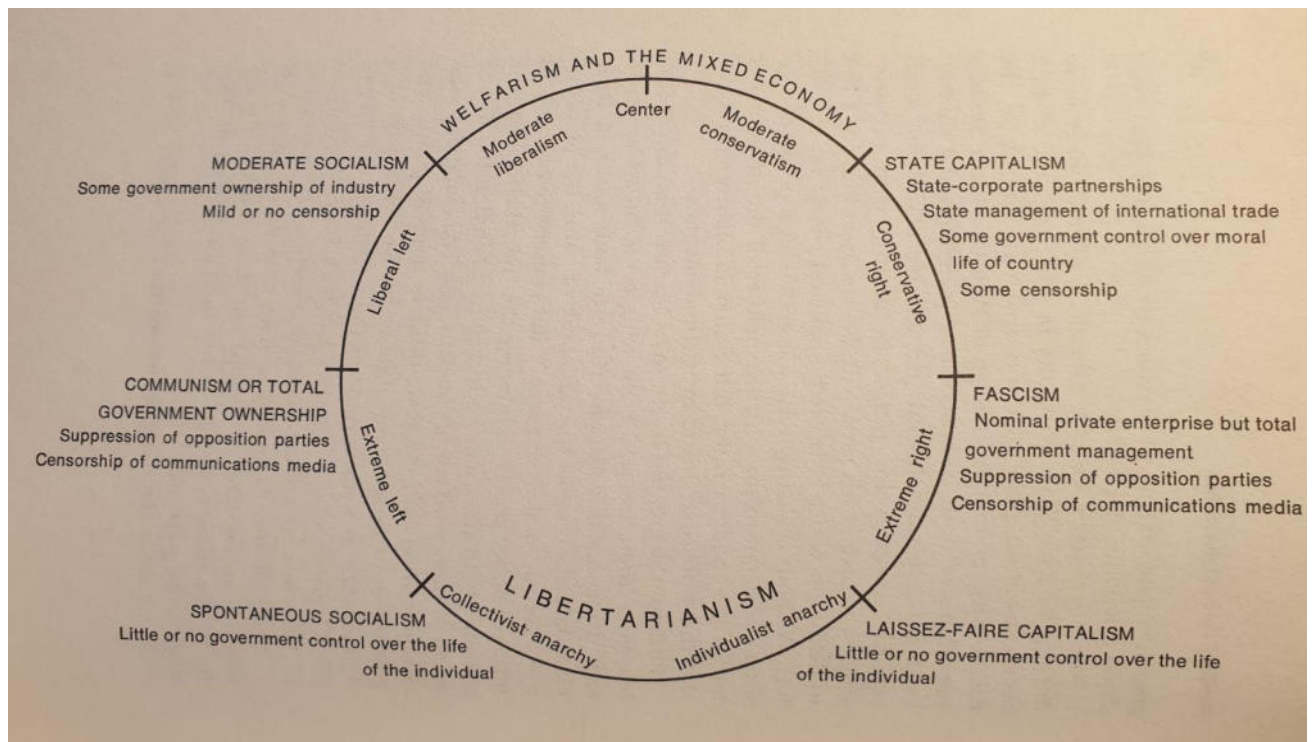


Figure 1

The most valued graphic representation is the one proposed by William S. Maddox and Stuart A. Lilie⁷¹⁹ in the early 1980s, later revised by David Nolan: it consists of a two-dimensional Cartesian diagram, which enriches the traditional one-dimensional spectrum and allows a dislocation based on content and not on empty labels (Figure 2).⁷²⁰ On the ordinate axis, economic liberties can be measured, and on the abscissa axis, the so-called civil liberties. The unit of measurement along the axes could be represented by the score assigned to the answers provided on the individual themes, with a high or low score depending on whether the answers highlight a predisposition or not to prefer economic and personal freedom. Each individual, party or political theory could be positioned, based on their own political-cultural beliefs, at a point on the Cartesian plane that represents a combination of the two chosen thematic blocks.

The further away from the origin of the axes, the more favorable the positions are to economic freedom and personal liberties respectively. Libertarians would be positioned at the outermost point of the quadrant (point A). Conservatives at point B (a lot of economic freedom, few civil liberties); liberals at point C; “authoritarians” or populists (communitarians, social Right, nationalists, despotic Left) at point D. The choice of these four positions may seem summary, but it is purely illustrative and aims to capture the standard characteristics of the four main political poles. The

⁷¹⁹ W.S. Maddox, S.A. Lilie, *Beyond Liberal and Conservative: Reassessing the Political Spectrum*, Cato Institute, Washington, DC, 1984.

⁷²⁰ In reality, the Maddox and Lilie graph has four quadrants, because it also includes the sections of the axes that contain the negative values of the variables. While the Nolan graph, reworked by Marshall Fritz, is “diamond-shaped”, with the vertices placed on the four cardinal points. However, I believe that the graphic representation is clearer using only one quadrant and placing the Cartesian axes according to the traditional canons of analytical geometry.

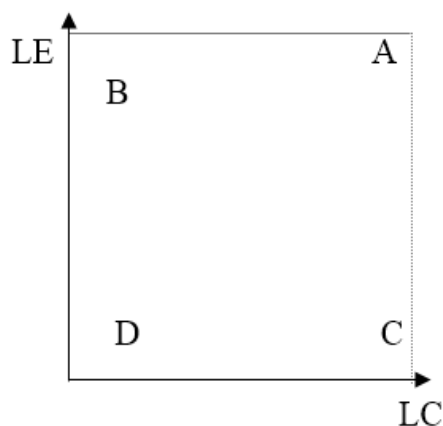
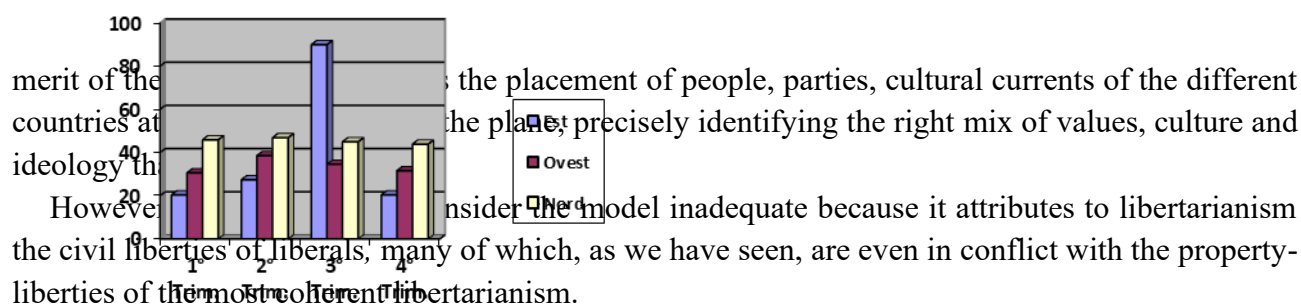


Figure 2

12.2 Relations with right-wingers

As regards the relations of libertarians with the Right, the different strands – conservatism, traditionalism, reactionarism – are in turn often crossed by different orientations. Consider, within conservatism, trends such as: social conservatism, liberal conservatism,⁷²¹ neoconservatism,⁷²² paleoconservatism,⁷²³ theoconservatism⁷²⁴ (often coexisting in a single political-organizational

⁷²¹ Within which *free market conservatism* can be included.

⁷²² It developed in the 1970s through the work of thinkers and journalists from the liberal or Trotskyist Left such as Irvin Kristol, Joshua Muravchik, Norman Podhoretz, disappointed by the soft attitude of the U.S. Democratic Party on the Vietnam War and worried about the pacifism which in their opinion undermined the battle against communism at an international level. The main features are elitism, interventionism in the economy and expansionism in foreign policy (the warmongering of the doctrine of “preventive war”, the aggressive globalism which has as its cornerstone the “exportation of democracy” and the “New World Order”). In 1991 Samuel Francis lists and describes, with a critical intent, the different variants of neoconservatism: there is the “Big Government conservatism” propagated by the journalist Fred Barnes; the “progressive conservatism” of Jack Kemp; the “opportunity society” of Newt Gingrich; the “cultural conservatism” expressed in terms of welfarism by Paul Weyrich; James Pinkerton’s so-called “New Paradigm”; all variations on the theme of “economic improvement through one kind or another of social engineering,” a settling on the consensus model represented by social democracy at home and imperial globalism abroad, the welfare-warfare State. S. Francis, *Beautiful Losers*, in “Chronicles,” May 1991.

⁷²³ It manifests itself in the United States in opposition to the neocon component after the decomposition of the Soviet system: it is an anti-statist, anti-tax, non-interventionist, isolationist (“America First”), protectionist, anti-immigration Right, denier of American exceptionalism, anti-environmentalist, hostile to pseudo-rights for racial and gender groups, with traditional views on life, marriage and family; a Right made up of “cultural traditionalists who reject the egalitarian movements that have wielded their way through America. They share the Founding Fathers’ distrust of standing armies, look to the original American foreign policy of isolationism as a guide to the post-cold war era, and see the welfare state as a moral and Constitutional monstrosity.” L.H. Rockwell, Jr., *The Case for Paleolibertarianism and Realignment on the Right*, Center for Libertarian Studies, Burlingame, CA, 1990, p. 21.

container). Without going into a detailed examination of the differences, and at times of the different nuances, regarding the relations with libertarianism the decisive elements are essentially three: the type of capitalism – whether *laissez-faire* or “crony capitalism” based on collusion between the public apparatus and businesses, especially large ones; the extent of interventionism in foreign policy; and the degree of juridification of the moral values preached. It is evident that *laissez-faire* conservatism⁷²⁵ is the least distant from the libertarian perspective. It also emphasizes Virtue, believing that, to maintain order and stability in society, shared values and accepted traditions are necessary, elements of cohesion that guarantee a context favorable to the intellectual and moral development of individuals.⁷²⁶ This point is far from being an element of dissent within libertarianism. Libertarians who consider themselves *culturally* conservative like Hoppe, Kinsella, Block or J. Raimondo do not deny it; they simply believe that such values and traditions should not be imposed by law. Similarly, the existence of a “transcendental moral order” claimed by conservative Russell Kirk was not denied by libertarians: they rejected its imposition through the State, which for Kirk was an entity necessary for the fulfillment of human nature (therefore a natural institution), while for libertarians it is a dangerous oppressor.⁷²⁷

When the Right accentuates its aversion to coercive egalitarianism and the pro-free market nature of its action, as happened with the American paleoconservatives in some parts of the twentieth century, the proximity with the libertarians in supporting anti-statist and decentralizing policies becomes closer. In the United States, convergences between the two areas are evident starting from the 1930s, when American libertarians and liberal conservatives unite in the Old Right, the enemies of both being the State dirigism inaugurated by the New Deal and interventionism in foreign policy.

Even Ayn Rand, in some essays of that period, shows a greater closeness to the U.S. Republicans (and feels disappointed when they propose statist measures): “if by “right” we mean capitalism and by “left” statism,”⁷²⁸ then for her the placement is obligatory.

⁷²⁴ According to this orientation, the State must support and/or impose the values of the Christian (or Judeo-Christian) tradition. Its exponents support prayer in schools and the teaching of creationism; and they would like to prohibit by law divorce, abortion, contraception, homosexual marriage, prostitution, pornography, and the possibility for homosexuals to hold certain positions, such as that of teacher or soldier.

⁷²⁵ Samuel Brittan has observed that, compared to libertarianism, in this type of conservatism the individual responsibility arising from operating in the market is valued more as an instrument of discipline than of freedom. S. Brittan, *A Restatement of Economic Liberalism*, Macmillan, London, 1988. An aristocratic contempt for mass consumption is also the trait of a certain conservatism that is also in favor of *laissez-faire* (opposed by Rothbard to “radical *laissez-faire*”: M.N. Rothbard, *The Laissez-Faire Radical: A Quest for the Historical Mises*, in “Journal of Libertarian Studies”, vol. 5, no. 3, Summer 1981, pp. 237–53). In dealing with *perfectionism* (Chapter 7), we have already seen that capitalism per se is not incompatible with traditional values and conservatism.

⁷²⁶ This is a position also supported by Scruton, who however believes that the free market should not belong to conservatism. According to the English thinker, Smithian egoism and *homo oeconomicus* are not enough, a market can implement a rational allocation of goods and services only if there is mutual trust between those who participate in it and trust exists only if each person takes responsibility for his own actions and behaves reliably: in essence, the economic order depends on the moral order. And therefore, the political order cannot be reduced to market operations. R. Scruton, *How to Be a Conservative*, Bloomsbury, London, 2014, Chapter 2.

⁷²⁷ There was another point of disagreement: for Kirk, order is prior to liberty and justice, while for libertarians, respect for (self)property (and consequently for life and liberty) is the foundation of order. R. Kirk, *A Dispassionate Assessment of Libertarians*, in Id., *The Politics of Prudence*, Intercollegiate Studies Institute, Bryn Mawr, PA, 1993.

⁷²⁸ A. Rand, *Capitalism: The Unknown Ideal*, cit., p. 213. After the publication of *Atlas Shrugged*, in 1957, the movement revolving around Ayn Rand acquired a certain consistency, even if its development and entrenchment were compromised by the strongly sectarian traits that characterized it. As an organized force it entered a crisis in 1968 following the personal breakup between Rand and Nathaniel Branden.

In 1955 the magazine “National Review”, founded by William F. Buckley Jr., aims to unify traditionalism, minarchic libertarianism and classical liberalism, through the contributions of exponents such as Russell Kirk, Richard Weaver, Wilhelm Röpke, John Chamberlain, Frank Chodorov, Max Eastman and Frank Meyer; although the center of gravity of this New Right is represented by the interventionist and imperialist positions of James Burnham.⁷²⁹ Meyer’s attempt to define the philosophical boundaries of the so-called *fusionism*, the integration of libertarianism and Old Right conservatism, is a minority.⁷³⁰

Libertarians denounce the involution of the Republican Right towards greater statism, warmongering and traditionalism.⁷³¹ In 1964 the libertarian movement supported the presidential campaign of the liberal conservative Barry Goldwater, focused on hostility towards the New Deal, the welfare state and big government.⁷³² But within the Republican Right are now prevalent an anti-market “social” conservatism and a Religious Right that emphasizes the demand for legislative implementation of proclaimed traditional values and a prohibitionism that generates crimes even in the absence of victims. Often these components share a common organicist cultural substratum: society is not composed of individuals, but of natural groups; individuals are seen only in terms of social identities, inseparable from the communities of which they are part. And the good of the

⁷²⁹ “The so-called “New Right” of William F. Buckley Jr. [was] intellectually dominated by the first generations of ex-Communists and ex-Trotskyists.” J. Raimondo, *Reclaiming the American Right*, cit., p. 51. Burnham is an influential ideologue of this new Cold War conservatism. One of the main targets of the “National Review” is Ayn Rand.

⁷³⁰ F.S. Meyer, *In Defense of Freedom and Related Essays*, Liberty Fund, Indianapolis, IN, 1996; in particular *Freedom, Tradition, Conservatism*, 1960. The elements characterizing the synthesis of liberty and traditionalism proposed by Meyer are: political liberty as a necessary premise for virtue (although it does not guarantee it); rejection of relativism (there are ‘good ends’ and ‘absolute truths’ that men should follow); good ends must be pursued without coercion (valuation of the Founding Fathers, who recognized the primacy of freedom within an objective moral order); emphasis on associations and communities of civil society for the purposes of a virtuous but free social order. On the theoretical level, the most articulated attack from the conservative front was directed by L. Brent Bozell, of Catholic natural law orientation: granting primacy to the maximization of individual liberty implies that there is no stopping point to the possibility of tearing down the collective – social and State – pillars that every society in history has erected to achieve virtue; the priority given to individual liberty makes the realization of virtue more difficult. On a philosophical level, Rothbard judged fusionism a failure: Meyer’s positions in philosophical-political terms were essentially libertarian; minor deviations were just formulas aimed at saving face and hold together the different orientations of the conservative movement. On the matter Raimondo writes: “Although *National Review* had for years promoted what it called “fusionism” – a fusion between the libertarian concern for economic and personal freedom with the conservative reverence for tradition – in fact this was nothing but ideological window-dressing. All talk of the free market and individualism was mere rhetoric, reserved for purely ceremonial occasions, designed to prettify *National Review*’s real preoccupation: the holy war against communism.” J. Raimondo, *Reclaiming the American Right*, cit., p. 223.

⁷³¹ The aforementioned work by Justin Raimondo, *Reclaiming the American Right* represents an interpretation of the historical mutation – in his opinion of corruption – of the American conservative movement from the positions of the Old Right to those of the New Right. The book follows the interpretation contained in Rothbard’s *The Betrayal of the American Right* (a manuscript of 1971, reworked in 1973 and 1991, published by the Mises Institute, Auburn, AL, 2007). Jerome Tuccille believes that it was precisely “with the advent of crusading conservatives religionists such as Russell Kirk and William F. Buckley [that] the freedom of the individual was to be subordinated to the traditions of the state.” J. Tuccille, *Radical Libertarianism: A Right-Wing Alternative*, cit., p. 7. George W. Carey instead believes that Kirk cannot be assimilated to the New Right that in the 1950s eclipsed the Old Right: “Kirk and other traditional conservatives saw the Soviet Union as a threat to Western civilization, but they can hardly be considered an integral part of the New Right [...]. Kirk, for instance, was never as one, philosophically speaking, with the principal editors of *National Review*. At the very least, by linking conservatism to Edmund Burke and to the main intellectual currents in the broader Western tradition, Kirk’s work transcended the issues involved in the Cold War – i.e., those concerns that preoccupied the New Right.” G.W. Carey, in J. Raimondo, *Reclaiming the American Right*, cit., *Introduction*, p. XIV. Kirk in the late 1960s will praise the typically Old Right positions taken by Republican Senator Robert Taft in the 1930s and 1940s, particularly his aversion to the New Deal, the extension of executive powers, and political-administrative centralization.

⁷³² One area of disagreement was foreign policy, isolationist for libertarians, interventionist for conservatives. Rothbard, unlike Rand, opposed support for Goldwater: see M. N. Rothbard, *Repartee*, in “Innovator,” August 1964, pp. 1–27.

individual community, the main recipient of individual actions and itself the holder of rights and, above all, duties, must be ensured through authority, which in fact sets the canons of morality. Nothing could be further from the libertarian cultural universe. Karl Hess described the reasons for dissent as follows: “capitalism is rejected by the modern right – which praises enterprise but practices protectionism. The libertarian faith in the mind of man is rejected by religionists who have faith only in the sins of man. [...] The libertarian insistence that each man is a sovereign land of liberty, with his primary allegiance to himself, is rejected by patriots who sing of freedom but also shout of banners and boundaries. [...] For them, getting tough [on public order] does not mean just getting tough on rioters. It means [...] clipping long hair, rousting people from parks for carrying concealed guitars, stopping and questioning anyone who doesn’t look like a member of the Jaycees, drafting all the ne’er-do-wells to straighten them up, ridding our theaters and bookstores of “filth” and always and above all putting “those” people in their place.”⁷³³ Jerome Tuccille, in the same period, radicalizes the differences by extending them to the philosophical presuppositions: “libertarianism is basically Aristotelian (reason, objectivity, individual self-sufficiency) while conservatism is just as fundamentally Platonic (privileged elitism, mysticism, collective order).”⁷³⁴

At the end of the 1960s, the particularly vital libertarian movement took note of the distances that had emerged and transformed its strong political identity into organizational autonomy.⁷³⁵

⁷³³ K. Hess, *The Death of Politics*, in “Playboy”, March 1969. Hess, who at the time in terms of activism represented, together with Rothbard, the most prominent figure of the libertarian movement, greatly emphasized the countercultural aspects and proximity to the New Left; this is what determined the break with Rothbard in 1970.

⁷³⁴ J. Tuccille, *Radical Libertarianism: A Right-Wing Alternative*, cit., p. 5.

⁷³⁵ On May 17, 1969, in New York, on the occasion of the third meeting of the magazine “Libertarian Forum”, Rothbard and other young libertarians of anarchist orientation – Walter Block, Roy Childs Jr., Wilson A. Clark Jr., John Hagel III, Karl Hess, Jerome Tuccille – constitute the Radical Libertarian Alliance. Many of them are also part of the Young Americans for Freedom, a Republican youth organization that at that time for libertarian activism is the most visible at the national level; even if the Buckleyan component is prevalent. The rift between the libertarian and conservative components emerges in a disruptive way at the ninth national convention of the YAF, held at the end of August 1969 in St. Louis, Missouri. The rejection of the resolutions proposed by libertarians – opposition to the war in Vietnam and the draft, legalization of marijuana, denunciation of growing authoritarianism – is followed by the expulsion and then the exit of the libertarian component, which in October of the same year gives birth to the Society for Individual Liberty on the East Coast (Don Ernsberger, Dave Walter) and the California Libertarian Alliance on the West Coast (Dana Rohrabacher, Shawn Steel, John Schurman, Ron Kimberling, Alan Boch, Gene Berkman). Thanks to the organizational drive of David Nolan, in December 1971 SIL and CLA, in coalition with local circles and university groups, gave birth to the Libertarian Party. For an effervescent, and at times satirical, account of the events of the American libertarian movement from the 1950s to 1971, and particularly in the period examined here, see J. Tuccille, *It Usually Begins With Ayn Rand*, Stein and Day, New York, 1971; republished by Fox & Wilkes, San Francisco, CA, 1997. The beginning of the Seventies marks the full entrance of libertarianism into the American political debate: the most renowned newspapers and magazines – *New York Times*, *Newsweek*, *Time*, *Esquire*, *Wall Street Journal*, *National Observer*, *Washington Post*, *Playboy*, *Nation* – dedicate long articles to the newborn movement, which begins to attract economic resources, adherents, sympathizers and voters. There is also an explosion of small magazines, which do not last long; the most solid are *Individualist*, published by SIL, *Abolitionist* (later renamed *Outlook*), more Left-wing, and *Reason*, more Randian and less countercultural (Bob Poole, Manny Klausner, Mark Frazier). Libertarian positions, articulated in various disciplines – economics, political philosophy, psychiatry, science fiction – begin to spread. Throughout the Seventies, the contribution of the billionaire Charles Koch, owner of an oil refining company, is decisive; he largely finances the libertarian area; mainly the cultural front, but also the more strictly political one. Regarding the first, the strategy is to focus on universities and on the creation of – or support for – think tanks. He finances the creation of Austrian economics departments within universities, even mainstream ones, such as NYU (the program is managed by Israel Kirzner); first at Rutgers and then at George Mason, the Center for Study of Market Processes (managed by Richard Fink) is established, which later evolves into the Mercatus Center; and again at George Mason in 1985, the Institute for Humane Studies, previously located in California, is transferred. Through the latter, in 1974 the first conference on Austrian economics was promoted in South Royalton, Vermont, with more than thirty participants; it was repeated in 1975 in Hartford, Connecticut, and in 1976 in Windsor Castle in Great Britain, with the participation of exponents such as Rothbard, Kirzner, Lachmann, Hazlitt, Hutt, Hayek, Yeager. In 1974 the Charles Koch Foundation was created, which became the Cato Institute in 1976 and was entrusted to Rothbard. From it the

These reasons explain the distance that even a classical liberal like Hayek claimed from conservatism: there is a “characteristic complacency of the conservative toward the action of established authority and his prime concern that this authority be not weakened rather than that its power be kept within bounds. This is difficult to reconcile with the preservation of liberty. In general, it can probably be said that the conservative does not object to coercion or arbitrary power so long as it is used for what he regards as the right purposes. [...] His main hope must be that the wise and the good will rule – not merely by example, as we all must wish, but by authority given to them and enforced by them. Like the socialist, he is less concerned with the problem of how the powers of government should be limited than with that of who wields them; and, like the socialist, he regards himself as entitled to force the value he holds on other people.”⁷³⁶

12.2.1 Paleolibertarianism

Starting from the mid-1980s, a divergence on some value premises became increasingly evident within the American libertarian world. A significant component continued to identify with the “anti-system” approach that had inspired the libertarian movement since its origins, coinciding with the development of protest movements at the end of the 1960s. In the virulence of the political-cultural clash then in progress, libertarianism was superficially and unduly identified *sic et simpliciter* with the “countercultural”, hippie, anti-religious and libertine traits typical of the New Left of the time. But this “radical Left” imprint did not do justice to the theory and subsequently would not have satisfied many authors who recognized themselves in it. It is in fact evident that many of the distinctive elements of the theory that we have examined in the course of this work, such as individualism, the centrality of private property and the market, anti-egalitarianism, the emphasis on personal responsibility, the enhancement of merit, represent principles antithetical to the collectivist and vaguely socialist suggestions expressed by a consistent part of the student movement, self-proclaimed “libertarian”.

The divergences could not remain dormant for long.⁷³⁷ Rothbard and Rockwell Jr. made them explicit⁷³⁸, soon followed by other personalities of the libertarian world.⁷³⁹ The main accusation leveled at Left-wing libertarians⁷⁴⁰ is that they do not limit themselves to favoring a legal system that, among the various “negative” liberties, also defends that of adopting bizarre or deviant

magazines “Libertarian Review” and “Inquiry” were generated; the first, founded by Robert Kephart in 1972, was purchased by Koch in 1977 and entrusted to the direction of Roy Childs. In 1976, Rothbard founded, together with Burton Blumert, the Center for Libertarian Studies, which, starting in 1977, published the most successful periodical, “The Journal of Libertarian Studies”. On the political front, Koch supported Ed Crane and his initiatives within the Libertarian Party, effectively controlling the party.

⁷³⁶ F.A. von Hayek, *The Constitution of Liberty*, cit., p. 523.

⁷³⁷ The theoretical-cultural disagreement has political implications: for the 1988 presidential elections in the Libertarian Party two opposing candidates face each other: the Sioux Indian Russell Means and the Republican Ron Paul, who wins by only 3 votes. The party’s Left is against him and a new split appears. In 1989 Rothbard leaves the LP.

⁷³⁸ Their partnership in 1990 gave rise to the “Rothbard-Rockwell Report”, a newsletter that is the cornerstone of paleolibertarian development.

⁷³⁹ Such as Walter Block, Ralph Raico, Paul Gottfried, Stephan Kinsella, Steven Greenhut, Justin Raimondo, Joseph Salerno, Thomas DiLorenzo, Joseph Sobran, Hans-Hermann Hoppe, Roderick T. Long, Gennady Stolyarov, Thorsten Polleit, Sean Gabb.

⁷⁴⁰ The label – *left-libertarian* – often used to indicate this component is the same one used to identify the doctrinal area composed of authors who recognize the ownership of themselves but not the individual ownership of external resources, which are instead originally common property and therefore imply redistributive actions of an egalitarian nature (see *infra*, § 12.2). Even if there may be overlaps at the thematic level, they are two distinct political phenomena, which belong to different analytical levels, one of a cultural-existential nature, the other more specifically theoretical.

behaviors and lifestyles; but that they celebrate such behaviors,⁷⁴¹ taking pleasure in nonconformism *in itself*, glorifying “diversity” for its own sake, praising any kind of transgression, enhancing “provocation” as such, emphasizing extravagance and eccentricity, placing any alternative morality in a position of supremacy and flirting with voguish nihilism⁷⁴² and hedonism.⁷⁴³ These libertarians – gathered mainly in the Libertarian Party and in any case prevalent in the entire movement – would subject libertarianism to an unnatural and undue cultural twist. They, critics point out, mistakenly equate freedom from State oppression with freedom from religion, tradition, family, or any codified morality. But libertarians oppose State authority, not social authority.

Furthermore, they Jacobinistically mobilize the State to enforce “civil rights,” many of which, as we have seen (§ 6.2.5), are pseudo-rights for libertarians. “Our beloved Modals are indeed social and cultural Leftists, more so even than we had originally suspected; they have bought into the entire panoply of feminism, egalitarianism, victimology, “civil rights,” the sanctity of the compulsory integrationist, socialist, and fake “Doctor” Martin Luther King, and all the rest of the odious baggage. In short, these Left-Libertarians have bought into the whole Politically Correct package, and as in the case of all P.C.’s, everyone who disagrees with them on any of these issues is automatically stigmatized with the litany of ‘racist, sexist, and homophobic.’”⁷⁴⁴

⁷⁴¹ “All-too-many libertarians [...] have confused legalization of drugs and unconventional lifestyles with defending and even advocating such activities.” J. Raimondo, *Reclaiming the American Right*, cit., p. 278.

⁷⁴² The epistemological foundation is also an aspect that divides the two components. As we saw in Chapter 5, left-libertarians favor relativist and/or skeptical approaches as a premise for tolerance. Paleolib, on the contrary, favor a cognitively “strong” approach: libertarian principles of justice are eternally and universally valid; the abandonment of any idea of Truth, of the possibility of the existence of some “solid” constants in human nature and social interactions and of criteria for establishing whether a given social institution is better than another, does not expand the degrees of liberty of a society but rather overwhelms any trench in defense of the individual and his property and leaves them at the mercy of State arbitrariness. See M.N. Rothbard, *The Big Government Libertarians: The Anti-Left-Libertarian Manifesto*, in “Rothbard-Rockwell Report”, vol. 4, no. 12, December 1993. The existence of constants allows for a non-aprioristically hostile position toward the customs and habits handed down over the centuries. There is no certainty of rationality nor imposition of them by force, but on a practical level it is appropriate to maintain a positive prejudice: if they have sedimented in history it is probable that they supported some solid and lasting characteristic of human nature. See M.N. Rothbard, *Frank S. Meyer: The Fusionist As libertarian*, in “Modern Age”, Fall 1981.

⁷⁴³ Other sources of divergence between the two perspectives are the fight against crime and ecology: with regard to the first, left-libertarians are accused of yielding tolerance, disguised as defense of rights; with regard to the second, of conforming to anti-capitalist environmentalism, with its pagan sacralization of nature, which would enjoy “rights” superior to those of human beings. Another element of distance is constituted by the nature-culture controversy, with its repercussions on disciplines such as anthropology and psychiatry. Paleo, unlike Leftists, are distant from, or averse to, approaches such as American cultural anthropology (Ruth Benedict, Margaret Mead), the Behavioral School and anti-psychiatry (R. Laing, D. Cooper, T. Szasz), with their contestation of biological constants and with the relativistic belief in an infinite malleability of the human mind. In Szasz, a libertarian, the non-existence of mental illness is asserted to contrast the coercive intervention of the “therapeutic State” and the de-responsibilization of the individual. By the author see: *The Myth of Mental Illness*, Hoeber Harper, New York, 1961; *Insanity: The Idea and Its Consequences*, John Wiley, New York, 1987; the libertarian political implications are contained in this second work.

⁷⁴⁴ M.N. Rothbard, *Rockwell vs. Rodney and the Libertarian World*, in “Rothbard-Rockwell Report”, vol. 2, no. 7, July 1991, p. 6. With the term “modal” Rothbard intends to identify the typical figure of the hedonistic, narcissistic, vagabond, inconclusive, freeloader libertarian militant, without a steady job but attracted by IT; with traits of fanaticism and therefore lacking a sense of humor; childish protagonist of a generic and all-round rebelliousness; uninterested in deep historical, cultural and political readings, and instead oriented almost exclusively towards science fiction or pseudo-provocative themes such as drugs or pornography. *Fashion* here indicates the statistical concept, that is, in a distribution, the character to which the maximum frequency corresponds. Therefore, in Rothbard’s sense, the “modal” libertarian is the typical one, the most widespread one. Other sarcastic labels assigned to them by Rothbard were those of *big-government libertarians* (borrowing the label from *big-government conservatives*, so defined by the paleoconservatives heirs of the Old Right) for their State interventionism; *nihilo-libertarians*, for their value-based nihilism; and *Official Libertarians*, because their politically correct positions were assumed and valorized in the media. In addition to the Libertarian Party, this world also included the magazines “Liberty” and “Reason”.

In an article that caused quite a stir in the libertarian world, Rockwell Jr. decried this attitude: “unless we cleanse libertarianism of its cultural image, our movement will fail as miserably as the Libertarian Party has. We will continue to be seen as a sect that “resists authority” and not just statism, that endorses the behaviors it would legalize, and that rejects the standards of Western civilization. Arguments against the drug war, no matter how intellectually compelling, are undermined when they come from the party of the stoned. When the LP nominates a prostitute for lieutenant governor of California and she becomes a much-admired LP celebrity, how can regular Americans help but think that [...] legalization of such acts as prostitution means moral approval? There could be no more politically suicidal or morally fallacious connection.”⁷⁴⁵ And Rothbard: “Too long has libertarianism been scorned because it has been connected, in the lifestyle and culture of most movement activists, with an adolescent hippie druggie culture.”⁷⁴⁶ And in an article the following month: “we paleos are no longer willing to be movement colleagues with these sorts of people. [...] One [reason] is strategic: these sorts of people tend, for obvious reasons, to turn off, indeed to repel, most “real people,” people who either work for a living or meet a payroll, middle class or working class people who, in the grand old phrase, enjoy “visible means of support.” In the Libertarian Party, [...] but also in the broader movement, these *luftmensch*-types have almost succeeded in making the glorious word “libertarian” a stench in everyone’s nostrils, synonymous with nut or libertine.”⁷⁴⁷

Right-libertarians judge such an attitude to be infantile and decadent and reach the opposite conclusion: for the purposes of a libertarian perspective, that is, for the construction of a free society, it is instead indispensable to have a cultural substratum based on some traditional values, an expression of the reviled bourgeois morality.⁷⁴⁸ Values that contemporary common sense unjustly despises as retrograde or reactionary, and instead judged functional, in a social context, to the preservation of individual autonomy and growth. An “ordered freedom” cannot be achieved unless an anti-assistance mentality increasingly spreads at a social level, one that does not invoke State intervention at every turn to achieve one’s own maintenance at the expense of others, but fully embraces the principle of personal responsibility; that restores the centrality of individual effort for the purposes of realizing one’s own life projects; that revalues the work ethic, commitment, industriousness, resourcefulness, perseverance, reliability, foresight, discipline, prudence; that rejects egalitarianism and welcomes the natural differences between people and the social roles that derive from them, including spontaneous hierarchies;⁷⁴⁹ that preserves the autonomy of the

⁷⁴⁵ L.H. Rockwell Jr., *The Case for Paleolibertarianism*, in “Liberty,” vol. 3, no. 1, January 1990, pp. 35.

⁷⁴⁶ M.N. Rothbard, *Why the Report?*, in “Rothbard–Rockwell Report,” vol. 1, no. 1, April 1990, p. 2.

⁷⁴⁷ M.N. Rothbard, *Why Paleo?*, in “Rothbard–Rockwell Report,” vol. 1, no. 2, May 1990, p. 3.

⁷⁴⁸ What economic historian Deirdre McCloskey calls “bourgeois virtue” was one of the powerful forces behind the take-off of innovation and production represented by the Industrial Revolution. Aristocratic, religious, and military cultures despised commerce as ignoble and venal. But in eighteenth-century England and the Netherlands, commerce began to be seen as moral and uplifting. D. McCloskey, *The Bourgeois Virtues: Ethics for an Age of Commerce*, University of Chicago Press, Chicago, IL, 2006. Ricossa argued that the bourgeoisie is not a social class but a human type, a character. S. Ricossa, *Straborghese*, cit., Chapter 2.

⁷⁴⁹ According to Hoppe, democracy has erased natural elites and spontaneous social hierarchies: “Today, after less than one century of mass democracy, there exists no such natural elites and social hierarchies [...]. People and institutions commanding an authority and respect independent of the State, are [...] intolerable and unacceptable to a democrat and incompatible with the democratic spirit of egalitarianism [...]. And because of that, under the democratic rules of the game, all independent authorities, all independent institutions have been systematically wiped or diminished through economic measures.” H.-H. Hoppe, *What Must Be Done*, speech at the conference “The Bankruptcy of American Politics”, organized by the Mises Institute and held in Newport Beach, California, on January 24–25, 1997; digital edition by the Mises Institute, Auburn, AL, 2013, p. 10.

family⁷⁵⁰ and other intermediate communities; that recovers the cultural heritage of the West⁷⁵¹ and the moral standards that arise from the Judeo-Christian tradition.⁷⁵²

⁷⁵⁰ The aprioristic challenge to any authority has been exercised with particular virulence against the family, one of the favorite targets of the libertarian Left. Traditional libertarians, on the other hand, believe that the family represents a capital institution, for at least two orders of reasons. First, being configured as a social microsystem with a private and voluntary structure, it *naturaliter* acts as a counterbalance to the State and as a shield against its intrusiveness: “the institutions of the centralizing, interventionist state and that of the family have historically been at odds with one another, and [...] this present threat is but another chapter in this unfolding saga. A government bent on taking an ever larger role in the life of its citizenry sooner or later runs into conflict with other institutions – churches, voluntary clubs, the family – which also command the strong loyalty of the people. And when this occurs, the government must either give up its totalitarian aspirations, or determine to enter a give–no–quarter war with these alternative institutions.” W. Block, *Defending the Undefendable II*, cit., pp. 73–4. Second, the family “promotes values necessary for the preservation of a free society such as parental love, selfdiscipline, patience, cooperation, respect for elders, and self–sacrifice.” L.H. Rockwell Jr., *The Case for Paleoliberalism*, cit., p. 36.

⁷⁵¹ Italian journalist Federico Rampini wrote: “Without our Industrial Revolution, that horrible thing that has soiled the planet, three billion Chinese and Indians, or a billion and a half Africans, would not be alive today: it is our modern agriculture based on fertilizers and machinery that allows them to be fed; it is our medicine that has reduced mortality and extended longevity. The Asian economic miracles that have lifted half the planet out of poverty happened by copying the scientific and entrepreneurial model of the West. Without our market economy, which uses innovations to create wealth, the green technologies that allow a future with fewer carbon emissions would not exist.” F. Rampini, *La colpa di essere ricchi*, in “Corriere della sera”, November 7, 2023 (my translation).

⁷⁵² The religious question is very useful to clearly illustrate the meaning of the paleo position. It is not believed, and it is not required, that religious faith is indispensable to adhere to – and implement – libertarianism (both Rothbard and Rockwell Jr., for example, were not believers). However, it is noted that Christianity has offered an important contribution to the construction of values and behaviors that are profitable for the germination of dynamic social arrangements. By emphasizing the value of each individual soul (each person is created in the image of God); by attributing a universal dimension to conscience; by asserting the moral equality of human beings (in contrast to the natural inequality, of status, of the ancient world); by conceiving natural rights in natural law; by contrasting imperial sovereignty and desacralizing the State, which is not the master of the conscience of individuals, it has transformed the perception of human identity, providing an ontological foundation for the individual. Thus, giving rise to individualism, and consequently to concepts such as the dignity and freedom of the individual and the rights of private property, cornerstones of libertarian doctrine. And by sedimenting these values in society, it has allowed the development of Western civilization in all fields, from the arts to science and technology. In a letter sent to Justin Raimondo in 1990, Rothbard writes: “I am convinced that it is no accident that freedom, limited government, natural rights, and the market economy only really developed in Western civilization. I am convinced that the reason is the attitudes developed by the Christian Church in general, and the Roman Catholic Church in particular. [...] Even though I am not a believer, I hail Christianity, and especially Catholicism as the underpinning of liberty”. J. Raimondo, *An Enemy of the State: The Life of Murray N. Rothbard*, cit., pp. 325–6. Joseph Salerno wrote: “Murray recognized the positive role in bolstering liberty in the U.S. played by liturgical Christianity. This brand of Christianity, which is epitomized by the Roman Catholic Church [...] emphasizes personal salvation through participation in the Church’s liturgy and denies that the Kingdom of God can be established on earth by the puny efforts of man. [...] A formal religion, specifically Christianity, is necessary as the natural repository of the traditional moral rules that are necessary to reinforce and complement a classical liberal or libertarian legal code in order for a real market society to survive and flourish.” J. Salerno, in AA.VV., *Murray N. Rothbard: in Memoriam*, Mises Institute, Auburn, AL, 1995, p. 80. On these grounds, the aggressive atheism and anti–religiosity exhibited by a significant part of the libertarian movement, on which the influence of Ayn Rand is not irrelevant, is rejected. Although Rothbard believed that they were more the by–product of contempt for bourgeois culture; these libertarians, in fact, were not hostile to other forms of religiosity, for example pagan or New Age. On the subject see L. Haddigan, *The Importance of Christian Thought for the American Libertarian Movement: Christian Libertarianism, 1950–71*, in “Libertarian Papers”, vol. 2, art. no. 14, 2010, <http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-14.pdf>; L. Siedentop, *Inventing the Individual: The Origins of Western Liberalism*, Penguin, London, 2014; G. Piombini, *Ecco cos’hanno in comune libertarismo e cattolicesimo*, in “Enclave”, no. 22, December 2003; *L’elogio del cattolicesimo nel pensiero di Rothbard*, in “élites”, no. 3, July–September 2004, pp. 69–94. Considering the Italian case, a libertarian interpretation of pervasive statism highlights the weight of the anticlericalism of classical liberals of the Risorgimento and post–Risorgimento: “Italian liberals wanted to restrict the freedoms of the Church and therefore enormously reduce its weight in society. The “omnipotent State” did not appear to be a danger to our liberals, because on the contrary its strength and power were considered useful to effectively counteract the influence of the clergy, understood by them as a real threat to the freedoms of individuals.” A. Atzeni, L.M. Bassani, C. Lottieri, *A scuola di declino. La mentalità anticapitalista nei manuali scolastici*, Liberilibri, Macerata, 2024, p. 25 (my translation).

Rothbard again: we “are hardcore libertarians, but we have also long been “paleos” – men devoted to bourgeois values and culture and staunch opponents of the nihilist ‘counter-culture.’”⁷⁵³ The integration of the libertarian political core with a right-wing cultural framework is outlined by Hoppe as follows: “as a right-libertarian, I would of course first say to my children and students: always respect and do not invade others’ private property rights and recognize the State as an enemy and indeed the very anti-thesis of private property. But I would not leave it at that. I would not say (or silently imply) that once you have satisfied this requirement “anything goes.” Which is pretty much what ‘thin’ libertarians appear to be saying! I would not be a cultural relativist as most “thin” libertarians at least implicitly are. Instead, I would add (at a minimum): be and do whatever makes you happy, but always keep in mind that as long as you are an integral part of the worldwide division of labor, your existence and well-being depends decisively on the continued existence [...] of white heterosexual male dominated societies, their patriarchic family structures, and their bourgeois or aristocratic lifestyle and conduct.”⁷⁵⁴

Rothbard’s reading of America’s political and cultural evolution in the previous twenty years also plays a significant role in the ‘paleo’ shift. Between the 1960s and 1970s, a left-liberal hegemony began to unfold in various sectors of American society. A statist, egalitarian, welfarist, secularist, environmentalist and multiculturalist elite⁷⁵⁵ succeeded in imposing a Left-wing common sense on many issues and in demonizing and excluding from the debate the demands of “Old America”. The Eastern establishment, welded to the world of “official” culture (academics, journalists, pundits, writers, directors) and to important exponents of big business, extended “positive” and group rights – pseudo-rights, compressed freedom of association through anti-discrimination laws, imposed forced integration through civil rights, and wrapped everything in a suffocating political correctness. The victim of this hegemonic operation has been primarily the *common man*. “The essence of the Progressive, New Deal, left-liberal revolution of that collectivist century was a monstrous assault upon the liberties, the income, and the sensibilities of what the great laissez-faire economist and social scientist William Graham Sumner called the Forgotten

⁷⁵³ M.N. Rothbard, *Why the Report?*, cit., p. 2.

⁷⁵⁴ In the same article he states: “most if not all technical inventions, machines, tools and gadgets in current use everywhere and anywhere, on which our current living standards and comforts largely and decisively depend, originated with *them* [the small minority of white, heterosexual males]. All other people, by and large, only imitated what *they* had invented and constructed *first*. [...] And isn’t it the typical white hierarchical family household of father, mother, their common children and prospective heirs, and their ‘bourgeois’ conduct and lifestyle — i.e., everything the Left disparages and maligns — that is the economically most successful model of social organization the world has ever seen, with the greatest accumulation of capital goods (wealth) and the highest average standards of living? And isn’t it only on account of the great economic achievements of this minority of ‘victimizers’ that a steadily increasing number of ‘victims’ could be integrated and partake in the advantages of a worldwide network of the division of labor? [...] Hence, even if you do not want to have any part in that, recognize that you are nonetheless a beneficiary of this standard “Western” model of social organization and hence, for your own sake, do nothing to undermine it but instead be supportive of it as something to be respected and protected.” H.-H. Hoppe, *A Realistic Libertarianism*, cit.

⁷⁵⁵ “Apart from the special case of the United States, no other country has been in any sense multicultural or multinational. Every nation has enjoyed a homogeneous, and therefore successfully harmonious, cultural and ethno-national base. This does not mean, of course, that every single resident of say, Sweden, must be ethnically and culturally Swedish. But it does mean that beyond a certain tipping point, an infusion of heterogeneous elements into the Swedish mix will begin to tear the nation asunder. Beyond a small quantity, national heterogeneity simply does not work, the “nation” disintegrates into more than one nation, and the need for separation becomes acute. Note that recognizing the vital importance of separation of national groups itself bears no implication that one or the other group is “superior” to the other. [...] It is just that they are different, a different nationality, and each should be able to possess and enjoy their own ethno-cultural home base, where each can speak its own language, and pursue its own values and mores undisturbed.” M.N. Rothbard, *The Vital Importance of Separation*, in “Rothbard-Rockwell Report”, vol. 5, no. 4, April 1994, p. 5.

Man, the average, hard-working, thrifty, God-fearing, and good-hearted, middle-class and working-class man and woman who has been fleeced, looted, outraged, and trampled upon by organized left-and-center liberalism via its control of the State apparatus, and by controlling our dominant cultural institutions.”⁷⁵⁶

On a strategic level, the answer is what Rothbard calls “right-wing populism”: a direct appeal to the “man in the street” in an anti-establishment and anti-State function.⁷⁵⁷ The defense of typical demands of the “common man” of the middle and working classes⁷⁵⁸ – the right to bear arms, homeschooling, local militias, strict protection against trespass, private residential centers, intransigence against crime, intolerance towards labor unions, irritation at the increasingly pervasive intrusion of psychotherapists, anti-environmentalism and anti-healthism – constitutes the foundation of a social bloc to be pitted against the political-bureaucratic elite and its allies in the intellectual world of universities, media, film, arts.⁷⁵⁹

If names follow things, faced with such a difference in approach the semantic aspect could no longer be ignored. At the beginning of the 1990s, Rockwell Jr. coined the term that best defines this current of contemporary libertarianism: *paleolibertarianism*. “If we are to have any chance of victory, we must discard the defective cultural framework of libertarianism. I call my suggested replacement, with its ethically based cultural principles, “paleolibertarianism”: the old libertarianism. I use the term as conservatives use paleoconservatism: not as a new creed, but as a harking back to their roots which also distinguishes them from the neocons. We have no parallel to the neocons, but it is just as urgent for us to distinguish libertarianism from libertinism.”⁷⁶⁰ Rothbard: “At this stage, the only way to save the glorious word and the concept of “libertarian” is to affix the word “paleo” to it, and thereby make the distinction and separation crystal clear.”⁷⁶¹

The new label also certifies the political and organizational separation.⁷⁶² The alliance with the paleoconservatives (Patrick Buchanan, Paul Gottfried, Thomas Fleming),⁷⁶³ which will last about a decade,⁷⁶⁴ further distances the Left components of American libertarianism.⁷⁶⁵

⁷⁵⁶ M.N. Rothbard, *The Kennedy Case: What Kind of Republican?*, in “Rothbard–Rockwell Report”, vol. 2, no. 6, June 1991, p. 7.

⁷⁵⁷ Confirming the fact that populism is a political attitude or practice that can be found in movements positioned at distant or even opposite points of the political spectrum, the “populism” evoked by Rothbard is different from the statist, social or Peronist one: this fuels resentment against “wealth” in itself, always certainly achieved through dishonest means or the fruit of undeserved privilege, and is therefore redistributive and protectionist; while the first supports the ‘leave-me-alone’ request, against the State caste and its intellectual arm.

⁷⁵⁸ Paleos point out that in a society based on the free market, and therefore not State-controlled, “alternative” behaviors that imply, or generate, idle or parasitic attitudes (excessive consumption of drugs or alcohol, begging, taking-over of homes) would tend to be drastically reduced, since one cannot live off others through welfare.

⁷⁵⁹ Paleo denounces the nihilism, catastrophism and irrationality conveyed by avant-garde, surrealist or postmodern literature and art, and vice versa celebrates the great aesthetic and narrative power of the past – of the Baroque, of Romanticism, of the nineteenth-century novel – and the optimism of Old America.

⁷⁶⁰ L.H. Rockwell Jr., *The Case for Paleolibertarianism*, cit., p. 35.

⁷⁶¹ M.N. Rothbard, *Why Paleo?*, cit., p. 3. On the question of denomination, two years later Rothbard goes to extremes in this way: “So what should we call ourselves? I haven’t got an easy answer, but perhaps we could call ourselves radical reactionaries, or “radical Rightists,” the label that was given to us by our enemies in the 1950s. Or, if there is too much objection to the dread term “radical,” we can follow the suggestion of some of our group to call ourselves “the Hard Right.” Any of these terms is preferable to “conservative,” and it also serves the function of separating ourselves out from the official conservative movement which [...] has been largely taken over by our enemies.” M.N. Rothbard, *A Strategy for the Right*, cit., p. 9.

⁷⁶² Even towards the so-called *neolibertarians*, or *Beltway libertarians*, pragmatic libertarians accused of accepting participation in the political-party game only to be admitted into the Washington elite, stipulating, in the name of political alliances, increasingly downward compromises (the most prominent exponent of this orientation is Rudolph J. Rummel). Remaining entangled in the federal power system, they would in fact endorse statist and warmongering

12.3 Relations with left-wingers

As regards the relationship between libertarianism and the Left, one should distinguish between the different traditions of thought that have constituted it – communist, socialist, social democratic, liberal, radical, anarchist-collectivist – and between the various historical periods. As mentioned above, in the 1960s American libertarianism appears closer to the New Left generated by protest movements, which favors themes coinciding with libertarian positions: pacifist impulses, opposition to the Vietnam War and to U.S. interventionism in general, aversion to compulsory conscription, legalization of marijuana, support for many Supreme Court rulings in favor of expanding individual liberties, decentralization, hostility to the nationalized school system, participatory democracy, “black power”, and pro-peasants land reforms in the Third World. The attempt is to channel the common antimilitarist and anti-big business inspiration into a more general anti-statist orientation.⁷⁶⁶ But already at the end of the decade the political-cultural incompatibilities, mainly

policies. Policies that, among other things, contrast the process of radical decentralization hoped for by the paleos in view of anarcho-capitalist perspectives.

⁷⁶³ We have already briefly examined in note 698 the main elements of this political-cultural current. The main center of debate and development was the John Randolph Club, founded in 1990 by Rothbard and Fleming, at the time president of the Rockford Institute and editor-in-chief of the magazine *Chronicles*, the main voice of the paleoconservative movement. A high point of the collaboration is a conference on isolationism held in 1994 at the Mises Institute, *The Costs of War*, whose papers are collected in a volume of the same name. On the political front in the strict sense there is the support for David Duke in the race for governor of Louisiana in 1991 and for Pat Buchanan in the presidential campaign of 1992. On the issues of dissent, such as abortion or prostitution, Rothbard suggested as a compromise solution the choice at the most decentralized level possible: not only at the state level, but also at the county or municipality level, so as to tailor policies according to the preferences of (majorities of) the various communities. The decentralization of decision-making would also have resolved issues such as prayer, the display of the crucifix or the teaching of creationism in schools, opposing the crude secularism of prohibitions and uniformity. In the 1990s the most marked disagreements between the two components concerned trade protectionism.

⁷⁶⁴ The partnership ended at the end of the 1990s mainly because of paleolibertarian intolerance towards Buchanan’s increasingly pronounced economic nationalism. But also because of the perception in public opinion of an indistinction between paleolibertarianism and social conservatism. The final divorce was sealed with two articles in which a harsh attack was launched against paleoconservatives: Rockwell in 2002 with *What I Learned From Paleoism*, published on his website lewrockwell.com, and Hoppe in 2005 with *The Intellectual Incoherence of Conservatism*, appeared on the Mises Institute website. On the controversies, convergences and in general the relationship between libertarianism and conservatism, even on a theoretical level, see R.A. Nisbet, *Conservatives and Libertarians: Uneasy Cousins*, in “Modern Age”, vol. 24, no. 1, Winter 1980, pp. 2–8; G.W. Carey (ed.), *Freedom and Virtue: The Conservative/Libertarian Debate*, University Press of America, Lanham, Maryland, 1998. More recently, the conservative Nathan W. Schlueter and the libertarian economist Nikolai G. Wenzel have identified and proposed the following points of agreement: the rejection of liberal progressivism, the importance of virtue and economic freedom, the moral and political priority of persons and the aversion to the hyper-bureaucratic modern State. N.W. Schlueter, N.G. Wenzel, *Selfish Libertarians and Socialist Conservatives? The Foundations of the Libertarian-Conservative Debate*, Stanford University Press, Stanford, CA, 2016.

⁷⁶⁵ An example of the urticating positions for the libertarian Left taken by Rothbard in that period is his defense of the Religious Right: “Most libertarians think of Christian conservatives in the same lurid terms as the leftist media, if not more so: that their aim is to impose a Christian theocracy, to outlaw liquor and other means of hedonic enjoyment, and to break down bedroom doors to enforce a Morality Police upon the country. Nothing could be further from the truth: Christian conservatives are trying to fight back against a left-liberal elite that used government to assault and virtually destroy Christian values, principles and culture. [...] While many Christian conservatives favor keeping some or all of the sex laws on the books for symbolic reasons, I know of no Christian group that wants to embark on a crusade of enforcing these laws, or of having the police break down bedroom doors. For that matter, there are very few conservative prohibitionist groups either; if and when prohibition comes to America, it will be a left-liberal measure, done to improve our “health” and to cut down accidents on the road. There are no Christian groups that want to persecute gays, or adulterers.” M.N. Rothbard, *The Religious Right: Toward a Coalition*, in “Rothbard-Rockwell Report”, vol. 4, no. 2, February 1993, pp. 2–3.

⁷⁶⁶ Rothbard’s founding of the magazine “Left and Right” in 1965 and his membership in the Peace and Freedom Party in 1968 and the publication of the article *Confessions* in the radical Left magazine “Ramparts” certify this passage.

the egalitarianism, collectivism, irrationalism and nihilism of the radical Left, make a common path impracticable.⁷⁶⁷ The strategy of “entryism” in large movements or organizations, such as the New Left (and previously the Right) is judged ineffective and no longer necessary. And from that moment on, U.S. libertarianism will give birth to an autonomous movement on the organizational level.

Limiting the comparison to the contemporary Left and its prevalent traits, it must first be clarified that it is not true, as is commonly believed, that the dissent concerns only the economic sphere, with the perennial leftist suspicion or open hostility towards the market, the equivalence between profit and greed, the “neoliberalism” responsible for all evils and the continuous recourse to the State and high taxation.⁷⁶⁸ The disagreement also extends to various social issues that affect personal freedom and to the so-called civil rights, which, as we have seen (Chapter 6), do not coincide at all with the “negative” liberties of libertarians.

More generally, from a libertarian point of view, the main limit of the political culture of the Left, socialist and liberal, is constituted by the idea that individuals do not know what their own needs and interests are, that they are minors in need of guidance, in particular of an elite capable of establishing which behaviors are emancipated and which are regressive. An attitude that is in turn a product of the sense of moral and intellectual superiority often manifested by this political-cultural area. With the intent, or pretext, of protecting the (allegedly) weak subjects, the aspiration to put order in the lives of others is pursued, with interventionist and regulatory impulses on civil society and the effects of compression of individual autonomy and freedom. For example, options are expressed that are contrary to the legalization of prostitution, or genetic engineering, or surrogate motherhood, based on abstract arguments such as the “commodification” of the body, against the principle of freedom that everyone is master of his own body and life.⁷⁶⁹ Healthy lifestyles are

Political and tactical in nature, linked to the historical contingency of the moment, not ideological, as Rothbard will specify in an interview in 1972: the pole star is always the relaunching of the Old Right, whose anti-imperialist tradition could have been welded to the pacifist drives of the student movement. On the other hand, already in the article mentioned Rothbard appears aware of the approximation contained in the label of “Left”: “Twenty years ago I was an extreme right-wing Republican [...]. Today, I am most likely to be called an extreme leftist, since I favor immediate withdrawal from Vietnam, denounce U.S. imperialism, advocate Black Power and have just joined the new Peace and Freedom Party. And yet my basic political views have not changed by a single iota in these two decades! It is obvious that something is very wrong with the old labels, with the categories of “left” and “right,” and with the ways in which we customarily apply these categories to American political life. My personal odyssey is unimportant; the important point is that if I can move from “extreme right” to “extreme left” merely by standing in one place, drastic though unrecognized changes must have taken place throughout the American political spectrum over the last generation.” M.N. Rothbard, *Confessions of a Right-Wing Liberal*, in “Ramparts,” June 15, 1968, p. 48.

⁷⁶⁷ Rothbard’s article that marked the definitive closure towards the radical Left was *The New Left, RIP*, which appeared in the “Libertarian Forum” in March 1970.

⁷⁶⁸ “The “liberals,” when confronted by a social problem, regularly turn toward government for a solution. Whether it is the problem of the cities, the problem of integration, the problem of poverty, the problem of housing, the problem of underdeveloped nations, and so on ad infinitum, they invoke government for solutions, at the expense of the citizenry. The problems have not been solved, but the cry is for more, more, all from government, that is, the taxpayer. [...] Liberals of our century are adept in advocating grand designs hatched from their brains, that is, the plans are to be thought of by them, and the bill for carrying them out is to be paid by everyone else. In most respects, the conservatives are much to be preferred. [...] As a rule they have a much more realistic picture of the economic facts of life than do the liberals, who seem to imagine that endless quantities of money will fall from heaven to fulfill their plans. The conservatives are usually aware that “you can’t get something for nothing” and that when people’s liberty is tampered with they will not produce as successfully and the standard of living will decline as a result.” J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., pp. 14–5.

⁷⁶⁹ This belief is also shared by conservatism, according to which a distinction must be made between “true” values and material values, induced but false desires, the ephemeral. Although a conservative like Scruton believes that we should

imposed. Environmentalism is yet another face of regressive, pauperist and punitive dirigism. The personal freedom to own weapons is opposed. Freedom to enter into relationships with whomever one wishes is hindered through “anti-discrimination” legislation. Freedom of expression is limited by supporting criminal sanctions for those who express “politically incorrect”, discriminatory, intolerant or apologetic of authoritarian movements opinions.⁷⁷⁰ Scrupulous controls are carried out on the display of religious symbols. The right to control the adequacy of parents in the upbringing of their children is reserved to the State. Doctors or judges are supported when they impose euthanasia even against the will of relatives and/or in the absence or violation of a living will.

The State is considered as the only possible dispenser of collective happiness, as a guardian, who must supervise citizens, limiting their freedom. And things get worse when elements of left-wing puritanism are superimposed on this cultural matrix, as has been evident since the 1980s.

According to this mentality, liberty is not above all an opportunity for individual self-realization and enrichment, both material and spiritual, but is a source of abuse, injustice, crime. Innovation is perceived as a danger rather than an opportunity, hence the suspicion that progressive and radical intellectuals cultivate towards television (the “videocracy”), all new forms of media communication, the Internet, advertising (the “hidden persuaders”), artificial intelligence. Television, due to its wide reach, the ways in which it is enjoyed, and virtually infinite range of programs (including entertainment and amusement, thus not “committed”, ones), has been, and still is, considered an instrument for the manipulation of consciences and brains, the promoter of mass stupefaction.⁷⁷¹ The paternalistic fear of the “subjugation” of the viewer and the invocation of his protection are often nothing more than the moralistic impulse to impose one’s own tastes and values, pedagogically selecting the contents to be spread. It is assumed that people (of course “the others”, not us) are incapable of choosing, of filtering the content received, that they are totally passive and at the mercy of propaganda messages and fake news, and “oversight” is invoked that only results in limits to the circulation of ideas. On the other hand, the apocalyptic approach to television also affected other means of communication (printed paper, radio, cinema) in their early years, and today it is repeated with video games, the Internet and new digital *media*, confirming a conservative reflex of a censorious type, which cloaks the discomfort felt in the face of innovation

strive to discipline the “commodification” of life through values such as good taste and decorum rather than through politics (and especially liberal and socialist politics). R. Scruton, *op. cit.*, Chapter V.

⁷⁷⁰ “Wokeism starts from a seemingly harmless or even healthy claim: to raise awareness of the weight that words and attitudes can have on others. To invite everyone to pay attention to others and respect their choices. Except that this reasonable request often goes beyond a censorious fury and claims to inflict and impose a sort of newspeak not only purged of offensive expressions but characterized by the loss of the main function of language – that is, to communicate. The ever-growing list of prohibited words ends up extending to the concepts they express. The slightly comical appearance of the crusade for the use of the schwa, nor the exaggerations about the rewriting of works of the past (even recent: see Roald Dahl) should not be misleading. The invasive editing ordered by Penguin on books like “Matilda” and “Charlie and the Chocolate Factory” shows that it is not simply a matter of giving the language a makeover, using words more appropriate to today. There is a desire for a broader rewriting, which involves the very meaning of the plot and the message of the book. This is not a metaphorical war of linguistic liberation, but an expedition of conquest: not the 25th of April, but the 27th of October of the language.” C. Stagnaro, *La libertà vigilata*, in “Il Foglio”, April 24, 2023 (my translation). This attitude has provoked a backlash from the right-wing, which, for example, in some U.S. states, has banned books exhibiting excessively crude language or dealing with transgender issues from municipal or school libraries: “a blind and obscurantist Left irresponsibly gives the blind and obscurantist Right the flag of ‘free speech,’ and the blind and obscurantist Right manipulates the principles of ‘free speech’ to take revenge for the intolerance of the blind and obscurantist Left.” P. Battista, *Le due inquisizioni d’America*, in “Il Foglio”, April 5, 2025 (my translation).

⁷⁷¹ In Italy, the Communist Party even opposed the switch from black-and-white to color television, considering it a luxury for the vicious, an aesthetic opulence that corrupted the necessary moroseness.

with noble intentions. This attitude is more marked on the Left because it is the expression of a cultural *humus* full of haughty suspicion, if not open hostility, towards Western mass capitalist societies, with their consumption judged “superfluous”, their “vulgar” tastes, their “conformist” choices.⁷⁷² This is countered by a strategy of cultural terrorism, often conducted with cryptic and unintelligible language.

This distrust is generally manifested towards technology and its progress. The Modern is often approached from an apocalyptic and denigrating perspective. Sandro Modeo described the “technophobia” of the Left as follows: “an equivocal and bigoted defense of “nature” against “science and technology” and of the “human” against the “artificial”, which emerges [...] in bioethical evaluations (with the alarmism towards technofertilization), in the treatment of psychopathologies (with the irresponsible opposition to pharmacology), in biotechnological questions (with the indiscriminate fight against transgenic foods, even the advantageous ones) and all the way up to cinema, with the stigmatization of special effects and digital in the name of “poetry”, as if it were not possible to love both *Ladri di biciclette* and *Matrix*.”⁷⁷³

We have already spoken about legal paternalism, hostility towards consumption (“consumerism”) and money as the “devil’s dung”, which are particularly pervasive on the Left (see *above*, Chapter 7).

As can be seen, even the set of values and beliefs adopted by the Left is notably distant from the libertarian cultural system.⁷⁷⁴

Finally, it should be added that the oversimplified classification: Right equals economic freedom and Left equals personal freedom is further refuted by the already demonstrated inseparability between the two freedoms (Chapter 6).

12.3.1 Left-libertarianism

At the doctrinal level, orientations have arisen that, renouncing the intangibility of private property rights, seek to reconcile certain classical libertarian principles with the legitimisation of ‘positive’ interference from an emancipatory or egalitarian perspective.

⁷⁷² And perhaps no longer just an Italian quirk is the reality of an ideologically oriented judiciary that is driven to prosecute, more and before a crime, an unwelcome anthropology.

⁷⁷³ S. Modeo, *Controcanto*, in “Il Nuovo Calcio”, n. 102, December 2000, p. 16 (my translation). In general, libertarianism, while not being scientific, has an attitude of complete openness towards the innovations brought about by science and technology. Free research, with the related applicative consequences, is one of the most powerful factors of progress for humanity, and therefore any restriction must be opposed, whether it concerns the interaction with nature (nuclear energy, GMOs, patentability of organisms) or with human beings (genetic engineering, biotechnology, nanotechnology). The possibility of eliminating many of the diseases that still afflict humanity, and in general of constantly improving the quality of life of individuals, is inextricably linked to the free deployment of the energies of scientists and researchers. The limits imposed on experimentation, inspired by the Frankenstein syndrome, for libertarians are just yet another face with which prohibitionism presents itself. In the debate between transhumanism (technology–body interaction) and the protection of human nature, libertarians support a third position which is the voluntariness of the individual and the non–imposition through collective decision (biopolitics): the choice to carry out genetic editing or to insert an implant in the brain, as well as the choice between synthetic meat and cow meat, should not be imposed by public authorities but left to individuals on the market.

⁷⁷⁴ From the progressive world, the hostility is largely reciprocated. As Brennan wrote referring to the U.S. political–media landscape: “the press often fails to present libertarians in a fair way. Thus, there is a good chance that you misunderstand what libertarians actually think. *Slate*, the *Huffington Post*, the *New Yorker*, and the *Boston Review* published articles on libertarianism by libertarianism’s critics. Libertarians believe these articles are as fair and balanced as the latest gossip column about Brad and Angelina’s marital spats.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 8.

A first current, which has assigned itself the label of *left-libertarianism*, and whose main exponents are Hillel Steiner,⁷⁷⁵ Philippe Van Parijs,⁷⁷⁶ Michael Otsuka,⁷⁷⁷ and Peter Vallentyne,⁷⁷⁸ seeks to hold self-ownership and positive rights together, advocating redistributive schemes.

The initial point of disagreement with the prevailing strand of libertarianism concerns the legal configuration of external resources devoid of ownership: they are not *res nullius* but common property.⁷⁷⁹ These authors, therefore, recognize the ownership of themselves but not the individual ownership of nature. They therefore believe that the original acquisition should have restrictions and not be configured as an unlimited homesteading. Natural capital and the proceeds of its exploitation must be divided into equal parts.

In addition to the problem of inequalities, in their opinion the privatization of each section of land following the homesteading criterion could leave some individuals without the means of subsistence and therefore destined to die.⁷⁸⁰

Left-libertarians, like liberals (C. Brettschneider, M. Murray, W. Kymlicka, R. Arneson, I. Carter, G.A. Cohen,⁷⁸¹ B. Ackermann, A. Alstott⁷⁸²), support their position by mentioning Locke's proviso, which, in its full version, is the following: there are two limits to appropriation: 1) each person can acquire only what he is able to produce with his own labor and what he is able to use/consume (so that there is no deterioration and waste of unused goods; for example, a person picks some fruit from the trees and then lets it rot; he is violating the share of others' property as common property); and 2) a sufficient quantity of goods must be left for others⁷⁸³.

In Steiner's version, each person has the right that others do not appropriate more than an equal share of external resources; in the version of Otsuka and Vallentyne, instead, each person has the right that others do not appropriate a share greater than what is compatible with equal opportunities for well-being. These principles of justice, aimed at generating not extreme egalitarianism but equality of starting points, should theoretically translate into an egalitarian redistribution of resources *only once* and *at the beginning of life* or *at the beginning of adult life* of each person, when people become moral agents, able to assume responsibility for their own choices. As a result of the practical difficulties of this solution,⁷⁸⁴ the prescription becomes the reiterated transfer of income from owners to those without access to resources (essentially the equivalent of a rent, or a tax), in a non-welfarist free market context.

⁷⁷⁵ H. Steiner, *An Essay on Rights*, Blackwell, Oxford, 1994.

⁷⁷⁶ Van Parijs defined himself as *real-libertarian*, since what must be maximized is the real liberty of all, understood as a combination of formal liberty and the means for its actual exercise. P. Van Parijs, *Qu'est-ce qu'une société juste?*, Éditions du Seuil, Paris, 1991; *Real Freedom for All. What (If Anything) Can Justify Capitalism?*, Oxford University Press, New York, 1995.

⁷⁷⁷ M. Otsuka, *Libertarianism Without Inequality*, Oxford University Press, Oxford, 2003.

⁷⁷⁸ H. Steiner, P. Vallentyne (eds.), *Left-Libertarianism and Its Critics: The Contemporary Debate*, Macmillan, London, 2000.

⁷⁷⁹ Authors who share this premise are also called *geo-libertarians*, from Henry George, an advocate of common ownership of land. One exponent was Fred Foldvary, who also minted the name.

⁷⁸⁰ We have already reported on Hoppe's objection to this thesis in Chapter 3, note 92.

⁷⁸¹ Cohen was an analytical Marxist who later defined himself, despite his harsh criticism of Rawls, as a "Left-wing Rawlsian" (see *Rescuing Justice and Equality*, Harvard University Press, Cambridge, MA, 2008).

⁷⁸² B. Ackerman, A. Alstott, *The Stakeholder Society*, Yale University Press, New Haven, CT, 1999.

⁷⁸³ J. Locke, *Second Treatise of Government*, cit.

⁷⁸⁴ For example, people are born and live in different periods and therefore would not receive the same capital in real terms, because this depends on the size of the population and the value of the natural capital to be distributed, which vary over time.

Such limitations apply not only to initial acquisition, but also to inheritance: because dead people are unable to exercise powers and therefore no longer have rights to their assets, which then become *res nullius*; and/or because over time natural resources are consumed and the population increases, and therefore each newborn has a smaller share of natural resources and must be compensated; the consequence is that inheritance would be significantly restricted.

The philosopher G.A. Cohen has tried to refute libertarianism (in Nozick's version) precisely through the use of the Lockean proviso, supporting the plausibility of the coexistence of self-ownership and common ownership of the external world. Referring to the statement made by Locke in the *Second Treatise of Government*, according to which God has given the world to men "in common", Cohen argues that, if the initial position is common ownership, and not the absence of ownership, any individual has a right of veto on the appropriation attempted by any other (or the right to negotiate in order to be rewarded). Assuming that the world is inhabited by only two people, Able and Infirm, the latter could use his co-ownership of the resources by allowing Able to undertake any productive activity as long as it produces a share for him too. This procedure would represent the basis of the legitimacy of income redistribution policies.⁷⁸⁵ A similar position is expressed by the liberal Alan Haworth: in a developed economy such as the contemporary one, which is different from the initial appropriation in the state of nature, following a bilateral exchange a third party might be in a "worse condition" than before (which Haworth also means as a reduction of opportunities), and therefore one would have to wait for his consent (expressible, for example, through democratic procedures).⁷⁸⁶

As can be seen, on the basis of the canons of classification followed in this paper, the positions now illustrated, regardless of their self-assigned labels, can hardly be included within the realm of libertarianism; and instead appear closer to the liberal democratic or social democratic research tradition.⁷⁸⁷

Standard libertarians naturally dispute these theses. They essentially resort to two arguments. First of all, they do not accept the Lockean proviso, on the basis of several logical objections: 1) it would prevent any private ownership of land, because it can always be said that the reduction of available land leaves everyone else, who could have appropriated that land, in a worse condition (Rothbard); 2) the impossibility of interpersonal comparison of utilities, which prevents accurate measurement of any deterioration in the condition of some (W. Block); 3) the fact that in the process of appropriation no rights are violated, because there is no right of the world to remain in the condition it is in at a given moment in its history (R. Pilon). Secondly, they deny the correctness of Cohen's interpretation of Locke's sentence. The expression "in common" should be understood in the sense of "in general". Indeed, Locke later states: "If such a consent as that [of all mankind] was necessary, man had starved, notwithstanding the plenty God had given him."⁷⁸⁸ Randall G.

⁷⁸⁵ G.A. Cohen, *Self-Ownership, World-Ownership, and Equality*, in F. Lucash (ed.), *Justice and Equality, Here and Now*, Cornell University Press, Ithaca, NY, 1986. The most convincing criticism of Cohen's theses is contained in T.G. Palmer, *G.A. Cohen on Self-Ownership, Property, and Equality*, in "Critical Review," vol. 12, no. 3, Spring 1998, pp. 225–51.

⁷⁸⁶ A. Haworth, *Anti-Libertarianism. Markets, Philosophy and Myth*, Routledge, London, 1994.

⁷⁸⁷ A left-liberal scholar like Nicola Riva wrote: "Some conceptions presented as left-libertarian go further and argue that at least some of the inequalities due to factors beyond people's control should be compensated. [...] In my opinion, with that move those conceptions leave the scope of libertarianism and become – as conceptions of economic justice – difficult to distinguish from liberal egalitarian conceptions of justice [...], except for the fact that people can renounce voluntarily their rights to join a non-egalitarian and/or illiberal political community." N. Riva, *Egalitarismi: Concezioni contemporanee della giustizia*, Giappichelli, Turin, 2016, Kindle e-book, Chapter 1, § 4 (my translation).

⁷⁸⁸ J. Locke, *Second Treatise of Government*, cit., p. 12.

Holcombe believes that the expression “common to all men” should be understood in the sense that, in the state of nature, resources are “available” to anyone, not “property” of all.⁷⁸⁹ For Gerard Casey, simple existence, without any action, cannot give the right to (collective) ownership of natural resources. To demonstrate this, he observes that, if the first human beings who populated only the eastern part of Africa were also owners of Alaska or Siberia, of whose existence they were unaware, then they were collectively owners also of Pluto or any uninhabited planet in any galaxy, of which they were equally unaware; and the same is true today for all the inhabitants of the Earth.⁷⁹⁰ In another work he argues the same thesis as follows: “Imagine the planet with no human inhabitants, a situation that must, it would seem, have obtained. In this scenario, it is clear that no one owns anything since there is no one to own anything. Now imagine the same scene but this time with the addition of 100 human beings. Now who owns what? Is the whole planet now owned in common by the 100 human beings? Suppose they are living in caves on the side of Mount Kilimanjaro. Do they own Oklahoma? This seems radically implausible, so the thought experiment appears to come down on the side of the no ownership condition rather than the common-ownership condition.”⁷⁹¹ Similar positions are expressed by An Feallsnach and R. Epstein. Libertarians, therefore, reiterate that the initial condition of the external world is not common property but the absence of property; which makes the foundation of redistributive claims precarious.

In section 5.1 we examined a left-libertarian current within the controversy between thin and thick libertarianism.

The *Bleeding-Heart Libertarians*⁷⁹² (Matt Zwolinski, John Tomasi, Jason Brennan, Fernando Teson), have positions very close to, and sometimes overlapping with, the above orientation. These authors favor open markets but are close to the progressive Left on issues such as intersectionality, systemic racism, inequality reduction, and free immigration. This current, also referred to as the Arizona School, coined the label *neoclassical liberals* for classical liberals of the second half of the nineteenth century, the twentieth century (Mises, Hayek, M. Friedman) and the twenty-first century; and they place themselves under this designation, thus using both definitions for their research project.

Two of these scholars, Tomasi⁷⁹³ and Zwolinski, also consider themselves *Rawlsians*, the liberals who attempt to reconcile Rawls and Hayek, interpreting Rawlsian maximin a way that leads

⁷⁸⁹ R.G. Holcombe, *Common Property in Anarcho-Capitalism*, in “Journal of Libertarian Studies”, vol. 19, no. 2, Spring 2005, pp. 3–29.

⁷⁹⁰ G. Casey, *Libertarian Anarchy*, Continuum, New York, 2012, p. 68.

⁷⁹¹ G. Casey, *Murray Rothbard*, Continuum, New York, 2010, p. 56.

⁷⁹² From the name (suggested by Daniel Shapiro) of the blog founded by Zwolinski in 2011. Compared to “thick” left-libertarians (R.T. Long), BHLs have a more consequentialist, empirical and eclectic approach, while the former are rationalist and monist in their theoretical stance.

⁷⁹³ J. Tomasi, *Free Market Fairness*, Princeton University Press, Princeton, NJ, 2012. “In academia, the call for a Rawlsian libertarianism has been defended most vigorously by (my colleague) John Tomasi, professor of political science at Brown University. His book, *Free Market Fairness*, was released in February 2012 and for at least a year, there was, on average, at least one colloquium, lecture, or workshop a month on it, at venues that include the Cato Institute, Princeton University, Stanford University, University of Notre Dame, George Mason University, and several forums in Europe. Tomasi calls for an end to the antagonism between the Rawlsian critics of free markets on the left and the Hayekian defenders of them on the right. He is being hailed as “one of America’s leading social and political philosophers” and his book as “the very best philosophical treatment of libertarian thought, ever.” Stalwarts of libertarian and conservative thought, such as Charles Murray, Michael Zuckert, Richard Epstein, and Loren Lomasky are cheering Tomasi’s proposal.” J.P. McCaskey, *New Libertarians: New Promoters of a Welfare State*, in <https://www.johnmccaskey.com/new-libertarians/>, April 14, 2014.

to less dirigiste market rectification policies. Authors such as Brink Lindsey, Will Wilkinson,⁷⁹⁴ Anthony Flew, Bruce Caldwell and Michael C. Munger also belong to this group. In 2006, it was Lindsey, then a member of the Cato Institute, who gave the impetus for this new direction with an article in “New Republic” magazine.⁷⁹⁵ What he calls “progressive fusionism” is an attempt to synthesize civil liberties and support for the free market. The latter should not be based on deontological grounds – libertarians must abandon the absoluteness of subjective rights and the principle of non-aggression – but rather consequentialist, empirically assessable, because it is the best way to achieve the most important result, to make those in the worst economic conditions better off.⁷⁹⁶ One must achieve the ends of liberals by the means of libertarians. On the cultural and social level, the two orientations share many positions: “both generally support a more open immigration policy. Both reject the religious right’s homophobia and blastocystophilia. Both are open to rethinking the country’s draconian drug policies. Both seek to protect the United States from terrorism without gratuitous encroachments on civil liberties or extensions of executive power. And underlying all these policy positions is a shared philosophical commitment to individual autonomy as a core political value.”⁷⁹⁷ Common visions have also manifested themselves in the past regarding such matters as divorce, protection of the rights of the accused, and freedom of choice in abortion. These civil issues need to be welded with the pro-market requirements of libertarians, which are often difficult for liberals to digest: streamlined regulations to ensure maximum economic growth, “light” redistribution so as to alleviate the most distressed situations without jamming the market mechanism, replacement of welfare programs with a minimum safety net that does not disincentivize individual effort and responsibility. Beyond possible disagreements on specific points, Lindsey concludes, “if a new kind of fusionism is to have any chance for success, [...] it must be based on a real intellectual movement, with intellectual coherence. A movement that, at the philosophical level, seeks some kind of reconciliation between Hayek and Rawls.”⁷⁹⁸

⁷⁹⁴ He coined the label in the article *Is Rawlsianism the Future?*, in “Cato At Liberty” (blog), December 4, 2006, <https://www.cato.org/blog/rawlsianism-future>. In 2014, together with Lindsey, he founded the Niskanen Center, a think tank that aims to translate abstract fusionist theoretical elaboration into concrete public policy.

⁷⁹⁵ B. Lindsey, *Liberaltarians*, in “New Republic”, December 4, 2006.

⁷⁹⁶ McCaskey thus criticized this point: “if helping the poor becomes your very standard of right and wrong, you’ll end up proposing universal welfare and other schemes that abandon even a facade of defending people’s individual and inalienable rights to life and liberty. That’s what New Libertarianism does.” J.P. McCaskey, *op. cit.*

⁷⁹⁷ B. Lindsey, *Liberaltarians*, cit.

⁷⁹⁸ *Ivi.*

13. Strategies for Liberty

Although this paper focuses on philosophical and theoretical aspects and their reflections on some political issues, it is not incongruous to complement it with a brief illustration of the strategic orientations that have emerged among libertarians with a view to the realization of a libertarian society, or at least to combat statism and increase the spaces of freedom.⁷⁹⁹

As regards the cultural and educational aspect,⁸⁰⁰ one strategy is that of “trickle down” supported by Hayek. Ideas cascade according to a hierarchy that proceeds from the most prestigious thinkers to minor philosophers, academics, and ends with journalists and politicians and reaches the common people. By converting the most prestigious thinkers to the correct ideas, the masses will also learn and assimilate them, following the relational chain described. Rothbard objects that this strategy, in addition to requiring too long a time, ignores the fact that intellectuals are not moved only by the truth: they are part of the state class and therefore their interest is to preserve the public Moloch. Furthermore, the sequence suffers from interruptions in the chain because the prejudices of many exponents at various levels, often those belonging to the journalistic world, prevent the diffusion of correct ideas and encourage the wrong ones: “how can it be explained that the media invariably distort the result, and in the audience of commentators carefully choose the few on the left? Clearly because the media, especially the respectable and influential ones, start, and continue, with a strong “progressive” bias.”⁸⁰¹

A different method is the “Fabian” one of persuasion not at an academic level but in the places of political power, with study centers and think tanks that try to gradually pass their programmatic addresses in the various sectors.⁸⁰² The criticism of this strategy is that, if reforms that increase the size of the state are generally successful, as was the case of the Fabian Society in England in the early twentieth century, those that go in the opposite direction are almost never accepted because the public *establishment* will never harm its own interests⁸⁰³.

A more aggressive and “challenging” strategy is one based on a leadership capable of addressing ordinary people by short-circuiting the intellectual and journalistic elite: the “right-wing populism” already encountered in the previous chapter.⁸⁰⁴

⁷⁹⁹ Of course, strategic options may diverge, in substance and gradualness, in relation to ultimate goals. So anarcho-capitalists and minarchists may differ in their choices and judgments about the political viability of different political strategies (and tactics).

⁸⁰⁰ In relation to the increase in public awareness, Étienne de La Boétie’s *Discourse on Voluntary Servitude* (1553, published in 1576) is much loved by libertarians. In it, the subjects’ consent to the unjust coercion of political power is highlighted and deprecated, and a conversion from a servile mentality to a striving towards freedom is hoped for.

⁸⁰¹ M.N. Rothbard, *A Strategy for the Right*, cit., p. 6.

⁸⁰² This is, for example, the position supported in the last century by the Chicago economist Stigler, in disagreement with the strategy of popular dissemination followed by Milton Friedman (see *infra*).

⁸⁰³ On the subject of “getting your hands dirty” with political power or maintaining your own “purity”, Doherty contrasted two libertarian organizations, the Cato Institute and the Mises Institute. People more in tune with the first believe it is productive to put aside the bunker mentality and sit at the table of Washingtonian politics to try to pass some libertarian themes in the media and in the mainstream political world; with the risk of being corrupted by that system of power. Adherents of the second instead aspire to spread libertarian ideas in their radicality, without compromise: “people in the orbit of the Mises Institute have a tendency to advance ideas that would mortally offend the typical reader of the *New York Times*. [...] They delight in being outsiders, in proclaiming an uncontaminated truth that must be kept alive.” B. Doherty, *op. cit.*, pp. 607–8. However, at the time of the 2024 U.S. presidential election, it was the Mises Caucus, the right-wing component of the Libertarian Party, that negotiated with Trump on a number of points, not supporting the party’s candidate, Chase Oliver, and accusing his supporters of behaviors oriented towards virtue signaling rather than aiming at achieving some concrete political result.

⁸⁰⁴ Limited to the dissemination of economic and social ideas, this is the type of initiative by Milton Friedman, who in 1980 hosted the television program *Free to Choose* on PBS (from which the book of the same name was derived), with

On the political-institutional level, most authors have oriented themselves towards the strategy of decentralization.

In the United States, centrifugal libertarians advocate “states’ rights” as a “lesser evil” against federal power⁸⁰⁵ and tend to valorize the Tenth Amendment. Of course, they do not believe that states have rights — only individuals do—but they do believe that competition between legislative systems in the long run generates better outcomes for liberty than uniformity at the central level.⁸⁰⁶ The whole position can be summarized with Rothbard’s slogan: “universal rights, locally enforced.”

There are at least four reasons why decentralization generates greater freedom in the long run. First of all, the *regulatory competition*, that is, competition for residents and capital discourages despotism.⁸⁰⁷ Second, local tyranny minimizes damage compared to macro-tyranny; beyond a certain threshold, diseconomies of scale manifest themselves not only in administrative efficiency but also in the size of interference. Third, central governments always invent “good” reasons for intervening; if you give them power, you give them a legal imprimatur to plan from above. Finally, a vertical separation of powers creates resistance from lower jurisdictions to higher ones, preventing excessive accumulation of power in the central government.

enormous public success. As Nicola Giocoli wrote, Friedman’s success as a popularizer has, among other explanations, also “his popular background and anti-elitist empathy that brought him closer to the general public than other colleagues. [...] The combination of libertarian impulses, reassuring conservative references and clarity in showing the beneficial effects of the market makes his dissemination tremendously effective precisely with respect to the objective of defining and popularizing a “philosophical” framework and, subsequently, a movement of opinion in favor of the free market. Therefore, the definition of Friedman as an economic popularizer as a “populist” is not without foundation, nor should it be understood in a negative sense. A typical trait of populism is the distance from the “strong powers”, both economic and political. [...] It was not difficult for Friedman to persuade his readers [and viewers] of his independence from such powers. Just think of his controversial – and certainly not appreciated by the *establishment* – positions on protectionism, access to the professions, the power of unions or the liberalization of drugs. [...] Power in general, and government interventionism in particular, always have a single victim in Friedman’s dissemination, the common citizen – be he a consumer, a taxpayer or, perhaps, poor and poorly educated. [...] The criticism of the elite and the anti-intellectualism [...] are found [...] in relation to the mix between public and private interests and the behavior of politicians and bureaucrats [...] It is not an exaggeration to say that the rediscovery of the free market in American society in the 1980s was also the result of the plebiscite [obtained by Friedman thanks to the TV broadcast].” N. Giocoli, *La Scuola di Chicago*, IBL Libri, Turin, 2024, Kindle e-book, pp. 310–5.

⁸⁰⁵ *Nullification* has been re-proposed in a liberal key, according to which each state must be guaranteed the right not to make a federal law effective on its territory if this is contrary to the principles and interests of the state in question.

⁸⁰⁶ “The important negative consequence of many government policies is that they can breed a polarized and embittered society. This occurs because people have to obey policies they dislike or see their tax dollars used for activities they believe to be offensive or wasteful. A good illustration is *Roe vs. Wade*, the Supreme Court’s 1973 decision that barred states from banning abortion. This created a level of anger among abortion opponents that would have been avoided if abortion policy had been left to the states. [...] A different example is public schools, which by their nature must take stands on issues such as affirmative action, prayer, dress and speech codes, curricular content, teaching methods, and more. To take one particular case, some parents are strong advocates of school prayer, while others are ardent opponents. Public schools have no room for compromise on this issue; they must accept the band dictated by the Supreme Court’s interpretation of the First Amendment. [...] Similar examples abound. Because it is in the marriage business, government must take a stand on what constitutes a marriage and therefore be either for or against gay marriage. Because it funds science, government must take a stand on whether to support stem cell research. Because it funds the arts, government must decide whether work that some find profound but others find offensive is actually art. Because it funds TV and radio, government implicitly supports some opinions over others, breeding resentment from those who disagree with the views expressed. The fact that policies have a tendency to polarize is one reason to keep intervention at the state rather than the federal level. This allows variety, which softens the hard feelings generated by federal imposition of one policy on everyone. Even residents of state who do not like their own state’s policy can take some comfort in the possibility of moving to another state.” J.A. Miron, *op. cit.*, pp. 131–2.

⁸⁰⁷ With more widespread *footvoting*, that is, with easier physical movement of people from one political proposal (an order) to another, governments would also have more incentive to produce better, more efficient policies, and people would have more incentive to inform themselves. See C. Tiebout, *A Pure Theory of Local Public Expenditures*, in “Journal of Political Economy”, vol. 64, n. 5, October 1956, pp. 416–24; I. Somin, *Democracy and Political Ignorance*, cit.; *Free to Move: Foot Voting, Migration, and Political Freedom*, Oxford University Press, New York, 2020.

According to critics, the paradox is that many libertarians prefer to defend the sovereignty of a state that immediately introduces an anti-libertarian measure, in conflict with federal power, in order to maintain, and increasingly extend, the process of decentralization.

“Centralist” libertarians, on the other hand, prefer to use federal power against the anti-libertarian measures of individual states.⁸⁰⁸ The strategy is mainly that of “judicial activism,” consisting in urging state and local courts to enforce the protection of individual rights through sentences.⁸⁰⁹

If the perspective is anarchic, decentralization becomes radicalized to the point of prefiguring secession. For individual states and for territorial entities within states. According to Hoppe, the triggering and proliferation of successive secessions is the most plausible strategy.⁸¹⁰ All revolutions, the German economist points out, are started by (active) minorities. Secessions would fall within this more realistic social dynamic, as they necessarily consist in the separation of a small number of people from a larger number. It is less difficult to convince a quota of people concentrated in a particular territorial district, which is a minority in the country but a majority in its own territory. Considering the asphyxia, elephantiasis and inefficiency that decades of social democracy have induced in economic and social systems, the current tendencies to demand forms of autonomy may strengthen in the future. If energetic libertarian elites manage to also use slogans belonging to the democratic thematic baggage, such as the concept of “self-determination”, thus putting their opponent in further difficulty, “seems to be nothing unrealistic about assuming that such secessionist majorities exist or can be created at hundreds of locations all over the country.”⁸¹¹

Another theme is represented by the alternative between gradualism and radicality of the transition. Despite the constitutionally subversive traits of the theory (especially in the anarchist versions), *revolution*, understood in the narrow operational meaning of armed insurrection with violent seizure of power, is excluded by libertarians. Both for ethical reasons and for reasons of expediency: “First, armed revolution would almost surely involve the destruction of life and property of many innocent people, innocent in the sense that they had committed aggression against no one. Second, the government is more thoroughly armed than any revolutionary group or combination of such groups is likely to be, and defeat would be extremely likely. Third, the more such destruction the revolutionists cause, the more the vast majority of the population who may have been indifferent before will align themselves on the side of the government to squelch the revolutionaries, not only their armed forces, but everything about them, including their ideas. The attempt would be self-defeating.”⁸¹²

Excluding traumatic events such as a State default or war conflicts, in normal situations Huemer favors soft evolutions. The scenario optimistically presupposes societies already oriented towards

⁸⁰⁸ A prominent exponent of this position is Walter Block: “My own view is as follows: I favor liberty. When the federal government is more libertarian than a state, I approve of the former, relatively. When the state is more liberty-oriented than the central apparatus, I am partial to the state. For example, President Reagan once threatened to not send money to New York State, to which it would otherwise have been entitled, unless New York City rescinded its rent control. Since rent control is anti-libertarian, I supported Washington D.C. vis-à-vis New York on that one. On the other hand, several states, such as California, now allow medical marijuana. The Federales shut them down. Here, I defend the state versus the federal government, since the state’s action is more libertarian, in that people should have the right to use this drug.” W. Block, *Review of Huebert’s ‘Libertarianism Today’*, in “Libertarian Papers”, vol. 2, art. no. 19, 2010, <http://libertarianpapers.org/wp-content/uploads/article/2010/lp-2-19.pdf>, p. 6.

⁸⁰⁹ Particularly active in this field is the “Institute for Justice”, with headquarters in Arlington, Virginia.

⁸¹⁰ H.-H. Hoppe, *Democracy: The God That Failed*, cit., pp. 287–92.

⁸¹¹ *Ibid.*, p. 290.

⁸¹² J. Hospers, *Libertarianism: A Political Philosophy for Tomorrow*, cit., p. 412.

liberal values or rationally disposed to be convinced and to recognize the superior efficiency of private mechanisms compared to public ones, as well as the dubious legitimacy of the State.⁸¹³ Alternative institutions would develop simultaneously with the reduction of homologous public institutions, with the consent, or even the active participation, of the political class.⁸¹⁴

Rothbard and Hoppe, on the other hand, are wary of gradualism.⁸¹⁵

The discussion also focused on the appropriateness of activism within contemporary political-institutional structures and therefore on the problem of democracy and the procedures connected to it. Libertarians, as we saw in Chapter 11, do not believe that, for the purpose of protecting freedom, democracy is necessarily the best system. The most efficient and freest social order – the best allocation of resources – is not achieved through collective decisions taken by majority, and imposed on everyone, but through individual decisions and their composition on the market. The dilemma of participation in voting therefore arises.

Pro-libertarians (Ron Paul) believe that participation in elections, even with little or no chance of winning, allows citizens to become aware of libertarian ideas and, in the event of good electoral results, to counter statist and illiberal policies.

The opponents (Rockwell Jr.) do not want to legitimize the State in any way. The very dynamics of representative democracy reward those who propose to “do something”, which mostly coincides with an ever-increasing public intervention.⁸¹⁶ The greater the abstention, the less opportunity there will be for the government to perpetuate the fiction of consensus and mandate. As for the diffusion of libertarian ideas, they believe that today the Web and social media are more effective for this purpose than any electoral campaign, given the limited space generally granted to libertarian candidates.

Finally, although still very much a minority, mention should be made of the “escape” strategies: from state sovereignty or from urban communities;⁸¹⁷ characterised by the attempt to establish *enclaves* or small libertarian states in areas without state sovereignty such as international waters or “terrae nullius”; attempts often frustrated by the violent aggression of geographically closer States.

⁸¹³ On the basis of surveys conducted by various American research institutes, it can be concluded that the share of public opinion that, even in an instinctive and not fully conscious manner, is oriented towards libertarian positions varies from about one eighth to about one third. “Researchers from the University of Michigan, Stanford University and other centers conduct the American National Election Studies, a study of voters’ opinions. [...] On the basis of these data, analysts from the Cato Institute (a libertarian think-tank in Washington) state that about 15% of voters describe themselves as libertarian. However, other surveys and inquiries find a higher percentage of libertarian voters or those tending towards libertarianism. Gallup polls generally identify between 20% and 23% of libertarian voters. A 2007 Washington Post–ABC News poll found that about 26% of Americans are libertarian.” J. Brennan, *Libertarianism: What Everyone Needs to Know*, cit., p. 172.

⁸¹⁴ M. Huemer, *The Problem of Political Authority*, cit., Chapter 13.

⁸¹⁵ Rothbard touched on strategic aspects in *For a New Liberty*, Chapter 14, and in *The Ethics of Liberty*, Part V.

⁸¹⁶ On the difficulties of getting many libertarian positions across in campaign debates, Jacob H. Huebert wrote: “It is much easier in a short speech of thirty seconds or less to argue that we need the government to fight bad things—terrorism, drug addiction, etc.—than to explain how the government has caused these problems and is not needed to solve them. And when it comes to issues of race, it requires a particularly elaborate explanation—and a political campaign may be the worst forum for that explanation.” J.H. Huebert, *Libertarianism Today* (Santa Barbara, Calif.: Praeger ABC–CLIO, 2010), 236.

⁸¹⁷ This second solution, defined by Rothbard, with a critical tone, *retreatism*, consists in abandoning the social life of the city, which makes it impossible to escape State submission, to take refuge in uninhabited areas such as woods or caves, practicing mainly nomadism. The greatest exponent of this survivalist approach, typical of the hippie orientation of the Sixties of the twentieth century, was Tom Marshall, founder of the magazine “Innovator” in 1964.

The first experiment was that of the Bolognese engineer Giorgio Rosa, who in 1967 built a 400 square meter island with steel and concrete structures in the Adriatic Sea, beyond six miles from the Italian coast (at the time the limit of territorial waters). The idea was to exploit tourism, sell gasoline without excise duties, issue stamps and initially open a bar and a post office, allowing other spontaneous initiatives to arise later. The Republic of the Island of the Roses died at the end of June 1968, when the Italian government sent a task force of carabinieri that surrounded the island and occupied it. In February 1969, even though the Italian state had no jurisdiction over that area, the navy destroyed the platform with explosives.

Also in the 1960s, in Great Britain the struggle between the government, which defends the state monopoly of the BBC's airwaves, and private off-shore radio stations generates several independence initiatives. The liberal entrepreneur Oliver Smedley founds Radio Atlanta and Radio Caroline and broadcasts from international waters. Paddy Roy Bates broadcasts Radio Essex from an abandoned World War II fortification located in international waters outside British jurisdiction. He names this 500 square meter platform the Principality of Sealand.

In 1968 Werner Stiefel, owner of a pharmaceutical company, started Operation Atlantis, aimed at obtaining sovereignty over some islands in the Atlantic Ocean, a base to set sail for ships flying the flag of the new country in order to build artificial platforms, the true libertarian nation⁸¹⁸. Initially, the Prickly Pear Cays, two uninhabited islands in the Caribbean Sea, were thought of; but Anguilla, at the time proclaimed independence from the United Kingdom, refused to sell them. In 1970 the Silver Shoals were then identified Cays, near the Bahamas. However, as soon as they landed, Haiti, which claimed those islands, sent a gunboat and forced Stiefel and crew to return to the United States.⁸¹⁹

In 2008, Patri Friedman, Milton's grandson and son of the libertarian jurist David, and Peter Thiel, the founder of PayPal (who contributed 500 thousand dollars) created the Seasteading Institute, a foundation that aims to build platforms in international waters to host communities eager to live according to libertarian ideals, without state monopoly and taxation.⁸²⁰

In 2015, Czech libertarian Vít Jedlička founded the free republic of Liberland in a territory of about 7 square kilometers located between Croatia and Serbia and not claimed by either of them. The 'taxes' would have been on a voluntary basis through crowdfunding campaigns. As soon as 50 thousand dollars of donations and over 400 thousand citizenship requests were collected, immediately after the declaration of baptism the Croatian police surrounded the territory, preventing anyone from entering.⁸²¹

Attempts to evade State sovereignty by claiming full and exclusive sovereignty over small sections of private property within States, as in the cases of Ruby Ridge in Idaho in 1992 or Waco in Texas in 1993, are also suppressed with often brutal and deadly violence.

⁸¹⁸ They also minted a silver coin, the *deca*.

⁸¹⁹ On attempts to create *libernations* up to that time see J.L. Snare, *The Nation Builders' Struggle*, in "Reason," December 1972.

⁸²⁰ On that occasion Patri Friedman stated that "the difficulty in starting a new form of government is simply the lack of physical space, all the land on the planet has been taken. We need a new frontier, which is the ocean: let a thousand nations bloom on the high seas." In October 2020, three Seasteading enthusiasts, Grant Romundt, Rudiger Koch and Chad Elwartowski, bought a cruise ship, the Pacific Dawn, renamed Satoshi in homage to the (mysterious) inventor of bitcoin, to live off the coast of Panama and create a community based on cryptocurrencies and without taxes. However, international waters are no man's land, the rules stratified following the various treaties at the UN make it difficult to settle and in 2021 the experiment ended with the sale of the Satoshi.

⁸²¹ For a complete overview of experiments of this type see G. Graziani, *Stati d'eccellenza. Cosa sono le micronazioni (States of Exception. What are Micronations)*, Edizioni dell'Asino, Rome, 2012.

Still within the American territory, it is worth mentioning the *Free State Project*, the proposal to move en masse to an American state that is not large and that already has libertarian requirements, such as low taxes, limited regulation or norms that are already oriented in a libertarian sense (sale of weapons with fewer restrictions, legality of not wearing a helmet, etc.), in order to accentuate them even more by obtaining large majorities that would change the composition of the legislative bodies in a libertarian sense. The original idea is by Jason Sorens, who in 2001 detailed it in the online magazine *The Libertarian Enterprise*.⁸²² A referendum held in 2003 among libertarian activists designated New Hampshire as the most suitable state. Since then, just over 6,000 people have moved to the state in compliance with the project.⁸²³

⁸²² Founded by Lester Neil Smith in 1995, with an anarchist and paleo orientation, it ceases to be updated in 2023: <https://ncc-1776.org/>.

⁸²³ The yearning for “escape” has also manifested itself on a literary level, with a certain attraction for science fiction: libertarian ideas have been expressed in stories or novels such as *Stranger in a Strange Land* (1961) and *The Moon is a Severe Mistress* by Robert Heinlein, the *Rustum Saga* (1961 and 1982) by Poul Anderson, *Alongside Night* (1979) and *The Rainbow Cadenza* (1983) by Joseph Neil Schulmann, *Illuminatus!* (1984) by Robert Anton Wilson, *The Gallatin Divergence* (1985) by Lester Neil Smith and *The Adventures of Jonathan Gullible* (1995) by Ken Schoolland. A dystopian, gloomy and totalitarian future is instead described in *Antiphon* (1938) by Ayn Rand. This affinity between libertarianism and science fiction is, in Brian Doherty’s opinion, determined by the fact that “libertarianism, especially its anarcho-capitalist variant, is a kind of political science fiction, imagining a social world very different from the one we have always known. A strong streak of optimistic techno-visionary utopianism has also been an integral part of the post-1968 libertarian movement. Libertarians tend to believe in the opportunities, possibilities and glory of unfettered human reason and imagination, an idea both Randian and simply capitalist.” B. Doherty, *op. cit.*, p. 519.

Appendix

DIFFERENT APPROACHES TO LIBERTARIANISM

Moral or 'of rights'*natural rights*

Leonard Read, Murray Rothbard, Roy Childs jr., Jerome Tuccille, Walter Block, Charles Curley, Justin Raimondo, David Boaz, K. Sanders, David Bergland, Lewellyn H. Rockwell Jr., Jorg G. Hülsmann

objectivism

Ayn Rand, Morris e Linda Tannehill, Tibor Machan, John Hospers, David Kelley, Peter Schwartz, Leonard Peikoff, Paul Beard, Eric Mack

aristotelism

Douglas Den Uyl, Douglas Rasmussen, Gary Chartier

basic rights, kantianism

Robert Nozick, Mark D. Friedman, Lansing Pollock

a priori of logic

Hans-Hermann Hoppe, Stephen Kinsella, Mark R. Crovelli, Frank van Dun

logical-empiricists

David Osterfeld, Tom G. Palmer, Pierre Lemieux

dialectic

Chris Sciabarra

intuitionism

Michael Huemer

Consequentialism

Richard Epstein, David Boaz, Richard Fumerton

indirect consequentialism

Randy Barnett, David Schmitz, John Hasnas

utilitarianism

David R. Steele, Leland B. Yeager, Raymond W. Bradford, Charles Murray, John Kelley, David Conway, Jeffrey A. Miron, Peter Leeson

economic analysis of law

David Friedman

Contractarianism

Jan Narveson, Anthony de Jasay, John Thrasher

mutual non-interference

Loren E. Lomasky

Action-based property theory

Justin M. Altman

Critical rationalism

Jan C. Lester

Eclecticists

Fred Foldvary, Bruce Benson, Bertrand Lemennicier

Left-Libertarians

shared natural resources

Hillel Steiner, Philippe Van Parijs, Michael Otsuka, Peter Vallentyne

Thick Lib

Charles Johnson, Kevin Carson, Matt MacKenzie, Roderick Long, Nick Gillespie, Matt Welch, Sheldon Richman, Jeffrey Tucker, Cathy Reisenwitz

Bleeding heart libertarianism, Rawlsianism

Matt Zwolinski, John Tomasi, Jason Brennan, Fernando Teson, Brink Lindsey, Will Wilkinson, Anthony Flew, Bruce Caldwell, Michael C. Munger

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